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ASSIST USER MANUAL FOR PRIVATE SECTOR



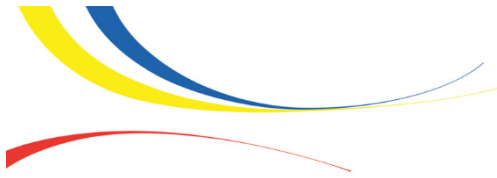
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ASSIST USER MANUAL FOR PRIVATE SECTOR

About this Manual

This Manual provides the guidelines and procedures for the key actors of the free-of-charge, online-based and non-binding consultative mechanism – ASEAN Solutions for Investments, Services and Trade or 'ASSIST' - set up with the aim of solving operational problems encountered by ASEAN enterprises on cross-border issues related to the implementation of ASEAN economic agreements and within the framework of the ASEAN Economic Community (AEC).

Part 1 of this Manual contains a general overview of ASSIST, outlining the scope, key actors, communications channels, etc., while Part 2 goes on to explain the complaint handling process from using the online complaint form, for non-anonymous and anonymous complaints, to when a solution is provided by ASSIST. Part 2 also provides a simplified diagram of the ASSIST Process Flow.

Reference tables, a flowchart of the ASSIST mechanism, Frequently Asked Questions (FAQs), and hypothetical case studies for better understanding of the ASSIST process are provided as Annexes at the end of this Manual.

ASSIST is accessed directly on its own website (<http://assist.asean.org>) or via the website of the ASEAN Trade Repository (<http://atr.asean.org>).

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Part 1:

GENERAL OVERVIEW OF ASSIST

This part of the Manual provides a general overview of what is ASSIST and its structure (i.e., establishment, scope, key features, key actors, types of complaints, communication channels and public forum).

What is ASSIST?

- ASSIST is designed as a key instrument to allow, facilitate and encourage ASEAN business operators and the private sector to interact directly with the Governments of individual ASEAN Member States and address trade problems on the ground.
- ASSIST is only available for intra-ASEAN cross-border trade issues between an ASEAN Enterprise, legally registered in one ASEAN Member State, and the Government of one of the other nine ASEAN Member States. Thus, ASSIST cannot be used to lodge a complaint against a Government of a country outside of ASEAN. ASSIST may also be used to address problems vis-a-vis other companies.
- ASSIST is an internet-based and business-friendly facility for receiving, processing and responding to complaints submitted by ASEAN enterprises, its representative entities or its appointed lawyer or law firm.
- Complaints within the scope of ASSIST are limited to operational problems encountered by ASEAN enterprises on cross-border trade issues related to the implementation of ASEAN economic agreements and within the framework of the ASEAN Economic Community (AEC).
- ASSIST is a non-binding and consultative means of communication, which seeks expedited and effective solutions for ASEAN enterprises experiencing trade problems when doing cross-border business within the ASEAN region. 'Non-binding' means that ASEAN Member States may decide not to accept a complaint or not to offer a solution once a complaint has been lodged on the ASSIST system. Although ASSIST is non-binding, ASEAN Member States shall deal with complaints on a best endeavour basis.
- ASSIST is consultative in nature, meaning that it is not a judicial system unfolding before a national or international court and it is not managed and decided by an independent judge, arbiter, mediator, panel of experts or third adjudicating body. It unfolds by means of direct online consultations through the ASSIST software platform between ASEAN enterprises (companies or its representative entities, i.e., trade associations, chambers of commerce, business councils or business federations, or their appointed lawyers or law firms) and ASEAN Governments.
- ASSIST is a free-of-charge service, operating through an online facility that is managed by the ASEAN Secretariat. There are no charges, no fees and no registration or submission costs in using ASSIST. The ASSIST web portal is based on simple and user-friendly formats, with a high degree of automatic features and computer-generated reminders and correspondence (email messaging), based on the process stages and set timelines. This aims at making the process smooth, expedited, easy to administrate and use, and effective.



- Confidentiality is of the utmost importance and only the complainants, the directly involved ASEAN Member States, and the ASEAN Secretariat will have the right to access the actual complaint and the solutions proposed (please also refer to the disclaimer of liability, which can be accessed on the link in the footer of all ASSIST's webpages, in this regard).
- Any information being exchanged through ASSIST cannot be used later in a court of law for purposes of domestic litigation or international dispute settlement (*i.e.*, World Trade Organisation (WTO) and/or ASEAN). ASSIST's disclaimer is clear. No information or statements made by complainants or by ASEAN Member States within the process of ASSIST can be used in national or international litigation. While not being enforceable in a court of law, however, the proposed solutions may have specific value within the similar context of such complaints before the administrative authorities (*i.e.*, customs officers, trade officials, authorities issuing the import licenses, conformity assessment bodies, etc.) of the ASEAN Member State that has proposed the solutions.

A. WHY AND HOW WAS ASSIST ESTABLISHED?

As mandated by the ASEAN Leaders, the ASSIST mechanism was established to implement the ASEAN Consultation to Solve Trade and Investment Issues (ACT) mandated under the ASEAN Trade in Goods Agreement (ATIGA) and it is loosely based on the European Union's SOLVIT system.

ACT was a consultation mechanism that was trialled in the 2000's, as provided in Article 88 of the ASEAN Trade in Goods Agreement and contained in the Declaration on ASEAN Concord II (Bali Concord II).

ASEAN Senior Economic Officials endorsed the proposal by ARISE (ASEAN Regional Integration Support from the European Union) on the concept for ASSIST and instructed ARISE to set up the necessary institutional mechanisms, detailed procedures and guidelines for ASSIST, and the website allowing internet access for ASSIST key actors.

ASSIST reaffirms the consultative and non-binding characteristics of the ACT, while modernising its structure and enabling the mechanism to operate in a more effective and efficient manner. As such, ASSIST serves as a mechanism for the expedited and effective solution of operational problems encountered by ASEAN enterprises on cross-border issues related to the implementation of ASEAN agreements falling within the scope of Article 1(1) of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism. ASSIST was launched in 2016 at the side-lines of the 48th ASEAN Economic Ministers (AEM) Meeting in August 2016 as one of the key deliverables under Lao PDR's ASEAN Chairmanship. The intended and eventual reach of ASSIST is the compliance with and implementation of both the letter and the spirit of the ASEAN Trade in Goods Agreement, as well as the ASEAN protocols and agreements on transport, finance and investment, and services. ASSIST was initially limited to intra-ASEAN trade in good issues in order to gradually operationalize the system. However, it is also set up to deal with trade in services and trade-related investment measures.

The aim is to provide a simple means for the ASEAN private sector to address any non-tariff measure, non-tariff barrier, trade irritant or trade problem that may be inhibiting regional trade and investment, by raising issues or concerns where integration mechanisms may not appear to be implemented in full or in the spirit of the particular regional agreement at the national level.

B. WHAT IS THE SCOPE OF ASSIST?

ASSIST allows only for complaints related to intra-ASEAN cross-border trade in goods, trade in services and trade-related investment issues within the AEC.

Issues that are Covered by ASSIST

- Cross-border issues or problems related to the implementation of one or more ASEAN economic agreement(s), which means the agreements concluded by ASEAN Member States for purposes of the realisation of the AEC for trade in goods, trade in services and investment measures.

Issues that are Not Covered by ASSIST:

Essentially, anything outside the scope as described above. This includes:

- Employee/employer disputes or discrimination claims;
- Matters that are being or have been litigated/arbitrated in national jurisdictions;
- Complaints against individuals or companies/businesses;
- Matters not related to intra-ASEAN trade, services or investment;
- Immigration issues;
- Visa and residence rights; and
- Cross-border movement of capital or payments.

ADDITIONAL IMPORTANT INFORMATION

ASSIST is only for intra-ASEAN cross-border trade issue between an ASEAN Enterprise (i.e., a company, not an individual person) legally registered in one ASEAN Member State and the Government of one of the other nine ASEAN Member States. Purely domestic issues vis-à-vis the home Government of the complaining enterprise cannot be referred through ASSIST.

In cases where a services provider, which belongs to a parent company based in ASEAN Member State X, but that that offers its services in ASEAN Member State Y, intends to file a complaint against ASEAN Member State Y, it is the parent company in ASEAN Member State X that should file the complaint on ASSIST. However, the case can also be filed 'anonymously' by an ASEAN-based trade association, chamber of commerce, business council, business federation, registered lawyer or registered law firm on behalf of the actual complainant.

C. WHAT ARE THE KEY FEATURES OF ASSIST?

- Linkage to the ASEAN Trade Repository (ATR). In line with the ASEAN Trade in Goods Agreement (ATIGA), the ATR is intended to provide transparency on the trade and customs laws and procedures of all ASEAN Member States. The ATR is an electronic interface through which the public can freely access the information available on the National Trade Repositories (NTRs) of each ASEAN Member State;
- Simple and user-friendly web-based portal that can be accessed and used, free-of-charge, by ASEAN enterprises experiencing trade problems when exporting their goods or services, or when investing into other ASEAN countries;

- An interactive ‘tracking system’ and ‘traffic light’ dashboard that allows the key actors to follow the online proceedings;
- The ability of ASEAN enterprises to lodge complaints anonymously, by doing so through ASEAN-based trade associations, or other representative entities such as chambers of commerce, business councils, business federations, or registered ASEAN-based lawyers or law firms, when anonymity is desired by the complainant;
- Online tutorials are available on the ASSIST website and the website will soon be available in all ASEAN languages (but cases may only be filed in English).
- A public forum where data on the type and number of applications, case studies of resolved issues, and feedback from ASEAN enterprises may be published.

D. WHO ARE THE KEY ACTORS WITHIN ASSIST?

1. ASEAN Enterprise (AE)

What is the definition of an ASEAN Enterprise and who qualifies as an ASEAN Enterprise?

A company duly registered in one of the ten ASEAN Member States.

ADDITIONAL IMPORTANT INFORMATION

Only ASEAN companies may use ASSIST. An individual person with personal complaints cannot lodge a complaint on ASSIST. However, an individual lawyer may file a complaint on behalf of its client, provided that the latter is a duly-registered ASEAN Enterprise.

Who can represent an ASEAN Enterprise?

- An ASEAN-based Representative Entity (*i.e.*, one that is duly registered in one of the ten ASEAN Member States), such as an ASEAN-based trade association, chamber of commerce, business council, or business federation, can use ASSIST and raise an issue, query or complaint through ASSIST on behalf of one of its members or a multitude of its members having the same trade problem.
- An ASEAN-registered Lawyer or Law Firm, duly admitted to practice law in one of the ten ASEAN Member States’ jurisdictions, may represent an ASEAN Enterprise and submit a complaint through ASSIST on behalf of its client.

ADDITIONAL IMPORTANT INFORMATION

For an ASEAN Enterprise (or representative entity) to be legally registered, the ASEAN Enterprise must have fulfilled the legal obligations in the country in which it operates and registered as a business or trade association/chamber of commerce, business council/business federation, and been provided a business registration license. For a lawyer to act on behalf of a client under ASSIST, a professional license, issued in accordance with the prevailing legislation in the respective ASEAN Member States, must be displayed.

2. Central Administrator (CA)

- The ASEAN Secretariat is the Central Administrator of ASSIST and, in that capacity, manages the online proceedings and maintains the functionality of the ASSIST facility.
- All communications among the key actors in ASSIST go through and are screened by the Central Administrator.
- The Central Administrator, after appropriate checks, passes the complaint details on to the ASSIST Contact Points (Home and Destination Contact Points) in the relevant Member State(s).
- The Central Administrator monitors progress and relays back to the applicant (*i.e.*, ASEAN Enterprise, its representative entity or its appointed lawyer or law firm) a response and, if available, a solution to the problem at the origin of the complaint.

3. Home Contact Point (HCP)

- The national body (*i.e.*, Focal Point) in the ASEAN Member State of the complaining ASEAN Enterprise (or where the parent company is based in certain Trade in Services cases).
- This ministry, agency or governmental authority may intervene, if need be, to hold discussions with the Central Administrator and/or the Destination Contact Point.

4. Destination Contact Point (DCP)

- The national body (*i.e.*, Focal Point) in the ASEAN Member State where the issue is raised and the ASEAN Enterprise is facing trade problems (*i.e.*, in the ASEAN Member State against which the complaint is lodged).
- This ministry, agency or governmental authority will decide whether it wants to engage within ASSIST to offer the ASEAN Enterprise a solution, will coordinate with its national competent authorities, and will manage all communications with the Central Administrator of ASSIST.

5. Relevant National Authorities (RAs)

- The authority(ies) or other government representative(s) that are competent and responsible in the ASEAN Member State where the issue is raised and where the ASEAN Enterprise is facing trade problems.
- These ministry(ies), agency(ies) or governmental authority(ies) are tasked by the Destination Contact Point with finding a solution to the issue and, in the instances where they acknowledge a complaint as accepted, they will suggest a possible solution to the complainant (*i.e.*, ASEAN Enterprise, its representative entity or its appointed lawyer or law firm) through their Destination Contact Point and on to the Central Administrator.

E. HOW CAN COMPLAINTS BE FILED?

There are two types of complaints which can be filed through ASSIST:

1. Non-Anonymous Complaints

Non-anonymous complaints can be submitted directly by an ASEAN Enterprise in its own name, as defined in Section D.1. of this Part of the Manual.

The ASEAN Enterprise must provide its national business registration number and proof of registration, which is mandatory on the complaint form on the ASSIST website.

2. Anonymous Complaints.

If anonymity is required by the ASEAN Enterprise experiencing the cross-border trade problem within ASEAN, the complaint can be submitted by an ASEAN-based Representative Entity of the ASEAN Enterprise's choice, such as a trade association, chamber of commerce, business council, business federation, or an ASEAN-registered Lawyer or Law Firm.

ASEAN-Based Trade Associations and other ASEAN-Based Representative Entities

- a. ASEAN-based Representative Entities, such as trade associations, chambers of commerce, business councils or business federations may file an anonymous case on behalf of one of their members or on behalf of a multitude of their members having the same trade problem. This approach is also intended to allow for multiple complainants, having the same trade problem, to avoid having to file multiple complaints. It must be noted that fees may apply when representative entities provide this service to ASEAN Enterprises seeking anonymity.
- b. In such cases, the ASEAN-based Representative Entity will file the complaint in its own name. In this case, the representative entity shall use its business registration number from the ASEAN jurisdiction where it is incorporated.
- c. ASEAN-based Representative Entities can file complaints against the ASEAN Member State where they are registered, so long as the trade problem is of a cross border nature and they are representing an ASEAN constituency (*i.e.*, a regional association and not merely a national one) or an individual member that is legally-registered in a different ASEAN Member State than the one of registration of the ASEAN-based Representative Entity.

ASEAN-Registered Lawyers or Law Firms

- a. ASEAN-registered Lawyers or Law Firms may file an anonymous case on behalf of one of their clients (*i.e.*, the ASEAN Enterprise having the trade problem). The lawyer or law firm must be duly licensed to practice law in the ASEAN Member State where the client is based or in the ASEAN Member State against which the complaint is filed.

- b. Special rules apply to complaints filed by ASEAN-registered Lawyers or Law Firms. In particular, ahead of submitting an ASSIST complaint on behalf of a client, an ASEAN-registered Lawyer or Law Firm must first contact the ASEAN Secretariat and provide the required data on its professional registration and on the client on whose behalf the anonymous complaint is being filed. In order to do so, the lawyer or law firm must download the necessary form on the ASSIST website (<http://assist.asean.org/complaint/?m=42&type=law>) and submit it by email to the ASEAN Secretariat, as specified on the form itself.
- c. Once the ASEAN Secretariat has provided the Confidential Case Code (CCC) by email to the lawyer or law firm, the actual complaint can be filed through ASSIST, using the dedicated online form.

