

AfCFTA Stakeholder Webinar for Tunisia

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Presented by the Trade Law Centre (tralac)

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Key topics:

Update on the AfCFTA

Rules of origin

Non-tariff barriers

Pan African Payment and
Settlement System



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Overview of the African Continental Free Trade Area (AfCFTA)

Context

- A comprehensive continental trade regime
- For 55 AU Members at different levels of development
- Goods, Services, Dispute Settlement, IP, Competition, Investment
- E-Commerce may follow
- No supra-national institutions....this is an FTA with additions
- RECs & existing trade arrangements continue (Art 19)
- Implementation of legal obligations between & within the State Parties only
- Negotiations began in 2015. AfCFTA launched March 2018.
- Agreement entered into force 30 May 2019
- But no trade yet - Ongoing negotiations on tariffs & RoO
- What is necessary for trade under the AfCFTA to begin?
- Note that intra-African trade is highly concentrated. SACU accounts for 42%; and SADC for 63% of intra-Africa trade in goods (2020)

General Objectives of the AfCFTA (Art 3)

- Single liberalised market for goods & services through further negotiations
- Contribute to movement of capital & natural persons
- Facilitate investment
- Building on developments in the State Parties & RECs
- Lay the foundation for a Continental Customs Union at a later stage
- Enhance competitiveness & promote industrial development
- Resolve the challenge of overlapping memberships

Specific Objectives (Art 4)

The State Parties shall progressively eliminate tariffs and non-tariff barriers to trade in goods; progressively liberalise trade in services; cooperate on investment, intellectual property rights and competition policy; cooperate on all trade-related areas; cooperate on customs matters and the implementation of trade facilitation measures; establish a mechanism for the settlement of disputes concerning their rights and obligations; and establish and maintain an institutional framework for the implementation and administration of the AfCFTA. (Emphases added.)

AfCFTA Governing Principles (Art 5)

- Driven by Member States of the African Union
- RECs' Free Trade Areas (FTAs) are the building blocs for the AfCFTA
- Variable geometry
- Flexibility and special and differential treatment; transparency and disclosure of information
- Preservation of the *acquis*
- Most-Favoured-Nation (MFN) Treatment & National Treatment
- Reciprocity
- Substantial liberalisation
- Consensus in decision-making
- Best practices in the RECs, the State Parties & International Conventions binding the African Union.

Important Features

- *The Protocols on Trade in Goods, Trade in Services, Investment, Intellectual Property Rights, Competition Policy, Rules and Procedures on the Settlement of Disputes and their associated Annexes and Appendices shall form part of the **single undertaking**, subject to entry into force. (Art. 8(2) Agreement)*
- *Each State Party shall apply preferential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions (Art 8(1) Goods Protocol)*
- *Rules of Origin must be met to benefit from Preferences*
- *Nothing in this Protocol shall prevent a State Party from concluding or maintaining preferential trade arrangements with Third Parties, provided that such trade arrangements do not impede or frustrate the objectives of this Protocol, and that any advantage, concession or privilege granted to a Third Party under such arrangements is extended to other State Parties on a reciprocal basis. (Art 4(2) Goods Protocol)*

Other Important Features

- RECs will not disappear. Art. 19(2):

“...State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this agreement, shall maintain such higher levels among themselves.”

- **Trade in Services** is based on the four modes of supply of GATS
 - from the territory of one State Party into the territory of any other State Party
 - in the territory of one State Party to the service consumer of any other State Party
 - by a service supplier of one State Party, through commercial presence in the territory of any other State Party
 - by a service supplier of one State Party, through presence of natural persons of a State Party in the territory of any other State Party.

Legal Architecture of the AfCFTA

Agreement establishing the AfCFTA

Phase 1

Protocol on
Trade in
Goods

Protocol on
Trade in
Services

Protocol on Rules
and Procedures
on the Settlement
of Disputes

Annexes

- Schedules of Specific Commitments
- MFN Exemptions
- Air Transport Services
- List of Priority Services
- Framework Document on Regulatory Cooperation

Phase 2

Protocol on
Investment

Protocol on
Competition
Policy

Protocol on Intellectual Property
Rights

Annexes

- Working Procedures of the Panel
- Expert Review
- Code of Conduct for Arbitrators and Panellists

