



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.