Report

on the

"Definition of the ATR's 'Shell' Architecture"

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1. Introduction

Activity 1.1.2.2 (on "*Assisting in the development of regional capacity to classify and notify NTMs*") of the programme of technical assistance of ASEAN Regional Integration Supported by the European Union (hereinafter, ARISE) falls within ARISE's Sub-Project 1.1.2 on the "*Support to ATIGA Implementation*" and aims at supporting the implementation of the ASEAN Trade in Goods Agreements (hereinafter, ATIGA), with particular focus on enhanced transparency and non-tariff measures (hereinafter, NTMs).

The strengthening of the institutional arrangements and management of the regional economic integration process will occur through the creation and operationalization of the ASEAN Trade Repository (hereinafter, ATR) and the National Trade Repositories (hereinafter, NTRs). ARISE's engagement, as endorsed by ASEAN in its Overall Work-Plan, aims at strengthening the institutional framework within ASEAN Member States (hereinafter, AMSs) and the ASEAN Secretariat (hereinafter, ASEC) in relation to regulatory transparency, classification and notification of NTMs, and the related reporting processes. The ultimate goal of this technical assistance and capacity building is to enable AMSs to operate NTRs and to use them as a stepping stone to feed information, in a standardised and systematic manner, to the ATR, which is a mandated body under the ATIGA and an agreed objective by 2015.

Regulatory transparency is a fundamental catalyst for economic development, cross-border investment and trade, and ASEAN regional integration. The ATIGA requires that an ATR be established by 2015 and be made accessible to the public through the internet. The ATR must contain the trade and customs laws and procedures of all AMSs and trade-related information such as: (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under this Agreement and other Agreements of ASEAN with its Dialogue Partners; (iii) rules of origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each Member State; and (ix) list of authorised traders of AMSs. It is the ASEC that must maintain and update the ATR based on the notifications submitted by AMSs.

The initial '*Mapping Exercise*', conducted by ARISE within Activity 1.1.2.1 and the related Activity Reports with the Conclusions and Recommendations, as circulated to the ASEC and AMSs and presented at the 13th Meeting of the ASEAN Coordinating Committee on the ATIGA of 11-14 November 2013 in Yangon, Myanmar, indicated a number of actions that need to be considered by AMSs for purposes of moving forward the process of establishment and operationalisation of the NTRs/ATR.

In line with those conclusions and recommendations, and according to the Terms of Reference (ToRs) of Activity 1.1.2.2, the immediate area of intervention of ARISE now focuses on building the skills on NTRs/ATR content development, the reporting processes, and the templates and common classification language, especially in relation to NTMs (in cooperation/coordination with other international donors active in this area of technical assistance, such as UNCTAD and/or the World Bank), in order to ensure that a standardised and harmonious notification process occurs regionally and in each AMS.

The key results, that this technical assistance must deliver, are the following:

- Strengthening the institutional framework within AMSs and ASEC in relation to regulatory transparency, classification and notification of NTMs, and the related reporting processes;

- Assisting and promoting the institutionalisation and operationalisation at AMSs' level of the NTRs, in light of ASEAN transparency requirements under the ATIGA (ATR) and parallel notification obligations under the WTO; and

- Assisting and promoting the cooperation among AMSs, the ASEC and the ASEAN sectoral committees responsible for trade, customs, standards and technical regulations in light of the NTR/ATR transparency obligations and ensure that the system be open to all stakeholders (*i.e.*, governments, private sector, foreign entities, etc.), including for purposes of a functioning ACTS system based on EU SOLVIT's best practices.

The first task of this activity concerns the development of the ATR's '*shell*' architecture (*i.e.*, its substantive structure and outlay), which will dictate the structure of the IT interface and the requirements for both the hardware and software development. This '*shell*' should then also inform the adjustments to be brought to the NTRs so that all 10 AMSs' repositories will have the same structure, scope, look and searchability functions.

2. Stocktaking from the '*Mapping Exercise*'

The '*Mapping Exercise*' conducted within Activity 1.1.2.1 led to a number of conclusions and recommendations that should inform the structure and development of the ATR. The final consideration developed from the outcome of the '*Mapping Exercise*' is that the ATR be a '*well-structured*', '*comprehensive*', '*accessible*' and '*easy-to-search*' source of '*reliable*' (if not legally binding) information on the trade and customs laws and procedures of all AMSs, containing AMSs' trade-related information in line with Article 13 of the ATIGA and with the notification architecture, the procedural requirements and the substantive contents agreed among AMSs. In particular:

- In order to be '*well-structured*', the ATR must be based on a framework that AMSs should agree to and consider legally-binding. This overall architecture should be simple, logical, easy to maintain and to update, and based on the macro-areas of notification indicated in the (non-exhaustive) list of Article 13 of the ATIGA. The regional architecture agreed for the ATR should then inform the structures of the individual AMSs' NTRs;

- In order to be '*comprehensive*', the ATR must contain all trade-related information on the trade and customs laws and procedures of all AMSs, as mandated by the ATIGA. For this to happen, AMSs must display and apply the political will to systematically identify, collect, classify and ultimately notify all domestic measures that relate to trade;

- In order to be '*accessible*', the ATR must be in English, based on an efficient and reliable software that can easily connect to the NTRs and retrieve information, public, non-fee-based and based on the internet;

- In order to be '*easy-to-search*', the ATR must be well organised, running on a simple and logical software, based on a shared classification, as much as possible searchable by HS code, well cross-referenced with hyperlinks to other AMSs' internet facilities and databases where the substantive information can be traced and downloaded (or purchased if available only on paper form), and user-friendly. The same interfaces, structures, style and searchability functions should apply to the ATR and to the individual NTRs of all AMSs; and

- In order to be '*reliable*', the ATR must be complete, timely updated by AMSs through their notifications to the ATR and by the upload of the contents on their NTRs, and based on a shared set of ASEAN templates, classifications and categories.

3. The overall architecture of the ATR

3.1 Introduction

The ATR will consist of an ASEAN-level IT interface linked by means of hyperlinks to a series of interoperable NTRs that provide and maintain the national-level trade related information and the actual contents. The ATR will be the entry point for system users and the gateway to the NTRs. For the ATR and the NTRs to smoothly interface, they must be ideally based on a single software and on common architectures and search functions. Hence the importance of a single classification (and of legally-binding standard operating procedures).

