Mac Protocol to CTC

Symposium for
UNIDROIT member States and States parties to the Cape Town Convention

Session 4: The MAC Protocol – coverage and legal innovations

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I. Coverage: Mining, Agriculture and Construction equipment

- High-value
- Mobile
- Uniquely Identifiable

Interaction with other Protocols

The HS System

Multi-purpose
- Inventory
- Accessions
- Implements

II. Legal innovations:

Immovable-associated equipment
The MAC Protocol -

Preamble

CHAPTER I – Sphere of application and general provisions
CHAPTER II – Default remedies and priorities
CHAPTER III – Registry provisions related to MAC equipment
CHAPTER IV – Jurisdiction
CHAPTER V – Relationship with other Conventions
CHAPTER VI – Final provisions

ANNEXES to the Protocol

Annex 1 Agricultural equipment
Annex 2 Construction equipment
Annex 3 Mining Equipment
I.- Coverage: Mining, agriculture and Construction equipment

**Article 51 (1) CTC**

- High-value
- Mobile
- Uniquely Identifiable

**The HS System**

Article I.2.e). “Harmonized System” means the Harmonized Commodity Description and Coding System governed by The International Convention on the Harmonized Commodity Description and Coding System.
I.- Coverage: Mining, agriculture and Construction equipment

High-value Mobile Uniquely Identifiable

The HS System

36 HS Codes
- 20 codes in Annex 1
- 28 codes in Annex 2
- 17 codes in Annex 3
- 9 of 36 in the 3 Annexes

FACTORS to select suitable HS codes (Tier 1):

a). Used primarily in MAC industries – if general use, excluded
b). High value (from 10,000-7Mill USD – unit value 100,000USD)
c). Individually financed under current industry practice
d). Individual serial number
e). Only parts - excluded
f). Significant amounts of international trade
### 1). Sphere of application

#### Annex 1 – Agricultural equipment
- including forestry and fisheries
  (aquaculture equipment)

- **Art. II.1.**
  - 843210: Agricultural, horticultural or forestry machinery for soil preparation or cultivation; lawn or sports-ground rollers – Plows

#### Annex 2 – Construction equipment

#### Annex 3 – Mining equipment

- **Art. II.1.**
  - 842911: Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers -- Bulldozers and angledozers -- Track laying

- **Art. II.1.**
  - 843010: Other moving, grading, levelling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-excavators; snow ploughs and snow-blowers - Pile-drivers and pile-extractors
OPT-OUT DECLARATION: States may declare that they will limit the application to one or two of the annexes.

DENUNCIATIONS: A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex.
2). Severability

OPT-OUT DECLARATION: States may declare that they will limit the application to one or two of the annexes

DENUNCIATIONS: A subsequent declaration made by a State Party under Article II declaring that the Protocol does not apply to one or more Annexes, shall be considered a denunciation of the Protocol in relation to that Annex

3). Multi-purpose equipment

ACTUAL USE IS NOT RELEVANT

If covered by a HS code, Protocol applies – 9 of 36 HS codes are included in the 3 Annexes
4). Inventory

NO DISTINCTION: If identifiable, Protocol applies
4). Inventory

**NO DISTINCTION:** If identifiable, Protocol applies

5). Interaction with other Protocols

**SCOPE-DELIMITING SOLUTION:** not applicable to objects falling within the definition of object under existing 3 Protocols

- Aircraft objects
- Railway rolling stock
- Space assets
- MAC equipment
  - HS Codes
  - Annexes 1, 2 and 3
6). Association with other assets

**Accessions**
- 1). No specific provision on accession
- 2). HS codes exclusively covering parts are excluded

**Implements**
- 1). Discrete pieces of equipment that must be connected to other equipment to be used
- 2). HS codes may cover them and they remain capable of being registered in IR

**Items other than an object**
- Article 29 (7) applies
6). Association with other assets

- **Accessions**
- **Implements**
- **Items other than an object**
II.- Association with Immovable Property

Concept: immovable-associated equipment
MAC equipment that is so associated with immovable property that an interest in the immovable property extends to the equipment under the law of the State in which the immovable property is situated

Situations
a). Ceases to exist
b). Is subordinated
c). Is otherwise affected by association

Scope: Contracting and non-Contracting State
1). NCS: applicable law applies
2). CS: DECLARATION Alternative A, B or C

Art. VII
- Association
- Extension
- Law of situation
- Existence
- Priority
- Other effect
- No NCS
- CS: A, B, C
II.1- Association with Immovable Property

ALTERNATIVES

A

**NO EFFECT – PROTOCOL APPLIES:** International Interest in MAC equipment continues to exist, retains priority and is not affected by the association
II.1- Association with Immovable Property

**ALTERNATIVES**

A. NO EFFECT – PROTOCOL APPLIES: International Interest in MAC equipment continues to exist, retains priority and is not affected by the association.

B. 1). LOST INDIVIDUAL LEGAL IDENTITY: domestic law applies

2). NO LOST IDENTITY: immovable property interest that extents over equipment has priority ONLY if:

- registration of interest in immovable prior to registration of i.i.
- association prior to registration of i.i.
II.1- Association with Immovable Property

**ALTERNATIVES**

**A**

NO EFFECT – PROTOCOL APPLIES: International Interest in MAC equipment continues to exist, retains priority and is not affected by the association.

**B**

1). LOST INDIVIDUAL LEGAL IDENTITY: domestic law applies
2). NO LOST IDENTITY: immovable property interest that extents over equipment has priority ONLY if:
   - registration of interest in immovable prior to registration of i.i.
   - association prior to registration of i.i.

**C**

DOMESTIC LAW APPLIES
II.2- Identification of MAC equipment

A). For the purposes of the agreement: 
CREATION

- By item
- By type
- All present and future (no need of new act of transfer)
- All present and future except for specified items or types

B). For the purposes of the 
REGISTRATION

Serial number + manufacturer name
(+ supplementary info in Regulations)
II.3- Other provisions specific to MAC equipment

**A). REMEDIES (Art. VIII):** + export and physical transfer

**B). INSOLVENCY (Art. X):** Alternatives, A, B and C – opt-in declaration

**C). SUPERVISORY AUTHORITY**

**D). NOTICES OF SALE (Art. XVIII):** registration for information purposes only

**E). AMENDMENTS AND REVIEW (Art. XXXII):**
- amendments of the Protocol
- addition of HS code
- realign Annexes to HS system
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