

# THE PRESIDENT'S EXPORT COUNCIL

WASHINGTON, D.C. 20230

March 12, 2013

President of the United States of America  
The White House  
Washington, DC 20500

Dear Mr. President,

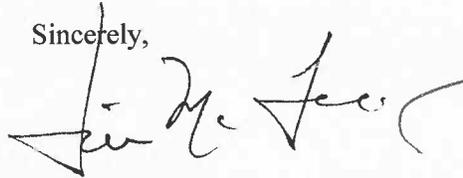
UNIDROIT, the International Institute for the Unification of Private Law, is considering extending the Cape Town Convention to cover agricultural, construction, and mining equipment. The Cape Town Convention on International Interests in Mobile Equipment is a treaty that establishes an international legal framework for equipment financing. Its goal is to reduce legal risk by applying a uniform legal regime to security interests in mobile equipment that, because it crosses borders, could otherwise be subject to uncertain legal treatment. The Convention itself provides general provisions on asset-based finance, similar to the approach taken in the U.S. by the Uniform Commercial Code; each category of equipment to be covered needs a separate protocol to reflect financing requirements for that sector. The first three protocols have covered aircraft, railway equipment, and space assets. Currently 55 countries are parties to the Convention, and 49 are parties to the aircraft protocol (which is the only protocol that has entered into force thus far); the U.S. is a party to these instruments.

The President's Export Council recommends the Administration support, encourage, and actively engage UNIDROIT to extend the Cape Town Convention to cover agricultural, mining, and construction equipment. The Council sees a time-sensitive opportunity to promote an enhanced trade finance mechanism that would increase exports of U.S. agricultural, mining, and construction equipment. U.S. manufacturers that lack captive finance arms experience difficulty in accessing wholesale and retail financing for their capital goods overseas. And even if available, interest rates are often high and terms are poor due to an inadequate legal framework to appropriately securitize the transaction. Even for transactions that are supported by captive finance companies or an Export Credit Agency such as Ex-Im Bank, a better, global legal framework would improve acceptance rates, lower financing costs, and increase sales. Building on the implemented legal framework for collateralizing aircraft worldwide under UNIDROIT's Cape Town Convention, a new protocol to that treaty is now being considered for agricultural, mining, and construction equipment. U.S. manufactured exports, especially from small to medium sized firms, stand to benefit greatly if such a protocol were developed and implemented by member countries.

As with aircraft and other types of equipment that cross borders frequently, agricultural, construction, and mining equipment is widely used in various jurisdictions and crosses borders both during use and upon sale or resale. Extending the Cape Town framework to such equipment would thus be appropriate and would provide significant benefits, particularly for small to medium sized companies who lack captive finance capabilities in multiple countries. A new protocol would provide for the creation of an international creditor's interest in these categories of equipment that would be recognized in all ratifying countries, and would establish an electronic international registry for these interests. The protocol would provide creditors with basic default remedies and means of obtaining speedy interim relief, thus enhancing the credit rating of frequently-mobile equipment and reducing borrowing costs. The increased finance approval rates and lower financing costs would lead to increased U.S. exports of capital goods. Moreover, in addition to aiding U.S. exports, the protocol could simultaneously provide development benefits—such as aiding global food security efforts through increased availability of advanced agricultural equipment—by facilitating the acquisition of new equipment in countries where such purchases are currently difficult.

UNIDROIT's Governing Council will meet in May 2013 to determine its 2014-2016 agenda and decide whether to proceed with work on a new protocol. If not approved for consideration, work on a new protocol would likely wait a minimum of three years. We believe agricultural, construction, and mining equipment crosses borders frequently enough to merit a uniform, treaty-based solution, and that the potential benefits of a new protocol far outweigh any challenges. We urge the Administration to provide its full support to this new protocol, and we in the private sector stand ready to work in partnership with you to provide any assistance that could further your efforts.<sup>i</sup>

Sincerely,

A handwritten signature in black ink, appearing to read "Jim McNerney". The signature is fluid and cursive, with a large initial "J" and "M".

Jim McNerney

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<sup>i</sup> Please note this letter was prepared by the private sector appointed members of the PEC.