The ATR should be set-up as a portal, that is a website providing a single point of access of trade-related information of AMSs (through the NTRs). The information (*i.e.*, links) found on the ATR will be accessible both by '*topic*', according to a shared classification, and by '*country*' (*i.e.*, the ten AMSs). The ATR should be accessible by links from the ASEC's website (www.aseansec.org) and the ASEAN website (www.asean.org). The ATR's server should be '*parked*' on the ASEC's IT network and maintained by the ASEC. The actual information, however, would be '*parked*' and contained in each individual AMS's NTR. The structure of the ATR should be three-pronged, to include:

- Information by '*topic*', where the topics correspond (at the very least) to each of the nine macro-areas of notification under Article 13(2) of the ATIGA, as further classified, detailed and clarified below;

- Information by country, which allows, for each topic, to retrieve the trade-related information sought in each AMS; and

- A link to the ASEAN Consultation to Solve Trade and Investment Issues webpage.

In addition, there will be a restricted log-in section, with a user-name and password for each AMS. This section will contain the actual notifications that AMSs submit according to Article 11 of the ATIGA. It may also contain the written comments and results of discussions concerning

the notifications, all of which would be compiled, updated and maintained by the ASEC on the ATR, following the notifications made by the AMSs.[1]

Therefore, the ATR webpage should include the following:

- A (password-protected) log-in function to be used by government employees from relevant AMSs agencies;
- A '*drop-down*' or maximising/minimising heading labelled "*Trade-related information by topic*". The nine-topics correspond to the nine macro-areas of notification, further classified according to a growing degree of detail;
- A '*drop-down*' or maximising/minimising heading labelled "*Trade-related information by country*", which would immediately direct users to each AMS's NTR, adequately organized (or re-organized) on the basis of the uniform and standardized structure of the ATR; and
- A notice concerning the ASEAN Consultation to Solve Trade and Investment Issues mechanism and a link to its webpage.

Each of these content areas is further discussed in the sections and sub-sections below.

3.2 Restricted log-in

A restricted-access portion of the ATR should be created to serve two main purposes. First, given the confidential nature of some information provided by AMSs to the ASEC, there should be a central registry where confidential documents can only be viewed by other AMSs. Second, to accommodate Article 11 of the ATIGA, a restricted portion of the ATR should serve as a registry of discussions concerning notified documents between AMSs.

Regarding the structure of the restricted-access portion of the ATR, again, it should be user-friendly and organised both by country and topic. It would also be useful to include a '*most-recently-submitted documents*' section.

With regard to the purpose that the ATR serve as registry of discussions, the restricted-access portion of the ATR should allow for AMSs to submit comments on notification documents submitted by other AMSs. There should be a mechanism created to allow for further responses to facilitate a discussion between AMSs as envisioned in Article 11.

This portion of the ATR would be maintained and regularly updated, as necessary, by the ASEC. It would be '*parked*' on the ATR and would be based on the information officially transmitted by AMSs to the ASEC and to other AMSs in light of and in line with the obligations under Article 11 of the ATIGA. It will not be publicly available to all users and the information contained therein will remain confidential.

[1] Article 11(5) of the ATIGA states that the contents of the notifications and all information relating to them (*e.g.*, written comments and results of discussions) shall be treated with confidentiality.

3.3 Trade-related information by topic

As mentioned above, Article 13 of the ATIGA identifies nine areas for inclusion in, and notification to, the ATR: (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under the ATIGA and other agreements of ASEAN with its Dialogue Partners; (iii) rules of origin; (iv) non-tariff measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each AMS; and (ix) list of authorised traders of AMSs. This list is indicative in nature (*i.e.*, non exhaustive) and it should be defined in detail and agreed to by AMSs.

The indicative list of the macro-areas of ATR notification contained in Article 13 of the ATIGA should be confirmed and/or reduced/increased by AMSs so that the ATR/NTRs structure can be organised accordingly and all AMSs can ensure that the domestic institutional and organisational structures are established to meet their transparency obligations. The trade-related information, which must be (notified and) contained in the ATR, particularly as it includes the all-encompassing category of NTMs, is to comprise all measures of AMSs having an effect on trade (*i.e.*, that "*relate to trade*" as provided by Article 13 of the ATIGA). This is clear from the wording of Article 13 of the ATIGA. This transparency obligation is very ambitious, much more than those established in the WTO system, and it is geared to the level of ambition of AEC 2015 and the related process of regional economic integration. The wording and the aim of Article 13 of the ATIGA support an extensive interpretation of the scope of the transparency requirements envisioned therein.

Each of the nine macro-areas of notification included in Article 13(2) of the ATIGA corresponds to nine '*topics*' under the ATR. These topics are further divided and classified to reflect (and distinguish between) all notifiable measures that are comprised therein. The '*drop-down*' or maximising/minimising structure allows the classification to be displayed for each of the nine '*topics*' (at the 2 or 3-digit level).

The suggestion is made that the indicative list of the macro-areas of ATR notification contained in Article 13 of the ATIGA be clarified and endorsed by AMSs according to the following classification:

1. Tariff nomenclature

2. MFN tariffs, preferential tariffs offered under the ATIGA and other Agreements of ASEAN with its Dialogue Partners

- 2.1 MFN tariffs (WTO);
- 2.2 ATIGA tariffs;
- 2.3 Tariff concessions applicable pursuant to the ASEAN – Australia New Zealand Free Trade Area;
- 2.4 Tariff concessions applicable pursuant to the ASEAN – China Free Trade Area;
- 2.5 Tariff concessions applicable pursuant to the ASEAN – India Free Trade Area;
- 2.6 Tariff concessions applicable pursuant to the ASEAN – Japan Free Trade Area; and
- 2.7 Tariff concessions applicable pursuant to the ASEAN – Korea Free Trade Area.

3. Rules of origin

- 3.1 Non-preferential rules of origin; and

3.2 Preferential rules of origin.

4. Non-tariff measures

4.1 Sanitary and phytosanitary (SPS) measures;
4.2 Technical barriers to trade (TBT);
4.3 Pre-shipment inspection and other formalities;
4.4 Contingent trade protective measures;[2]
4.5 Non-automatic licensing, quotas, prohibitions, and quantity control measures other than for SPS or TBT reasons;
4.5 Price-control measures including additional taxes and charges;
4.6 Finance measures;
4.7 Measures affecting competition;
4.8 Trade-related investment measures (TRIMs);
4.9 Distribution restrictions;
4.10 Restriction on post-sales services;
4.11 Subsidies (excluding export subsidies);
4.12 Government procurement restrictions;
4.13 Intellectual property; and
4.14 Export-related measures.

