

**The Trade Facilitation Agreement
and its Transit Provisions**

Prospects & Potential



Nora Neufeld
06/02/2019



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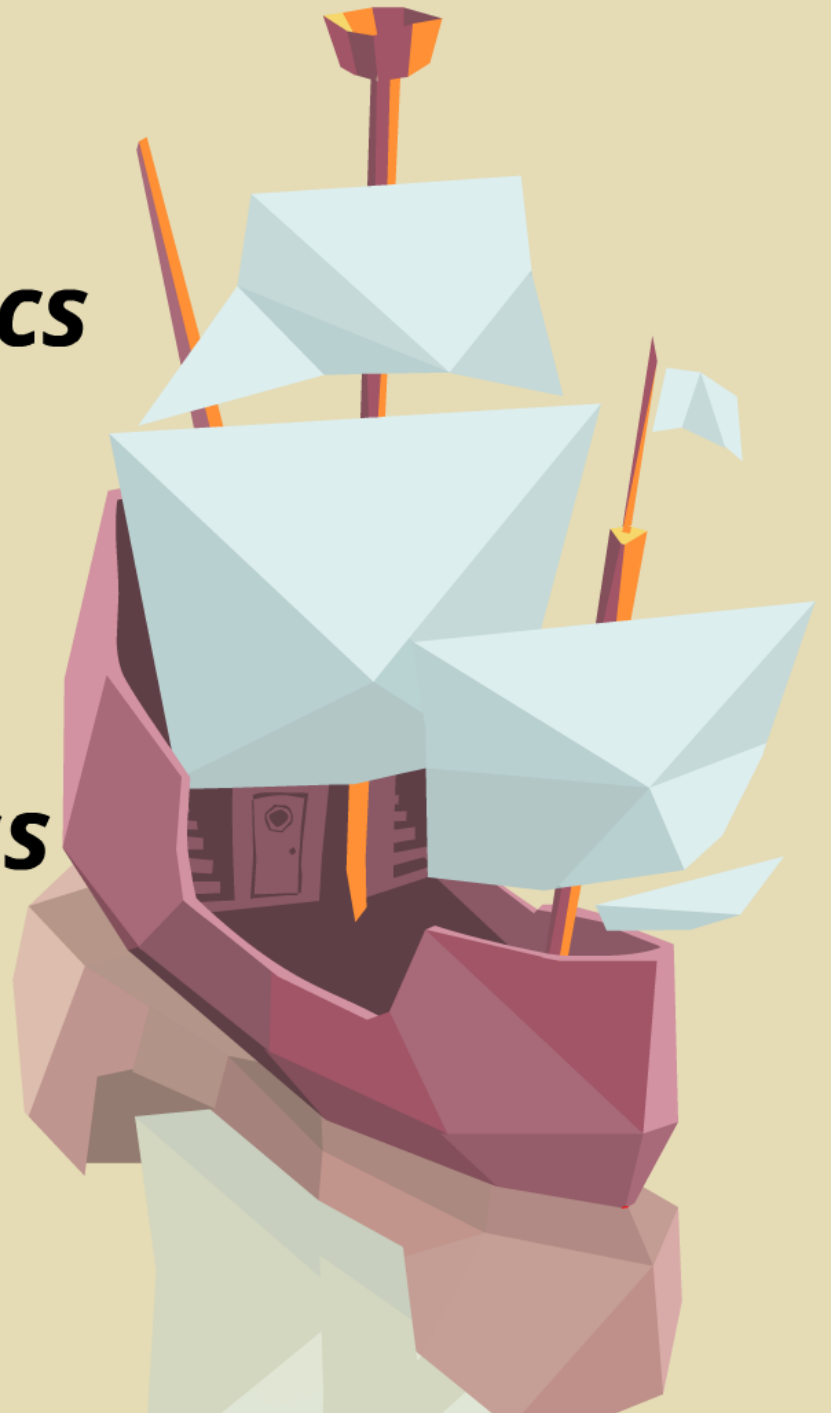


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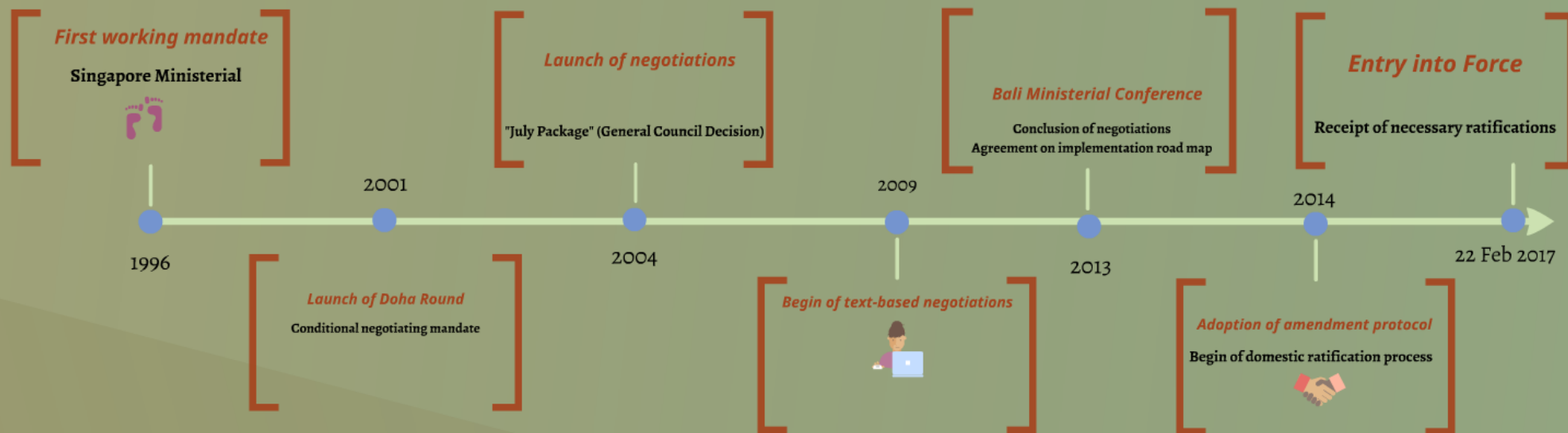
- 1. Background & basics***
- 2. Special features***
- 3. Impact***
- 4. Unfinished business***
- 5. Accession issues***



1. Background & basics



The long and winding road: from first steps to the final Accord



First working mandate

Singapore Ministerial



1996

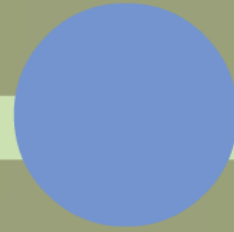
2001

"July P

Launch of Doha Round

Conditional negotiating mandate

2001



Launch of Doha Round

Conditional negotiating mandate

Launch of negotiations

"July Package" (General Council Decision)



2004

200



Begin of text-base

2009



Begin of text-based negotiations



Bali Ministerial Conference

**Conclusion of negotiations
Agreement on implementation road map**

09

2013

ed negotiations

Adoption of

map

2014

22 Feb 2017

Adoption of amendment protocol

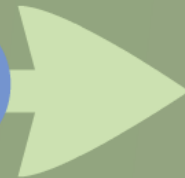
Begin of domestic ratification process



Entry into Force

Receipt of necessary ratifications

2014



22 Feb 2017



WORLD TRADE
ORGANIZATION

WT/L/931

WT/L/931

15 July 2014

[14-4101]

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Preparatory Committee on Trade Facilitation

AGREEMENT ON TRADE FACILITATION*

Preamble

Members,

Having regard to the negotiations launched under the Doha Ministerial Declaration;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1) and in Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004 (WT/L/579), as well as in paragraph 33 of and Annex E to the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC);

Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

Recognizing the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues;

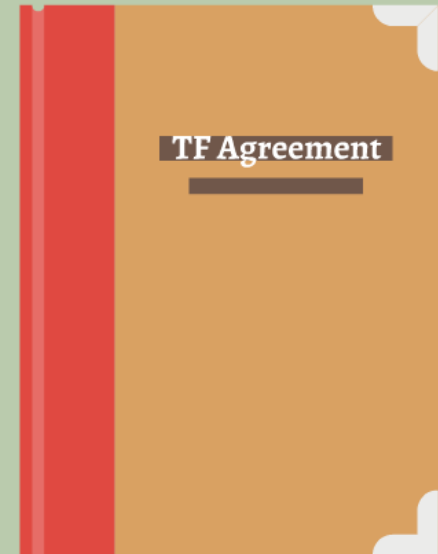
Hereby agree as follows:

