the benefits under this Convention shall not apply to any item of income on which the tax in the third jurisdiction is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.

(b) The provisions of subparagraph (a) shall not apply if the income derived from the other Contracting State described in that subparagraph emanates from, or is incidental to, the active conduct of a business carried on through the permanent establishment (other than the business of making, managing or simply holding investments for the enterprise's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance enterprise or registered securities dealer, respectively).

(c) If the benefits under the Convention are denied pursuant to the provisions of subparagraph (a) with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of subparagraphs (a) and (b) (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence by a resident of the other Contracting State shall consult with the competent authority of that other Contracting State before either granting or denying the request.

2. Notwithstanding the other provisions of this Convention, a benefit under the Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Convention.

ARTICLE 28
ENTRY INTO FORCE

1. Each of the Contracting States shall send in writing through diplomatic channels to the other Contracting State the notification confirming that its internal procedures necessary for the entry into force of this Convention have been completed. The Convention shall enter into force on the thirtieth day after the date of receipt of the latter notification.

2. This Convention shall have effect:

(a) in Japan:

(i) with respect to taxes levied on the basis of a taxable year, for taxes for any taxable years beginning on or after 1 January in the calendar year next following that in which the Convention enters into force;

(ii) with respect to taxes levied not on the basis of a taxable year, for taxes levied on or after 1 January in the calendar year next following that in which the Convention enters into force;

(b) in Ukraine:

(i) with respect to taxes withheld at source, for amounts paid on or after 1 January in the calendar year next following that in which the Convention enters into force;