

Re: Gerber Steel GmbH, Submission Open for Inspection, R797, R798

Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>

Tue 2023-11-14 17:42

To: Martin.Lukas@ec.europa.eu <Martin.Lukas@ec.europa.eu>; Pedro.Velasco-Martins@ec.europa.eu <Pedro.Velasco-Martins@ec.europa.eu>

Cc: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>

Dear Mr Lukas,
 Dear Mr Velasco Martins,
 Dear Ms Koops,

To our great regret, our submission on the two anti-circumvention proceedings was repeatedly rejected by Ms Koops.

- Case R797 Stainless steel cold-rolled flat products (SSCR)
- Case R798 Stainless steel cold-rolled flat products (SSCR)

In the email correspondence with Ms Koops attached below, we have explained in detail why our submission must be included and taken into account in both cases and why the European Commission has committed multiple procedural errors here. As Ms Koops has now once again rejected our submission and ignored our queries without reply, we must unfortunately move to the next level.

We call on the European Commission to accept our submission on cases R797 and R798 immediately, to add them to the proceedings and to take full account of the findings.

We have collected and presented sufficient evidence that the two anti-circumvention proceedings are without foundation. We have exposed the accusations made by EUROFER as false and unfounded and raised the legitimate question of whether they could even be relevant under antitrust law, if not criminal law - e.g. for the European Public Prosecutor's Office (EPPO), the European Anti-Fraud Office (OLAF) or the cartel authorities of the EU member states.

This is no longer a matter of fairness, but very probably a matter of false pretences, if not fraud, to the detriment of the European Union's economy as a whole.

We assume that our submission will be included in both cases without any further delay.

Thank you very much.

Best regards

Björn Kammeyer (i.A.)

Contact

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Gerber Steel GmbH
 Großherzog-Leopold-Platz 2
 79359 Riegel

Vertreten durch: Thorsten Gerber
 Handelsregister: HRB 719990
 Registergericht: Amtsgericht Freiburg

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From: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>
Sent: 13 November 2023 17:48
To: Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>

Cc: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>
Subject: RE: Gerber Steel GmbH, Submission Open for Inspection, R797, R798

Dear Mr Kammeyer,

We take note of your message and the arguments put forward by you. As these arguments do not change the assessment of the facts, we confirm the rejection of your submission on initiation.

With kind regards,
 Catharina Koops

Catharina Koops
 Case Handler



European Commission
 DG TRADE
 Unit G3 – Trade Defence Investigations

CHAR 4/123
 B-1049 Brussels/Belgium
 Tel +32 2 29 87303
catharina.koops@ec.europa.eu

From: Björn Kammeyer I Gerber Steel GmbH <bk@gerber-steel.com>
Sent: Monday, November 13, 2023 8:48 AM
To: TRADE SSCR AC <TRADE-SSCR-AC@ec.europa.eu>
Subject: Re: Gerber Steel GmbH, Submission Open for Inspection, R797, R798
Importance: High

Dear Ms. Koops,

Thank you for confirming once again that you have made a mistake. According to the Official Journal of the European Union, the procedure was published on 14 August 2023, but the COMMISSION IMPLEMENTING REGULATION (EU) 2023/1632 is dated 11 August 2023.

We registered as an interested party on 17 August 2023. You have confirmed that, in your opinion, the deadline expired on 18 September 2023.

We therefore have several points here where you have made errors.

A) On 11 August 2023, it was impossible for us to register as an interested party with the European Commission, as the procedure was only published in the Official Journal of the European Union on 14 August 2023. This means that, contrary to your statement, we did not have 37 days. But, if at all, 35 days. The EC has therefore already committed a breach of its own regulation. Official Journal of the European Union, L202, Volume 66, 14

August 2023, ISSN 1977-0677

Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELLAR%3Ae1ca0afe-3a3b-11ee-bbad-01aa75ed71a1>

B) We registered as an interested party in TRON within the 15-day deadline. See our registration in TRON dated 17 August 2023, but we only received confirmation from you that we had been accepted as an interested party on 4 October 2023. Well after the deadline. We therefore had no opportunity to get involved.

