

104th Congress, 2d Session - - - - - House Document 104-217

SUPPLEMENTARY AGREEMENT AMENDING THE
AGREEMENT BETWEEN THE UNITED STATES OF
AMERICA AND THE REPUBLIC OF AUSTRIA ON SO-
CIAL SECURITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A SUPPLEMENTARY AGREEMENT AMENDING THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY (THE "SUPPLEMENTARY AGREEMENT") SUPPLEMENTARY AGREEMENT, SIGNED AT VIENNA ON OCTOBER 5, 1995, IS INTENDED TO MODIFY CERTAIN PROVISIONS OF THE ORIGINAL UNITED STATES-AUSTRIA SOCIAL SECURITY AGREEMENT, SIGNED JULY 13, 1990, PURSUANT TO 42 U.S.C. 433(e)(1)



MAY 20, 1996.—Message and accompanying papers referred to the
Committee on Ways and Means and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

To the Congress of the United States:

Pursuant to section 233(e)(1) of the Social Security Act, as amended by the Social Security Amendments of 1977 (Public Law 95-216, 42 U.S.C. 433(e)(1)), I transmit herewith the Supplementary Agreement Amending the Agreement Between the United States of America and the Republic of Austria on Social Security (the "Supplementary Agreement"). The Supplementary Agreement, signed at Vienna on October 5, 1995, is intended to modify certain provisions of the original United States-Austria Social Security Agreement, signed July 13, 1990.

The United States-Austria Social Security Agreement is similar in objective to the social security agreements with Belgium, Canada, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, The Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Such bilateral agreements provide for limited coordination between the United States and foreign social security systems to eliminate dual social security coverage and taxation, and to help prevent the loss of benefit protection that can occur when workers divide their careers between two countries.

The Supplementary Agreement, which would amend the 1990 Agreement to update and clarify several of its provisions, is necessitated by changes that have occurred in U.S. and Austrian law in recent years. Among other things, it would introduce a new method of computing Austrian benefits under the Agreement that will result in higher Austrian benefits for certain people who have divided their careers between the United States and Austria. Another provision in the Supplementary Agreement will allow U.S. citizens hired in Austria by U.S. Foreign Service Posts to be covered by the Austrian Social Security System rather than the U.S. system. The Supplementary Agreement will also make a number of minor revisions in the Agreement to take account of other changes in U.S. and Austrian law that have occurred in recent years.

The United States-Austria Social Security Agreement, as amended, would continue to contain all provisions mandated by section 233 and other provisions that I deem appropriate to carry out the provisions of section 233(c)(4).

I also transmit for the information of the Congress a report prepared by the Social Security Administration explaining the key points of the Supplementary Agreement, along with a paragraph-by-paragraph explanation of the effect of the amendments on the Agreement. Annexed to this report is the report required by section 233(e)(1) of the Social Security Act on the effect of the Agreement on income and expenditures of the U.S. Social Security program and the number of individuals affected by the Agreement. The Department of State and the Social Security Administration have recommended the Supplementary Agreement and related documents to me.

I commend the United States-Austria Social Security Agreement and related documents to the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 17, 1996.*

REPORT TO CONGRESS
TO ACCOMPANY THE SUPPLEMENTARY SOCIAL SECURITY AGREEMENT
BETWEEN THE UNITED STATES AND AUSTRIA

INTRODUCTION

The supplementary Social Security agreement between the United States and Austria is intended to modify certain provisions of the original U.S.-Austrian Social Security agreement that was signed on July 13, 1990, and which entered into force on November 1, 1991. The supplementary agreement, like the original agreement, was negotiated under authority of section 233 of the Social Security Act.

U.S.-Austrian Social Security Agreement

The original Social Security agreement between the United States and Austria is one of 17 bilateral agreements the United States has concluded with foreign countries to provide limited coordination of the U.S. old-age, survivors, and disability insurance (OASDI) program with the comparable programs of the other countries. Like other U.S. Social Security agreements, the agreement with Austria has two main purposes. First, it eliminates dual Social Security coverage and taxation, the situation that occurs when a person from one country works in the other country and is required to pay Social Security taxes to both countries on the same earnings. The agreement includes rules that assign a worker's Social Security coverage and tax liability to only one country.

Second, the agreement helps prevent gaps in Social Security benefit protection for workers who divide their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or Austrian benefits based on "totalized" (i.e., combined) work credits from both countries.

Supplementary Agreement

The supplementary agreement, which was signed by representatives of the U.S. and Austrian Governments on October 5, 1995, would amend the original agreement to update and clarify several of its provisions. The primary purpose of the supplementary agreement is to introduce a new method of computing Austrian benefits under the agreement. The supplementary agreement would make a number of additional revisions in the original agreement that are necessary to take account of changes that have occurred in U.S. and Austrian law in recent years.

The supplementary agreement is now being transmitted to Congress for review in accordance with section 233(e) of the Social Security Act. Accompanying this report is a paragraph-by-paragraph explanation of the supplementary agreement (Annex A)

and the estimate required by section 233(e)(1) of the Social Security Act on the effect of the supplementary agreement on income and expenditures of the U.S. Social Security program (Annex B). Also included is a composite version of the original agreement marked to show the changes that will be made as a result of the supplementary agreement (Annex C).

MAIN PROVISIONS

Computation of Austrian Benefits

One of the primary objectives of the original U.S.-Austrian Social Security agreement is to help eliminate situations where workers lose benefits because they divide their careers between the two countries. Under the agreement, these workers and their family members may qualify for partial U.S. or Austrian benefits based on combined Social Security credits from both countries. When entitlement to a benefit is based on combined credits, the benefit amount is proportional to the amount of work completed in the paying country.

The rules in the existing agreement for computing Austrian benefits apply to any person who has earned both U.S. and Austrian coverage credits. The first step is for the Austrian agency to compute a theoretical benefit as if the worker's U.S. periods of coverage had been completed under the Austrian system. The Austrian agency then computes the amount of the benefit it will actually pay by prorating the theoretical amount. The pro rata benefit is computed by multiplying the theoretical amount by the ratio of the periods of coverage completed under the Austrian system to the total periods completed in both countries.

As indicated above, the agreement provides for payment of prorated Austrian benefits whenever the worker has both U.S. and Austrian coverage--even if the worker's Austrian periods of coverage are of sufficient duration to meet the requirements for Austrian benefits without regard to the person's periods of U.S. coverage. (This feature of the agreement, which was included at the insistence of Austria, is a significant departure from other U.S. agreements which provide for payment of a pro rata benefit only if a person is not eligible for a domestic law benefit.) Because the pro rata computation can produce a smaller benefit amount than a benefit computed under Austrian domestic law, some beneficiaries could receive a smaller Austrian pension based on the agreement than they would have received if the agreement had not entered into force. For this reason, the agreement includes a "grandfather" clause that prevents the application of the pro rata computation to persons who become eligible for a benefit from Austria based solely on Austrian coverage within 5 years after the agreement enters into force. This 5-year transition period will expire on October 31, 1996.

As a result of its adherence to the European Union and the new European Economic Area, the Austrian Government has modified its position regarding eligibility for Austrian domestic law benefits. In the proposed supplementary agreement, Austria has agreed that people who qualify for an Austrian pension based on Austrian coverage alone will receive a benefit computed under Austrian domestic law. They will receive an Austrian domestic law benefit even if their initial eligibility is after October 31, 1996. In cases where eligibility can be established only by taking account of both U.S. and Austrian coverage, the Austrians will also compute the benefit following domestic law. Thus, the pro rata computation in the existing agreement will not be used in any situation.