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

Structure of the Agreement

- ▶ **Preamble**
- ▶ **Section I:**
 - **TF disciplines (Art. 1-12)**
- ▶ **Section II:**
 - **Special & Differential Treatment (Art. 13-22)**
- ▶ **Section III:**
 - **Institutional Arrangements (Art. 23)**
 - **Final Provisions (Art. 24)**



Trade facilitation disciplines

GATT X:

- Art. 1: Publication & Availability of Information**
- Art. 2: Opportunity to Comment, Information before Entry into Force & Consultation**
- Art. 3: Advance Rulings**
- Art. 4: Appeal or Review Procedures**
- Art. 5: Other Measures to Enhance Impartiality, Non-Discrimination and Transparency**

GATT VIII:

- Art. 6: Disciplines on Fees & Charges imposed on or in connection with Import & Export**
- Art. 7: Release and Clearance of Goods**
- Art. 8: Border Agency Cooperation**
- Art. 9: Movement of Goods under Customs Control intended for Import**
- Art. 10: Formalities Connected with Importation and Exportation and Transit**

GATT V:

- Art. 11: Freedom of Transit**
- Art. 12: Customs Cooperation**



Building on existing legal framework

Examples

- Enquiry Points (SPS, TBT)
- Advance Rulings (ROO)
- Appeal Rights (CV, IL, PSI)
- Release of goods upon guarantee (CV)
- Use of international standards (SPS, TBT)

Nature and scope of obligations



Binding

Example

Art.1:1 (Publication): "Each Member *shall* promptly ***publish*** the following information ..."

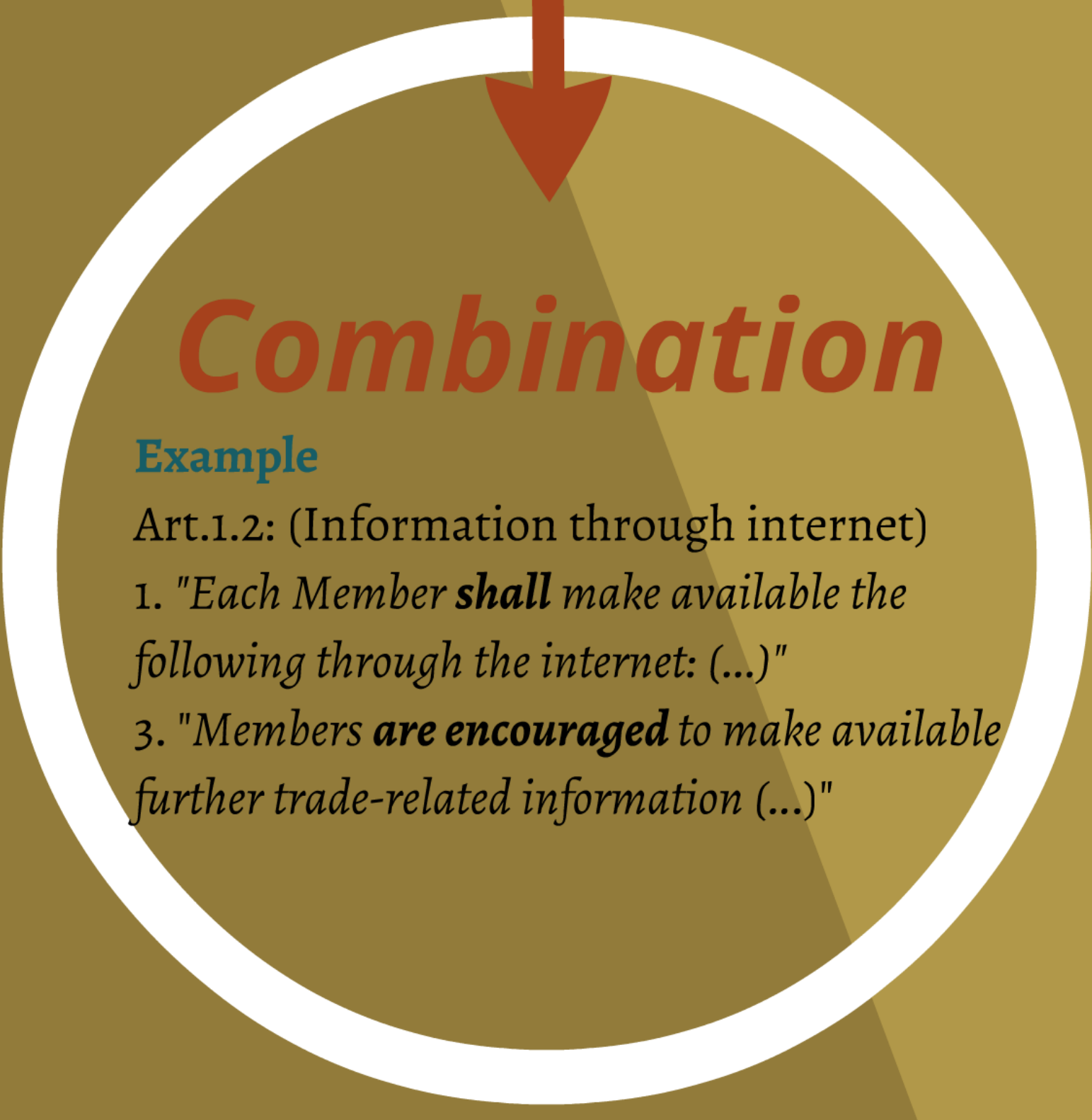
Mixed

Best endeavor

Example

Art. 10.3 (Use of international standards): "Members ***are encouraged*** to use relevant international standards (...)"

ixed



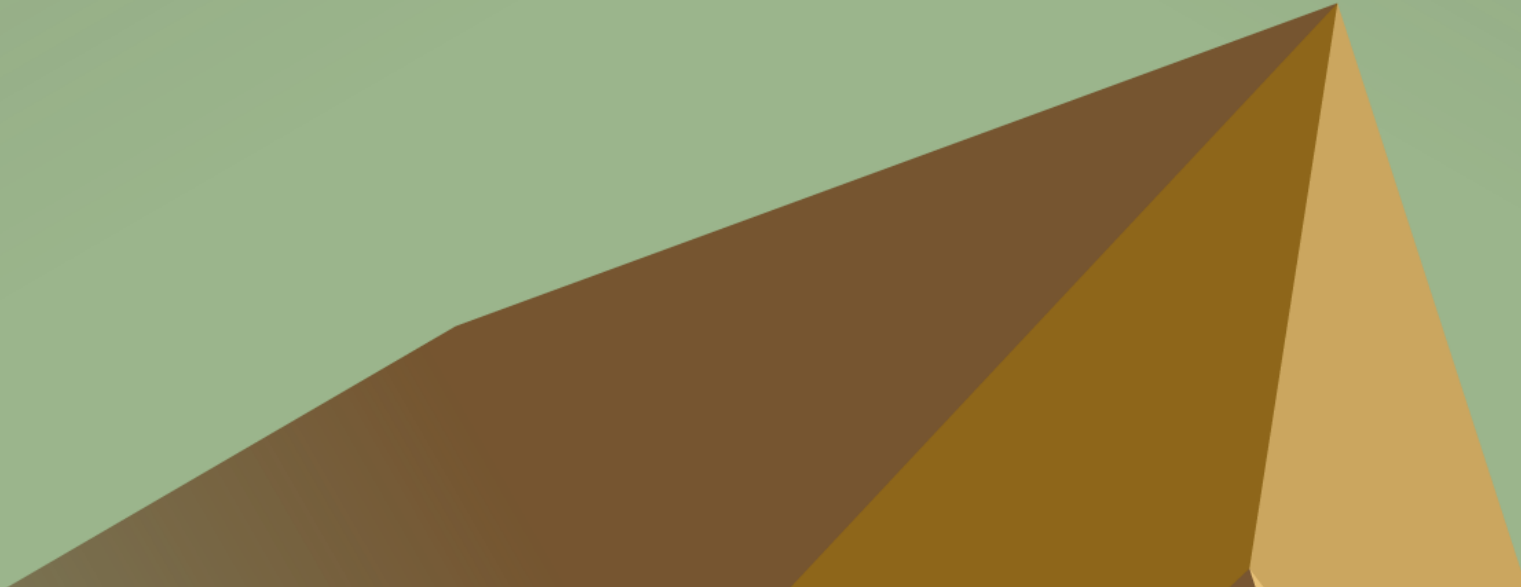
Combination

Example

Art.1.2: (Information through internet)

1. "Each Member **shall** make available the following through the internet: (...)"
3. "Members **are encouraged** to make available further trade-related information (...)"

