ERIA Policy Discussion Paper No. 3

Enforcement of the ASEAN Trade in Goods Agreement in Domestic Courts: Insights from Indonesia and Malaysia

Ali Salmande[*]

August 2026

This paper examines how domestic courts in Indonesia and Malaysia engage with and enforce the ASEAN Trade in Goods Agreement (ATIGA). Employing a mixed doctrinal and empirical methodology, it analyses judicial decisions alongside interviews with judges and legal experts involved in ATIGA-related disputes. The study highlights key cases, including Indonesian tax court rulings that overturned customs authorities' import duty assessments on the basis of ATIGA provisions, and Malaysian decisions concerning the implementation of ATIGA tariff preferences through the Licensed Manufacturing Warehouse (LMW) scheme. The findings demonstrate that, notwithstanding ASEAN's limited supranational enforcement mechanisms, domestic courts in both countries have emerged as important actors in ensuring compliance with regional trade commitments. By interpreting and applying ATIGA in domestic disputes, these courts function as de facto enforcement mechanisms and contribute to strengthening the effectiveness, predictability, and credibility of ASEAN's regional legal order.

Keywords**:** ASEAN Trade; ATIGA; Domestic Court.

[*] Fellow ERIA School of Government 2025–2026 and PhD Candidate at University of New South Wales (UNSW), Sydney.

Please cite this publication as: Salmande, A. (2026), 'Enforcement of the ASEAN Trade in Goods Agreement in Domestic Courts: Insights from Indonesia and Malaysia', ERIA Policy Discussion Paper Series, No.3, Jakarta: ERIA.

1. Introduction

1.1. Background

The ASEAN Trade in Goods Agreement (ATIGA) is central to economic integration in Southeast Asia, as it promotes the free flow of goods and the removal of trade barriers amongst ASEAN Member States. The Agreement was signed in February 2009 in Thailand and entered into force in May 2010, replacing the Common Effective Preferential Tariff (CEPT) scheme under the ASEAN Free Trade Area (AFTA), which had been in place since 1992. ATIGA was designed to streamline and deepen commitments to intra-ASEAN free trade. Since its implementation, intra-ASEAN trade has increased from approximately US$500 billion in 2010 to US$630 billion in 2019 (Singh, 2022). Research by ERIA further shows that Cambodia, Lao PDR, Myanmar, and Viet Nam experienced significant growth, with their share of intra-ASEAN exports rising from 7% to 9% in 2018, while their share of intra-ASEAN imports expanded from 10% to 16% during the same period (Buban and Shrestha, 2021). More recently, intra-ASEAN trade reached US$823.1 billion in 2024 (Antara, 2025).

These data demonstrate the importance of ATIGA for ASEAN economic co-operation and underscore the need for ASEAN Member States to continue improving the Agreement to enhance its benefits. At the 47th ASEAN Summit in October 2025, held under Malaysia's Chairmanship, ASEAN finalised and signed the Second Protocol to Amend the ASEAN Trade in Goods Agreement, commonly referred to as the Upgraded ATIGA. This protocol introduces new chapters on the environment, the circular economy, and supply chains, while also strengthening support for micro, small, and medium-sized enterprises (MSMEs). However, beyond the ambition to establish and upgrade ATIGA, a critical question remains: how is ATIGA actually implemented and applied in practice?

Many existing studies – particularly from an economic perspective – have examined the validity and impact of ATIGA. By contrast, relatively few studies address ATIGA from a legal perspective, even though legal mechanisms play a crucial role in ensuring that the Agreement is enforced in accordance with its objectives. Unlike other regional organisations, such as the African Union and the European Union, which have regional courts – namely the African Court of Justice and the European Court of Justice – mandated to enforce regional agreements, ASEAN has no plan to establish a comparable judicial body. One reason for this is that the creation of a regional court is considered inconsistent with the 'ASEAN Way,' which emphasises consensus, sovereignty and non-interference. ASEAN does, however, have a dispute settlement mechanism, namely the ASEAN Enhanced Dispute Settlement Mechanism (ASEAN EDSM). This mechanism has evolved since its initial establishment in 1996 as the ASEAN Dispute Settlement Mechanism (ASEAN DSM) and has been continuously refined, most recently through the 2019 ASEAN EDSM Protocol, which entered into force in 2022. The mechanism was established, inter alia, to address disputes arising from the implementation of ASEAN economic agreements, including ATIGA. Nevertheless, since its establishment, not a single case has been brought before this forum. This is unsurprising, as ASEAN Member

States have generally been reluctant to resort to formal legal mechanisms to resolve inter-state disputes.

At the same time, numerous issues concerning the implementation of ATIGA have arisen in disputes between private parties and ASEAN Member States before domestic courts. In Indonesia alone, there are dozens of domestic court cases related to the implementation of ATIGA (Salmande, 2021), while at least two such cases have occurred in Malaysian courts. This trend indicates that the enforcement of ATIGA commitments is increasingly taking place at the domestic level, as ASEAN continues its efforts to become a rules-based and people-centred community. In this context, private entities have sought to invoke ATIGA obligations before national courts and, in some cases, to challenge state actions that are allegedly inconsistent with those commitments. This paper examines in greater depth how ATIGA has been enforced through domestic courts in Indonesia and Malaysia.

There are several reasons why this research focuses on the enforcement of ATIGA in Indonesia and Malaysia. First, from empirical standpoint, preliminary research indicates that publicly accessible ATIGA-related judicial decisions are available primarily in Indonesia and Malaysia. As an Indonesian citizen, I have extensive access to Indonesian court decisions and the linguistic competence necessary to analyse judgments that are available only in Bahasa Indonesia. To ensure broader regional coverage, I initially conducted a preliminary search for ATIGA-related decisions in English-speaking ASEAN jurisdictions, including Malaysia, the Philippines, and Singapore. However, this search revealed relevant cases only within Malaysian courts.

Second, the selection of Indonesia and Malaysia is also justified by their relatively comparable socio-cultural and historical backgrounds. Both countries share elements of Malay heritage and overlapping historical trajectories shaped by colonial administration and post-independence state-building. While Indonesia is often characterised as a pluralistic archipelagic state and Malaysia as a federal constitutional monarchy with strong Malay political identity, both societies reflect similar patterns of state–citizen relations and administrative governance rooted in post-colonial Southeast Asia (Lindsey, 2008; Harding, 1996). This socio-historical proximity strengthens the comparative design by controlling for broad cultural and regional variables while allowing meaningful institutional comparison. At the same time, the two countries represent different legal traditions: Indonesia adheres to the civil law (continental European) tradition, heavily influenced by Dutch legal transplantation, whereas Malaysia follows the common law tradition inherited from British colonial rule (Harding, 2022; Crouch, 2019). This contrast enhances the analytical value of the study. By comparing ATIGA enforcement across civil law and common law systems within a relatively similar socio-political environment, the research can better isolate the role of judicial reasoning and institutional design in shaping domestic engagement with ASEAN trade law.

Third, although there are significant structural differences between the Indonesian and Malaysian judiciaries, both countries operate within constitutional-democratic frameworks that formally endorse the rule of law. In comparative regional perspective, both jurisdictions demonstrate a relatively higher degree of judicial institutionalisation and openness compared to some ASEAN Member States with more centralised or single-party political systems. This makes Indonesia and Malaysia particularly suitable for examining how domestic courts may act as sites of regional integration enforcement. Where courts possess a minimum level of institutional autonomy and doctrinal engagement, the possibility of invoking and interpreting ASEAN legal instruments becomes more visible and empirically traceable.

1.2. Research Questions

This study addresses a central question: how and why do the practices of domestic courts in Indonesia and Malaysia in handling ATIGA-related cases contribute to legal certainty within ASEAN economic integration?

1.3. Objectives and Contribution of the Study

This study aims to:

a. Systematically examine selected judicial decisions in Indonesia and Malaysia that involve the interpretation or application of ATIGA obligations;
b. Analyse the manner in which ATIGA commitments are enforced through domestic judicial processes, with particular attention to the legal reasoning adopted by national courts;
c. Compare institutional capacities and judicial approaches in Indonesia and Malaysia in interpreting, applying, and giving effect to ATIGA commitments; and
d. Develop legal and institutional reform proposals to enhance compliance with and enforcement of ATIGA commitments across ASEAN Member States.

Moreover, this study contributes to the literature by demonstrating how ATIGA – one of ASEAN's principal legal instruments – is operationalised and enforced through domestic courts rather than through regional dispute settlement mechanisms. By focusing on judicial practice at the national level, the study advances understanding of the role of domestic courts in ASEAN's rules-based regional integration. It further shows how domestic enforcement of ATIGA can enhance legal certainty and predictability for private entities and individuals operating within the ASEAN trade regime.

