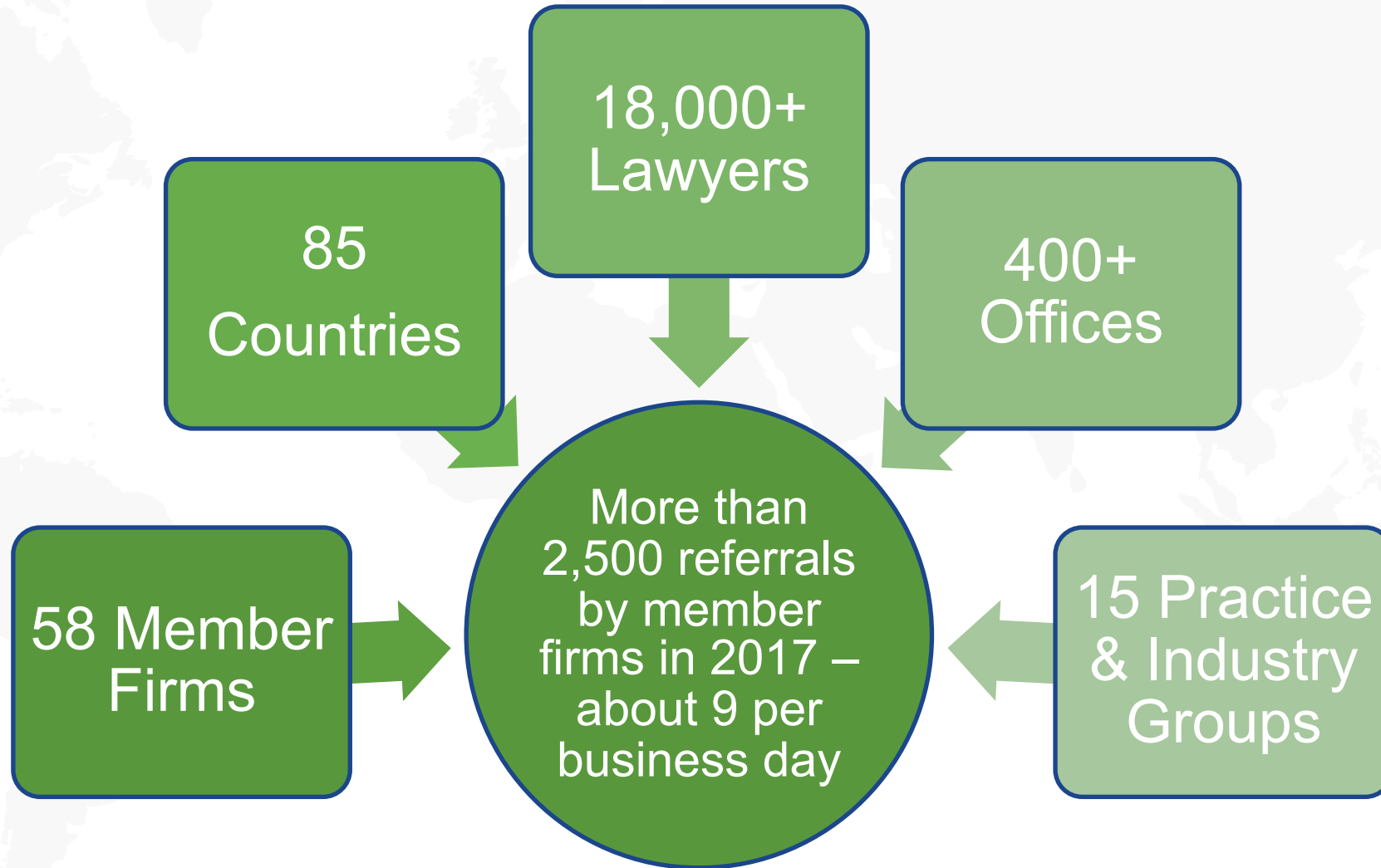




World Law Group



World Law Group – Quick Facts



Why World Law Group

- WLG is ranked one of a few “Elite” (Band 1) law firm networks, according to Chambers and Partners
- Qualified, trusted advisors
- Global coverage and local expertise
- Seamless client services
- Established in 1988, our firms have been working together for more than 30 years



WORLD LAW GROUP

INTERNATIONAL TRADE LAW GROUP

BERNARDINE ADKINS, HEAD OF EU, TRADE AND COMPETITION

"BREXIT: THREE YEARS OLD AND NOW RUNNING OUT OF STEAM" – OR IS IT?