Coverage of Temporarily Transferred Workers

Under the existing agreement, a person who works in the United States or Austria is generally subject to Social Security coverage and taxation (along with the person's employer) only in the country in which the work is performed. An exception to this territoriality rule applies, however, if an employer in one country sends a person to work in the other country for a period of 5 years or less. In this case, the person remains covered only by the sending country. The purpose of this "detached worker" provision is to maintain the coverage of a worker under the system of the country with which he or she has the closest attachment.

The supplementary agreement amends the detached worker provision to make clear that, in order for the rule to apply, the employee who is being transferred must normally have been working in the territory of the first country before being sent to the other country. This change is intended to explicitly state the manner in which the provision is currently applied. For example, the detached worker rule would generally not apply to a non-U.S. resident alien who has been working in a third country but who is brought briefly to the United States to sign an employment contract with a U.S. employer before being temporarily transferred to Austria. In this case, the worker would not have a current connection to the U.S. economy, and the territoriality rule, rather than the detached worker rule, would apply so that the worker would be subject only to Austrian law. This change will bring the language of this provision of the U.S.-Austrian agreement into conformity with the more recent U.S. Social Security agreements.

Coverage of U.S. Citizens Hired in Austria by U.S. Foreign Service Posts

The original U.S.-Austrian agreement, like other U.S. bilateral Social Security agreements, provides that U.S. citizens employed by the U.S. Government in the other country are subject only to U.S. Social Security. Public Law 103-236 (frequently referred to as the "Rockefeller Amendment") authorizes U.S. Foreign Service posts (FSP's) to hire U.S. citizens directly in host countries for positions customarily filled in the past by foreign nationals. FSP's in several countries with which the United States has Social Security agreements, including Austria, have pointed out that it would be preferable in some situations to provide coverage for locally hired U.S. citizens under the local Social Security system, rather than the U.S. system. This might be true, for example, where an employee has lived in the foreign country and been covered under its Social Security system for an extended period before being hired by the FSP.

All U.S. Social Security agreements, including the one with Austria, contain a provision that authorizes the U.S. Social Security Administration and the Social Security authorities in the other country to agree to exceptions to the normal coverage rules of the agreement. Under other agreements, U.S. citizens hired under P.L. 103-236 have been covered under the local Social Security system by means of such exceptions. According to Austrian authorities, however, the special exception provision in the U.S.-Austrian agreement could only be used to extend Austrian coverage to U.S. citizens employed by U.S. FSP's in Austria if the provision were amended to state that the employees are to be treated as though they were Austrian nationals. The supplementary agreement will provide for this.

SUPPLEMENTARY AGREEMENT
AMENDING THE AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF AUSTRIA
ON SOCIAL SECURITY

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The United States of America
and
the Republic of Austria

being desirous of amending and supplementing the Agreement on Social Security of July 13, 1990 - hereinafter referred to as the "Agreement" - have agreed as follows:

Article I

1. a) Subparagraph (1)(b) of Article 1 of the Agreement shall be deleted.

b) Subparagraph (1)(e) of Article 1 of the Agreement shall be revised by replacing the words "the Secretary of Health and Human Services" with the words "the Social Security Administration".

2. Paragraph (2) of Article 5 of the Agreement shall be revised to read as follows:

"(2) As regards Austrian laws, paragraph (1) of this Article shall not apply to the compensatory supplement."

3. Paragraph (1) of Article 7 of the Agreement shall be revised to read as follows:

"(1) If a person who is normally employed in the territory of one Contracting State is sent by an employer having a place of business in the territory of that Contracting State to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws of only the first Contracting State as if the person were employed in its territory, provided that the employment in the

territory of the other Contracting State is not expected to exceed five years."

4. Paragraph (2) of Article 9 of the Agreement shall be revised by adding the following sentence at the end thereof:

"If the person is a United States national and subject to Austrian laws as an exception to Article 8, those laws shall apply to him as if he were an Austrian national."

5. Article 11 of the Agreement shall be revised to read as follows:

"When a person who has completed periods of coverage under the laws of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine, in accordance with Austrian laws, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10 and taking into account the following provisions:

- (a) Where Austrian laws make the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, under United States laws shall be taken into account for the award of such benefits.
- (b) Where Austrian laws provide that the period of payment of a pension shall prolong the reference period in which the periods of coverage must be completed, periods during which a pension has been awarded under United States laws shall prolong the aforesaid reference period.
- (c) A quarter of coverage under United States laws shall be treated as three months of coverage under Austrian laws."

6. Article 12 of the Agreement shall be revised to read as follows:

"(1) Where under Austrian laws entitlement to a benefit exists without the application of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Austrian laws on the basis of periods of coverage to be taken into account exclusively under those laws.

- (2) Where under Austrian laws entitlement to a benefit exists only with the application of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Austrian laws on the basis of periods of coverage to be taken into account exclusively under those laws and taking into account the following provisions:
- (a) Benefits or parts of benefits the amount of which does not depend on the duration of the periods of coverage completed shall be calculated in proportion to the ratio of the duration of the periods of coverage to be taken into account for the calculation under Austrian laws to 30 years, but not exceeding the full amount.
 - (b) Where periods after the contingency arises are to be considered for the calculation of invalidity or survivors benefits, these periods shall be taken into account only in proportion to the ratio of the duration of the periods of coverage to be taken into account for the calculation of the benefit under Austrian laws to two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 and the date on which the contingency occurred, but not exceeding the full period.
 - (c) Subparagraph (a) shall not apply
 - (i) to benefits resulting from supplementary insurance,
 - (ii) to means-tested benefits designed to ensure a minimum income.
- (3) Where the periods of coverage to be taken into account under Austrian laws for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under Austrian laws exclusively on the basis of these periods of coverage, no benefit under these laws shall be paid."
7. Articles 13 and 14 of the Agreement shall be deleted.
8. Article 25 of the Agreement shall be deleted.

Article II

1. This Supplementary Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Supplementary Agreement.
2. Paragraph 2 of Article I of this Supplementary Agreement shall be effective retroactively beginning with the entry into force of the Agreement.
3. Paragraph (1) of Article 12 of the Agreement as amended by paragraph 6 of Article I of this Supplementary Agreement shall be effective retroactively from November 1, 1996, if the Supplementary Agreement enters into force after this date.
4. Except as provided in paragraph 3, this Supplementary Agreement shall not result in any recalculation of benefits to which entitlement was established prior to its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Supplementary Agreement.

DONE at Vienna on October 5, 1995,
in duplicate in the English and German languages, both texts
being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Jean Ellen Corbett

FOR THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA:

Dr. Michael Fitz

ANNEX A

AGREEMENT

ANNOTATIONS AND COMMENTS

SUPPLEMENTARY AGREEMENT
 AMENDING THE AGREEMENT
 BETWEEN THE UNITED STATES OF AMERICA
 AND THE REPUBLIC OF AUSTRIA
 ON SOCIAL SECURITY

The United States of America
 and
 the Republic of Austria

being desirous of amending and supplementing the
 Agreement on Social Security of July 13, 1990 -
 hereinafter referred to as the "Agreement" - have
 agreed as follows:

This Supplementary Agreement will amend the U.S.-
 Austrian Social Security Agreement that was
 signed on July 13, 1990, and which entered into
 force on November 1, 1991.

