United States Senate

WASHINGTON, DC 20510

March 27, 2015

The Honorable Lindsey Graham
Chairman
Subcommittee on State, Foreign Operations,
and Related Programs
Committee on Appropriations
U.S. Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Ranking Member
Subcommittee on State, Foreign Operations,
and Related Programs
Committee on Appropriations
U.S. Senate
Washington, D.C. 20510

Dear Chairman Graham and Ranking Member Leahy:

As you prepare the Fiscal Year 2016 State, Foreign Operations, and Related Programs Appropriations Bill, we respectfully request that you include language prohibiting funding for the UN Arms Trade Treaty (ATT) that updates and strengthens the language of Public Law No: 113-235, the Consolidated and Further Continuing Appropriations Act, 2015, as well as Public Law No: 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015.

The ATT entered into force for those nations that have ratified it on December 24, 2014. The next step in the treaty process is for the nations that have signed or ratified the treaty – including the United States – to hold a Conference of States Party to the treaty. Preparations for this CSP are already well under way. One of the main agenda items at the CSP will be the creation and funding of a treaty secretariat, which is explicitly required by the text of the treaty.

We continue to have serious concerns with both the substance of the ATT and the process by which it was adopted. We are deeply concerned that the ATT does not expressly recognize, in the body of the treaty text, the fundamental, individual right to keep and bear arms, and the individual right of personal self-defense, as well as the legitimacy of hunting, sports shooting, and other lawful activities pertaining to the private ownership of firearms and related materials, and are thus concerned that the treaty risks encouraging infringements on freedoms protected by the Second Amendment.

In this regard, we are particularly concerned by the treaty's requirement to prevent the "diversion" of firearms, and by the fact that this requirement is not clearly limited to international trade – and thus could be held to apply to the sale or transfer of firearms inside the United States. Moreover, we are concerned that the ATT calls for all nations to keep records of arms transfers, and its suggestion that these records include information on "end users," e.g. private firearms owners, which are to be reported to the treaty secretariat. This would be a serious violation of the privacy of millions of Americans.

Furthermore, we are concerned that the ATT could hinder the U.S. from fulfilling its strategic, legal, and moral commitments to provide arms to key allies such as the Republic of China

(Taiwan) and the State of Israel, noting that the ATT's criteria for assessing the potential consequences of arms transfers are vague and easily politicized, and that the ATT's supporters have already repeatedly sought to use it to end U.S. arms transfers to Israel. We are equally concerned that the ATT risks imposing costly regulatory burdens on U.S. businesses, for example, by creating onerous reporting requirements that could damage the domestic defense manufacturing base and related firms. Finally, we are concerned that the ATT places free democracies and totalitarian regimes on a basis of equality, recognizing their equal right to transfer arms, and is thereby dangerous to the security of the United States.

We also have serious concerns with the process by which the ATT was adopted. By voting in support of adopting the ATT through the UN General Assembly by a majority vote, rather than by consensus-based agreement, the State Department abandoned its stated "key U.S. redline," that the "ATT negotiations must have consensus decision making to allow us to protect U.S. equities" and to "ensure that all countries can be held to standards that will actually improve the global situation." We are concerned that the U.S. departure from consensus undermines our efforts to protect U.S. interests in future treaty negotiations, particularly when the U.S. is in a minority or when it stands alone.

We are also concerned with President Obama's efforts to implement the ATT unilaterally via executive actions, without the advice and consent of the Senate, and without the passage of implementing legislation, as required, by the Congress. You may recall that Thomas Countryman, Assistant Secretary for International Security and Nonproliferation at the Department of State and the head of the U.S. delegation to the UN conferences that negotiated the ATT, provided assurances in November 2013 that "becoming a party to the treaty would not require any additional export or import controls for the United States, full stop." However, on January 14, 2014, President Obama expressed his willingness to "use [his] pen to sign executive orders and take executive actions and administrative actions" without Congress. The very next day the Obama administration announced a new U.S. Conventional Arms Transfer Policy (Presidential Policy Directive/PPD-27), which abandoned the existing policy and incorporated the standards and requirements of the ATT.

We are also concerned that almost eighteen months have passed since Secretary of State John Kerry signed the ATT on behalf of the United States in September 2013. Both before and after that date, both the Senate and the House have repeatedly expressed serious concerns about the ATT, including in a bipartisan letter signed by 50 members of the Senate to President Obama on October 15, 2013, and a companion letter from 181 House members. More recently, on March 2, 2015, new members of Congress were given a chance to support the October 2013 letter resulting in a total of 55 currently-serving Senators and 191 currently-serving members of the House opposed to the ATT.

In spite of these expressions of concern, the Obama administration has continued to hold the ATT in limbo, implementing it through administrative actions while failing even to transmit it to the Senate. Nor has the administration acknowledged that, as a non-self-executing treaty, the ATT must be the subject of implementing legislation passed by both the House and the Senate. The U.S. export and import control systems were created by Senate and House action: they are not simply a creation or, or subject to the sole control of, the Executive Branch. The ATT is

directly related to those systems, and legislative control of its implementation in law is inseparable from Congressional responsibility for the creation of the export and import control systems. We believe it is essential to maintain the principle that non-self-executing treaties must be the subject of implementing legislation before funds can be expended upon them.

Moreover, during the course of those months, the ATT has come into force: in the course of fiscal year 2016, the U.S. will be presented with a bill, likely to be set at a level comparable to its UN dues (i.e. 22 percent of expenditures), for the funding of the treaty secretariat. We are entirely opposed to the contribution of any U.S. funds to such a secretariat, the establishment of which will not serve U.S. interests, and which is the result of a treaty that has not even been transmitted to the Senate for its advice and consent.

Finally, the Supreme Court case of *Bond v. United States* (2014) illustrates that domestic criminal prosecutions of individuals have been based on treaties that were supposedly intended to control the conduct of the states party. Even though the ATT has not received the advice and consent of the Senate, or been the subject of implementing legislation, this danger still exists in this case, partly because the Obama administration accepts that it has the obligation not to undermine the treaty's objective and purpose, and partly because it has stated that it is already implementing the ATT through existing authorities, which opens the door for prosecutions that are sustained by a charge of violating the ATT.

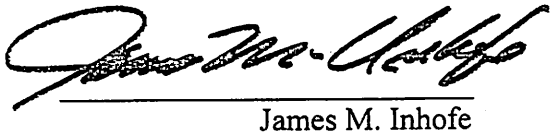
For the above reasons, we respectfully request that you include the following language in opposition to ATT funding in the Fiscal Year 2016 State, Foreign Operations, and Related Programs Appropriations Bill.

Sec. ___ (a) IN GENERAL. -- None of the funds made available by this Act may be obligated or expended to fund a Secretariat or any other international organization created to support the implementation of the Arms Trade Treaty, to sustain domestic prosecutions based on any charge related to the Treaty, or to implement the Treaty until the Senate approves a resolution of ratification for the Treaty and the House and Senate adopt implementing legislation for the Treaty.

(b) RULE OF CONSTRUCTION. –Nothing in this section shall be construed to preclude the Department of Defense from assisting foreign countries in bringing their laws, regulations, and practice related to export control up to United States standards.

Thank you for your consideration of this request.

Sincerely,



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