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COMMENTS

(Submitted by the United Kingdom)

1. The United Kingdom welcomes the substantial progress made at the first meeting of the Committee of Governmental Experts and congratulates the Study Group, the Working Group and the UNIDROIT Secretariat for the fruitful work they have done. We have also benefited from the comments submitted by the United States and others and are in general agreement with the thrust of these. We would like to submit the following comments:

A. Title and sequence of equipment references

2. We agree that to reflect the description of the Protocol as the MAC Protocol the sequence of equipment descriptions should be mining, agricultural and construction equipment.

B. Article I(2)

3. We propose that the following new definition, "equipment", be inserted as Article I(2)(b) bis:

> "equipment" means mining, agricultural or construction equipment".

Given that all the provisions in the body of the text are equipment-neutral the cumbersome phrase "mining, agricultural and construction equipment" can be replaced by "equipment".

C. Article V(1)

4. We consider that the word "the" in the second line (appearing after the words "description of") should be deleted as not all of the equipment will necessarily be dealt with at the same time.

D. Article VII, Alternative A

5. The following comments are in reference to the proposed US text for Article VII.[1] In the second line the words "or the equipment" should be added after "immovable property". We believe that this accords with the law in most jurisdictions.

6. We support the thrust of paragraph 3 of the text proposed by the United States but believe that sub-paragraph (a) can be deleted, being adequately covered by the word "creation" in sub-paragraph (b). Moreover, sub-paragraph (a), with its reference to "power to dispose" without limitation appears to us to go beyond the scope of what paragraph 3 is designed to achieve.

7. We consider that the suggested paragraph 4 is unnecessary, being simply the obverse of paragraph 1.

E. Articles IX and X

8. We can see the force of the suggestion that references to the duty of administrative authorities to facilitate the remedies of export and physical delivery should be deleted, given the wide range of equipment covered by the Protocol and the fact that many categories of equipment might not involve the intervention of any administrative authority. But we would welcome views on whether such references are practicable and fulfil a useful purpose or should be discarded.

F. Article XVII(3)

9. With reference to the US proposal to substitute "UNIDROIT" for "Depositary,[2] we should prefer to retain the reference to "Depositary" rather than "UNIDROIT", as "Depositary" is used throughout elsewhere in the draft Protocol and in the Convention and earlier Protocols.

G. Articles XXXII(4) and (5)

10. At an earlier stage it was suggested that where changes are made to the HS Codes which do not change their scope it should be left to the Depositary to make them. Objection to this was rightly taken on the ground that treaty changes should not be made without the involvement of participating States without some proper process. On the other hand, where there are amendments to the HS Codes which do not affect the scope of the Annexes, for example, where there is merely a reordering and consequent renumbering of the codes in an Annex, it seems desirable to have a more automatic process for amendments which avoids the delay and expense of involving participating States. We think this could be done by a process of certification by the competent authority of the WCO that the amendments to the HS Codes do not affect the scope of the Annexes and deposit of such certificate with the Depositary. There is precedent for a procedure of this kind in Articles XXIII(1)(b) of the Luxembourg Protocol and XXXVIII(1)(b) of the Space Protocol relating to deposit of a certificate that the International Registry has become fully operational. We would therefore propose the following:

In Article XXXII(4) Insert at the beginning: "Subject to paragraph 5,"

Substitute the following for Article XXXII(5):

[5. Where in any revision of the Harmonised System changes are made to the Harmonised System Codes listed in the Annexes and a certificate issued by the

[1] UNIDROIT 2017 - Study 72K - CGE2 - Doc. 10.
[2] UNIDROIT 2017 - Study 72K - CGE2 - Doc. 10.

competent Authority of the World Customs Organization that such changes to the Annexes do not change their scope is deposited with the Depositary then upon such changes coming into force this Protocol shall have effect with the substitution for the existing Annexes of new Annexes incorporating such changes. The Depositary shall inform all Contracting States of the changes and transmit certified true copies of the amended Protocol to the Contracting States.]

H. "Contracting States"; States Parties

11. It has been suggested that we should have a uniform terminology by using one phrase or the other throughout. However, this would not only be inconsistent with the Convention and previous Protocols but would substantially change the effect. A Contracting State is a State that has consented to be bound even though the Protocol is not yet in force. A State becomes a State Party only when the Protocol has entered into force for that State. There is a good reason to maintain "Contracting State" in most of the provisions, because a State may wish to make declarations when ratifying even if the Protocol is not then in force. "States Parties" should therefore be reserved, as it is in the earlier instruments, for those provisions which depend upon the Protocol being in force for the States concerned, for example Article XXXII.