

# **An introduction to the Mining, Agriculture and Construction (MAC) Protocol of the Cape Town Convention**

*Presentation to the Board of the Kenya Leasing Association  
15 September 2021*

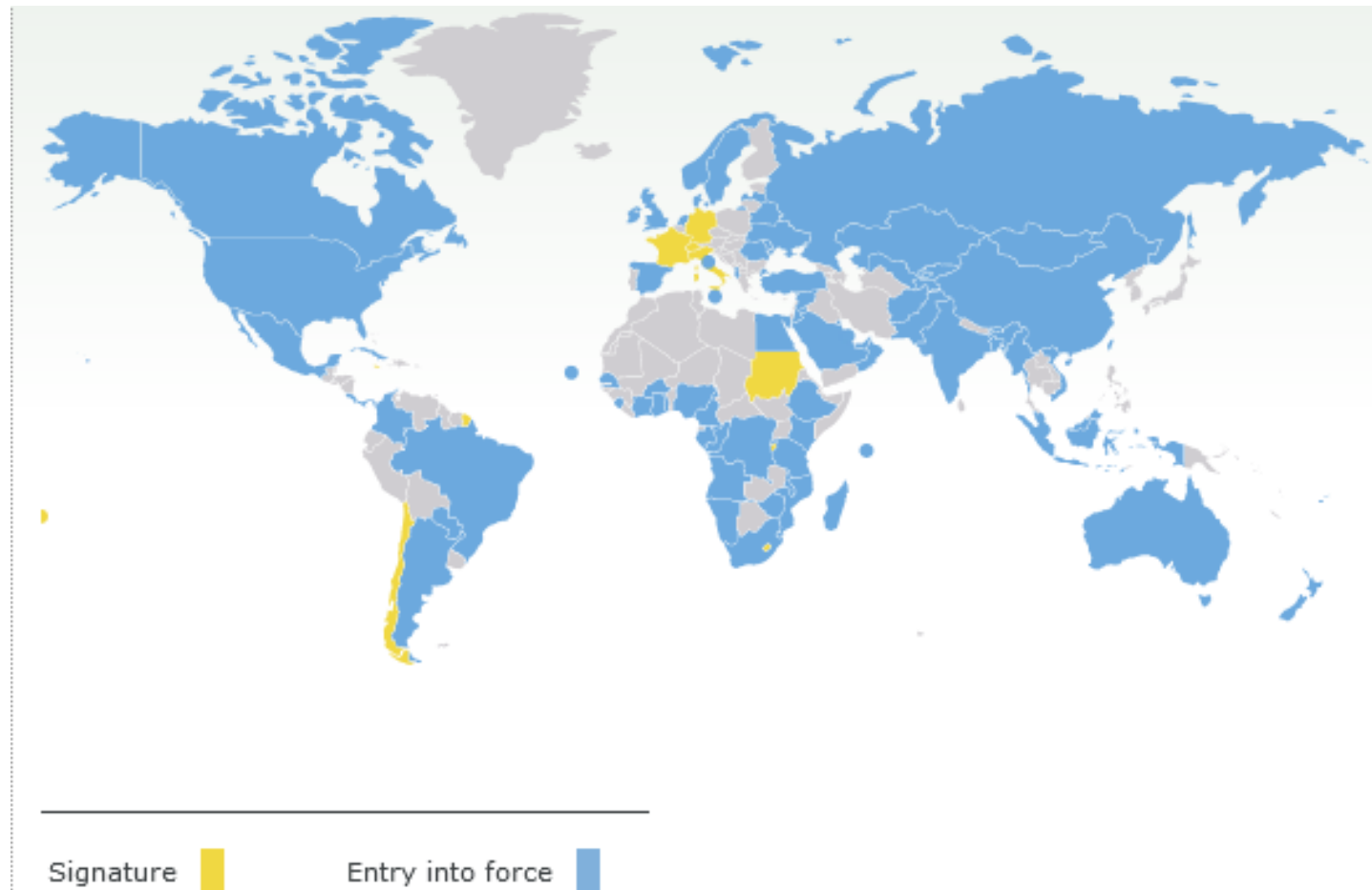
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In combination with the Convention, the MAC Protocol establishes uniform international standards for the creation, enforcement, registration and priority of security interests in MAC equipment.