Phase 3

Protocol on
Ecommerce

Protocol on Women,
Youth and SMEs

Annexes

- Schedules of Tariff Concessions
 - Rules of Origin
 - Customs cooperation and mutual administrative assistance
 - Trade Facilitation
 - Non-tariff barriers
 - Technical Barriers to Trade
 - Sanitary and Phytosanitary Measures
 - Transit
 - Trade Remedies
- Guidelines for implementation of Trade Remedies

AfCFTA Institutions

- The **Assembly** of the AU provides oversight and strategic guidance by consensus.
- The **Council of Ministers** (Trade Ministers of the State Parties): Implementation & enforcement of Agreement. May issue regulations, directives & recommendations. Reports to the Assembly through AU Executive Council.
- The **Committee of Senior Trade Officials** (Permanent or Principal Secretaries of State Parties) must implement Council decisions, request investigations & direct Secretariat to undertake assignments, promote harmonisation of appropriate policies, consider reports, take appropriate actions, establish committees.

AfCFTA Institutions....cont'd

The Secretariat:

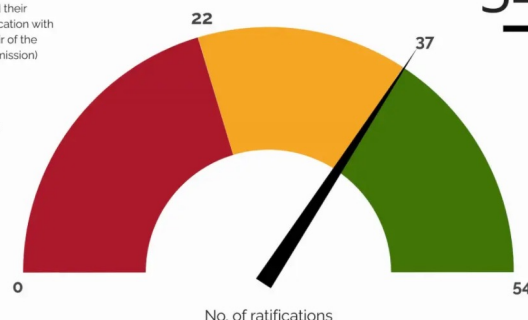
- A “*functionally autonomous body within the AU system*” with independent legal personality & autonomous of the AU Commission.
- AU will fund Secretariat. HQ in Accra. Has started.
- Secretariat has monitoring and support functions, help re Remedies, NTBs, Dispute Settlement etc.
- African Trade Observatory (ATO). Must provide reliable information on trade data, market conditions and applied regulations, registered exporters/importers and authorized economic operators.
- Several ***ad hoc* bodies** (Standards, Trade Remedies, Trade Facilitation etc) listed in Protocols & Annexes

Update on AfCFTA (as at 23 June 2021)

AfCFTA Ratification Barometer

37 No. of countries that have deposited their instruments of ratification with the depositary (Chair of the African Union Commission)

22 country threshold for entry into force of the AfCFTA Agreement, as stipulated in Article 23



54 No. of signatories (countries) that have signed the consolidated text of the Agreement Establishing the AfCFTA

1 country (of the 55 AU member states) has yet to sign the AfCFTA Agreement - Eritrea

Number of ratifications deposited



Which countries have ratified the AfCFTA Agreement?

Listed by date on which the AfCFTA instrument of ratification was deposited with the AUC Chairperson



- Instrument of ratification deposited
- Parliamentary approval received or pending
- AfCFTA Agreement signed
- AfCFTA Agreement not signed

Country	Date
Ghana	10/05/2018
Konya	10/05/2018
Reanda	28/05/2018
Niger	19/06/2018
Chad	02/07/2018
Eswatini	02/07/2018
Guinea	16/10/2018
Côte d'Ivoire	23/11/2018
Mali	01/02/2019
Namibia	01/02/2019
South Africa	10/02/2019
Congo, Rep.	10/02/2019
Djibouti	11/02/2019
Mauritania	11/02/2019
Uganda	09/02/2019
Senegal	02/04/2019
Togo	02/04/2019
Egypt	08/04/2019
Ethiopia	10/04/2019
Gambia	16/04/2019
Sahrawi Arab Democratic Rep.	30/04/2019
Sierra Leone	30/04/2019
Zimbabwe	24/05/2019
Burkina Faso	29/05/2019
São Tomé & Príncipe	27/06/2019
Equatorial Guinea	02/07/2019
Gabon	07/07/2019
Mauritius	07/10/2019
Central African Rep.	22/09/2020
Angola	04/11/2020
Lesotho	27/11/2020
Tunisia	27/11/2020
Cameroon	01/12/2020
Nigeria	05/12/2020
Malawi	15/01/2021
Zambia	05/02/2021
Algeria	23/06/2021

Tariffs and Rules of Origin

Phase 1 negotiations update – tariffs and rules of origin

Modalities for tariff negotiations

- 90% of tariff **lines** liberalised over 5 years (LDCs have 10 years)
- 7% additional tariff lines (**sensitive products**) liberalised over 10 years (LDCs have 13)
- 3% tariff lines may be **excluded**
- Tariff phasedown in equal instalments (e.g. 20% reduction per annum on 90% of tariff lines, over 5 years)