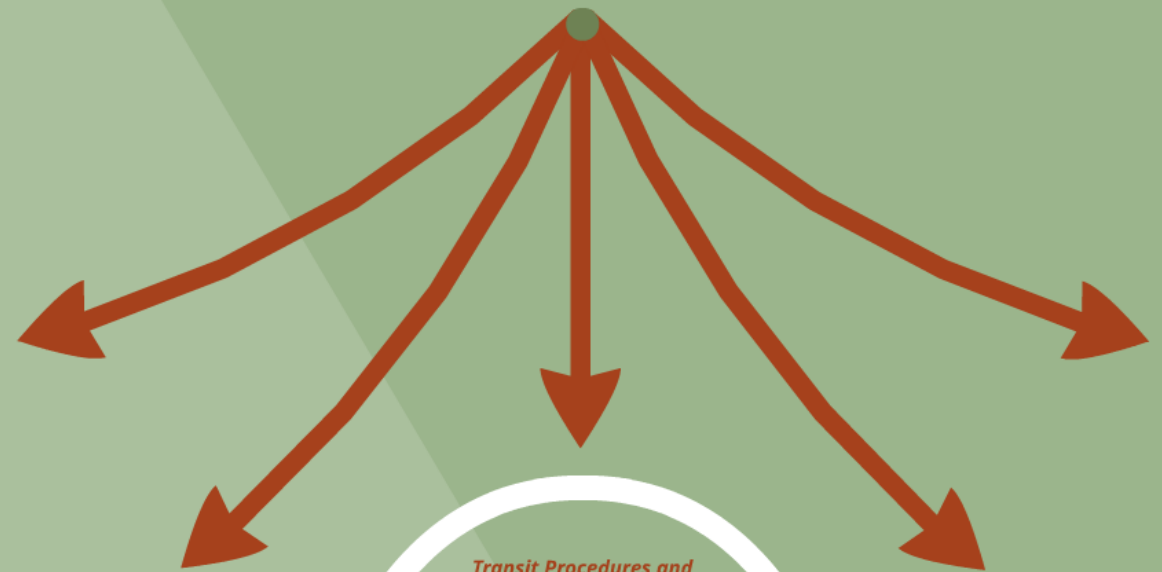
Transit provisions



Article 11



Art 11 Freedom of Transit (examples)



Transit Regulations, Fees and Charges

Transit-related **regulations** and **formalities** shall **not** be **maintained** if **no longer required** for **trade objectives** can be **addressed** in a **less trade restrictive** manner. They shall **not** be applied in a manner that would be a **disguised restriction on traffic in transit**

Prohibition to condition traffic in transit upon collection of fees and charges except for those permitted under GATT Article V

Cooperation and Coordination

Members shall endeavour to cooperate with one another to enhance freedom of transit and to appoint a national transit coordinator to which other Members can address enquiries and proposals relating to the good functioning of transit operations

Transit Procedures and Controls

- Formalities, documentation requirements and customs control shall **not** be **more burdensome than necessary** to identify goods and ensure compliance
- Members shall not apply customs charges, formalities or inspections other than at the offices of departure and destination (and not en-route) and allow for pre-arrival processing
- **Limitations on the use of customs convoys/escorts**

Strengthened Non-Discrimination

Members shall accord to products which will be in transit through the territory of another Member treatment no less favorable than for products which did not pass through the territory of that Member

Guarantees

Any guarantee that customs requires for a transit movement shall be limited to ensuring that requirements are fulfilled. Such guarantee(s) shall be discharged once transit is completed and information on them shall be made public

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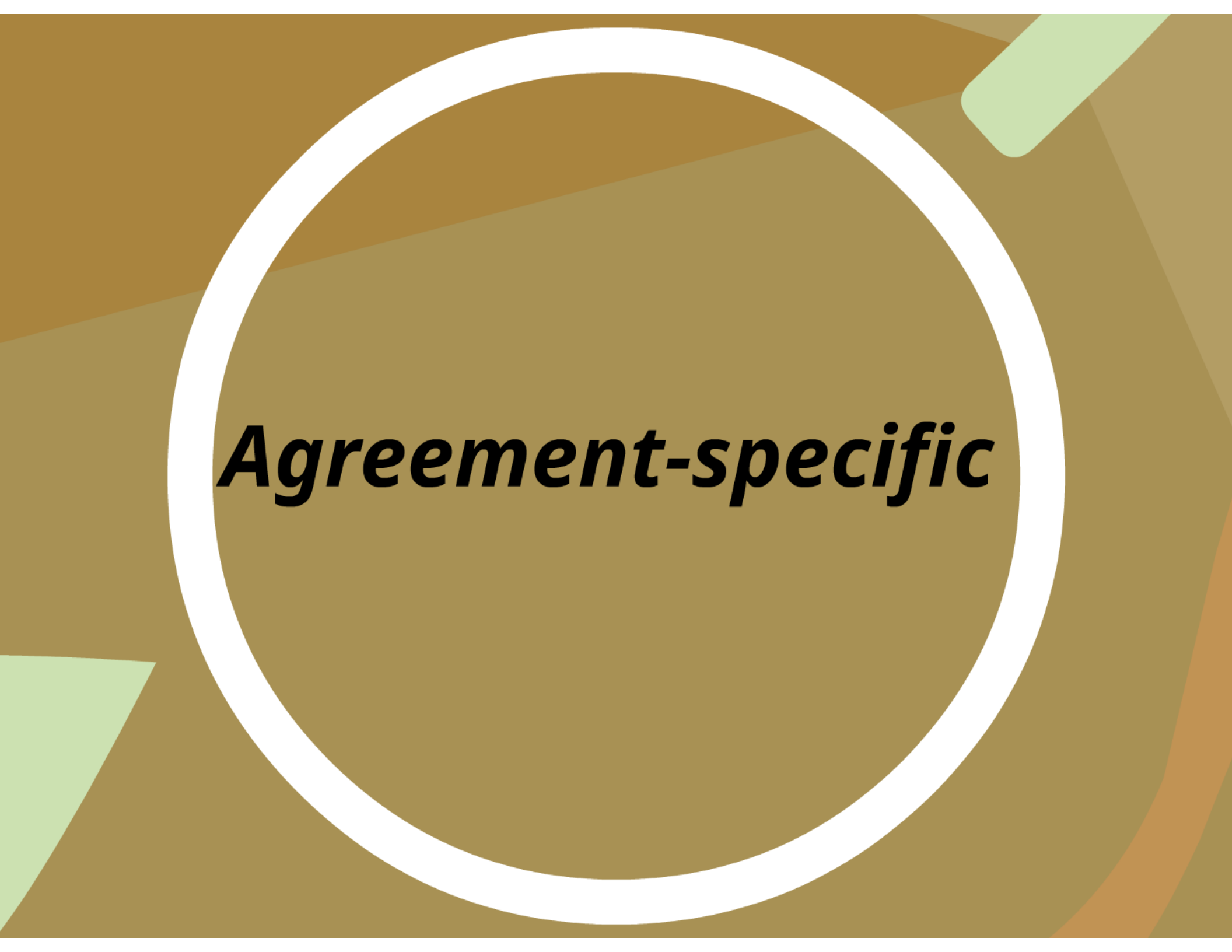
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2. *Special features*