5. National trade and customs laws and rules

5.1 Laws and regulations concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges and other taxes;
5.2 Laws and regulations relating to the rates of duty not otherwise included under category 2 (item *ii* of Article 13(2) of the ATIGA), taxes or other charges (*e.g.*, customs surcharges, additional taxes and charges, customs fees and charges on imports);
5.3 Laws and regulations relating to requirements, restrictions or prohibitions on imports or exports, transit goods or transhipment (*e.g.*, licensing, quotas, prohibitions and quantity control measures);
5.4 Laws and regulations relating to requirements, restrictions or prohibitions on the transfer of payments for imports or exports, transit goods or transhipment; and
5.5 Laws and regulations affecting the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of imports or exports, goods in transit and transhipment.

6. Procedures and documentary requirements

6.1 Consular formalities;
6.2 Documentary requirements relating to the importation, exportation, transit and transhipment of goods;
6.3 Licensing;
6.4 Pre-shipment inspections and other formalities;
6.5 Analysis and inspection procedures;
6.6 Quarantine, sanitation, and fumigation;

[2] It is noted that the classification of anti-dumping and countervailing duties as NTMs is still the object of debate among AMSs, the result of which may lead to trade defence measures being dropped as an area of NTM notification and compilation in the database for purposes of the ATR/NTRs. The UNCTAD's 2012 NTM Classification includes such measures within the category of "*Contingent Trade Protective Measures*". On the contrary, these measures are not listed as NTMs under the ASEAN Working Definition of NTMs, adopted by the Interim Technical Working Group (ITWG) on CEPT for AFTA. Certain AMSs have expressed reservations with respect to the necessity of notifying measures taken by AMSs through trade defence instruments, particularly as NTMs.

- 6.7 Special customs regimes;
- 6.8 Special customs formalities (*e.g.*, formalities that are not clearly related to the administration of any measure applied by the given importing country such as the obligation to submit more detailed product information than normally required on the basis of a customs declaration, the requirement to use specific points of entry, etc.).

7. Administrative rulings

8. Best practices in trade facilitation

- 8.1 Publication and availability of information (*e.g.*, enquiry points);
- 8.2 Advance rulings;
- 8.3 Appeal or review procedures;
- 8.4 Disciplines on fees and charges imposed on or in connection with importation and exportation;
- 8.5 Release and clearance of goods (including, *inter alia*, pre-arrival processing, risk management, post-clearance audit, authorized operators, expedited shipments);
- 8.6 Border agency cooperation;
- 8.7 Formalities connected with importation and exportation and transit (*e.g.*, single window, temporary admission of goods);
- 8.8 Freedom of transit; and
- 8.9 Customs cooperation.

9. List of authorised economic operators

The definition and actual content of the notification and reporting obligations for each of the nine macro-areas reflected in Article 13 of the ATIGA, as classified above, is further detailed in section 4 below and will be fully developed in the subsequent stages of Activity 1.1.2.2.

For the purposes of the ATR's structure and the webpage, the software should be arranged to ensure that, when a user clicks on this section's heading, a list of the nine macro-areas of notification (*i.e.*, nine topics) housed in the ATR should '*drop-down*' or maximise. Within each of these nine topics, there should then be the possibility for a '*drop-down*' or maximization of a list of the ten AMSs. For the most part, this list of countries should just contain links to external websites maintained by each particular AMS (one exception to this will be the non-tariff measure database discussed below). The links should be opened in a separate tab or window.

3.4 The non-tariff measure database

Paragraph 4 of Article 40 of the ATIGA requires the creation of an NTM database. In particular, it provides that:

> "*The database on non-tariff measures applied in Member States shall be further developed and included in the ASEAN Trade Repository as referred to in Article 13*".

This suggests that, when a user searches by '*topic*' (section 3.3), the link provided to '*non-tariff measures*' in the list should link to an internal webpage maintained by the ASEAN Secretariat and based on the NTM databases compiled and provided by each AMS, which would also be available on each AMS's NTR. This webpage should include a search prompt allowing for any

user to perform an *ad-hoc* query. The output of this query should be provided in an integrated spreadsheet on the webpage. There should also be links to the individually-maintained NTM databases of AMSs, as appropriate. Additionally, if a user searches by country from the main ATR webpage (section below), the list that '*drops-down*' or maximises should include the ten AMSs and a link to the ASEAN NTM database.

3.5 Trade-related information by country

This section should provide the same information as in the previous section, but in a reverse structure. That is to say, the initial '*drop-down*' or maximisation should list the ten AMSs. Then a sub-category from that list will provide a new list of the nine topics of trade-related information. Those nine topics will be in the form of links that lead users to the external websites and sources of information maintained by each respective AMS. This method will facilitate searchability by users and allow AMSs to achieve uniform NTRs (based on the standardized ATR structure) while not having to completely restructure their existing trade repositories, but simply reorganizing the existing information by means of weblinks.

To further clarify the structure and rationale of the last two sections, this structure is intended to increase user-friendliness. If the user opts to '*search*' by type of information, it should be led to a page that lists the ten AMSs. The links on this webpage should lead him/her to the individual relevant NTR information from the selected AMS. Conversely, if the user on the main ATR webpage chooses to '*search*' by country, he/she should be led to a webpage that lists the nine topics of information required in the ATR. From there, the links should again lead to the individual relevant NTR information from the selected AMS. The ATR will lead to the same information, but give users a choice on how they would like to arrive at that information.

3.6 The ASEAN Consultation to Solve Trade and Investment Issues

The main ATR webpage should also contain a notice regarding the ASEAN Consultation to Solve Trade and Investment Issues (hereinafter, ACT). The message should state that:

> "*Any organisations/companies which encounter any operational issues relating to the failure of an ASEAN Member State to implement properly one of its obligations are encouraged to access the ACT website. ACT is an internet-based problem solving network where private individuals and businesses may report problems associated with the implementation of ASEAN agreements*".

The link to the ACT should then be included (https://act.asean.org/act/login/index.do). This section of the ATR is to be maintained and regularly updated by the ASEC. It is to be '*parked*' on the ASEC's IT network.

4. Identification and description of the broad macro-areas for notification to the ASEAN Trade Repository

As mentioned, Article 13 of the ATIGA identifies nine areas for inclusion in, and notification to, the ATR: (i) tariff nomenclature; (ii) MFN tariffs, preferential tariffs offered under the ATIGA and other agreements of ASEAN with its Dialogue Partners; (iii) rules of origin; (iv) non-tariff

measures; (v) national trade and customs laws and rules; (vi) procedures and documentary requirements; (vii) administrative rulings; (viii) best practices in trade facilitation applied by each AMS; and (ix) list of authorised traders of AMSs.

The exact definition and content of these nine macro-areas of inclusion in, and notification to, the ATR bear fundamental importance for purposes of the functioning of the transparency mechanism designed by the ATIGA and it is crucial that they be agreed to by AMSs, uniformly applied in all AMSs and duly reflected in the NTRs' structures.