The original Agreement, like other U.S. agree-
 ments concluded pursuant to section 233 of the
 Social Security Act, has two main purposes.
 First, it eliminates dual Social Security cover-
 age, the situation that occurs when a person from
 one country works in the other country and is re-
 quired to pay Social Security taxes to both the
 United States and Austria on the same earnings.
 The Agreement includes rules that assign a
 worker's coverage to only one country.

Second, the Agreement helps prevent gaps in bene-
 fit protection for workers who have divided their
 careers between the United States and Austria.
 Such workers may fail to qualify for Social Secu-
 rity benefits from one or both countries because
 they have not worked long enough to meet minimum
 eligibility requirements. Under the Agreement,
 these workers may qualify for partial U.S. or
 Austrian benefits based on "totalized" (i.e.,
 combined) credits from both countries.

The primary purpose of the Supplementary Agree-
 ment is to authorize Austria to use a different

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method of computing benefit amounts for people who have earned periods of coverage under both the U.S. and Austrian Social Security systems. Under the Supplementary Agreement, Austria will pay benefits that are computed in accordance with Austrian domestic law rather than the pro rata computation method provided under the existing Agreement (see the annotations to Article I.5 and Article I.6 of the Supplementary Agreement). In addition, the Supplementary Agreement makes revisions in the original Agreement that are necessary to take account of several changes in U.S. and Austrian law that have occurred in recent years.

Article I

1. a) Subparagraph (1)(b) of Article 1 of the Agreement shall be deleted.

The definition of "territory" in Article 1(1)(b) of the original U.S.-Austrian Agreement includes, as regards the United States, the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands and American Samoa, but not the Northern Mariana Islands (NMI). Article I.1 of the Supplementary Agreement would delete the definition of "territory" with the effect that the Agreement would apply to all areas to which the U.S. and Austrian Social Security programs apply, including, in the case of the United States, the Northern Mariana Islands. This is a clarifying change rather than a substantive amendment, since the U.S. Social Security Administration already applies all U.S. international Social Security agreements to the NMI. It does so in conformity with the Covenant establishing the NMI Commonwealth in political union with the United States, which stipulates that the U.S. Social Security program is to apply in the NMI as it applies in

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b) Subparagraph (1)(e) of Article 1 of the Agreement shall be revised by replacing the words "the Secretary of Health and Human Services" with the words "the Social Security Administration".

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Guam (all U.S. Social Security agreements apply to Guam). Deleting the definition of "territory" will also bring the U.S.-Austrian Agreement into conformity with the latest U.S. Social Security agreements, which do not include this definition.

Article I.1(b) revises the definition of "competent authority" in Article 1(1)(e) of the original Agreement to take into account the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296). This law removes the U.S. Social Security Administration (SSA) from the Department of Health and Human Services and establishes it as an independent agency effective March 31, 1995.

2. Paragraph (2) of Article 5 of the Agreement shall be revised to read as follows:

"(2) As regards Austrian laws, paragraph (1) of this Article shall not apply to the compensatory supplement."

Article 5(1) of the original U.S.-Austrian Agreement provides that where the laws of either country require that a person be resident or present in that country in order to qualify for or receive Social Security benefits, the person may also qualify for and receive those benefits during periods of residence in the other country, provided that he or she is a U.S. or Austrian national, refugee or stateless person, or a person who derives rights from such persons. Article 5(2) of the original Agreement, however, excludes certain categories of Austrian benefits from this portability guarantee. One of the excluded benefits is the "compensatory supplement," which is an assistance payment for Austrian residents with little or no other income. The other exclusions relate to provisions of Austrian law that allow certain Austrian citizens and persons

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of German ethnic origin to receive noncontributory coverage credit in the computation of their Social Security pensions. These credits are granted for periods of prior employment in certain Central and Eastern European countries and for periods of self-employment in the territory of the former Austro-Hungarian Monarchy that is outside current Austrian borders.

Article I.2 of the Supplementary Agreement extends the portability guarantee in Article 5(1) of the Agreement to the portion of Austrian pensions that is based on the noncontributory credits for work outside present-day Austria. In anticipation of this liberalization, Austrian authorities have already begun to pay pension amounts based on these credits to U.S. residents. The Supplementary Agreement will not affect the Austrian compensatory supplement, which will continue to be payable only to qualifying residents of Austria.

3. Paragraph (1) of Article 7 of the Agreement shall be revised to read as follows:

"(1) If a person who is normally employed in the territory of one Contracting State is sent by an employer having a place of business in the territory of that Contracting State to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws of only the first Contracting State as if the person were employed in its territory, provided that the employment in the territory of the other Contracting State is not expected to exceed five years."

Article 6 of the original Agreement provides that a person who works in the United States or Austria will generally be subject to Social Security coverage only in the country in which the work is performed. Article 7(1) of the Agreement contains an exception to the "territoriality" rule in Article 6. This exception provides that an employee working for an employer in the United States or Austria who is transferred to work in the other country for the same employer for a period of five years or less will continue to be covered by the country from which the employee has been sent. Article I.3 of the Supplementary Agreement amends Article 7(1) to make clear that, in order for the exception to apply, the employee who is being transferred must normally have been

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working for the sending employer in the territory of the first country before being sent to the other country. This change is intended to clarify application of the rule in situations where the employee does not have a current connection to the labor market in the first country. For example, the rule in Article 7(1) would generally not apply to a non-U.S. resident alien who has been working in another country but who is brought briefly to the United States to sign an employment contract with a U.S. employer before being temporarily transferred to Austria. In this case, Article 7(1) would not apply since the individual did not have a current connection to the U.S. economy; rather, the territoriality rule in Article 6 would apply so that the worker would be subject only to Austrian law.

4. Paragraph (2) of Article 9 of the Agreement shall be revised by adding the following sentence at the end thereof:

"If the person is a United States national and subject to Austrian laws as an exception to Article 8, those laws shall apply to him as if he were an Austrian national."

Paragraph 4 of Article I of the Supplementary Agreement amends Article 9 of the original Agreement. Article 9 authorizes the U.S. and Austrian Social Security authorities to agree to special exceptions to the normal coverage rules of the agreement. The amendment is necessitated by the recent enactment in the United States of legislation authorizing U.S. Foreign Service posts (FSP's) to hire U.S. citizens directly in host countries for positions customarily filled by foreign nationals.

Article 8 of the original U.S.-Austrian Agreement, like similar provisions in other U.S. Social Security agreements, provides that U.S. citizens employed by the U.S. Government in Austria are subject to the Social Security laws of only the United States. FSP's in several agreement countries, including Austria, have pointed out that it would be preferable in some situations to

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provide coverage for locally hired U.S. citizens under the local Social Security system, rather than the U.S. system. This might be true, for example, where an employee has lived in the foreign country and been covered under its Social Security system for an extended period before being hired by the FSP. Under other agreements, employees in this situation have been covered under the local Social Security system by means of special exceptions agreed to by SSA and the Social Security authorities in the host country in accordance with provisions similar to Article 9 of the U.S.-Austrian Agreement. According to Austrian authorities, however, Article 9 could only be used to extend Austrian coverage to U.S. citizens employed by U.S. FSP's in Austria if the provision were amended to state that the employees are to be treated as though they were Austrian nationals. Article I.4 of the Supplementary Agreement will accomplish this.

