

Trade Facilitation through ASEAN Solutions for Investments, Services and Trade (ASSIST)

Introduction

The trade facilitation tool of the ASEAN Solutions for Investments, Services and Trade (ASSIST) was officially launched at the 48th ASEAN Economic Ministers' Meeting on the 3rd of August 2016 in Vientiane, Lao PDR. ASSIST can be used by ASEAN-based enterprises (*i.e.*, companies that are legally registered in one of the 10 ASEAN Member States) to lodge complaints or to interact with ASEAN Governments in relation to intra-ASEAN cross-border trade issues. ASSIST is currently available only to address cross-border problems with regard to trade in goods, but ARISE Plus is supporting ASEAN to roll-out ASSIST for trade in services by training all ASEAN Member State Governments (*i.e.*, the respective ASSIST Focal Points) during the first six months of 2019. It will eventually be extended also to trade-related investment measures.

ASSIST provides a significant opportunity for ASEAN-based enterprises, either directly or through ASEAN-based trade associations, chambers of commerce, business councils, business federations, and ASEAN-based lawyers or law firms, to seek solutions to the constraints or problems that they may be facing when trading within and across ASEAN. ASSIST is a non-judicial, non-confrontational and non-binding trade facilitation tool that aims at finding solutions, rather than apportioning responsibilities and/or sanctioning instances of illegality or inconsistency with ASEAN obligations. It is freely available online (<http://assist.asean.org>), free of charge, it works in English, and is based on simple and streamlined procedures that are managed by a software and do not require any physical or direct interaction with ASEAN Member States' Government authorities or the ASEAN Secretariat.

Who are the key actors within ASSIST?

- The **ASEAN Enterprise** (AE), or the ASEAN-based association, chamber of commerce, business council, business federation or ASEAN-registered lawyer or law firm representing the ASEAN enterprise, is the actor that raises an issue, query or complaint through ASSIST. It must be a company or entity duly-registered (*i.e.*, holding a regular and valid business registration license) in one of the ten ASEAN Member States;
- The ASEAN Secretariat is the **Central Administrator** of ASSIST and, in that capacity, manages the online proceedings. All communications among the key actors within ASSIST must go through the Central Administrator;
- The **Home Contact Point** (HCP) is 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;

- The **Destination Contact Point** (DCP) is the national body (i.e., 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 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; and
- The **Responsible Agencies** (RAs) are the agencies or other government representatives tasked with finding a solution to the issue. They are the competent authorities in the ASEAN Member State where the issue is raised and where the ASEAN Enterprise is facing trade problems. They will suggest a possible solution to the ASEAN Enterprise through their Destination Contact Point and thereto the Central Administrator.

How does ASSIST work?

ASSIST is based on a simple and streamlined process that largely unfolds online:

- The ASEAN Enterprise (or the ASEAN-based association, chamber of commerce, business council, business federation, or registered lawyer or law firm that is representing the ASEAN Enterprise, in cases of anonymous complaints) submits a complaint on the ASSIST website;
- If the complainant wishes for the complaint to be anonymous, the online submission may be made *'on its behalf'* by an ASEAN-based trade association, or any other representative entity chosen by the complainant, such as an ASEAN-based chamber of commerce, business council, business federation, or registered lawyer or law firm, so long as it is an entity duly registered in one of the ten ASEAN Member States. In this case, the complaint will be filed using the representative entity's business registration number and no information on the actual ASEAN Enterprise need to be revealed to the Home and/or Destination Contact Points. In case of a complaint filed on behalf of a client by an ASEAN-registered lawyer or law firm, special rules apply;
- The Central Administrator reviews the complaint and may return it to the ASEAN Enterprise (or to the representative entity, in cases of anonymous complaints) for possible amendment and re-submission, if necessary;

- When accepted by the Central Administrator, the Destination Contact Point reviews the complaint and may reject it, if it considers that ASSIST is not the appropriate *forum* for consultation or if it does not wish to address it for other compelling reasons (*e.g.*, there is ongoing domestic litigation on the same issue before national courts, or there is a parallel proceeding at the World Trade Organization in Geneva under its dispute settlement system). In this case, a justification must be given by the Destination Contact Point;
- If the complaint is accepted by the Destination Contact Point, the Responsible Authority(ies) in that country will search for a solution to the issue at stake;
- If a solution can be proposed, it will be notified by the Central Administrator to the complainant (*i.e.*, the ASEAN Enterprise or the representative entity, in cases of anonymous complaints) and to the Home Contact Point; and
- The ASEAN Enterprise (or the representative entity, in cases of anonymous complaints) may accept the proposed solution or reject it and seek other dispute resolution avenues.

ASEAN Enterprises can expect practical solutions to be found through ASSIST in **40 to 60 working days maximum** from the date of acceptance of the complaint by the Central Administrator. All solutions must be in full conformity with existing ASEAN commitments and applicable ASEAN Member States' laws and regulations.