ADDITIONAL IMPORTANT INFORMATION

For an ASEAN Enterprise and an ASEAN-based Representative Entity, proof of business registration within the Member State of the enterprise or representative entity making the complaint is required when lodging the complaint application – to be provided as an attachment, by means of an electronic copy of the registration document. For an ASEAN-registered Lawyer or Law Firm, the law firm or lawyer's professional license is required as registration proof. However, the lawyer or law firm must submit the business registration of its client, the ASEAN Enterprise, in confidence to the ASEAN Secretariat, prior to filing the actual complaint through ASSIST.

F. HOW DO THE ASSIST COMMUNICATION CHANNELS WORK?

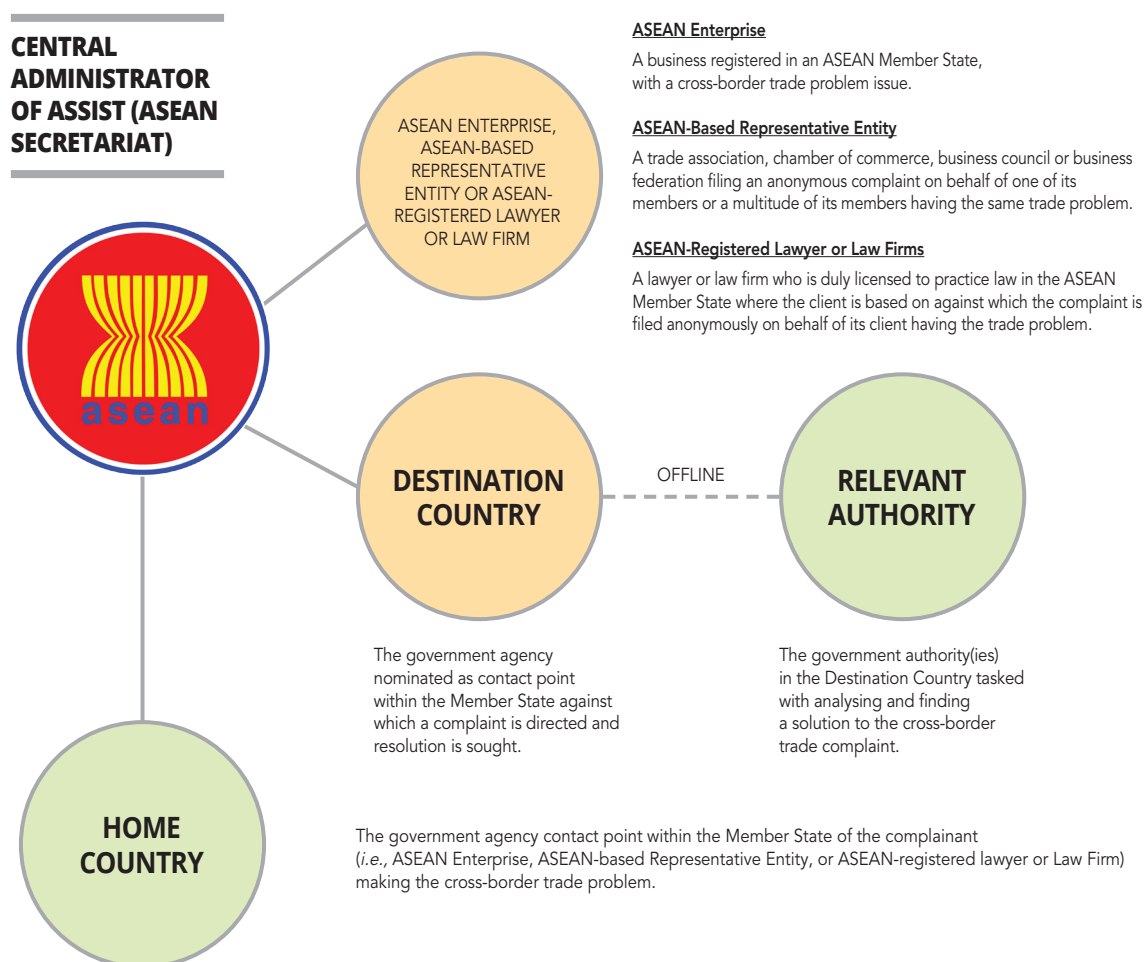
ASSIST operates by maintaining communication channels through the Central Administrator, on behalf of the complainant (*i.e.*, ASEAN Enterprise, ASEAN-based Representative Entity, or ASEAN-registered Lawyer or Law Firm), with the government officials of the agencies nominated as Focal Points for ASSIST within the ASEAN Member States.

- This is managed through the web-based portal, by email messaging, according to assigned responsibilities and procedures; and
- By user access – through login controls to ASSIST Administrator Panels – to monitor progress and compliance with the agreed time frames.

ADDITIONAL IMPORTANT INFORMATION

In some instances, an automated notification appears in the ASSIST webpage following a certain action by the complainant, such as a complaint is filed, which requires the complainant to click on the link provided to continue the ASSIST process.

Figure 1.
The Communications/Constructive Structure of ASSIST



Central Administrator of ASSIST (CA)

The ASEAN Secretariat is the Central Administrator of ASSIST and, in that capacity, manages the online proceedings. All communications in ASSIST go through and are screened by the Central Administrator.

Home Country/Home Contact Point (HCP)

The national body, called ASSIST Focal Point, in the ASEAN Member State of business registration of the complainant. This ministry, agency or governmental authority may intervene, if need be, to hold discussions with the Central Administrator and/or the Destination Contact Point.

Destination Country/Destination Contact Point (DCP)

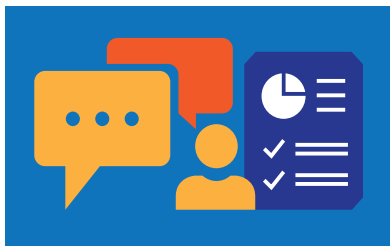
The national body, called ASSIST Focal Point, in the ASEAN Member State where the issue is raised and where the ASEAN Enterprise is facing trade problems. This ministry, agency or governmental authority will decide whether it wants to engage within ASSIST in order to offer the complainant (i.e., ASEAN Enterprise, its representative entity or its appointed lawyer or law firm) a solution, will coordinate with its national competent authorities, and will manage all communications through the system and with the Central Administrator of ASSIST.

Relevant National Authority (RA)

The Authority or Authorities, or other government representatives, tasked with finding a solution to the issue being complained about by the complainant (i.e, ASEAN Enterprise, its representative entity or its appointed lawyer or law firm). They are the competent and responsible authorities in the ASEAN Member State against which the complaint was lodged and where the ASEAN Enterprise is facing trade related problems. In situations where the Destination Contact Point accepts a complaint, they may suggest a possible solution to the complainant, which is then forwarded through their Destination Contact Point and, via the Central Administrator and, ultimately to the ASEAN Enterprise, its representative entity, or its lawyer or law firm.

ADDITIONAL IMPORTANT INFORMATION

It is important to note that English is the language of official communication within the ASSIST system and the complaint must be written in English. All supporting documents uploaded by the complainant (such as legal briefs, technical reports and the like) must be written in English. However, any official documents such as proof of registration, national laws, certificates, licenses or similar, which are written in a national official language may be uploaded onto the system in support of the complaint, but should be accompanied by an (unofficial) English translation. The solution from the Destination Country will also be provided in English.

G. PUBLIC FORUM ON THE ASSIST WEBSITE

As more experience is gained with ASEAN Member States' trade complaint resolution through ASSIST, the ASSIST web portal will eventually have a public forum section. Over time, the Public Forum will provide information that can be useful for ASEAN Enterprises that are looking for business solutions while doing business in the region. The Public Forum will also encourage business to share their own experiences and useful lessons in seeking solutions in ASEAN. No confidential information will be placed on the Public Forum.

It is proposed that the Public Forum contain the following information:

- Data/statistics on the type and number of applications;
- Operational guidelines;
- Case studies or success stories of resolved issues;
- Guides to help businesses to better understand ASEAN agreements;
- Feedbacks from users or complainant enterprises; and
- Tips on using ASSIST.

ADDITIONAL IMPORTANT INFORMATION

Confidentiality of information in the Public Forum will be strictly maintained. Any details identifying individual complainants or their representative entities, as well as the ASEAN Member States concerned, will not be published, unless publication is authorised by all the parties involved.



Part 2:

THE COMPLAINT HANDLING PROCESS

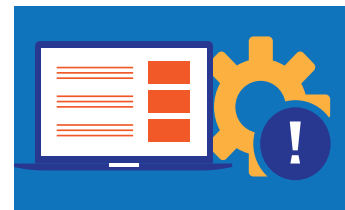
This Part of the Manual gives guidance with respect to the complaint handling process. Examples of hypothetical case studies are also provided in Annex 4 to give a better picture of the processes by which complaints are handled by Authorities involved in the operation of ASSIST.

How is a Complaint Lodged?

A. USING THE ONLINE COMPLAINT FORM

1. For an ASEAN Enterprise

A qualifying ASEAN Enterprise may file a complaint using the specified online form on the ASSIST website: <http://assist.asean.org> or by selecting 'ASEAN Enterprise' icon on the 'File a Complaint' tab.



2. For an ASEAN-Based Trade Association and other ASEAN-Based Representative Entity

For anonymous complaints lodged by a qualifying ASEAN-based Trade Association and other ASEAN-based Representative Entities, such as chambers of commerce, business councils or business federations, a complaint may be filed using the specified online form on the ASSIST website by selecting 'ASEAN Trade Association' on the 'File a Complaint' tab. In this case, the complaint must be filed under the representative entity's own name, as the member(s) on behalf of which the complaint is filed must remain anonymous. The complaint will be filed using the representative entity's business registration number and no information on the actual ASEAN Enterprise behind the complaint is to be revealed to the Home and/or Destination Contact Points.

3. For an ASEAN-Registered Lawyer or Law Firm

For anonymous complaints lodged by a qualifying ASEAN-registered Lawyer or Law Firm, a complaint may be filed using the specified online form on the ASSIST website by selecting 'ASEAN Lawyer or Law Firm' on the 'File a Complaint' tab. In this case, the complaint will be filed using the lawyer's professional license and no information on the actual ASEAN Enterprise need to be revealed to the Home and/or Destination Contact Point. However, special rules apply to complaints filed by ASEAN-registered Lawyers or Law Firms. In particular, ahead of submitting an ASSIST complaint on behalf of a client, an ASEAN-based lawyer or law firm must first contact the ASEAN Secretariat and provide the required data on its professional registration and on the client on whose behalf the anonymous complaint is being filed (i.e., the company registration licences). In order to do so, the lawyer or law firm must download the necessary form from the ASSIST website (<http://assist.asean.org/complaint/?m=42&type=law>) and submit it by email to the ASEAN Secretariat, as specified on the form itself. Once the ASEAN Secretariat has provided a Confidential Case Code (CCC) by email to the lawyer or law firm, the actual complaint can be filed. The CCC is a substitute for the contact details of the ASEAN Enterprise, which enables the Destination Contact Point to be reassured that the anonymous complaint was lodged on behalf of an ASEAN Enterprise and vetted by the ASEAN Secretariat. The CCC has to be inserted by the law firm or lawyer in the actual complaint form on the ASSIST website in the field provided in the 'Complaint Description' section of the form.

PLEASE INCLUDE ALL ESSENTIAL INFORMATION IN THE ONLINE COMPLAINT FORM!

The online form prompts for the required information, including business name and details (depending on the complainant, *i.e.*, ASEAN Enterprise, ASEAN-based Trade Association or other ASEAN-based Representative Entity, or ASEAN-registered Lawyer or Law Firm), contact person details, and a description of the complaint, to be provided. It is extremely important that the 'Description' field in the 'Complaint Description' section of the complaint form be filled-in properly, (*i.e.*, it should give a full explanation of the problem experienced), so that the Central Administrator of ASSIST may be able to clearly identify the problem in the context of the specific ASEAN agreement(s). Also, Reference Tables on List of Sub-Category of Goods and List of Services Sectors and Sub-Sectors are provided in Annex 1 to this Manual, so as to give guidance on filling in the 'Type of Problem Encountered' and 'Services Sector Description' in the 'Complaint Description' section of the complaint form.

Supporting documents, such as the business registration of the ASEAN Enterprise or ASEAN-based Trade Association (or other ASEAN-based Representative Entity), the professional license of the lawyer for complaints filed by an ASEAN-registered Lawyer or Lawyer, the relevant law or measure, the schedule of specific commitments under ASEAN Framework Agreement on Services or AFAS (for trade in services related complaints), and any legal arguments, factual evidence, and possible avenues that already have been pursued domestically, should be filed with the complaint, so as to help the Central Administrator in deciding whether to approve the complaint or not. Complainants may even consider proposing possible solutions in order to facilitate the process and the identification of a solution. Properly and comprehensively presented complaints will have a higher chance of being accepted by the Destination Country, with the objective of finding a solution. Such additional information may be provided in electronic form as attachments to the website complaint form.

Fields marked with an asterisk (*) are mandatory fields. If the complainant is not sure on what to fill-in for a field, ⓘ buttons are available to click on for a review of the detailed instructions on what to fill-in for each of the 'Complaint Description' field.

The Central Administrator of ASSIST may request resubmission of a complaint if any of the necessary information is incomplete or incorrect (refer to Section C.2. of Part 3 'Roles and Responsibilities of the Central Administrator' of this Manual for more details).

B. STEPS IN HANDLING A COMPLAINT

1. For an ASEAN Enterprise or an ASEAN-Based Representative Entity



Submission of Complaint

A qualifying ASEAN Enterprise or an ASEAN-based Trade Association or other ASEAN-based Representative Entity prepares and submits a complaint (being within the scope of ASSIST) using the online complaint form at ASSIST's website: <http://assist.asean.org> in the 'ASEAN Enterprise' or 'ASEAN Trade Association' icons on the 'File a Complaint' tab. An ASEAN-based Representative Entity may

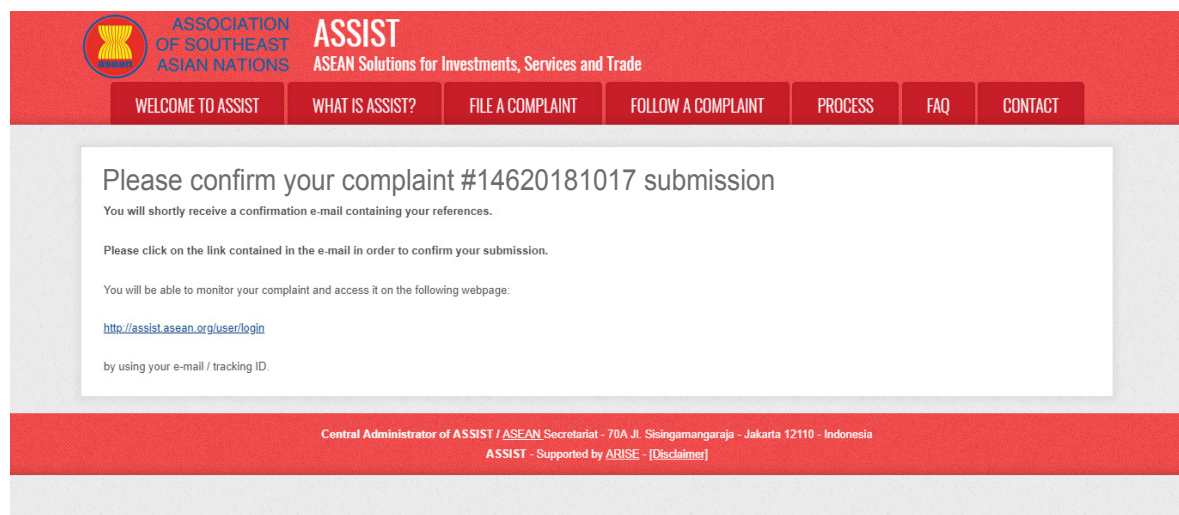
file a complaint on behalf of one of its members or a multitude of its members if the ASEAN Enterprise wishes to remain anonymous. The input details are checked by the system to ensure that all mandatory information is present.

ADDITIONAL IMPORTANT INFORMATION

In order to build a thorough and well-proven/well-argued case, before lodging a complaint, the complainant should undertake careful research on the basis of the information provided on ASSIST's website and/or by seeking guidance and assistance from its own home Government or from independent consultants, lawyers, law firms, business councils, chambers of commerce, business federations and trade associations.