1.4. Methodology

In conducting this study, I employ a mixed-methods approach that combines doctrinal legal analysis and qualitative empirical research.

First, through doctrinal legal analysis**,** I examine judicial decisions of Indonesian and Malaysian courts that relate to ATIGA, together with relevant legal materials, including the ATIGA text itself and applicable national laws in both countries. This analysis enables the identification of the nature and patterns of ATIGA-related litigation in Indonesia and

Malaysia, including similarities, differences, and emerging best practices in judicial reasoning and application.

Second, using a qualitative empirical approach, I conduct semi-structured interviews with legal practitioners, judges, and academics or experts in both countries as well as ASEAN Secretariat's officials to gain deeper insights into interpretative trends, enforcement practices, and judicial attitudes towards ATIGA obligations. Accordingly, this study draws on two primary sources of data: (i) court decisions from Indonesia and Malaysia, and (ii) interviews with relevant stakeholders.

The identification of relevant cases relies primarily on keyword searches using 'ASEAN', 'ATIGA' and 'ASEAN Trade in Goods Agreement' on official court websites, supplemented by follow-up information obtained through interviews. This study focuses specifically on court decisions in which private entities have successfully challenged actions of ASEAN Member States. This focus allows the analysis to demonstrate how domestic courts can function as effective guardians of ASEAN trade commitments and contribute to the development of a rules-based ASEAN legal order. Therefore, the decisions selected and analysed in this study primarily consist of cases in which importers' claims on ATIGA were upheld. Although there are also decisions in which domestic courts rejected importers' challenges, the focus on successful claims is deliberate and methodologically justified. These cases most clearly illustrate instances where domestic courts actively engaged with, interpreted, and applied ATIGA provisions in a manner that supplements and reinforces the Agreement's objectives at the domestic level.

2. Theoretical Framework and Literature Review

There are numerous legal theories and doctrines that address the relationship between international law and domestic courts. The theoretical framework adopted in this study is the Role-Splitting Theory (*dédoublement fonctionnel*), introduced by the French jurist Georges Scelle in 1930. This theory explains that, due to the limited legislative, judicial, and enforcement capacities at the international level, state organs – including domestic courts – perform dual functions: first, as organs of the state when applying national law; and second, as agents of the international legal order when giving effect to international law (Cassese, 1990). In this sense, although Scelle did not articulate this point explicitly, the theory implies that state organs may operate as de facto international organs responsible for enforcing international legal obligations (Thierry, 1990). While the Role-Splitting Theory is often regarded as a classical approach, it remains highly relevant in the ASEAN context, where the organisation seeks to advance a rules-based community while lacking – and not intending to establish – a regional judicial body.

This theoretical framework also helps to bridge an important research gap concerning the implementation of the rule of law in ASEAN and its derivative concepts. Scholarly work on the role of law and the rule of law in ASEAN regional integration has expanded over the past decade. A prominent example is the project *Integration through Law: The Role of Law and the Rule of Law in ASEAN Integration*, led by the National University of

Singapore between 2015 and 2022, which has resulted in numerous publications. This body of scholarship includes, inter alia, proposals for an ASEAN Legal Service (Piris and Woon, 2015), analyses of the evolution of monitoring obligations in ASEAN (Chesterman, 2015), discussions on rules of origin within ASEAN (Inama and Sim, 2015), and studies on compliance and dispute settlement mechanisms in ASEAN (Beckman et al., 2016). Despite these contributions, much of the existing literature on the ASEAN rule of law focuses on monitoring mechanisms, compliance processes, and inter-state dispute settlement, with comparatively limited attention given to the role of domestic courts. Notably, scholars such as Hsien-Li (2011), in the context of ASEAN human rights, and Desierto and Cohen (2022), in relation to the ASEAN Single Market, have highlighted concerns regarding the 'soft' nature of ASEAN law and the marginal role of judicial institutions in regional enforcement.

Beyond this extensive literature, Gucciardo (2023) has proposed the establishment of a specialised regional court for ATIGA. However, such proposals are difficult to realise in practice, given that the ASEAN Way – rooted in principles of non-interference, consensus and sovereignty – discourages the creation of supranational judicial institutions. Against this background, this study fills a critical gap by focusing instead on national judicial mechanisms and their interaction with regional commitments under ATIGA. By examining how domestic courts in Indonesia and Malaysia – two central ASEAN Member States – interpret and enforce ATIGA obligations, the study highlights both the legal and institutional challenges of domestic enforcement within ASEAN's integration framework. This study also forms part of my broader PhD project at the University of New South Wales (UNSW), which examines the role of domestic courts in advancing ASEAN regional integration more generally. While this paper focuses specifically on ATIGA, the broader project analyses Indonesian court decisions across a range of ASEAN legal instruments in order to assess the judiciary's contribution to the development of a rules-based ASEAN legal order.

3. Indonesia: Enforcement of ATIGA through Tax Court and Supreme Court

3.1. Institutional Setting

In Indonesia, disputes concerning the implementation of ATIGA have been adjudicated primarily by two judicial bodies: Tax Court and the Supreme Court. Before examining their respective roles and authorities, it is necessary to outline the structure of the Indonesian judicial system, which operates under the supervision of the Supreme Court of Indonesia (Mahkamah Agung).

Under the 1945 Constitution of the Republic of Indonesia, judicial power is exercised by the Supreme Court and the Constitutional Court of Indonesia. The Supreme Court oversees four distinct jurisdictions: (i) general courts, which handle criminal and civil cases; (ii) military courts, which adjudicate criminal cases involving members of the armed forces; (iii) religious courts, which deal primarily with family law matters for Muslims; and (iv) state administrative courts, which resolve disputes arising from decisions issued by government officials. Each jurisdiction consists of courts of first instance (such as district courts) and appellate courts (high courts). At the apex of this structure, the Supreme Court exercises cassation jurisdiction and has the authority to conduct judicial reconsideration of lower court decisions.

ATIGA-related cases originate within the state administrative court jurisdiction. Within this branch, a specialised court is tasked with adjudicating customs disputes, namely the Tax Court of Indonesia. Established in 2002, the Tax Court exercises dual jurisdiction over both tax and customs disputes. Since its establishment, the court has operated under a dual institutional arrangement: judicially under the supervision of the Supreme Court, while administratively and financially under the authority of the Ministry of Finance of Indonesia. However, ongoing tax court reforms are expected to be completed by the end of 2026. Once implemented, these reforms will place the Tax Court fully under the Supreme Court's authority, including in administrative and financial matters, thereby removing its institutional dependence on the Ministry of Finance (Salmande, 2023). This reform is intended to strengthen the independence of the Tax Court as a judicial body adjudicating disputes between taxpayers or customs declarants and government authorities, particularly the Directorate General of Taxes and the Directorate General of Customs and Excise, both of which operate under the Ministry of Finance. At present, a significant proportion of Tax Court judges are seconded from these two directorates, a factor that has raised concerns regarding judicial independence and impartiality.

3.2. Tax Court and Supreme Court Jurisdiction

The Tax Court of Indonesia exercises two principal authorities: adjudicating disputes and deciding appeals against decisions issued by the Directorate General of Taxes and the Directorate General of Customs and Excise. ATIGA-related cases – along with disputes arising from the implementation of other free trade agreements (FTAs) – most commonly arise in the context of customs administration. These cases typically involve situations in which Customs and Excise continues to impose import duties on goods that importers claim should be eligible for preferential tariff treatment under ATIGA or other FTAs.

In such cases, importers may challenge the customs decision by filing an appeal before the Tax Court. If the Tax Court rejects the importer's claim, the importer may then submit a judicial reconsideration (*peninjauan kembali*) directly to the Supreme Court of Indonesia as the final remedy available within the Indonesian judicial system. At the Supreme Court, these import duty disputes are examined by the State Administrative Chamber.

The judicial procedural pathway for tax and customs disputes differs significantly from that applicable to general civil or administrative cases. In ordinary litigation, a case is first decided by a court of first instance, followed by an appeal to a high court, then a cassation to the Supreme Court, and finally a judicial reconsideration before the Supreme Court as an extraordinary remedy, typically available only in cases of judicial error or the discovery of new evidence. By contrast, tax and customs disputes bypass the ordinary appellate and cassation stages: The Tax Court functions as the court of first and last instance on the merits, with judicial reconsideration before the Supreme Court serving as the sole and final avenue of further legal recourse.

