

SEA EUROPE CONTRIBUTION TO THE “EU TRADE POLICY REVIEW: CHANGES NEEDED FOR A RENEWED TRADE AND INVESTMENT POLICY”

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EXECUTIVE SUMMARY

[SEA Europe](#) welcomes the opportunity to set out its views to the European Commission on the political direction that EU trade and investment policy should take in the years to come.

SEA Europe represents the European shipyards’ and maritime equipment sector (the “European maritime technology sector”). This sector encompasses the building, maintenance, repair, retrofitting and conversion of all types of ships and floating structures - commercial as well as naval - including the full supply chain of producers of maritime systems, equipment material, technologies and services.

Maritime technology is strategic to Europe’s (maritime) autonomy, defence and security, its access to trade, seas, and energy, and is a key enabler of Europe’s policy ambitions (e.g. European Green Deal). With more than 1 million jobs generated annually, the European maritime technology sector is fundamental for Europe’s economic growth and regional development. Maintaining and fostering a strong and resilient maritime manufacturing base in Europe capable of competing fairly in all markets is thus of vital importance for the EU strategic interests.

Europe is currently a global leader in the building of complex, high-tech ships as well as in the production and supply of advanced maritime equipment, systems, and technologies. This global leadership directly results from the sector’s continuous investments in highly skilled workforce as well as in research, development, and innovation (RDI). Yet, Europe’s high-tech maritime leadership and strategic autonomy are at risk as a result of aggressive foreign State-led policies, rising protectionism and unfair competition from third countries, notably in Asia, and from a lack of adequate trade tools.

For long time, contrary to most other manufacturers of goods, European shipyards have been suffering, quite uniquely, from a lack of effectively applicable trade defence remedies and instruments to deter and counter market distortions and unfair practices from foreign (shipbuilding) nations:

- Existing Trade Defence Instruments (TDIs) on imports do not effectively apply to shipbuilding products *inter alia* because ships are generally not imported into the EU in the sense of “cleared for free circulation” as required by the TDI rules¹. Besides, ships are rarely produced in large series, which makes the identification of a so-called “like product” in the context of anti-dumping investigations extremely difficult if not impossible for ships.
- As acknowledged in EU Regulation 2016/1035, recital (3), ‘(...) *the special characteristics of ship purchase transactions have made it impractical to apply countervailing and anti-dumping duties, as provided for under Article VI of the General Agreement on Tariffs and Trade, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Implementation of Article VI of the*

¹ Both the EU Anti-Dumping (2016/1036) and Anti-Subsidy Regulations (2016/1037) foresee the imposition of duties on any dumped or subsidised product "whose release for free circulation in the Union causes injury". In other words, the focus is on products "released for free circulation". Goods “released for free circulation” means goods that permanently enter the EU customs territory and are therefore subject to trade policy measures, i.e. customs duties can be levied on them

General Agreement on Tariffs and Trade 1994 ('the 1994 Anti-Dumping Agreement') annexed to the Agreement establishing the World Trade Organisation".

- At the same time, a major part of (foreign) state aids granted to shipbuilding companies cannot be challenged as “prohibited”, e.g. in the context of a WTO dispute settlement case, because they are not listed as such under the current WTO rules. Moreover, existing remedies in the context of a WTO dispute settlement case, e.g. a dispute panel ruling ordering a country to “withdraw” the subsidies in question, are largely ineffective for shipbuilding *inter alia* because by the time such a ruling is delivered the (unfair) transaction has been already completed and the ship has been delivered. In a sector like shipbuilding, with a limited number of very large transactions, companies suffer damage from distorted competitive conditions already and primarily at the moment when contracts are lost, e.g. due to abnormally low price offers.
- A sector-specific EU Regulation on ‘Protection against Injurious Pricing of Vessels’ (Regulation 2016/1035), as currently worded, is entirely ineffective *inter alia* because its application is tied to a 1994 OECD Agreement which will never enter into force. Just as important, besides the fact that this Regulation has never become applicable (nor will it ever become applicable), as currently designed, it is nowadays also completely outdated and inadequate to solve present challenges.
- Long-running efforts to establish a legally binding global discipline amongst shipbuilding nations under OECD-sponsored negotiations have so far not succeeded. Nor can tangible results be expected in the foreseeable future at international level, despite the best efforts of the EU.