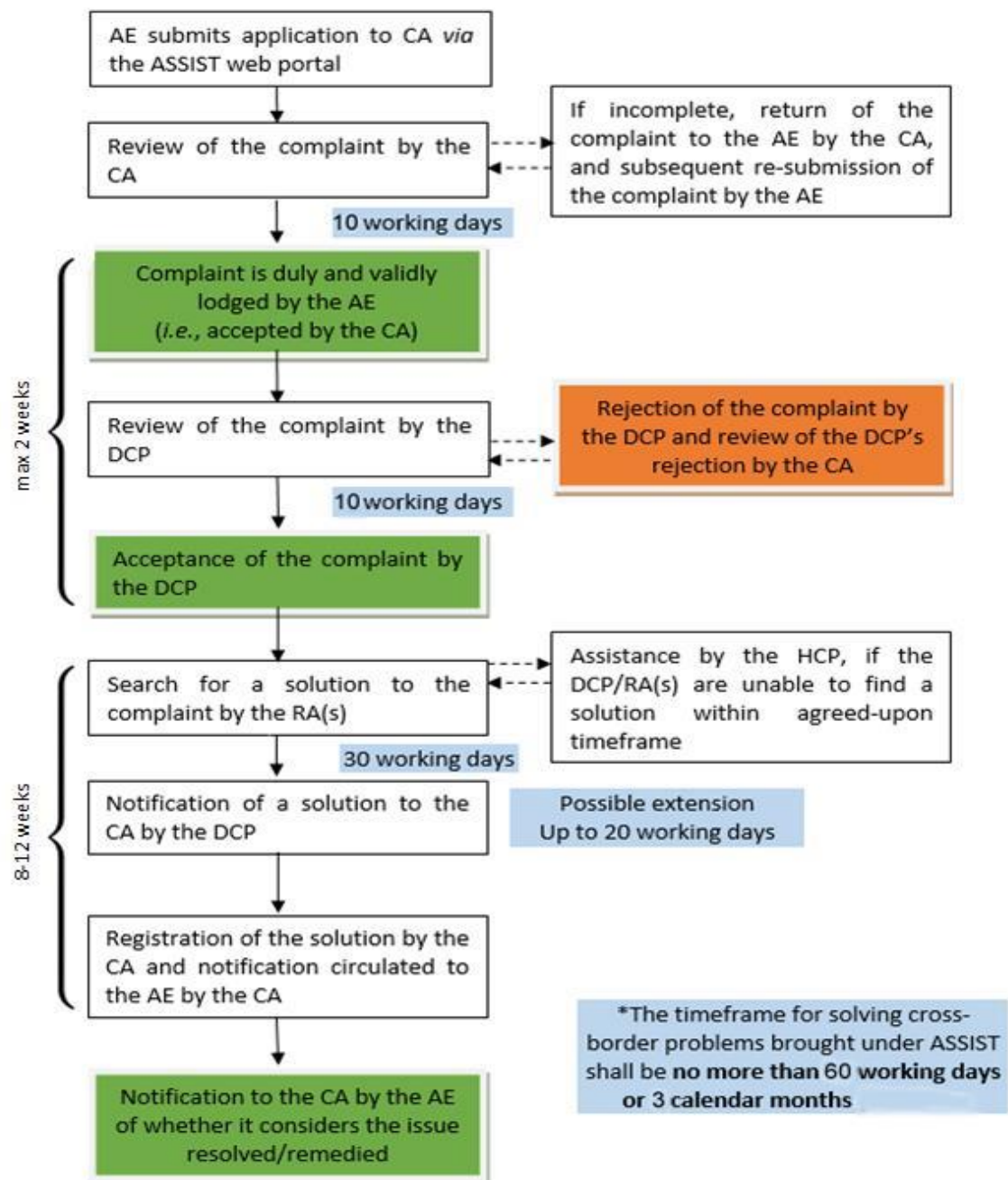
If the ASEAN Enterprise that lodged the complaint (or the representative entity, in cases of anonymous complaints) is not satisfied with the outcome, it may refer the case, through its ASEAN Member State of business registration, to the ASEAN Compliance Body (ACB) or to the ASEAN Enhanced Dispute Settlement Mechanism (EDSM). Recourse may even be made to the WTO dispute settlement system, but these alternative dispute resolutions mechanisms are driven by Governments, not directly by ASEAN enterprises.

Naturally, the ASEAN Enterprise (or the representative entity, in cases of anonymous complaints) may also decide to pursue national litigation or alternative dispute resolution mechanisms (*i.e.*, mediation, conciliation or arbitration) within national ASEAN jurisdictions.