3.3. Pathway of Customs Disputes

From the discussion above, it is evident that disputes concerning the implementation of ATIGA in Indonesia fall within the jurisdiction of the Tax Court and, ultimately, the Supreme Court. However, it is equally important to understand the procedural pathway through which customs disputes arise and are resolved, beginning at the administrative level.

First, a customs dispute originates from an initial decision issued by a customs official. Such decisions may relate to, inter alia, the determination of import duties and customs value (PTNP), the issuance of tariff re-determination letters, the rejection of certificates of origin, corrections to Harmonized System (HS) codes, and other customs-related determinations. Second, if the importer disagrees with the initial decision, they may file an administrative objection to the Director General of Customs and Excise. This objection must be submitted within 60 days, as stipulated in Article 93(3) of Law No. 17 of 2006 on Customs (2006).

Third, where the administrative objection is rejected or not granted in full, the importer may lodge an appeal with the Tax Court. Fourth, if the importer remains dissatisfied with the Tax Court's decision, they may submit a petition for judicial reconsideration (*peninjauan kembali*) to the Supreme Court as the final legal remedy.

In general, disputes concerning import duties in Indonesia follow a structured administrative and judicial process, as outlined below:

Customs Decision

↓

Administrative Objection

(to the Director General of Customs and Excise)

↓

Appeal to the Tax Court

↓

Judicial Reconsideration (Peninjauan Kembali)

to the Supreme Court

3.4. Indonesian Court Case Study

This sub-chapter examines selected decisions of the Tax Court and the Supreme Court relating to trade-related litigation involving ATIGA and its predecessor agreements. The analysis focuses primarily on cases in which importers prevailed, in order to demonstrate the effectiveness of enforcing ATIGA commitments through domestic courts. Some of these cases involved substantial monetary values. For example, in a dispute concerning the importation of *TNE cane raw sugar in bulk* from Thailand to Indonesia, Indonesian Customs initially rejected the application of ATIGA preferential treatment and required the importer to pay import duties at the MFN rate amounting to Rp9.5 billion, or equivalent with approximately US$600.000–US$610.000. This decision was subsequently overturned by the Supreme Court, which corrected the tariff to zero percent on the basis of ATIGA eligibility (*PT Sentra Usahatama Jaya v. Directorate General of Customs and Excise, 2018*). It should be noted, however, that not all ATIGA-related claims have been successful.

A notable example of an unsuccessful claim is a series of cases concerning the importation of milk products from the Philippines to Indonesia, involving PT Nestlé Indonesia and the Directorate General of Customs and Excise under the Common Effective Preferential Tariff (CEPT) scheme of the ASEAN Free Trade Area (AFTA), the predecessor to ATIGA (*PT Nestlé Indonesia v. Directorate General of Customs and Excise*, 2009–2010). The dispute concerned the import of *Lactogen-1* and *Lactogen-2* products. The importer sought preferential tariff treatment under the CEPT-AFTA framework, but Customs rejected the claim on the ground that the imported products did not qualify as 'milk' under the applicable tariff classification.

Both the Tax Court and the Supreme Court upheld the position of Customs, finding that the products constituted processed food products (Lactogen with DHA) rather than milk, and were therefore subject to a 5% import duty. This issue was addressed in dozens of Supreme Court decisions between 2011 and 2012, in which the Court consistently rejected the importers' appeals and affirmed the rulings of the Tax Court (Supreme Court of Indonesia, 2011–2012).

Although these decisions did not grant tariff preferences to the importer, they nonetheless demonstrate both the authority and the long-standing practice of Indonesian domestic courts in interpreting and applying ASEAN free trade commitments. In particular, the cases illustrate the judiciary's role in determining whether specific goods fall within the scope of ASEAN preferential trade frameworks, thereby reinforcing the function of domestic courts in the enforcement of ASEAN economic agreements at the national level. Meanwhile, ATIGA-related cases in which importers were successful predominantly concerned rules of origin, which may be classified into three broad categories.

3.4.1 Doubts over the Authenticity of the Certificate of Origin (ATIGA Form D)

In Tax Court Decision No. 48293/PP/M. IX/19/2013 (2013), the dispute arose from the importation of *pre-painted steel sheets in coils* from Viet Nam to Indonesia. Indonesian Customs denied the application of preferential tariff treatment under ATIGA on the ground that the authenticity of the Certificate of Origin (ATIGA Form D) was in doubt. Specifically, Customs questioned the authenticity of the signatures on the Form D, noting discrepancies between the signatures on the certificate and those contained in the official specimen records. As a result, the applicable import duty was reverted to the most-favoured-nation (MFN) tariff rate.

The importer challenged this determination before the Tax Court. The Court upheld the importer's appeal after evidence was presented showing that the Ministry of Industry and Trade of the Socialist Republic of Vietnam, through its Import–Export Management Office in Binh Duong Province, had issued a confirmation letter to the Indonesian Customs authority. The letter confirmed that Form D No. VN-ID 12/01 00186, dated 9 January 2012, had been duly issued by the competent authority and that the signatures appearing on the certificate were authentic. The issuing authority further clarified that the Form D number contained a typographical error and should correctly read VN-ID 12/0600186. On this basis, the Tax Court concluded that the requirements for preferential tariff treatment under ATIGA had been satisfied.

A similar dispute arising from doubts over the authenticity of a Certificate of Origin (ATIGA Form D) occurred in Tax Court Decision No. Put-50605/PP/M.VA/19/2014 (2014). In that case, Indonesian Customs maintained the application of a 5% MFN tariff on goods imported from Singapore, citing concerns regarding the authenticity of the Certificate of Origin (ATIGA Form D). The importer subsequently contested this decision before the Tax Court. The details of the imported goods in that case are set out in Table 1.

Table 1: Regional Value Content of Imported Goods

No.	Description of Goods	Origin Criterion
1.	20 Drums Rarus 424	Regional Value Content 90%
2.	20 Drums DTE Light	Regional Value Content 97%
3.	25 Drums Delvac 1640	Regional Value Content 90%

Source: Tax Court Decision No. Put-50605/PP/M.VA/19/2014 (2024), p.2.

According to Table 1, the goods qualify for preferential treatment under ATIGA because their regional value content exceeds the minimum requirement under Article 28 of ATIGA, which requires a regional value content of not less than 40%. During the initial inspection, Indonesian Customs stated that it had attempted to communicate with Singaporean customs authorities to verify the authenticity of the Certificate of Origin (ATIGA Form D). However, no response was received within the timeframe prescribed for the objection process before the Directorate General of Customs and Excise. On this basis, the Directorate General of Customs and Excise rejected the Certificate of Origin (ATIGA Form D) and continued to apply the 5% MFN tariff. The importer subsequently filed an appeal with the Tax Court. During the proceedings before the Tax Court, the importer submitted additional evidence in the form of a response letter from Singaporean customs authorities, which stated as follows:

'We confirm that the above form d is authentic. Based on the verification check carried out by Singapore Customs, the RVC declared in box 8 of the said form D is deemed to be true and correct. Singapore customs had issued the form D based on the information declared in the manufacturer cost statements whereby the products are certified to have met the ATIGA RVC of more than 40% of their respective FOB value.'

A related but distinct issue concerning the doubts over the authenticity of certificate of origin (ATIGA Form D) arose in Tax Court Decision No. Put-57357/PP/M.XIB/19/2014 (2014)**,** which involved the application of the *Third Country Invoicing* mechanism. This case concerned the importation of *Propylene Copolymers PP AP03B* from Singapore to Indonesia, where the commercial invoice was issued by a company in Thailand, as indicated in Box 7 of Form D, which records the name and country of the invoice issuer. Indonesian Customs denied the application of the zero tariff under ATIGA on the ground that Box 13 of Form D, relating to Third Country Invoicing, did not contain a check mark (√). Customs also expressed doubts regarding the authenticity of a subsequently issued check mark (√) added retroactively by the issuing authority. As a result, the import was subjected to a 10% MFN import duty.