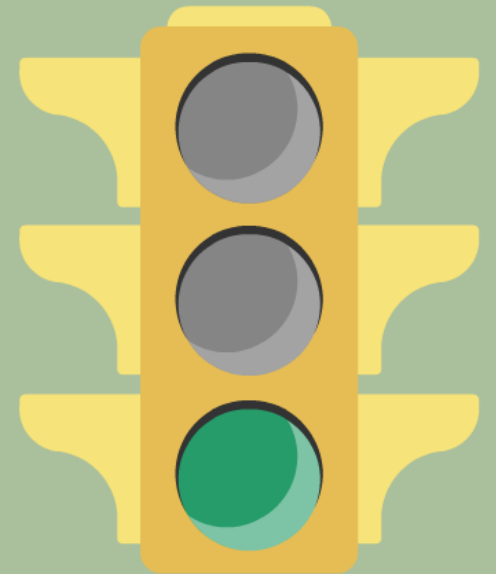




Agreement-specific

Pro-active, "should do" approach

 **Emphasis on doing certain things
as opposed to refraining from them**



New dimensions

➡ Unusual scope

➡ Involves not just WTO Members but a series of other parties



New balances



No traditional trade-offs



New equilibria



***New & innovative
implementation approach,
reflecting new philosophy***

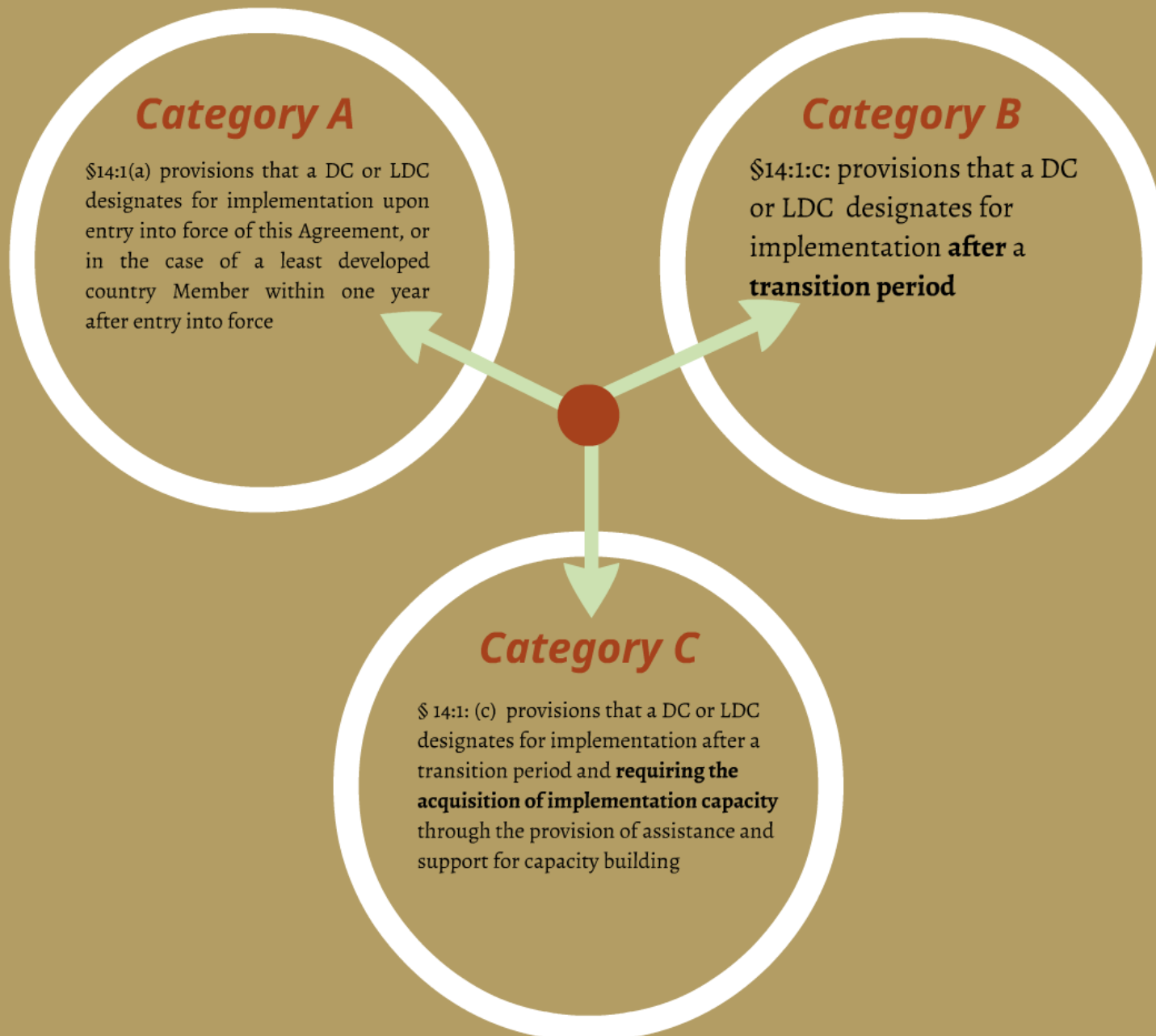
- **Country-by-country (as opposed to per group of development)**
- **Measure-per-measure: no one-size fits all**
- **Link between implementation capacity and requirement to implement**
- **New time horizons**
- **New methods of determining steps for implementation**

Reflection in TFA



- *3 categories concept and related treatment*
- *Additional flexibilities*

3 Categories of Commitments



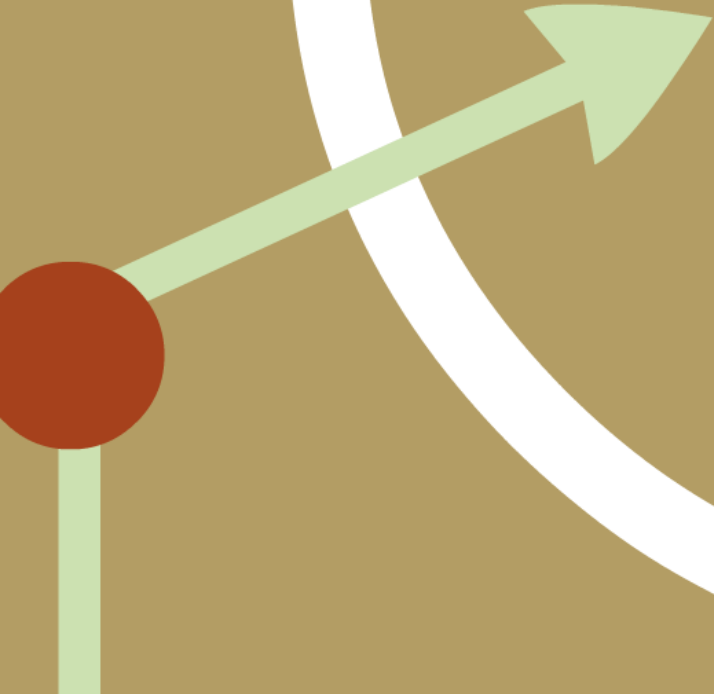
Category A

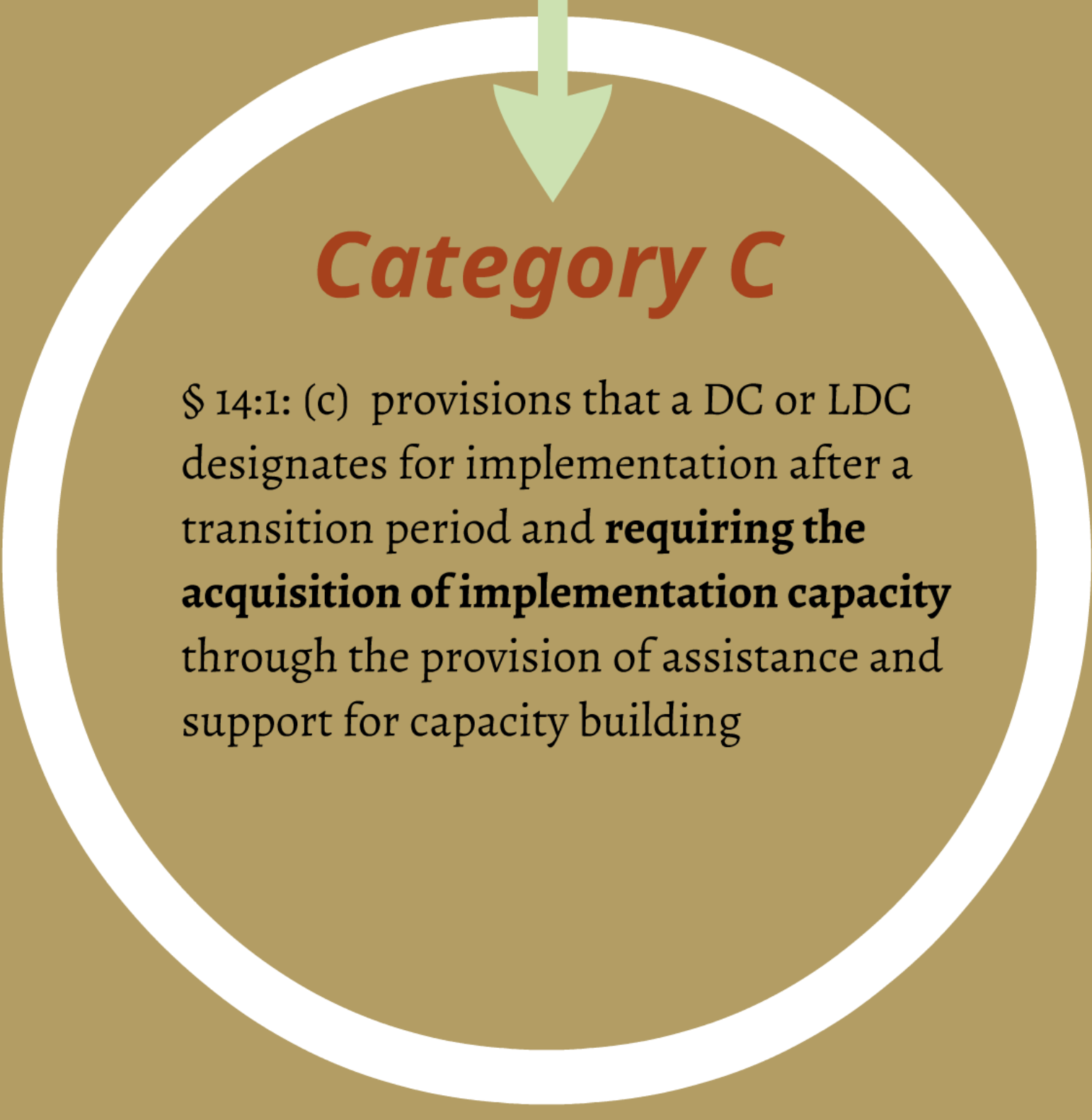
§14:1(a) provisions that a DC or LDC designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force



