

SEA Europe Position Paper on EU – China Investment Agreement

March 2015

Introduction

The EU-China Investment Agreement negotiations were launched in 2013. The scope of these negotiations covers investment protection and market access issues. This is important for European maritime manufacturers with subsidiaries, branches or local offices in China. However, trade in goods and subsidy issues are not part of these negotiations. Since the last decade China has become a major shipbuilding country playing an increasingly important role in global trade with the ambition of owning the biggest fleet and becoming the world leader for shipbuilding. Therefore, it would be good for the industry to extend the scope of these negotiations to a full free trade agreement.

Under the current negotiation scope, SEA Europe calls for:

- National treatment to foreign investment (joint ventures and wholly owned)
- Transparency in regulation/policy and its implementations
- Elimination of restrictions on European investments in China
- A solid IPR chapter: Improvement of intellectual property protection and enforcement

National Treatment

Case one: 70% local supply restrictions under the Chinese Shipbuilding Scrapping / Newbuilding Subsidy Program

It has been reported that the Chinese government has been providing subsidies which only favor Chinese companies. More specifically, SEA Europe refers to the Chinese Shipbuilding Scrapping & New building Subsidy Program which has the magnitude of 19,5 billion RMB in total and runs from 2013 to 2015. In order to get the subsidy for newbuilding, the percentage of “local” marine equipment must be at least 70%. “Local” supply refers only to manufacturing companies. Sales offices of a foreign marine equipment supplier do not qualify as local suppliers. Wholly foreign owned manufacturing companies established in China do not qualify as local suppliers either. In the case of joint ventures, the Chinese partner has to be the major shareholder. However, these restrictions have not been written down in any formal documents. Chinese shipyards and ship-owners told foreign companies that these restrictions come from “internal communications”. They never gave foreign companies any response in writing. As per information given informally, each type of equipment has a X % share of the total value of a ship. The total value of the ship should consist of at least 70% local content. For example, marine engines represent about 40% of

the total value of a ship. This means that an European engine manufacturer can never sell engines to these subsidized ships, regardless of whether they have factories in China or not.

Case two: foreign invested life-saving equipment companies are not able to serve on Chinese flagged ships

Today it is not possible for a foreign company which offers repair and maintenance service of the company's life-saving equipment on board Chinese flagged ships (e.g. immersion suits, lifeboats and firefighting equipment) even if the foreign company is locally established in China. Such service can only be provided to foreign flagged vessels calling Chinese ports or are docked at shipyards in China. A permission to service Chinese flagged vessels requires authorization from the Chinese Maritime Safety Agency. However, it is unclear on what terms such an authorization can be obtained since there are no clear rules and guidelines. An investment agreement between EU and China should ensure that locally established European suppliers of life-saving equipment can offer their repair and maintenance services also to Chinese flagged vessels.

Transparency in regulation/policy and its implementations

All three cases listed above give a clear indication that none of the Chinese "requirements"/ "policies" are ever being published or handed over in writing to the foreign companies.

In 2014, during the *EU – China Transport Dialogue* and the *EU - China Shipbuilding Dialogue*, both the European industry and the European Commission requested their Chinese counterparties for more detailed information about the "70% local content requirement". Unfortunately, the Chinese authorities (Ministry of Transport and Ministry of Industry and Information) played "ping pong" and no one wanted to take the responsibility or wanted to have an open discussion.

In the case of life-saving equipment, there are no clear rules for the Chinese Maritime Safety Agency and for foreign companies on the authorization process for foreign products.

In short, the main market access problem in China is the lack of transparency when implementing rules and policies. This causes legal uncertainty and has created an unfriendly business environment for foreign investors.

Moreover, it is extremely unfair for those foreign companies who have moved their production from Europe to China and who have created local jobs and have almost become "local". They deserve the same treatment as Chinese companies.

Elimination of restrictions on foreign investment

There are also official restrictions in China. For instance, China periodically publishes its *Guidelines on Foreign Investment*. According to the most recent version of these Guidelines,

shipbuilding is listed under the “encouraged” category. However, even “encouraged” sectors in China do face restrictions on foreign investment. In the case of shipbuilding and the marine equipment sector, which is considered of strategic importance by Chinese authorities, there is a shareholding limit for foreign companies when they invest and establish themselves in China. Foreign shipbuilding and maritime equipment suppliers can only set up equity joint ventures or contractual joint ventures in China. Moreover, it is mandatory that the Chinese partner holds the majority of shares. Foreign companies can only have maximum 49% of the shares.

Since the Guidelines are updated periodically according to the need and strategy of the Chinese government, any restrictions and conditions in the Guidelines can change. (e.g. the majority shareholding restriction on foreign investment in shipbuilding did not exist in the past)

Therefore, this Guideline system has brought two layers of negative impacts on foreign investment, namely: *restriction and uncertainty*.

A Solid IP Protection Chapter: Improvement of intellectual property protection and enforcement

In the area of intellectual property (IP) protection and enforcement, IP rights of several SEA Europe member companies have been violated by Chinese companies. Due to business sensitivity and their business / public relations in China, most of them have decided not to challenge the infringers or not to expose themselves.

SEA Europe calls for the inclusion of a chapter on IPR in the EU – China Investment Agreement to reflect shared commitment to robust and well-functioning protection of all forms of IP rights.

Conclusion

The European shipbuilding industry supports the bilateral investment agreement with China, but prefers to extend it to a full trade agreement. Such an agreement must be able to provide European companies with free and open market access, fair competition and a friendly environment for foreign investment. It should generate win-win results for both sides.

Background Note

SEA Europe brings together CESA and EMEC and represents an industry which generates more than €91 billion turnover annually and offers employment in high profile jobs for more than 500 000 Europeans. The association represents close to 100% of the European shipbuilding industry in 18 nations, encompassing the production, maintenance, repair and conversion of all types of ships and floating structures, commercial as well as naval including the full supply chain with the various producers of maritime systems, equipment material, and services.

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