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**CAPE TOWN CONVENTION'S PROPOSED MINING, AGRICULTURE AND
CONSTRUCTION PROTOCOL**

POSITION PAPER

(Submitted by the Government of Japan)

Overview

1. This opinion paper expresses Japan's position on the Mining, Agriculture and Construction Protocol (MAC Protocol) to the Cape Town Convention. Japan appreciates the opportunity to express its opinion concerning this Protocol.
2. We would like to express our gratitude to the UNIDROIT Secretariat for the invaluable efforts put into the drafting of the Protocol. We also commend the Study Group for their thoughtful consideration of the draft.
3. Japan supports developing MAC Protocol. This protocol, applied in conjunction with the Cape Town Convention, will enable stability in international financial transaction and will facilitate in further developing export for manufactures of the Mining, Agriculture and construction machines. Given that the Cape Town Convention has been widely accepted, it is expected that the MAC Protocol will also be successful in enabling access to MAC equipment at a cheaper cost, which will be beneficial to the world, in particular emerging markets.
4. Thus, we believe that to achieve such success, this new protocol should carefully be prepared to enable legal stability of international interests, and the Protocol must be in conformity with domestic laws and with practice.

1. Association with Immovable Property

5. In article VII of the draft Protocol, the effect of the international interests when MAC equipment is associated with immovable property is stipulated. We believe that law regulating immovable property is specific to each state; thus, Contracting State should be able to make its choice in accordance with its situation. In this sense, we support the existence of options such as drafted in the article.

2. The Scope of MAC Protocol and Amendment

6. Japan supports the Study Group's decision to use the Harmonized System (HS) codes to define the equipment covered by the Protocol, although, we look forward to the discussions to be held at the Committee of Governmental Experts, by further looking into the equipment that is in transaction.

7. We would also like to suggest that amendment procedure stipulated in article XXXII of the Protocol should further be considered.

8. For one, the current draft stipulates that when there is a change to relevant HS codes, whether this affects the Annex of MAC protocol will be determined by either the consideration of the Review Conference of the States Parties (paragraph 2 of article XXXII) or the amendment process initiated by the Depositary (paragraphs 4 and 5 of article XXXII). The relation between the two is somewhat unclear. Namely, this article does not mention the effect of the decision by the Review Conferences of the States Parties: If the Review Conference decides that an amendment to Annex is necessary (paragraph 2(e) of article XXXII), does this bind the Depositary to proceed with an amendment process, if it is a matter that falls under procedure of paragraphs 4 and 5 of article XXXII? We also believe that problem may arise as to what amendment procedure is to be taken in a case where the decision by the Review Conferences of the States Parties concerning amendment of Annex means substantive change in the scope of the protocol. The current draft protocol excludes Annex in its entirety from the procedure stipulated by paragraph 3 of article XXXII; and the procedure stipulated by paragraphs 4 and 5 of article XXXII are not meant for such substantive change.

9. Another point to be mentioned is a case where new MAC equipment is identified as "materially similar" in the report (paragraph 4 of article XXXII). We feel that paragraph 4 of article XXXII could be clarified further by considering if the Depositary should be left with discretion to decide whether to proceed with the process or if the report should necessitate the Depositary to take actions exactly as stated in the report.

10. We feel that the amendment procedure should be carefully considered from the aspect of ensuring prompt, efficient and transparent process.

11. Furthermore, we believe that when HS codes are amended, especially in a situation where new codes are added, it is necessary to secure protection of the existing rights. We also feel the need to consider whether measures provided in article XXXII is sufficient to publicize the fact that such new code has been included, especially in the case of paragraph 4 of article XXXII.