During the proceedings before the Tax Court, Indonesian Customs received a response letter from the Director General of Customs of Singapore confirming that the Form D had been validly issued. The letter further confirmed that the goods satisfied the regional value content requirement of more than 40% and that Box 13 had indeed been marked to indicate Third Country Invoicing. In light of this evidence, the Panel of Judges granted the importer's appeal, stating:

'Based on the explanations provided by the Appellant and the Respondent during the trial, as well as the data contained in the appeal file, the Panel is of the opinion that the importation of Propylene Copolymers PP AP03B, as declared in PIB No. 172817 dated 3 May 2013, is entitled to preferential tariffs under the ASEAN Trade in Goods Agreement (ATIGA) scheme.' (Tax Court Decision No. Put-57357/PP/M.XIB/19/2014, p.2)

A similar, though not identical, issue was later examined by the Supreme Court in Decision No. 276B/PK/PJK/2017 (2017). In this case, following its loss before the Tax Court, the Directorate General of Customs and Excise filed a petition for judicial reconsideration against PT Indocement Tunggal Prakasa (*PT Indocement Tunggal Prakasa v. Directorate General of Customs and Excise*, 2017). The central issue concerned the interpretation of procedural requirements under the Third Country Invoicing mechanism. The Directorate General of Customs and Excise maintained that, where Third Country Invoicing is used, a check mark (√) must be placed in Box 7 of Form D – together with the name of the invoice-issuing company – to ensure that the Certificate of Origin is accepted as a basis for preferential tariff treatment under ATIGA. In support of its position, the Directorate General of Customs and Excise relied on Rule 23(2) of the Operational Certification Procedures for Rules of Origin under Chapter 3, which provides that:

'*The exporter shall indicate 'third country invoicing' and such information as the name and country of the company issuing the invoice in the Certificate of Origin (Form D).*'(Supreme Court Decision No. 276B/PK/PJK/2017, p.16).

Customs also referred to Overleaf Note No. 10 of Annex 7 of the Operational Certification Procedures for Rules of Origin, which states:

> *'THIRD COUNTRY INVOICING: In cases where invoices are issued by a third country, the 'Third Country invoicing' box should be ticked (√), and such information as the name and country of the company issuing the invoice shall be indicated in Box 7.'* (Supreme Court Decision No. 276B/PK/PJK/2017, p.16).

Despite these arguments, the Supreme Court rejected the petition for judicial reconsideration and ruled in favour of the importer. Former Supreme Court Justice Hary Djatmiko, who chaired the panel in this case, later acknowledged that disputes involving such highly technical requirements arise frequently (Interview with H. Djatmiko, 17 December 2025). He explained that the Court adopted a *substance-over-form* approach, prioritising the substantive compliance with ATIGA requirements over strict adherence to procedural formalities, such as the placement of a check mark (√). At the same time, he noted and criticised the continued reliance by some judges on overly formalistic and procedural approaches in similar cases.

3.4.2. Timing of Certificate of Origin Submission

In addition to disputes concerning the doubts over the authenticity of Certificates of Origin, a significant number of ATIGA-related cases before Indonesian courts concern the timing of submission of the Certificate of Origin (ATIGA Form D). The primary legal basis governing these disputes is Minister of Finance Regulation No. 229/PMK.04/2017 of 29 December 2017 on the Procedures for the Imposition of Import Duty Tariffs on Imported Goods Based on International Agreements (2017). One of the stated objectives of this Regulation is to accommodate the outcomes of the Joint ASEAN Economic Ministers Meeting and the 30th ASEAN Free Trade Area Council Meeting (AEM 30th AFTA Council Meeting) held on 3 August 2016 in Vientiane, Laos, as well as amendments to the Operational Certification Procedures (OCP) of ATIGA governing the use of electronic Certificates of Origin (e-Form D). As explicitly stated in the *Considering* section (letter B) of the Regulation, these amendments were intended to provide greater legal certainty in the application of import duty tariffs based on international agreements. This Regulation serves as an implementing instrument for several ASEAN trade agreements, including ATIGA, ACFTA, AKFTA, AIFTA, AANZFTA, and AJCEP, as well as two bilateral agreements, namely the Indonesia–Japan Economic Partnership Agreement (IJEPA) and the Indonesia–Pakistan Preferential Trade Agreement (IPPTA), as stated in its Article 2.

A representative case is Tax Court Decision No. PUT-007071.45/2018/PP/M.XVIIA/2019, involving *PT Sarimakmur Tunggal Mandiri v. Directorate General of Customs and Excise* (2019). In this case, Indonesian Customs denied preferential tariff treatment under ATIGA for the import of *Vietnam Robusta Green Coffee Grade 1 SC. 16* from Viet Nam. The denial was based on two grounds: the late submission of the Certificate of Origin and a typographical error in the country of origin, which was incorrectly stated as Indonesia instead of Viet Nam. The Certificate of Origin was submitted beyond the 3-day deadline applicable to goods classified under the green lane pursuant to MoF Regulation No. 229, prompting Customs to apply the MFN tariff instead.

The Tax Court rejected the arguments advanced by Customs. The Panel of Judges held that the differentiated deadlines for Certificate of Origin submission – one day for goods in the red and yellow lanes and three days for goods in the green lane – combined with varying working hours across customs offices as stated in MoF Regulation No. 229, did not provide sufficient legal certainty. Accordingly, the Panel adopted a 30-day period from the date of importation as the appropriate reference point, drawing on Article 16 of the Customs Law, which provides a 30-day period for initial customs inspections.

Disputes concerning the timing of Certificate of Origin submission have become increasingly common before the Tax Court in recent years. According to Tax Court Judge Tri Andrini Kusumandari, these disputes stem from divergent interpretations of the applicable rules (Interview with Tri Andrini Kusumandari, 3 December 2025). Under a strict reading of ATIGA, the Certificate of Origin must be submitted 'at the time of importation.' It stated in Rule 13 (1) Annex 9 OCP for Rules of Origin Under Chapter 3 of ATIGA, as follows:

> *For the purposes of claiming preferential tariff treatment, the importer shall submit to the customs authority of the importing Member State <u>at the time of import</u>, a declaration, a Certificate of Origin (Form D) including supporting documents (i.e. invoices and, when required, the through Bill of Lading issued in the territory of the exporting Member State) and other documents as required in accordance with the laws and regulations of the importing Member State;*

However, MoF Regulation No. 229 introduces a degree of flexibility by allowing submission within one day for red lane goods and three days for green lane goods. Tax Court judges have generally accepted the MoF Regulation No. 229 as an implementing regulation that lawfully provides such relaxation.

The more contentious issue arises when importers submit the Certificate of Origin after the deadline stipulated in the MoF Regulation No. 229. Kusumandari (2025) explained, on this point, judicial practice reveals three distinct approaches. The first group of judges adopts a strict interpretation, holding that submission beyond the PMK deadlines automatically disqualifies the importer from ATIGA preferential tariffs. Kusumandari aligns with this view, arguing that the MoF Regulation No. 229 deadlines already constitute a significant relaxation from the original ATIGA requirement of submission at the time of importation. The second group adopts a more 'progressive' approach, allowing submission at any time, provided that the Certificate of Origin remains valid, typically within its one-year validity period. The third group takes an intermediate position, permitting submission within 30 days of importation, by analogy with the statutory deadline for initial customs inspections as explained in the case above.

The Supreme Court endorsed the progressive approach in Decision No. 3617 B/PK/PJK/2020**.** This case concerned the importation of steel sheets and aluminium from Viet Nam, for which ATIGA preferential tariffs were denied due to late submission of the Certificate of Origin. PT Blue Steels Industries challenged the decision of the Directorate General of Customs and Excise before the Tax Court but was unsuccessful (*PT Blue Steels Industries v. Directorate General of Customs and Excise*, 2020). On judicial reconsideration, however, the Supreme Court ruled in favour of the importer. The Panel of Judges, chaired by Hary Djatmiko who describes himself holding the 'substance over formality' of progressive approach during the interview for this study, relied on two principal considerations. First, the Court held that declaring the Certificate of Origin invalid solely on the basis of late submission 'seriously contradicts and disregards the principles of international treaty law,' as the grace period should be treated as a purely administrative matter that cannot override the substantive legal requirements of ATIGA. Second, although the Certificate of Origin was submitted beyond the three-day deadline under the MoF Regulation No. 229, it remained within the one-year of Certificate of Origin's validity period. As a result, the Court granted ATIGA preferential treatment, thereby preventing PT Blue Steels Industries from bearing an additional import duty liability of Rp1.361 billion under the MFN regime.

3.5. Judicial Approaches

From the discussion above, it is evident that ATIGA-related cases – and disputes arising under other FTAs – brought before the Tax Court often stem from the overly strict approach adopted by customs officials in applying regulatory requirements, including highly technical procedural rules. This phenomenon can be explained by two interrelated factors. First, as is still common amongst customs authorities in many developing countries, import duties continue to be viewed primarily as a source of state revenue. As a result, where there is any doubt – particularly in relation to eligibility for preferential treatment – customs officials tend to impose tariffs, even in cases that fall within the ATIGA framework. This approach contrasts with practices in many developed countries, where customs administration has shifted away from revenue collection toward risk management, such as safeguarding public health or preventing the entry of hazardous goods (Interview with ASEAN Secretariat Official, 17 December 2025).

