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**MAC Protocol  
Diplomatic Conference**

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## **COMMENTS ON THE DRAFT MAC PROTOCOL**

(Submitted by Canada)

1. In preparation for the Diplomatic Conference for the adoption of the draft Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Mining, Agricultural, and Construction Equipment (Protocol), States are invited to share written comments prior to the Conference. Canada first wishes to express its appreciation for the efforts made by the UNIDROIT Secretariat to find solutions for several issues that have been left unresolved during the negotiation sessions leading up to the Diplomatic Conference. We also appreciate the efforts by other delegations to find solutions through their written comments.
2. In relation to Article VIII(5) – Modification of default remedies provisions, Canada is of the view that the reference to tax and customs authorities is not appropriate because it does not refer to the kind of administrative authorities that would normally be in a position to cooperate and assist a creditor in the exercise of default remedies.
3. In relation to Article XXXIII - Review conferences, amendments and related matters, we submit the following considerations:
  - Canada supports an opt-out mechanism that would temporarily suspend the application of amendments to the Annexes in order to provide sufficient time for the domestic legislative process before an amendment comes into force. Alternatively, we would support a longer time period between the acceptance by Contracting States of a change to the Annexes and its effective date of application.
  - The treaty adoption process of many States is applicable to treaty amendments, including technical amendments such as those contemplated for the Protocol. This process can be lengthy, as it requires obtaining policy approval and the introduction of legislation before the legislative assembly.
  - As it is the case for Canada, if an amendment to the Annexes were to come into force for internationally before a country's domestic treaty adoption process were completed, it would create a disconnect between the domestic law of that country and its obligations under international law. This in turn could create confusion for lenders and debtors wishing to benefit from the regime set out under the Protocol.
  - The text currently contains no mechanism for a temporary opt-out or temporary objection. If a State were to object on the basis that it needs more time to complete its domestic process before it could accept a modification to the Annexes, it would

likely trigger a meeting of Contracting States (depending on the amendment process ultimately retained). As such, it would trigger a substantive meeting of the Contracting States even if the State objected only to the timeline and not the substance.

- For these reasons, we suggest the inclusion of an opt-out that would temporarily suspend the application of a change to the Annexes in relation to the state exercising that option.
- Alternatively, we would suggest that this period be no shorter than twelve months in all cases. As noted in document 5 corr., States may not have enough time to complete their domestic ratification processes if the Depositary is allowed to bring forward the entry into force of technical adjustments to the Annexes to a period shorter than six months.