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**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
(THE "MAC PROTOCOL")**

Pretoria, 11-22 November 2019

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FINAL CLAUSES COMMITTEE – FINAL REPORT

(Prepared by the Chairs of the Final Clauses Committee)

1. The Final Clauses Committee (FCC) met five times: on 13, 14, 15, 18 and 20 November.
2. At the outset of the first meeting on 13 November the FCC elected its Co-Chairs in the persons of Adv. Thembile Joyini (South Africa) and Mr Mark Smith (UK). The following States participated in the meetings: Argentina, Australia, Brazil, Canada, China, Germany, Ghana, Japan, Mexico, Paraguay, South Africa, Spain, Syrian arab republic, United Kingdom, United States, Uruguay, Uzbekistan,. The following observers attended the meetings: International Finance Corporation (IFC); NatLaw; World Customs Organisation (WCO). The meeting was attended by representatives of the UNIDROIT Secretariat.
3. The first three meetings addressed the provisions on the amendments to the text and the Annexes of the MAC Protocol, which was referred to the FCC by the Chair of the Committee of the Whole in view of the position of the relevant provisions in the Final Clauses. The fourth meeting focussed on one additional policy point on the amendment procedures that had not been considered in the previous meetings, and all outstanding Final Clauses except for Article XXVI, which was discussed in the Commission of the Whole. The fifth meeting approved the Final Report of the Committee.
4. In relation to the amendment articles of the Protocol, the FCC considered as a starting point of its deliberation the Secretariat's proposed redrafting of the MAC Protocol's amendment provision contained in document DCME-MAC – Doc 5 corr. para. 194. For clarity purposes the FCC renumbered the two Articles proposed by the Secretariat as Article XXXIII and Article XXXIIIbis.
5. The FCC agreed at the outset on fundamental policy goals which guided the discussions on this point: the Protocol amendment mechanism should provide for (a) a process that would keep MAC Protocol Annexes aligned with the current version of the HS to the greatest extent possible; (b) the balancing of two important competing principles: (1) the need for a Contracting State to have control over changes to its obligations under the treaty and (2) the need to a provide a flexible mechanism for adjusting the MAC Protocol Annexes; (c) the need to take into account commercial certainty.

6. On the basis of the afore mentioned policy goals, the FCC confirmed the need to provide for a simplified amendment procedure in relation to adjustments to HS codes revisions. The FCC also agreed on the hybrid mechanism in Article XXXIIIbis incorporating a 2-step process, consistent with existing treaty practice: first, an approval process and, in the event of its failure, a second step consisting of a Meeting of Contracting States.

7. There were, however, several aspects of the Secretariat's proposed amendment articles that were not supported by the FCC. The FCC suggested that the amendment articles be revised to reflect the following principles: (a) changes to ensure that Contracting States retain full control over their obligations; (b) changes to ensure that Contracting States have sufficient time to adjust their domestic laws to implement amendments to the MAC Protocol Annexes or to decide on whether such amendments would be acceptable; (c) changes to allow for a more flexible amendment mechanism for revisions to the HS codes in the Annexes unrelated to HS revisions.

8. Taking all these aspects into account, the FCC developed detailed policy guidelines on the amendment Articles. The FCC further suggested that other provisions of the Protocol might have to be modified as a consequence of the modifications in the amendment provisions. In particular, the FCC proposed additional language in Article XXXIV on Depositary Function. The Final Clauses Committee Interim Report was published as DCME-MAC – Doc. 17 and was discussed during the Commission of the Whole on 15 November 2019. Delegations generally supported the policy recommendations of the FCC and the Chair referred their implementation to the Drafting Committee.

9. At its fourth meeting on 18 November 2019 the FCC considered one additional policy issue connected with the amendment provisions, that is the application of the amendment mechanisms to the Annexes of the Protocol to States which would become Contracting States after commencement of an amendment process. The FCC provided a policy guideline in this regard, which was referred to the Drafting Committee for implementation.

10. The FCC reviewed all other Final Clauses provisions in the draft Protocol except for Article XXVI, and transmitted its recommendations regarding such provisions to the Drafting Committee.

11. At its fourth meeting on 18 November 2019, the FCC reviewed the provisions prepared by the Drafting Committee.

12. At its fifth meeting on 20 November 2019 the FCC approved the Final Report to be presented to the Plenary of the Conference.