

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

14 November 2020

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.**

Contact information :

SEA Europe asbl
 Rue de la Loi 67 (4th floor)
 1000 Brussels - Belgium
 tel. +32 2 230 27 91
info@seaeurope.eu

SEA EUROPE RESPONSE TO EU TRADE POLICY REVIEW CONSULTATION QUESTIONNAIRE

Question 1: How can trade policy help to improve the EU's resilience and build a model of open strategic autonomy?

As a starting point, SEA Europe believes that a trade policy aiming at “open strategic autonomy” must be based on the high standards and ambitions set out in the Treaties of the European Union (TEU) and the Functioning of the European Union (TFEU).

This means that fairness in trade must be evaluated in the light of EU standards on competition and state aids, non-discrimination, health and safety, labour rights, and protection of the environment. Trade agreements must promote these standards and the Union must ensure they are complied with.

Greater emphasis must be placed on ensuring fair trade as well as ensuring market access and non-discriminatory treatment on third-country markets. SEA Europe wholeheartedly agrees with the European Commission's observation that as trade barriers in third country markets are *‘increasingly affecting sectors linked to the EU's Technological sovereignty and strategic autonomy’*, and become more difficult to challenge, (...) *a radically new approach to defend EU trade interests will be required*².

In SEA Europe's view, the goal of “**open strategic autonomy**” should be pursued as follows:

- **Open:** Openness must apply equally to both the inward and outward flow of goods, services and capital. The EU must remain an open market and promote openness and fair trade in global markets. This is all the more important for an internationally active and export-oriented sector like the maritime technology sector. But the stronger the EU's toolbox for addressing all forms of unfairness, at home and abroad, the greater the willingness to be open. New, strong and effective instruments, that take into account the industry's sectoral specificities, are key to allow EU industry to confront unfair trade practices from abroad and obstacles to trade on third-country markets and, ultimately, to achieve the goal of open and fair trade. Closing the existing “trade defence” gaps in the EU domestic toolbox that have been for long time affecting Europe's maritime technology industry will be fundamental to this end.
- **Strategic:** EU trade policy must aim at preserving its highly strategic (maritime) industrial and technological assets and capabilities from unfair competition. Europe is the most maritime of all continents. It has more sea than land mass and has one of the longest coastlines in the world. Within the maritime and “Blue Economy” sector, Europe's shipyards and maritime equipment manufacturers are a core and strategic pillar³. By way of example:
 - The complex, innovative maritime products and solutions manufactured and developed in Europe are key in transforming the maritime sector into a climate neutral mode of transport and thus making the EU a climate neutral society by 2050.
 - These products and solutions are also instrumental in helping the EU to untap the promising potential of its Blue Economy and to enable the EU to control access to oceans and seas, trade lanes, marine resources, energy sources, food supplies, offshore and other maritime activities.

² [Report from the Commission to the European Parliament and the Council on “Trade and Investment Barriers” \(1 January- 31 December 2019\)](#)

³ [See SEA Europe White Paper LEADERSHIP 2030 “Maritime Technology in Europe: A Strategic Solution Provider for Major Societal Challenges” \(2019\).](#)

- Navy ships, coastguard and other public vessels built in Europe and (complex) naval systems, equipment and technologies manufactured in Europe enable the Navies and coastguards of Member States to guarantee the EU's defence and security, protect coastal and maritime regions and, inter alia, contribute to the EU's Common Security and Defence Policy (CSDP) operations.

The strategic dimension of the maritime sector has been of all times. It was already acknowledged by Themistocles (524-459 B.C.) in ancient times, when he said: *“Whoever controls the sea, controls everything”*. More than ever before, this control is vital for the EU for geo-political and geo-strategic reasons, particularly in times of growing international tensions and increased protectionism. Europe should acknowledge the strategic dimension of the maritime technology sector⁴ and reflect it consistently and holistically across all EU policies, including its trade policy, making it also a central element in the implementation of its external “Connectivity strategy”.

- **Autonomy:** The resilience of the EU is based on the competitiveness and dynamism of the Single Market. The Single Market is the basis of the EU's trade strength. For Europe's maritime technology sector, it is vital to have effective tools, adapted to the sector specificities and rigorously enforced, to ensure that free and fair competition on the Single Market is not distorted by foreign subsidies and unfair practices originating in third countries (e.g. predatory competition in the form of injurious pricing of ships supported by trade-distortive subsidies). Special attention should be paid also to the practice of using unfair instruments by non-EU nations to create national champions that have a dramatic negative impact on the internal market. The EU must use the strength and attractiveness of its market as a means to ensure a level playing field in global markets. If trade partners do not share the EU's ambition for a sustainable global and open market economy, autonomy means acting unilaterally. The EU is a trading economy. If third country markets are not open, or discriminate against EU companies, the EU must apply reciprocity. If foreign governments and industries engage in unfair trade and competition, the EU must deter and react to such practices through effective dissuasive remedies that are tailored to industry's sectoral specificities. For shipbuilding, effective remedies should include, as a last resort option, conditioning access of unfairly traded vessels produced by foreign subsidised shipbuilders to EU ports and/or to EU waters.

Question 2: What initiatives should the EU take – alone or with other trading partners - to support businesses, including SMEs, to assess risks as well as solidifying and diversifying supply chains?

Global value chains are a fundamental element of the organization of production throughout the world. They contribute to the optimization of production processes, to the competitiveness of the companies involved and benefit the consumers. However, global value chains can be distorted. Subsidies and state intervention undermine comparative advantages. The COVID-19 pandemic has shown that the EU has not prioritised ensuring a minimal industrial base for certain strategic products.

