PROTOCOL

At the signing of the Convention between Japan and the Republic of Lithuania for the Elimination of Double Taxation with respect to Taxes on Income and the Prevention of Tax Evasion and Avoidance (hereinafter referred to as "the Convention"), Japan and the Republic of Lithuania have agreed upon the following provisions which shall form an integral part of the Convention.

1. With reference to paragraph 1 of Article 4 of the Convention:

It is understood that a person is "liable to tax" in a Contracting State even where all or part of its income is exempted from tax in that Contracting State by satisfying the requirements for exemption specified in the tax laws of that Contracting State.

2. With reference to Article 7 of the Convention:

(a) Paragraphs 1 to 6 of Article 7 of the Convention shall be deleted and replaced by the following provisions on the date to be agreed between the Governments of the Contracting States through an exchange of diplomatic notes:

"1. Profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Contracting State.

2. For the purposes of this Article and Article 24, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.

3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other Contracting State, that other Contracting State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.

4. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article."

(b) The provisions of paragraphs 1 to 4 of Article 7 of the Convention as amended by the provisions of subparagraph (a) shall have effect with respect to profits of an enterprise for any taxable years beginning on or after the date referred to in subparagraph (a). Until the provisions of paragraphs 1 to 4 of Article 7 of the Convention as amended by the provisions of subparagraph (a) have effect, the provisions of the original paragraphs 1 to 6 of Article 7 of the Convention shall continue to apply.

3. With reference to paragraph 5 of Article 26 of the Convention:

(a) The competent authorities of the Contracting States shall by mutual agreement establish a procedure in order to ensure that an arbitration decision will be implemented within two years from a request for arbitration as referred to in paragraph 5 of Article 26 of the Convention unless actions or inaction of a person directly affected by the case in respect of which the request for arbitration has been made hinder the resolution of the case or unless the competent authorities of the Contracting States and that person otherwise agree.

(b) An arbitration panel shall be established in accordance with the following rules: