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South Centre Inputs on Workstream III - Dispute prevention and resolution: Co-Leads' Concept Note (23 Jan 2026)

February 2026

I. Background

The South Centre is the intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. The South Centre has 55 Member States coming from the three developing country regions of Africa, Asia, and Latin America and the Caribbean. It was established by an Intergovernmental Agreement which came into force on 31 July 1995. Its headquarters are in Geneva, Switzerland.

The South Centre in 2016 launched the South Centre Tax Initiative (SCTI). This is the organization's flagship project for promoting South-South cooperation among developing countries in international tax matters.[1]

II. Abstract

The protocol should give priority to dispute prevention, as emphasized by some delegates and stakeholders during the Fourth Session. Dispute prevention ensures that disputes are avoided before they arise, which is important, effective, and resource-efficient, especially for developing countries.

As such, the dispute prevention mechanisms outlined in the Concept Note, including Advance Pricing Arrangements (APAs), simultaneous audits and joint audits, are important and necessary. These mechanisms should be retained within the protocol as they provide practical tools to directly reduce cross-border tax disputes.

The mechanisms under the Protocol should remain sufficiently detailed and broad to align with existing country practices, particularly with respect to timelines and administrative processes. The provisions should establish clear parameters and minimum safeguards to promote coherence, predictability, and effective cooperation across countries.

The proposed taskforce on transfer pricing databases risks overstretching already constrained resources, particularly for developing countries engaged in different

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workstreams under tight timelines. Efforts would be better concentrated on the Framework Convention (FC) and Protocols. A better approach would be for the Conference of Parties (COP) to the UNFCITC to take up the database issue once the FC comes into effect.

Arbitration should not be included. Even under a UN-administered panel or "last-best-offer" (baseball) form, arbitration poses risks for developing countries and thus should be completely removed from the protocol.

Mediation and conciliation are largely untried and untested tools in resolving cross-border tax disputes, countries do not have experience on them, and thus they should be approached with caution on an experimental basis.

III. General Comments

The South Centre commends the Co-leads, secretariat, and Intergovernmental Negotiating Committee (INC) for the progress under WS III and welcomes the Co-Leads' Concept Note (23 Jan 2026). This Concept Note builds on the October 2025 Concept Note and incorporates developments from the Third Session negotiations and written submissions on potential approaches and elements for the Protocol. It provides a substantive basis for advancing to drafting the text of the Protocol.

We provide specific comments in the next section.

IV. Specific Comments

Below are our responses and comments on the issues for the Committee:

on optionality,

(a) whether the Committee considers additional prevention or resolution mechanisms for potential inclusion in the protocol:

Comment:

The mechanisms are sufficient. Advance rulings can also include transfer pricing matters which constitute the majority of cross-border tax disputes.

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(b) whether the three broad situations described in paragraph 12 (absence of, coexistence with, or replacement of mechanisms) provide a sufficient basis for the drafting work on the interaction between the protocol and other tax-related instruments;

Comment:

Yes. Ensure the protocol does not replace mechanisms in existing instruments without the agreement of all the partner States involved in the dispute.

on scope,

(c) whether it is appropriate that the protocol does not include a definition of a "cross-border tax dispute" and instead relies on its general features to inform the design and operation of the mechanisms under the protocol;

Comment

Yes. There is no need to define cross-border tax dispute at this point to allow applicability in different country contexts. The two guiding features provided, i.e. State-to-State disputes and a shared legal framework, are sufficient for drafting purposes.

Various developing country delegates and stakeholders expressed concern that the absence of a definition could create ambiguity or overly broad interpretation, but we note that the identified features are adequate for the purpose of developing the mechanisms under the protocol. A more precise definition may be considered at a later stage, once the scope of the mechanisms is clearer and the articles on dispute prevention and resolution under the FC are developed. This facilitates progress in negotiations while preserving the opportunity for refinement as the architecture of the FC and Protocol becomes more defined.

(d) whether it is appropriate to include a provision addressing no-treaty situations, as described in paragraph 19, and if so, what types of situations and key legal and practical considerations should be taken into account;

Comment:

There is no need for the protocol to address 'no-treaty situation'. Such a provision will be harmful and counterproductive for developing countries and will serve to restrict their taxing rights. Situations that lack a shared legal basis, such as a bilateral or multilateral treaty should not be in scope for cross-border disputes. Such issues should be handled

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under the domestic frameworks of the respective states, subject to applicable public international law or established norms.

on dispute prevention,

(e) whether the main features outlined for each mechanism provide an appropriate basis for drafting the corresponding provisions under the protocol;

Comment

The protocol should give priority to dispute prevention, as emphasized by some developing country delegates and by stakeholders during the Fourth Session. Dispute prevention ensures that disputes are avoided before they arise, which is important, effective, and resource-efficient in terms of human effort, time and cost, especially for developing countries with limited administrative capacity.

As such, the dispute prevention mechanisms outlined in the Concept Note, including Advance Pricing Arrangements (APAs), simultaneous audits and joint audits, are necessary and sufficient. These mechanisms should be retained within the protocol. They are appropriately situated in the protocol as dispute prevention mechanisms, and are directly linked to the objective of reducing cross-border tax disputes.