As known, Asia is targeting Europe's remaining global leadership in complex shipbuilding as well as in advanced maritime equipment manufacturing. Without effective tailor-made measures for our sector, Europe runs a serious risk of losing its remaining market share to Asia and thus become entirely dependent on Asia's maritime technology sector. Such (foreign) dependence is not without any risk for Europe and its status as a global maritime power and high-tech manufacturing leader.

⁴ Cf. [Answer given by Commissioner for the Internal Market, Thierry Breton, to question of the European Parliament \(E-000114/20 of 16 April 2020\)](#).

SEA Europe furthermore agrees with the statement in the Trade Policy review document that in “order to remain an open area for investment, the EU needs to be able to control who invests in its territory and for which purpose, and to react when a foreign investment poses a threat to security and public order”. In some third countries, overseas expansion of foreign shipbuilding and maritime technology companies is an explicit objective of State-led industrial strategies and plans⁵, which aim to accelerate indigenous technology development and innovation in order to acquire a major market presence in high-tech segments in Europe. The current economic crisis, moreover, makes it crucial to prevent foreign subsidised companies from exploiting opportunities to take over European maritime technology companies affected and weakened by COVID-19.

Question 3: How should the multilateral trade framework (WTO) be strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment?

SEA Europe wishes to refer to its detailed position paper and recommendations on the reform of the WTO rules “**Addressing the WTO rulebook gaps: for a global level playing field in the maritime technology industry**”, issued on 18 April 2019 and available [here](#) for ease of reference.

In sum, the open, market orientated WTO rules have been profoundly undermined by state-led economies exploiting WTO openness and have regrettably proved to be ineffective in ensuring normal competitive conditions in world shipbuilding. For several years, shipbuilding and the related maritime equipment supplying industries in certain third countries have benefitted from subsidies and many other government support measures which are not only trade distortive but are also responsible for overcapacity in the global shipbuilding and shipping markets. Unfair trading practices (e.g. injurious pricing of ships) have a long track record while aggressive State-led plans from some third countries are now targeting Europe’s global leadership in high-tech shipbuilding and maritime equipment.

For an internationally active and export-oriented industry like the maritime technology sector, a stable, predictable and trusted framework for rules-based international economic governance is of paramount importance. For SEA Europe, it is therefore vital that the ongoing discussions on the WTO modernization process leads to a trading system that is able to ensure fair trade treatment of our industry on a global scale. To this end, all the “gaps” in the WTO rulebook that affect our sector must be closed. This requires in turn the build-up of a strong leverage from the EU’s side.

From SEA Europe’s perspective the following analysis and sector-specific considerations on the existing WTO disciplines on Subsidies and on Dumping practices are essential:

- **The WTO Agreement on Subsidies and Countervailing Measures (The ASCM)** applies general disciplines to the use of subsidies and regulates actions that countries can take to counter the effects of subsidies where these exist. Regrettably, the ASCM has not been able to tackle or remove trade distortive subsidies introduced in shipbuilding or other market distorting support measures by governments or government related entities. This was *inter alia* demonstrated in the EU complaint against South Korea in WTO concerning unfair trade practices in shipbuilding and the subsequent panel findings in March 2005⁶. The present shipbuilding dispute settlement case initiated by Japan against South Korea does not provide comfort that the ASCM will be applicable⁷.

⁵ 8 See e.g. NDRC et al., 2016 (2016–2020) [Action Plan to Deepen and Accelerate the Transformation and Upgrading of the Shipbuilding Industry]. See also, J. Holslag “The Silk Road Trap – How China’s Trade Ambitions Challenge Europe”, Polity Press, 2019”.

⁶ Korea – measures affecting trade in commercial vessels, complaint by the European Communities, WT/DS2734, panel report of 7 March 2005.

⁷ Korea – measures affecting trade in commercial vessels, complaint by Japan, WT/DS594/1 • G/SCM/D129/1 • G/L/1354

- The ASCM does not provide an ideal framework for the shipbuilding sector *inter alia* because while the general definition of subsidies is quite broad, only subsidies that are contingent on export performance or upon the use of domestic over imported goods are “prohibited”. These provisions, however, are not fit for the shipbuilding industry as they comprise only a fraction of the direct or indirect subsidies that are, in practice, provided by governments to the shipbuilding sector. Typical subsidies in shipbuilding mostly appear as production aid or, nowadays more often, restructuring aid, which are only regarded as “actionable subsidies”. Actionable subsidies can be subject to challenge either through WTO dispute settlement or through countervailing duties, if they cause “adverse” effects to the interests of another WTO Member. However, the specific features of the shipbuilding sector can make it rather difficult to reveal the full magnitude of the adverse effects caused by subsidies on other yards. Hence, proof of such actionable subsidies and the injury they have caused are very difficult to establish.
- Because ships are generally not “imported” in the common customs sense (i.e. no permanent entry into commerce in the affected economy), the application of “border measures”, like countervailing duties (as well as anti-dumping duties), is extremely difficult if not impossible with respect to unfairly subsidized 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 General Agreement on Tariffs and Trade 1994 (‘the 1994 Anti-Dumping Agreement’) annexed to the Agreement establishing the World Trade Organisation***. Vessels are indeed generally put into service upon delivery at the yard, and neither physical delivery, customs clearance nor registration take place in the buyer country.
- Hence, instead of the classic WTO “two-track” approach to disciplining subsidies, i.e. consisting of countervailing duties at the border and dispute settlement, there is currently only one single “track” available, in the form of a dispute settlement case on the basis of “serious prejudice”. However, even if a dispute settlement complaint were to be successful, the ASCM does not provide effective remedies. Usually, the WTO dispute panel will rule that the subsidies in question must be withdrawn but for a shipbuilding case the transactions have been already completed and the ships have 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.
- The existing ASCM subsidy provisions are considered largely ineffective also owing to the **lack of transparency and comprehensive information** on trade-distorting subsidies and state support measures provided by some key shipbuilding countries.
- **Self-declared “developing country” status**, moreover, exempts key shipbuilding nations from existing WTO obligations, enabling them to receive ‘special and differential treatment’ which of course adds to the non-satisfactory situation in terms of ensuring a level-playing field for our industry. A meaningful WTO Reform will be impossible without addressing the problem that no agreed definition exists of what constitutes a developed or developing country at the WTO.
- **Existing WTO Anti-dumping rules do not effectively address distorting pricing practices in shipbuilding inter alia for the reasons explained above**, notably the fact that ships are rarely “imported” in the common customs sense. While the principles and objectives of the WTO Anti-Dumping Agreement would appear crucial to ensure that similar practices do not occur in shipbuilding, there are other sector-specific features which complicate their effective application