Acknowledgement of complaint

On the submission of a complaint, the ASEAN Enterprise or ASEAN-based Representative Entity receives an automatic acknowledgement on the webpage, as shown below.



The Central Administrator of ASSIST is also alerted to the submission of a new complaint. This is followed by an email directed to the address given for the contact person named in the complaint form. An example is given below.



ASEAN Enterprise <aseanenterprise0@gmail.com>

[ASSIST] Thanks to confirm your complaint #14620181017 submission

No Reply ASSIST <assist@asean.org>
 Reply-To: "assist@asean.org" <assist@asean.org>

Wed, Oct 17, 2018 at 12:49 PM

ASSIST
ASEAN Solutions for Investments, Services and Trade

Dear Mr Paul Smith,

Thank you for having filed a complaint on **ASSIST**, the system of ASEAN Solutions for Investments, Services and Trade.

Please **confirm** your complaint **14620181017** on the following link (or by copy-pasting the following link onto your Internet browser):
http://assist.arsenadevelopment.space/user/confirm_email?email=aseanenterprise0@gmail.com&id=14620181017&code=3y4r38bbq98

After your confirmation, ASSIST will monitor your complaint and you will be able to access it on the following webpage
<http://assist.arsenadevelopment.space/user/login> by using your e-mail / tracking ID: aseanenterprise0@gmail.com / **14620181017**

ASEAN Enterprise / Trade Association / Law Firm : Star 88 Co., Ltd. (type Enterprise)
 Company size : 50 to 100
 Phone : +905 524 1532
 Website : www.star88.com
 Address : Better Living Street City W Country X
 City : City W / Zip Code : 1711
Country : AMS-X
 :

Contact person : Mr Paul Smith
 Phone : +905 524 1532
 Position : Chief Executive Officer
Email : aseanenterprise0@gmail.com
 Address : Better Living Street City W Country X
 City : City W / Zip Code : 1711
 Country : AMS-X

Confidential case code (for law firm or lawyer only):
Country of Legal Registration : AMS-X
Legal Registration Number : 123456
Type of Business : Service provider
Business Sector : Services /
Type of problem encountered : Transport services
Destination Country : AMS-Y

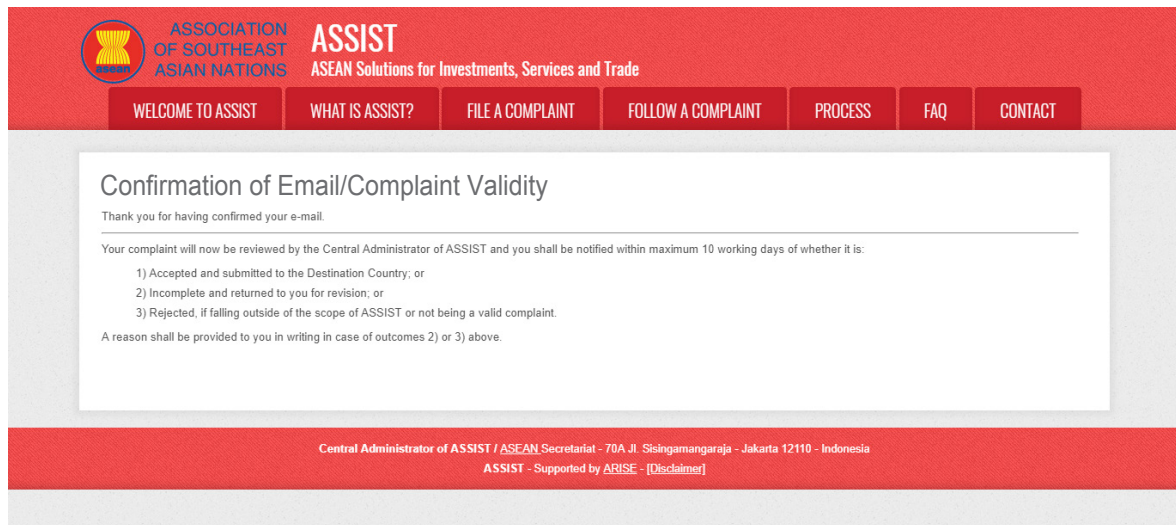
Description:
 We are a duly registered shipping company in AMS-X. We have entered into a two-year binding agreement since January 2018 with an import-export company in AMS-X. The scope of the agreement is to export iron and aluminium from AMS-X into AMS-Y and import rubber and cotton from AMS-Y into AMS-X using our fleet of vessels. We have agreed to conduct this export-import transaction in round-trips from AMS-X to AMS-Y using the same vessel. The intention, inter alia, is to save cost in fuel consumption and manpower by having a full freight load in both inbound and outbound trips, thereby being able to provide a cost-effective and competitive service on a cross-border basis to customers based in both AMS-X and AMS-Y. We recently learned that AMS-Y has issued a new shipping law, namely the Ministry of Trade Law No. 13 Year 2018, imposing that certain commodities can only be transported for import or export by national maritime transport companies. The four commodities, i.e. iron, aluminium, rubber and cotton, are among the commodities listed in this new shipping law. This new law would certainly result in a financial loss for our business and prevent us from providing its maritime shipping services between AMS-X and AMS-Y. We are very worried that this legislative development is contrary to free trade, to the spirit of the ASEAN Economic Community (AEC) and, possibly, against the specific commitments and obligation of AMS-Y under the relevant ASEAN economic agreements (e.g., the ASEAN Framework Agreement on Services, or AFAS). We are of the view that this new law is a clear measure of protectionism and is incompatible with free trade principles and customary law regarding international maritime services, which will seriously impact AMS-X's shipping companies that are offering cross-border maritime transport services in relation to the commodities affected by this law. Furthermore, this new measure by AMS-Y is a clear violation of the commitments made by AMS-Y to the World Trade Organization and is a clear violation of the Schedule of Specific Commitments of AMS-Y under AFAS, where AMS-Y have committed to allow foreign shipping companies that are offering cross-border freight transport services within ASEAN to operate within its waters without any limitations to market access and national treatment. Thus, we would like to request for AMS-Y to revoke or amend this new law accordingly.

Thanking you, ASSIST is at your service.

assist.asean.org

3 attachments

The email to the ASEAN Enterprise or ASEAN-based Representative Entity's contact person contains the basic details of the complaint submission and the complaint number or tracking identity number (Tracking ID), that is automatically allocated to the complaint by ASSIST, through which the complainant may monitor progress of the complaint (further details on monitoring a complaint are provided in the "Complainant may Monitor the Progress of a Complaint" in Section E of this Part). A reply to the email is expected; the complainant/addressee can confirm and so validate the submission by simply clicking on the link provided in the email. Once the complainant clicks on the link, the following page will automatically appear on the computer screen.



Verification by Central Administrator

The Central Administrator of ASSIST carries out verification checks to determine eligibility (*i.e.*, whether or not the complaint falls within the scope of ASSIST), and as a result of that analysis, within 10 working days, reviews the complaint and:

- **Accepts** the complaint and passes it on to the relevant national focal points (*i.e.*, the 'Destination Contact Point' and the 'Home Contact Point');
- May request further information (**incomplete**) or ask for revision by the complainant (see further explanation of the Central Administrator's actions under Section C.2. of Part 3 of this Manual 'The Role of the Central Administrator of ASSIST'); or
- **Rejects** the complaint as invalid, with reasons given as to why it took such decision.

Destination Contact Point to Accept or Reject

The Destination Contact Point (within the ASEAN Member State against which the complaint is directed and from which a solution is sought) reviews the details of the complaint within 10 working days and decides if:

- On the basis of the information provided, the complaint appears to present a valid case, and so the complaint is **accepted**;
- An email notifying acceptance goes to the Central Administrator and Home Contact Point;
- Details are forwarded to the Relevant National Authority, in order to seek a potential resolution to the problem; or
- The case presented is not valid, or, after consulting the Relevant National Authorities, the Destination Contact Point decides that the ASSIST mechanism is not the appropriate channel, and the complaint is **rejected**. The Central Administrator and Home Contact Point are informed through email, with reasons for the rejection given by the Destination Contact Point.

ADDITIONAL IMPORTANT INFORMATION

If the complaint is accepted by the Destination Contact Point and passed to the Relevant Authority(ies) for a reply, the Destination Contact Point is expected to monitor progress and to obtain a response from the Relevant National Authority(ies) within the agreed ASSIST time frame. The timeline set for each stage of the ASSIST process is laid out in Section D 'Complaint Handling Timeline' of this Part of the Manual.

Central Administrator Responds with Result

The reply, such as a suggested solution, is sent by the Destination Contact Point to the Central Administrator, within 30 to 50 working days, and:

- The response or solution proposed is reviewed by the Central Administrator, in the context of providing a satisfactory answer to the problem experienced and described in the complaint.
- This gives the Central Administrator an opportunity to seek any clarification, if necessary, before registering the solution or response, and relaying the outcome to the ASEAN Enterprise (*i.e.*, the complainant) or the ASEAN-based Representative Entity.
- The Central Administrator relays the Destination Contact Point's response to the complaint back to the ASEAN Enterprise (the complainant) or the ASEAN-based Representative Entity.

ADDITIONAL IMPORTANT INFORMATION

All solutions must be in full conformity with existing ASEAN commitments and applicable ASEAN Member States' laws and regulations.

Complainant Responds in the Satisfaction Survey

After submission of the solution by the ASEAN Member State through ASSIST, the ASEAN Enterprise (*i.e.*, the complainant) or the ASEAN-based Representative Entity is notified by email and asked to reply to a satisfaction survey by clicking on YES/NO. The ASEAN Enterprise (*i.e.*, the complainant) or the ASEAN-based Representative Entity is then redirected to the ASSIST website to answer the survey and is invited to give comments, particularly if not satisfied.

- If the ASEAN Enterprise (*i.e.*, the complainant) or the ASEAN-based Representative Entity that lodged the complaint is not satisfied with the proposed outcome, it may seek to refer the case, through its ASEAN Member State of business registration, to the ASEAN Compliance Body (ACB) or to the ASEAN Enhanced Dispute Settlement Mechanism (EDSM).
- The complainant may also decide to pursue national litigation or alternative dispute resolution mechanisms (*i.e.*, mediation, conciliation or arbitration) within national ASEAN jurisdictions.

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Satisfaction survey

Please comment your response for our feedback

Your answer

Satisfied with the solution

Comments

☐ I'm not a robot

reCAPTCHA
Privacy · Terms

SUBMIT YOUR FEEDBACK

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ADDITIONAL IMPORTANT INFORMATION

When a solution to an issue is proposed, it is important to remember that ASSIST is established as a consultative process vis-à-vis ASEAN Member States and the advice given aims at solving the specific issue on the ground and not at 'deciding who is right and who is wrong' or determining the consistency with ASEAN law of the ASEAN Member States' laws, regulations, procedures and/or practices being complained against through ASSIST.

In addition, the information provided by the complainant shall be used within ASSIST and by the actors involved only for purposes of addressing the specific ASSIST complaint. Appropriate steps shall be taken to safeguard commercially sensitive or personal data at all times, especially when transferring data across the network.

The complainant may choose to withdraw the complaint at any stage until a solution has been proposed by ASSIST.

2. For an ASEAN-Registered Lawyer or Law Firm

Download Anonymous Complaint Form

If an ASEAN-registered Lawyer or Law Firm submits a complaint on behalf of its client, the lawyer or law firm must, prior to submitting the actual complaint, download the necessary form from the ASSIST website in the 'File a Complaint: ASEAN Lawyer or Law Firm' page or the following link: (<http://assist.asean.org/complaint/?m=42&type=law>), as provided below.

Submit Anonymous Form and other Required Documents to the ASEAN Secretariat/ ASSIST Central Administrator

Once the lawyer or law firm fills in the form, it must be submitted by email to the ASEAN Secretariat at assist@asean.org, along with: (i) the lawyer's or law firm's professional registration/license document (if the original language is not

Special rules apply to complaints filed by ASEAN-based registered lawyers or law firms. In particular, ahead of submitting an ASSIST complaint on behalf of a client, which must be a duly registered ASEAN enterprise based in one of the 10 ASEAN Member States, an ASEAN-based lawyer or law firm (i.e., a lawyer or law firm duly licensed to practice law in the ASEAN Member State where the client is based or against which the complaint is filed) must contact the ASEAN Secretariat and provide the required data on its professional registration and on the client on whose behalf the anonymous complaint is filed. assist@asean.org

- Gender:
- First Name:
- Last Name:
- Title/Position:
- Address:
- Zip code: City:
- Phone: E-mail:
- ASEAN Jurisdiction(s) where Admitted to Practice Law (country):

- Name:
- Address:
- Zip code: City:
- Phone: E-mail:
- Website:
- ASEAN Jurisdiction(s) where Local Office(s) is(are) Established (country):

Please attach the Professional Licence (e.g., issued by the Government, Lawyers' Bar, Law Society, declaration by Attorney General's Chamber, etc.) for the individual lawyer showing the ability to practice law in the relevant ASEAN jurisdiction(s). Should there be no such Professional Licence, a sworn declaration should be submitted by the Lawyer or Law Firm indicating that the individual Lawyer is admitted to practice law in the relevant ASEAN jurisdiction(s). The document can be attached in PDF format in the original language. If the original language is other than English, an unofficial translation into English should also be attached and submitted to the ASEAN Secretariat.

- ASEAN Enterprise Name:
- Company Size:
- Address:
- Zip code: City:
- Phone: E-mail:
- Website:
- Country of Legal Registration:
- Registration Number:
- Company Registration Proof: *To be attached to the email*

ASEAN Secretariat Responds

The ASEAN Secretariat responds to the ASEAN-registered Lawyer or Law Firm on whether the documents that are submitted meet the requirements and are complete or not.

- If the documents are complete, then the ASEAN Secretariat provides the Confidential Case Code (CCC) by email to the lawyer or law firm, so that the actual complaint can be filed.
- If the documents are not complete, the ASEAN Secretariat requests that the lawyer or law firm sends the missing necessary documents.

Submission of Actual Complaint

The ASEAN-registered Lawyer or Law Firm prepares and submits a complaint using the online complaint form available on ASSIST's website: <http://assist.asean.org> in the 'ASEAN Lawyer or Law Firm' icon on the 'File a Complaint' tab. The input details are checked by the system to ensure that all mandatory information is present.

ADDITIONAL IMPORTANT INFORMATION

The Confidential Case Code (CCC) provided by the ASEAN Secretariat must be inserted in the actual complaint under the field provided in the 'Complaint Description' section of the form.

The ASEAN-registered Lawyer or Law Firm may then continue the ASSIST process by following the same steps in handling a complaint for an ASEAN Enterprise and ASEAN-based Representative Entity, as listed above.

C. ASSIST PROCESS FLOW

The two flow charts below illustrate the basic steps in handling a complaint. The first flow chart illustrates the steps in handling a complaint submitted by an ASEAN Enterprise or an ASEAN-based Representative Entity, while the second one illustrates the steps in handling a complaint submitted by an ASEAN-registered Lawyer or Law Firm.