In the last decades, Europe has lost entire ship market segments as well as technical competences and capabilities to Asia due to aggressive Asian State-led and supported competitive distortions. While Europe’s maritime equipment still captures a significant pie of the world market for shipbuilding supplies including the markets in Asia, the sector’s market share has been declining in recent years whereas the one of notably China’s as well as South Korea’s supplying industries have been on the rise. Partly responsible for this decline has been state support measures often combined with local content requirements to promote local marine equipment manufacturers.

Europe’s maritime technology sector has been furthermore experiencing rising trade protectionism globally especially in terms of increasing “non-tariff barriers” such as buy-national or local content requirements and discriminatory product classification/approval procedures. Some of these barriers have existed for several years like the US “Jones Act” requiring ships for domestic maritime trades to be carried by US built ships and Brazil’s local content requirement as part of national concession contracts in the oil and gas sector, Indonesia’s local content requirements on the manufacturing industry and China’s local content requirements in relation with upgrading ships controlled by Chinese shipowners. More recently, India has introduced local content requirements within its shipbuilding industry and the Russian Duma is at present considering legislation on restricting foreign content in its domestic shipbuilding industry activities. Governments in China, Japan and South Korea have for many years – more or less officially – encouraged or even instructed their local shipping industries to order their ships at national shipyards and when building these vessels to use local marine supplies.

Against this background, SEA Europe wishes to offer the following comments and recommendations:

- **EU’s trade policy must, first and foremost, mirror the fundamental values and standards of the Union, such as fair trade and competition, high standards for health and safety, sustainability, protection of the environment and of workers.**

- SEA Europe supports the European Commission’s idea of building an *‘open strategic autonomy’* model to balance openness and pragmatic actions to maintain a strong and sustainable EU manufacturing economy. However, to achieve the goal of fair trade, strong and effective instruments are urgently needed to allow EU industry to confront unfair trade practices from abroad and obstacles to trade on third-country markets. To be effective, such new instruments must be necessarily designed taking into due account the industry’s sectoral specificities and must address all the existing trade defence regulatory “gaps”.
- The EU Trade Policy Review and the White Paper on Foreign Subsidies (hereafter the “White Paper”) offer a perfect opportunity for the EU to urgently close the long-standing trade defence gap for shipbuilding by means of robust measures adapted to the specificities of the sector. As indicated in the SEA Europe response to the public consultation on the White Paper, the nature of the European maritime technology sector and its current state calls for the urgent adoption of a sector-specific solution. In our view, a level playing field requires above all the unilateral establishment of ambitious and workable legal rules that can then be promoted in an international context and provide the EU with the necessary bargaining leverage.
- In SEA Europe’s view, the ideal avenue to close this gap would be to promptly activate a thoroughly updated version of the afore mentioned EU Regulation 2016/1035, based on elements from the Module 1 of the White Paper but adapted to the specificities of the maritime technology sector *(as per SEA Europe recommendations to the White Paper’s consultation).* Alternatively, or in addition to the above, robust sector-specific measures and tailor-made remedies must be included in the new EU tool on foreign subsidies that the European Commission has announced for Q2 2021. In either option, it is fundamental that any avenue considered to solve such a major long-standing “gap” is based on a sector-specific approach.
- In order for the EU to build its resilience, a close link is furthermore required between trade, competition and industrial policies, to also take into account the EU objective of achieving digital and green transformations and lead globally in these areas.

To conclude, openness cannot be naïve to the distortions of non-market economic models, excessive subsidies, and the weaponization of trade and state policies from certain third countries.

Well designed and enforceable rules that reflect today’s realities as well as the industry’s sector specificities are critical to address international distortions and tensions caused by competing economic and political systems. Having these instruments allows the EU to be more open to trade at home and abroad because effective remedies can be applied when trade is not fair.

In this regard, we hope that the European Commission will promptly come forward with proposals for sector-specific measures that can effectively fight unfair competition, on the single market and worldwide, and thereby preserve **its strategic European maritime technology industrial base with its vital contribution to EU innovation, sustainable growth, employment, security and autonomy.**

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