Category B

§14:1:c: provisions that a DC
or LDC designates for
implementation **after** a
transition period





Category C

§ 14:1: (c) provisions that a DC or LDC designates for implementation after a transition period and **requiring the acquisition of implementation capacity** through the provision of assistance and support for capacity building

3. *Impact*





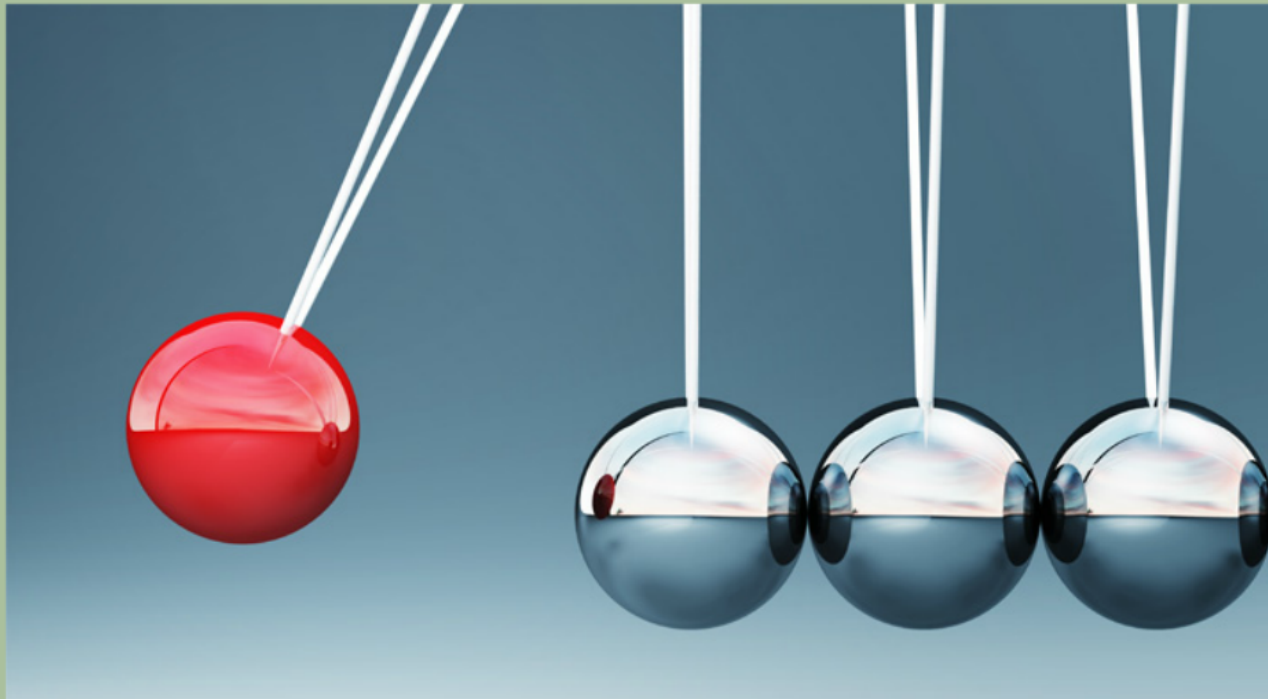
***Legal, political
and economic
implications***

Broader impact

- ***First multilateral agreement successfully negotiated in Geneva in 20 years***
- ***First agreement adopted under WTO umbrella***
- ***(A) main Doha deliverable***

New momentum

... for Trade Facilitation reforms



Common direction/conversion



Sustainability



New enforcement perspectives





A few figures.....

Full implementation of the TFA has ability

- **reduce trade costs by average of 14.3%
(= more than the elimination of all
remaining applied MFN tariffs)**



Source: WTO, World Trade Report

✓ **reduces time to import** by over a day and a half (a 47% reduction over the current average) **and to export** by 2 days (a 91% reduction over current average)