to our industry. Ships are rarely produced in series. Generally, they are one-off orders and are constructed to meet specific buyer needs. Furthermore, ships are large capital investments and buyers rarely purchase multiple units. Hence, it is difficult to establish a “like product” and calculate the related “dumping margins”. Finally, the remedy of the WTO anti-dumping rules is to impose antidumping duties on “importing” future products. But for shipbuilding the effective remedy can only be provided to the shipyards itself or to the buyer of the ship. **As a result, there is currently no effective trade defence remedy at all for a recognized unfair trade practice, either in the market of the importing country or in a third country.**

SEA Europe supports the innovative set of technical subsidy disciplines improvements as envisaged under the joint EU-USA-Japan statement from 14 January 2020 on industrial subsidies, including new types of prohibited subsidies, injury presumption related to excess capacity and non-notification sanctioning. Addressing the issue of subsidies is becoming more important not least due to the implications of COVID-19 for state provision of economic support in many countries.

However, it must be borne in mind that even if progress were (theoretically) to be achieved on new anti-subsidy disciplines in the framework of the WTO reform discussions, this will not be sufficient alone to ensure a true level playing field for the maritime technology industry. Indeed, shipbuilding will still suffer from a lack of effectively applicable trade remedies, a problem currently not addressed in the WTO reform discussion, which would ultimately deprive any possible subsidy discipline improvements of any practical effectiveness for our industry.

Besides, a true global level playing field in shipbuilding will necessitate actions against price-undercutting and ships’ pricing offers below costs (besides state interventions), either through sector-specific amendments to the WTO Anti-Dumping Rules or a separate multilateral or as a second best option plurilateral agreement. Regrettably, countries like South Korea have been for long blocking any attempts towards effective international solutions in plurilateral contexts such as the OECD Working Party 6 on Shipbuilding⁸. Given the tremendous global challenges currently faced by our sector and the lack of effective trade remedies available, it is of paramount importance that EU adopts robust measures adapted to the specificities of our sector that can effectively safeguard the European maritime technology industry from foreign trade distortions and at the same time build up negotiating leverage vis-à-vis third countries for an international solution (*see our response to Q12*).

SEA Europe would like, furthermore, to draw attention to the following additional considerations:

- Another challenge the European maritime technology industry is facing relates to the **WTO Technical Barriers to Trade (TBT) Agreement**. The TBT Agreement aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. Already the intention behind the TBT seems not to be respected by certain third countries in their certification and approval procedures of marine equipment, even though they claim that there are legitimate policy objectives justifying their discriminatory certification or approval requirement against foreign equipment suppliers. Even if the TBT Agreement actually encourages member countries to base their measures on international standards such as standards developed in the IMO concerning approval of marine equipment, this encouragement is not respected.
- Frustrated by the current deadlock in the WTO, some countries have already moved towards plurilateral agreements as illustrated by the **Trade in Services Agreement (TISA)**, which

⁸ See more recently, e.g. : <https://lloydslist.maritimeintelligence.informa.com/LL1130402/South-Korea-frustrates-OECDs-efforts-in-new-shipbuilding-competition-regime>

involves 50 countries and covers about 70 per cent of the global trade in services. SEA Europe priority in the TISA negotiations is primarily to ensure **binding market access and national treatment commitments (across all modes of delivery) in ship and repair services, marine engineering, ship design and business consultancy services.**

- The **WTO Plurilateral Agreement on Government Procurement (GPA)**, despite a revision in 2014, remains imperfect. Major EU trading partners are not signatories (e.g. China, Russia, India) and incentives to join are limited as companies from these countries can already do business in Europe. It is a fact that, for instance, foreign shipyards can win public tenders in Europe and even benefit from EU funds (i.e. EU taxpayers' money) while they already receive state aid from their own governments. European companies on the other hand have neither equal access to these third country markets nor the benefit of any local funding. By way of example, in 2019 a Chinese-led consortium, including a wholly owned subsidiary of the country's biggest state-owned shipbuilding conglomerate, was awarded in Europe a public tender contract for *inter alia* a vessel construction project which was co-financed by the EU Connecting Europe Facility with additional financing support from the EIB. Furthermore, members of the GPA have maintained, to different degrees, discriminatory measures against other GPA members through negotiated carve-outs in the market access schedules of commitments (e.g. on shipbuilding). In this context, the Commission shall:
 - Continue to support the accession of third countries to the WTO GPA on a strictly reciprocal basis and with strong enforcement provisions (including at EU level);
 - Intensify work with the GPA parties to eliminate discriminatory measures and achieve the greatest possible extension of its coverage on the basis of mutual reciprocity.
- At the same time, it is crucial for the EU to adopt an (ambitious) 'International Procurement Instrument' (see also our response to Q13). In this regard, SEA Europe calls on EU Member States to pursue and accelerate negotiations on this important proposal to foster reciprocity and provide leverage to push third countries to open their markets.

