

# The Hearing Officer in Trade Proceedings

An independent office for good administration in trade proceedings





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## What is the Hearing Officer?

The Hearing Officer is an independent office that ensures that the European Commission applies good administrative practice when implementing EU legislation concerning international trade.

In particular, the Hearing Officer ensures that interested parties affected by procedures or measures under such legislation can effectively exercise their procedural rights, such as the right to be heard.

### What are trade proceedings?

The European Commission is responsible for implementing EU legislation on international trade. It also investigates unfair practices in international trade that affect EU businesses and consumers, and dramatic shifts in trade flows into or out of the EU.

The administrative procedures it follows and the measures it applies when carrying these tasks are called 'trade proceedings'.

Trade proceedings include procedures and measures relating to:

- anti-dumping
- anti-subsidy
- safeguards, including those under the EU's free trade agreements
- trade barriers
- the EU's Generalised Scheme of Preferences
- ensure fair pricing of vessels
- ensure fair competition in air services
- implement rulings of the World Trade Organization and the European Court of Justice.

### The right to good administration in trade proceedings

Citizens and businesses rightly expect that the European Commission apply good administrative practice.

The European Commission, like other EU institutions, applies the following principles in its administrative proceedings:

interested parties have the right to access their file  
interested parties have the right to be heard  
the duty to conclude proceedings in a reasonable time.

Under the Treaty of Lisbon of 2009, these principles are set out in Article 41 of the Charter of Fundamental Rights of the European Union.

Article 41 states that every person has the '...right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union'.

This means:

- everyone has the right to be heard before any individual measure is taken that would affect them adversely
- everyone has the right to access their file, while respecting the legitimate interests of confidentiality and of professional and business secrecy
- the administration is obliged to give reasons for its decisions.

### Who are interested parties in trade proceedings?

Interested parties are natural or legal persons directly involved in trade proceedings.

For example:

- EU Industry
- Exporting producers in countries outside the EU
- EU importers
- governments of countries outside the EU
- consumers organisations if there is an objective link between their activities and the product concerned
- trade unions.

Academics, students, journalists cannot be considered interested parties.

### The rights of interested parties in trade proceedings

Trade proceedings usually affect the interests of a number of businesses, based either in the EU or outside it.

EU legislation that gives rise to trade proceedings grants specific procedural rights to interested parties.

For example:

- the right to submit comments in writing
- the right to request an oral hearing
- the right to the confidential treatment of your information
- the right to access the file open for inspection by interested parties (commonly referred to as the 'non-confidential file' or 'open file')
- the right to be informed of the main facts and considerations on which the European Commission based its findings (disclosure)
- the right to equal treatment (non-discrimination).

## What is the role of the Hearing Officer?

An interested party affected by trade proceedings can request the Hearing Officer to intervene if they believe that during the proceedings:

- the European Commission has not applied good administrative practice;
- they have been unable to exercise their procedural rights.

The Hearing Officer's principal role is to ensure:

- interested parties' procedural rights are exercised effectively
- trade proceedings are handled impartially, fairly and within a reasonable time.

To achieve this, the Hearing Officer aims to ensure that:

- interested parties are duly heard, in writing and/or orally
- all relevant arguments and facts presented by interested parties are duly considered and replied to
- interested parties have access to the open file
- information is treated confidentially when necessary and business secrets are protected.

The Hearing Officer advises the Commissioner and the Director-General concerned on all issues arising from a trade proceeding in which that Commissioner and that Director-General was involved.

The relevant Commission department consults the Hearing Officer on any policy changes that may affect the rights of interested parties.

The Hearing Officer:

- is experienced in trade proceedings but does not conduct trade proceedings themselves
- works independently from Commission departments
- does not receive instructions in the exercise of their duties
- is attached, for administrative purposes only, to the Commissioner for Trade.

## What powers does the Hearing Officer have?

The Hearing Officer can make:

- decisions on issues related to access to the file, confidentiality and extension of deadlines
- confidential recommendations to Commission departments.

If the Commission department concerned does not follow the Hearing Officer's recommendations, it must provide justifications.

The Hearing Officer has the authority to bring the issue to the attention of the Director-General and where necessary, the Commissioner.

