United State Senate Committee on Foreign Relations
Tax Treaties Hearing
Testimony of Paul B. Nolan
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February 26, 2014

Good morning Mr. Chairman, Ranking Member Barrasso, and Members of the Committee. Thank you for the opportunity to testify at today's hearing. My name is Paul Nolan and I am the Vice President Tax at McCormick & Company, Inc.

McCormick & Company, Incorporated is a global leader in flavor with $4 billion in annual sales. McCormick manufactures, markets and distributes spices, seasoning mixes, condiments and other flavorful products to the entire food industry – retail outlets, food manufacturers and foodservice businesses - in more than 125 countries and territories. Approximately 45% of our sales are to customers located outside the United States and that number is growing each year.

We employ more than 10,000 people in locations around the world, including approximately 2,000 in Maryland, where our company began at the foot of the Baltimore harbor 1889 and where our company has its global headquarters and most of its US manufacturing and research & development. In 2014, we are celebrating our 125th year under the theme of "The Flavor of Together."

Since Willoughby M. McCormick founded the company selling root beer extract in 1889, McCormick has demonstrated a strong commitment to the communities in which it operates. Innovation in flavor and a clear focus on employee engagement and product quality has allowed McCormick to grow its business globally and become the flavor leader it is today.

I am here today to testify in favor of the ratification of the two treaties and the three protocols amending three other treaties that are the subject of this hearing.

Mr Chairman, Ranking Member Barrasso, and Members of this committee, tax treaties benefit the US economy and US-based multinational companies (MNCs) that are globally engaged, such as McCormick, in three ways.

First, tax treaties provide clear thresholds and triggers for foreign taxation of global American companies' income generated from trading with foreign

customers. Bi-lateral tax treaties allow global American companies to invest and compete abroad for foreign customers through: (i) greater certainty regarding future income tax costs and (ii) equal treatment among other non-US competitors because there is no competitive disadvantage arising from higher local taxation of US companies' investment vs. foreign business investment in the treaty country.

Second, Mutual Agreement Procedures (MAP) are a critically important tool to facilitate resolution of income tax disputes between governments. Tax treaties provide the two governments who are disputing the income tax liability of a single company to enter into a principle-based government to government negotiation that can resolve the disputed income tax liability. This process assures no double-taxation due to differences in taxation principles between countries.

In the absence of MAP procedures, globally engaged US companies would have limited recourse in resolving tax issues on their own. In some countries, tax authorities or judiciaries can be hostile to US investors in particular, or all foreign investors in general, subject to political interference, or motivated by domestic budget pressures.

As a result, foreign tax authorities operating without tax treaties might levy duplicative capital gains and withholding taxes on US company investments unsupported by international tax policy norms. Tax treaties bring with them OECD principles on proper attribution of profits, rules on permanent establishment, and other broadly accepted principles.

Third, Tax treaties provide for mutually agreed reduced rates of withholding taxes on royalty payments for US-owned intellectual property and interest payments paid with respect to US debt. Without tax treaties in force, US companies pay higher taxes on the same types of business transactions as foreign MNCs with broader and more effective treaty networks. By avoiding higher or additional layers of income tax, tax treaties also increase the net return to US-owned intellectual property which increases the incentive to develop and own intellectual property in the US.

As you well know, Mr Chairman and Ranking Member Barrasso, expanding the network of tax treaties benefits the United States economy. Tax treaties improve the environment for international trade and outbound investment, with major benefits to US companies, workers, consumers, and taxpayers.

The headquarters activity generated by globally engaged US companies' investments abroad spurs greater job growth here at home and along their supply chains. This increases federal, state, and local tax revenues that are sustainable only in an environment which continues to support free trade in goods and services.

Increased restrictions on trade will disadvantage consumers by reducing consumer choice, increasing prices, and favoring local producers, which makes globally engaged American companies less able to compete in the provision of goods and services to consumers around the world. Reduced foreign tax burdens on royalties paid to the US increases the incentive for investment in intangible property in the US by increasing the expected return of US-owned intellectual property. This results in more investment in intellectual property in the US.

Tax treaties also improve the environment for inbound investment that benefits both consumers and taxpayers. US affiliates of foreign MNCs pay royalties to their foreign parent companies for the use of the foreign-owned intellectual property in the US. Tax treaties enhance the environment for certainty in business planning and potentially reducing US tax costs on inbound investments. This results in increased investment in the US, with associated benefits for employment, tax revenue, and consumer choice.

"Exchange of Information" provisions provide appropriate and limited tools to reduce tax evasion by US businesses and individuals while precluding the use of these provisions for 'fishing expeditions' on the part of foreign or US tax authorities without evidence of such evasion.

In conclusion, we support as broad a network of tax treaties as possible that reduce rates of withholding taxes and non-resident capital gains taxes. We support "limitation on benefits" provisions consistent with the latest model US tax treaty. They prevent "treaty shopping". Unilateral application of "generally anti-avoidance rules (GAAR) should be avoided as they are arbitrary in their application and often result in double-taxation.

In the recent past, some of the government to government negotiations that are intended to resolve double-taxation for taxpayers have become bogged down when one party or the other refuses to work the differences over the amount of income to be taxed in each jurisdiction.

So-called ‘baseball’ arbitration is a solution to this problem of deadlocked negotiations between competent authorities. Baseball arbitration requires each country seeking to tax the same income to submit a “last best offer’”. The arbitrator then selects one of the offers to resolve the dispute. While it is rarely invoked, it does provide an incentive for two disputing jurisdictions to come to a timely agreement that avoids double-taxation. Baseball arbitration does not create nowhere income – it ensures that a taxpayer is not subjected to double taxation.

Thank you once again for the opportunity to testify and I would be happy to answer any questions.