Figure 2.
Complaint Filed by an ASEAN Enterprise or an ASEAN-Based Representative Entity

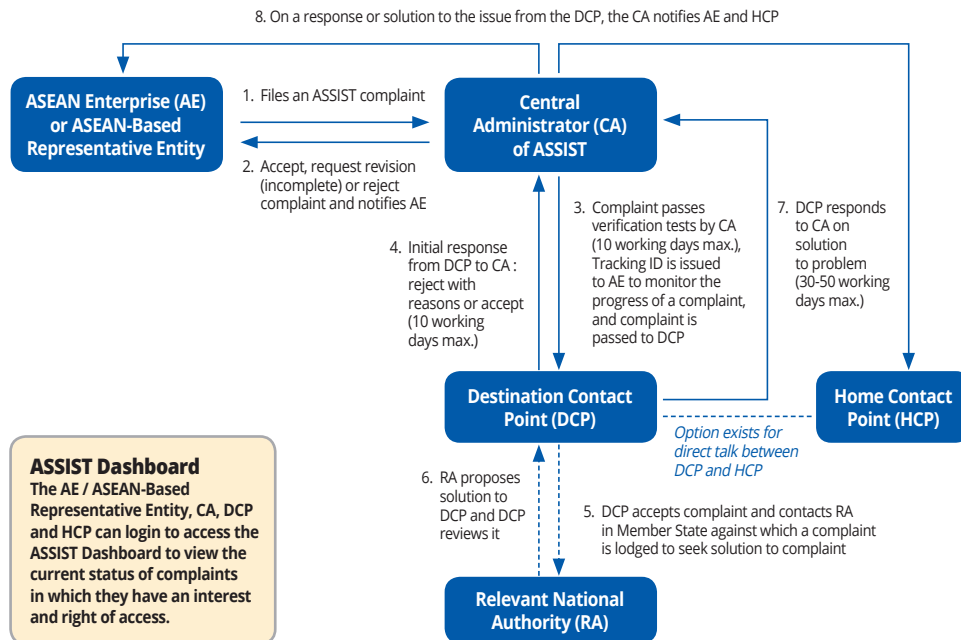
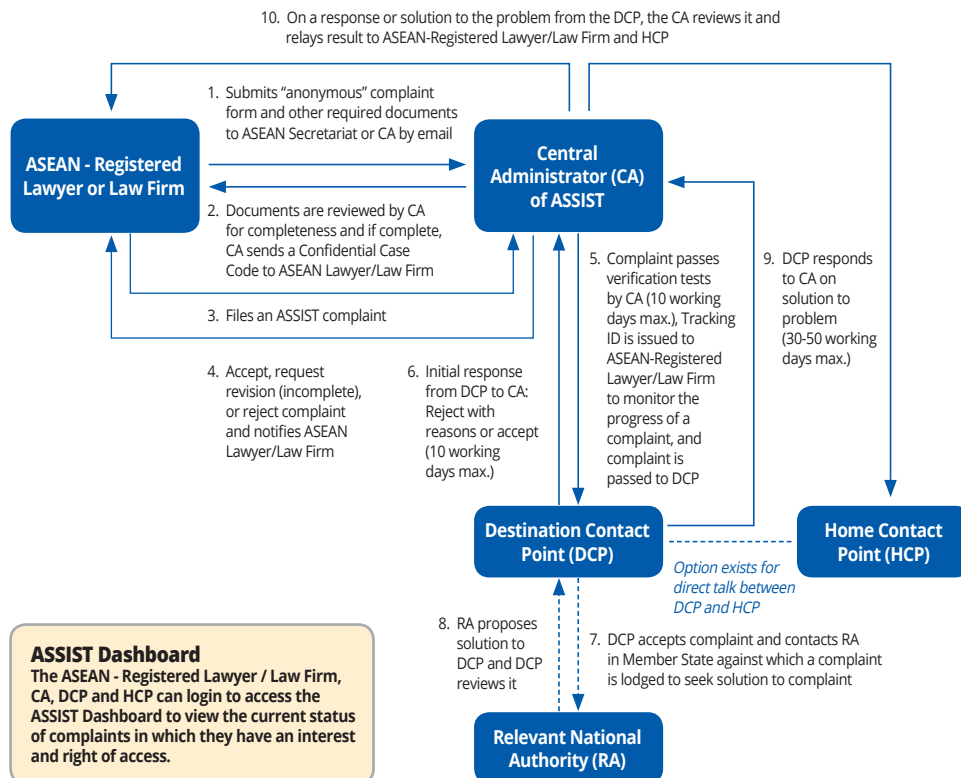
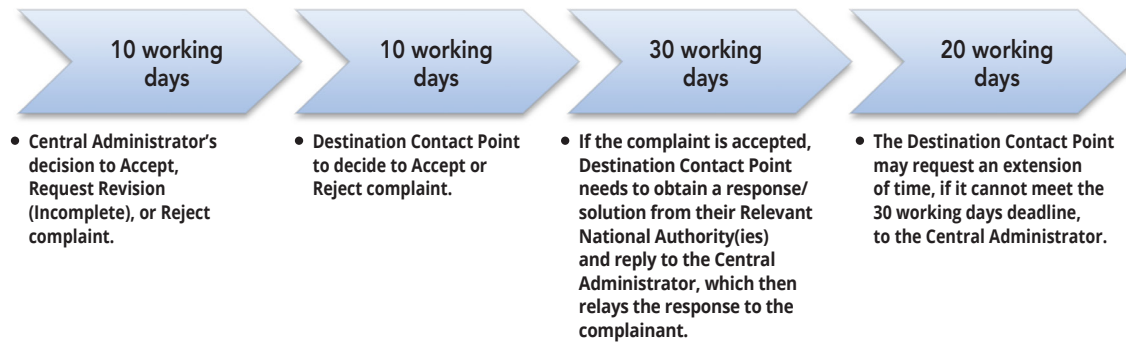


Figure 3.
Complaint Filed by an ASEAN-Registered Lawyer or Law Firm



D. COMPLAINT HANDLING TIMELINE

Progress in handling a complaint is monitored and responses are expected within the following timeline:



1. Extensions of Time

In situations where the Relevant National Authority(ies), within the Member State against which the complaint is lodged, are actively seeking a resolution to the trade problem encountered by the complainant, and are unable to meet the 30 working day deadline set by the Central Administrator of ASSIST due to the issue being complex and requiring consultations with additional domestic authorities, the Destination Contact Point may request an extension of time.

- The Central Administrator may extend the deadline for up to 20 working days upon request of the Destination Contact Point.
- This extended deadline shall not extend the total duration of the time allocated to the Destination Country to provide a solution to more than 50 working days from when the complaint was accepted by the Destination Contact Point.
- An extension of time is recorded within the system and the Central Administrator notifies the Destination Contact Point of the extended deadline for a solution to be submitted.
- In an extension of time, the whole ASSIST process should not exceed 60 working days from when a complaint is accepted by the Central Administrator.

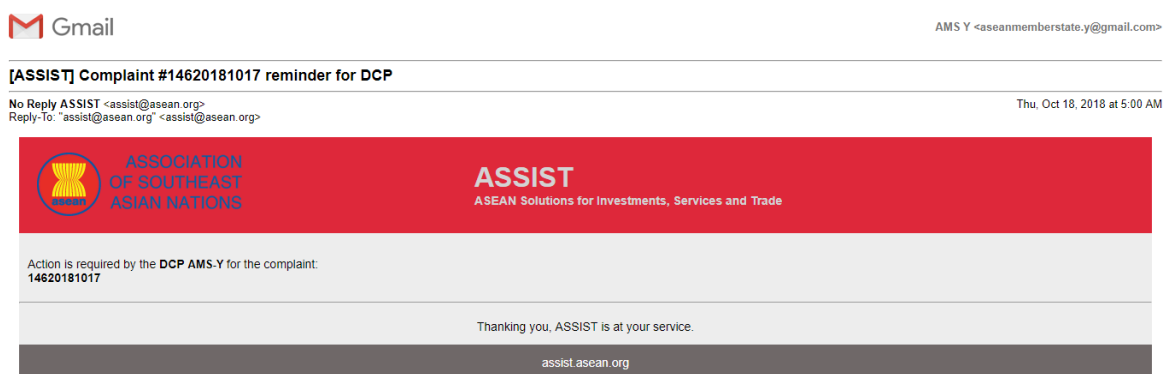
2. Follow-up on Overdue Actions



When some actions are overdue by the Central Administrator or the Destination Contact Point, or reminders are needed on actions to be taken within the expected time intervals, yellow or red warnings, as seen here, are displayed to the Central Administrator or Destination Contact Point's dashboards, including to the complainant's display of the status of the complaint through accessing the website.

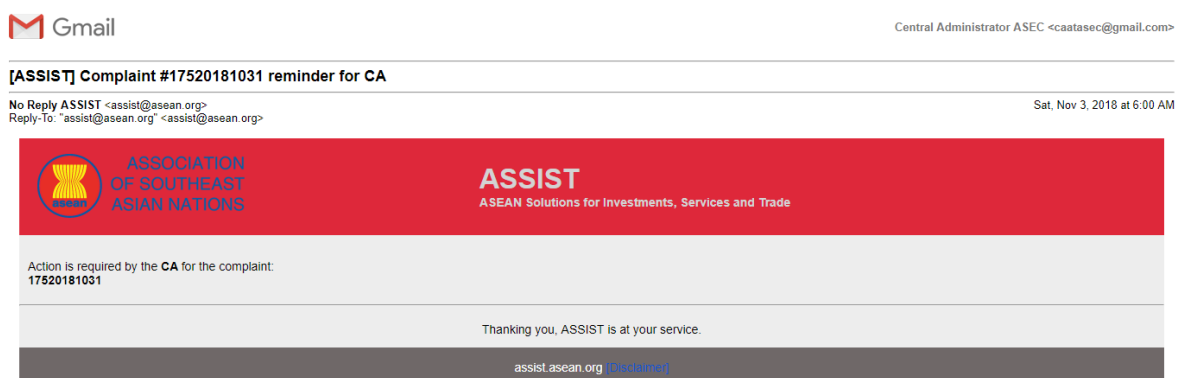
Automatic reminders via email from the ASSIST system are also sent to the Central Administrator and Destination Contact Point, with copies sent to the Home Contact Point, if no actions are taken by the Central Administrator and/or the Destination Contact Point within the required timeframes for that certain action.

- If, upon receiving a complaint, the Central Administrator does not revert to the complainant within 10 working days after a complaint is lodged, the Central Administrator will receive an automatic reminder via email from ASSIST within 7 calendar days after the complaint is lodged. The Central Administrator must decide to accept, request revision (incomplete), or reject a complaint within 10 working days.
- If the Central Administrator still has not provided a response to the complainant, the Central Administrator will receive another automatic reminder via email from ASSIST, within 14 calendar days after a complaint is lodged, informing the Central Administrator that an action is required by it in order to continue the ASSIST process.



An example of an email reminder to the Central Administrator that an action is overdue.

- If a complaint has been accepted by the Central Administrator and passed on to the Destination Contact Point, but the Destination Contact Point does not revert with a response within 10 working days, the Destination Contact Point will receive an automatic reminder via email from ASSIST within 7 calendar days after the complaint has been accepted by the Central Administrator. The Destination Contact Point must decide on whether to accept or reject the complaint within 10 working days.
- If the Destination Contact Point still has not provided a response, the Destination Contact Point will receive another automatic reminder via email from ASSIST, within 14 calendar days after a complaint is lodged, informing the Destination Contact Point that an action is required by it in order to continue the ASSIST process.



An example of an email reminder to the Destination Contact Point that an action is overdue.

ADDITIONAL IMPORTANT INFORMATION

The timeframe for solving cross-border problems brought under ASSIST shall be no more than 30 working days (unless an extension of maximum 20 working days has been accorded) from the date when the complaint has been accepted by the Destination Contact Point (i.e., the ASEAN Member State against which the complaint is filed).

Annex 2 'Flowchart of the ASSIST Mechanism and its Associated Timeline' of this Manual provides a detailed but easy to follow description of the ASSIST processes.

E. COMPLAINANT MAY MONITOR PROGRESS OF THE COMPLAINT

To follow progress of a complaint, select the 'Follow a Complaint' tab from the webpage at <http://assist.asean.org>, and the below page will appear. The complainant may login using their email address and the Tracking ID given in the confirmation of complaint submission message.

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Follow a Complaint

Please log in using your email address and the tracking ID that you were given at the time of filing your complaint to enter the ASSIST dashboard and check on the progress of your proceeding.

Email	Tracking ID
<input type="text"/>	<input type="text"/>


LOGIN

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By using the Tracking ID, the system displays to the complainant the details of the complaint and the processing steps taken by ASSIST in the complainant's ASSIST dashboard.

In the example display of the complainant's ASSIST dashboard below, which uses fictitious data developed for tutorial developing purposes, the complaint is directed in this case against a trade problem with ASEAN Member State-Y (AMS-Y). The complainant was represented by an ASEAN-registered Lawyer because its client, a duly registered business in AMS-X (i.e., the ASEAN Enterprise) wished to remain anonymous.

- The complaint has been acknowledged as received by ASSIST, by email message;
- Upon initial review by the Central Administrator, the complaint was seen as incomplete (for the reasons stated in an email to the complainant) and the Central Administrator requested the ASEAN-registered Lawyer to revise the complaint and provide additional information;
- The complaint was revised and resubmitted by the Lawyer on the same day; and
- The status of the complaint remains at this stage (according to the history of the complaint) with the Central Administrator for verification of completeness and acceptance.



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[PROCESS](#)
[FAQ](#)
[CONTACT](#)
[DISCLAIMER](#)

Tracking ID #18120181102 / AMS-Y

History			
Date	Action	Action By	Comments
02/11/2018 16:52:15	Revised	ASEAN-based Enterprise	
02/11/2018 16:10:12	Incomplete	Central Administrator of ASSIST	Dear Ms. Sierra Riviera, Thank you for lodging your complaint under ASSIST. In order to properly assess your complaint and determine its eligibility under ASSIST, the Central Administrator of ASSIST (i.e. the ASEAN Secretariat or CA) requests additional information. In particular, the CA requests that your complaint be re-submitted together with information on the AMS-Y measure that is allegedly inconsistent with the ATIGA (i.e. AMS-Y's Ministry of Health's Regulation ...)
02/11/2018 12:19:35	Email Confirmed	ASEAN-based Enterprise	Email Confirmed
02/11/2018 12:18:02	New	ASEAN-based Enterprise	

WITHDRAW COMPLAINT

ASEAN ENTERPRISE

ASEAN Enterprise Name		ARISE & Partners	
Company Size		Address	Danube Street No. 13 City P Country X
Phone	+36 1 7653572	City	City P
Website	www.arise&partners.com	ZIP Code	12310
		Country	AMS-X

CONTACT PERSON

First Name	Sierra	Address	Danube Street No. 13 City P Country X
Last Name	Riviera	City	City P
Phone	+36 7878137686	ZIP Code	12310
Position	Senior Associate	Country	AMS-X
Email	aseanlawyer0@gmail.com (Confirmed)		

COMPLAINT DESCRIPTION

Country of Legal Registration	AMS-X	Business Sector	Goods
Registration Number	137911	Type of Problem Encountered	Goods / Internal taxes and charges levied on imports
Company Registration Proof	Annex 0: Simulated Professional License of Ms. Sierra Riviera4.pdf	Destination Country	AMS-Y
Type of Business	Export/Import		
Description	We are a registered law firm in AMS-X filing a complaint under ASSIST on behalf of our client, a duly registered palm oil company in AMS-X. The complaint is in relation to the new excise duty imposed by AMS-Y (the Destination Contact Point or DCP) on palm oil and food products containing palm oil under its Ministry of Health's Food Regulation Chapter 1000, Section 100 of 2015. The measure adopted by AMS-Y introduced taxes on foods high in sugar and saturated fat as part of a strategy for addressing the rising problem of obesity in AMS-Y. We are of the view that AMS-Y's measure expressly targeted palm oil and not just the saturated fat component of palm oil and of products containing palm oil, thereby discriminating against palm oil and demonizing the product as a whole instead of just discouraging excessive consumption of products containing saturated fats, independently of the vegetable or animal origin of the fats. Thus, we find the measure adopted and applied by AMS-Y is contrary to Article 6 of the ATIGA (on National Treatment on Internal Taxation and Regulation), in as much as it discriminates against palm oil as a whole and is not applied to other 'like' products manufactured or sold in AMS-Y (i.e., food products containing saturated fats deriving from soy, sunflower, rapeseed, corn, peanut or animal fat).		
Attachment	Annex 2-Simulated Regulation of AMS-Y1.pdf Annex 3-Simulated Legal Brief ARISE Partners1.pdf		

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An example of the ASSIST dashboard of a complainant in viewing the status of its complaint.

Annex 1.

