and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes, in accordance with the provisions of paragraph 1, in the profits of an enterprise of that Contracting State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other Contracting State and where the competent authorities of the Contracting States agree, upon consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Contracting State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Contracting State shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.

3. Notwithstanding the provisions of paragraph 1, a Contracting State shall not change the profits of an enterprise of that Contracting State in the circumstances referred to in paragraph 1 after the expiry of the time limits provided in its laws and, in any case, after seven years from the end of the taxable year in which the profits which would be subject to such change would have accrued to that enterprise. The provisions of this paragraph shall not apply in the case of fraud or wilful default."

Article 6

Article 10 of the Convention shall be deleted and replaced by the following:

"Article 10

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that Contracting State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company that has owned, directly or indirectly, for the period of six months ending on the date on which entitlement to the dividends is determined, either:

(i) shares representing at least 10 per cent of the voting power of the company paying the dividends where such company is a resident of Japan; or

(ii) shares representing at least 10 per cent of the capital or of the voting power of the company paying the dividends where such company is a resident of Switzerland;

(b) 10 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a resident of the other Contracting State and is either:

(a) a company that has owned, directly or indirectly, for the period of six months ending on the date on which entitlement to the dividends is determined:

(i) shares representing at least 50 per cent of the voting power of the company paying the dividends where such company is a resident of Japan; or

(ii) shares representing at least 50 per cent of the capital or of the voting power of the company paying the dividends where such company is a resident of Switzerland; or