5. Article 11 of the Agreement shall be revised to read as follows:

"When a person who has completed periods of coverage under the laws of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine, in accordance with Austrian laws, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10 and taking into account the following provisions:

Paragraphs 5 and 6 of Article I of the Supplementary Agreement revise the rules of the original Agreement for determining entitlement to and the amount of Austrian benefits. Austria sought these changes in order to make the provisions conform more closely to the wording of European Regulations on Social Security that have become applicable for Austria since its adherence to the Convention on the European Economic Area effective January 1, 1994. Article I.5, which includes rules for determining Austrian benefit entitlement for persons with periods of coverage under both the U.S. and Austrian Social Security systems, makes no substantive change in the original Agreement. Article I.6, on the other hand,

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(a) Where Austrian laws make the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, under United States laws shall be taken into account for the award of such benefits.

(b) Where Austrian laws provide that the period of payment of a pension shall prolong the reference period in which the periods of coverage must be completed, periods during which a pension has been awarded under United States laws shall prolong the aforesaid reference period.

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establishes new rules for computing Austrian benefit amounts for persons with both U.S. and Austrian coverage.

The conditions for payment of benefits under the Austrian Social Security system are more favorable for certain occupational categories--most notably for workers engaged in certain mining activity. Article 11(a) of the Agreement, as revised by the Supplementary Agreement, makes clear that a worker's U.S. periods of coverage will be taken into account to meet the eligibility requirements for these special occupational benefits, but only if the U.S. periods were completed in an occupation or profession similar to that to which the special Austrian provisions apply. The revised Article 11(a) replaces a provision in the original Agreement--Article 12(9)--which was limited specifically to the special Austrian benefits for miners.

Article 11(b) of the Agreement, as revised by the Supplementary Agreement, is similar in effect to Article 12(4) (a) of the original Agreement. To qualify for some types of Austrian benefits (for example, disability and early retirement benefits) a worker must have earned a certain number of coverage credits within a specified period of time, i.e., meet a recent coverage test. The period during which the coverage credits must have been earned can be extended for certain other periods, known as "neutral periods." Neutral periods include periods of receipt of specified benefits, as well as other periods stipulated by law. Under Article 11(b), periods during which a worker was entitled to U.S. Social Security benefits will be treated as neutral periods.

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(c) A quarter of coverage under United States laws shall be treated as three months of coverage under Austrian laws."

For purposes of determining benefit eligibility, Austrian agencies will credit 3 months of coverage for each quarter of U.S. coverage certified by the Social Security Administration. Article 11(c) of the Agreement, as revised by Article I.5 of the Supplementary Agreement, is similar to Article 12(3) of the existing Agreement.

6. Article 12 of the Agreement shall be revised to read as follows:

Article 12 of the U.S.-Austrian Agreement, as revised by the Supplementary Agreement, establishes new rules for the computation of Austrian benefits for persons with both U.S. and Austrian coverage credits.

Pension Amounts under Austrian Law

The monthly amount of Austrian retirement and disability benefits equals 1.9 percent of the worker's average monthly earnings for each year of coverage up to 30, plus 1.5 percent of average earnings for each year of coverage over 30. In the case of workers disabled before age 56, the years from disability onset up to attainment of age 56 are counted as years of coverage. The term "average monthly earnings" for benefit computation purposes means the worker's average monthly covered earnings, indexed for changes in national average income levels, during the worker's 15 years of highest indexed earnings.

A retired or disabled worker may also receive a flat-rate child's supplement, equal to 300 schillings per month in 1994, for each child under age 18 (age 26 if in school or any age if disabled). Under specified conditions, the surviving spouse of a deceased worker can receive a benefit equal to 60 percent of the disability benefit that was paid to the deceased worker or which would have

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been paid to the deceased worker if he or she had been disabled at the time of death. A surviving child can qualify for a benefit equal to 40 percent of the surviving spouse's benefit if one parent has died, or 60 percent if both parents are deceased.

In addition to 12 monthly pension payments, retirement, disability and survivor beneficiaries receive two additional payments each year equal to one month's pension.

Pension Amounts under the Original U.S.-Austrian Agreement

Article 11 of the existing Agreement establishes the rules that the Austrian agencies follow when computing the benefit amount payable based on the record of a worker who has earned periods of coverage under both the U.S. and Austrian Social Security systems. The first step is to compute a theoretical benefit amount based on the worker's average earnings under the Austrian system and his or her total years of coverage under both the U.S. and Austrian systems. To determine the benefit amount that is actually payable, the theoretical benefit amount is multiplied by the ratio of the Austrian periods of coverage to the combined periods of coverage from both countries. For example, a person who had 15 years of Austrian coverage and 25 years of U.S. coverage, and whose average earnings while covered under the Austrian system equaled \$1,000, would receive a monthly pension equal to:

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$$[(1.9\% \times 30) + (1.5\% \times 10)] \times \$1,000 \times \frac{15}{15 + 25} =$$

$$72\% \times \$1,000 \times \frac{15}{40} = \$270$$

The existing Agreement provides that this pro rata computation applies whenever the worker has both U.S. and Austrian periods of coverage--even if the worker has enough Austrian coverage to establish eligibility without regard to the worker's U.S. coverage. Because the pro rata computation can produce a smaller benefit amount than a benefit computed under Austrian domestic law, some beneficiaries could receive a smaller Austrian pension based on the Agreement than they would have received if the Agreement had not entered into force. By way of illustration, if the Agreement had not entered into force the monthly pension payable under Austrian domestic law to the worker in the example above would be:

$$1.9\% \times 15 \times \$1,000 = \$285$$

A "grandfather" clause in Article 25 of the existing Agreement ensures that the pro rata computation will not apply to anyone who has enough Austrian coverage credits to qualify for an Austrian pension (i.e., without totalization) before November 1, 1996.

"(1) Where under Austrian laws entitlement to a benefit exists without the application of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Austrian laws on the basis of periods of coverage to be taken into account exclusively under those laws.

Under Article 12(1) of the Agreement, as revised by the Supplementary Agreement, Austria has agreed that a person who qualifies for an Austrian pension without counting the worker's U.S. coverage will receive a benefit computed under Austrian domestic law even if initial eligibility occurs after October 31, 1996.

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(2) Where under Austrian laws entitlement to a benefit exists only with the application of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Austrian laws on the basis of periods of coverage to be taken into account exclusively under those laws and taking into account the following provisions:

(a) Benefits or parts of benefits the amount of which does not depend on the duration of the periods of coverage completed shall be calculated in proportion to the ratio of the duration of the periods of coverage to be taken into account for the calculation under Austrian laws to 30 years, but not exceeding the full amount.

(b) Where periods after the contingency arises are to be considered for the calculation of invalidity or survivors benefits, these periods shall be taken into account only in proportion to the ratio of the duration of the periods of coverage to be taken into account for the calculation of the benefit under Austrian laws to two-thirds of the number of full calendar months between the date on

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Article 12(2) of the Agreement, as revised by the Supplementary Agreement, provides new rules for computing Austrian benefits in cases where eligibility can only be established by taking into account the worker's coverage credits under both the U.S. and Austrian systems. Instead of the pro rata computation that applies under the original Agreement, the Austrian agencies will generally compute benefits in these cases according to Austrian domestic legislation. Subparagraphs (a), (b) and (c) of Article 12(2) of the Agreement, as revised by the Supplementary Agreement, include additional rules that apply in several special situations.