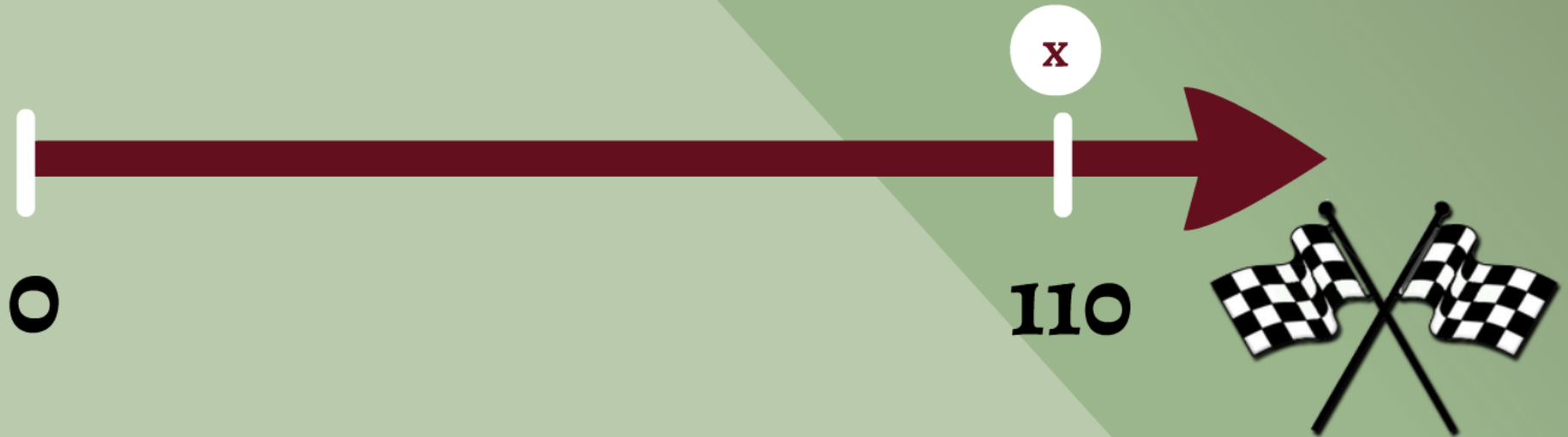
Source: WTR 2015

4. Unfinished business

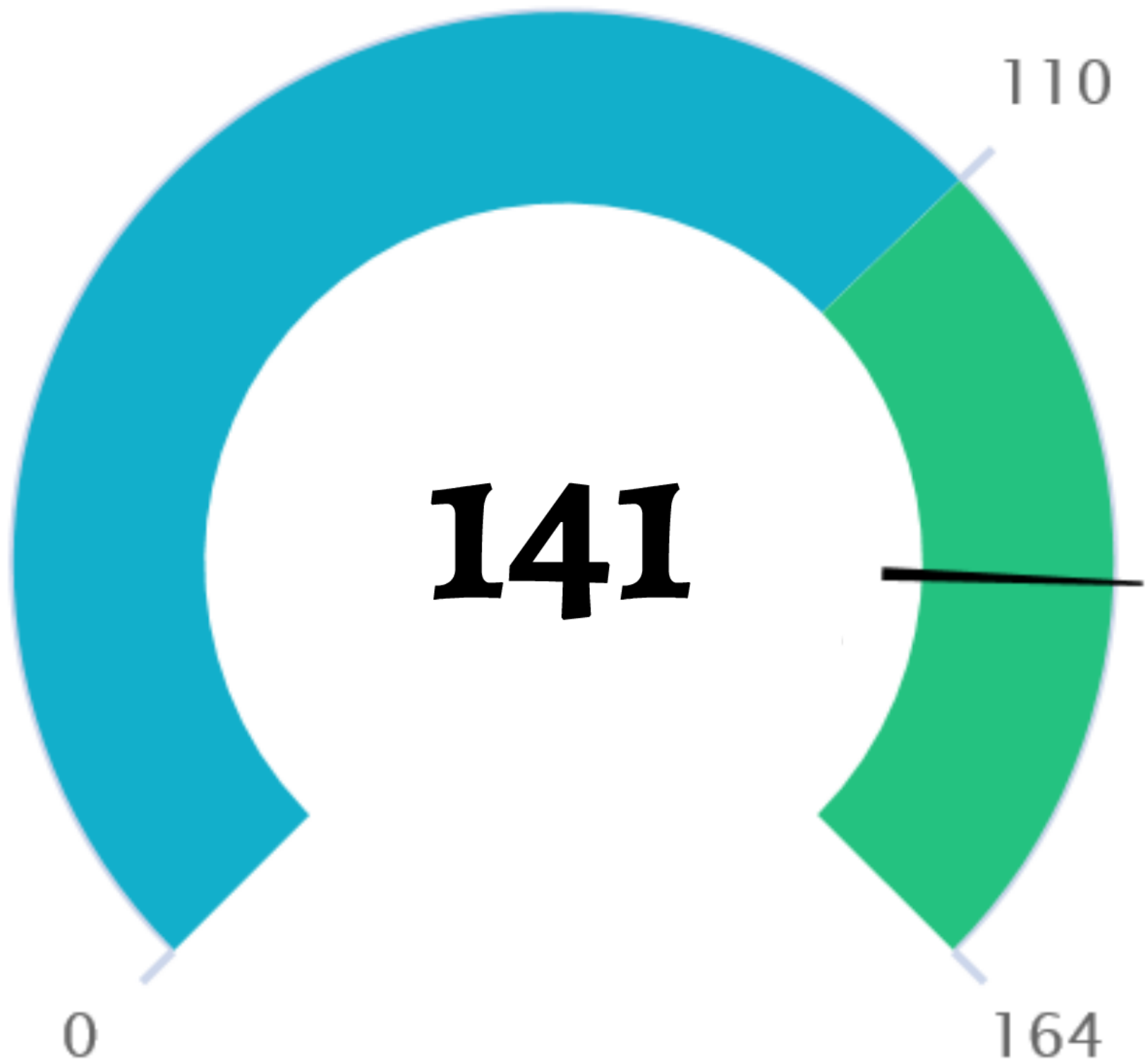


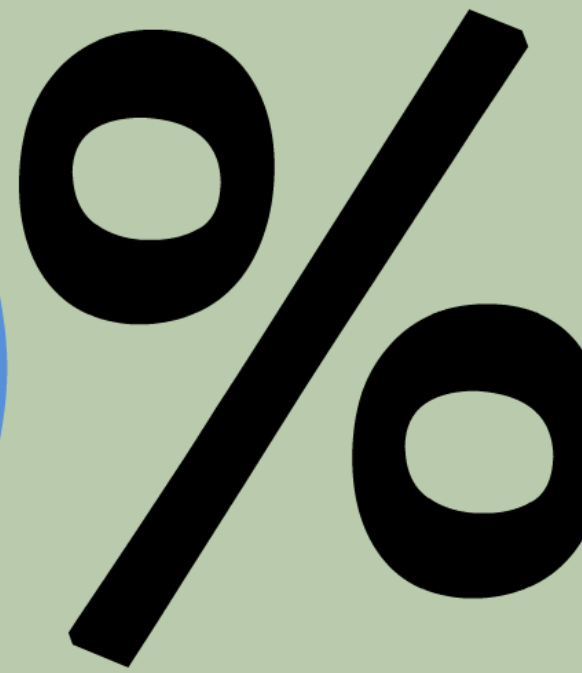


Threshold reached on 22 Feb 2017











Overall

cat. A

cat. B

cat. C

114

73

63

Transit-related

cat. A

cat. B

cat. C

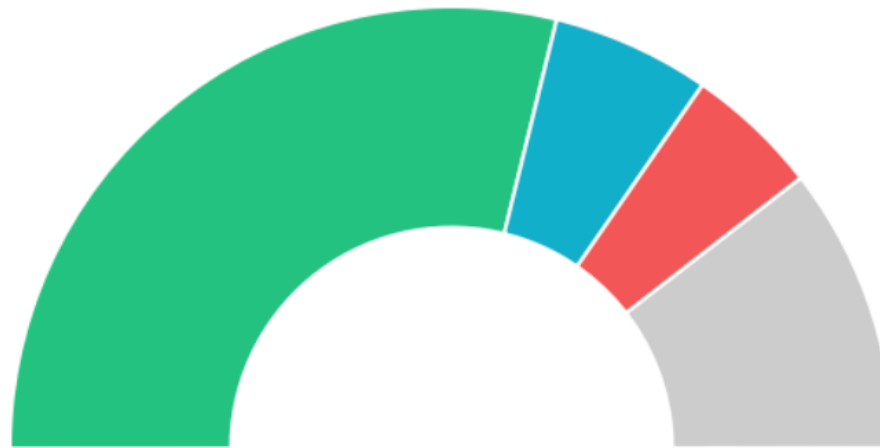
84

30

22

Share of Categories A, B, C

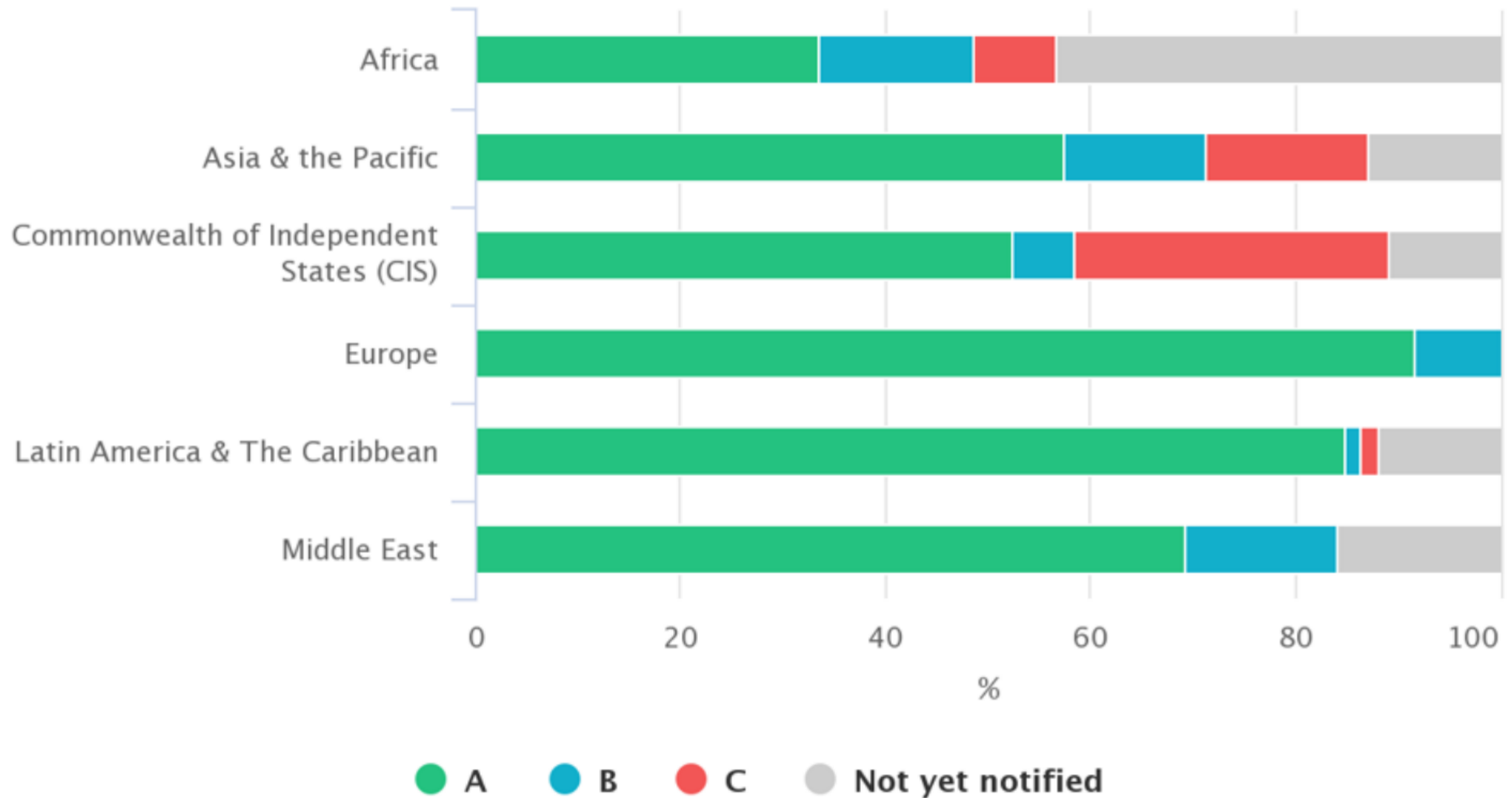
Based on % of all notifiable article items – 11 – Transit