The sub-sections below define and spell-out the actual content of the notification obligations for each of the nine macro-areas of notification reported in Article 13 of the ATIGA, outlining a classification of measures to be notified under each of the nine-areas of notification in Article 13(2) of the ATIGA.

(i) Tariff nomenclature

For purposes of international trade and customs processing, goods are classified on the basis of nomenclatures. Product nomenclature refers to the classification of goods on the basis of certain criteria of description such as usage, function or measurement. Product nomenclatures become tariff nomenclatures (or tariff lines) when tariff rates are attached to the classification of goods.

Each AMS has a tariff nomenclature which, according to Article 4 of the ASEAN Agreement on Customs, must be based (at the eight-digit level) on the ASEAN Harmonised Tariff Nomenclature (hereinafter, AHTN).[3] AMSs may further sub-divide the AHTN, beyond the 8-digit level, for the collection of statistical data or other non-tariff purposes. Tariff nomenclatures are commonly adopted by law and managed by customs authorities. Implementing acts, as well as certain amendments, may be adopted by administrative authorities, according to each country's legislation.

The term tariff nomenclature is not defined in the ATIGA or in the ASEAN Agreement on Customs. However, to give effect to the requirement under Article 13, this must be intended to refer to the tariff nomenclature of each AMSs (up to the ten-digit level) and the explanatory notes, where applicable.

Therefore, under Article 13(2)(i) of the ATIGA, for purposes of the ATR's (and NTRs') structure, AMSs are required to notify their laws and regulations establishing the tariff nomenclature as well as the explanatory notes, where applicable, according to the outline below:

1. Tariff nomenclature

[3] See ASEAN Agreement on Customs, Phuket, Thailand, 1 March 1997. This agreement requires that the ASEAN Harmonised Tariff Nomenclature be based on the 6-digit Harmonised Commodity Description and Coding System (HS) of the World Customs Organisation and the amendments thereto. It also requires AMSs to use a common tariff nomenclature at the 8-digit level. See also the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature, Makati, Philippines, 7 August 2003. The Protocol contains the Interpretative Notes Governing the Implementation of the AHTN.

(ii) MFN tariffs, preferential tariffs offered under the ATIGA and other Agreements of ASEAN with its Dialogue Partners

This macro-area of notification is intended to capture all information related to the applicable tariff concessions on any given product. In particular, it requires that the following information be notified and included in the ATR:

- MFN tariffs, which are the tariff concessions negotiated and agreed upon within the WTO framework;[4]
- Tariff concessions applicable pursuant to the ATIGA; and
- Tariff concessions applicable pursuant to the free trade agreements in place with Dialogue Partners, which currently include:
    - The ASEAN – Australia New Zealand Free Trade Area;[5]
    - The ASEAN – China Free Trade Area;[6]
    - The ASEAN – India Free Trade Area;[7]
    - The ASEAN – Japan Free Trade Area;[8] and
    - The ASEAN – Republic of Korea Free Trade Area.[9]

Therefore, this macro-area of notification should include the relevant tariff concessions agreed and committed by each AMSs, according to the outline below:

2.	***MFN tariffs, preferential tariffs offered under the ATIGA and other Agreements of ASEAN with its Dialogue Partners***
	2.1 MFN tariffs (WTO);
	2.2 ATIGA tariffs;
	2.3 Tariff concessions applicable pursuant to the ASEAN – Australia New Zealand Free Trade Area;

[4] See Article 2(j) of the ATIGA.
[5] Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area: Hua Hin, Thailand, 27 February 2009.
[6] Framework Agreement on Comprehensive Economic Co-Operation Between ASEAN and the People's Republic of China: Phnom Penh, Cambodia, 4 November 2002.
[7] Framework Agreement on Comprehensive Economic Cooperation Between the Republic of India and the Association of Southeast Asian Nations, Bali, Indonesia, 8 October 2003.
[8] Agreement on Comprehensive Economic Partnership among Japan and Member States of the Association of Southeast Asian Nations, 14 April 2008 (by authorised ministers in capitals of respective countries).
[9] Framework Agreement on Comprehensive Economic Cooperation Among the Governments of the Member Countries of the Association of Southeast Asian Nations and the Republic of Korea: Kuala Lumpur, Malaysia, 13 December 2005.

2.4	*Tariff concessions applicable pursuant to the ASEAN – China Free Trade Area;*
2.5	*Tariff concessions applicable pursuant to the ASEAN – India Free Trade Area;*
2.6	*Tariff concessions applicable pursuant to the ASEAN – Japan Free Trade Area; and*
2.7	*Tariff concessions applicable pursuant to the ASEAN – Korea Free Trade Area.*

(iii) Rules of origin

Rules of origin are laws, regulations and administrative determinations of general application applied to determine the country of origin of goods.[10] Rules of origin are commonly classified into non-preferential and preferential rules of origin.

Non-preferential rules of origin are used for the application of (non-preferential) trade policy instruments, such as the MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements or tariff quotas, as well as for purposes of gathering trade statistics.[11] Preferential rules of origin are those that are applied to determine whether or not goods qualify for preferential treatment under contractual trade agreements (*i.e.*, FTAs, customs unions) or autonomous trade regimes[12] (*e.g.*, generalised system of preferences).

These definitions, provided by the WTO Agreement on Rules of Origin (Agreement on RoO), can apply to the ASEAN framework.[13] It is noted that the WTO caters for transparency requirements for both categories of rules of origin. In particular, under Article 5 of the Agreement on RoO, WTO Members were required to provide to the WTO Secretariat their applicable non-preferential rules of origin, as well as judicial decisions and administrative rulings of general application relating to rules of origin. The same article also foresees an advanced notice requirement for modifications (other than *de minimis*) of rules of origin and for new rules of origin, in order to enable interested parties to become acquainted with the amendments.[14] With respect to preferential rules of origin, paragraph 4 of Annex II of the Agreement on RoO required WTO Members to provide the Secretariat with their preferential rules of origin, including a listing of the preferential arrangements to which they apply, as well as judicial decisions and administrative rulings of general application relating to their preferential rules of origin as soon as possible, as well as any modification thereto or new preferential rule of origin.