The amount of most Austrian benefits is directly related to the length of time the worker was covered under Austrian Social Security. However, some benefits--notably the child's supplement--are paid in flat amounts that are independent of the worker's length of coverage. (The child's supplement is currently 300 schillings per child per month.) Revised Article 12(2)(a) stipulates that where eligibility for such benefits can be established only by taking account of U.S. coverage, the flat-rate benefit will be prorated based on the ratio of the duration of the worker's Austrian coverage to 30 years.

Austrian invalidity (i.e., disability) and survivors benefits are computed using the same formula that is used to compute retirement benefits. However, in addition to receiving credit for periods of covered work, the worker also receives noncontributory credit for the period from disability onset or death up to attainment of age 56. Under revised Article 12(2)(b), if U.S. coverage must be counted to establish eligibility

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which the person concerned reached the age of 16 and the date on which the contingency occurred, but not exceeding the full period.

- (c) Subparagraph (a) shall not apply
 - (i) to benefits resulting from supplementary insurance,
 - (ii) to means-tested benefits designed to ensure a minimum income.

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for Austrian invalidity or survivors benefits, the period from disability onset or death up to age 56 will be counted in full only if the worker was covered under the Austrian system for at least two-thirds of the period from age 16 to disability onset or death. If the worker had less than this amount of Austrian coverage the amount of noncontributory credit will be proportionately reduced.

Revised Article 12(2)(a) stipulates that certain types of Austrian benefits which are paid in amounts that are independent of the worker's length of coverage must be pro rated if U.S. coverage is needed to establish eligibility. Revised Article 12(2)(c), however, includes two exceptions to this rule. Benefit amounts that are based on "supplementary insurance" will not be prorated. Supplementary insurance is a form of voluntary Social Security coverage that allows a person to elect to pay additional contributions in order to increase the amount of future benefits. The other benefit component that will not be subject to reduction includes guaranteed income supplements that are subject to a means test.

(3) Where the periods of coverage to be taken into account under Austrian laws for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under Austrian laws exclusively on the basis of these periods of coverage, no benefit under these laws shall be paid."

Article 12(3), as revised by the Supplementary Agreement, replaces a similar rule in Article 11(2) of the existing Agreement. It provides that the Austrian agencies will take U.S. coverage into account under the Agreement only if the worker has at least 12 months of Austrian coverage. Like the similar 6-quarter-of-coverage requirement for totalization by the United States under Article 15(5) of the Agreement, this provision is intended to avoid the considerable

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7. Articles 13 and 14 of the Agreement shall be deleted.

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administrative burden that would result from processing claims for very small benefits based on minimal periods of coverage.

Article I.7 of the Supplementary Agreement eliminates two provisions of the original Agreement that are no longer needed now that Austria has agreed to pay its full domestic law pension to persons who qualify without totalization. One of these unnecessary provisions, Article 13, is an exception to the rule (which this Supplementary Agreement repeals) whereby Austria pays a reduced pro rata pension to anyone with periods of coverage under both the U.S. and Austrian systems. Under Article 13, Austria would pay its full domestic law pension if such a person failed to qualify for a U.S. Social Security benefit. The other unnecessary provision, Article 14, provides that if a person qualifies for both a U.S. Social Security benefit and a prorated Austrian pension, and the combined benefits total less than the pension for which the person could have qualified under Austrian domestic law, Austria would pay a supplement to bring the amount of the combined benefits up to the level of the Austrian domestic law pension.

8. Article 25 of the Agreement shall be deleted.

Article 25 of the existing Agreement is a "grandfather clause" intended to ensure that anyone with periods of U.S. and Austrian coverage who becomes eligible for an Austrian pension without regard to the Agreement during a 5-year transition period (i.e., up to October 31, 1996) would receive the full Austrian domestic law pension, rather than a reduced pro rata pension. Since the Supplementary Agreement provides that Austria will pay its full domestic law pension to persons who qualify without totalization regardless of

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their date of initial eligibility, Article 25 is no longer needed.

Article II

1. This Supplementary Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Supplementary Agreement.

2. Paragraph 2 of Article I of this Supplementary Agreement shall be effective retroactively beginning with the entry into force of the Agreement.

3. Paragraph (1) of Article 12 of the Agreement as amended by paragraph 6 of Article I of this Supplementary Agreement shall be effective retroactively from November 1, 1996, if the Supplementary Agreement enters into force after this date.

Article II provides that each country will follow its own constitutional procedures for approval of the Agreement. Once each country has completed its internal review, the two Governments will exchange formal instruments of approval. The Agreement will enter into force on the first day of the third calendar month after each Government has received formal notification of approval from the other Government.

Notwithstanding Article II.1, Article I.2 of the Supplementary Agreement--which extends the Agreement's benefit portability guarantee to Austrian benefits that are based on certain periods of noncontributory coverage--will apply from the effective date of the original Agreement, i.e., November 1, 1991.

The existing Agreement provides that Austria will generally pay a reduced pro rata pension to a person who has periods of both U.S. and Austrian coverage and who first becomes eligible for an Austrian pension on or after November 1, 1996, even if the person has sufficient Austrian coverage to qualify without regard to the totalization provisions of the Agreement. Under the new rule introduced by Article I.6 of the Supplementary Agreement, however, Austria will pay its full domestic law pension if a person has sufficient Austrian coverage to qualify without regard to the Agreement. Article II.3 of the Supplementary Agreement stipulates that if implementation of

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4. Except as provided in paragraph 3, this Supplementary Agreement shall not result in any recalculation of benefits to which entitlement was established prior to its entry into force.

The Supplementary Agreement is delayed beyond November 1, 1996, it shall be applied retroactively to that date, so that no one will incur a loss due to the delay.

The changes in the method of computing Austrian benefit amounts that are introduced by the Supplementary Agreement will only apply to Austrian benefits for which entitlement arises after the Supplementary Agreement enters into force.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Supplementary Agreement.

The Supplementary Agreement was signed in Vienna on October 5, 1995, by the Deputy Chief of Mission at the United States Embassy, Joan Ellen Corbett, and Ambassador Michael Fitz of the Austrian Foreign Ministry.

DONE at Vienna on October 5, 1995, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Joan Ellen Corbett

FOR THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA:

Michael Fitz

ANNEX B

REPORT TO CONGRESS ON THE FINANCIAL EFFECT
OF THE UNITED STATES-AUSTRIAN SUPPLEMENTARY SOCIAL SECURITY AGREEMENT
SIGNED ON OCTOBER 5, 1995

Under the U.S.-Austrian supplementary Social Security agreement, the basic provisions of the original agreement regarding the elimination of dual coverage and taxation would be modified in several ways. First, two important changes would be made in the method of computing Austrian benefit amounts. The first change applies to the computation of benefits for persons who do not have enough coverage under the Austrian system and must use coverage under the U.S. system to qualify for a totalized Austrian benefit. This change involves replacing the pro rata benefit computation with one computed under Austrian domestic law. The pro rata method involves computing a theoretical benefit amount based on Austrian law which takes into account the worker's average earnings under the Austrian system and the worker's combined periods of coverage under the U.S. and Austrian systems. This theoretical amount is then multiplied by the ratio of the period of Austrian coverage to the combined periods of U.S. and Austrian coverage to produce the pro rata benefit actually payable. The benefit based on Austrian domestic law is based on average earnings and periods of coverage from the Austrian system only and is nearly always the same as, or slightly larger than, the pro rata benefit.

The second computation change applies to the computation of benefits for those who have sufficient coverage under the Austrian system to become insured without totalization, and who also have coverage under the U.S. system. Under the existing agreement, beginning November 1, 1996, such computations would be made using the pro rata method. The supplemental agreement would change this so that computations would continue to be made under Austrian domestic law.