● A – 57.7% ● B – 11.6% ● C – 9.8% ● Not yet notified – 21.0%

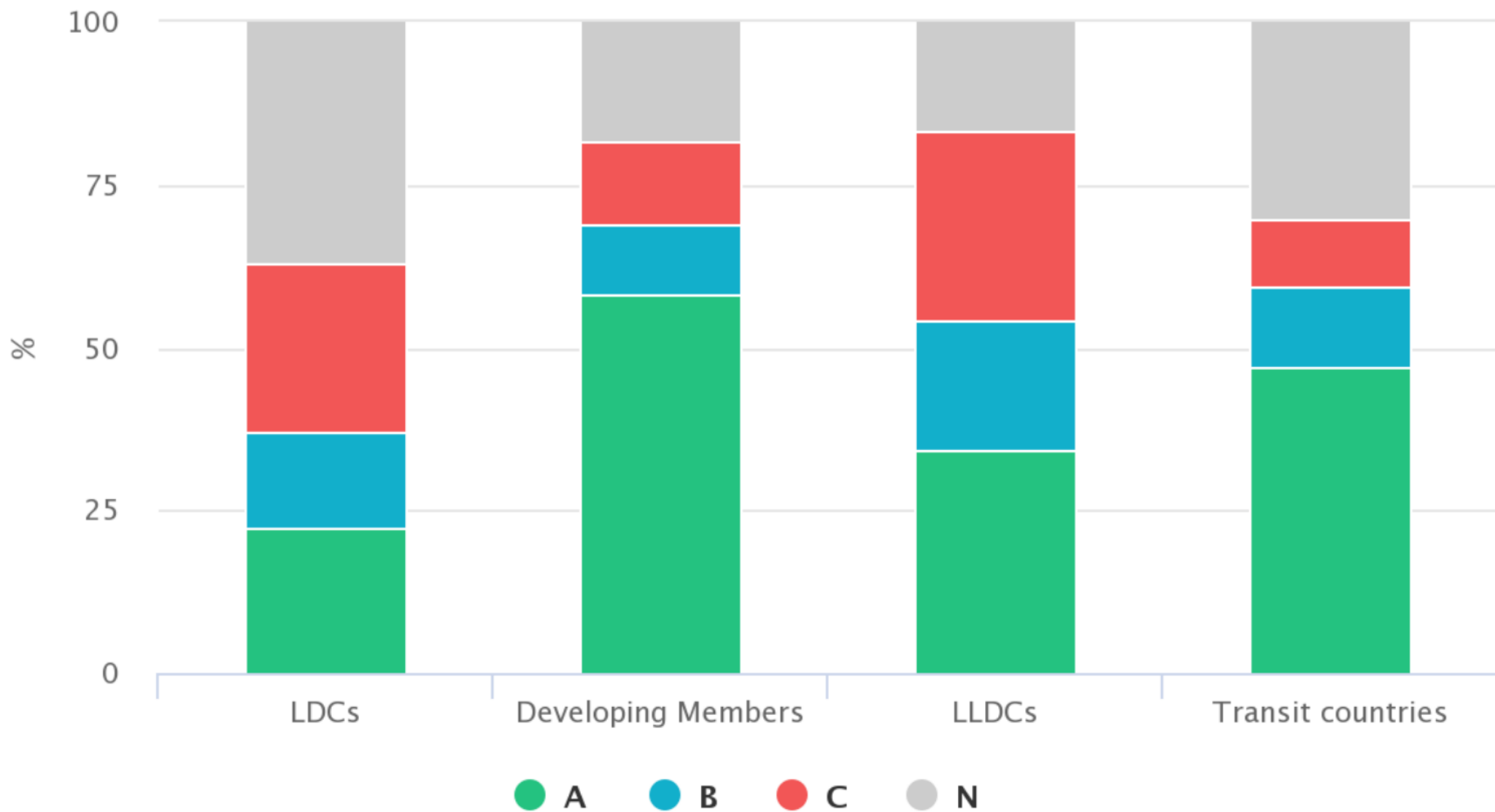
Share of Categories A, B, C by region

Based on % of all notifiable article items – 11 – Transit

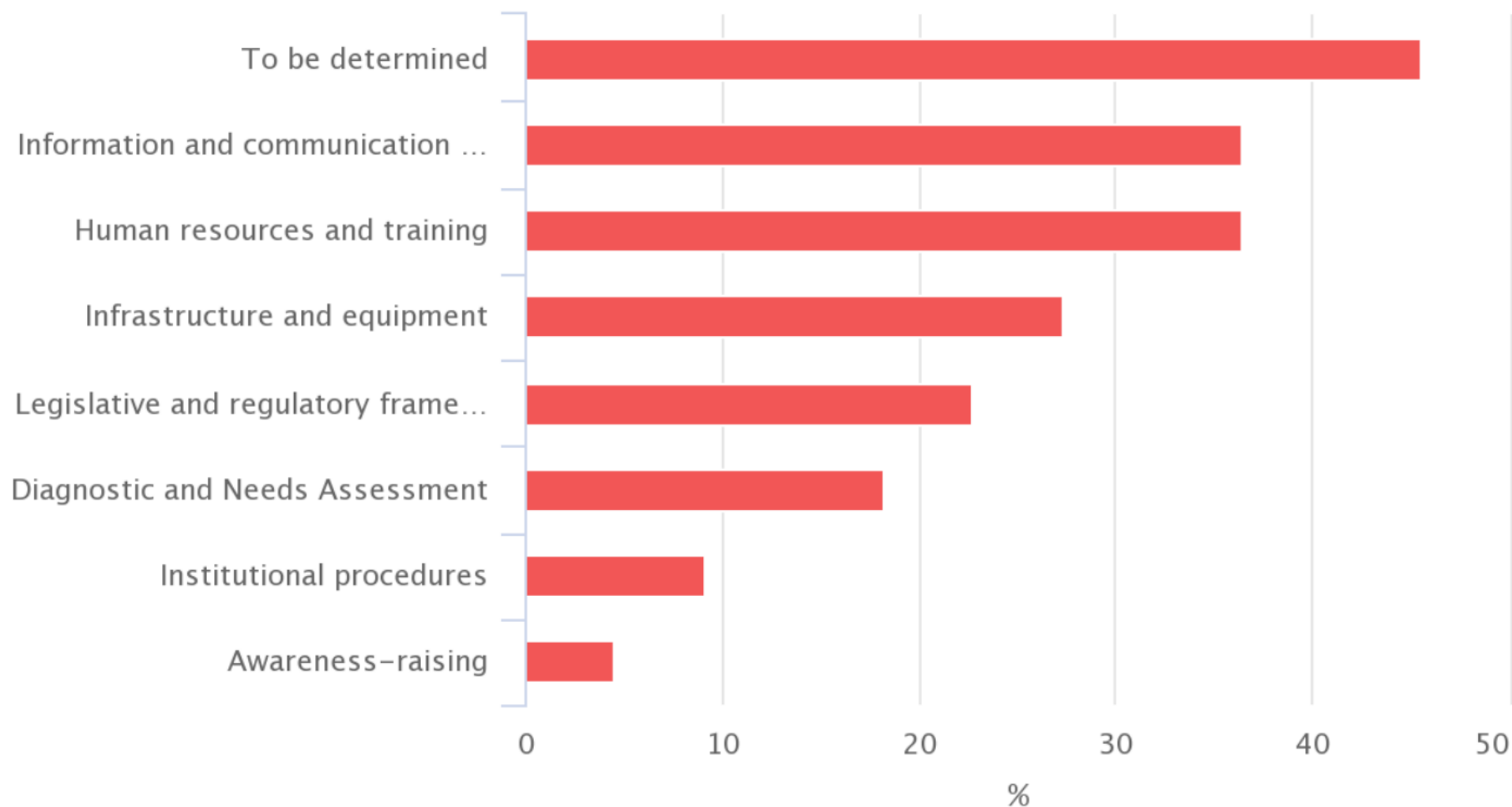


Share of Categories A, B, C by grouping

Based on % of all notifiable items



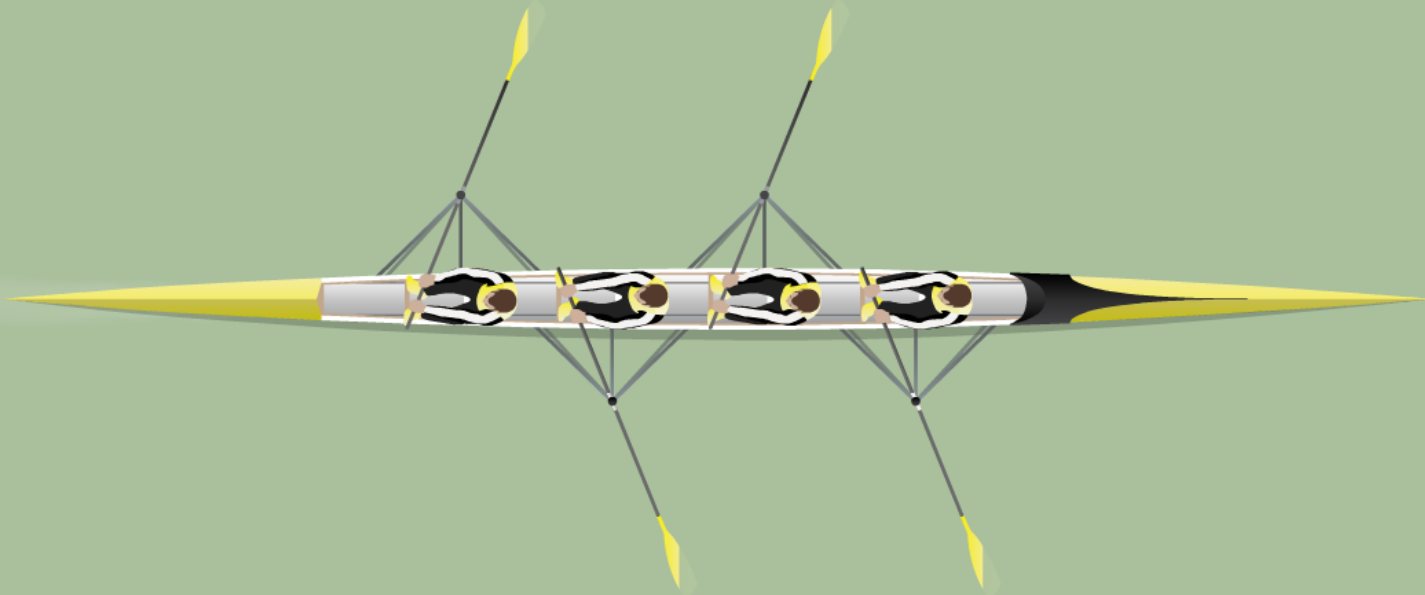
Type of technical assistance requested



● Share of technical assistance requested



What's ahead?



Current Committee work





5. *Accession* *issues*



***Development
status***



```
graph TD; A((Development status)) --> B(( )); A --> C(( ))
```

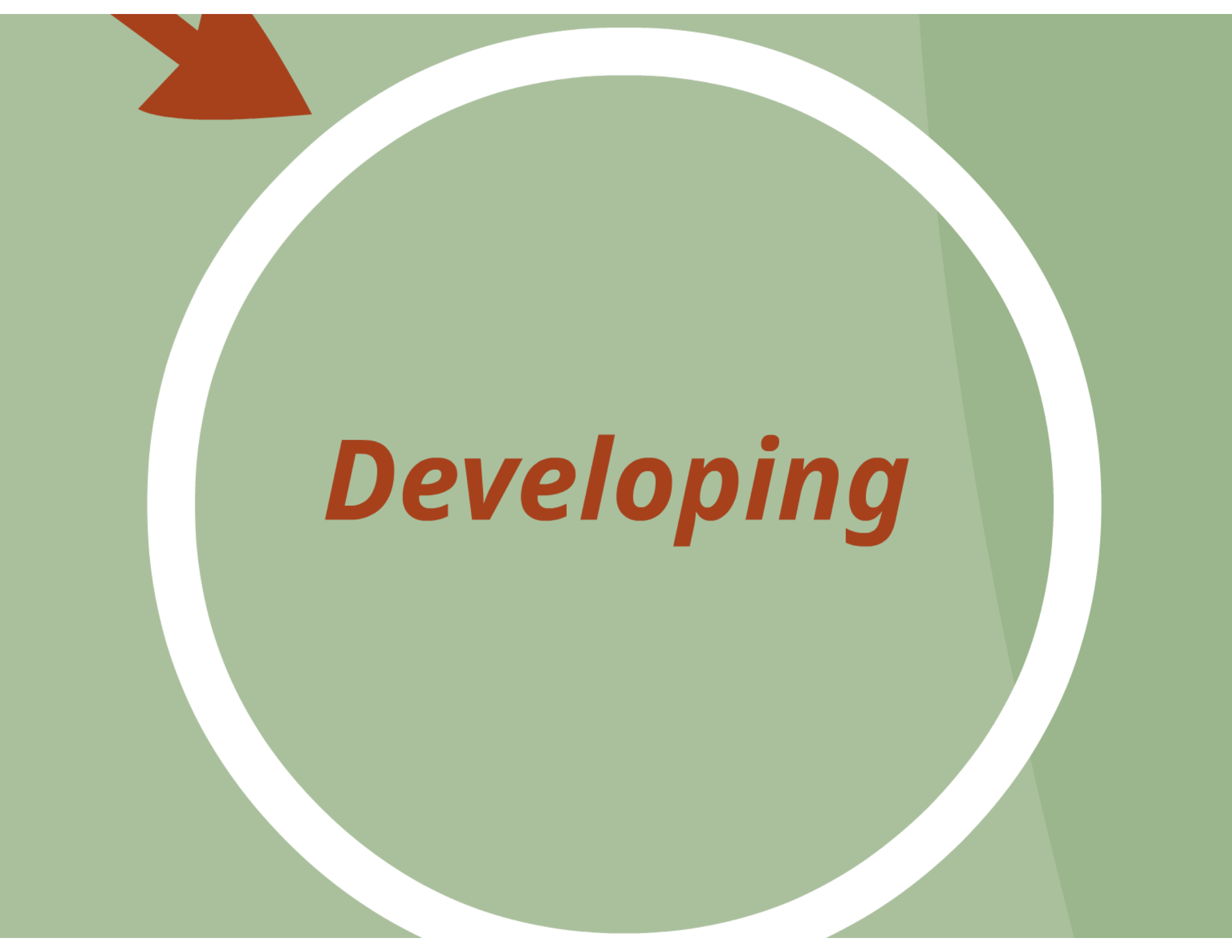
The diagram features a central circle with a white outline containing the text 'Development status' in a bold, italicized, dark red font. From the bottom center of this circle, two dark red arrows branch out downwards and outwards. Each arrow points towards the top of a second circle, which is partially visible at the bottom of the frame. The background is a solid light green color with a subtle geometric pattern of overlapping shapes.