# The Cape Town Convention: Status Map

The Convention currently has 83 contracting states and has been approved by the European Union.



# Why the Cape Town Convention and its Protocols?

- **Starting point:** growing global need for financing (including private capital) in the acquisition and use of high value mobile equipment
- Particularly evident, initially, in the **aviation sector**:
  - Exponential growth of air traffic and aviation industry
  - Reduction of public financial support, need to attract private capital
  - Positive externalities of acquisition and use of new equipment (e.g., greater safety of air travel)

## BUT:

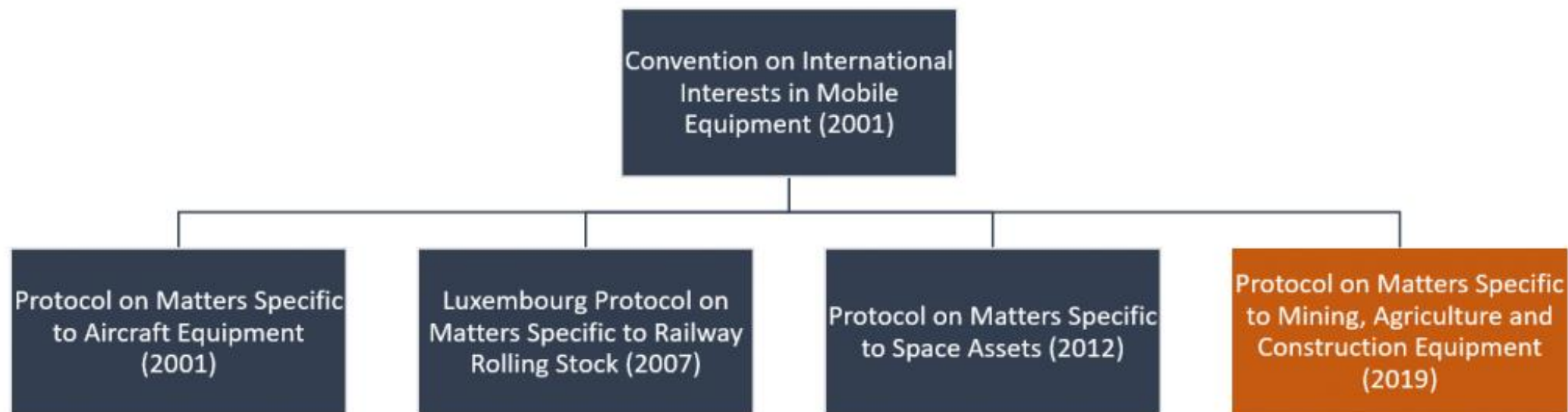
- **LEGAL OBSTACLES** in using asset-based financing and leasing, particularly in cross-border transactions, without uniform law:
  - Traditional conflict-of-laws approach not always suited to moving assets
  - Legal systems vary in their approach to recognition of security interests, the process for enforcement, and the remedies available

# Basics of the Cape Town Convention Treaty System

## SOLUTION:

- Uniform legal regime created by treaty to **facilitate financing and leasing** of certain types of uniquely identifiable, mobile high value equipment used in specific industry sectors:
  - **Aviation industry** (airframes, aircraft engines and helicopters)
  - **Rail industry** (railway rolling stock from high-speed trains to commuters to trams or undergrounds)
  - **Space industry** (satellites and other space assets)
  - **Mining, agricultural and construction sectors** (high value equipment used in these sectors)

# The Cape Town Convention Treaty System



## TWO-TIER STRUCTURE: MAIN CONVENTION/PROTOCOLS

- Convention provides a common core of rules; Protocols adapt it to the needs of the particular equipment/market
- Convention applies only in relation to a specific Protocol
- Protocols can derogate from the Convention and they prevail over the Convention

# Special features of the treaty making process

- Inclusive, decade-long drafting process involving academics and other experts, governments, international organisations and national research institutions (ICAO, OTIF, ITU, WCO, IFC...)
- Active involvement of industry (Aviation Working Group (AWG); Rail Working Group (RWG); MAC Working Group)
- Importance of substantiating the expected impact of the treaty by providing an independent economic benefit assessment

# Benefits of the Cape Town Convention and its Protocols

- Cape Town Convention and its Protocols aim at increasing certainty and reducing risks in asset-based financing for certain types of uniquely identifiable, high value mobile equipment

MORE CERTAINTY: LESS RISKS, LOWER COSTS



# Key legal features of the CTC model which apply to all Protocols

- ❑ **INTERNATIONAL INTEREST:** Parties can create an autonomous “international interest” over the equipment, deriving from a security agreement, a conditional sale or a lease agreement
- ❑ **INTERNATIONAL REGISTRY:** A dedicated international asset-based and wholly electronic registry ensures transparency and predictability as well as effectiveness as against competing creditors and in insolvency.
- ❑ **CLEAR PRIORITY RULES:** The registry provides a clear rule for determining priorities, including as against interests in domestic law, with limited and well-defined exceptions
- ❑ **EFFECTIVE ENFORCEMENT MEASURES APPLICABLE ALSO IN INSOLVENCY:** CTC provides effective and swift enforcement measures, including out-of-court remedies, if Contracting States so agree, and including advance relief pending final determination during court proceedings
- ❑ **FLEXIBILITY ACHIEVED THROUGH DECLARATIONS:** States can make policy choices through declarations to the Convention and to the Protocols
- ❑ **ENHANCED CREDITORS’ PROTECTION THROUGH PROTOCOLS:** Protocols allow States to strengthen creditor’s rights in enforcement and insolvency through declarations

# Mining, Agriculture and Construction Protocol (MAC Protocol) to the Cape Town Convention – Diplomatic Conference

The MAC Protocol is an international treaty which provides an international legal framework for the financing of high-value mining, agricultural and construction equipment. It was adopted at a Diplomatic Conference in Cape Town, Pretoria between 11-22 November 2019. Over 150 delegates from 43 States, 1 regional economic integration organisation, 3 intergovernmental organisations, 4 international non-governmental organisations, and 1 technical adviser participated in the negotiations.

## DIPLOMATIC CONFERENCE

For the adoption of the draft Protocol on Matters specific to Mining, Agricultural and Construction Equipment

PRETORIA 11-22 November 2019



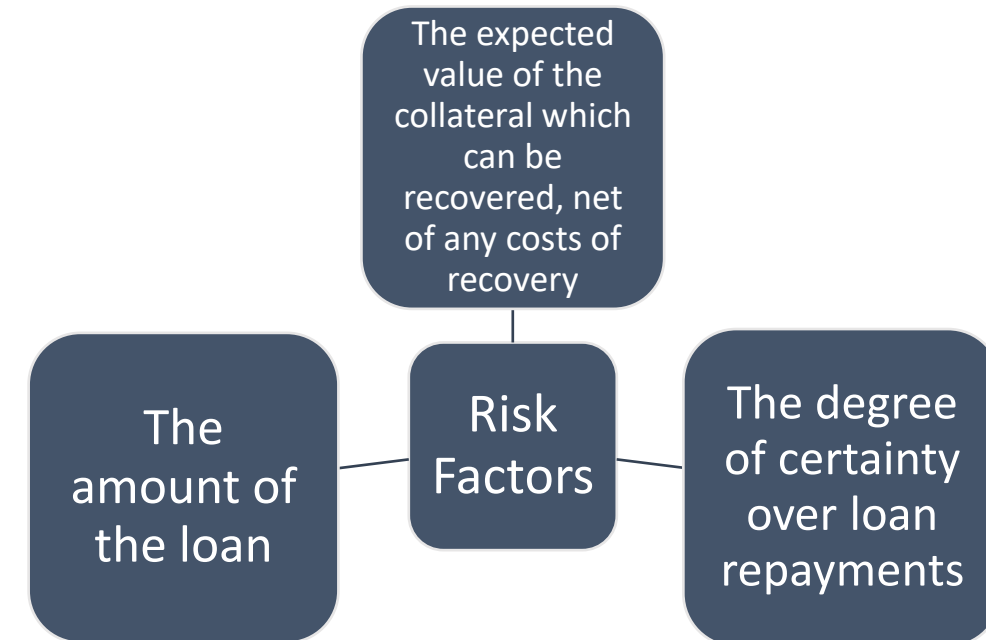
international relations  
& cooperation

Department:  
International Relations and Cooperation  
REPUBLIC OF SOUTH AFRICA

# Mining, Agriculture and Construction Protocol (MAC Protocol) to the Cape Town Convention

Despite large demand, financial institutions are unwilling to provide credit to companies in the MAC sectors to purchase or lease equipment, **due to uncertainty created by domestic laws, the possible movement of assets across borders, or challenges in enforcing their rights upon default or insolvency.** This uncertainty limits the availability of secured finance for MAC equipment across the globe.

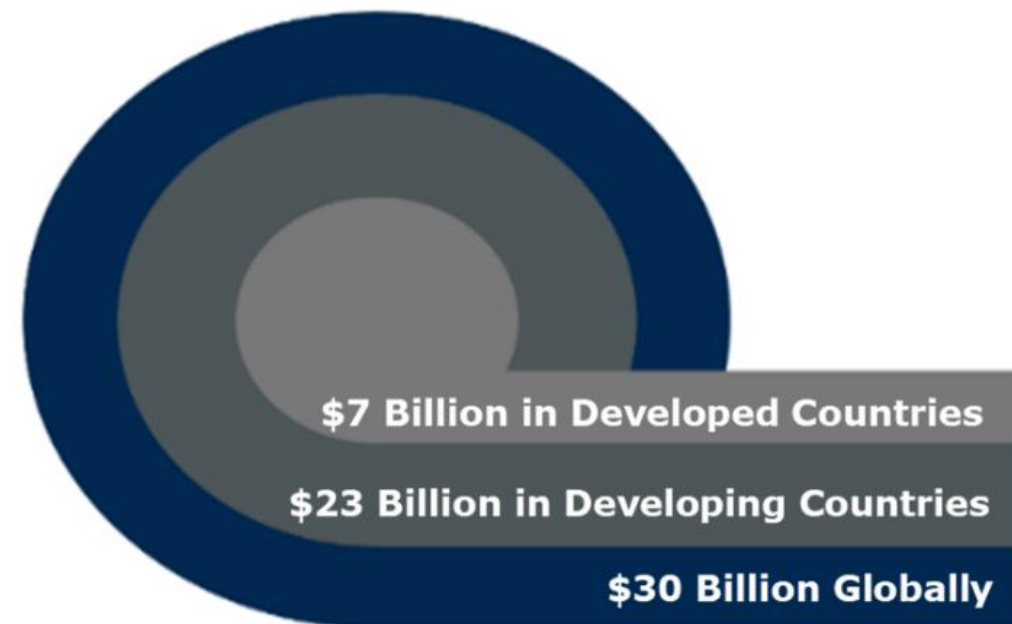
Credit availability in the MAC sectors remains constrained in many regions. **Credit may cover as little as 20% of product value in developing country markets.** In certain markets, borrowers have no choice but to self-finance entire sales. Companies also face challenges in securing credit using MAC equipment they already own as collateral. Consequently, many entities involved in the MAC sectors cannot access credit on reasonable terms and thus lack the ability to acquire the equipment needed to improve productivity and performance.



# MAC Protocol: Economic Benefits

The expected economic benefits are enormous for countries that ratify the MAC Protocol.

A 2018 independent report prepared by Warwick Economics and Associates states that the MAC Protocol is predicted to have a positive impact of **\$23 billion on GDP** in developing countries and of **\$7 billion in developed countries, for a total impact on GDP equivalent to \$30 billion a year**. It is estimated that over a ten-year period, the Protocol may **increase the stock of MAC equipment in developing countries by \$90 billion**. As the scope of the economic assessment was limited to UNIDROIT's 63 Member States, the actual global economic impact is likely to be much higher.

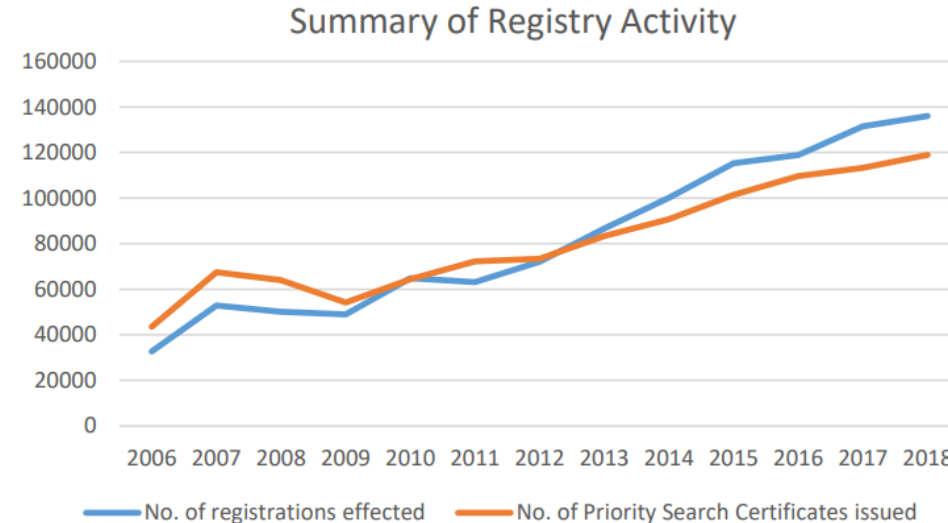


# Economic Benefits already brought by the Aircraft Protocol

## Aircraft Protocol of the Cape Town Convention

The Aircraft Protocol of the Cape Town Convention is a great example of how a financing instrument can allow for the growth and expansion of an entire industry:

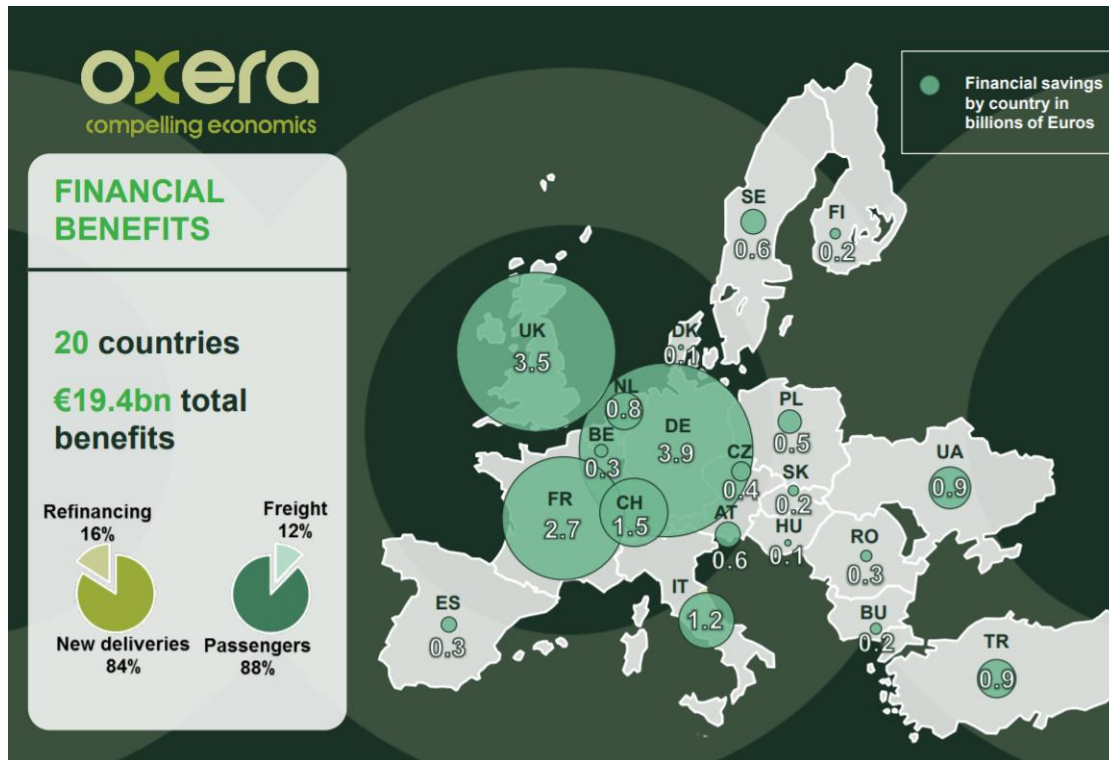
- the coming into force of the Aircraft Protocol has **reduced the cost of financing aircraft equipment by at least 30%**.
- Moreover, one study showed that the adoption of the Aircraft Protocol by an average country could save it **between \$7.6 Billion and \$11.1 Billion over a twenty-year period**.
- Presently there are over **250,000 international interests** created, and over **1 Million registrations** in the International Registry against more than **250,000 aircraft objects**.



# Economic Benefits projected for the Luxembourg Rail Protocol

According to various studies conducted by Oxera, the Luxembourg Rail Protocol is projected to bring large economic benefits to the countries all over the world. These include:

- Study indicating total benefits of **19.4 Billion EUR in 20 European countries**. See: <https://www.oxera.com/wp-content/uploads/2018/07/Luxembourg-Rail-Protocol.pdf.pdf>
- Study indicating direct micro-benefits between **4.8-5.2 Billion GBP in the United Kingdom**. See <https://www.oxera.com/wp-content/uploads/2020/11/LRP-financing-benefits-UK-update-November-2020.pdf>
- Study indicating direct micro-benefits between **1.6%-13.5% of total value of railway rolling stock in Africa**. See: <https://www.oxera.com/wp-content/uploads/2020/05/LRP-financing-benefits-Africa-06.04.2020.pdf>
- Study indicating direct micro-benefits up to **20 Billion Rand in South Africa**. See: <https://www.oxera.com/wp-content/uploads/2018/07/LRP-financing-benefits-South-Africa.pdf.pdf>



# MAC Protocol: Economic Benefits

## Benefits for developing countries and emerging markets

From a development perspective, the MAC Protocol will be one of the most important commercial law instruments aimed at improving economic growth, food security and infrastructure. In emerging and developing countries, the MAC Protocol will not only result in cheaper financing and better access to modern MAC equipment, but will **also serve as a modernisation tool that is simple to implement**. In general, emerging and developing economies are often more reliant on primary industries such as agriculture and mining.

The Protocol will stimulate **greater global productivity** in the MAC sectors, thereby boosting the GDP of States that support and ratify it. The Protocol can be implemented alongside domestic secured transaction legal reform, which would complement ongoing efforts in many regions.