It is estimated that each of these two benefit computation changes would result in an increase in benefit payments from the Austrian social security system of less than \$500,000 each year for the next few years.

The current totalization agreement with Austria contains a provision under which an employee who works for an employer in one country and who is transferred to work in the other country for 5 years or less continues to be covered by the country from which he was sent. The supplementary agreement includes a provision that is intended to make clear that, in order for this rule to apply, the employee who is being transferred must have been working for the sending employer on a regular basis in the territory of the first country before being sent to the other country. With this change, some employees, and their employers, would now pay taxes to the country in which the work is performed, and not to the country from which they came. It is expected that few workers would be affected by this change. We estimate that this provision would have a negligible effect on both the U.S. and the Austrian social security systems, i.e., a net change of less than \$500,000 in tax revenues each year.

Social Security Administration
February 13, 1995

ANNEX C

**AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF AUSTRIA
ON SOCIAL SECURITY**

*Agreement signed at Vienna July 13, 1990; entered into force
November 1, 1991.
Amended by supplementary agreement signed at Vienna October 5,
1995.*

*Administrative agreement signed at Vienna July 13, 1990; entered
into force November 1, 1991.*

The following is a composite version of the U.S.-Austrian Social Security Agreement, marked to show revisions made by the Supplementary Agreement signed October 5, 1995. Text in underlined bold italics has been added; text in brackets with ~~strikeout~~ markings has been deleted.

**AGREEMENT BETWEEN THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY**

The Government of the United States of America and
the Government of the Republic of Austria,

Being desirous of regulating the relationship between their two
countries in the area of social security,

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

- (1) For the purposes of this Agreement,
- (a) "Austria" means the Republic of Austria, and "United States" means the United States of America;
 - ~~[(b) "territory" means, as regards Austria, its federal territory, and, as regards the United States, the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa.]~~
 - (c) "national" means, as regards Austria, a citizen of Austria, and, as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act of 1952, as amended;
 - (d) "laws" means, as regards Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph (1) (a) of Article 2, and, as regards the United States, the laws and regulations specified in subparagraph (1) (b) of Article 2;

- (e) "competent authority" means, as regards Austria, the Federal Minister responsible for the application of the laws specified in subparagraph (1) (a) of Article 2, and, as regards the United States, [~~the Secretary of Health and Human Services~~] **the Social Security Administration**;
- (f) "agency" means, as regards Austria, the institution responsible for the application of the Austrian laws, and, as regards the United States, the Social Security Administration;
- (g) "competent agency" means the agency responsible for applying the laws in a specific case;
- (h) "period of coverage" means a period of payment of contributions or a period of earnings from employment or self-employment as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is recognized by such laws as equivalent to a period of coverage;
- (i) "benefit" means any cash benefit provided for in the laws of either Contracting State, including all components thereof provided out of public funds, all increments, readjustment sums, additional allowances and lump-sum payments;
- (j) "refugee" means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees dated July 28, 1951, and the Protocol to that Convention dated January 31, 1967;

- (k) "stateless person" means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons dated September 28, 1954.
- (2) Any other expression used in this Agreement shall have the meaning assigned to it in the laws being applied.

Article 2

- (1) This Agreement shall apply:
 - (a) as regards Austria,
 - (i) to the laws concerning pensions insurance, with the exception of the special insurance for notaries;and, with regard to Part II only,
 - (ii) to the laws concerning sickness insurance and accident insurance;
 - (b) as regards the United States, to the laws governing the Federal Old-Age, Survivors and Disability Insurance Program:
 - (i) Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections, and
 - (ii) Chapter 2 and Chapter 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters.

- (2) This Agreement shall also apply to any laws which amend or supplement the laws specified in paragraph 1 of this Article.
- (3) Unless otherwise provided in this Agreement, laws within the meaning of paragraph (1) of this Article shall not include treaties or other international agreements concluded between one Contracting State and a third state, except insofar as they contain provisions relating to the apportionment of insurance burdens.

Article 3

This Agreement shall apply to:

- (a) persons who are or have been subject to the laws of one or both Contracting States;
- (b) other persons with respect to the rights they derive from the persons mentioned in subparagraph (a).

Article 4

- (1) Unless otherwise provided in this Agreement, nationals of one Contracting State who are or have been subject to the laws of that Contracting State and who reside in the territory of the other Contracting State shall, together with other persons who derive rights from the foregoing, receive equal treatment regarding eligibility for and payment of benefits with the nationals of the other Contracting State.

- (2) With regard to provisions of Austrian laws concerning the crediting of periods of war service and periods considered as such, United States nationals shall receive equal treatment with Austrian nationals provided they had Austrian nationality immediately before March 13, 1938.
- (3) Provisions relating to the apportionment of insurance burdens that may be contained in international treaties shall not be affected.

Article 5

- (1) Unless otherwise provided in this Agreement, any provision of the laws of a Contracting State under which entitlement to or payment of cash benefits is dependent on residence or presence in the territory of that Contracting State shall not be applicable to nationals of a Contracting State, refugees or stateless persons, or other persons who derive rights from the foregoing, who reside in the territory of the other Contracting State.
- (2) As regards Austrian laws, paragraph (1) of this Article shall not apply to the compensatory supplement ~~{-}~~
- ~~{(a) the compensatory supplement ("Ausgleichszulage")~~
and
- ~~(b) those parts of the Austrian pension which are based on~~
- ~~(i) periods of coverage under the provisions of the Austrian Federal Act of November 22,~~

~~1961, concerning entitlement to benefits and rights in course of acquisition in the field of pensions insurance for gainful occupation outside Austria or~~

~~(ii) periods of self employment completed outside the territory of Austria, but within the territory of the former Austro-Hungarian Monarchy}.~~

PART II

PROVISIONS ON COVERAGE

Article 6

Unless otherwise provided in Articles 7 through 9, persons who are employed or self-employed within the territory of one of the Contracting States shall, with respect to that work, be subject to the laws of only that Contracting State even when the place of residence of the person concerned or the principal place of business of the employer is located in the territory of the other Contracting State.

Article 7

- (1) If a person [~~in the service of~~] *who is normally employed in the territory of one Contracting State is sent by* an employer having a place of business in the territory of [one] *that* Contracting State [~~is sent by that employer~~] to the territory of the other Contracting State for a temporary period, the person shall be subject to the laws of only

the first Contracting State as if the person were employed in its territory, provided that the employment in the territory of the other Contracting State is not expected to exceed five years.

- (2) A person who would otherwise be compulsorily covered under the laws of both Contracting States with respect to self-employment and who is a resident of one Contracting State shall be subject to the laws of only the Contracting State of which the person is a resident.
- (3)
 - (a) If a person is employed as an officer or member of a crew on an aircraft and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State in whose territory the employer is headquartered.
 - (b) When an Austrian national is sent to perform services in the United States for an Austrian air transport organization, paragraph (1) of this Article shall be applied without reference to the 5-year time limit.
- (4) If a person is employed as an officer or member of a crew on a vessel which flies the flag of one Contracting State and is covered under the laws of both Contracting States, the person shall be subject to the laws of only the Contracting State whose flag the vessel flies. For purposes of the preceding sentence, a vessel which flies the flag of the United States is one defined as an American vessel under the laws of the United States.