**To be completed by end
June 2021**

Sensitive and excluded products

Criteria for products **designated** sensitive or excluded - *food security, national security, fiscal revenue, livelihood and industrialization* (Decision in 2019)

Rules of Origin still being negotiated

Fish (Chapter 3), articles of leather (Chapter 42), knitted/crocheted fabrics (Chapter 62), knitted/crocheted apparel and clothing accessories (Chapter 61), and not knitted/crocheted apparel and clothing accessories (Chapter 62); and some motor vehicle, agric and clothing products

Rules of origin

What are Rules of Origin? Rules that determine the national origin of a product (confirming that substantial transformation has taken place in the country of origin)

For agricultural products: wholly obtained rule

For industrial products: value addition rules, change of tariff heading rules apply

Where do we find the AfCFTA Rules of Origin? Annex 2

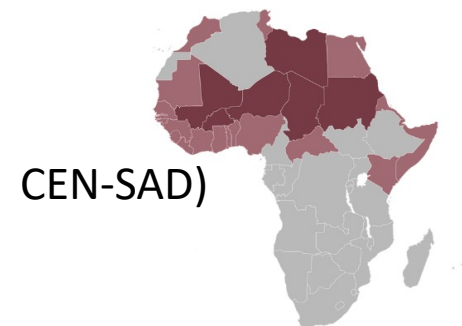
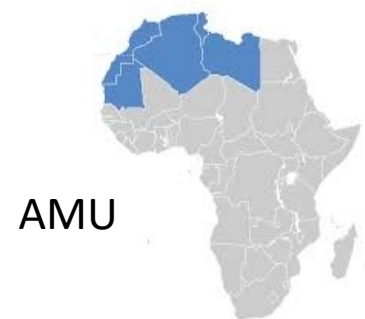
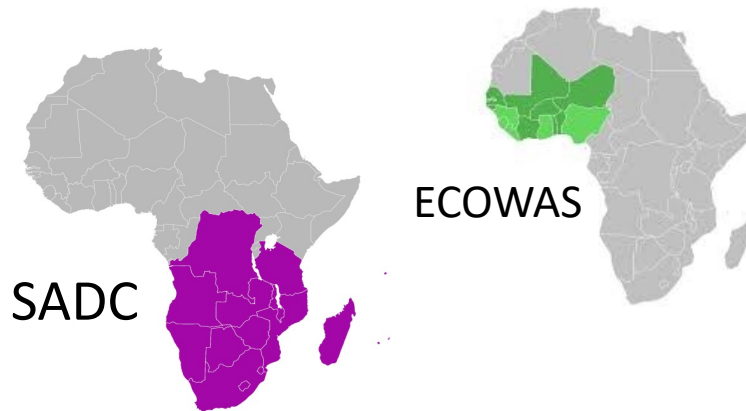
Where do we stand now: 88% of RoO are agreed

Rules of origin – outstanding negotiations

Rules of origin for the following chapters are still to be finalised:

- Articles of leather (Chapter 42), knitted/crocheted fabrics (Chapter 62), knitted/crocheted apparel and clothing accessories (Chapter 61), and not knitted/crocheted apparel and clothing accessories (Chapter 62)
- Sugar (Ch 17) and edible oils

RECs (and their trading regimes) continue Who negotiates with whom?



Negotiations: Phase 2 and Phase 3

- Phase 2 negotiations: Protocols on Investment, Competition Policy and Intellectual Property Rights (State Parties have agreed to **cooperate** in these areas)

Intellectual Property Rights: Regional cooperation initiative - ARIPO and OAPI regional initiatives

OAPI in Africa



ARIPO in Africa



Phase 3 negotiations: E-commerce

- AfCFTA Agreement provides that additional legal instruments may be concluded – e.g. Women and Youth and SMEs

Non-tariff barriers

What are Non-Tariff Barriers (NTBs)?

- NTBs refer to restrictions resulting from prohibitions, conditions, or market requirements that make importation or exportation of products difficult and/or costly.
- NTBs include unjustified and/or improper application of Non-Tariff Measures (NTMs) such as sanitary and phytosanitary (SPS) measures or TBTs.
- NTBs arise from official measures in the form of laws, regulations, policies, restrictions, labelling requirements, private sector business practices, or prohibitions.
- If abused the aim is probably to protect domestic industries from competition.