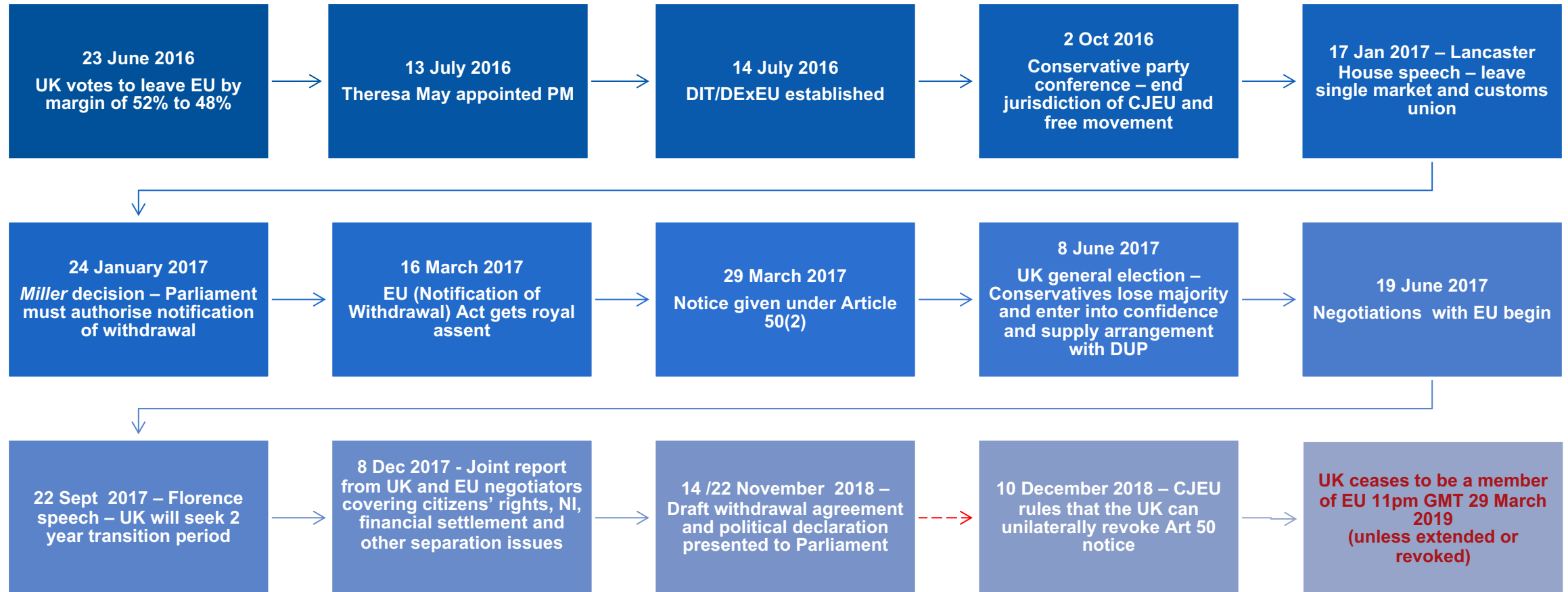
OVERVIEW

- **Reminder of Article 50 TFEU**
- **Overview of the Withdrawal Agreement, the Northern Ireland backstop and the Political Declaration**
- **Future UK/EU trade relations**
- **Where are we now?**
- **Implications for trade with third countries, and the proposed 'rollover' of existing FTAs and trade measures**

A RECAP – ARTICLE 50 OF THE TREATY OF THE EUROPEAN UNION

1. Any Member State may decide to withdraw from the Union **in accordance with its own constitutional requirements.**
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union **shall negotiate and conclude an agreement with that State**, setting out the arrangements for its withdrawal, **taking account of the framework for its future relationship with the Union.** That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council [of the European Union], acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, **unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.**
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

YESTERDAY, ALL [OUR] TROUBLES SEEMED SO FAR AWAY.....