Article 8

- (1) This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.
- (2) Notwithstanding Article 6, nationals of one of the Contracting States who are employed by the Government of that Contracting State in the territory of the other Contracting State, but who are not exempt from the laws of the other Contracting State by virtue of the Conventions mentioned in paragraph (1), shall be subject to the laws of only the first Contracting State.
- (3) Paragraph (2) of this Article shall apply as appropriate to the Representative of the Austrian Trade Commission and to the Representative's assistants, and to persons employed by the Austrian National Tourist Office in the United States.
- (4) Paragraph (2) of this Article shall apply to employees of the Federal Government of the United States or any of its instrumentalities.
- (5) A person employed by the American International School in Austria shall be exempt from Austrian laws if he is a United States national, or a national of a State other than a Contracting State who does not reside in Austria.

Article 9

- (1) At the request of an employed person and his employer or a self-employed person, the competent authorities of the two Contracting States may provide, by mutual agreement,

for exceptions to Articles 6 through 8 of this Agreement, taking into account the nature and circumstances of the work.

- (2) Where, in accordance with paragraph (1) of this Article, a person is subject to Austrian laws, those laws shall apply to him as if he were employed in the territory of Austria. **If the person is a United States national and subject to Austrian laws as an exception to Article 8, those laws shall apply to him as if he were an Austrian national.**

PART III

PROVISIONS CONCERNING BENEFITS

Article 10

- (1) Except as otherwise provided in this Agreement, if a person has completed periods of coverage under the laws of both Contracting States, these periods, insofar as they do not coincide, shall be added together for the purpose of establishing entitlement to a benefit.
- (2) When it is not possible to determine the time when specific periods of coverage were completed under the laws of one of the Contracting States, it shall be presumed that such periods do not coincide with periods of coverage completed under the laws of the other Contracting State.

Chapter 1Benefits Under Austrian LawsArticle 11

~~[(1) When a person who has completed periods of coverage under the laws of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine the amount of the benefit in the following manner:—~~

~~(a) The agency shall determine, in accordance with Austrian laws, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10.~~

~~(b) If the claimant is entitled to a benefit, the agency shall first calculate the theoretical amount of the benefit which would be payable if all the periods of coverage completed under the laws of both Contracting States had been completed exclusively under Austrian laws, in cases where the amount of the benefit is independent of the duration of the periods of coverage, this amount shall be taken to be the theoretical amount.~~

~~(c) The agency shall then calculate the partial benefit to be paid based on the amount calculated under subparagraph (b) in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian laws and the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States.~~

~~(2) Where the periods of coverage to be taken into consideration under Austrian laws for the purpose of calculating the amount of a benefit are in aggregate less than 12 months, no benefit under those laws shall be paid. However, the preceding sentence shall not apply if entitlement to that benefit has been established under Austrian laws exclusively on the basis of periods of coverage completed under those laws.]~~

When a person who has completed periods of coverage under the laws of both Contracting States, or the survivor of such a person, claims a benefit, the competent Austrian agency shall determine, in accordance with Austrian laws, whether the claimant is entitled to a benefit by adding together the periods of coverage, as provided in Article 10 and taking into account the following provisions:

- (a) Where Austrian laws make the award of certain benefits conditional upon the completion of periods of coverage in an occupation covered by special schemes or in a specified occupation or employment, only periods of coverage completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, under United States laws shall be taken into account for the award of such benefits.**
- (b) Where Austrian laws provide that the period of payment of a pension shall prolong the reference period in which the periods of coverage must be completed, periods during which a pension has been awarded under United States laws shall prolong the aforesaid reference period.**
- (c) A quarter of coverage under United States laws shall be treated as three months of coverage under Austrian laws.**

Article 12

~~[The competent Austrian agency shall apply Articles 10 and 11 according to the following rules:~~

- ~~(1) In determining the agency responsible for paying a benefit, only periods of coverage under Austrian laws shall be taken into consideration.~~
- ~~(2) Articles 10 and 11 shall not apply to eligibility requirements for or payment of the miners' long service allowance ("Bergmannstreuegeld") under miners' pensions insurance.~~
- ~~(3) For the application of Article 10 and paragraph (1) of Article 11, a quarter of coverage under United States laws shall be treated as 3 months of coverage under Austrian laws.~~
- ~~(4) For the application of paragraph (1) of Article 11, the following shall apply:~~
 - ~~(a) periods during which the insured person was entitled to a retirement or disability benefit under United States laws shall be treated as if they were neutral periods ("neutrale Zeiten");~~
 - ~~(b) the basis of assessment ("Bemessungsgrundlage") shall be determined by taking into account periods of coverage only under Austrian laws;~~
 - ~~(c) contributions for supplementary insurance ("Hoeherversicherung"), the miners' supplementary benefit ("knappschafflicher Leistungszuschlag"),~~

~~the helpless person's allowance ("Hilflosenzuschuss") and the compensatory supplement shall be disregarded.~~

- ~~(5) For the application of subparagraphs (1) (b) and (c) of Article 11, periods of coverage shall be taken into consideration even if they coincide.~~
- ~~(6) If, for the application of subparagraph (1) (c) of Article 11, the total duration of the periods of coverage to be taken into consideration under the laws of both Contracting States exceeds the maximum number of months of coverage specified under Austrian laws for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of coverage to be taken into consideration under Austrian laws and the maximum number of months of coverage referred to above.~~
- ~~(7) For the calculation of the helpless person's allowance, subparagraphs (1) (b) and (c) of Article 11 shall apply; Article 14 shall apply as appropriate.~~
- ~~(8) The amount calculated according to subparagraph (1) (c) of Article 11 shall be increased, where appropriate, by increments for contributions for supplementary insurance, the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement.~~
- ~~(9) If the award of benefits under miners' pensions insurance depends on the completion, in specific undertakings, of essentially mining activities, within the meaning of Austrian laws, then only those periods of coverage under United States laws which are based on a~~

~~similar occupation in a similar undertaking shall be taken into consideration.~~

~~(10) Special payments ("Sondersahlungen") shall be payable in the amount of the Austrian partial benefit, Article 14 shall apply as appropriate.]~~

- (1) Where under Austrian laws entitlement to a benefit exists without the application of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Austrian laws on the basis of periods of coverage to be taken into account exclusively under those laws.
- (2) Where under Austrian laws entitlement to a benefit exists only with the application of Article 10, the competent Austrian agency shall determine the amount of the benefit in accordance with Austrian laws on the basis of periods of coverage to be taken into account exclusively under those laws and taking into account the following provisions:
- (a) Benefits or parts of benefits the amount of which does not depend on the duration of the periods of coverage completed shall be calculated in proportion to the ratio of the duration of the periods of coverage to be taken into account for the calculation under Austrian laws to 30 years, but not exceeding the full amount.
- (b) Where periods after the contingency arises are to be considered for the calculation of invalidity or survivors benefits, these periods shall be taken into account only in proportion to the ratio of the duration of the periods of coverage to be taken into account for the calculation of the benefit

under Austrian laws to two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 and the date on which the contingency occurred, but not exceeding the full period.

(c) Subparagraph (a) shall not apply

(i) to benefits resulting from supplementary insurance,

(ii) to means-tested benefits designed to ensure a minimum income.

(3) Where the periods of coverage to be taken into account under Austrian laws for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under Austrian laws exclusively on the basis of these periods of coverage, no benefit under these laws shall be paid.