Second, according to Judge Tri Andrini Kusumandari and Supreme Court Judge Cerah Bangun whom previously served within the Customs and Excise administration – respectively in technical roles and as Director of Objections and Appeals – before their judicial appointments, explained customs officials responsible for handling objections within the customs administration tend to reject most, if not all, objections due to concerns about internal audits and potential legal exposure (Interview with C. Bangun on 27 October 2025). In particular, customs officials fear that granting a zero tariff – even where preferential treatment may be justified – could later be interpreted as constituting corruption. Under this view, such an action could be seen as fulfilling the elements of corruption, namely: committing an unlawful act, causing losses to state finances, and conferring benefits on oneself or others.

Against this institutional backdrop, it is understandable that ATIGA-related disputes before the Tax Court and the Supreme Court are often highly procedural in nature. This procedural focus, in turn, has led to divergent judicial approaches. Some judges adopt a positivist approach, relying strictly on the text of existing regulations and procedural requirements. Others take a more progressive approach, emphasising the underlying objectives of international trade agreements. Former Supreme Court Justice Hary Djatmiko, who adjudicated numerous customs-related cases between 2011 and 2021, exemplified the latter approach by prioritising compliance with Indonesia's international commitments. By contrast, Tax Court Judge Tri Andrini Kusumandari has tended to adopt a more positivist stance, viewing procedural compliance as a decisive factor that must be carefully observed. Supreme Court Justice Cerah Bangun, meanwhile, has indicated a contextual approach, examining the factual background of each case before reaching a decision. In cases involving late submission of a Certificate of Origin, for example, he considers whether the delay was attributable to force majeure or other justifiable circumstances.

Patterns of ATIGA-related litigation have also evolved in recent years. Earlier cases frequently involved disputes over the validity of Certificates of Origin, including mismatches between signatures and official specimens. However, since the introduction of the ASEAN Single Window, such disputes have declined significantly. The digitisation of Certificates of Origin has facilitated verification and reduced uncertainties surrounding authenticity. By contrast, the most prevalent disputes in recent years concern the timing of Certificate of Origin submission, largely due to differing judicial interpretations of applicable rules. These divergent approaches have, in some instances, resulted in inconsistent outcomes in cases involving substantially similar facts, thereby raising concerns regarding legal certainty.

4. Malaysia: Enforcement of ATIGA Through High Court of Malaya

4.1. Institutional Setting

As a federal state, Malaysia has a judicial system that differs from Indonesia, which follows a unitary state model. Under the Malaysian Federal Constitution, two High Courts are recognised: the High Court of Malaya and the High Court of Sabah and Sarawak. These courts reflect Malaysia's division into two main geographical regions: Peninsular Malaysia (West Malaysia) and East Malaysia. Decisions of both High Courts may be appealed to the Court of Appeal of Malaysia, while the highest judicial authority is the Federal Court of Malaysia, which hears appeals from the Court of Appeal and, in limited circumstances, directly from the High Courts.

In addition to this constitutional judicial structure, Malaysia also recognises the Customs Appeal Tribunal, which is established under Part XIVA of the Customs Act (1967). The

Customs Appeal Tribunal is a specialised quasi-judicial body tasked with hearing appeals against decisions of the Director General of Customs under customs and indirect tax legislation. Although the Tribunal is administratively placed under the Ministry of Finance, it functions independently in adjudicating disputes between taxpayers and the customs authority (Ministry of Finance, Malaysia, n.d.).

The decisions of the Customs Appeal Tribunal are final and binding, but subject to further challenge. Any party aggrieved by a tribunal decision may appeal to the High Court on questions of law or mixed questions of law and fact. Despite this appellate pathway, the Tribunal's decisions are not readily accessible to the public. According to Article 141R (1) of the Customs Act 1967, Tribunal proceedings are, in principle, conducted in private unless otherwise agreed by the parties, and decisions may only be published if deemed to be in the public interest and agreed by the parties. Even then, publication is restricted where disclosure is prohibited by law. As a result of these limitations – and in the absence of an official publicly accessible database of tribunal decisions – this research encountered significant obstacles in accessing and analysing ATIGA-related disputes before the Customs Appeal Tribunal. This lack of transparency makes it difficult to conduct a comprehensive examination of the technical implementation of ATIGA in Malaysia, particularly when compared with the extensive body of publicly available jurisprudence in Indonesian courts. Nevertheless, despite these constraints, there are at least two Malaysian judicial decisions directly addressing ATIGA, both of which were adjudicated by the High Court of Malaya. These cases therefore provide a limited but important basis for examining the role of Malaysian courts in the domestic enforcement of ATIGA commitments.

4.2. Key ATIGA-related Cases

The two ATIGA-related cases adjudicated by the High Court of Malaya were brought directly before the court, rather than through an appeal from the Customs Appeal Tribunal. As a result, these cases did not focus on whether the imported goods were substantively eligible for ATIGA preferential tariffs in the same manner as most of the Indonesian cases. Instead, they addressed issues that went beyond procedural technicalities, while nevertheless demonstrating how ATIGA commitments may be invoked and enforced by private entities through domestic judicial proceedings.

Both cases concerned Licensed Manufacturing Warehouses (LMWs) in Malaysia. LMWs are customs facilities that permit companies to import raw materials without paying import duties or taxes, provided that the materials are used for manufacturing or processing and that the resulting products are primarily exported. Under the LMW regime, up to 20% of production may be sold in the domestic market (or up to 40% with special approval), while the remaining output (80%) must be exported.

4.2.1. DDG Glass Case

The first case was *DDG Glass MFG Sdn Bhd v. Minister of Finance and Director General of Customs* (2020), decided by the High Court of Malaya in 2020. The dispute arose when DDG Glass MFG Sdn Bhd, a holder of an LMW licence, imported raw materials from other ASEAN Member States under the ATIGA framework, processed them in Malaysia, and subsequently sold the finished products domestically in quantities exceeding the permitted threshold. In response, Malaysian Customs imposed a 30% import duty and service tax on the company. DDG Glass sought a remission from the Ministry of Finance, Malaysia, but the request was rejected.

DDG Glass then initiated judicial review proceedings before the High Court of Malaya and succeeded. The Court held that the Minister of Finance and the Director General of Customs had misinterpreted the law by subjecting the same finished products to double taxation**,** despite the fact that those products were eligible for a zero% import duty under ATIGA. The Court emphasised that a breach of the LMW license conditions did not justify altering the applicable tariff rate, which was determined independently by Malaysia's ATIGA commitments.

Importantly, the High Court characterised the decision of the Director General of Customs to alter the tariff as ultra vires, noting that the authority to determine or vary tariff rates lies with the Minister of Finance under the Customs Regulations 2010 and Article 11(1) of the Customs Act 1967. In strong and unequivocal terms, the Court underscored the obligation of customs authorities to respect Malaysia's commitments under ATIGA, setting out a series of forceful considerations that reinforced the binding nature of ASEAN trade obligations in domestic law:

> *'By acting as he did, alludes to the fact that the 2nd respondent had plainly failed to conform to the spirit and intent of the ASEAN Trade in Goods Agreement, which essentially stood to eliminate non-tariff barriers and the quantitative restrictions on the importation of goods intra ASEAN; and indeed did so by altering the rate of duty concerned where he had no ostensible authority to do so;'(DDG Glass MFG Sdn Bhd v. Minister of Finance and Director General of Customs* (2020), p.54).

The High Court of Malaya held that the Minister of Finance's decision to reject DDG Glass's application for remission of tax liabilities could reasonably be regarded as tainted by illegality. Emphasising that the court 'does not substitute its own opinion for that of the decision-maker, but is concerned only with the legality of the decision rather than its merits,' the Court remitted the matter to the Minister of Finance for reassessment of the remission request that formed the subject of the dispute.

4.2.2. Pan International Electronic Case

The second case involved a dispute between *Pan International Electronics (M) Sdn Bhd v. Minister of Finance and Director General of Customs* (2024)**.** Pan International is a

Licensed Manufacturing Warehouse (LMW) holder. Similar to the DDG Glass case, Pan International imported raw materials from ASEAN Member States under the ATIGA framework, processed them in Malaysia into finished goods, and subsequently sold part of the output domestically while exporting the remainder.