REFERENCE TABLES

1.1. List of Sub-Categories of Goods¹

2.4.1. Sub—Categories of Goods

I. GOODS

1. Tariff-related measures
2. Rules of origin
3. Non-tariff measures

3.1 Sanitary and phytosanitary measures

- 3.1.1 Prohibitions and restrictions of imports for SPS reasons
- 3.1.2 Tolerance limits for residues and restricted use of substances
- 3.1.3 Labeling, marking and packaging requirements
- 3.1.4 Hygienic requirements
- 3.1.5 Treatment for elimination of plant and animal pests and disease-causing organisms in the final product (e.g., post-harvest treatment)
- 3.1.6 Other requirements on production or post-production processes
- 3.1.7 Conformity assessment related to SPS
- 3.1.8 SPS measures not elsewhere specified

3.2 Technical barriers to trade

- 3.2.1 Prohibitions or restrictions of imports for TBT reasons
- 3.2.2 Tolerance limits for residues and restricted use of substances
- 3.2.3 Labeling, marking, and packaging requirements
- 3.2.4 Production or post-Production requirements
- 3.2.5 Product identity requirement
- 3.2.6 Product quality or performance requirement
- 3.2.7 Conformity assessment related to TBT
- 3.2.8 TBT measures not elsewhere specified

3.3 Pre-shipment inspection and other formalities

- 3.3.1 Pre-shipment inspection
- 3.3.2 Direct consignment requirement
- 3.3.3 Requirement to pass through specified port of customs
- 3.3.4 Import monitoring and surveillance requirements and other automatic licensing measures
- 3.3.5 Other formalities not elsewhere specified

¹ This classification is based on the classification proposed and endorsed for use in the ASEAN Trade Repository, with respect to notification obligations under Article 13 of the ATIGA.

3.4 Contingent trade protective measures

- 3.4.1 Antidumping measures
- 3.4.2 Countervailing measure
- 3.4.3 Safeguard measures

3.5 Non-automatic licensing, quotas, prohibitions, and quantity control measures other than for SPS or TBT reasons

- 3.5.1 Non-automatic import licensing procedures other than authorisations for SPS or TBT reasons
- 3.5.2 Quotas
- 3.5.3 Prohibitions other than for SPS and TBT reasons
- 3.5.4 Export restraint arrangement
- 3.5.5 Tariff Rate Quotas (TRQs)
- 3.5.6 Quantity control measures not elsewhere specified

3.6 Price control measures including additional taxes and charges

- 3.6.1 Administrative measures affecting customs value
- 3.6.2 Voluntary export price restraints (VEPRs)
- 3.6.3 Variable charges
- 3.6.4 Customs surcharges
- 3.6.5 Seasonal duties
- 3.6.6 Additional taxes and charges levied in connection to services provided by the Government
- 3.6.7 Internal taxes and charges levied on imports
- 3.6.8 Decreed Customs valuations
- 3.6.9 Price control measures not elsewhere specified

3.7 Finance measures

- 3.7.1 Advance payment requirement
- 3.7.2 Multiple exchange rates
- 3.7.3 Regulation on official foreign exchange allocation
- 3.7.4 Regulations concerning terms of payment for imports
- 3.7.5 Finance measures not elsewhere specified

3.8 Measures affecting competition

- 3.8.1 State trading enterprises, for importing; other selective import channels
- 3.8.2 Compulsory use of national services
- 3.8.3 Measures affecting competition not elsewhere specified

3.9 Trade-related investment measures (TRIMs)

- 3.9.1 Local content measures
- 3.9.2 Trade balancing measures
- 3.9.3 Trade-related investment measures not elsewhere specified

3.10 Distribution restrictions

- 3.10.1 Geographical restriction
- 3.10.2 Restriction on resellers

3.11 Restriction on post-sales services**3.12 Subsidies (excluding export subsidies)****3.13 Government procurement restrictions****3.14 Intellectual property****3.15 Export-related measures**

- 3.15.1 Export license, quota, prohibition, and other quantitative restrictions
- 3.15.2 State trading enterprises, for exporting; other selective export channels
- 3.15.3 Export price control measures
- 3.15.4 Measures on re-export
- 3.15.5 Export taxes and charges
- 3.15.6 Export technical measures
- 3.15.7 Export subsidies
- 3.15.8 Export credits
- 3.15.9 Export measures not elsewhere specified

1.2. List of Services Sectors and Sub-Sectors²**1. BUSINESS SERVICES****1.1 Professional Services**

- 1.1.1 Legal Services
- 1.1.2 Accounting, auditing and bookkeeping services
- 1.1.3 Taxation Services
- 1.1.4 Architectural services
- 1.1.5 Engineering services
- 1.1.6 Integrated engineering services
- 1.1.7 Urban planning and landscape architectural services
- 1.1.8 Medical and dental services
- 1.1.9 Veterinary services
- 1.1.10 Services provided by midwives, nurses, physiotherapists and para-medical personnel
- 1.1.11 Other professional services

1.2 Computer and Related Services

- 1.2.1 Consultancy services related to the installation of computer hardware
- 1.2.2 Software implementation services
- 1.2.3 Data processing services
- 1.2.4 Data base services
- 1.2.5 Other computer and related services

² This list of services sector and sub-sectors is adapted from the WTO Document #MTN/GNS/W/120, Services Sector Classification List.

1.3 Research and Development Services

- 1.3.1 R&D services on natural sciences
- 1.3.2 R&D services on social sciences and humanities
- 1.3.3 Interdisciplinary R&D services

1.4 Real Estate Services

- 1.4.1 Involving own or leased property
- 1.4.2 On a fee or contract basis

1.5 Rental/Leasing Services without Operators

- 1.5.1 Relating to ships
- 1.5.2 Relating to aircraft
- 1.5.3 Relating to other transport equipment
- 1.5.4 Relating to other machinery and equipment
- 1.5.5 Other rental/leasing services without operators

1.6 Other Business Services

- 1.6.1 Advertising services
- 1.6.2 Market research and public opinion polling services
- 1.6.3 Management consulting service
- 1.6.4 Services related to manufacturing consulting
- 1.6.5 Technical testing and analysis services
- 1.6.6 Services incidental to agriculture, hunting and forestry
- 1.6.7 Services incidental to fishing
- 1.6.8 Services incidental to mining
- 1.6.9 Services incidental to manufacturing
- 1.6.10 Services incidental to energy distribution
- 1.6.11 Placement and supply services of personnel
- 1.6.12 Investigation and security
- 1.6.13 Related scientific and technical consulting services
- 1.6.14 Maintenance and repair of equipment
- 1.6.15 Building-cleaning services
- 1.6.16 Photographic services
- 1.6.17 Packaging services
- 1.6.18 Printing, publishing
- 1.6.19 Convention services
- 1.6.20 Other business services

2. COMMUNICATION SERVICES**2.1 Postal services****2.2 Courier services**

2.3 Telecommunication services

- 2.3.1 Voice telephone services
- 2.3.2 Packet-switched data transmission services
- 2.3.3 Circuit-switched data transmission services
- 2.3.4 Telex services
- 2.3.5 Telegraph services
- 2.3.6 Facsimile services
- 2.3.7 Private leased circuit services
- 2.3.8 Electronic mail
- 2.3.9 Voice mail
- 2.3.10 On-line information and data base retrieval
- 2.3.11 Electronic data interchange (EDI)
- 2.3.12 Enhanced/value added facsimile services, incl. store and forward, store and retrieve
- 2.3.13 Code and protocol conversion
- 2.3.14 On-line information and/or data processing (including transaction processing)
- 2.3.15 Other telecommunication services

2.4 Audio-visual services

- 2.4.1 Motion picture and video tape production and distribution services
- 2.4.2 Motion picture projection service
- 2.4.3 Radio and television services
- 2.4.4 Radio and television transmission services
- 2.4.5 Sound recording
- 2.4.6 Other audio-visual services

2.5 Other communication services**3. CONSTRUCTION AND RELATED ENGINEERING SERVICES**

- 3.1 General construction work for buildings**
- 3.2 General construction work for civil engineering**
- 3.3 Installation and assembly work**
- 3.4 Building completion and finishing work**
- 3.5 Other construction and related engineering services**

4. DISTRIBUTION SERVICES

- 4.1 Commission agents' services**
- 4.2 Wholesale trade services**
- 4.3 Retailing services**
- 4.4 Franchising**
- 4.5 Other distribution services**

5. EDUCATIONAL SERVICES

- 5.1 Primary education services**
- 5.2 Secondary education services**
- 5.3 Higher education services**
- 5.4 Adult education**
- 5.5 Other education services**

6. ENVIRONMENTAL SERVICES

- 6.1 Sewage services**
- 6.2 Refuse disposal services**
- 6.3 Sanitation and similar services**
- 6.4 Other environmental services**

7. FINANCIAL SERVICES

7.1 All insurance and insurance-related services

- 7.1.1 Life, accident and health insurance services
- 7.1.2 Non-life insurance services
- 7.1.3 Reinsurance and retrocession
- 7.1.4 Services auxiliary to insurance (including broking and agency services)

7.2 Banking and other financial services

- 7.2.1 Acceptance of deposits and other repayable funds from the public
- 7.2.2 Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction
- 7.2.3 Financial leasing
- 7.2.4 All payment and money transmission services
- 7.2.5 Guarantees and commitments
- 7.2.6 Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
- 7.2.7 Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues
- 7.2.8 Money broking
- 7.2.9 Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services
- 7.2.10 Settlement and clearing services for financial assets, incl. securities, derivative products, and other negotiable instruments
- 7.2.11 Advisory and other auxiliary financial services
- 7.2.12 Provision and transfer of financial information, and financial data processing and related software by providers of other financial services

7.3 Financial services, other

8. HEALTH-RELATED AND SOCIAL SERVICES

- 8.1 Hospital services**
- 8.2 Other Human Health Services**
- 8.3 Social Services**
- 8.4 Other health-related and social services**

9. TOURISM AND TRAVEL-RELATED SERVICES

- 9.1 Hotels and restaurants (including catering)**
- 9.2 Travel agencies and tour operator services**
- 9.3 Tourist guides services**
- 9.4 Other tourism and travel-related services**

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES

- 10.1 Entertainment services**
- 10.2 News agency services**
- 10.3 Libraries, archives, museums and other cultural services**
- 10.4 Sporting and other recreational services**
- 10.5 Other recreational, cultural and sporting services**

11. TRANSPORT SERVICES**11.1 Maritime Transport Services**

- 11.1.1 Passenger transportation
- 11.1.2 Freight transportation
- 11.1.3 Rental of vessels with crew
- 11.1.4 Maintenance and repair of vessels
- 11.1.5 Pushing and towing services
- 11.1.6 Supporting services for maritime transport

11.2 Internal Waterways Transport

- 11.2.1 Passenger transportation
- 11.2.2 Freight transportation
- 11.2.3 Rental of vessels with crew
- 11.2.4 Maintenance and repair of vessels
- 11.2.5 Pushing and towing services
- 11.2.6 Supporting services for internal waterway transport

11.3 Air Transport Services

- 11.3.1 Passenger transportation
- 11.3.2 Freight transportation
- 11.3.3 Rental of aircraft with crew
- 11.3.4 Maintenance and repair of aircraft
- 11.3.5 Supporting services for air transport

11.4 Space Transport

11.5 Rail Transport Services

- 11.5.1 Passenger transportation
- 11.5.2 Freight transportation
- 11.5.3 Pushing and towing services
- 11.5.4 Maintenance and repair of rail transport equipment
- 11.5.5 Supporting services for rail transport services

11.6 Road Transport Services

- 11.6.1 Passenger transportation
- 11.6.2 Freight transportation
- 11.6.3 Rental of commercial vehicles with operator
- 11.6.4 Maintenance and repair of road transport equipment
- 11.6.5 Supporting services for road transport services

11.7 Pipeline Transport

- 11.7.1 Transportation of fuels
- 11.7.2 Transportation of other goods

11.8 Services auxiliary to all modes of transport

- 11.8.1 Cargo-handling services
- 11.8.2 Storage and warehouse services
- 11.8.3 Freight transport agency services
- 11.8.3 Services auxiliary to all modes of transport, other

11.9 Other Transport Services



Annex 2.

FLOWCHART OF THE ASSIST MECHANISM AND ITS ASSOCIATED TIMELINE

The following flowcharts provides a summary of the ASSIST process. The following acronyms apply:

AE : ASEAN Enterprise

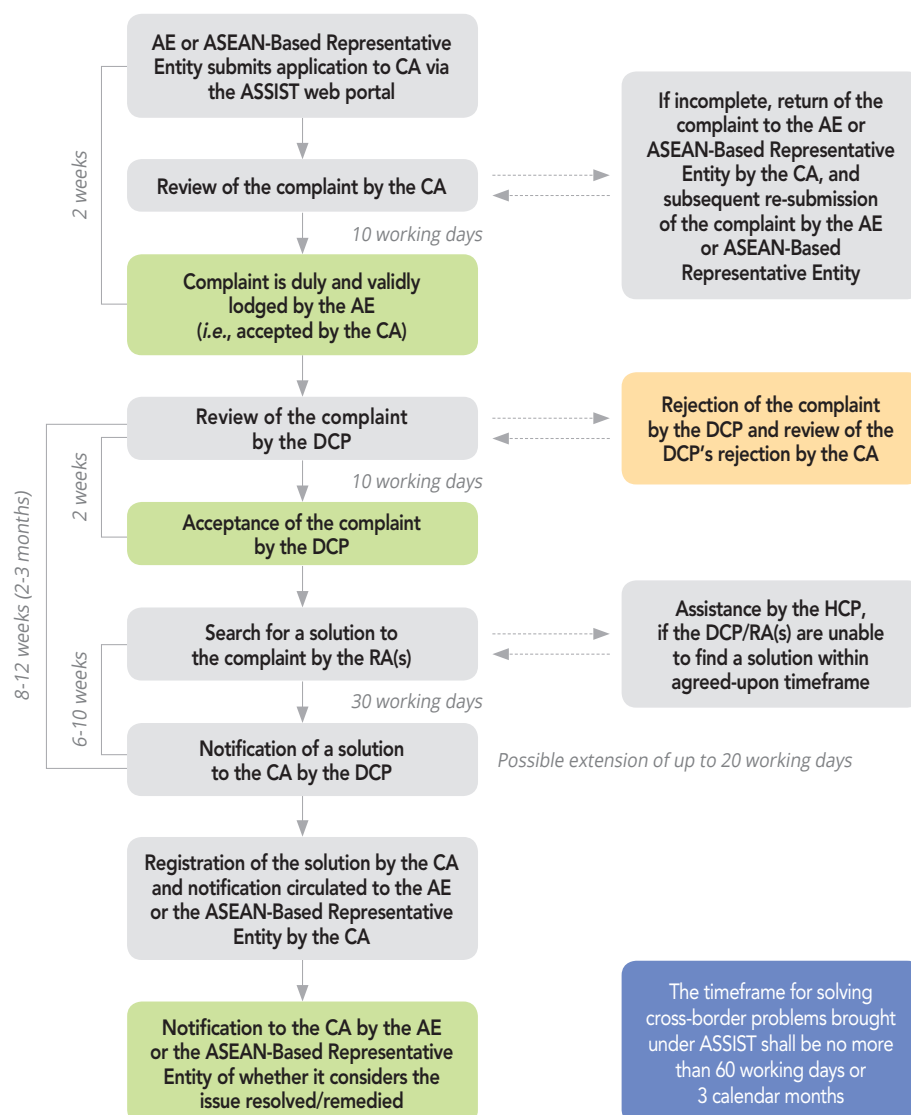
CA : Central Administrator

DCP : Destination Contact Point

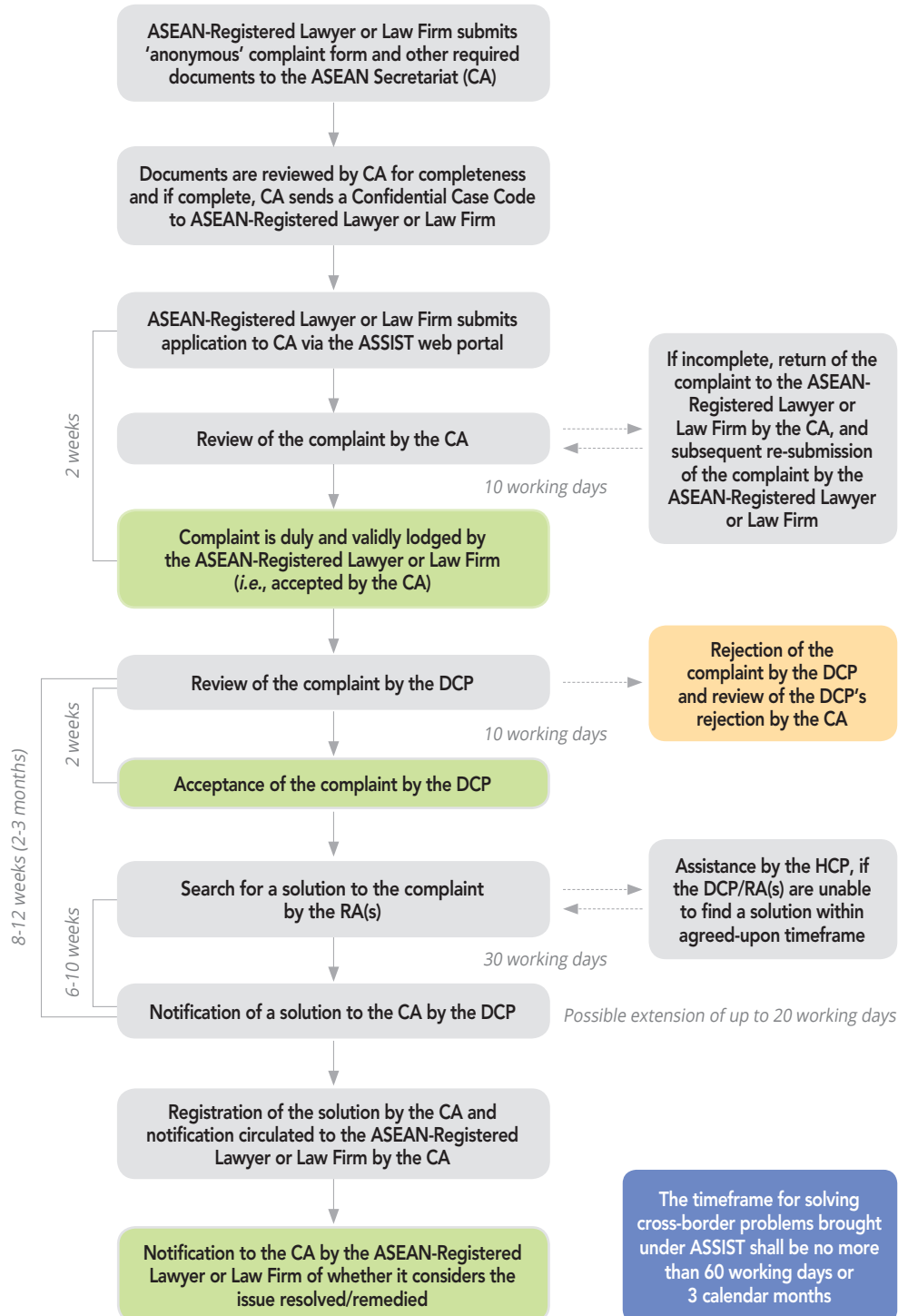
HCP : Home Contact Point

RAs : Relevant Authority(ies)

2.1. For a Complaint Filed by an ASEAN Enterprise or an ASEAN-Based Representative Entity



2.2. For a Complaint Filed by an ASEAN-Registered Lawyer or Law Firm



Annex 3.

FREQUENTLY ASKED QUESTIONS (FAQs)



1. General questions about ASSIST

1.1 Are there any charges or fees for using ASSIST?

No, ASSIST can be used at no cost. There are no charges, no fees and no registration or submission costs.

1.2 Why is ASSIST currently available only for complaints related to intra-ASEAN cross-border trade in goods and trade in services?

When will it be extended to investment issues? ASSIST has been available for issues in relation to trade in goods since August 2016 and for issues occurring with respect to intra-ASEAN cross-border trade in services since 1 May 2019. ASSIST will likely be extended to investment issues in 2020.

1.3 What is meant by saying that ASSIST is non-binding?

Non-binding means ASEAN Member States may decide not to accept a complaint or to offer a solution once a complaint has been lodged on the ASSIST system. Although ASSIST is non-binding, ASEAN Member States shall deal with complaints on a best endeavour basis.

1.4 Why is ASSIST consultative in nature?

ASSIST is not a judicial system unfolding before a national or international court and it is not managed and decided by an independent judge, arbiter, mediator, panel of expert or third adjudicating body. It unfolds through direct online consultations through the ASSIST software platform between ASEAN-based enterprises (companies or trade associations/chambers of commerce) and ASEAN Governments.

1.5 What kind of information will be placed on the public forum page of the ASSIST website?

Over time, the Public Forum will provide information that can be useful for ASEAN Enterprises that are looking for business solutions while doing business in the region. The information will include success stories, case studies and guides to help businesses better understand ASEAN agreements. The Forum will also encourage business to share their own experiences and useful lessons in seeking solutions in ASEAN. No confidential information will be placed on the Forum.

1.6 Will complaints remain confidential? Who has access to the information provided by a complainant in its complaint or by an ASEAN Government as part of a solution being proposed?

Confidentiality is of the utmost importance and only the complainants, the directly involved ASEAN Member States and the ASEAN Secretariat will have the right to access to the actual complaint and to the solutions proposed. (Please also see the disclaimer of liability on the ASSIST website in this regard).

1.7 Can any of the information being exchanged through ASSIST later be used in a court of law for purposes of domestic litigation or international dispute settlement (i.e., WTO and/or ASEAN)?

No. ASSIST's disclaimer (please see the link in the footer of all ASSIST's webpages) is clear. No information or statements made by complainants or by ASEAN Member States within the process of ASSIST can be used in national or international litigation. While not being enforceable in a court of law, however,

the proposed solutions may have specific value within the similar context of such complaints before the administrative authorities (*i.e.*, customs officers, trade officials, authorities issuing the import licenses, conformity assessment bodies, etc.) of the ASEAN Member State that has proposed solutions.

2. The scope of ASSIST

2.1 Can an ASEAN Enterprise lodge a complaint against its own country's Government?

No. ASSIST is only for intra-ASEAN cross border trade issue between an ASEAN Enterprise legally registered in one ASEAN Member State and the Government of one of the other nine ASEAN Member States. Purely domestic issues vis-à-vis the home Government of the complaining enterprise cannot be referred through ASSIST. In cases where a services provider, that belongs to a parent company based in ASEAN Member State A, but that that offers its services in ASEAN Member State B, intends to file a complaint against ASEAN Member State B, it is the parent company in ASEAN Member State A that should file the complaint on ASSIST. However, the case can also be filed 'anonymously' by an ASEAN-based trade association, chamber of commerce, business council, business federation, registered lawyer or registered law firm on behalf of the actual complainant.

2.2 Can ASSIST be used to lodge a complaint against a Government of a country outside of ASEAN (*e.g.*, Australia, China, the EU, Japan, Korea, the US, etc.)?

No. ASSIST is only for intra-ASEAN cross border trade issue between an ASEAN Enterprise legally registered in one ASEAN Member State and the Government of one of the other nine ASEAN Member States.

2.3 Can a complainant lodge a complaint in relation to a measure that is already before national courts in domestic litigation, or that is the object of an ongoing arbitration or that has been taken up by its Government within WTO or ASEAN under the respective dispute settlement mechanisms?

No. If a complaint is lodged under any such circumstances, the ASEAN Secretariat or the Destination country will likely reject the complaint as not validly lodged.

3. Before lodging a complaint

3.1 Is it necessary to get permission or support from the ASEAN Government where the complainant is legally registered ahead of lodging a complaint on ASSIST?

No, it is not. ASSIST is available for direct use by ASEAN Enterprises and no permission need be sought from their home Governments. That being said, complainants are encouraged to seek their home governments' opinions and possible support ahead of filing a complaint through ASSIST.

3.2 If a complainant does not fully understand the relevant ASEAN Agreements or needs advice before lodging a complaint, what are the available resources to seek advice and guidance?

A complainant may seek their home governments' opinions and possible support ahead of filing a complaint through ASSIST. They may also seek guidance and assistance from independent consultants, lawyers, law firms, chambers of commerce, business councils, business federations, trade associations or even academia. Guidance and support by any of these actors is highly recommended when complainants are enterprises that may have technical capacity constraints with regard to understanding ASEAN issues or difficulties communicating in English.

3.3 If the complaint is a micro-, small- or medium-sized enterprise (MSME), what is the best way to seek support when filing an ASSIST complaint?

By seeking guidance and assistance from independent consultants, lawyers, law firms, chambers of commerce, business councils, business federations, trade associations or even academia. Or by seeking its home government's opinion and possible support ahead of filing a complaint through ASSIST.

3.4 How can a complainant be sure that the issue that is affecting its business activities falls within the scope of ASSIST?

The scope of ASSIST is presented on the ASSIST website. A complaint may be rejected if it falls into one of the following categories: It is not covered or regulated by any ASEAN trade agreement; It goes beyond intra-ASEAN trade; It is solely a dispute between businesses; It is not supported by sufficient and reliable information; It is subject to other legal administrative or judicial review and/or litigation; and It is addressing investment issues, which is currently not yet available under ASSIST.

Therefore, the complainant should undertake careful research on the basis of the information provided on ASSIST's website and/or by seeking guidance and assistance from its own home government or from independent consultants, lawyers, law firms, business councils, chambers of commerce, business federations and trade associations.

3.5 Why is it important to build a thorough and well-proven/well-argued case before lodging a complaint on ASSIST?

This is very important because the case will be examined by the relevant authorities involved in ASSIST. The measure or practice being challenged, or the problem being faced by the complainant must be presented clearly, and it is highly recommended that supporting documentation be provided. Complainants may even consider proposing possible solutions to facilitate the process. Comprehensively presented complaints will have a higher chance of being accepted by the Destination Country, with the objective of finding a solution.

4. Lodging a complaint

4.1 Does a complainant need to pre-register to show that his/her company is an ASEAN-based enterprise or trade association or is registration automatic when filing a complaint?

There is no pre-registration process. The complainant must provide its national business registration number and proof of registration, which is mandatory on the complaint form on the ASSIST website. Lawyers or law firms filing complaints on behalf of their clients (anonymous complaints) must first register with the ASEAN Secretariat and file a dedicated form to obtain the Confidential Case Code from the ASEAN Secretariat.

4.2 Does a complainant need to fill in the online complaint form and register each time that he/she wishes to lodge a complaint or can he/she file multiple complaints with a single form?

The complainant must fill in the online Complaint Form each time the enterprise (or the entity representing it, in anonymous complaints) lodges a new complaint with all the mandatory fields completed.

4.3 Does a complainant need to register as an ASEAN Enterprise at some central registry?

No, there is no central registry. Only lawyers or law firms filing complaints on behalf of their clients (anonymous complaints) must first register with the ASEAN Secretariat and file a dedicated form to obtain the Confidential Case Code from the ASEAN Secretariat.

4.4 What does it mean to be an ASEAN Enterprise (i.e., company or trade association) legally registered in one of the 10 ASEAN Member States?

This means that the ASEAN Enterprise has fulfilled the legal obligations of the country in which it operates and has registered as a business or trade association / chamber of commerce / business council / business federation. This will be in accordance with the prevailing legislation in the respective ASEAN country. Similar criteria apply to lawyers or law firms filing complaints on behalf of their clients. They will need to show registration with one of the ASEAN Member States and the professional license to practice law in the relevant ASEAN jurisdiction.

4.5 If the complainant is the legally registered ASEAN office (i.e., branch, subsidiary, representative office, plant, distribution centre, etc.) of a multinational corporation from a country outside of ASEAN, can the complaint be lodged by the complainant's "head office" located in a non-ASEAN country?

No. The complaint must be lodged by the enterprise operating in one of the ASEAN countries. However, the 'head office' can provide advice or technical support to the ASEAN Enterprise when the latter submits its complaint.

4.6 Can a complaint be lodged by a consultant, lawyer or advisor on behalf of an ASEAN Enterprise? If so, which business registration number and proof of registration should be provided?

Yes, a complaint may be filed by a consultant, lawyer or advisor on behalf of an ASEAN Enterprise, but in this case the registration number and proof of legal registration must be that of the ASEAN Enterprise (AE) being represented, because it is the AE's complaint that is being lodged. Complainants may, of course, be advised and assisted in lodging their complaints by individuals or entities not working for that ASEAN Enterprise. However, if the complaint being filed is an anonymous complaint, the business registration number (for trade associations, chambers of commerce, business councils, business federations, etc.) and proof of legal registration (for lawyers and law firms) will be those of the entity filing the complaint on behalf of the ASEAN enterprise and not of the ASEAN enterprise itself.

4.7 Can an individual person lodge a complaint on ASSIST?

No. At this point in time, ASSIST is only available for use by legally registered businesses (i.e., legal entities). It is not for individuals (i.e., natural persons). However, an individual lawyer may file an anonymous complaint on behalf of one of his/her clients (i.e., an ASEAN-based Enterprise), so long as of course all other requirements are met.

4.8 Can a complainant lodge a complaint anonymously without using its company's name? If so, what is the alternative approach to do so?

Yes, anonymous complaints may be lodged when a complainant prefers that, for whatever reason, its identity not be revealed to the Home and/or Destination Contact Points. In order to do so, a complainant may use a trade association or similar representative entity (i.e., a chamber of commerce, business council, business federation, lawyer or law firm) for the complaint to be lodged on its behalf. The ASEAN-based trade association or representative entity does not need to indicate the name of the specific ASEAN Enterprise(s) on behalf of which it files the complaint and shall simply file the complaint by using its own business registration number (i.e., the business registration number in the ASEAN jurisdiction where it is incorporated or the practicing license for lawyers or law firms). Lawyers and law firms also need to pre-register with the ASEAN Secretariat and file a dedicated form in order to receive a Confidential Case Code to be used when filing the anonymous complaint. This approach is also intended to allow for multiple complainants, having the same trade problem, to avoid having to file multiple complaints. It must be noted that fees may apply when representative entities provide this service to ASEAN Enterprises seeking anonymity.

4.9 Why/when should a complainant or multiple complainants consider lodging a complaint through a legally registered ASEAN trade association, business council or business federation?

This mode may be used if a number of companies all have the same trade problem or issue and they decide to use their representative business association (*i.e.*, trade associations, chambers of commerce, business councils, business federations, etc.) in order to lodge the complaint on their behalf seeking a solution for all of them. Another situation may be where the enterprise does not wish to have its identity revealed due to the potential sensitivity of an issue and would prefer for its business association to lodge the complaint on its behalf, thereby retaining anonymity. In this latter case, duly registered ASEAN-based and licensed lawyers or law firms may also be used, subject to them meeting the registration requirements with the ASEAN Secretariat.

4.10 Can a complainant upload any document (e.g., laws, correspondence with authorities, licenses, photographic evidence, legal memoranda, etc.) when filing its complaint?

Yes. In any format, as long as it is within the Mb limit for attachments that are indicated on the ASSIST online complaint form. In exceptional cases, the complainant may be requested to provide the Central Administrator with additional information by email.

4.11 Can a draft complaint be saved on the ASSIST webpage (*i.e.*, the online complaint form) for later completion?

No. The complainant should work offline to prepare the complaint and then copy and paste the information onto the online complaint form at the time of lodging the complaint.

4.12 Can a single complaint be filed against multiple ASEAN Member States if the same trade problem is being experienced in many countries?

No. Each complaint can only be against one ASEAN Member State at any one time. The complainant would have to lodge multiple complaints if it is experiencing the same problem in more than one country.