Finally, SEA Europe regrets the current paralysis of the WTO Appellate Body and supports the contingency appeal arrangements for trade disputes set up by the EU and a selected number of other WTO members. We also support the updated EU enforcement regulation on which political agreement was reached in October this year between the Council and the European Parliament to better protect the EU's trade interest and rights in light of the serious situation for the WTO dispute settlement system. We hope that the appeal function in the WTO can be restored soonest since a well-functioning WTO dispute settlement system applicable to all WTO members will always be the first best solution for the EU to defend its trading rights and act against unfair trade practices injuring European business such as the European maritime technology industry.

Question 4: How can we use our broad network of existing FTAs or new FTAs to improve market access for EU exporters and investors, and promote international regulatory cooperation—particularly in relation to digital and green technologies and standards in order to maximise their potential?

SEA Europe welcomes the Free Trade Agreements ("FTAs") concluded between the EU with approximately 70 third countries or regions. SEA Europe, also, acknowledges that FTAs could be in principle an adequate instrument to improve market access for EU maritime technology companies in foreign countries. However, this could only happen if these FTAs are broad in scope, contain sector-specific provisions and are effectively implemented and monitored afterwards.

In our view, the specific features of the EU shipbuilding and marine components industries are not sufficiently addressed by the existing FTAs. Such agreements as the EU-Korea FTA do not contain a

specific chapter on shipbuilding. The competition chapters in the various FTAs normally include specific provisions on state subsidies. However, these provisions are horizontal, apply to all sectors, and hence do not take into account trades patterns in shipbuilding and are therefore not capable of addressing those types of subsidies prevalent among major Asian shipbuilders. Trade distortive subsidies can therefore not be addressed via the EU FTAs. By way of example, the EU-South Korea FTA has not prevented South Korea from (continuing to) massively subsidising its domestic shipbuilding industry in recent years, with trade-distorting support measures which were not notified, despite the (WTO+) Anti-subsidy and transparency provisions of the agreement and the strong political reactions from the EU in the context of bilateral FTA implementation meetings and other *fora*.

The FTAs also often contain general commitments on technical barriers to trade based on the WTO TBT Agreement, including cooperation on standards and regulatory issues. Such TBT provisions are intended to reduce obstacles to trade between the EU and a particular third country arising out of technical regulations, standards, conformity assessment procedures and similar requirements. However, based on our experience, the FTA TBT provisions cannot be used to address technical barriers related to certification or approval of marine products experienced at third country markets even if the regulatory regime behind the approval of such product originates from the IMO.

Europe's maritime equipment industry invests significantly in the certification and approval of its equipment, systems and technologies by Flag States or so-called classification societies. Typically, one maritime equipment company needs approval from different Flag States or different classification societies before it can bring its product to the market and install it onboard ships even if the approvals are based on statutory requirements from the IMO. One option could be to incorporate a mutual recognition provisions on marine equipment in the FTA-template or alternative negotiate a parallel agreement to the current FTA negotiations⁹.

SEA Europe would furthermore like to see provisions in the FTA paving the way for automatic Flag State approval of all those so-called mutual recognition certificates issued by classification societies based on Article 10 (1) of Regulation 391/2009. Certain Flag States have indicated that they will not accept such certificates as part of their ship registration process or in relation to inspections – a situation that creates uncertainties about the status of these certificates.

In general, SEA Europe supports the expansion of FTAs provided the following **pre-conditions** are met:

- **FTAs must ensure that EU standards on competition and state aid, non-discrimination, health & safety, labour rights, environment protection, are respected by our trade partners.**
- **FTAs should have a stronger dispute settlement mechanism which should enable fast discussions between trading partners, and powerful enforcement mechanisms including prompt remedies and provisions tailored to the specificities of the industrial sectors.**

From SEA Europe perspective, existing as well as new FTA should, at least, cover the following areas:

- Phasing out of industrial tariffs for machinery, equipment and electronics.
- Provisions prioritising trade liberalisation in green or climate friendly maritime products.

⁹ A Mutual recognition agreement on marine equipment between the European Union and the United States entered into force on 1 July 2004. Under the terms of the agreement, certain marine equipment that has been type-approved in the United States may be sold in the EC and vice versa. The products are listed in an annex to Council Decision 2004/425/EC Amended by Decision No 1/2018 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA of 18 February 2019 on the mutual recognition of certificates of conformity for marine equipment amending Annexes I, II and III [2019/996].

- Subsidy and normal value pricing provisions and remedies tailored to the needs and specificities of the maritime technology sector.
- Government procurement provisions that eliminate the possibility of maintaining preferential obligations to select local marine products to the detriment of foreign suppliers.
- Provisions that ensure that standardisation, certification and approval of maritime products by foreign manufacturers do not constitute Technical Barriers to Trade.
- Certification of maritime equipment, according to Art. 10 in Regulation 391/2009 of 23 April 2009 on common rules and standards for ship inspection and survey organisations, should be acknowledged by Europe's trade partners and/or FTAs should contain a provision on mutual recognition of maritime equipment based on the marine equipment directive (2014/90/EU).
- A prohibition of local content requirements in relation to shipbuilding and maritime supplies.
- Provisions on service trade liberalisation in ship repair service, maritime engineering and maritime consulting services and in mode 4 (temporary movement of business personnel).
- Ambitious provisions on the protection of intellectual property rights.

