

RE: Violation of our rights as an interested party - Ares(2023)8337555

TRADE HEARING OFFICER <trade-hearing-officer@ec.europa.eu>

Wed 2023-12-06 11:35

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

Cc: JAKOB Thinam (VDL-CA-04) <thinam.jakob@ec.europa.eu>; REYES AGUIRRE Beatriz (TRADE) <beatriz.reyes-aguirre@ec.europa.eu>; VAN EESBEECK DIT VANDERHAEGEN Andra (TRADE) <andra.van-eesbeeck-dit-vanderhaegen@ec.europa.eu>

[RE: Violation of our rights as an interested party - Ares\(2023\)8337555](#) (Please use this link only if you are an Ares user – Svp, utilisez ce lien exclusivement si vous êtes un(e) utilisateur d'Ares)

Mr Kammeyer

I refer to your submission below.

I regret to learn that you have serious concerns regarding the proceedings R797 and R798.

Please note, that my mandate as the Hearing Officer for trade allows me specific competences. Not being part of the Commission services responsible for the investigation, I do not supervise or follow the on-going proceedings. Furthermore, decisions concerning initiation or termination of proceedings are clearly outside my mandate.

As regards your submissions, I have received assurances from the investigation team that you will have opportunities to present them in due course and they will be duly included and considered.

If you have further concerns about your rights of defence please do not hesitate to revert to me again.

Sincerely,

Thinam JAKOB**European Commission**

Hearing Officer in Trade Proceedings

170 Rue de la Loi – CHAR 03/129
B-1049 Brussels, Belgium

phone: +32 2 296.29.33

e-mail: thinam.jakob@ec.europa.eu**From:** Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>**Sent:** Tuesday, December 5, 2023 12:33 PM**To:** TRADE HEARING OFFICER <TRADE-HEARING-OFFICER@ec.europa.eu>**Cc:** JAKOB Thinam (CAB-DOMBROVSKIS) <Thinam.Jakob@ec.europa.eu>; VAN EESBEECK

DIT VANDERHAEGEN Andra (TRADE) <Andra.VAN-EESBEECK-DIT-VANDERHAEGEN@ec.europa.eu>

Subject: Re: Violation of our rights as an interested party

Dear Ms. Reyes Aguirre,

Thank you for your message dated 1 December 2023.

We refer to the anti-circumvention cases R797 and R798 in which Gerber Steel GmbH registered as an interested party in a timely manner via the TRON system, but due to negligence and/or intent, was only admitted as an interested party by the responsible department at DG Trade, Trade Defence, Investigations II. Anti-circumvention, with considerable delay, namely on 4 October 2023. Thus, it was only from this date that access to the Non-Confidential Files was granted to us. This was significantly after the deadlines defined by the Commission for the participation of interested parties.

This has led to a situation where interested parties, whether they registered as such shortly after the publication of cases R797 and R798 in the TRON system of the European Commission or at a later date, were treated at least unequally, if not discriminatorily, in comparison to other parties when exercising their rights as interested parties.

We deeply regret that we now have to involve the Hearing Officer in this unfortunate matter. Unfortunately, all our objections, evidence, and requests for clarification in this case have been rejected as unfounded by the responsible Anti-circumvention department or simply ignored. Key points that should clarify the more than strange and evasive behaviour of the department have not been answered, even upon our repeated and urgent inquiries.

We can only assess the behaviour of the responsible department as follows:

1. After the department accepted our submission and confirmed that it would be added to the case, several days later they misused a preliminary inquiry we made to exclude our submission from the proceedings. Our repeated inquiries about this have not been satisfactorily and unequivocally answered by the department to this day.
2. This raises more than a reasonable suspicion that the responsible department, upon reviewing our submission - which presented solid evidence and clear facts showing that cases R797 and R798 are legally untenable and should not only be immediately discontinued but should not have been initiated in the first place - decided to reject it rather than risk the apparently desired outcome of the proceedings.
3. Moreover, this already more than questionable and improper behaviour of the Anti-Circumvention department has led to our research being able to clearly demonstrate that the responsible department has grossly violated our right to good administration under Article 41 of the EU Charter of Fundamental Rights. This has resulted in Gerber Steel GmbH being treated not only unequally compared to other interested parties but probably even discriminated against by the responsible department.
4. This negligent and/or intentional behaviour of the responsible Anti-Circumvention department affects not only Gerber Steel GmbH but many other interested parties in these two proceedings. We reserve the right to inform these parties, if necessary, about the disregard of their rights as interested parties. This could lead to extensive and well-founded lawsuits before the European Court of Justice, which the department has stated it would like to avoid.

5. We have also informed the responsible department that we see indications that these two cases and the irregularities that have become apparent in them could be relevant for the European Anti-Fraud Office (OLAF), the competition authorities of the Member States, and the European Public Prosecutor's Office. The department has also ignored this.
6. The entire conduct, the mistakes made, and the additional evidence and facts we have presented, already now call into question the integrity of the Trade Defence, Investigations II. Anti-circumvention department. Objectively, the two proceedings R797 and R798 should be discontinued immediately due to significant administrative errors and the unequal treatment and probable discrimination of Gerber Steel GmbH and many other interested parties.