THE WITHDRAWAL AGREEMENT

Three issues:

1. The transition/implementation period
2. The NI 'backstop' – i.e. the Ireland/Northern Ireland Protocol
3. The Political Declaration

THE WITHDRAWAL AGREEMENT & POLITICAL DECLARATION

- Terms of UK's departure from EU –
 - Citizen's rights
 - Separation provisions e.g. ongoing cases before CJEU
 - Financial settlement of UK's obligations as a member state
 - Sovereign base areas in Cyprus
 - Protocol on Gibraltar
 - Governance arrangements
 - Transition period
 - Northern Ireland backstop
- Accompanied by Political Declaration –
 - Agreement to agree on long list of issues in future trade deal

THE WITHDRAWAL AGREEMENT - THE TRANSITION PERIOD

- Creation of a fiction – the UK is deemed to continue as an EU Member State in all things save for participation in adoption of legislation or decision-taking.
- All EU law will continue to have effect in the UK during the transitional period. (Article 127(1) WA).
- Therefore, no change to current regime, save for UK is rule taker, not maker.
- Provision made for ongoing cases to continue at end of transition period (Article 92 WA). Commission can start new state procedures up to four years after end of transition period. (Article 93 WA).

HOW LONG IS THE TRANSITIONAL PERIOD?

- The transition period starts at the time of the entry into force of the WA and ends on 31 December 2020.
- The UK may request, at any time before 1 July 2020 an extension of the transitional period of one to two years. (Art 126)

THE NORTHERN IRELAND BACKSTOP

- Theresa May's redlines of leaving the Single Market and the EU Customs Union mean that there will be a land border between Ireland and Northern Ireland (NI)
- The backstop is designed to protect the Good Friday Agreement/Belfast Agreement and keep an open border between Ireland and NI post Brexit, in the light of the redlines
- NI remains in regulatory alignment with the EU
- The UK remains in a single customs territory with the EU
- The UK risks being in breach of WTO MFN rules if it does not impose checks on the border in the event of a no deal Brexit

TIME LINE FOR THE NEW UK/EU PARTNERSHIP?

“This is the first trade deal in history where partners are seeking to get further apart....All trade deals I’ve ever worked on were about getting closer together and dismantling barriers to trade. We are now deliberately re-erecting barriers, seeking a thinner relationship than the one we have.” Ivan Rogers, Der Spiegel online, 1 March 2019.

<http://www.spiegel.de/international/world/ivan-rogers-on-brexit-what-surprises-me-is-the-extent-of-the-mess-a-1255789.html>

A BLIND BREXIT...A PEEP BEHIND THE CURTAIN

How much do we know?

The Political Declaration –

*“...the Parties agree to develop an ambitious, wide-ranging and balanced economic partnership. This partnership will be comprehensive, encompassing a free trade area as well as wider sectoral cooperation where it is in the interest of both Parties. It will be underpinned by provisions ensuring **a level playing field for open and fair competition**, as set out in Section XIV of this Part”* (Part II : Economic Partnership I. Objectives and Principles, point 17 to the Political Declaration)

*“...However, with a view to facilitating the movement of goods across borders, the Parties envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation, underpinned by provisions ensuring **a level playing field for open and fair competition**.”* (point 22 to the Political Declaration)