SEA Europe also insists upon the EU to make all these areas subject to a **strict application of the principle of reciprocity**.

As regards existing FTAs, the EU must continually update them to reflect evolution in trade and in the bilateral relationship. Moreover, focusing on the effective enforcement of the EU's broad network of FTAs should continue to be a priority in the context of the Trade Policy Review. The Commission should continue its efforts in this direction, through instruments provided in the FTAs themselves as well as its Market Access Strategy. SEA Europe furthermore highly welcomes the appointment of the new EU Chief Trade Enforcement Officer and looks forward to the rigorous enforcement of competition, market access, social, and procurement clauses in those agreements.

Finally, SEA Europe calls upon the EU to play a key role in the development of international regulations and standards for new and green technologies key for future sustainable competitiveness and growth.

Question 5: With which partners and regions should the EU prioritise its engagement? In particular, how can we strengthen our trade and investment relationships with the neighbouring countries and Africa to our mutual benefit?

With a view to achieving a trade environment based on more predictable and fairer rules for European maritime technology companies, the following interests and priorities should be pursued in the context of the EU's international relations with its trading partners:

- **Relations with the UK:**

The EU and the UK will remain important trading partners. SEA Europe advocates for an ambitious economic and trade agreement that could ensure a level-playing field for the EU maritime technology industry vis-à-vis the UK maritime technology industry and furthermore that the UK shipbuilding and offshore markets remain open for the EU maritime technology companies. More specifically:

- Smooth customs procedures and frictionless trade in goods (e.g. marine equipment and components) between the EU and the UK will be key for the maritime technology industry, which works on a global scale and is regulated primarily by global rules, e.g. from the IMO.
- The EU should be vigilant that no trade distortions arise due to more lax rules e.g. in case the UK would adopt specific rules for state aid to UK shipyards and UK marine equipment industry and/or ease the access to finance for UK shipyards and the equipment manufacturers, and ensure level playing field for EU and UK maritime technology businesses.

- No “Buy British” clauses in future UK procurement rules should be allowed in order to avoid that e.g. vessels for public services may be required in future to be equipped with British manufactured marine equipment and UK maritime technology solutions. Local content rules in relation to shipbuilding, decommissioning activities, plus in offshore Oil & Gas and windfarm installation and maintenance activities should be disallowed.
- In terms of regulatory co-operation, companies need predictability. The option of a Mutual Recognition Agreement (“MRA”) of Marine Equipment, based on the EU-US MRA model, should be explored. However, in order to balance the market access on both negotiating sides it is also recommended that any EU-UK MRA is directly applicable to the so-called Red-Ensign flags, that already enjoy the same rights and obligations under the UK flag.

- **Relations with the USA:**

The US is the EU’s most important strategic ally and trade partner. For this reason, the EU-US relationship should be preserved and further strengthened under the incoming Biden Administration. We hope that the EU as soon as possible next year will team up with the new US Administration in order to inject fresh momentum in the WTO-reform process, including a revision of the ASCM with a view to minimizing trade distortions to the detriment of Europe’s maritime technology industry.

SEA Europe would welcome if the TTIP-negotiations between the EU and the US were resumed in a foreseeable future. In particular, SEA Europe encourages the European Commission to re-open talks in the future with the US government with an aim at relaxing – at least parts of – the US Jones Act, starting from the lifting of the existing restrictions for supplying European manufactured maritime equipment to US Jones Act vessels and for European yards to carry out ship repair and conversion activities on these vessels. Such deletion would enable European maritime technology companies to penetrate the US market and thus to create more turnover and jobs in Europe as well as in the US.

The US Jones Act (The Merchant Marine Act of 1920) indeed prevents European shipyards from entering into the US maritime technology market, on the basis that all commercial vessels operating cabotage transport in the US must be built in the US. This Act applies to cargo and passenger transport as well as to dredging, towage, salvage, and fisheries. Furthermore, the Jones Act also prevents European maritime equipment manufacturers from offering integrated maritime equipment systems more widely in the US, because the use of foreign parts for ship construction is heavily restricted. In contrast to the US, the EU does not exclude any US maritime technology company to do business in Europe.

Moreover, for ship repair and conversion – two important activities for European Ship Maintenance, Repair and Conversion yards – specific rules apply. Firstly, repair or conversion of Jones Act vessels is prohibited outside the USA. Secondly, hull repairs on Jones Act ships or the addition of new superstructures on top of Jones Act vessels carried out outside the US and going beyond a specifically defined threshold, result in a requalification of these vessels from “US-built” into “foreign-built” vessels. As a result, these ships are prevented from trading into US waters any longer. Thirdly, when repair or retrofitting is carried out to US-flagged vessels but outside the US, these ships will be subject to higher costs than pure repair or retrofitting costs. In contrast to commercial/US Jones Act vessels, navy ships belonging to the US ‘sixth fleet’ can be repaired in Spain or Italy.

Finally, all vessels procured by the US Government (e.g. icebreakers, ocean research vessels, marine training vessels, etc.) have to be US-built and are subject to a 60% local content requirement.

Based on the above, SEA Europe firmly believes that opening-up the US market, i.e. by deleting the “US-built requirement” in the Jones Act or by amending the Buy American Act, would create interesting business opportunities for European maritime technology companies.

