

FREQUENTLY ASKED QUESTIONS ON ASSIST

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? When will it be extended to trade in services and investment issues?

The decision to initially limit ASSIST only to intra-ASEAN trade in goods issues was made by ASEAN Member States in order to gradually operationalize the system smoothly. ASSIST will likely be extended to intra-ASEAN trade in services and investment issues as soon as possible.

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.

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, chambers of commerce, 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, chambers of commerce, 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 trade in services and trade in investment, which are 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, chambers of commerce, 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.

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 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.

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. This will be in accordance with the prevailing legislation in the respective ASEAN country.

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.

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).

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

This is possible if a complainant decides to use a trade association or similar entity (*i.e.*, a chamber of commerce) in order to lodge a complaint on its behalf. The trade association does not need to indicate the name of the specific ASEAN Enterprise(s) on behalf of which it files the complaint and this approach is also intended to allow for multiple complainants, having the same trade problem, to avoid having to file multiple complaints.

4.9. Why/when should a complainant or multiple complainants consider lodging a complaint through a legally registered ASEAN trade association or chamber of commerce?

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, 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.

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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