[Article 13]

~~(1) If a person is entitled to a benefit under Austrian laws without the application of Article 10, the competent Austrian agency shall pay the benefit which would be payable exclusively on the basis of the periods of coverage to be taken into consideration under those laws, provided the person is not entitled to a corresponding benefit under United States laws.~~

~~(2) The benefit amount determined in accordance with paragraph (1) of this Article shall be recalculated in accordance with the provisions of Article 11 as soon as the person becomes entitled to a corresponding benefit under United States laws. This recalculation shall have~~

~~effect from the beginning date of the benefit payment under United States laws. The irrevocability of previous decisions shall not prevent this recalculation.~~

- ~~(2) Where, in applying paragraph (2) of this Article, the agency has overpaid a benefit, the overpayment shall be regarded as an advance payment.]~~

~~[Article 14]~~

~~[If a person is entitled to a benefit under Austrian laws without the application of Article 10, and if such benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph (1) (e) of Article 11 and the corresponding United States benefit, the competent Austrian agency shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if Austrian laws alone were applied.]~~

Chapter 2

Benefits Under United States Laws

Article 15

- (1) Where a person has sufficient periods of coverage under United States laws to satisfy the requirements for entitlement to benefits under United States laws, the United States agency shall determine the amount of the benefit according to the laws which it applies taking into account the periods of coverage completed only under United States laws.

- (2) Where entitlement to a benefit under United States laws is established according to the provisions of Article 10, the United States agency shall compute a pro rata primary insurance amount in accordance with United States laws based on
- (a) the person's average earnings credited exclusively under United States laws and
 - (b) the ratio of the duration of the person's periods of coverage credited under United States laws to the duration of a coverage lifetime as determined in accordance with United States law.

Benefits payable under United States laws shall be based on the pro rata primary insurance amount.

- (3) In determining eligibility for benefits under Article 10, the United States agency shall credit one quarter of coverage for every 3 months of coverage certified as creditable by the Austrian competent agency to the extent that the months do not coincide with calendar quarters already credited as quarters of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed 4.
- (4) Entitlement to a benefit under United States laws which results from Article 10 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provisions of that Article.

- (5) This Agreement shall not result in entitlement to a benefit under United States laws unless the person on whose record benefits are claimed has completed at least 6 quarters of coverage under those laws.

PART IV

MISCELLANEOUS PROVISIONS

Article 16

- (1) The competent authorities of the two Contracting States shall make all joint administrative arrangements necessary for the application of this Agreement.
- (2) The competent authorities of the two Contracting States shall communicate to each other, as soon as possible, information concerning the measures taken for the application of this Agreement and concerning all changes in their respective laws which may affect its application.

Article 17

Liaison agencies for the implementation of this Agreement shall be:

- (a) for Austria, the Main Association of Austrian Social Insurance Agencies ("Hauptverband der oesterreichischen Sozialversicherungstraeger");
- (b) for the United States, the Social Security Administration.

Article 18

- (1) The competent authorities, liaison agencies and agencies of the Contracting States, within the scope of their respective authority, shall assist each other in applying this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.
- (2) Where administration of this Agreement requires an agency of a Contracting State to seek a medical examination of a person in the territory of the other Contracting State, such examination shall, upon request of the competent agency of the first Contracting State and at its expense, be arranged by the agency of the other Contracting State in accordance with its rules.
- (3) The statutes of a Contracting State concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Contracting State by the other Contracting State.

Article 19

- (1) The competent authorities, liaison agencies and agencies of the Contracting States may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement. The correspondence may be in the writer's official language.

- (2) An application or document may not be rejected by a competent authority, liaison agency or agency of a Contracting State solely because it is in the official language of the other Contracting State.

Article 20

- (1) Where the laws of a Contracting State provide that any document which is submitted to the competent authority or an agency of that Contracting State shall be exempted, wholly or partly, from taxes, fees or charges, including consular and administrative fees, the exemption shall also apply to documents which are submitted to the competent authority or an agency of the other Contracting State in accordance with its laws.
- (2) Copies of documents which are certified as true and exact copies by the agency of one Contracting State shall be accepted as true and exact copies by the agency of the other Contracting State, without further certification. The agency of each Contracting State shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 21

- (1) Any claim, notice or written appeal which, under the laws of one Contracting State, must have been filed within a prescribed period with the agency of that Contracting State, but which is instead filed within the same period with the agency of the other Contracting State, shall be considered to have been filed on time.

- (2) (a) Any claim for a benefit submitted under Austrian laws shall be considered to be a claim for the corresponding benefit under United States laws for which the applicant meets the entitlement requirements if he provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under United States laws; this shall not apply, however, when the applicant expressly requests that the determination of an old-age benefit under United States laws be deferred.
- (b) If an applicant has filed a claim for a benefit with the United States agency and has not specifically restricted the claim to benefits under United States laws, the claim shall also be considered to be a claim for the corresponding benefit under Austrian laws if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods of coverage under Austrian laws.

Article 22

- (1) Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Contracting States.
- (2) If any such disagreement has not been resolved within a period of six months, either Contracting State may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Contracting States.

PART VTRANSITIONAL AND FINAL PROVISIONSArticle 23

- (1) This Agreement shall not establish entitlement to benefits for any period before its entry into force or a lump-sum death benefit if the person died before its entry into force.
- (2) In determining entitlement to benefits under this Agreement, periods of coverage completed under the laws of a Contracting State prior to its entry into force shall be taken into account; however, neither Contracting State shall take into account periods of coverage occurring prior to the earliest date for which periods of coverage may be credited under its laws.
- (3) (a) Subject to the provisions of paragraph (1), this Agreement shall also apply to events relevant to rights under the laws which occurred prior to its entry into force.

(b) In cases to which subparagraph (a) applies, a benefit under Austrian laws due only by virtue of this Agreement shall be determined, at the request of the beneficiary, in accordance with the provisions of this Agreement. If the claim for determination of such benefit is submitted within two years from the date of entry into force of this Agreement, the benefit shall be paid from that date; otherwise, the benefit shall be paid from the date determined under Austrian laws.

- (4) The provisions of this Agreement shall apply only to an application for benefits which is filed on or after the date this Agreement enters into force.
- (5) Determinations made before the entry into force of this Agreement shall not affect rights arising under it.
- (6) This Agreement shall not result in any reduction in the amount of benefits to which entitlement was established prior to its entry into force.

Article 24

This Agreement shall not affect any existing rights under Austrian laws of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of ethnic origin.

~~[Article 25]~~

~~[If a person becomes eligible for a benefit under Austrian laws without the application of Article 10 within a period of 5 years from the date of the entry into force of this Agreement, Chapter 1 of Part III shall not apply.]~~

Article 26

This Agreement may be amended in the future by supplementary agreements, which from their entry into force shall be considered an integral part of this Agreement. Such supplementary agreements may be given retroactive effect if they so specify.

Article 27

- (1) This Agreement shall enter into force on the first day of the third month following the month in which each Government shall have received from the other Government written notification that it has complied with all statutory and constitutional requirements for the entry into force of this Agreement.
- (2) This Agreement shall remain in force and effect until the expiration of one calendar year following the year in which written notice of its termination is given by one of the Contracting States to the other Contracting State.
- (3) If this Agreement is terminated, rights regarding entitlement to or payment of benefits acquired under it shall be retained; the Contracting States shall make arrangements dealing with rights in the process of being acquired.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Agreement.

DONE at Vienna, Austria on July 13, 1990, in duplicate in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA:

Michael J. Habib

FOR THE GOVERNMENT OF
THE REPUBLIC OF AUSTRIA:

Eric Nettel