In the meantime, the EU should seek to broaden the EU-US MRA to simplify conditions for maritime equipment manufacturers wishing to obtain the US Coast Guard (USCG) type approval, ease the administrative burdens and costs in the form of fewer tests and certifications.

- **Relations with China:**

China is not a market economy. It pursues a state led economic policy based on control of many aspects of economic activity through subsidies, state-dominated enterprises, import substitution, technology theft and transfer, export manipulation, the coordination of supposedly independent companies on prices and volumes both in the home market and in export markets.

Starting from 2002 China’s shipbuilding industry has undergone a tremendous growth, especially in terms of output. This growth further intensified after 2006 when Beijing recognized the industry as strategic, creating massive global overcapacities. A study undertaken in 2019 by US researchers estimated the amount of government support to Chinese domestic shipbuilding companies between 2006 and 2013 to stand at approximately \$90 billion¹⁰. Another report, published on 8 July 2020 by the US Centre for Strategic and International Studies, estimates that the combined state support to Chinese firms in the shipping and shipbuilding industry totalled roughly \$132 billion between 2010 and 2018¹¹. As recognised by the Authors of the latter study, owing to data limitations and the opacity of China’s political system, the afore-mentioned estimate is conservative and does not even include direct subsidies to unlisted firms, indirect subsidies, state-backed fundraising, preferential borrowing rates, and other nonmarket advantages from China’s state capitalist system.

In 2015, China issued its “Made in China 2025 Strategy which aims at taking over Europe’s global leadership position in complex shipbuilding and in advanced maritime technologies by 2025 latest and to reduce its dependence on foreign technology imports. In line with this policy framework, the Chinese government has more recently issued a series of plans to support the development of the shipbuilding industry. Moreover, the recent approved draft of the 14th Five Years Plan places science, technology, and innovation before any other sector as well as elevate China technological self-reliance as a priority pillar.

In recent years, China has been successful in winning several European ferry newbuilding orders through aggressive and commercially unrealistically low prices; i.e. prices on average 30% below (Chinese) cost of production, according to our analyses based on conservative estimation parameters.

In parallel to the bosting development of the Chinese fleet (now the third largest merchant fleet in the world) and its shipbuilding capacity, the role of China in ship finance has been increasing. Chinese banks have been gradually replacing Western banks in shipping portfolios since 2008 whilst often imposing very stringent local content requirements (e.g. obliging site of manufacture, use of domestic suppliers or use of home currency). Hence, contrary to European shipyards, Chinese yards have been able – and will remain able – to win various contracts for newbuilt ships and equipment-related projects, based on attractive financing packages offered by state-owned banks or other state-controlled financial institutions. The current lack of global level playing field related to access to (ship)

¹⁰ “*China’s Industrial Policy: an Empirical Evaluation*”, Panle Jia Barwick, Myrto Kalouptsidi, Nahim Bin Zahur; NBER Working Paper No. 26075 Issued in July 2019,

¹¹ “*Hidden Harbors*” by Jude Blanchette, Jonathan E. Hillman, Maesea McCalpin and Mingda Qiu, CSIS-briefs, July 2020.

finance is expected to intensify even further in the coming years, e.g. with the rise of new forms of finance, including Chinese leasing, as well as favourable international export credits granted outside the framework of the existing OECD discipline.

China is an important market for some European yards and an even more important market for European maritime manufacturers which have either invested in production facilities in China (creating local jobs but without often being treated as “local companies”), opened subsidiaries, branches or local offices in China or established joint ventures. Yet, despite shipbuilding having been removed from the “Foreign Investment Negative List”, European maritime technology companies experience other (often hidden) barriers *inter alia* due to the proliferation of discriminatory subsidies, tax benefits and preferential treatment extended to local state-owned enterprises (SOEs)¹². In the area of intellectual property (IP) protection and enforcement, IP rights of several SEA Europe member companies have been in the past violated by Chinese companies.

As a consequence, Europe’s maritime technology companies are suffering from unfair price competition and other consequences of massive domestic subsidies that have been worsening global shipbuilding market imbalances as well as from market access asymmetries and other obstacles.

SEA Europe urges the EU to continue to become more assertive vis-à-vis China and do “whatever it takes” to address the root causes of the distortions. Besides, SEA Europe calls upon the Commission to insist countries such as China (and South Korea) provide full transparency on their state support measures to local shipyards so as to scrutinise the full impact of these measures and to assess any possible violations of applicable trade law obligations, in which case the European Commission should act. In parallel, the EU must enhance its own “in-house” monitoring and economic intelligence capabilities to better detect, jointly with the maritime technology industry, the most hidden and non-transparent cases of trade distorting behaviours from third country shipbuilding nations.

- **Relations with South Korea:**

For years South Korean shipyards have been able to benefit from state-linked finance enabling them to build vessels at low prices and to compete for business, despite a lack of newbuilding demands or an over-capacity on the global market. Being one of the world’s largest shipbuilding economies, the massive state support measures provided by the South Korean Government create distortion of competition and further aggravate the overcapacity problem in the global shipbuilding and shipping market, to the detriment of the European maritime technology industry.

Besides, European maritime equipment manufacturers have been facing discriminatory trade barriers in accessing the local market due to onerous or unjustified requirements enforced by the South Korean Authorities. By way of example, as reported in the 2019 EU Trade Barriers & Investment Report¹³, since early 2019 EU suppliers of ballast water management systems (BWMS) have encountered a new barrier due to lack of recognition of tests performed outside Korea as part of the Type Approval process for installation of such systems on Korean flagged vessels.