(https://www.tradebarriers.org/ntb/non_tariff_barriers)

- NTBs defined in AfCFTA Protocol on Trade in Goods as *barriers that impede trade through mechanisms other than the imposition of tariffs.*

Non-Tariff Barriers as part of Trade Governance

- Traditional debate: Certain WTO & other Trade Agreements deal with bureaucratic/ legal issues that could hinder trade:
 - Import Licensing
 - Valuation of goods at Customs
 - Pre-shipment inspection
 - Rules of Origin
 - Investment measures
 - (Are Disputes re NTBs declared?)
- The New Debate:
 - Use smart clearance technology at borders – at both sides
 - Digital trade solutions for logistics etc
 - Implement *Trade Facilitation Agreement*
 - Improve implementation of REC instruments & customs administration
 - Use WCO instruments & templates
 - Recognise Immigration as a separate category
 - Transparency – Trade Departments & REC Secretariats to help.

One Example: Import Licensing

- Import licensing systems are subject to disciplines in the WTO. The *Agreement on Import Licensing Procedures* says import licensing should be simple, transparent and predictable.
- Publish sufficient information for traders/freighters to know how and why the licences are granted.
- Members must notify new import licensing procedures or changes. Guidance on transparency, rationality & due process.
- Some licences issued automatically once conditions are met.
- Agencies handling licensing should not normally take more than 30 days to deal with an application.
- See WCO instruments & customs reform initiatives. (One stop Border posts and single window).

What in the AfCFTA re NTBs?

- Art 1: "*Non-Tariff Barriers*" means barriers that impede trade through mechanisms other than the imposition of tariffs.
- Art 12 Protocol on Trade in Goods: Detail in Annex 5
- **Art 3 Annex 5: General Categorisation**
 1. State Parties may, for guiding purposes, adopt inter alia the general categorisation of potential NTBs as indicated below:
 - government participation in trade and restrictive practices tolerated by Governments
 - customs and administrative entry procedures
 - TBTs and SPS Measures
 - specific limitations
 - charges on imports.

What in AfCFTA re NTBs?.....cont'd

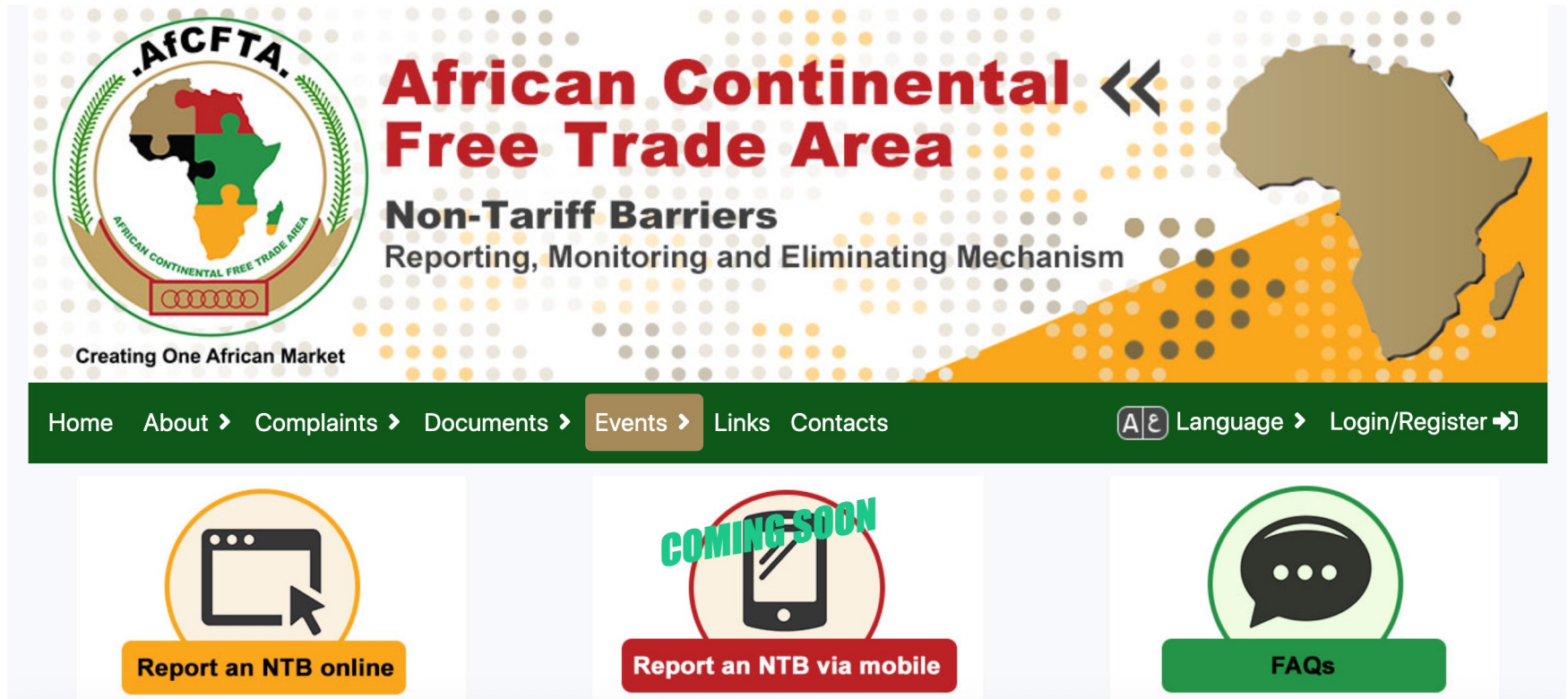
2. *The general categorisationdoes not determine the legitimacy, adequacy, necessity or discrimination of any form of policy intervention used in international trade and it does not prejudice the rights and obligations of State Parties under the WTO Agreements.*