In the absence of a precise definition of the scope and content of the concept of rules of origin, which could be applied for purposes of the transparency requirements under the ATIGA, and with the aim of harmonising, to the extent possible, the transparency requirements under the

[10] Definition from the WTO Agreement on Rules of Origin.
[11] Definition from Article 1, paragraph 2 of the Agreement on Rules of Origin.
[12] Definition provided in Annex II, paragraph 2 of the Agreement on Rules of Origin.
[13] The ATIGA contains disciplines and criteria for the purposes of establishing the ASEAN origin of goods in Chapter 3, but fails to provide a definition of rules of origin for the purposes of the transparency requirements under Article 13.
[14] See Article 5.1 and 5.2 of the Agreement on Rules of Origin.

ASEAN framework with those applicable under the WTO, it is concluded that the obligation to notify and to include in the rules of origin in the ATR must be interpreted as including:

- Non-preferential rules of origin currently applicable in each AMS; and
- Preferential rules of origin currently applicable in each AMS.

Therefore, the following measures should be included, for each AMS, within this macro-area on the basis of the outline below:

3. Rules of origin

3.1 Non-preferential rules of origin; and

3.2 Preferential rules of origin.

(iv) Non-tariff measures

NTMs are generally defined as measures other than tariffs, which have an effect on trade. The range of measures explicitly or inadvertently acting as obstacles to trade is broad, which makes the identification of NTMs not an easy task. Neither the ATIGA nor the WTO provide a technical definition of non-tariff measures, which could be applied for purposes of the transparency requirement of Article 13 of the ATIGA.

Under the general definition provided above, any measure, other than tariffs having an effect on trade, qualifies as an NTM. The concept of tariff refers to "*ordinary customs duties*", which under the ATIGA includes "*[a]ny customs or import duty and a charge of any kind imposed in connection with the importation of a good*". Therefore, NTMs comprise all measures other than "*ordinary customs duties*" and "*other duties and charges*" having an effect on trade.[15] A similar conclusion is reached on the basis of the text of the GATT.

In light of the broad definition of NTMs and the lack of comparable, up-to-date data, major efforts have been made to gather and compile data on NTMs across countries. The UNCTAD established a Multi-Agency Support Team (hereinafter, MAST), which led the data collection and revision of NTMs classification, first establishing a common definition for NTMs as:

[15] Under Article 2(c) of the ATIGA the following types of measures are not to be considered as customs duties: (i) charges equivalent to an internal tax or other internal charge applied consistently with Article III.2 of the GATT; (ii) anti-dumping and countervailing duties; and (iii) fees commensurate to the costs of the services rendered. The UNCTAD New Classification of Non-Tariff Measures adopted by the Group of Eminent Persons on NTBs includes anti-dumping and countervailing measures within the category of price control measures. Similarly, the WTO inventory (WTO document TN/MA/S/5/Rev.1) classifies countervailing duties as those NTMs resulting from "*Government Participation in Trade and Restrictive Practices Tolerated by Governments*" and anti-dumping duties within the group of NTMs consisting into "*Customs and Administrative Entry Procedures*". On the contrary, these measures are not listed as NTMs under the ASEAN Working Definition of NTMs, adopted by the Interim Technical Working Group (ITWG) on CEPT for AFTA.

> "*policy measures, other than ordinary customs tariffs, that can potentially have an economic effect on international trade in goods, changing quantities traded, or prices, or both*".

The new MAST classification of NTMs, adopted in 2010, follows a hierarchical "*tree*" structure where NTMs are differentiated according to 16 branches, or chapters, denoted alphabetically, with three levels of sub-branches designated by one, two, and three-digit codes. This classification draws on the now outdated UNCTAD Coding System of Trade Control Measures classification of NTMs, which was modified and expanded by adding various categories of measures to reflect current trading conditions. The classification includes many new subcategories of NTMs in the areas of SPS and TBT and introduces new NTMs categories, including export measures, trade-related investment measures, distribution restrictions, restrictions on post-sales services, subsidies, measures related to intellectual property rights and rules of origin. The classification also introduces the concept of "*procedural obstacles*," which refers to issues related to the process of application of an NTM, rather than the measure itself. These data are collected through surveys by the government agencies responsible for enforcing such procedures. The NTMs classification has further been revised by UNCTAD after consultation with the WTO in 2012.[16]

On the basis of the definitions provided above, it is clear that the concept of NTMs includes a number of different measures, ranging from quantitative restrictions of all kinds, both when allowed (for example, because of being justified) and when inconsistent with the relevant ATIGA (or WTO) rules, technical regulations, standards, SPS measures, customs rules, etc. All of them share the same characteristic of affecting trade. Item (iv) of Article 13(2) of the ATIGA is intended to capture all these measures and, in order to give full effect to the transparency requirements under the ATIGA, it is necessary that the concept of non-tariff measures be interpreted so as to include the broadest range of NTMs applied or applicable.

In the context of the assistance delivered under ARISE Activity 1.1.2.1, the recommendation was made that, for purposes of clarity and in order to identify the scope of the obligations on NTMs, a general definition of NTMs be agreed by AMSs and be applied to the processes of national and regional notifications (to the NTRs and ATR, respectively). It was also recommended that, for purposes of establishing the ATR as a '*well-structured*', '*comprehensive*', '*accessible*' and '*easy-to-search*' source of '*reliable*' information, the UNCTAD's 2012 NTM classification (eventually fine-tuned to the ATR's purposes) be adopted and systematically used by all AMSs.

The UNCTAD's 2012 NTM classification classifies NTMs in 16 large macro-categories (referred to by UNCTAD as Chapters), organised by alphabetic characters.[17] This table, developed by UNCTAD, provides a visual summary of the macro-categories of NTMs:[18]

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[16] UNCTAD, Classification of Non-Tariff Measures (February 2012).
[17] UNCTAD refers to this as *"a hierarchical "tree" structure where NTMs are differentiated according to 16 "branches" or chapters (denoted by alphabetical letters), each comprising of "sub-branches" (1-digit), "twigs" (2-digits) and "leafs" (3 digits)*".
[18] UNCTAD, Classification of Non-Tariff Measures (February 2012), Table on p. 3, Non tariff measure classification by chapter.