Malaysian Customs alleged that Pan International had exceeded its permitted local sales quota by 7.21%, resulting in domestic sales amounting to 27.21% of its total production. On this basis, Customs assessed import duties amounting to RM8,432,282.51 (approximately US$1.8 million) and imposed a sales tax of RM841,342. Pan International appealed the assessment to the Minister of Finance, but the appeal was rejected, prompting the company to commence judicial review proceedings before the High Court of Malaya. According to Pan International's legal counsel, Cheong Yeow Sheng, the company initially raised arguments concerning alleged miscalculations in determining the applicable sales quota period – specifically whether the quota should be calculated on a daily or monthly basis – emphasising the absence of bad faith on the part of the importer. However, during the court proceedings, the legal strategy shifted to focus primarily on ATIGA-based arguments (Interview with Yeow Sheng, 5 December 2025). The core contention mirrored that advanced in the DDG Glass case: namely, that goods imported under ATIGA should not be subjected to re-imposed import duties merely because of a breach of LMW licence conditions.

The case was heard by a single judge of the High Court of Malaya, Quay Chew Soon, who framed the central legal question as whether the applicant was entitled to a zero% import duty under ATIGA, notwithstanding its failure to comply with the 20% local sales limitation imposed under the LMW regime. The Court answered this question in the affirmative. Adopting reasoning similar to that in the DDG Glass case, the Court held that the Minister of Finance had failed to exercise his statutory discretion to impose customs duties in a fair and equitable manner, as required under Section 14A of the Customs Act 1967. The Court observed that the Minister had effectively allowed LMW licence conditions to be superimposed onto the ATIGA Order, despite the absence of any express provision in either the ATIGA Order or the Customs Act 1967 authorising such an approach. As a result, a 30% import duty had been imposed on goods that were otherwise entitled to a zero% tariff under the ATIGA framework.

Furthermore, the Court rejected the argument advanced by the Minister of Finance and the Director General of Customs and Excise (DGCE) that Pan International had applied to the Ministry of International Trade and Industry for an increase in its local sales quota to 40%, which was subsequently approved. The Court considered this fact to be immaterial to the issues in dispute. The quota extension was intended to address potential administrative consequences – such as the revocation or suspension of the LMW licence – for breaches of the local sales conditions. It had no bearing on the separate question of entitlement to import duty exemptions under the ATIGA Order. The Court concluded that the Minister's decision was therefore tainted by illegality and irrationality, granted the application for judicial review, and ordered the Minister of Finance and the Director General of Customs to pay RM3,000 in costs to Pan International.

4.3. Judicial Approaches

Taken together, these two cases demonstrate that the Malaysian courts – specifically the High Court of Malaya – have affirmed that ATIGA commitments must be upheld independently and should not be conflated with other regulatory regimes, such as the Licensed Manufacturing Warehouse (LMW) regime. The Court emphasised that these two regimes must be treated separately, as they pursue distinct policy objectives. The LMW regime, which requires that at least 80% of manufactured products be exported, is designed to enhance the international competitiveness of goods produced in Malaysia by allowing manufacturers to operate at lower cost. By contrast, ATIGA serves a different purpose: to promote free trade amongst ASEAN Member States through the reduction and elimination of tariffs (Interview with Yeow Sheng, 5 December 2025). Conflating these two regimes would therefore undermine the objectives of ATIGA by introducing conditions that are unrelated to preferential tariff treatment.

This distinction was explicitly underscored by the High Court of Malaya in the *Pan International* case, as provided in Table 2, where the Court illustrated the differing objectives and legal bases of the ATIGA framework and the LMW regime through a comparative table, reproduced below:

Table 2: Distinction of LMW and ATIGA Order

	LMW	ATIGA Order
Approving body	Director General of Customs	Minister of Finance
Purpose	For effective competitiveness in the pricing of our local products when entering the global export market	To facilitate the free flow of goods within the ASEAN region by providing a comprehensive framework aimed at reducing trade barriers amongst the ASEAN countries.
Entitlement	Must apply to the Director General of Customs for a LMW license.	Do not need to apply to be entitled.
Type of goods	Only raw materials (from any country)	Any goods, which includes finished product, so long as it has a regional value content of not less than 40 percent based on its formula (only from the ASEAN countries)
Type of company applicable	A company with a LMW license.	Any company.
Export/ local sales quota	Export: 80% Local sales: 20%	None.
Revocability	The Director General of	Revocation of the order by the

	Customs may suspend or cancel a LMW license	Minister of Finance, which is to be gazetted.

Source: Pan Internasional Electronics (M) Sdn Bhd v. Menteri Kewangan Malaysia and Ketua Pengarah Kastam (2024), p.8.

These two decisions also demonstrate the High Court's consistency in giving effect to the spirit and intent of ATIGA, which was established to eliminate trade barriers and quantitative restrictions on the movement of goods within the ASEAN region. In both cases, the Court adopted an approach that firmly aligned with this objective, prioritising the facilitation of intra-ASEAN trade over restrictive or extraneous regulatory considerations (RDS Law Partners, 2024). At the same time, as noted by Liew (2024), these cases highlight a recurring practical issue in Malaysia, where tax and regulatory authorities may conflate conditions attached to different licences or approvals. Taxpayers must therefore remain vigilant and assess carefully whether the conditions imposed under one regulatory regime can lawfully be applied to another. Failure to do so risks the improper extension of regulatory obligations beyond their intended legal scope.

5. Comparative Analysis and Implications for ASEAN Economic Integration

This chapter examines, in a single comparative analysis, the similarities and differences between Indonesian and Malaysian courts in handling ATIGA-related disputes, as well as its implication to ASEAN Economic Integration. First, at the institutional level, both Indonesia and Malaysia have specialised bodies that have – or potentially have – direct involvement in the implementation of ATIGA, particularly in relation to import duties: the Tax Court of Indonesia and the Customs Appeal Tribunal of Malaysia. Conceptually, the two institutions are comparable. The Customs Appeal Tribunal operates under the Ministry of Finance, with its decisions subject to appeal before the High Court. Similarly, the Indonesian Tax Court has historically been institutionally linked to the Ministry of Finance while exercising judicial functions under the supervision of the Supreme Court of Indonesia. By the end of 2026, ongoing reforms are expected to place the Tax Court fully under the Supreme Court, thereby strengthening its judicial independence.

A key institutional difference, however, lies in transparency and access. Proceedings and decisions of the Indonesian Tax Court are relatively open and systematically published, whereas proceedings before the Customs Appeal Tribunal are, in principle, closed and its decisions are not routinely made public. This lack of transparency constitutes a significant limitation for this research, as it restricts the ability to conduct a comprehensive and systematic analysis of ATIGA-related disputes at the tribunal level in Malaysia. For example, it is not possible to ascertain whether procedural and technical disputes – so prevalent in Indonesian Tax Court cases – also arise with similar frequency before the Malaysian tribunal. Nevertheless, despite these constraints, this study proceeds by examining and comparing publicly available judicial decisions, particularly those issued by Malaysian courts.

Second, a shared characteristic of ATIGA-related litigation in both countries is that disputes typically arise from actions taken by customs authorities. This is unsurprising, given that customs agencies are responsible for controlling the import and export of goods and are therefore directly engaged in the implementation of ATIGA and other FTAs. In both jurisdictions, judicial intervention frequently functions as a corrective mechanism, reminding or requiring customs authorities to comply with ATIGA commitments.

Third, courts in both countries demonstrate a generally positive engagement with ATIGA. Neither Indonesian nor Malaysian courts exhibit reluctance to acknowledge the legal relevance of ATIGA, and no cases were identified in which courts outright rejected the applicability of the Agreement. Although not all ATIGA-related cases in Indonesian tax courts result in importer victories, the proportion of successful claims is nonetheless significant. Indonesian courts frequently and explicitly cite ATIGA, using it both as an interpretative reference and, at times, as a central legal basis for their decisions. Malaysian courts, by contrast, tend to engage with ATIGA more cautiously. When they do so, however, they articulate clear constitutional and statutory limits on the powers of customs authorities, particularly through doctrines such as ultra vires and improper exercise of discretion.

Fourth, both jurisdictions exhibit a defined scope of judicial review, albeit with different emphases in practice. Indonesian courts tend to engage in both factual and legal review, including technical customs matters such as tariff classification, valuation, and rules of origin. Malaysian courts, by contrast, adopt a more legality-focused approach, concentrating on issues such as ultra vires actions, jurisdictional error, and the improper exercise of discretion, rather than reassessing factual determinations made by customs authorities. In conclusion, Indonesia contributes volume and continuity to the enforcement of ATIGA through a substantial and transparent body of domestic jurisprudence, while Malaysia contributes sharper doctrinal boundaries through principled judicial review by its courts. Taken together, these complementary judicial pathways illustrate how domestic courts – operating within different institutional and constitutional settings – can collectively strengthen legal certainty and support rules-based trade integration within ASEAN.