3. *In order to ensure that this general categorisation, sub-categories and sub-classifications evolve and adapt to the changing reality of international trade and data collection needs, the State Parties, through the Secretariat, may propose changes for consideration and concurrence by other State Parties in accordance with Article 17 of this Annex.*

4. *The descriptions of these categories and sub-categories form Appendix 1 of this Annex.*

- What does *retention of rights under WTO* mean? (Example of livestock trade)
- Remember: Annex 2 on Rules of Origin & Annex 4 on Trade Facilitation
- Relationship between different legal instruments of AfCFTA.
- What do African States do re enforcement of NTB related rights?
- It seems most of the future action will be on REC level. Why?
- What is then the implication?

NTB Reporting, Monitoring and Eliminating Mechanism



The screenshot displays the homepage of the AfCFTA Non-Tariff Barriers Reporting, Monitoring and Eliminating Mechanism. The header features the AfCFTA logo on the left, which includes a map of Africa and the text "AfCFTA" and "AFRICAN CONTINENTAL FREE TRADE AREA". To the right of the logo, the text "African Continental Free Trade Area" is prominently displayed in red, followed by "Non-Tariff Barriers" in black and "Reporting, Monitoring and Eliminating Mechanism" in a smaller black font. A large, stylized map of Africa is positioned on the right side of the header. Below the header, a green navigation bar contains links: "Home", "About", "Complaints", "Documents", "Events", "Links", and "Contacts". To the right of these links are "Language" and "Login/Register" options. Below the navigation bar, there are three main sections: "Report an NTB online" with a computer icon, "Report an NTB via mobile" with a smartphone icon and a "COMING SOON" banner, and "FAQs" with a speech bubble icon.

AfCFTA
AFRICAN CONTINENTAL FREE TRADE AREA
Creating One African Market

African Continental Free Trade Area

Non-Tariff Barriers

Reporting, Monitoring and Eliminating Mechanism

Home About > Complaints > Documents > Events > Links Contacts

Language > Login/Register >

Report an NTB online

COMING SOON

Report an NTB via mobile

FAQs

Classification of NTBs in the Online Mechanism

Several categories have been identified with potential to create NTBs when implemented /applied by Governments have been identified:

1. Government Participation in Trade & Restrictive Practices Tolerated by Governments
2. Customs and Administrative Entry Procedures
3. Technical Barriers to Trade (TBT)
4. Sanitary & Phyto-sanitary (SPS) Measures
5. Specific Limitations to trade
6. Charges on Imports
7. Other (Procedural Problems)

