



Snapshots of IO Practices

Administration of the Central American Mechanism for the Settlement of Trade Disputes

Organisation(s): SIECA

The Snapshots of IO Practices present examples of specific efforts undertaken by an international organisation to work towards more effective international instruments. They aim to highlight examples of practices within the five focus areas of the Partnership of International Organisations for Effective International Rulemaking (IO Partnership), namely the variety and development of international instruments, their implementation, evaluation, ensuring stakeholder engagement, and co-ordination among IOs. The snapshots are submitted by the secretariats of the relevant international organisations implementing the relevant practice. The practices were compiled by the OECD Secretariat and focal points of the IO Partnership (UNCITRAL, OIE, WHO, ISO, WCO, BIPM, and SIECA), with a brief review to ensure consistency and comparability of the information provided within the snapshots. The inclusion of a practice in these snapshots implies no endorsement or assessment of that practice on the part of the OECD Secretariat or the focal points of the IO Partnership.

1	Overview of the Practice	Answers	Comments and Intersections
1.1	Organisation	SIECA	
1.2	Area of relevance among the IO partnership focus themes (variety of instruments, implementation, stakeholder engagement, evaluation, co-ordination)	Implementation	
1.3	Name of the Practice	Administration of the Central American Mechanism for the Settlement of Trade Disputes	
1.4	Name of person(s) completing the template	Desiree García Mario Gallardo Andrés Paniagua	

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2	Description of the Practice	Answers	Comments and Intersections
2.1	Please describe the practice shortly, providing information on its core features.	Pursuant to Legal Resolution No. 170-2006 (COMIECO-XLIX), SIECA manages the Central American Trade Dispute Settlement Mechanism (MSC; for its Spanish acronym), to support implementation of Central American economic integration legal instruments. The Secretariat's role is mainly administrative, assisting diplomatic and arbitration phases of the process. The process has an optional, diplomatic phase in addition to consultations and arbitration, where the dispute is submitted to the Council of Ministers for Economic Integration of Central America -COMIECO- (Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica & Panama) thus promoting a general assessment of the implementation and compliance with specific provisions of economic community Law.	
2.2	What are the objectives of the practice?	To preserve the rights and obligations derived from the Central American economic integration legal instruments and to ensure the security, predictability and foreseeability of intraregional trade.	
2.3	What have been the key results of the practice?	Thirty four (34) disputes have been initiated, most of them have been amicably resolved or dismissed by the parties. Four arbitration procedures have been initiated and three have concluded, while one is in progress.	
2.4	In what year was the practice introduced?	2003.	
2.5	Has the practice been updated/reformed since then? If yes, when and how has it evolved over time?	Yes. It was introduced through Legal Resolution No. 106-2003 (COMIECO-EX) and was reformed by Resolution No. 170-	

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		<p>2066 (COMIECO-XLIX). Mostly, procedural changes were made for practical reasons (e.g. notification procedures).</p> <p>Legal Resolution No. 205-2007 (COMIECO-EX) introduced specific rules on financial aspects of arbitration procedures.</p>	
2.6	What do you consider to be the primary strengths of the practice?	Unlike many FTA dispute settlement chapters, the MSC has been widely utilised, with relevant practice on multiple stages of the proceedings.	
2.7	What do you consider to be the main challenges faced during the implementation of the practice?	Countries must finance dispute settlement procedures, which may be a limitation in certain cases.	
2.8	<p>Does the practice have a formal/normative basis within the organisation or is it conducted informally? Does this basis make the practice mandatory or voluntary?</p> <p>If there is formal basis, please provide the relevant link or documentation.</p>	<p>Article 35 of the Tegucigalpa Protocol to the Chapter of the Organization of Central American States and Resolution No. 170-2006 (COMIECO-XLIX) are the basis of this practice.</p> <p>Legal Resolution No. 205-2007 (COMIECO-EX) is also relevant on the financing of arbitration procedures.</p>	See the intersection identified in 2.1.
2.9	At what frequency is the practice applied? i.e. is it conducted once or on an iterative basis?	Dispute settlement activities are member-driven among the State Parties to the Central American Economic Integration Subsystem (Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica & Panama). During its 17 years of operation, 34 disputes have been initiated – this equates to an average of two dispute settlement proceedings annually.	