C) We have registered as an interested party via TRON.tdi, as required by Regulation E. PROCEDURE. You should have received the confirmation of our registration. However, we will be happy to send them to you again.

And as is clear from the TRON.tdi:

Instructions and Terms of Use:

1.2. TRON.tdi has four main uses:

- **Registration to a case as an interested party** (web registration);
- Consultation of the open (non-confidential) file, granting representatives of interested parties' remote access to the open file of a specific case;
- Informing interested parties about availability of certain documents by sending appropriate link to these documents (web notification);
- Submission of documents (open and sensitive) by interested parties in a proceeding (file upload and online forms modules).

2.2. Once an interested party has an EU Login account, they or their appointed legal representative can fill in an online form **to request to be accepted as an interested party for a particular Trade Defence proceeding**.

2.3. **Once the application for interested party status has been accepted by the case team**, the party will receive information by email **confirming its status as an interested party**.

2.4. In case you haven't been granted an interested party status and you do not agree with the reasons for this decision, you may contact the case team, or you may request the intervention of the Hearing Officer.

Source:

<https://tron.trade.ec.europa.eu/tron/resources/documents/TermsOfUseTRON.pdf>

So, we have clearly demonstrated that you made the mistake here. You failed to inform interested parties in good time that they had been included as interested parties in the first place. This omission alone could be reason enough for the entire procedure to be cancelled immediately.

To make matters worse, we would also like to refer you to the letter dated 12 September 2023 from Isabella Omrod-Bufill, Associate, Van Bael and Bellis on behalf of the European Association of NonIntegrated Metal Importers & Distributors (EURANIMI), in which you were already made aware that the association had not yet been given any insight into the proceedings, although it had applied as an interested party. So, you were well aware that something was wrong and yet you took until 4 October 2023 to inform all interested parties. This can only be interpreted as negligent total failure or intent.

In addition, you had already confirmed the inclusion of our submission in the procedure in your first email. Since you failed to explain your change of mind despite our request, we must continue to assume that the EC deliberately blocked our submission.

You will therefore now accept our submission on this procedure immediately. We are

already looking forward to the TRON notification that our documents have been uploaded. Thank you very much.

Best regards

Björn Kammeyer (i.A.)

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Vertreten durch: Thorsten Gerber
Handelsregister: HRB 719990
Registergericht: Amtsgericht Freiburg

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stored is required for no longer exists (e.g. once your request has been conclusively processed). This shall be without prejudice to any compelling statutory provisions – in particular tax and commercial law based retention periods. You have the right to at any time receive free information concerning the origins, recipients and purpose of your data archived by us. You also have a right to object, to data portability and a right to log a complaint with the competent supervisory agency. Moreover, you can demand the correction, eradication and, under certain circumstances, the restriction of the processing of your personal data. For more details, please consult our Data Privacy Policy (<https://gerber-steel.com/datenschutz/>).

From: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>
Sent: 10 November 2023 16:46
To: Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>
Cc: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>
Subject: RE: Gerber Steel GmbH, Submission Open for Inspection, R797, R798

Dear mr Kammeyer,

As is clear from article 3(2) of the Initiation Regulations, the 37-day deadline for the submission of information in these investigations starts from the day of publication of these regulations in the Official Journal. Although you were aware of this deadline you have not, to our knowledge, alerted us to any issues related to access to the open file nor did you ask for any extension of the deadline before submitting your reply much after the deadline. Taking into account these circumstances as well as the need to treat all parties fairly and equally, we cannot accept your late submission. This is not, as you argue, a violation of your rights of defence, since you will have another opportunity during the investigations to submit comments, i.e. at the time of the disclosure of the essential facts and findings of the investigation.

We therefore confirm the rejection of your submission on initiation and will not put the submission in the open file.