The choice of the “core” dispute prevention mechanism should be considered later, once the operational details are clearer. It should take into account different country capacities and should allow for flexibility and phased implementation.

The dispute prevention mechanisms should remain sufficiently detailed and broad enough to align with existing country practices, particularly with respect to timelines and administrative processes. Excessive narrowing or over-standardization may create inconsistencies with domestic systems and undermine practical implementation. The provisions should establish clear guidelines and minimum safeguards to promote coherence, predictability, and effective cooperation across jurisdictions.

Further, the protocol should include guidance on simplified procedures tailored to countries with limited administrative capacity, such as safe harbours. Capacity building should include best practices from other countries on implementation of the various mechanisms.

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(f) whether it is appropriate for the protocol to include one or more provisions emphasizing the FC's capacity-building commitment as a key element to facilitate effective implementation of the protocol's dispute-prevention mechanisms;

Comment

The Commitment to capacity-building under the FC is general and not issue-specific. It is meant to apply to all future protocols. Having a unique provision in this protocol to re-emphasize the need for capacity building will undermine the general nature of the capacity building commitment in the FC. It will imply that each protocol may then need its own provision on capacity building, which can make the protocols unnecessarily lengthy and verbose. Another scenario is that some protocols would have such a commitment and others do not, implying that some issues are more important than others, which again will be unhelpful as what is important depends from country to country and changes from time to time. Thus, to avoid all these negative implications the protocol should not include a provision emphasizing the FC's capacity building commitment.

on dispute resolution,

(g) whether the indicative key features outlined for each dispute resolution mechanism provide an appropriate basis for drafting the corresponding provisions under the protocol;

(h) for MAP, whether it is appropriate that the current MAP article of the United Nations Model Convention should serve as the starting point for the protocol MAP provision;

Comment:

Yes, the concept note largely provides an appropriate basis for developing the dispute resolution mechanisms, and the current MAP article of the UN Model provides a good starting point. However, it can be improved as follows:

Arbitration should be excluded from the protocol. Experience shows that arbitration remains costly, often dominated by experts from a few developed countries, and may undermine national sovereignty. While some delegates stated that mandatory arbitration serves as an incentive for competent authorities to conclude MAP cases within agreed timelines, delays in MAPs often stem from limited administrative capacity, lack of access to information, or complexity of cases, not unwillingness to resolve cases. Thus, imposing arbitration as a scare tactic does not address these root causes. Making MAPs more efficient through for instance through reasonable timelines, increased access to information, transparency, MAPs statistics, and UN-supported capacity building is a more sustainable solution. The MAPs statistics could cover data on cases under MAPs,

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resolved cases, and outcomes. The data can be anonymized or aggregated for confidentiality.

The “Last-best-offer” arbitration (baseball arbitration) proposed by some delegates and business community which is a form of arbitration in which each party submits its final proposal to resolve the dispute to the arbitration panel and then the panel must choose one of the two proposals, may deter extreme positions but still risks a “winner takes all” situation, and does not address the underlying concerns of developing countries.

The proposal to have an arbitration panel constituted under the UN, also risks perpetuating the same power asymmetries, given disparities in technical expertise and resources between developed and developing countries.

Thus, excluding arbitration will address these concerns and avoid creating overly complex dispute resolution mechanisms.

Mediation and conciliation are largely untried and untested tools in resolving cross-border tax disputes. As noted by developing country delegates during the Fourth Session, many countries do not have practical experience with these tools in resolution of cross-border dispute. While they may offer innovative approaches to dispute resolution, their potential adoption should be approached cautiously on an experimental basis to ensure effectiveness and avoid unintended consequences, and with due regard to capacities of different countries.

(i) whether it is appropriate for the protocol to include an anchoring provision allowing the United Nations to support resolution mechanisms, and if so, which areas of support should be prioritized;

Comment:

As supported by many delegates during the Fourth Session, it is appropriate for the protocol to include an anchoring provision allowing the United Nations to play a supportive role in dispute resolution. Some of the roles would include to maintain data on lists of mechanisms specific countries have subscribed to, provide MAP statistics and manage capacity building.

on access to information: TP databases

(j) whether the Committee has any guidance or recommendations on the mandate of the task force.

Comment:

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Setting up a task force to explore this issue is not recommended for the following reasons:

1. Delegates, particularly from developing countries, are already over-burdened dealing with the large range of issues under negotiation in the Framework Convention and its Protocols and the database is not a priority. It will distract efforts from the existing priorities.
2. The issue is complex and finding a solution by the timeline of July 2027 is unrealistic.
3. Further it is unclear who will adopt that solution since not all the Member States negotiating the UNFCITC and the dispute protocol will sign and ratify it.

A better approach would be for the Conference of Parties (COP) of the UNFCITC to take up the issue once the UNFCITC comes into effect, and then if it so decides, it can create a task force or subsidiary body to find a solution. In this manner the complex topic can be studied in detail and without a rush. Further, the resulting solution(s) will be more likely to be implemented since the task force would present its solution to the UNFCITC COP who mandated the work.