

1 **SEC. 3. CONDITIONS.**

2 The advice and consent of the Senate under section
3 1 is subject to the following conditions:

4 (1) Not later than 2 years after the Protocol
5 enters into force and prior to the first arbitration
6 conducted pursuant to the binding arbitration mech-
7 anism provided for in the Protocol, the Secretary of
8 the Treasury shall transmit to the Committee on Fi-
9 nance and the Committee on Foreign Relations of
10 the Senate and the Joint Committee on Taxation the
11 text of the rules of procedure applicable to arbitra-
12 tion panels, including conflict of interest rules to be
13 applied to members of the arbitration panel.

14 (2)(A) Not later than 60 days after a deter-
15 mination has been reached by an arbitration panel
16 in the tenth arbitration proceeding conducted pursu-
17 ant to the Protocol or any of the treaties described
18 in subparagraph (B), the Secretary of the Treasury
19 shall prepare and submit to the Joint Committee on
20 Taxation and the Committee on Finance of the Sen-
21 ate, subject to laws relating to taxpayer confiden-
22 tiality, a detailed report regarding the operation and
23 application of the arbitration mechanism contained
24 in the Protocol and such treaties. The report shall
25 include the following information:

1 (i) For the Protocol and each such treaty,
2 the aggregate number of cases pending on the
3 respective dates of entry into force of the Pro-
4 tocol and each treaty, including the following
5 information:

6 (I) The number of such cases by trea-
7 ty article or articles at issue.

8 (II) The number of such cases that
9 have been resolved by the competent au-
10 thorities through a mutual agreement as of
11 the date of the report.

12 (III) The number of such cases for
13 which arbitration proceedings have com-
14 menced as of the date of the report.

15 (ii) A list of every case presented to the
16 competent authorities after the entry into force
17 of the Protocol and each such treaty, including
18 the following information regarding each case:

19 (I) The commencement date of the
20 case for purposes of determining when ar-
21 bitration is available.

22 (II) Whether the adjustment trig-
23 gering the case, if any, was made by the
24 United States or the relevant treaty part-
25 ner.

1 (III) Which treaty the case relates to.

2 (IV) The treaty article or articles at
3 issue in the case.

4 (V) The date the case was resolved by
5 the competent authorities through a mu-
6 tual agreement, if so resolved.

7 (VI) The date on which an arbitration
8 proceeding commenced, if an arbitration
9 proceeding commenced.

10 (VII) The date on which a determina-
11 tion was reached by the arbitration panel,
12 if a determination was reached, and an in-
13 dication as to whether the panel found in
14 favor of the United States or the relevant
15 treaty partner.

16 (iii) With respect to each dispute sub-
17 mitted to arbitration and for which a deter-
18 mination was reached by the arbitration panel
19 pursuant to the Protocol or any such treaty, the
20 following information:

21 (I) In the case of a dispute submitted
22 under the Protocol, an indication as to
23 whether the presenter of the case to the
24 competent authority of a Contracting State

1 submitted a Position Paper for consider-
2 ation by the arbitration panel.

3 (II) An indication as to whether the
4 determination of the arbitration panel was
5 accepted by each concerned person.

6 (III) The amount of income, expense,
7 or taxation at issue in the case as deter-
8 mined by reference to the filings that were
9 sufficient to set the commencement date of
10 the case for purposes of determining when
11 arbitration is available.

12 (IV) The proposed resolutions (in-
13 come, expense, or taxation) submitted by
14 each competent authority to the arbitration
15 panel.

16 (B) The treaties referred to in subparagraph
17 (A) are—

18 (i) the 2006 Protocol Amending the Con-
19 vention between the United States of America
20 and the Federal Republic of Germany for the
21 Avoidance of Double Taxation and the Preven-
22 tion of Fiscal Evasion with Respect to Taxes on
23 Income and Capital and to Certain Other
24 Taxes, done at Berlin June 1, 2006 (Treaty
25 Doc. 109–20) (the “2006 German Protocol”);

1 (ii) the Convention between the Govern-
2 ment of the United States of America and the
3 Government of the Kingdom of Belgium for the
4 Avoidance of Double Taxation and the Preven-
5 tion of Fiscal Evasion with Respect to Taxes on
6 Income, and accompanying protocol, done at
7 Brussels July 9, 1970 (the “Belgium Conven-
8 tion”) (Treaty Doc. 110–3);

9 (iii) the Protocol Amending the Convention
10 between the United States of America and Can-
11 ada with Respect to Taxes on Income and on
12 Capital, signed at Washington September 26,
13 1980 (the “2007 Canada Protocol”) (Treaty
14 Doc. 110–15); and

15 (iv) the Protocol Amending the Convention
16 between the Government of the United States
17 of America and the Government of the French
18 Republic for the Avoidance of Double Taxation
19 and the Prevention of Fiscal Evasion with Re-
20 spect to Taxes on Income and Capital, signed
21 at Paris August 31, 1994 (the “2009 France
22 Protocol”) (Treaty Doc. 111–4).

23 (3) The Secretary of the Treasury shall prepare
24 and submit the detailed report required under para-
25 graph (2) on March 1 of the year following the year

1 in which the first report is submitted to the Joint
2 Committee on Taxation and the Committee on Fi-
3 nance of the Senate, and on an annual basis there-
4 after for a period of five years. In each such report,
5 disputes that were resolved, either by a mutual
6 agreement between the relevant competent authori-
7 ties or by a determination of an arbitration panel,
8 and noted as such in prior reports may be omitted.

9 (4) The reporting requirements referred to in
10 paragraphs (2) and (3) supersede the reporting re-
11 quirements contained in paragraphs (2) and (3) of
12 section 3 of the resolution of advice and consent to
13 ratification of the 2009 France Protocol, approved
14 by the Senate on December 3, 2009.