Congress of the United States
Washington, DC 20515

March 17, 2016

The Honorable John Carter
Chairman
Committee on Appropriations
Subcommittee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Lucille Roybal-Allard
Ranking Member
Committee on Appropriations
Subcommittee on Homeland Security
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Carter and Ranking Member Roybal-Allard:

As you prepare the FY 2017 Homeland Security 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: 114-113, the Consolidated Appropriations Act, 2016, as well as Public Law No: 114-92, the National Defense Authorization Act for FY 2016.

The ATT entered into force for those nations that have ratified it on December 24, 2014. The next step in the treaty process was for the nations that have signed or ratified the treaty – including the United States – to hold a Conference of States Parties (CSP) to the treaty, to create and fund a Treaty Secretariat, and to make arrangements for the funding and organization of future CSPs and other treaty events. The first CSP was duly held in Cancun, Mexico, on August 24-27, 2015.

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 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 industrial base and related firms. Finally, we note with regret that the ATT places free

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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 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 thirty 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 House and the Senate repeatedly expressed serious concerns about the ATT, including in a bipartisan letter signed by 181 members of the House to President Obama and led by Representatives Mike Kelly and Collin Peterson on October 15, 2013, and a companion letter led by Senators Jerry Moran and Joe Manchin on behalf of fifty senators. More recently, on March 2, 2015, Representative Kelly sent a new letter, noting that 34 members of the House newly-elected in 2014 support his previous letter, making a total, on that date, of 191 currently-serving members of the House. Senators Moran and Inhofe sent a parallel letter, which now has the support of 55 currently-serving members of the Senate.

In spite of these concerns, 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 of, 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. The administration should refrain from changing or promulgating import or export control rules that draw on the authority or language of the ATT before it has completed the full ratification process, including the passage of implementing legislation. We believe it is essential to maintain the principle that non-self-executing treaties must be the subject of implementing legislations before funds can be expended upon them.

Furthermore, 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 parties. 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 object 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 based on a charge of violating the ATT.

Finally, the outcome of the 2015 CSP causes us further concern, because it sets out a schedule of assessed payments that will apply to the United States. The Cancun CSP decided that all signatory and observer states – including the U.S. – would be assessed on the basis of a modified U.N. scale of assessments for the costs attending future CSPs and subsidiary body meetings. The U.S. will be assessed 22 percent of the costs of these meetings. The Cancun CSP further allows nations to make voluntary contributions to "support the participation of delegations from developing countries to attend the CSP or other meetings under the Treaty."

As we noted above, Congress has consistently banned the appropriation of funds "to implement the Arms Trade Treaty," and at the Cancun CSP, the Treaty Secretariat was charged with providing "technical advice on the implementation of the Treaty." Accordingly, the U.S. should not make any payments to the Treaty Secretariat, or any voluntary contributions to Treaty institutions.

For the above reasons, we respectfully request that you include the following language in opposition to ATT funding in the FY 2017 Homeland Security Appropriations Bill:

Sec. ___ (a) None of the funds made available by this Act may be obligated or expended to sustain a domestic prosecution based on any charge related to the Arms Trade Treaty, to make assessed payments for the Treaty's Conference of States Parties or to meet in any other way expenses sustained by the Treaty Secretariat, to make voluntary contributions to any international organization or foreign nation for any purpose related to attendance at the Conference, 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: *Provided*, That the limitation in this paragraph shall not apply to a United States delegation attending the Treaty's Conference of State Parties, subsidiary bodies or extraordinary meetings, or to the payment, to entities other than the Treaty Secretariat, of an attendance fee towards the cost of preparing and holding the Conference of State Parties, or subsidiary body meeting as applicable.

Thank you for your consideration of this request.

Sincerely,

Mike Kelly

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Member of Congress

PETE SESSIONS
Member of Congress

MICHAEL MCCAUL
Member of Congress

KEVIN BRADY
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