With kind regards,

Catharina Koops

Catharina Koops
Case Handler



European Commission
DG TRADE
Unit G3 – Trade Defence Investigations

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catharina.koops@ec.europa.eu

From: Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>
Sent: Thursday, November 9, 2023 2:00 PM
To: TRADE SSCR AC <TRADE-SSCR-AC@ec.europa.eu>
Subject: Re: Gerber Steel GmbH, Submission Open for Inspection, R797, R798
Importance: High

Dear Ms. Koops,

Thank you for your feedback and the interesting perspective.

We made our submission on 3 November 2023.
 However, the details of the case and the exact allegations were only available to TRON users (interested parties) from 4 October 2023. All you have to do is look at your own proof of transmission.

- Case R798 Stainless steel cold-rolled flat products (SSCR), your appointment as Tron's Users Delegated Manager (TUDM) for Gerber Steel GmbH
- Case R797 Stainless steel cold-rolled flat products (SSCR), your appointment as Tron's Users Delegated Manager (TUDM) for Gerber Steel GmbH

However, we have attached these as PDFs.

Thus, the necessary background information was only available to us from 04 October 2023 onwards in order to be able to prepare a qualified submission. Therefore, the 37 days can only be counted from this date, if at all. Furthermore, as Gerber Steel GmbH was not on the list of companies to be consulted in advance and had not received an explicit invitation to participate in the proceedings, it was not possible for anyone who had registered as an interested party via TRON to submit a submission by the deadline.

And to ensure that we remain in fair treatment of all parties and that you otherwise violate our fundamental rights under Article 41 - Right to good administration under the Charter of Fundamental Rights of the European Union, we are pleased that our submission will be published immediately in TRON.

We have attached the link to our common charter and the relevant article:
<https://fra.europa.eu/en/eu-charter/article/41-right-good-administration>

You could also have asked what the reasons for the alleged delay were in detail, and as you have presumably read what we sent you, you are aware of the scope of the submission and the details of its content. You failed to do so.

You also wrote on 06 November 2023 14:12: "We acknowledge receipt of your submission which will be put in the (open resp. sensitive) file."

And since your reply of 09 November 2023 12:37 also says something different in terms of content than your first message, we must assume that we are being deliberately obstructed by the EC here.

We therefore look forward to the immediate publication of our submission. Thank you very much.

Best regards

Björn Kammeyer (i.A.)

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Vertreten durch: Thorsten Gerber
Handelsregister: HRB 719990
Registergericht: Amtsgericht Freiburg

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From: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>
Sent: 09 November 2023 12:37
To: Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>
Cc: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>
Subject: RE: Gerber Steel GmbH, Submission Open for Inspection, R797, R798

Dear Mr Kammeyer,

Thank you for your message, which allows us to better clarify the situation regarding your submission of 3 November on initiation of the abovementioned cases.

Please note that according to Article 3(2) in both Regulation 2023/1632 and Regulation 2023/1632, which initiated the anti-dumping and anti-subsidy investigations, respectively, provides that “*Interested parties, if their representations are to be taken into account during the investigation, **must** present their views in writing and submit questionnaire replies, requests for exemptions, or any other information **within 37 days from the date of the publication of this Regulation** in the Official Journal of the European Union, unless otherwise specified.*” Your submission was due 37 days after the initiation of the investigations, i.e. 18 September 2023. No attempt was made from your side to request an extension before that date. Moreover, in your e-mail you mention no good cause for the lateness of your submission, just that “*the complexity of the cases required some time for research and preparation*”. You have not explained why such a complexity required more than double the 37-day period allotted for such submissions.

Therefore, in order to properly conduct the investigation and treat all interested parties equally, we cannot accept your late submission and it will not be added to the case file.

However, as any other registered interested party, you will still have the occasion to provide comments at a later time, i.e. at the time of the disclosure of the essential facts and findings of the investigation. At that stage, you would be able to submit any of the information you consider relevant.