# MAC Protocol: Economic Benefits

## Benefits for the private sector

- Farmers and other agricultural entities will benefit from increased access to modern agricultural equipment at a lower cost, thereby increasing their productivity and yields.
- Builders and other construction entities will benefit from increased access to modern construction equipment at a lower cost, thereby decreasing operating costs and risks.
- Mining entities will benefit from increased access to modern mining equipment at a lower cost, thereby increasing their productivity, profitability and extractive capacity.
- Manufacturers will benefit from higher demand for their equipment and increase output.
- Dealers and traders will be able to export and import an increased volume of equipment and begin operations in new markets.
- Financiers will benefit from greater legal protection in issuing credit, which will allow them to provide cheaper financing in existing markets and expand operations to new markets.



# MAC Protocol: Economic Impact on Africa

The African continent is particularly well suited to benefit from the MAC Protocol as the mining, agricultural, and construction sectors represent a significantly large portion of the African economy. Based on UN data for 2018 (the latest year data is available for), **the African continent imported over 7.4 Billion USD worth of equipment falling under the scope of the MAC Protocol, as well as exporting more than 1 Billion USD.**

<b>Africa</b>		<b>Imports</b>	<b>Exports</b>
<b>Total</b>	<b>56 HS Codes</b>	<b>\$7,426,240,277</b>	<b>\$1,088,273,621</b>
Mining	25 HS Codes	\$5,432,516,435	\$806,075,310
Agriculture	36 HS Codes	\$5,358,438,958	\$715,231,907
Construction	35 HS Codes	\$6,500,997,853	\$985,747,052

# MAC Protocol: Economic Benefits for Kenya

Furthermore, Kenya in particular is very well positioned to benefit from the MAC Protocol as large parts of its economic output comes from the mining, agricultural and construction sectors. According to the United Nations Comtrade Database, in 2018 (the most recent year global data is available for), **Kenya imported more than 236 Million USD worth of equipment which falls within the scope of the MAC Protocol, as well as exporting equipment worth more than 21 million USD.** Should Kenya become a party to the MAC Protocol, the mining, agricultural, and construction sectors in Kenya will benefit from better access to credit for acquiring hundreds of millions of dollars' worth of equipment.

Kenya		Imports	Exports
<b>Total</b>	<b>56 HS Codes</b>	<b>\$236,974,260</b>	<b>\$21,680,854</b>
Mining	25 HS Codes	\$156,607,990	\$16,163,386
Agriculture	36 HS Codes	\$169,458,034	\$16,735,999
Construction	35 HS Codes	\$215,941,911	\$19,462,198

# Specific MAC Imports to Kenya

## Relevant HS Codes covering the highest value of Kenyan Imports

HS Code	Industry	Description	Amount Imported
842959	Mining Agriculture Construction	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Mechanical shovels, excavators and shovel loaders -- Other	<b>\$59,877,039</b>
842920	Mining Agriculture Construction	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Graders and levelers	<b>\$24,688,714</b>
842940	Agriculture Construction	Self-propelled bulldozers, angledozers, graders, levellers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers - Tamping machines and road rollers	<b>\$21,683,360</b>

# MAC Protocol: Current status and next steps

The MAC Protocol has been signed by **5 States**.

The Republic of Congo, the Republic of Gambia, the Republic of Paraguay and the Federal Republic of Nigeria all signed the treaty on adoption. On 1 October 2020, the United States of America, which is already a Party to the Cape Town Convention and the Aircraft Protocol, signed the MAC Protocol. Secretary of State Michael R. Pompeo signed the MAC Protocol at a ceremony held at UNIDROIT Headquarters in Rome.

More than 20 States have expressed confidence in the future impact of the MAC Protocol on global economic development across the mining, agriculture and construction sectors, and declared their own internal process for signature was already under consideration.





**Thank you for your attention  
Any Questions?**

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