Imports	Technical measures	A	SANITARY AND PHYTOSANITARY MEASURES
		B	TECHNICAL BARRIERS TO TRADE
		C	PRE-SHIPMENT INSPECTION AND OTHER FORMALITIES
	Non technical measures	D	CONTINGENT TRADE-PROTECTIVE MEASURES
		E	NON-AUTOMATIC LICENSING, QUOTAS, PROHIBITIONS AND QUANTITY-CONTROL MEASURES OTHER THAN FOR SPS OR TBT REASONS
		F	PRICE-CONTROL MEASURES, INCLUDING ADDITIONAL TAXES AND CHARGES
		G	FINANCE MEASURES
		H	MEASURES AFFECTING COMPETITION
		I	TRADE-RELATED INVESTMENT MEASURES
		J	DISTRIBUTION RESTRICTIONS
		K	RESTRICTIONS ON POST-SALES SERVICES
		L	SUBSIDIES (EXCLUDING EXPORT SUBSIDIES UNDER P7)
		M	GOVERNMENT PROCUREMENT RESTRICTIONS
		N	INTELLECTUAL PROPERTY
		O	RULES OF ORIGIN
	Exports	P	EXPORT-RELATED MEASURES

This classification could be used, for purposes of the ATR (and the NTRs), and particularly for purposes of defining the scope and content of the macro-area of notification listed in item (iv) of Article 13(2) of the ATIGA, with the following carve-outs and/or clarifications:

- Certain measures identified as NTMs under the 2012 UNCTAD's NTM classification are to be expressly included in other macro-areas of notification to the ATR. This is the case of rules of origin, mentioned in item (iii) of Article 13(2) of the ATIGA, which constitute a separate area of notification although they are commonly identified (including by UNCTAD) as non-tariff measures. Rules of origin should, therefore, not be notified or included within the macro-area defined by item (iv) of Article 13(2) of the ATIGA;

- There is a risk of duplication inasmuch as certain non-tariff measures contained in, or effected through, laws, rules and procedures are susceptible of notification and inclusion (also) within other macro-areas of notification, such as those defined by items (v) on "*national trade and customs laws and rules*" and (vi) on "*procedures and documentary requirements*". This problem could be by-passed through the use of cross-references and links. There may inevitably also be few instances of double notification, but this happens also in the WTO and it should not be seen as a problem inasmuch as the emphasis must be placed on ensuring transparency; and

- As it has been stated in the context of ARISE Activity 1.1.2.1, the transparency requirements mandated by the ATIGA (*i.e.*, under Article 11 on the notification procedures, Article 40(2), which concerns publication, and Article 40(3) and 40(4) on the inclusion in the ATR) clearly call for the elaboration of a common definition of NTMs applicable to all AMSs, as well as for a set of common

procedures for the identification, collection and classification (in the NTRs) and notification (to the ATR) of NTMs applicable to all AMSs. Whereas certain AMSs are in the process of establishing their NTM databases within the framework of technical assistance projects, it is key that NTMs be classified and compiled on the basis of a shared (*i.e.*, uniform) regional classification and database, for purposes of the establishment and operationalisation of the NTRs/ATR, so that all AMSs will apply the same definitions, classifications, standard operating guidelines, templates and notification formats, thereby ensuring a harmonious and user-friendly outcome on the ATR.[19]

On this basis, the NTMs that AMSs would be required to notify and that would need to be included under this macro-area of notification can be defined and classified as follows:

4. Non-tariff measures

4.1 Sanitary and phytosanitary (SPS) measures;

4.2 Technical barriers to trade (TBT);

4.3 Pre-shipment inspection and other formalities;

4.4 Contingent trade protective measures;[20]

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

4.5 Price-control measures including additional taxes and charges;

4.6 Finance measures;

4.7 Measures affecting competition;

4.8 Trade-related investment measures (TRIMs);

4.9 Distribution restrictions;

4.10 Restriction on post-sales services;

4.11 Subsidies (excluding export subsidies);

[19] This is an area in which there is a high degree of coordination and engagement with other donors, particularly the World Bank.

[20] As noted, it is recalled that the classification of anti-dumping and countervailing duties as NTMs is still the object of an on ongoing debate among AMSs, the result of which may lead to trade defence measures being dropped as an area of NTMs notification and compilation in the database for purposes of the ATR/NTRs. The UNCTAD's 2012 NTM Classification includes such measures within the category of "*Contingent Trade Protective Measures*". On the contrary, these measures are not listed as NTMs under the ASEAN Working Definition of NTMs, adopted by the Interim Technical Working Group (ITWG) on CEPT for AFTA. Certain AMSs have expressed reservations with respect to the necessity of notifying measures taken by AMSs through trade defence instruments, particularly as NTMs.

4.12	*Government procurement restrictions;*
4.13	*Intellectual property; and*
4.14	*Export-related measures.*[21]

(v) National trade and customs laws and rules

This area of notification and transparency is very broad. It further reflects the general obligation under paragraph (1) of Article 13 of the ATIGA that the ATR contain "*trade and customs laws and procedures*".

The category covering "*national trade and customs laws and rules*" includes the following items:

- National trade laws and rules; and
- National customs laws and rules.

The ATIGA does not contain a definition of "*trade laws and rules*". It does, however, define "*customs laws and rules*" as "*laws and regulations administered and enforced by the customs authorities of each AMS concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges and other taxes, or to prohibitions, restrictions, and other similar controls with respect to the movement of controlled items across the boundary of the customs territory of each AMS*".[22]

In the absence of a definition of "*national trade laws and rules*" in the ATIGA, trade laws and rules should be intended to cover all "*trade regulations*" in force in each AMS, within the meaning of Article X of the GATT, which, by virtue of Article 12 of the ATIGA, is incorporated into the ATIGA *mutatis mutandis*.

Article X of the GATT, which also contains an obligation of transparency, concerns the category of trade regulations. This category must be intended to comprise, in relevant part, laws, regulations, judicial decisions and administrative rulings of general application, which pertain to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use.[23]

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[21] The inclusion of the categories of "*Finance measures*", "*Distribution restrictions*", "*Restrictions on post-sales services*", "*Intellectual property*" and "*Export-related measures*" within the NTMs database may be object of debate, which may lead to them being dropped as an area of NTMs notification and compilation in the database for purposes of the ATR/NTR. However, the inclusion of foreign exchange controls (one type of "*Finance measure*") and export taxes (within "*Export-related measures*") within the scope of Article 13(2), item (iv) of the ATIGA appears necessary and certainly advisable in light of their inclusion within the "*List of Notifiable Measures*" contained in Annex 1 of the ATIGA, and the related notification obligation under Article 11 of the ATIGA.

[22] See Article 2(1)(d) of the ATIGA.

[23] Article X of the GATT clarifies that WTO Members are not required to disclose confidential information, which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

On the basis of this wording, "*national trade laws and rules*" should be intended to cover laws and regulations[24] of AMSs pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports of exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, that are not otherwise included within the concept of "*customs laws and rules*".