A BLIND BREXIT...A PEEP BEHIND THE CURTAIN

*“The future relationship must ensure open and fair competition. Provisions to ensure this should cover **state aid, competition, social and employment standards, environmental standards, climate change, and relevant tax matters**, building on **the level playing field arrangements provided for in the Withdrawal Agreement** and commensurate with the overall economic relationship. The Parties should consider the precise nature of commitments in relevant areas, having regard to the scope and depth of the future relationship. These commitments should **combine appropriate and relevant implementation domestically, enforcement and dispute settlement as part of the future relationship.**”*

(XIV. Level Playing Field for Open and Fair Competition, para. 79. to the Political Declaration)

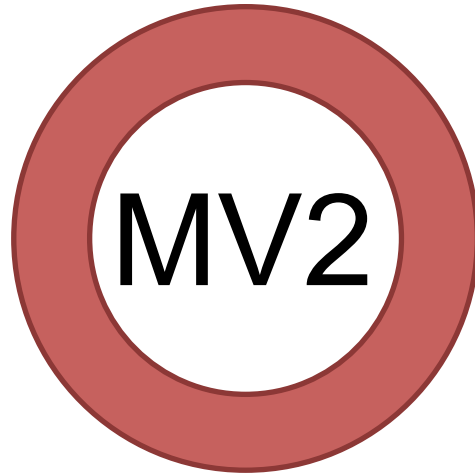
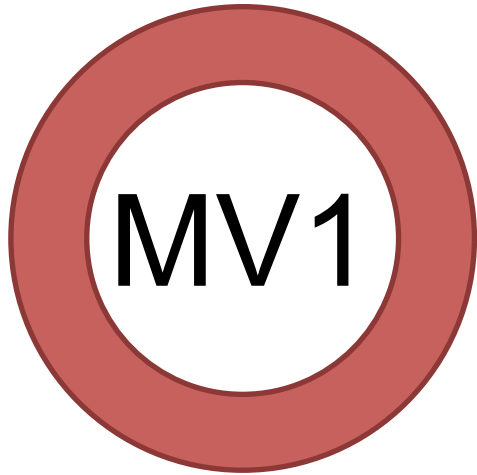
WHERE ARE WE NOW?

Part of the responsibility of the Speaker is to frankly speak truth to power. I have always done that and, no matter what, I always will.

John Bercow, 18 March 2019



WHERE ARE WE NOW?



CONSIDERATIONS FOR THE EU27 ON EXTENSION

- Debate as to the time and any conditions that EU would attach to any extension
- Query whether the EU27 could impose any conditions under Article 50 TFEU
- European Parliament elections 23-26 May with new European Parliament sitting 2 July
- 3 month extension until end of June provided WA passes through UK Parliament
- Possible longer extension to allow for referendum/election or negotiation of Parliamentary alternative
- European Parliament's legal service has said no rule hindering it being constituted without all seats allocated, but that the UK would be in breach of EU law if didn't hold elections

WHAT IF THE EU REFUSES AN EXEMPTION?

- NO DEAL – WE ❤️ WTO
- At present UK will leave EU automatically on 29 March 2019 with or without a deal



WHAT IF THE EU27 REFUSES AN EXTENSION?

- REVOCATION IS AN OPTION
- Case C-621/18 *Wightman v Secretary of State for Exiting the European Union*

“....where a Member State has notified the European Council, in accordance with that article, of its intention to withdraw from the European Union, that article allows that Member State — for as long as a withdrawal agreement concluded between that Member State and the European Union has not entered into force or, if no such agreement has been concluded, for as long as the two-year period laid down in Article 50(3) TEU, possibly extended in accordance with that paragraph, has not expired — to revoke that notification unilaterally, in an unequivocal and unconditional manner, by a notice addressed to the European Council in writing, after the Member State concerned has taken the revocation decision in accordance with its constitutional requirements. The purpose of that revocation is to confirm the EU membership of the Member State concerned under terms that are unchanged as regards its status as a Member State, and that revocation brings the withdrawal procedure to an end.” (para 75 to the judgment of the CJEU, 10 December 2018)

IF A LONG EXTENSION IS GRANTED?

