

European Scrutiny Committee

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From: Sir William Cash MP

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Establishment of the list of potential arbitrators under the UK/EU Trade and Cooperation Agreement

Thank you for your Explanatory Memorandum of 12 October on the EU's proposal setting out their position on a future Decision of the UK/EU Joint Committee to update the list of potential members of any arbitration panel established under the Withdrawal Agreement to adjudicate on disputes relating to that treaty's interpretation.

While we agree with your assessment that the appointment of a new individual to the EU's list of potential arbitrators under the Withdrawal Agreement is not in itself significant, it has served to emphasise the fact that the UK/EU Partnership Council under the Trade and Cooperation Agreement has yet to establish a similar list of eligible arbitrators for tribunals that may be established to rule on disputes under that treaty. We note that the deadline set in Article 752 of the TCA for the establishment of such a list expired on 30 June, without the UK and EU having jointly agreed on one in the Partnership Council.

Given the uncertainties that lie ahead in the broader UK-EU relationship (in particular, the possibility that the EU may take retaliatory measures under the TCA in response to any UK invocation of safeguard measures under Article 16 of the Northern Ireland Protocol), it may be in the UK's interest in the near or

medium-term that an arbitration tribunal can be established under the TCA to adjudicate on any counter-actions taken by the EU that disrupt trade with Great Britain. That would, by definition, require arbitrators to be available under the terms set out in the Agreement. The TCA envisages that, in the absence of an agreed list, arbitrators are to be “selected by lot from the individuals who have been formally proposed” by the UK or the EU in accordance with Annex 48 of the Agreement. However, no such formal ‘proposals’ appear to have been made either by the Government or the European Commission, at least publicly.

In light of this, we would be grateful if you could write to us before the Christmas recess confirming the Government’s expectations with respect to the timetable for the establishment of the list of eligible arbitrators under Article 752 of the TCA; the reasons for the delays in doing so to date; and what the process is for ‘formally proposing’ eligible individuals by the EU and UK respectively, so that a tribunal could be established if necessary before any list is established by the Partnership Council.

CHAIR