The EU – both the European Commission and Member States – should continue to be vigilant for unfair competitive distortions and press very hard – in all relevant fora – for fair competition and for a proper

¹² See e.g. examples reported in *European Chamber of Commerce in China – Shipbuilding Working Group Position Paper 2020-21*

https://www.europeanchamber.com.cn/en/publications-archive/830/Shipbuilding_Working_Group_Position_Paper_2020_2021

¹³ Report from the Commission to the European Parliament and the Council on “Trade and Investment Barriers” (1 January- 31 December 2019)

enforcement of these principles, e.g. through strict enforcement of obligations flowing from existing bilateral Agreements (e.g. in the EU/South Korea FTA) and by, in parallel, seeking to strengthening the relevant provisions in the context of future revision and amendments to the existing FTA.

- **Relations with Japan**

Japan is an important trade partner and key shipbuilding nation that shares similar values and views as the EU on fair competition. The EU-Japan bilateral trade agreement is an expression of this. In the absence of international solutions, it is key for the EU to also explore coordinated actions against unfair competition with Japan and other like-minded countries in a true “coalition of the willing” spirit in order to send a strong signal to the global shipbuilding community.

One area, though, where there is significant room for improvement in our bilateral trade relationship with Japan relates to the access of European marine equipment suppliers to the Japanese shipbuilding market which *de facto* remains very closed, despite the EU-Japan trade agreement. The possibility of negotiating a shipbuilding sector-specific provision should be considered in the context of future treaty amendments.

Question 6: How can trade policy support the European renewed industrial policy?

In March 2020, the European Commission presented a new strategy¹⁴ to help drive Europe’s competitiveness and its strategic autonomy at a time of moving geopolitical plates and increasing global competition. This strategy recognises the key role of maritime technology as a core driver for the twin green and digital transitions. SEA Europe welcomed this initiative and has called upon the European Commission to have an open dialogue with our sector so as to ensure the adoption of adequate sector-specific actions that can maximise the promising potential of the maritime technology industry for Europe.

In this context, the “external” dimension of the industrial policy is key to ensure the competitiveness of our industry in terms of having the appropriate instruments available to tackle the adverse consequences from the long-lasting aggressive and unfair competitive distortions resulting from Asian State-led policies and practices. Trade policy has, thus, a fundamental role to play to safeguard the EU maritime technology industrial base and manufacturing capabilities in Europe.

The intertwining of trade and industrial policies is furthermore embodied by the recent European Commission’s White Paper on foreign subsidies. SEA Europe has welcomed the White Paper as a step in the right direction and called upon the EU to translate its promising proposals and ambitions into concrete and effective measures that help establishing the necessary level playing field for the shipbuilding and maritime equipment industry in Europe (see our response to Q12).

Question 7: What more can be done to help SMEs benefit from the opportunities of international trade and investment? Where do they have specific needs or particular challenges that could be addressed by trade and investment policy measures and support?

The EU’s maritime technology industrial base is made up of large enterprises with internal integrated value chains and local establishments all over the world as well as thousands of dynamic and innovative SMEs. Access to global markets is vital source of growth for maritime technology SMEs.

¹⁴ EU’s new Industrial Strategy was adopted on 10 March 2020 (COM(2020) 102 final).

Due to lack of resources, SMEs have generally more difficulties however, in taking advantage of trade benefits in concluded trade agreements, such as benefits from tariff elimination, as well as in challenging third country trade barriers or defending themselves against unfair trade practices.

Growth of SMEs within the maritime technology industry depends on an ambitious EU trade agenda being implemented with strong focus on their needs. SEA Europe welcomes initiatives aimed at providing support on how to export to extra-EU countries, including the recent “**Access2Market tool**” which we hope will not only make information more accessible, but also easier to understand.

In addition, we encourage the EU to sign **Mutual Recognition Agreements** with third countries to help maritime technology companies, especially SMEs, overcome obstacles to trade, particularly related to certification procedures required by many EU trading partners.

Support measures against late payments from creditors and the facilitation of supply chain financing tools would also ease the financial pressure for the many SMEs that are part of shipbuilding ecosystem. Finally increasing financial measures for exporters (e.g. Long-term Credits and inclusion of Tax Benefits in DTI Double Taxation Treaties) will be beneficial for SME maritime technology companies.

Question 8: How can trade policy facilitate the transition to a greener, fairer and more responsible economy at home and abroad? How can trade policy further promote the UN Sustainable Development Goals (SDGs)? How should implementation and enforcement support these objectives?

The EU should use all of its tools (multilateral, bilateral or unilateral) to foster a sustainable approach to trade and investment and to contribute to development.

European maritime technology companies are at the forefront in developing environmental and climate friendly technologies that enable the global shipping industry to become greener. **However, overcapacity and low prices in the world shipbuilding and shipping markets significantly impact the industry capability to push for faster technology development and implementation** by making the capital that is needed to invest in clean and safe technology scarce.

Indeed, as a result of overcapacity, shipowners, including European shipowners are confronted with reduced freight rates, whilst facing severe political pressure to upgrade their fleets with environmental-friendly ships. This upgrade requires significant investments in innovative, clean and safe technologies. However, in the current circumstances, shipowners – including European shipowners – refrain from making such investments or are simply no longer in a position to do so. **Effective trade rules aimed at removing the root causes of the shipbuilding market distortions and imbalances are therefore essential to ultimately strengthen a faster decarbonisation of shipping.**

Moreover, EU trade policy could facilitate a green and more climate friendly economy within the EU and abroad by giving priority **to trade liberalization in environmental goods and services**. SEA Europe supported the so-called **Environmental Goods Agreement (EGA) negotiations** to remove barriers to trade in environmental and green goods. SEA Europe’s priorities are to achieve duty free access for marine products such as scrubbers and ballast water management treatments systems or more generally marine products that supported the IMO agenda in making shipping greener. SEA Europe would like to see the EGA negotiations resumed preferably within the WTO or alternatively at a plurilateral basis. Services trade should be included in such negotiations and hopefully liberalization of ship design and marine engineering services which contributes to green shipping and shipbuilding in accordance with IMO regulations would fall under the scope of these negotiations.