Election

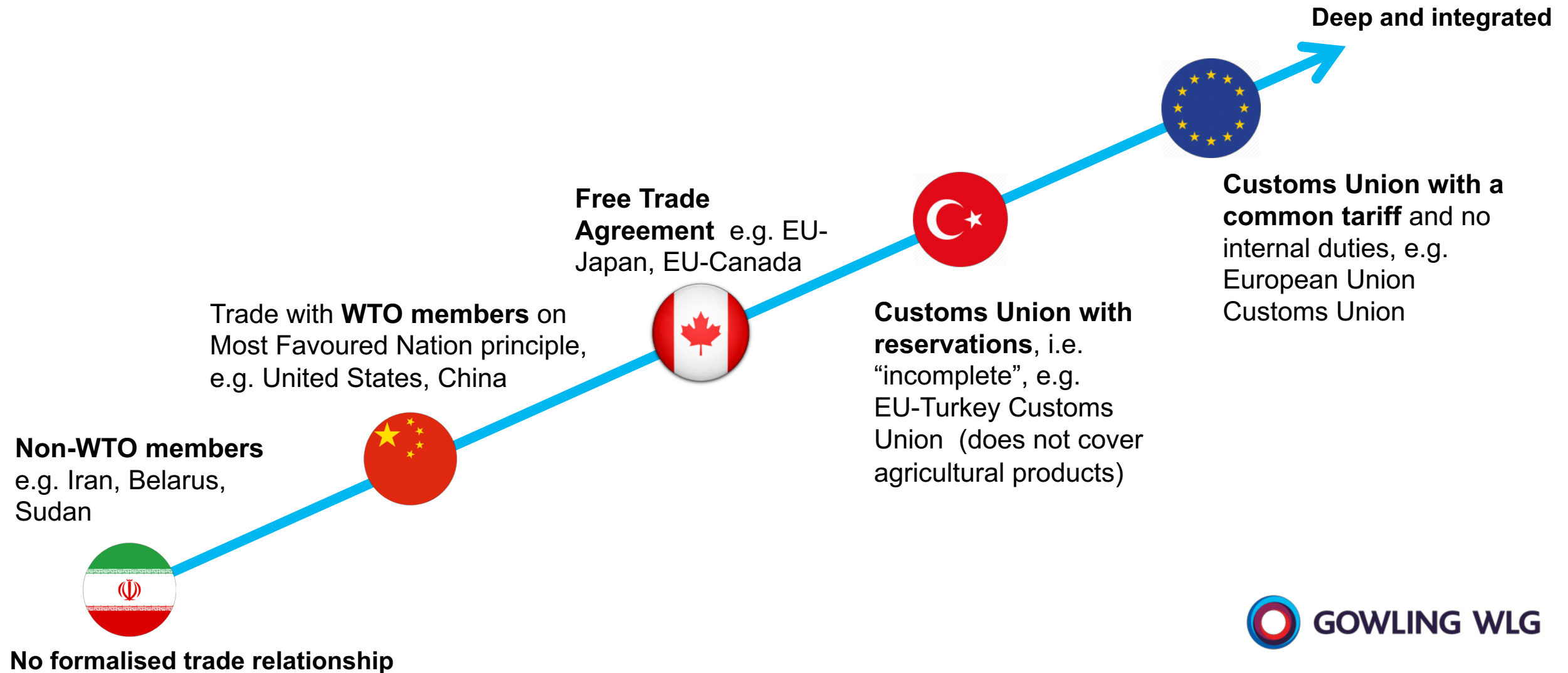
- Two thirds MPs vote for early election
- Or pass no confidence motion by bare majority –
 1. 14 days in which try to form new Govt that can command confidence of the house
 2. If not then early general election
- Govt sets date and then Parl dissolved 25 days in advance
- At least 5 weeks for Govt motion, 7 weeks for no-confidence motion
- Last year's election held in **7 weeks**