4.13 Does a complainant need to mail a copy of its complaint to any of the other actors under ASSIST?

No. All communications are done online through the ASSIST platform.

4.14 Can a complaint be lodged in a language other than English? If not, can at least some of the supporting factual and legal information (e.g., proof of company registration or copy of a national law) be provided in the language of the complainant or of the country where the trade problem is occurring?

English is the language of official communication within the system and the complaint must be written in English. All supporting documents uploaded by the complainant (such as legal briefs, technical reports and the like) must be written in English. However, any official documents such as proof of registration, national laws, certificates, licenses or similar, which are written in a national official language may be uploaded onto the system in support of the complaint, but should be accompanied by an English translation. The solution from the Destination Country will also be provided in English.

5. Once a complaint is lodged

5.1 What should a complainant do if it has lost or forgotten the tracking ID number and or the e-mail used to lodge a complaint?

The complainant should contact the ASEAN Secretariat's Contact Point as shown on the ASSIST website.

5.2 What happens to a complaint if it is rejected by either the Central Administrator (CA) or the Destination Contact Point (DCP)?

Once a complaint is rejected, that particular proceeding is technically concluded and the complaint is terminated. However, a complainant may either file a new complaint under ASSIST, providing additional or new information to justify its complaint, or seek other alternative options to find appropriate solutions, including referring the matter to other dispute resolution mechanisms (see information provided below in the section on "Once a solution is provided").

5.3 Can the Central Administrator or the Destination Contact Point request additional information from the complainant (ASEAN Enterprise)?

Yes they can. The Central Administrator can send the complaint back to the Enterprise using the 'Incomplete' function on the ASSIST system and requesting further information. The Destination Contact Point can only request additional information from the ASEAN Enterprise via the Central Administrator and this is to be done 'offline' (i.e., via e-mail or telephone communication). The Destination Contact Point does not have direct contact with the ASEAN Enterprise.

5.4 Can a complainant voluntarily provide additional information after having filed its complaint? If so, what is the procedure to do so?

No. A complainant cannot provide additional information once the complaint has been accepted or rejected by either the Central Administrator or the Destination Country. To do so, the complainant would have to withdraw the complaint and lodge a new one with the additional information.

5.5 Can a complaint be withdrawn once a complainant has lodged it? If so, what is the procedure to do so?

Yes it can. Only the complainant can withdraw the complaint at any time during the course of the proceeding. To do so, the complainant would need to log onto its ASSIST dashboard, open the complaint and click on the 'Withdraw' function. All the relevant actors under ASSIST would be automatically notified of the withdrawal by the ASSIST system.

5.6 Does the ASEAN Enterprise communicate directly with the Destination Contact Point or with the Responsible Authorities?

No. There is no direct communication at any stage in the process.

5.7 How often can a Destination Contact Point request a time extension of a maximum 20 days?

Only once using the online function.

5.8 What should a complainant do if it does not hear back from ASSIST with an answer within 30 to 50 working days (i.e., 6-10 calendar weeks) from the date when the Destination Contact Point accepted the complaint?

In this case, a complainant may either contact ASSIST's Central Administrator via e-mail (see the ASSIST website for contact details of the ASEAN Secretariat's ASSIST Contact Point) to enquire about the state-of-play of its proceeding, or contact its Home Contact Point in its own country to follow-up on its behalf with the Destination Contact Point as to why there is a delay.

6. Provision of Solutions

6.1 What can a complainant do if it does not receive a solution to its complaint?

In this case, a complainant may either contact ASSIST's Central Administrator via e-mail to enquire about the state-of-play of its proceedings, and contact its Home Country Contact Point to facilitate the process. The complainant could seek other options including dispute resolution mechanisms (e.g., the procedures of the ASEAN Enhanced Dispute Settlement Mechanism, through its home Government, or national litigation in the destination country, or arbitration, or even the procedures of the WTO Dispute Settlement Mechanism, through its Home Government acting as a WTO Member against the destination country).

6.2 What can a complainant do if it is not satisfied with the solution to its complaint?

In this case, a complainant may consider either filing a new complaint under ASSIST with new or additional factual information, or seek other alternative options, including recourse to the dispute resolution mechanisms as mentioned in 6.1 above.

6.3 Can a complainant appeal a proceeding that has not delivered a solution or one that is not satisfactory?

No. The ASSIST is a "non-binding" and voluntary mechanism. It is not part of a legal proceeding where the complainant can appeal a decision by a government.

6.4 Can a complainant file again the same complaint if it did not receive an answer or it received a solution that it did not consider satisfactory?

Yes, technically it can, but it would likely be unproductive and a waste of time and resources. However, if the complainant decides to do so, it is strongly recommended that it consider reformulating the complaint, providing additional factual evidence or legal arguments for consideration by the Destination Country.



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A 'Frequently Asked Questions' page is also available for users or key actors of ASSIST under the 'FAQ' tab on the ASSIST website at: <https://assist.asean.org/read/faq/30/>.



Annex 4.

HYPOTHETICAL CASE STUDIES

Several case studies were developed to test the operationalisation and functioning of the ASSIST system. These simulated scenarios add realistic detail in illustrating the intended scope of ASSIST and the interaction of the complainant enterprise, the Central Administrator and the National Contact Points. The information in these five case studies is fictional and does not reflect the position of and/or any provisions with respect to any ASEAN Member States. No identification with actual companies, countries, trade in goods, services or investments is intended or should be inferred.

Step-by-step tutorials based on the following case studies were also developed for better understanding of the ASSIST process. The tutorials are available in the last section of this toolkit and also on the ASSIST website at <https://assist.asean.org/read/proces/20>.

The first scenario is for a complaint not falling under ASSIST, the second and third scenarios are mock trade in good cases, while the last two scenarios are hypothetical trade in services cases.

The Scenarios

Case 1:

A complaint is filed by an ASEAN Enterprise and rejected by ASSIST's Central Administrator

Reason for Rejection:

The complaint dealt with an issue that falls outside of the scope of ASSIST and so is not validly lodged by the ASEAN Enterprise.

Case 2:

A complaint that is filed by an ASEAN-based Trade Association on behalf of its Member, an ASEAN Enterprise, accepted by ASSIST's Central Administrator as validly lodged, (i.e., being complete and falling within ASSIST's scope), but rejected by the Destination Contact Point

Reason for Rejection:

The complaint is rejected by the Destination Contact Point because of the same dispute having already been litigated at the World Trade Organization (WTO) in a complaint brought by the country of registration of the ASEAN Enterprise (where the Home Contact Point is located) against the country of the Destination Contact Point. This placed the complaint outside of the scope of ASSIST and within the rights of the Destination Contact Point to reject. In the case at stake, the rejection by the Destination Contact Point was sufficiently motivated and fell within the sovereignty of ASEAN Member States within the ASSIST system.

Case 3:

A complaint that is filed by an ASEAN-registered Lawyer of Law Firm on behalf of its client, an ASEAN Enterprise, accepted by the Central Administrator as having been validly lodged (i.e., being complete and falling within ASSIST's scope), also accepted and solution proposed by the Destination Contact Point and accepted by the ASEAN Enterprise.

Reason for Acceptance:

The Destination Contact Point accepted the complaint as an issue for which it is willing to engage with the ASEAN Lawyer through ASSIST, interact with the domestic Relevant National Authorities (RAs) and provide a solution to the ASEAN Lawyer through ASSIST.

In the case at stake, the Home Contact Point is not actively involved, but all other possible steps in the ASSIST procedure, including the initial request by the Central Administrator for additional information from the ASEAN Lawyer, are simulated for purposes of reviewing a full-fledged ASSIST proceeding.

Case 4:

A complaint that is filed by an ASEAN Enterprise, accepted by the Central Administrator as having been validly lodged (i.e., being complete and falling as within ASSIST's scope), also accepted and solution proposed and Destination Contact Point and accepted by the ASEAN Enterprise

Reason for Acceptance:

The Destination Contact Point accepted the complaint as an issue for which the particular ASEAN Member State is willing to engage with the ASEAN Enterprise, interact with the domestic Relevant Authorities (RAs) and provide a solution to the AE through ASSIST. The case at stake is structured to reflect Mode 1 (or the so-called Cross Border Supply) of international trade in services, which is defined in the ASEAN Framework Agreement on Services (AFAS) and the General Agreement on Trade in Services (GATS), *mutatis mutanda*, as the supply of a service from the territory of one country into the territory of another country or, in other words, in all commercial instances where the service moves across the border.

Case 5:

A complaint that is filed by an ASEAN Enterprise (parent company of its subsidiary company), accepted by the Central Administrator as having been validly lodged (i.e., being complete and falling within ASSIST's scope), but rejected by the Destination Contact Point

Reason for Rejection:

The Destination Contact Point rejected the complaint because it finds that the allegations by the ASEAN Enterprise lacks merits as the Destination Contact Point has complied with the relevant ASEAN commitments. The case at stake falls under Mode 3 (Commercial Presence) of services trade, which is defined in GATS and AFAS, *mutatis mutanda*, as the supply of a service supplier of one country, through commercial presence in the territory of any other country.

The ASEAN Enterprise in this case is the parent company in another ASEAN Member State of its subsidiary company where the Subject ASEAN Member State or DCP is located and that is actually the one with the problem or complaint.

Case 1:

Complaint Rejected by Central Administrator

The Complainant

Mr. Very Upset is a director of *Blue Sapphire Consulting Group* (the ASEAN Enterprise) and he has a post graduate degree in economics. He has been offered a job in a consultancy firm in AMS-Y (the Destination Country) and intends to move to Phnom Penh and live there on a permanent basis.

The Complaint Details

The Cambodian company indicated that it would take about one month for it to secure Mr. Upset's work permit. However, the procedure is taking much longer and it is now nearly three months that the permit is withheld by the Government of AMS-Y. This is jeopardizing Mr. Upset's chances of getting the job. Mr. Upset wishes to raise an ASSIST complaint against the Cambodian Government, though his company in AMS-X, for delaying the issuing of his work permit. The basis of Mr. Upset's complaint is that there is the ASEAN Agreement on Movement of Natural Persons, which allows for free movement of skilled persons within ASEAN as well as the ASEAN Framework Agreement on Services (AFAS).

Review by ASSIST's Central Administrator

ASSIST's Central Administrator (*i.e.*, the ASEAN Secretariat) reviews the complaint and rejects it. This case appears to be an individual's private issue rather than a company issue and is, therefore, not covered by the ASEAN Agreement on Movement of Natural Persons, which states in Article 2.2 that it does not apply to measures affecting natural persons seeking to access to the employment market of another ASEAN Member State, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

ASSIST is available for complaints triggered by ASEAN Enterprises (*i.e.*, duly registered legal entities, not natural persons) and the artificial use of a legal entity (*i.e.*, the ASEAN Enterprise), in order to address and issue that refers to interactions between an ASEAN Member States and a natural person, is not sufficient to extend the scope of coverage of ASSIST to it. In the case at stake, Mr. Upset should interact directly with AMS-Y's Ministry of Interior and/or Ministry of Labour. ASSIST is not an available instrument.

The Result

The rejection appears valid and sufficiently justified. ASSIST will consider this procedure as one where no complaint was lodged.

Case 2:**Complaint Filed by an ASEAN-Based Trade Association and Rejected by Destination Contact Point****The Complainant**

The ASEAN Enterprise is a registered company in AMS-X. The *ASEAN Tobacco Trade Association*, the ASEAN-based Trade Association, files an ASSIST complaint on behalf of the ASEAN Enterprise against AMS-Y (the Destination Contact Point) concerning a number of AMS-Y's fiscal and customs measures affecting cigarettes exported from AMS-X to AMS-Y.

The Complaint Details

Such measures include AMS-Y's customs valuation practices, excise tax, health tax, VAT regime, retail licensing requirements and import guarantees imposed upon cigarette importers. *ASEAN Tobacco Trade Association* claims that AMS-Y administers these measures in a partial and unreasonable manner and thereby violates Article 57 of the ATIGA, which incorporates into ASEAN, *mutatis mutandis*, the WTO Agreement on Customs Valuation. According to *ASEAN Tobacco Trade Association*, AMS-Y does not use transaction value as the primary basis for customs valuation as required and fails to conform to the sequence of valuation methods mandated by the Article 57 of the ATIGA, rather it uses a valuation method with no basis in the Agreement.

In addition, *ASEAN Tobacco Trade Association* claims that AMS-Y's dual license scheme, which requires that tobacco and/or cigarette retailers hold separate licenses to sell domestic and imported cigarettes, is inconsistent with Article 6 of the ATIGA, incorporating Article III of the General Agreement on Tariffs and Trade (GATT) 1994, because it provides less favourable treatment for imported products than for like domestic products.

Review by ASSIST's Central Administrator

This complaint was validly lodged and is approved by the Central Administrator of ASSIST – the ASEAN Secretariat.

Details of the complaint are forwarded by the Central Administrator to the Destination Contact Point (AMS-Y) and the Home Contact Point (AMS-X).

Review and Decision by Destination Contact Point

The Destination Contact Point (AMS-Y) rejected the complaint because it argued that the case was the same that AMS-X had brought against AMS-Y under the WTO dispute settlement mechanism.

In fact, on 29 September 2008, AMS-X had requested the establishment of a panel to resolve a dispute that challenged exactly the same customs valuation regime of AMS-Y as it applied to imported cigarettes.

- At its meeting on 17 November 2008, the WTO Dispute Settlement Body (DSB) had established a panel, which circulated its report to the Members on 15 November 2010.
- On 22 February 2011, AMS-Y notified the DSB of its decision to appeal to the Appellate Body certain issues of law and legal interpretation covered in the panel report.
- On 17 June 2011, the Appellate Body report was circulated to Members and, at its meeting on 15 July 2011, the DSB adopted the Appellate Body report and the panel report, as modified by the Appellate Body report.
- On 11 August 2011, AMS-Y informed the DSB that it intended to implement the recommendations and rulings of the DSB in line with its WTO obligations and that it would need a reasonable period of time to do so.
- On 23 September 2011, AMS-Y and AMS-X informed the DSB that they had mutually agreed on the reasonable period of time for AMS-Y to comply with the recommendations and rulings of the DSB.
- At a DSB meeting on 28 January 2013, AMS-Y reported that it had completed the final outstanding steps in its implementation process. However, AMS-X did not agree that AMS-Y had fully implemented the DSB's recommendations and rulings.
- At the DSB meeting of 27 February 2013, AMS-X expressed concern that it had not been informed of any progress toward resolving the remaining WTO-inconsistencies and added that it would take appropriate steps shortly.
- At the DSB meeting on 18 June 2014, AMS-Y reported that it did not have to take any further action to implement the DSB's recommendations and rulings. AMS-X disagreed and was of the view that AMS-Y had failed to comply.

Despite there not being agreement between AMS-X and AMS-Y on whether the WTO dispute was actually resolved and on whether AMS-Y had complied with its WTO obligations, the complaint lodged by *ASEAN Tobacco Trade*

Association is one that the Destination Contact Point rightfully considered as already addressed within the WTO framework, including in light of the ASEAN obligations that *ASEAN Tobacco Trade Association* had referred to in its ASSIST complaint. The Destination Contact Point is sovereign in deciding whether or not it intends to engage in the ASSIST Process to offer a solution to the complaining ASEAN-based Trade Association.

The Result

The rejection appears valid and sufficiently justified. ASSIST will consider this procedure as one where the complaint was rejected and a solution has not been provided.

Case 3:

Complaint Filed by an ASEAN-Registered Lawyer or Law Firm and Solution to Complaint Proposed and Accepted

The Complainant

ARISE & Partners (the ASEAN Enterprise) is a duly registered law firm based in AMS-X. It files a complaint under ASSIST on behalf of its client, a company duly registered in AMS-X, in relation to the new excise duty imposed by AMS-Y (the Destination Contact Point or DCP) on palm oil and food products containing palm oil under its Ministry of Health's Food Regulation Chapter 1000, Section 100 of 2015.

The Complaint Details

The measure adopted by the Government of AMS-Y introduced taxes on foods high in sugar and saturated fat as part of a strategy for addressing the rising problem of obesity in Singapore.