Accordingly, domestic courts play a highly significant role as a *de facto* enforcement mechanism for ATIGA – or, in more emphatic terms, as guardians of ATIGA (and broader ASEAN) commitments. This judicial role can also be leveraged to strengthen monitoring and compliance within ASEAN economic integration, particularly by the ASEAN Secretariat. With respect to ATIGA, there are currently two regional-level mechanisms available when implementation problems arise. First, each ASEAN Member State may raise complaints or implementation issues through its national focal point, which then submits the matter to the ATIGA Working Committee at ASEAN Economic Community Department. This mechanism is already operational and has been used to address issues relating to the implementation of the Rules of Origin, such as specimen signatures, minor discrepancies, and third-country invoicing. However, this process is state-centric: traders and private entities cannot submit complaints directly, but must act through national authorities – typically the Ministry of Trade (Anonymous interview with ASEAN Secretariat officials, December 2025). Second, the ASEAN Secretariat provides the ASEAN Solutions for Investments, Services and Trade (ASIST) Platform, a non-binding and consultative mechanism designed to facilitate the expedited resolution of operational trade and investment issues faced by ASEAN enterprises. Importantly, ASIST is not limited to ATIGA-related matters. While private entities may submit complaints directly through this platform, its effectiveness in practice is limited. The platform operates largely as a one-way communication channel and lacks robust follow-up, enforcement, or adjudicative features.

A critical distinction between these two ASEAN-level mechanisms and domestic judicial enforcement lies in the availability of remedies. Neither the national focal point process nor the ASIST Platform is capable of providing direct, binding remedies to private entities whose rights to ATIGA preferential tariffs have been infringed by customs authorities. By contrast, domestic courts can offer concrete and enforceable relief, including the annulment of unlawful customs decisions and the restoration of preferential tariff treatment. In this respect, national courts fill an essential enforcement gap within ASEAN's trade governance framework, reinforcing ATIGA's effectiveness in practice and enhancing legal certainty for traders operating within the ASEAN single market.

6. Policy Recommendations

Based on the comparative analysis of ATIGA enforcement by domestic courts in Indonesia and Malaysia, this paper advances the following policy recommendations addressed to key stakeholders within the ASEAN trade governance ecosystem.

6.1. ASEAN Institutions (ASEC and Regional Legal Networks)

ASEAN institutions – particularly the ASEAN Secretariat – should strengthen their engagement with domestic judicial practice as part of ASEAN's trade monitoring framework. First, ASEAN should systematically capture and analyse domestic court decisions involving ATIGA as a complementary source of information on implementation challenges, alongside traditional state-to-state reporting mechanisms. Domestic jurisprudence offers valuable insights into how ATIGA obligations are interpreted and applied in practice, particularly in disputes involving private entities.

Second, ASEAN should establish structured feedback loops between domestic courts, national authorities, and the ASEAN Secretariat. Such mechanisms would allow judicial findings – especially those identifying administrative inconsistencies or regulatory gaps – to inform policy discussions and implementation reviews at the regional level.

Third, ASEAN Regional Legal Networks, such as the Council of ASEAN Chief Justice (CACJ) or the ASEAN Law Association should promote sustained judicial dialogue on

ASEAN law, including seminars, case exchanges, and comparative workshops. These initiatives would foster a shared interpretative culture and reduce fragmentation in the application of ATIGA across member states.

6.2. ASEAN Member States

At the national level, ASEAN Member States should issue clear and coherent administrative guidelines on the implementation of ATIGA, particularly in technically sensitive areas such as rules of origin, certificate of origin verification, and preferential tariff eligibility. Clear guidance would help limit excessive discretionary enforcement by customs authorities and reduce the volume of avoidable disputes. Member states should also ensure effective co-ordination between customs authorities and trade ministries, so that administrative practice remains aligned with ATIGA obligations and ASEAN-level commitments. Fragmented institutional approaches risk undermining the predictability and credibility of preferential trade regimes.

In addition, member states should invest in capacity-building programmes for judges and customs officials on ASEAN trade law. Training initiatives should focus not only on technical rules but also on the objectives and principles underpinning ATIGA, thereby encouraging consistent, good-faith implementation.

6.3. Domestic Courts

Domestic courts play a central role as *de facto* enforcers of ATIGA and should continue to strengthen their contribution to ASEAN's rules-based economic integration. Courts should strive to develop more consistent and transparent interpretative approaches to ATIGA and related ASEAN instruments, particularly in recurring areas of dispute. Where relevant, courts should explicitly cite ATIGA in their reasoning. Clear references to ASEAN legal instruments enhance legal certainty, improve predictability for traders, and reinforce the normative status of ASEAN commitments within domestic legal systems.

Courts should also share jurisprudential experiences through regional judicial networks, contributing to cross-border learning and the gradual convergence of interpretative practices across ASEAN.

6.4. Universities and Academic Institutions

Universities and academic institutions should play a more active role in supporting ASEAN legal integration. ASEAN law – and ATIGA in particular – should be integrated into core legal curricula, judicial education programmes, and continuing legal training. This would help cultivate a new generation of judges, lawyers, and policymakers' familiar with ASEAN legal instruments.

Academia should also expand doctrinal and empirical research on the domestic enforcement of ASEAN law, including court-based studies that document how regional commitments are operationalised at the national level. Finally, universities should facilitate structured engagement between courts and academia, through workshops, case commentaries, and collaborative research initiatives.

6.5. Regional Think Tanks

Regional think tanks – such as the Economic Research Institute for ASEAN and East Asia – are well positioned to act as knowledge brokers between domestic courts and ASEAN policy institutions. These organisations should systematically translate judicial findings into policy-relevant insights, particularly in the context of ATIGA review and upgrade discussions.

Think tanks should also support comparative, evidence-based research on the enforcement of ASEAN law across member states, drawing on court decisions, administrative practice, and stakeholder interviews. Such research can inform ASEAN's ongoing efforts to strengthen compliance, enhance legal certainty, and advance a more effective rules-based regional economic order.

7. Conclusion and Future Research

This paper has examined the enforcement of ATIGA through domestic courts in Indonesia and Malaysia, highlighting the increasingly important role of national judiciaries in ASEAN's legal and economic integration. In the absence of a regional ASEAN court with compulsory jurisdiction, domestic courts have emerged as key de facto enforcement mechanisms for ATIGA commitments. Through judicial review and the adjudication of disputes involving customs authorities, national courts give practical effect to ASEAN trade obligations that might otherwise remain largely programmatic or aspirational.

The comparative analysis reveals the existence of two complementary judicial models within ASEAN. Indonesia contributes to ATIGA enforcement through a high volume of cases handled by a specialised and relatively transparent Tax Court (and the Supreme Court for judicial reconsideration), generating a visible and continuous body of jurisprudence on tariff classification, rules of origin, and procedural compliance. Malaysia, by contrast, offers a more selective but doctrinally rigorous model, in which superior courts – particularly the High Court of Malaya – intervene to delineate clear legal boundaries, constrain ultra vires administrative action, and safeguard the integrity of ATIGA commitments against conflation with unrelated regulatory regimes. While institutionally and procedurally distinct, these two models demonstrate how diverse domestic legal systems can nevertheless support a shared regional objective.

A central finding of this study is that legal certainty under ATIGA is generated primarily at the domestic level. Through their decisions, courts in both jurisdictions have constrained excessive administrative discretion, clarified the scope and operation of ATIGA obligations, and, most importantly, provided concrete and enforceable remedies to traders whose rights have been infringed. In doing so, domestic courts help fill an enforcement gap left by ASEAN's predominantly intergovernmental and consultative compliance mechanisms, which lack the capacity to deliver binding relief to private parties. More broadly, the paper demonstrates that judicial engagement with ATIGA does not undermine the 'ASEAN Way,'; rather, it complements it. By enforcing ASEAN commitments through national legal orders, domestic courts enable ASEAN to advance a rules-based economic community without the politically sensitive step of establishing a supranational court. This form of indirect judicialisation allows ASEAN integration to proceed incrementally, grounded in domestic legality and institutional practice.