With kind regards,
Catharina Koops

Catharina Koops
Case Handler



European Commission

DG TRADE

Unit G3 – Trade Defence Investigations

CHAR 4/123

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Tel +32 2 29 87303

catharina.koops@ec.europa.eu

From: Björn Kammeyer I Gerber Steel GmbH <bk@gerber-steel.com>
Sent: Monday, November 6, 2023 3:22 PM
To: TRADE SSCR AC <TRADE-SSCR-AC@ec.europa.eu>
Subject: Re: Gerber Steel GmbH, Submission Open for Inspection, R797, R798

Dear Ms. Coops,

Thank you for your feedback and for confirming receipt of our submission.

What specific statement would you like to make with the second paragraph of your feedback?

Best regards

Björn Kammeyer (i.A.)

Contact

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für die Anbahnung, Begründung, inhaltliche Ausgestaltung oder Änderung eines Rechtsverhältnisses zwischen Ihnen und uns erforderlich sind (Art. 6 Abs. 1 lit. b DSGVO) oder eine sonstige Rechtsnorm die Verarbeitung gestattet. Ihre personenbezogenen Daten verbleiben bei uns, bis Sie uns zur Löschung auffordern, Ihre Einwilligung zur Speicherung widerrufen oder der Zweck für die Datenspeicherung entfällt (z. B. nach abgeschlossener Bearbeitung Ihres Anliegens). Zwingende gesetzliche Bestimmungen – insbesondere steuer- und handelsrechtliche Aufbewahrungsfristen – bleiben unberührt. Sie haben jederzeit das Recht, unentgeltlich Auskunft über Herkunft, Empfänger und Zweck Ihrer gespeicherten personenbezogenen Daten zu erhalten. Ihnen steht außerdem ein Recht auf Widerspruch, auf Datenübertragbarkeit und ein Beschwerderecht bei der zuständigen Aufsichtsbehörde zu. Ferner können Sie die Berichtigung, die Löschung und unter bestimmten Umständen die Einschränkung der Verarbeitung Ihrer personenbezogenen Daten verlangen. Details entnehmen Sie unserer Datenschutzerklärung (<https://gerber-steel.com/datenschutz/>).

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From: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>

Sent: 06 November 2023 14:12

To: Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>

Cc: TRADE-SSCR-AC@ec.europa.eu <TRADE-SSCR-AC@ec.europa.eu>

Subject: RE: Gerber Steel GmbH, Submission Open for Inspection, R797, R798

Dear mr. Kammeyer,

We acknowledge receipt of your submission which will be put in the (open resp. sensitive) file.

Please note that your submission was filed more than a month after the deadline laid down in Article 3(2) of the relevant Initiating Regulations

("Interested parties, if their representations are to be taken into account during the investigation, must present their views in writing and submit questionnaire replies, requests for exemptions, or any other information within 37 days from the date of the publication of this Regulation in the Official Journal of the European Union, unless otherwise specified").

With kind regards,
Catharina Koops

Catharina Koops
Case Handler



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Unit G3 – Trade Defence Investigations

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From: Björn Kammeyer I Gerber Steel GmbH <bk@gerber-steel.com>
Sent: Friday, November 3, 2023 4:05 PM
To: TRADE SSCR AC <TRADE-SSCR-AC@ec.europa.eu>
Subject: Gerber Steel GmbH, Submission Open for Inspection, R797, R798
Importance: High

Dear Sir or Madam,

Please find enclosed our submission on the anti-circumvention cases:

- R797 - Stainless steel cold-rolled flat products (SSCR)
- R798 - Stainless steel cold-rolled flat products (SSCR)

We apologise for any delays. However, the complexity of the cases required some time for research and preparation.

Download Appendix for R797 - R798
<https://drive.google.com/drive/folders/1aWEW2XWGDRIweEO3L-LRuJNpHqhCMYnq?usp=sharing>

Please kindly confirm receipt.
We wish you a pleasant weekend and look forward to your feedback.

Best regards

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Registergericht: Amtsgericht Freiburg

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