## Who can submit a request to the Hearing Officer?

- Any natural or legal person involved in a trade proceeding being dealt with by the European Commission
- other European Commission departments
- the authorities of any non-EU countries affected by trade proceedings

For details of how to submit a request, see Section B below.

## Contacting the Hearing Officer

You can contact the Hearing Officer by email or in writing.

As a rule, you should first try to find a solution with the Commission Services. If this is not possible, you should specify:

what you want the Hearing Officer to do (convene an oral hearing, provide access to a file, extend a deadline etc.)  
why you think your procedural rights have been infringed in the investigation.

In summary:

- Requests for the Hearing Officer to intervene must be submitted in good time and expeditiously, so as not to jeopardise the orderly conduct of the proceeding;
- Interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention;
- Hearings with the Hearing Officer should in principle only take place if it has not been possible to settle the issue with the Commission department concerned.

The Hearing Officer decides whether their involvement is justified, taking into account:

- the time constraints of the proceedings
- the legal deadlines set out in the EU regulations being applied.

## Are the Hearing Officer's decisions public?

No. The Hearing Officer's work is part of the Commission's internal decision-making process, so their reports and recommendations are not made public.

The Hearing Officer does not express a public view on the substance of a case. However, every case submitted to the Commission for a decision must be accompanied by a note from the Hearing Officer.

The Hearing Officer:

- is neither an investigator nor a judge but acts as a facilitator and mediator between the parties and the Commission departments carrying out the trade proceedings
- acts independently in their area of competence and may intervene at any stage of a proceeding at the request of interested parties or Commission departments
- makes decisions on issues related to:
  - access to the file
  - confidentiality
  - extension of deadlines
- addresses recommendations in all cases, where necessary.

## INTRODUCING A REQUEST – A STEP BY STEP GUIDE

### Hearings — an opportunity to be heard

The Hearing Officer organises and chairs two types of hearings as necessary:

- between an interested party and the Commission services carrying out the trade proceedings
- among interested parties with different interests in the presence of the Commission staff carrying out the trade proceedings and the EU Member States.

As an interested party in a hearing you:

- can ask the Hearing Officer to admit external experts to the hearing
- should explain aspects of the proceedings that affected your rights
- can ask for clarification and further examination of a particularly complex issue in the trade proceeding in question.

Access to the file

As an interested party, you have access to the file open for consultation by interested parties, which contains non-confidential versions of information submitted by other parties to the proceedings.

You may ask the Hearing Officer to intervene if you consider that you were unlawfully denied access to:

- the open file
- or
- a particular document held by the Commission staff carrying out the trade proceeding.

The Hearing Officer will decide whether to:

- grant you partial or full access
- or
- refuse access to the file or the document.

### Confidentiality — balancing transparency with respect for business secrets

The right to know the main content of submissions by other interested parties ensures transparency and enables each party to exercise their rights of defence.

However, important confidential business information communicated to Commission departments may – if disclosed to all interested parties – confer an advantage to the interested party's competitor or damage that party.

So the European Commission must strike the right balance between transparency and respect for business secrets.

The Hearing Officer only intervenes in a dispute between you as an interested party and the Commission staff carrying out the trade proceedings to:

- decide whether a particular document is actually confidential
- decide whether the non-confidential summary you prepared was detailed enough and understandable.
- check how a confidential document to which you have no access has been used by the Commission staff carrying out the trade proceedings.

### Extension of deadlines — help in critical situations

As an interested party, you may ask the Commission staff carrying out the trade proceedings for an extension of the deadline for submitting documents (questionnaires, comments). They may refuse to grant an extension or grant a shorter extension than requested.

If you disagree with the decision of the Commission staff, you may ask the Hearing Officer to review the request.

Depending on the circumstances and the time constraints of the proceeding, the Hearing Officer may extend the deadline or refuse an extension.

More information about the Hearing Officer:

<https://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

Hearings Officer's terms of reference:

<http://data.europa.eu/eli/dec/2011/695/oj>

Charter of Fundamental Rights of the European Union:

[http://data.europa.eu/eli/treaty/char\\_2012/oj](http://data.europa.eu/eli/treaty/char_2012/oj)

Information on the European Commission's Directorate-General for Trade:

[https://ec.europa.eu/trade/index\\_en.htm](https://ec.europa.eu/trade/index_en.htm)