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2.10	Is this practice applied systematically, (e.g. with respect to every normative instrument, according to specific criteria or on an ad hoc basis)?	The MSC is applied on an <i>ad hoc</i> basis, as it is a Member-driven procedure. The content or scope of a dispute is determined by its parties.	
2.11	Please provide specific details or examples to illustrate the practice (including supporting links and documents).	<p>The dispute settlement section of the SIECA website illustrates how emerging technologies can lay down the key aspects of the legal framework structuring the dispute settlement mechanism, provides information on the body of relevant case law, and displays a list of arbitrators as well as the the rules for their selection.</p> <p>For more information, visit the dispute settlement section of the SIECA website: https://www.sieca.int/index.php/economic-integration/economic-integration/dispute-settlement/?lang=en</p> <p>The last arbitral award adopted by a tribunal is available on the following link: https://s3-us-west-2.amazonaws.com/web-sieca/MSC-01-16-Laudo+del+tribunal+arbitral.pdf (Spanish only)</p>	
3	Design of the Practice	Answers	Comments and Intersections
3.1	Who designed the practice (e.g. Was it developed internally, in collaboration with other organisations, etc?)	<p>The MSC is the result of negotiations between the State Parties to the Central American Economic Integration Subsystem (Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica & Panama).</p> <p>SIECA support as technical assistance, and co-ordinates co-operation from other stakeholders.</p>	The co-ordination of stakeholders with respect to the dispute settlement mechanism and provision of technical assistance highlights an intersection between stakeholder engagement (WG3), implementation (WG2), and the development of international instruments (WG1).

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3.2	Which stakeholders were engaged with in the design of the practice?	Member States of the Central American Economic Integration Process (Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica & Panama).	
3.3	How long did it take to design the practice?	With respect to the current version, approximately three years.	
3.4	What resources were needed to design the practice initially (i.e., staff, budget etc.)?	Legal Department staff (a dedicated SIECA official was assigned to the MSC negotiations), budget for arbitrators, capacity building experts.	
3.5	What challenges were encountered during the design of the practice and how were they overcome?	<p>Drafting a highly technical document required closely keeping track of multiple text proposals.</p> <p>The Mechanism was prepared using as a reference the WTO DSU and the Dispute Settlement Chapters of the FTAs in force for the States Parties. The process of negotiating the mechanism was similar to the negotiation of an FTA, where different proposals were presented and analysed among the States Parties, which were agreed by consensus among them.</p>	
3.6	Has the practice been tested before implementation (i.e. pilot phase)? If yes, please describe.	Originally, the MSC was not tested, although it drew important design cues from the WTO dispute settlement system and from third generation FTAs. In its second version, the MSC took into account the challenges posed by case MSC-04-04, such as working hours and personnel limitations, etc.	The transmission of design features from the WTO dispute settlement system to the MSC represents an intersection between the implementation of international instruments (WG2), and the co-ordination of international rulemaking activities (WG5).

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4	Implementation of the Practice	Answers	Comments and Intersections
4.1	Which units are responsible for implementing the practice within your IO?	The MSC Administrator at the Legal Affairs Division.	
4.2	Are IO members involved in implementing the practice? If so, how?	Only Member States may act as parties to a dispute and as third parties. However, SIECA (as IO) carries out the administration of the MSC.	See the comment contained in 3.2.
4.3	Are external actors beyond the organisation or its membership involved in implementing the practice? If so, how?	No.	
4.4	Which resources are needed to implement the practice (e.g., staff and budget)?	Staff, budget and software licences or other IT tools.	
5	Outputs and Evaluation of the Practice	Answers	Comments and Intersections
5.1	Has the practice been evaluated or reviewed?	Yes.No evaluation of their impact has been made. However, SIECA monitors its implementation and informs COMIECO about it.	The ongoing monitoring of the effectiveness of the MSC provides an example of the integrated nature of implementation, and the need to deploy a combination of tools to advance this process. In other words, the features of the MSC encompass assistance mechanisms (technical assistance, publication of legal framework/cases/arbitrators), monitoring mechanisms (overseeing implementation), and compliance mechanisms (the dispute settlement system itself).
5.2	If yes, who carried out the evaluation (please specify whether it was done internally or externally)	National delegations from State Parties to the Central American Economic Subsystem (Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica &Panama), SIECA staff and experts.	

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5.3	If yes, please describe the evaluation methodology? (e.g. were any quantitative or qualitative indicators/criteria used to measure/assess the outcomes of the practice?).	Assessment had a qualitative character, and was based on best practices in international trade arbitration rules as well as regional experience.	
5.4	If yes, what were the conclusions of the evaluation, and has the practice evolved subsequently? If possible, please attach related documents or provide a link.	The conclusions were mostly related to realistic expectations regarding the operation of the MSC, according to regional and institutional resources (personnel and budgetary constraints, etc.).	
6	Additional comments and information	Answers	Comments and Intersections
6.1	Is there any more information or documentation that would be valuable to share in relation to the practice (e.g. links, reports, meeting minutes, supporting documents)?	See links above.	
	Sources		