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 ASSIST process

Flowchart of the ASSIST Mechanism and its Associated Timeline



The recent improvements to enhance ASSIST utilization

To date, only 3 cases related to intra-ASEAN trade in goods issues have been lodged under ASSIST since August 2016 and only 1 of them has gone through the full procedure. Some consider the reluctance of ASEAN's private sector at using ASSIST a consequence of one or

more of these potential factors: 1) Fear of 'retaliation' by the ASEAN Governments complained against; 2) Lack of awareness of the existence or functioning of ASSIST; and/or 3) Language barriers in the ASEAN countries that do not operate in English, particularly among MSMEs.

To address these restraining factors, ARISE Plus is working with ASEAN Member States to improve the anonymity features of ASSIST, so as to dispel complainants' fears about possible 'retaliation', it is increasing its outreach initiatives in order to create greater awareness of ASSIST among ASEAN's private sector, media, academia, lawyers, trade associations, chambers of commerce, business councils and business federations, and it will endeavour to translate the ASSIST website and related materials in all ASEAN languages. Dedicated tutorials with a selection of simulated cases have also been developed and are available on the ASSIST website to help ASEAN enterprises understand the system and use it.

Private sector engagement and ASEAN trade facilitation tools

All these engagements require the active participation and support of ASEAN private sector organizations such as the *ASEAN Business Advisory Council (ABAC)* or national business advisory councils, trade associations, chambers of commerce and/or business federations. ARISE Plus looks forward to increase its cooperation and coordination with all relevant civil society organizations, in order to turn ASSIST into a powerful tool of trade facilitation, in line with the objectives of the ASEAN Economic Community (AEC) Blueprint 2025 and as part of its focus on supporting private sector engagement and the activities of the ASEAN Trade Facilitation Joint Consultative Committee within the scope its Strategic Action Plan.

ASSIST is just one of the tools of trade facilitation that ARISE Plus has been assisting ASEAN with since the launch of its predecessor programme (ARISE) in 2012. The others are, *inter alia*, the **ASEAN Trade Repository** (<http://atr.asean.org/>) with its objective of legislative and regulatory transparency, the trade and transport facilitation regime represented by the **ASEAN Customs Transit System** (<https://acts.asean.org/>), and the work on ASEAN standardization, harmonization and mutual recognition of conformity assessments, particularly in the areas of food safety and pharmaceuticals, notably by supporting the **ASEAN Risk Assessment Centre** (<http://www.arac-asean.org/>) and through the **ASEAN Harmonized Standards Search Facility** (<http://atr.asean.org/standards/>).

Key drivers for AEC realization

ASSIST fits perfectly within the three dimensions that the European Union (EU), through its programme of technical assistance to ASEAN (ARISE Plus), considers critical to the advancement of the ASEAN Economic Community and, in broader terms, of the socio-

economic development of the region: Trade Facilitation, Regulatory Transparency and Private Sector Engagement. Indeed, these are the key drivers of ARISE Plus, the EU Programme of support to ASEAN's regional economic integration from 2017 to 2022, and they should resonate well with the daily needs of the ASEAN business sector.

Trade Facilitation is at the centre of all EU activities of support under ARISE Plus, with assistance to flagship ASEAN initiatives such as the *ASEAN Trade Repository (ATR)*, the *ASEAN Solutions for Investments, Services and Trade (ASSIST)* and the *ASEAN Customs and Transit System (ACTS)*, which ultimately all cater to the private sector. Trade facilitation is what you all need on the ground, every day, and ASSIST is meant to allow ASEAN enterprises to interact directly with ASEAN Governments and address cross-border problems with a view to facilitating intra-ASEAN trade.

Regulatory Transparency is the bedrock of trade facilitation and a pre-requisite to traders complying with the applicable rules, protecting their rights, and taking advantage of the trade opportunities under the AEC. Legislative and regulatory transparency of AMSs' measures that relate to trade, including non-tariff measures (NTMs), and that have the ability to distort trade, is critical. ASEAN is committed to greater transparency through the full operationalization of the ATR and the network of National Trade Repositories (NTRs) and ARISE Plus has been supporting these objectives. As businesses benefit from greater transparency, ASSIST must be seen as the best option to address their problems.

Private Sector Engagement must increase, as called for by the AEC Blueprint 2025, for ASEAN to adopt better trade policies and trade related measures. The private sector must also assist AMSs in identifying and addressing NTMs, as well as removing NTBs within the region. Again, this is exactly what ASSIST aims at delivering and the ASEAN business sector should take advantage of it.

Trade facilitation, transparency, private sector engagement and systems like ASSIST or the ACTS can act as fundamental catalysts to socio-economic development and the EU, through ARISE Plus and several other regional and national programmes of tailored technical assistance, remains committed to assist ASEAN and individual AMSs in achieving these important objectives and fully operationalizing these tools. ASEAN needs a vibrant business sector that is ready to embrace these tools and the related opportunities.

Do not hesitate to use ASSIST to address your intra-ASEAN trade issues. ARISE Plus stands ready to support ASEAN's private sector with further capacity building or awareness creation activities on how to make best use of ASSIST and of the other ASEAN trade facilitation tools.