Therefore, the macro-area of notification identified under item (v) of the ATIGA stands to comprise the following elements:

5. National trade and customs laws and rules[25]

5.1 Laws and regulations concerning the importation, exportation, transit, transhipment, and storage of goods as they relate to customs duties, charges and other taxes;

5.2 Laws and regulations relating to the rates of duty not otherwise included under category 2 (item ii of Article 13(2) of the ATIGA), taxes or other charges (e.g., customs surcharges, additional taxes and charges, customs fees and charges on imports);

5.3 Laws and regulations relating to requirements, restrictions or prohibitions on imports or exports, transit goods or transhipment (e.g., licensing, quotas, prohibitions and quantity control measures);

5.4 Laws and regulations relating to requirements, restrictions or prohibitions on the transfer of payments for imports or exports, transit goods or transhipment; and

5.5 Laws and regulations affecting the sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use of imports or exports, goods in transit and transhipment.

(vi) Procedures and documentary requirements

This category encompasses all those trade-related procedural and documentary requirements that are imposed in connection with the importation and exportation of goods. Broadly

[24] This sub-category would not include administrative rulings, which are covered under item (vii) of Article 13(2) of the ATIGA) and judicial decisions, which appear to fall outside of the notion of "*laws and rules*".

[25] As mentioned above with respect to NTMs, there may be instances of duplication inasmuch the category of "*National trade and customs laws and rules*" requires notification of all measures affecting trade and customs, including measures that are susceptible of notification and inclusion in other macro-areas of notification, particularly that of NTMs. This problem could be overcome through the use of cross-references and links, where the of the law and regulations concerned are already referenced elsewhere in the ATR/NTRs (*e.g.*, in the NTMs database).

speaking, it covers measures concerning customs formalities (*i.e.*, all the operations that must be carried out by the persons concerned and by the customs authorities in order to comply with customs laws).

In particular, these formalities and requirements may consist of, *inter alia*, those relating to the preparation and submission of certain documents required for trading, such as permits, letters of credit, bills of lading, etc.; procedures for the submission of applications, including the eligibility of persons, firms and institutions where to submit applications, the administrative bodies to liaise with, and the list of goods subject to application; and administrative procedures and documentary requirements related to customs clearance, technical controls, analysis and inspections, quarantine, sanitation and fumigation, pre-shipment inspections; and special customs formalities.

Therefore, the macro-area of notification identified under item (vi) of Article 13(2) of the ATIGA stands to comprise the following elements:

6. Procedures and documentary requirements

6.1 Consular formalities;

6.2 Documentary requirements relating to the importation, exportation, transit and transhipment of goods;

6.3 Licensing;

6.4 Pre-shipment inspections and other formalities;

6.5 Analysis and inspection procedures;

6.6 Quarantine, sanitation, and fumigation;[26]

6.7 Special customs regimes; and

6.8 Special customs formalities (e.g., formalities that are not clearly related to the administration of any measure applied by the given importing country such as the obligation to submit more detailed product information than normally required on the basis of a customs declaration, the requirement to use specific points of entry, etc.).

(vii) Administrative rulings

[26] Similarly to what has been stated in footnote 24 in relation to the macro-area of notification on "*National trade and customs laws and rules*" and the potential for overlap, there may be instances of duplication inasmuch as "*Licensing*", "*Pre-shipment inspections and other formalities*", "*Analysis and inspection procedures*", and "*Quarantine, sanitation, and fumigation*" are susceptible of notification and inclusion in other macro-areas of notification, particularly that of NTMs. This problem could be overcome through the use of cross-references and links with the information already referenced elsewhere in the ATR/NTRs.

"*Administrative rulings*" may be defined as actions of governing or exercising authorities, government, authority, control, influence or authoritative pronouncements stemming from administrative bodies[27] (*i.e*., bodies in charge of managing and implementing regulations, laws and governmental policies). Therefore, this category captures acts from this type of bodies, which in practice may be attributed variable degrees of authority, depending on the national administrative provisions in place in each AMS.

The term '*administrative ruling*' is found in Article X of the GATT, on "*Publication and Administration of Trade Regulations*". The type of administrative rulings relevant to Article X of the GATT are those of '*general application*'. The transparency requirements under Article X are not concerned with administrative rulings that are not of general application. Administrative rulings in individual cases will be of '*general application*' where such rulings establish or revise principles or criteria applicable in future cases and of a systemic discretion to deviate from a general methodology.

Some interpretative guidance on the notion of '*general application'* is offered by WTO case-law:

In *US – Underwear*, the WTO Appellate Body upheld the panel's interpretation

> *"… that Article X:1 of GATT 1994, which … uses the language 'of general application', includes 'administrative rulings' in its scope. The mere fact that the restraint at issue was an administrative order does not prevent us from concluding that the restraint was a measure of general application. Nor does the fact that it was a country-specific measure exclude the possibility of it being a measure of general application. If, for instance, the restraint was addressed to a specific company or applied to a specific shipment, it would not have qualified as a measure of general application. However, to the extent that the restraint affects an unidentified number of economic operators, including domestic and foreign producers, we find it to be a measure of general application".*[28]

In *EC – Poultry*, the WTO Appellate Body upheld the panel's finding that the withholding of information regarding a specific shipment was not inconsistent with Article X as being outside its scope. It noted that:

> *"… Article X does not deal with specific transactions, but rather with 'rules of general application'. (…) Although it is true … that any measure of general application will always have to be applied in specific cases, nevertheless the specific treatment accorded to each individual shipment cannot be considered a 'measure of general application' within the meaning of Article X".*[29]

The WTO Appellate Body further agreed with the panel that:

[27] WTO Panel report *EC – IT Products*, para. 7.1025. The definition put forward by the Panel is taken from the *Shorter Oxford Dictionary* (2003), p. 2630.

[28] Panel Report, *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear, ("US – Underwear"),* WT/DS24/R, adopted 25 February 1997, as modified by the Appellate Body Report, WT/DS24/AB/R, para. 21.

[29] Appellate Body Report, *EC – Poultry,* WT/DS69/AB/R, paras. 111 and 113. See also Panel Report, *US – Underwear,* WT/DS24/R, as modified by the Appellate Body Report, WT/DS24/AB/R, para. 7.65. Confirmed in *United States, Sunset Review of Anti-dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, Report of the Panel, WT/DS244/R para. 7.309.