Referendum

- Need to pass new Act
- Including time for Electoral Commission to consider question – usually 12 weeks but could be compressed
- Then need to allow for required regulated period – 10 weeks
- If allow 11 weeks for question testing, Bill could be approved in 11 weeks then 10 week regulated period, with week between – around **22 weeks**

POST BREXIT - THIRD COUNTRY TRADE

CURRENT UK TRADE INTEGRATION UNDER EU

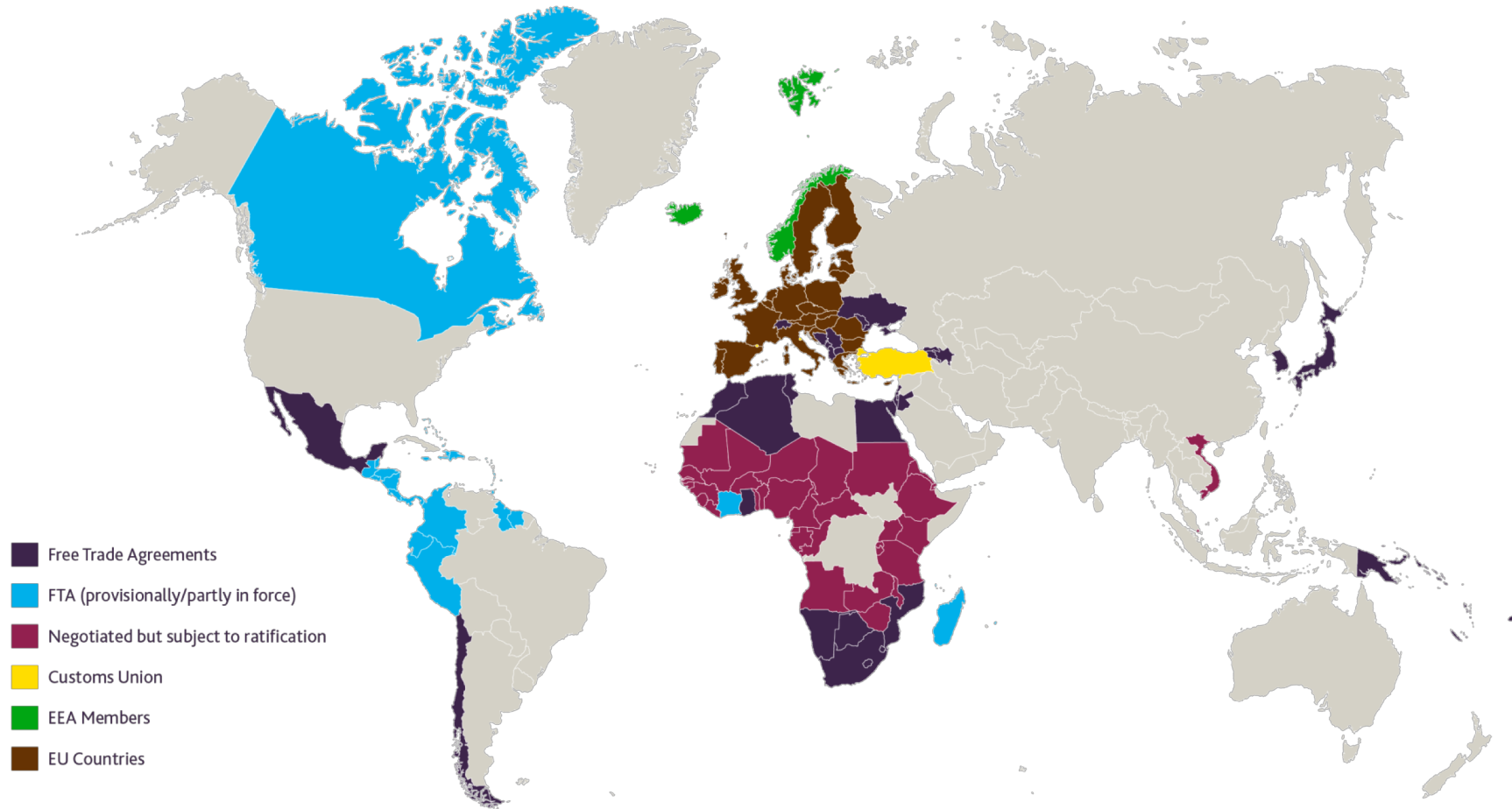


FTA CONTENT – AN EXAMPLE

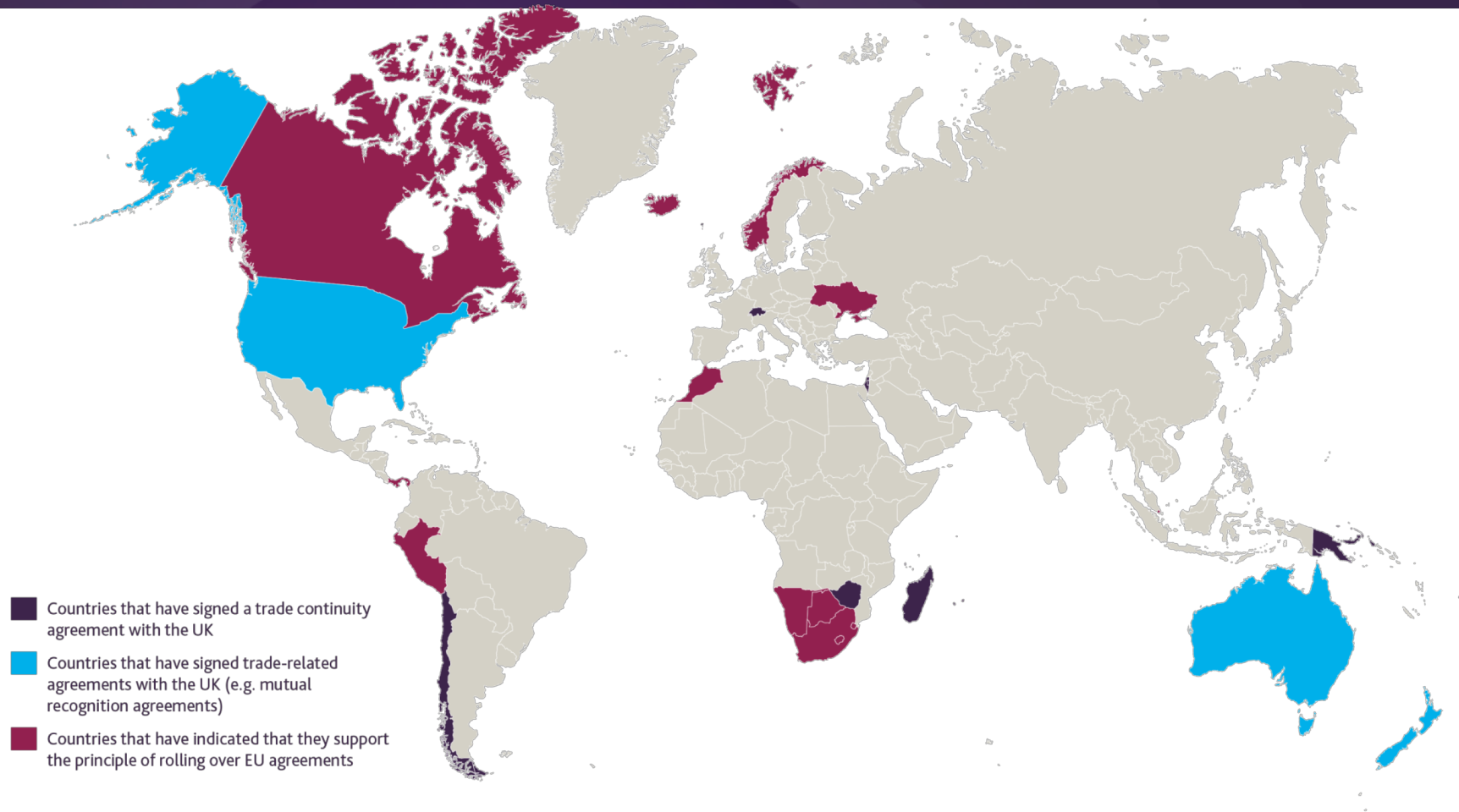


- The Canada-EU Comprehensive Economic Trade Agreement (“**CETA**”), provisionally applied since 2017
- The CETA text runs to some 1,598 pages, with 868 of those being ‘reservations’ – i.e. exceptions to the commitments in the FTA
- Reservations include restricting the cross-border supply of health services from the UK

EU TRADE AGREEMENT BY COUNTRY



UK TRADE AGREEMENT BY COUNTRY



....DO KEEP IN TOUCH...

UK GETTING CUSTOMS, VAT AND EXCISE REGIMES READY FOR NO DEAL BREXIT

08 February 2019

Article

The UK Government is in the process of introducing new legislation in relation to customs, VAT and excise in the event that there is a "no deal" Brexit. A total of 20 Statutory Instruments were laid before the Parliament in January 2019.

BREXIT: CUSTOMS & TRADE

CUSTOMS & TRADE COMPLIANCE - BREXIT PREPARATION

2018

Podcasts