NTBs Institutions Managing Elimination of NTBs Mechanisms

- **National Monitoring Committees (NMC)**
 - Appointed by each State Party.
 - NMC Composition **to be officially notified** to the AfCFTA Secretariat
 - Comprise relevant Government and Private Sector Institutions responsible for managing and resolving NTBs
- **National NTBs Focal Points**
 - Manages system at national level
 - State parties can appoint any number of Focal points that may also include private sector
 - Appointed Focal Points to **be officially notified** to the AfCFTA Secretariat
- **REC NTBs Units**
 - Each REC establishes a NTB Unit / Appoints Officer to deal with NTBs
 - Manages Regional NTBs Sub- System
- **AfCFTA NTBs Coordination Unit**
 - Dedicated unit established in the AfCFTA Secretariat

Demonstration – how does the NTB Mechanism work?

www.tradebarriers.Africa

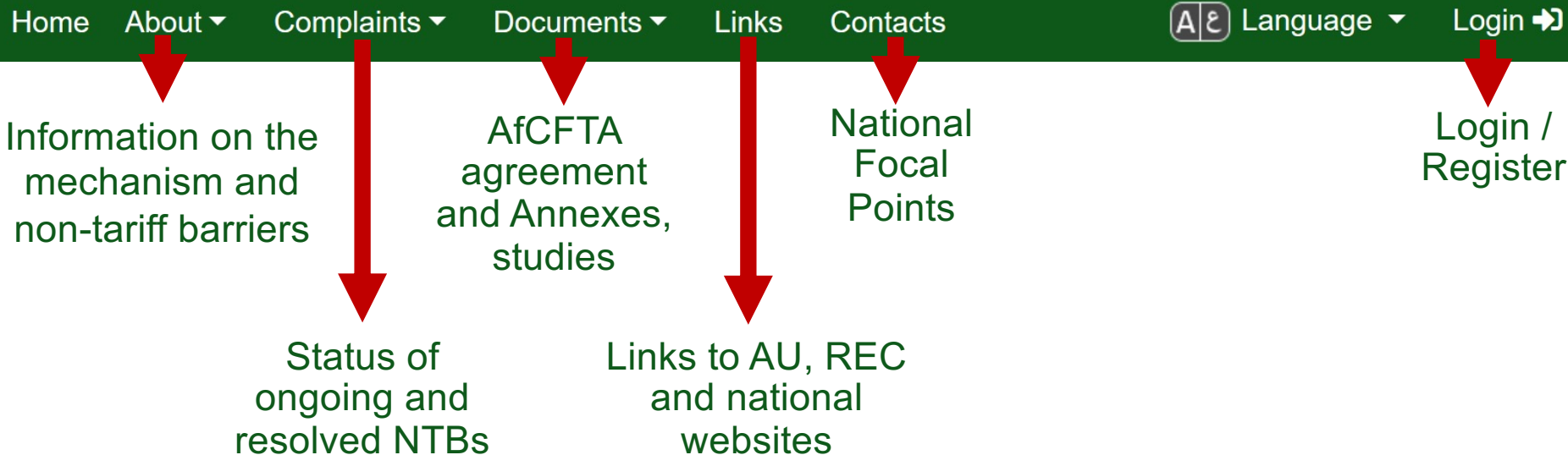


Creating One African Market

African Continental Free Trade Area

Non-Tariff Barriers

Reporting, Monitoring and Eliminating Mechanism





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Active complain

Showing items 1 to 3

[Register a complaint](#)

[Active complaints](#)

[Resolved complaints](#)

[Go](#)[Clear all](#)

Complaint number	NTB Type	Date of incident	Location	Reporting country or region	Status	Actions
NTB-000-007	2.1. Customs valuation	2019-06-24	Malawi: Dedza	Gambia, The	New	View
Complaint:	[TEST, THIS IS NOT A REAL CASE] The customs officials valued my export at 10'000 Kwacha, instead of the truthful and declared 7'000 Kwacha on the Customs Declaration.					

What happens when an NTB is reported?

1. Relevant officials receive immediate notification:

- AfCFTA NTB Coordination Unit
- Requesting State Party National Focal Point
- Responding State Party National Focal Point

2. AfCFTA NTB Coordination Unit checks validity of complaints

- Accepts, rejects, asks for further clarification from the trader

3. If accepted, National Focal Points receive notification and are requested to follow up on the NTB to resolve it

- *Process follows Appendix 2 of Annex 5 of the Protocol on Trade in Goods*
- System allows easy monitoring and issues regular progress reports
- System allows easy and secured information exchange between governments
- System keeps users informed and sends out notifications