We have attached a detailed compilation and documentation of delays and irregularities in the Anti-Circumvention proceedings R797 and R798. This documentation clearly and emphatically demonstrates a gross and serious violation of our right, and thus also a violation of the rights of other interested parties, to good administration under Article 41 of the EU Charter of Fundamental Rights.

We currently see only two solutions in this dispute:

Solution 1: The submission of Gerber Steel GmbH is fully added to the proceedings R797 and R798 and the findings from it are duly, transparently, and under the observation of the Hearing Officer considered in the decision-making. Other interested parties who have been subjected to unequal treatment and/or discrimination by the responsible department should be given a corresponding opportunity to participate in the proceedings.

Solution 2: The proceedings R797 and R798 are terminated immediately and without result, regardless of whether the administrative errors contributed to the serious violations of Article 41 of the EU Charter of Fundamental Rights through gross negligence and/or intent.

As emphasized at the beginning, we deeply regret that we now have to involve the Hearing Officer in this matter. But you will surely agree with us that, given the overwhelming evidence, we cannot stand idly by when our rights as a European company and, in particular, citizens of the EU are so blatantly disregarded.

We are available for further exchange and hope to be able to resolve this matter without resorting to a court.

Thank you.

Attachments

Enclosed, you will find the complete correspondence with the DG Trade, Trade Defence, Investigations II. Anti-Circumvention department.

Gerber Steel GmbH's submission on the R797 and R798 proceedings can be downloaded here: https://drive.google.com/drive/folders/1aWEW2XWGDRIweEO3L-LRuJNpHqhCMYnq?usp=drive_link

PDFs enclosed (zip-file):

- 001 Summary of the points raised so far in the dispute.pdf
- 002 Communications TRADE SSCR AC 0311 to 14112023.pdf
- 003 Communications Pedro Velasco Martins 2111 to 23112023.pdf

004 Communications HEARING OFFICER TRADE SSCR AC 3011 to 01122023.pdf

- 005 Case R797 Stainless steel cold-rolled flat products (SSCR), your appointment as Tron's Users Delegated Manager (TUDM) for Gerber Steel GmbH.pdf
- 006 Case R798 Stainless steel cold-rolled flat products (SSCR), your appointment as Tron's Users Delegated Manager (TUDM) for Gerber Steel GmbH.pdf
- 007 Tron R797 1 marked.pdf
- 008 Tron R797 2 marked.pdf
- 009 Tron R798 1 marked.pdf
- 010 TRON usersGuide.pdf
- 011 Website TRON Trade defence instruments.pdf

Best regards

Björn Kammeyer (i.A.)

Contact

P: +49 7642 9282851

F: +49 7642 9282852

M: bk@gerber-steel.com

W: <https://gerber-steel.com>

News: <https://steelnews.biz>

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-HEARING-OFFICER@ec.europa.eu <TRADE-HEARING-OFFICER@ec.europa.eu>

Sent: 01 December 2023 10:52

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

Cc: JAKOB Thinam <Thinam.Jakob@ec.europa.eu>; VAN EESBEECK DIT VANDERHAEGEN Andra <Andra.VAN-EESBEECK-DIT-VANDERHAEGEN@ec.europa.eu>

Subject: RE: Violation of our rights as an interested party

Dear Mr Kammeyer,

We acknowledge receipt of your request. Could you please specify what rights of defence you consider violated and what kind of intervention you are seeking from the Hearing Officer, at this point in time.

Thank you very much in advance.

Best regards,

On behalf of the Hearing Officer.

*Beatriz REYES AGUIRRE
Assistant to Ms Thinam JAKOB
Hearing Officer for Trade Proceedings*



*EUROPEAN COMMISSION
170 Rue de la Loi - CHAR 03/133
B-1049 Brussels/Belgium
Tel : +32 2 295 52 83
e-mail : TRADE-HEARING-OFFICER@ec.europa.eu*

From: Björn Kammeyer | Gerber Steel GmbH <bk@gerber-steel.com>
Sent: Thursday, November 30, 2023 5:41 PM
To: TRADE HEARING OFFICER <TRADE-HEARING-OFFICER@ec.europa.eu>; VELASCO MARTINS Pedro (TRADE) <Pedro.Velasco-Martins@ec.europa.eu>; LUKAS Martin (TRADE) <Martin.Lukas@ec.europa.eu>
Cc: TRADE SSCR AC <TRADE-SSCR-AC@ec.europa.eu>
Subject: Violation of our rights as an interested party

Dear Sir or Madam, Dear Hearing Officer,

To our great regret, we have not yet received a reply from you to our last message dated 23 November 2023.

We would therefore like to kindly ask when we can expect a response?

We have now provided more than enough evidence that our rights as an interested party in the anti-circumvention investigations R797 and R798 have been seriously violated by the European Commission.

Thank you very much.

Yours sincerely

Björn Kammeyer (i.A.)

Contact

P: +49 7642 9282851

F: +49 7642 9282852

M: bk@gerber-steel.com

W: <https://gerber-steel.com>

News: <https://steelnews.biz>

Gerber Steel GmbH
 Großherzog-Leopold-Platz 2
 79359 Riegel

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

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