... of UK's trading relations with its former EU partner states, and the rest of the world, is ... Talk of Brexit 'redlines', regulatory alignment, no-deal, World Trade Organization (WTO) rules ... sion continues. In this session we strip back the debate to identify the challenges business will

CUSTOMS, BORDERS AND DIGITAL PROTECTIONISM - THE IMPERFECT STORM

ber 2018

... will cause a fundamental change in the way the UK trades with the EU. The guide is intended ... practical advice to assist businesses to start to prepare for this change.

BREXIT & CROSS-BORDER TRADE CHALLENGES: THE VIEW FROM THE ROAD / RUNWAY / PORT ...

14 November 2018

Podcas

To build on the findings from our whitepaper [Protectionism 2.0: Digital forces driving the new protectionist agenda](#), our latest podcast sees Gowling WLG's Ursula Johnston and Sean Giles talk to national journalist [Andrew Cave](#), a writer for the Daily Telegraph and Forbes magazine. The podcast explores the crucial customs and border issues that are likely to be caused by protectionist laws and barriers that govern the movement of data, as well as tech related goods and services.

EU-JAPAN TRADE AGREEMENT ENTERS INTO FORCE

Articles

The podcast will consider:

- The practical and realistic implications of these laws and the protectionist approach
- The issues that this will create where the accelerated race to develop smart tech is concerned
- The entire product development process - from mining and manufacturing to product development and the individual concerns that protectionism creates for these

01 February 2019

Articles

The EU Japan Economic Partnership Agreement^[1] (the "EPA"), comes into force today, 1 February 2019. The EPA covers almost one third of the world's total GDP, removing 99% of the tariffs applied on €1 billion of goods the EU exports to Japan.^[2]

... and regulatory challenges of a "no deal" Brexit start to crystallise, the in-house legal specialist busy answering questions about their exposure to risk of non-compliance across multiple ... y businesses, particularly in the manufacturing and retail sectors, in-house legal teams are ... extend their remit to trade compliance. This includes customs reporting obligations and ... look in practice for goods arriving from the European Union post 29 March 2019. Customs ... kely treated as a "black hole" or outsourced function to be handled by a nominated freight ... itself creates a risk for the importer or exporter i.e. the owner of the goods.

... and we spoke to Phil Evans who leads the customs compliance function for DSV, an ... transport and freight carrier, to understand what the landscape looks like from his ... nd how, in his view, businesses can prepare for Brexit. DSV offers a customs brokerage service ... r wider freight offering.



QUESTIONS