ARISE & Partners claims that AMS-Y's measure expressly targeted palm oil and not just the saturated fat component of palm oil and of products containing palm oil, thereby discriminating against palm oil and demonizing the product as a whole instead of just discouraging excessive consumption of products containing saturated fats, independently of the vegetable or animal origin of the fats.

ARISE & Partners claims in its ASSIST complaint, that the measure adopted and applied by AMS-Y is contrary to Article 6 of the ATIGA (on National Treatment on Internal Taxation and Regulation), in as much as it discriminates against palm oil as a whole and is not applied to other 'like' products manufactured or sold in AMS-Y (*i.e.*, food products containing saturated fats deriving from soy, sunflower, rapeseed, corn, peanut or animal fat).

Review by ASSIST's Central Administrator

This complaint was validly lodged by the ASEAN-registered Lawyer, but the Central Administrator of ASSIST requests additional information from the complainant in order to properly assess the claim and accept the complaint. In particular, the Central Administrator requests re-submission the complaint by annexing information on the AMS-Y measure that is allegedly inconsistent with the ATIGA.

Resubmits Complaint with Additional Information

ARISE & Partners resubmits the complaint and annexes both the copy (in the English language) of AMS-Y's Ministry of Health's Food Regulation Chapter 1000, Section 100 of 2015, and a legal brief detailing out its allegations, the parts of the AMS-Y measure that are considered discriminatory, and the arguments that the ASEAN Enterprise believes should be taken into consideration for purposes of accepting the complaint and possibly providing a solution.

Central Administrator Accepts

On the basis of the re-submitted and now complete complaint, the Central Administrator accepts the complaint as falling within the scope of ASSIST and as being validly lodged. The ASSIST proceeding commences and the complaint is submitted to AMS-Y (the Destination Contact Point) and copied to AMS-X (the Home Contact Point) for information.

The Destination Contact Point agrees to Accept

The Destination Contact Point (*i.e.*, AMS-Y's Ministry of Trade and Industry) reviews the complaint, informally interacts with its domestic Relevant Authorities, namely the Prime Minister's Office, the Ministry of Health, the Ministry of Finance, the Agri-Food and Veterinary Authority, and the Health Promotion Board of AMS-Y, and replies to the Central Administrator that it wishes to accept the complaint and engage in the ASSIST procedure.

Resolution Sought

Upon internal discussions between the Destination Contact Point and the Relevant Authorities, it emerges that, indeed, the measure adopted by AMS-Y, imposing increased excise duties to a range of foods high in sugar and saturated fat, is aimed at discouraging excessive consumption of substances considered dangerous under Singapore's strategy for addressing the rising problem of obesity among its citizens. This is in line with similar actions taken by several countries around the world and with the World Health Organization's Global Action Plan for the Prevention and Control of Non-Communicable Diseases 2013-2020, such as diabetes and obesity.

However, AMS-Y recognizes that the measure did single-out certain products (*i.e.*, *inter alia*, palm oil) and did not target, in a '*neutral manner*', the substances (*i.e.*, saturated fats) that the Government considers dangerous (if consumed in excess) from a dietary and health policy perspective. Therefore, the Destination Contact Point, in coordination with AMS-Y's Relevant Authorities, proposes the immediate suspension of the measure contained in its Ministry of Health Regulation Chapter 1000, Section 100 of 2015, pending its amendment to delete any express reference to specific products and application only to products containing saturated fats, irrespective of their vegetable or animal origin. Singapore underlined that its measure was never intended to have, *de jure or de facto*, any discriminatory effect or objective, being justified in science and in light of its health protection purpose and applying to all '*like*' products containing saturated fats.

Solution Proposed and Accepted

The Destination Contact Point communicated the proposed solution to the Central Administrator, which in turn informed the Relevant Authorities and Home Contact Point through ASSIST.

Having reviewed the proposed solution, *ARISE & Partners* replies to the Central Administrator through ASSIST and expresses its satisfaction at the proposed solution thereby accepting it.

ASSIST will consider this procedure as one where the complaint was accepted and a solution was provided by the Destination Contact Point and accepted by the Complainant.

Case 4:

Complaint Filed by an ASEAN Enterprise and Solution to Complaint Proposed and Accepted

The Complainant

Star 88 Co., Ltd., the ASEAN Enterprise, is a duly registered shipping company in AMS-X. As a shipowner, it has entered into a two-year binding agreement since January 2018 with an import-export company in AMS-X. The scope of the agreement is to export iron and aluminium from AMS-X into AMS-Y and import rubber and cotton from AMS-Y into

AMS-X using *Star 88 Co., Ltd.*'s fleet of vessels. It has agreed to conduct this export-import transaction in round-trips from AMS-X to AMS-Y using the same vessel. The intention, *inter alia*, is to save cost in fuel consumption and manpower by having a full freight load in both inbound and outbound trips, thereby being able to provide a cost-effective and competitive service on a cross-border basis to customers based in both AMS-X and AMS-Y.

The Complaint Details

In August 2018, *Star 88 Co., Ltd.* learned that AMS-Y has issued a new shipping law, namely the Ministry of Trade Law No. 13 Year 2018, imposing that certain commodities can only be transported for import or export by national maritime transport companies. The four commodities (*i.e.*, iron, aluminium, rubber and cotton), are among the commodities listed in this new shipping law. This new law would certainly result in a financial loss for *Star 88 Co., Ltd.*'s business and prevent it from providing its maritime shipping services between AMS-X and AMS-Y. *Star 88 Co., Ltd.* is very worried and believes that this legislative development is contrary to free trade, to the spirit of the ASEAN Economic Community (AEC) and, possibly, against the specific commitments and obligation of AMS-Y under the relevant ASEAN economic agreements (*e.g.*, the ASEAN Framework Agreement on Services, or AFAS).

Star 88 Co., Ltd. files a complaint under ASSIST in relation to the issuance of the new shipping law by AMS-Y. The AE argues that this new law is a clear measure of protectionism and is incompatible with free trade principles and customary law regarding international maritime services, which will seriously impact AMS-X's shipping companies that are offering cross-border maritime transport services in relation to the commodities affected by this law. Furthermore, the AE claims that this new measure by AMS-Y is a clear violation of the commitments made by AMS-Y to the World Trade Organization and, most importantly for purposes of ASSIST, is a clear violation of the Schedule of Specific ASEAN Commitments of AMS-Y under the AFAS, where AMS-Y have committed to allow foreign shipping companies that are offering cross-border freight transport services within ASEAN to operate within its waters without any limitations to market access and national treatment.

Review by ASSIST's Central Administrator

The Central Administrator of ASSIST – the ASEAN Secretariat initially reviews and accepts the complaint as falling within the scope of ASSIST and as being validly lodged.

The ASEAN Enterprise has provided proof that it is a business registered in an ASEAN Member State (*i.e.*, AMS-X) by providing its company registration number and an electronic copy of its company/business registration in both the local language and English translation (unofficial). The ASEAN Enterprise has also annexed a copy of the Ministry of Trade Law No. 13 Year 2018 that is allegedly in violation of the Schedule of Specific ASEAN Commitments of AMS-Y under the AFAS. The AE has also given a detailed description in the complaint form of the problem in the context of the new law and of its allegations, which the Central Administrator deems sufficient.

Details of the complaint is submitted to AMS-Y (the Destination Contact Point or DCP) and copied to AMS-X (the Home Contact Point or HCP) for information.

Destination Contact Point Accepts Complaint

AMS-Y's Destination Contact Point, (*i.e.*, the Ministry of Trade of AMS-X) reviews the complaint, informally interacts with its domestic Relevant Authorities (RAs), namely the Directorate General of International Trade, the Ministry of Transportation, the Ministry of Marine Affairs and Fisheries, and the Ministry of Finance, and communicates to the Central Administrator that it wishes to accept the complaint and engage in the ASSIST procedure.

Resolution Sought

Upon internal discussions between the DCP and the RAs, AMS-Y decides to postpone the application of the new regulation requiring exporters and importers of certain commodities, including iron, aluminium, cotton and rubber,

to use only AMS-Y's domestic vessels (*i.e.*, vessels belonging to maritime shipping companies based in AMS-Y), as there has also been criticism and disagreements from local exporters that this new regulation will possibly affect export volumes and State revenues, as it will discourage or alienate foreign investors, as many buyers of the restricted commodities are now pending finalization of their contracts. However, AMS-Y stated that it did not intend for the regulation to be seen as a protectionist measure against foreign vessels and in violation of free trade principles. AMS-Y underlined that its measure was initially intended to encourage AMS-Y's shipping industry to increase domestic shipping capacity as more than 90% of all shipping in AMS-Y waters is handled by foreign vessels. Thus, for example, in the rubber industry more than 90% of export shipments are conducted by foreign vessels. Domestic shipping capacity was estimated at 50 million tons in 2017, while foreign vessels shipped 800 million tons in the same year, which is a major difference.

AMS-Y added that the key goal of the regulation is that domestic shipping services companies start to benefit more significantly from the rising amount of sea trade in AMS-Y waters. Currently, most of the contracts and volumes of sea trade are dominated by foreign shipping service companies. However, AMS-Y agrees that it requires a more gradual process rather than a sudden break, thus the decision to postpone indefinitely (although not to revoke) the application of the new law.

Solution Proposed and Accepted

The Destination Contact Point communicated the proposed solution to the Central Administrator, which in turn informed the Relevant Authorities and Home Contact Point through ASSIST.

Having reviewed the proposed solution, *Star 88 Co., Ltd.* replies to the Central Administrator through ASSIST and expresses its satisfaction at the proposed solution thereby accepting it.

ASSIST will consider this procedure as one where the complaint was accepted and a solution was provided by the Destination Contact Point and accepted by the Complainant.

Case 5:

Complaint Filed by an ASEAN Enterprise (Parent Company of its Subsidiary Company) and Rejected by Destination Contact Point

The Complainant

AirTel Co., Ltd. is a duly registered telecommunications company in AMS-Y. It is a subsidiary company of *AirTel Holdings, Inc.* which is based in AMS-X. 80% of the total shares issued by *AirTel Co., Ltd.* are owned by AMS-X shareholders and its senior management level positions are dominated by AMS-Y nationals. *AirTel Co., Ltd.*'s operating license has been revoked by AMS-Y's National Communication Authority in September 2018 on the argument that the telecommunications license possessed by *AirTel Co., Ltd.* is no longer valid. In fact, in August 2018, AMS-Y had amended the Telecommunications Business License Act No. 1500, whereby foreign operators were no longer permitted to apply for Type B and Type C licenses.

A type B telecom license is for an operator with or without its own network, but provides services targeting a segment or even several segments of the public. A type C telecom license is for an operator with a network that provides services to the general public, or services that cause a significant impact on fair competition, the public interest, or require special consumer protection. The applicant applying for Type B and Type C licenses must be companies where AMS-Y nationals hold at least 51% shares and at least three quarters of the applicant's senior level

management and the person authorized to sign any binding commitments, as a representation of the applicant company, must be an AMS-Y national. *AirTel Co., Ltd.* feels that it has been treated unfairly as it simply followed the government process at the time when it had applied for the license and it was not given any notification by AMS-Y on this new development. It has also complied with the requirement for foreign companies with a majority of foreign shareholders, which is obtaining a Foreign Business License from the Ministry of Commerce.

The revoking of *AirTel Co., Ltd.*'s license and the amendment of the business license regulation has caused the shares of *AirTel Co., Ltd.*'s parent company, *AirTel Holdings, Inc.*, to fall 5.67% in AMS-X as AMS-Y is the world's second biggest cellular market. *AirTel Co., Ltd.* believes that the revoking of its license is a discrimination against foreign investors in the telecommunications sector and a violation of the specific commitments and obligations of AMS-Y under the relevant ASEAN Framework Agreement on Services (AFAS).

The Complaint Details

AirTel Co., Ltd. decides to lodge its complaint through ASSIST. However, under ASSIST, an ASEAN Enterprise legally registered in AMS-Y cannot lodge a complaint against AMS-Y for a measure adopted or maintained by the latter. With respect to trade in services, this principle would rule out any complaint being lodged under Mode 3 on Commercial Presence, where an ASEAN Enterprise legally registered and 'commercially present' in AMS-Y would need to bring a complaint against a measure of AMS-Y. Thus, *AirTel Co., Ltd.* decided to request its parent company, *AirTel Holdings, Inc.*, which is based and legally registered in AMS-X, to bring this case under ASSIST against AMS-Y.

Thus, *AirTel Holdings, Inc.*, the ASEAN Enterprise, a duly registered company in AMS-X, files a complaint under ASSIST in relation to the revocation of the license of its subsidiary company, *AirTel Co., Ltd.* which is registered in AMS-Y. *AirTel Holdings, Inc.* argues that the revocation of the license of *AirTel Co., Ltd.* and the amendment of the Telecommunications Business License Act are illegal acts in the telecommunications sector by AMS-Y and thus, a discrimination against foreign investors and in clear violation of the Schedule of Specific ASEAN Commitments of AMS-Y under the AFAS where AMS-Y have committed to allow commercial presence of a foreign company (*i.e.*, the Mode 3 provision of telecommunication services), in other words the legal right for foreign operators, legally registered in another ASEAN Member State to provide the service through commercial establishment, without any limitations to market access and national treatment.

Review by ASSIST's Central Administrator

The Central Administrator of ASSIST – the ASEAN Secretariat initially reviews and accepts the complaint as falling within the scope of ASSIST and as being validly lodged.

The ASEAN Enterprise has provided proof that it is a business duly registered in an ASEAN Member State by providing its company registration number and an electronic copy of its company/business registration in both the local language and English translation (unofficial). The ASEAN Enterprise has also annexed a copy of the AMS-Y Specific Schedule of ASEAN Services Commitments, specifically in the Telecommunication Services sector, as well as the AMS-Y 2010 Telecommunications Business License Act No. 1500 and the amended act (2018).

Details of the complaint is submitted to AMS-Y (the Destination Contact Point or DCP) and copied to AMS-X (the Home Contact Point or HCP) for information.

Review and Decision by Destination Contact Point

AMS-Y's Destination Contact Point, (*i.e.*, the Ministry of Trade of AMS-X) reviews the complaint, informally interacts with its domestic Relevant Authorities (RAs), namely the Ministry of Telecommunications, the National Communication Authority, and the Ministry of Commerce, and communicates to the CA that it wishes to reject the complaint.

The Destination Contact Point finds sufficient basis that AMS-Y has complied with its relevant ASEAN commitments and that the complaint lacks merit. It argues that, although under the AFAS Schedule of Specific Commitments, AMS-Y has no limitations on foreign ownership, it is stated in its Horizontal Commitments that, as a limitation to market access, the Commercial Presence of the foreign service provider(s) may be in the form of a joint venture and/or representative office, which should meet the following requirements: (i) not more than 49% of the capital share of the company may be owned by foreign partner(s); (ii) at least three quarters of the company's senior level management and the person authorized to sign any binding commitments as a representation of the company must be AMS-Y nationals. Thus, the amendment of the 2018 Telecommunications Business License Act No. 1500 is not in violation of AMS-Y's Schedule of Services Commitments.

In response to AE's claim that it has not received any notification from AMS-Y on the new amendment, AMS-Y responded that the Government of AMS-Y has promulgated the amendment of the law through official government websites and local newspapers after it has been approved on 1 September 2018.

The Result

The Destination Contact Point's reasons for rejection are sent to the Central Administrator and it is reviewed for language and sufficiency of information. The Central Administrator accepts the reason of rejection as it appears valid and sufficiently justified. The Central Administrator: (i) notifies the ASEAN Enterprise of the decision; (ii) informs the ASEAN Enterprise that the ASSIST proceedings are terminated; and (iii) informs the ASEAN Enterprise of its options (*i.e.*, legal action, arbitration, withdrawal of service, etc.) and advise the Central Administrator whether it intends to pursue any of these courses of actions.

ASSIST will consider this procedure as one where the complaint was rejected and a solution has not been provided.