***Development
status***



Developed

A large white circle is centered on a green background. In the top-left corner, a red arrow points towards the circle. The word "Developing" is written in a bold, italicized, brown font across the center of the white circle.

Developing

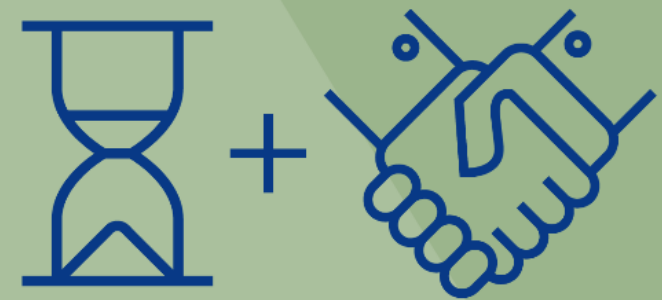
Implementation framework for developed countries

- *No S&D treatment*
- *Entire TFA has to be fully implemented from day 1*



Implementation framework for developing countries

- *Series of flexibilities*
- *Possibility to self-determine
time frames & capacity needs*



Common framework

Entire TFA has to be fully implemented

Built-in level playing field

Additional aspects

- ***Ratification***
- ***Commitments***
- ***Timing & linkages***
- ***Additional processes***



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