> "*conversely, licenses issued to a specific company or applied to a specific shipment cannot be considered to be a measure of 'general application' within the meaning of Article X*".[30]

In the *Japan – Film* case, the panel referred to the panel Report on *US – Underwear* when interpreting the term '*of general application*' as follows:

> "*…inasmuch as the Article X:1 requirement applies to all administrative rulings of general application, it should also extend to administrative rulings in individual cases where such rulings establish or revise principles or criteria applicable in future cases*".[31]

The ATIGA does not require that administrative rulings to be notified/included in the ATR be of '*general application*'. However, in order to ensure synchrony with parallel WTO and ATIGA obligations[32] and to avoid placing unnecessary burdens on AMSs, the recommendation is made that the requirement to (notify and) include in the ATR and NTRs administrative rulings, be interpreted so to cover only administrative rulings of '*general application*'.[33]

The types of administrative rulings that are relevant for purposes of Article 13(2)(vii) of the ATIGA are those concerning the application and interpretation of trade and customs laws, such as, *inter alia*, those concerning: goods' tariff classification (*e.g.*, binding tariff information, nomenclature explanatory notes), origin determination (*e.g.*, binding origin information,) and the appropriate method for customs valuation; relief or exemption from customs duties; measures concerning the appropriate method of customs valuation; safeguard measures (where imposed by an administrative authority).

7. Administrative rulings

(viii) Best practices in trade facilitation applied by each Member States

Article 13(2)(viii) of the ATIGA requires AMSs to notify best practices in trade facilitation. To better frame and clarify the scope of this macro-area of notification and transparency, it appears necessary to define the term '*trade facilitation*' and, notably, identify the areas within which the relevant best practices are to be found.

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[30] Appellate Body Report, *EC – Poultry,* WT/DS69/AB/R, para. 113.

[31] Panel Report, *Japan – Measures Affecting Consumer Photographic Film and Paper, ("Japan – Film"),* WT/DS44/R, adopted 22 April 1998, para. 10.388.

[32] Note that Article 12 of the ATIGA on "*Publication and Administration of Trade Regulations*" refers to, and incorporates, Article X of the GATT.

[33] This interpretation would exclude from the scope of administrative rulings anti-dumping and countervailing measures adopted by administrative authorities (*i.e.*, provisional duties and price undertakings in the EU), but, arguably, not safeguard measures. As indicated above in relation to NTMs, the decision of whether or not to subject anti-dumping and/or countervailing measures to the transparency obligations of Article 13 of the ATIGA (as either NTMs or administrative rulings of general application) is ultimately left to the AMSs.

Useful guidance can be sought from the recently concluded WTO Agreement on Trade Facilitation,[34] which identifies a number of trade facilitation measures that WTO Members are required to put in place.[35] Moreover, in the context of the negotiations, the WTO organised a number of *Symposia* on "*Practical Experience of Implementing Trade Facilitation Reforms, Including Their Costs and Benefits*" within which certain WTO Members individually (including certain AMSs) or collectively (AMSs as ASEAN), submitted "*Best Practices of Implementation of a Trade Facilitation Measure*" and case studies. The obligation to notify best practices in trade facilitation foreseen in item (viii) of Article 13(2) of the ATIGA should certainly take stock from such experience.

It is noted that the ATIGA contains a number of provisions relevant to trade facilitation as well as a specific chapter on trade facilitation (*i.e.*, Chapter 5) and customs (*i.e.*, Chapter 6). Chapter 5 requires AMSs to develop and implement a comprehensive ASEAN Trade Facilitation Work Programme setting out actions and measures to be implemented at both ASEAN and national levels, in areas such as customs procedures, trade regulations and procedures, standards, conformity assessment and SPS measures and ASEAN Single Window.[36] It also contains a set of Principles on Trade Facilitation, which include: transparency; communications and consultations; simplification and efficiency; non-discrimination, consistency and predictability; harmonisation, standardisation and recognition; modernisation and use of technology; due process; and cooperation.[37] Chapter 6 provides for a set of obligations and requirements on customs procedures and trade facilitation (*e.g.*, pre-arrival documentation, risk managements, authorised economic operators, advance rulings, transparency, review and appeal). The ASEAN Agreement on Customs also contains relevant provisions on these aspects.

As compared to the ATIGA, the WTO Agreement on Trade Facilitation endorses a narrower definition of trade facilitation measures, its provisions being rather focussed on the coverage of customs aspects and clearance procedures. In this light, and on the basis of the provisions of such multilateral instrument, the requirement to notify best practices in trade facilitation must be intended as a requirement to notify the following measures:

8. Best practices in trade facilitation

8.1 Publication and availability of information (e.g., enquiry points);

8.2 Advance rulings;

[34] The conclusion of the negotiations for a WTO Agreement on Trade Facilitation was formalised with a Ministerial Decision of 7 December 2013 within the framework of the WTO Ministerial Conference held on 3-6 December 2013. See WTO, document WT/MIN(13)/36, WT/L/911.

[35] There is no fixed definition of the term '*trade facilitation*', which could be intended as limited to measures relating to customs procedures and customs clearance or as having a broader scope, including in the area of SPS and TBT measures. ASEAN appears to endorse this latter broader understanding. The wording of Article 46 of the ATIGA, which sets the scope of the ASEAN Trade Facilitation Work Programme, suggests that the concept of trade facilitation measure is to cover a broad range of areas beyond customs and clearance procedures. AMSs adopted the Trade Facilitation Work Programme in 2008 and the Trade Facilitation Indicators were subsequently adopted in 2009. However, these documents are not publicly available. For the purposes of the ATR/NTRs, and in the absence of more detailed information on the Trade Facilitation Work Programme in 2008 and the Trade Facilitation Indicators (which would help clarify the scope of '*trade facilitation*' within ASEAN), this contribution endorses an understanding of '*trade facilitation*' that is in line with the definitions and scope of the WTO Agreement on Trade Facilitation.

[36] See Articles 45 and 46 of the ATIGA.

[37] See Article 47 of the ATIGA.

8.3	*Appeal or review procedures;*
8.4	*Disciplines on fees and charges imposed on or in connection with importation and exportation;*
8.5	*Release and clearance of goods (including, inter alia, pre-arrival processing, risk management, post-clearance audit, authorized operators, expedited shipments);*
8.6	*Border agency cooperation;*
8.7	*Formalities connected with importation and exportation and transit (e.g., single window, temporary admission of goods);*
8.8	*Freedom of transit; and*
8.9	*Customs cooperation.*

(ix) List of authorised traders

Article 13(2)(ix) of the ATIGA requires AMSs to notify and include within the ATR the list of authorised traders. The concept of '*authorised traders*' appears to coincide with that of '*authorised economic operator*', which is defined, under Article 52 of the ATIGA, as a "*party involved in the international movement of goods in any function that has been approved by the customs authorities as complying with statutory and/or regulatory requirements of Member States, taking into account supply chain security standards*".

Therefore, Article 13 of the ATIGA requires AMSs to notify their lists of '*authorised economic operators*', drawn and compiled following the establishment of the programme of Authorised Economic Operators, as required by Article 59 of the ATIGA.

9.	***List of authorised economic operators***

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