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**MAC Protocol
Diplomatic Conference**

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COMMENTS ON THE DRAFT MAC PROTOCOL

(Submitted by the Government of Japan)

Overview

1. Japan appreciates the opportunity to express its comments concerning the draft Mining, Agricultural and Construction Protocol (“the draft MAC Protocol”) to the Convention on International Interests in Mobile Equipment (“the Cape Town Convention”).
2. We would first like to express our sincere gratitude to the UNIDROIT Secretariat for their efforts in following up on the suggestions made at the second Committee of Governmental Experts, including proposing new texts for a number of provisions in the draft MAC Protocol. Japan also appreciates the opportunity that was provided by the UNIDROIT Secretariat to submit additional HS codes taking into account the needs of relevant industries for consideration to include to the draft MAC Protocol.
3. Japan supports development of the MAC Protocol, as it has throughout the process. This Protocol will extend the economic benefits of the Cape Town Convention, to the MAC sectors, to enhance legal certainty for transactions, including cross-border financing and exports, concerning MAC equipment.
4. Japan wishes to provide following comments on some of the issues that are likely to attract the greatest interests from States participating in the Diplomatic Conference.

Provision on Inventory Financing (Article XII of the Draft MAC Protocol and the Proposal by the UNIDROIT Secretariat)

5. Considering the difference among domestic laws and existing financing practices for MAC equipment when held as inventory, it would be desirable to provide an opt-out mechanism which would allow a Contracting State to entirely exclude the application of the Protocol to interests created in MAC inventory by a dealer.
6. The proposal by the UNIDROIT Secretariat, which would allow application of a domestic regime to protect buyers and lessees of MAC equipment subject to international interest properly registered in international registry, may have negative consequences for the clear priority regime established under the Cape Town Convention and the previous Protocols. We are concerned that such a deferral to domestic law could undermine the unification effect of the Protocol and increase the cost of transactions when parties would have to examine the complex provisions of domestic law.

7. Although we recognize the importance of opt-in or opt-out mechanisms, we suppose that, for this article as well as the articles that deal with amendment mechanisms, the number of options that permit or require declarations should be kept to a minimum so as to promote the unification effect of the Protocol.

Provisions on Amendment Mechanisms (Article XXXIII of the Draft MAC Protocol and Article XXXIII and XXXIV of the Proposal by the UNIDROIT Secretariat)

8. We suggest that following points should be considered in the articles that govern amendment mechanisms. We agree with the UNIDROIT Secretariat that it is desirable that the Annexes to the Protocol be aligned with the most recent revision of the Harmonized System. Although it is important to allow the States to consider if they wish to be bound by technical amendments, Japan is concerned that applying different versions of the HS codes to States Parties would be confusing.

9. We welcome the proposal by the UNIDROIT Secretariat that clarifies that the technical adjustments include all changes resulting from a revision to the Harmonized System. However, we feel that following two points should also be considered. First, convening a meeting of Contracting States at a request of a single State that opposed the proposed adjustment that is purely of a technical nature would unduly burden other Contracting States and the Depositary in terms of the time and cost it would take to organize. Second, under the proposal by the UNIDROIT Secretariat, addition of new codes are to follow the general amendment procedure under article XXXIII. In the context of amendments, it should be considered whether additions of HS codes due to technological development should be subject to more simplified procedure.

Consideration to the Necessity of Three Separate Annexes

10. Given the almost perfect overlap between the codes included in the Annex 1 (mining equipment) and Annex 3 (construction equipment), we query whether the Protocol should allow an opt-out from one of these two annexes, which would still result in the application of the Protocol to the equipment with respect to which the opt-out has been made. A state may not appreciate that its intended disapplication to a particular industry would not achieve the result.

Proposal for Addition of New Codes

11. Japan would like to propose that the Diplomatic Conference consider the following codes for inclusion to the Annexes.

1. Addition to Annex 1 (Mining Equipment)

12. We propose the following three codes, already listed in Annex 3 (construction equipment), be included to Annex 1 (mining equipment) as well, since the equipment covered by the three codes is also used by the mining industry.

- 842920

Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers. ___ Graders and levellers

- 842951

Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers. ___ Front-end shovel loaders

- 843069

Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile -drivers and pile-extractors; snow-ploughs and snow-blowers ___ Other

13. We propose the following code be included to Annex 1 (mining equipment), since the equipment covered by the code is parts that are separately sold in the mining industry.

- 843143

Parts suitable for use solely or principally with the machinery of headings 84.25 to 84.30. ___

Parts for boring or sinking machinery of subheading 8430.41 or 8430.49

14. We propose the following code be included to Annex 1 (mining equipment), since the equipment covered by the code is trucks that are used especially for underground mining.

- 870490

Motor vehicles for the transport of goods ___ Other

2. Code for Reconsideration for Inclusion that was Proposed by Japan at the Second Committee of Governmental Experts

15. We would like to propose the following code be reconsidered for inclusion to the Annex 3 (construction equipment), since this code covers equipment that is used solely for construction even though it is used to plough or blow snow.

- 843020

Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile -drivers and pile-extractors; snow-ploughs and snow-blowers. ___ Snow-ploughs and snow-blowers