Future research could extend this analysis in several directions. First, similar court-based studies could be conducted on other ASEAN legal instruments, such as agreements on services, investment, or customs transit, to assess whether comparable enforcement patterns emerge. Second, expanding the analysis to additional ASEAN Member States would deepen understanding of how different legal systems contribute to regional compliance and legal certainty. Finally, further interdisciplinary research combining doctrinal analysis with empirical judicial data could help ASEAN institutions better incorporate domestic jurisprudence into regional monitoring and policy reform processes.

In sum, this study underscores that the effectiveness of ATIGA ultimately depends not only on regional commitments, but also on their domestic judicial enforcement. National courts, acting as key actors in the enforcement or custodians of ASEAN trade obligations, play a pivotal role in transforming ATIGA from a formal agreement into a living instrument of regional economic integration.

References

Antara (2025), 'ATIGA Upgrade Boosts ASEAN's Economic Resilience, Minister Says', *Antara*, 27 October. https://en.antaranews.com/news/388157/atiga-upgrade-boosts-aseans-economic-resilience-minister-says

Beckman, R., L. Bernard, H.D. Phan, T. Hsien-Li, and R. Yusran (2016), *Promoting Compliance: The Role of Dispute Settlement and Monitoring Mechanisms in ASEAN Instruments*. Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9781316534700

Buban, S and R. Shrestha (2021), *Impact of the ASEAN Trade in Goods Agreements (ATIGA) on Intra-ASEAN Trade*. Jakarta: ERIA. https://www.eria.org/publications/impact-of-the-asean-trade-in-goods-agreements-atiga-on-intra-asean-trade

Cassese, A. (1990), 'Remarks on Scelle's Theory of 'Role Splitting' (*Dédoublement Fonctionnel*) in International Law', *European Journal of International Law*, 1(1), pp.210–31. https://doi.org/10.1093/oxfordjournals.ejil.a035763

Chesterman, S. (2015), *From Community to Compliance? The Evolution of Monitoring Obligations in ASEAN*. Cambridge: Cambridge University Press.

https://doi.org/10.1017/CBO9781316162248

Crouch, M. (ed.) (2019), *The Politics of Court Reform: Judicial Change and Legal Culture in Indonesia*. Cambridge: Cambridge University Press. https://doi.org/10.1017/9781108636131

Customs Act 1967 (Malaysia).

DDG Glass MFG Sdn Bhd v. Minister of Finance and Director of Customs, [2020] 1 LNS 1369 (High Court of Malaya, Johor Bahru).

Desierto, D. and D. Cohen (2021), *ASEAN Law and Regional Integration: Governance and the Rule of Law in Southeast Asia's Single Market.* Oxfordshire: Routledge.

Gucciardo, N.R. (2023), 'A New Dawn for the Common Law: A Proposal for a New Court System for the ASEAN Trade in Goods Agreement,' *William & Mary Business Law Review*, 15(1), pp.217–244.

Harding, A. (1996), *Law, Government and the Constitution in Malaysia*. The Hague; Kluwer Law International.

——— (2022), *The Constitution of Malaysia: A Contextual Analysis*. 2nd ed. Oxford: Hart. https://doi.org/10.5040/9781509955695

Hsien-Li, T (2011), *The ASEAN Intergovernmental Commission on Human Rights: Institutionalising Human Rights in Southeast Asia*. Cambridge: Cambridge University Press.

Inama, S. and E.W. Sim (2015), *Rules of Origin in ASEAN: A Way Forward*. Cambridge: Cambridge University Press. https://doi.org/10.1017/CBO9781316145128

Law No. 17 of 2006 on Customs (Indonesia).

Liew, D.Z.H. (2024), 'Limitation of Licensed Manufacturing Warehouse Conditions', *Halim Hong & Quek*, 30 May. https://hhq.com.my/posts/limitation-of-licenced-manufacturing-warehouse-conditions/

Lindsey, T. (2008), *Indonesia: Law and Society*. 2nd ed. Sydney: The Federation Press.

Minister of Finance Regulation No. 229/PMK.04/2017 on the Procedures for the Imposition of Import Duty Tariffs on Imported Goods Based on International Agreements (Indonesia).

Ministry of Finance, Malaysia (n.d.), 'Customs Appeal Tribunal', *Ministry of Finance*, 2 April. https://www.mof.gov.my/portal/index.php/en/profile/divisions/customs-appeal-tribunal

Pan International Electronics (M) Sdn Bhd v. Minister of Finance and Director General of Customs, Judicial Review No. PA-25-65-08/2023 (High Court of Malaya, Penang, 26 March 2024).

Piris, J.-C. and W. Woon (2015), *Towards a Rules-Based Community: An ASEAN Legal Service.* Cambridge: Cambridge University Press.

PT Blue Steels Industries v. Directorate General of Customs and Excise, Decision No. 3617 B/PK/PJK/2020 (Supreme Court of Indonesia 2020).

PT Indocement Tunggal Prakasa v. *Directorate General of Customs and Excise*, Decision No. 276B/PK/PJK/2017 (Supreme Court of Indonesia, 2017).

PT Nestlé Indonesia v. Directorate General of Customs and Excise, Decisions Nos. 380/B/PK/PJK/2009, 381/B/PK/PJK/2009, 423/B/PK/PJK/2009, 425/B/PK/PJK/2009, 426/B/PK/PJK/2009, 427/B/PK/PJK/2009, 436/B/PK/PJK/2009, 439/B/PK/PJK/2009, 446/B/PK/PJK/2009, 447/B/PK/PJK/2009, 448/B/PK/PJK/2009, 229/B/PK/PJK/2009, 228/B/PK/PJK/2009, 384/B/PK/PJK/2009, 34/B/PK/PJK/2010, 35/B/PK/PJK/2010, 38/B/PK/PJK/2010, 73/B/PK/PJK/2010, 74/B/PK/PJK/2010, 80/B/PK/PJK/2010, 102/B/PK/PJK/2010, 120/B/PK/PJK/2010, 131/B/PK/PJK/2010, 132/B/PK/PJK/2010, 144/B/PK/PJK/2010, 171/B/PK/PJK/2010, 172/B/PK/PJK/2010, 175/B/PK/PJK/2010, 204/B/PK/PJK/2010, 250/B/PK/PJK/2010, 252/B/PK/PJK/2010, 282/B/PK/PJK/2010, 283/B/PK/PJK/2010, 351/B/PK/PJK/2010, 360/B/PK/PJK/2010, 361/B/PK/PJK/2010, and 384/B/PK/PJK/2010 (Supreme Court of Indonesia, 2009–2010).

PT Sarimakmur Tunggal Mandiri v. the Directorate General of Customs and Excise, Decision No. PUT-007071.45/2018/PP/M.XVIIA/2019 (Tax Court of Indonesia 2019).

PT Sentra Usahatama Jaya v. Directorate General of Customs and Excise, Decision No. 1601/B/PK/Pjk/2018 (Supreme Court of Indonesia 2018).

RDS Law Partners (2024), 'The High Court Rules in Favour of Taxpayer in Relation to Disputed Import Duty on Zero-Rated Goods', *RDS Law Partners*, 30 August. https://www.rdslawpartners.com/post/the-high-court-rules-in-favour-of-taxpayer-in-relation-to-disputed-import-duty-on-zero-rated-goods.

Salmande, A. (2021), 'Experiences of Indonesian Domestic Courts in Invoking ASEAN Law Instruments', *ASEAN Ideas in Progress Series*, No. 1/2021. Singapore: Centre for International Law, National University of Singapore. https://cil.nus.edu.sg/publication/experiences-of-indonesian-domestic-courts-in-invoking-asean-law-instruments/

——— (2023), 'Why Indonesian Tax Court Reform Matters to ASEAN Integration', *The Jakarta Post*, 5 June. https://www.thejakartapost.com/opinion/2023/06/05/why-indonesian-tax-court-reform-matters-to-asean-integration.html

Singh, S. (2022), *A Forward-Looking ASEAN Trade in Goods Agreement in a Changing World*. Jakarta: The ASEAN Secretariat. https://asean.org/wpcontent/uploads/2022/04/Deputy-Secretary-General-Satvinder-Singh-Op-Ed-on-ATIGA-Upgrade-21032022.pdf

Supreme Court of Indonesia, Decision No. 276B/PK/PJK/2017 (2017).

Tax Court of Indonesia, Decision No. 48293/PP/M.IX/19/2013 (2013).

Tax Court of Indonesia, Decision No. Put-50605/PP/M.VA/19/2014 (2014).

Tax Court of Indonesia, Decision No. Put-57357/PP/M.XIB/19/2014 (2014).

Thierry, H. (1990), 'The Thought of Georges Scelle', *European Journal of International Law*, 1(1), pp.193–209.