Written Testimony of

Alexander Spitzer

Senior Vice President - Taxes, Nestlé

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Good morning. My name is Alexander Spitzer. Mr. Chairman, I am grateful for this opportunity to share with the Committee my personal views on international tax policy as it relates to U.S. operations of multinational firms and, in particular, any impediments that may serve as a barrier to attracting international investment into the U.S. manufacturing base.

I am Senior Vice President - Taxes for Nestlé in the U.S. and have held the top tax job in the company for the last 26 years. Also, from 1996-2002, I served as President of the Organization for International Investment (OFII) and I continue to serve on OFII's Executive Committee.

As the top tax executive for a major U.S. subsidiary of a Swiss-based multinational and as long-time President of the inbound investment community's leading association, I believe that I have a unique perspective to offer the Committee today. Thank you for inviting me.

Nestlé in the United States

Nestlé, a Swiss public company, is the world's largest food company with sales over $100 billion and was established in 1866 (50 years before the enactment of the U.S. federal income tax). For more than 110 years, Nestlé has been insourcing into the U.S. and investing in American factories, jobs and businesses. Our first factory in the U.S. was built around 1900 in upstate New York to produce chocolate products. Nestlé manufactures in the U.S. a large range of products including Stouffer's & Lean Cuisine, Gerber, Jenny Craig, PowerBar, Hot Pockets, Poland Spring, Deer Park, Edy's & Häägen-Dazs Ice Cream, Butterfinger, Crunch, Libby's Juicy Juice, Nescafé Coffee, Coffee-Mate, DIGIORNO Pizza, also Pet Food's Friskies, Alpo, Purina, and Beneful. We have a total of 51,000 employees at 85 manufacturing facilities, and 7 U.S. R&D centers. Nestlé's U.S. manufactured product sales approximate $28.0 billion annually, including $600 million in exports.

Nestlé in the U.S. has been consistently ranked by *Fortune* magazine as the **# 1** consumer foods products company in the industry. Our Pet Food Company, Purina, is one of 7 companies in 2010 winning the Malcolm Baldrige Quality Award.

Excluding acquisitions, we have invested approximately $5.5 billion over the last 6 years in M&E and factories in our U.S. businesses. For example, we have recently completed a $650 million factory investment in Anderson, Indiana making aseptic packaged beverages like NesQuik and Coffee-Mate. Gerber has recently opened a call center in Muskegon, Michigan (not India) and also invested in a $90 million expansion in its Fort Smith, Arkansas factory. And, Nestlé Purina has recently installed the largest solar renewable power system in Colorado at its Denver PetCare plant … if it works well … we will continue to make such investments at other plants.

Some of our other U.S. facilities include our Dublin, Ohio Quality Assurance Center employing approximately 115 people; our Franklin Park, Illinois chocolate factory employing approximately 750 people; our Itasca, Illinois Willy Wonka candy factory employing 300 people and our Dallas, Texas Water Production company which employs approximately 250 people.

When Nestlé acquires a business, we usually maintain current management and **increase** investment and **expansion** rather than cut costs or dismantle the business. This approach is more common with cross border acquisitions than domestic-to-domestic acquisitions, in which there is more often redundancy and, therefore, a higher likelihood of layoffs. For example, after we completed our Dreyer's acquisition, we invested over $100 million in expanding our Bakersfield, California plant making it the largest ice cream factory in the world.

Disincentives and Impediments to Investing in the United States

There has been much discussion of the U.S. corporate tax rate and its impact on the country's ability to compete for global investment. There is no doubt that a lower rate and a more transparent tax code would make the U.S. more competitive for investment from abroad. The rest of the world is moving towards lower rates; simply put, the U.S. must do the same. However, I also want to highlight a number of other areas of particular interest to my business community.

The ability of the inbound business community and Nestlé itself to deduct ordinary and necessary business expenses related to investment such as interest and royalties for both federal and state purposes is of great concern and weighs heavily on our investment decisions. Not only are inbound companies singled out (as opposed to U.S.-headquartered companies) with regard to restrictions on the deductibility of debt service via Section 163(j), recently there seems to be a coordinated IRS effort to audit dozens of inbound companies with regard to debt/equity type issues although there is no indication of any abuse.

Despite the fact that a 2007 Treasury report found no evidence of wide-spread abuse with regard to Section 163(j), there is still much uncertainty regarding further restrictive legislation in this area. This uncertainty weighs heavily on investment decisions. Various legislative proposals concerning corporate residency rules, treaty overrides, as well as IRS administrative practices also contribute to the climate of uncertainty.

With regard to the states, in many cases they seem to be bent on conducting their own individual foreign fiscal policy. Many states have enacted legislation to deny the deduction of interest and royalties paid to foreign parent companies, even those headquartered in treaty countries. At great effort, OFII has educated many such states on the importance of including treaty exceptions that ensure the state is aligned with U.S. tax treaty obligations.

However, many states are now attempting to bring foreign parent companies and affiliates, who have no physical presence in the U.S., into their states for tax purposes. This would violate the federal and treaty rules concerning permanent establishments, but unlike most foreign sub-national governments, the states are not bound by U.S. tax treaties.

It would be helpful if the Committee would use its best efforts to promote the inclusion of the states in upcoming treaties. If this trend of state taxation continues, I'm afraid not only will it discourage investment into the U.S., but it could jeopardize our tax treaty network and/or encourage reciprocal treatment by our treaty and trading partners.

In this regard, the enactment of the BATSA bill (The Business Activity Tax Simplification Act of 2011 – H.R. 1439) before the House Subcommittee on Courts, Commercial and Administrative Law of the House Committee on the Judiciary would be important so as to limit the states' application of "economic nexus" theories to foreign companies which have no physical presence in the U.S. (link to bill text: http://www.gpo.gov/fdsys/pkg/BILLS-112hr1439ih/pdf/BILLS-112hr1439ih.pdf).

As a U.S. citizen, I think it important for the United States to create a competitive environment to attract and maintain investment via a competitive tax regime as well as ensure fairness and certainty in our tax rules and administration. We should put the welcome mat out for investment in an affirmative, proactive manner.

As the Committee moves forward in considering reforms to the tax system, I urge you to do so in a non-discriminatory way that maximizes job-creating investment in the United States. Thank you for thoughtfully framing this discussion. I am happy to answer any questions.