Furthermore, **legally binding commitments to ratify and effectively implement international environmental conventions** should be part of future FTA negotiations with third countries.

The 17 Sustainable Development Goals establish a set of highly ambitious goals and targets touching upon a broad range of issues relevant for the maritime technology industry and policies that affect trade flows. Our work's prime focus has been on sustainable energy (Goals 7 and 12), and oceans (Goal 14). We believe that that trade can contribute to growth and sustainable development in order to achieve 2030 Agenda. Trade is an important feature of the market for sustainable shipbuilding and shipping. Both trade and investment have played important roles in the growth of in particular our marine equipment sector. Measuring trade in sustainable shipbuilding and marine equipment goods is not straightforward, particularly because materials, equipment and components which are used to construct a ship consist of many tariff codes, and many are also dual-use.

Question 9: How can trade policy help to foster more responsible business conduct? What role should trade policy play in promoting transparent, responsible and sustainable supply chains?

Responsible business conduct is a core element of the values, strategy and international operations of SEA Europe member companies. European maritime technology companies are leaders in the field of responsible business conduct, committed to promoting sustainable and responsible supply chains.

SEA Europe agrees that responsible sourcing and production as well as due diligence should be an essential part of reinforced EU Trade policy. From our perspective, for instance, ships operating in European waters must be built and operated according to highest environmental protection and social standards and foreign producers active on the European market must abide by the same rules. Absence of similar levels of regulatory requirements and standards in third countries, such as environmental and social obligations lower than those in effect in the EU, can indeed have a similar distortive effect of a subsidy, and thus need to be addressed in order to ensure a true level playing field for our industry.

Several international guidelines exist for responsible business conduct, including those developed by the OECD. It is important that the shipbuilding and marine supplier industries all over the world adhere to these guidelines to ensure sustainable business conduct and due diligence. Poor working conditions, non-sustainable shipbuilding and ship recycling activities are prevalent in certain countries and we are concerned that this situation will deteriorate due to the COVID-19 crisis. The EU should be in the forefront in fighting for the improvement of poor conditions at third country shipyard, ship scrapping and marine manufacturing facilities. Irresponsible business conduct by third country maritime industries does not only undermine the competitiveness of the European maritime technology sector. It also makes the global shipbuilding supply chains less resilient and more vulnerable.

EU trade deals and their Sustainable Development chapters support workers' rights, environmental protection since they promote the implementation of existing international guidelines on responsible business practices. However, we need to make sure that the obligations can be enforced effectively which is also important if we wish to make sure that the EU's ambitious climate agenda as outlined in the European Green Deal are not undermined by third country trade partners. Focus should not least be on how to enforce a "zero-tolerance on child labour" commitment which is obviously a commitment well beyond trade. SEA Europe welcome the initiative as part the first year of the implementation of the EU-Japan agreement in joining forces with Japan to promote the uptake of Corporate Social Responsibility practices in Asia. SEA Europe hopes that such efforts could have an impact in improving the working conditions and poor environmental activities conducted at certain shipyards and in certain scrapping facilities in Asia.

Question 10: How can digital trade rules benefit EU businesses, including SMEs? How could the digital transition, within the EU but also in developing country trade partners, be supported by trade policy, in particular when it comes to key digital technologies and major developments (e.g. block chain, artificial intelligence, big data flows)?

Digitization has become an aspect for the maritime industries. Alongside the rise of the industrial internet, many aspects of shipbuilding, including retrofits and shipping activities draw already on the integration of automation solutions, big data, maritime block chain technologies, cloud computing and artificial intelligence.

European maritime companies see new business opportunities in digitization. The industry can develop and offer new models for smart manufacturing and ship digital development. Products, services and technology solutions will thus streamline shipping, reduce costs and furthermore extract additional benefits in terms of a stronger maritime safety regime and furthermore lower the environmental and climate impact. Tasks and services that were previously complicated can be automated, and much more extensive computing power can analyse behaviour, patterns, spot deviations etc. Special attention should be paid in this regard to ensuring adequate cyber-security protection in the context of international data transfers.

However, the core of maritime industrial business and trade activity will still be physical in that sense that marine products need to be exported to shipyards, ship repair and maintenance activities need to be carried out by maritime technicians and repair workers on board the ship and most marine engineering consultancy services also require proximity to the ship, the production facility or the customer.

Question 11: What are the biggest barriers and opportunities for European businesses engaging in digital trade in third countries or for consumers when engaging in e-commerce? How important are the international transfers of data for EU business activity?

See response to Q10. In addition, it should be noted that some non-EU nations require a mandatory storage of their data in clouds located inside their respective borders with evident dangers for the security and safety of industrial secrets and information. This represents a huge deterrent for marketing, sales and investments in those nations.

Question 12: In addition to existing instruments, such as trade defence, how should the EU address coercive, distortive and unfair trading practices by third countries? Should existing instruments be further improved or additional instruments be considered?

As highlighted in the response to Q1 and Q3, our industries have for several years faced significant trade distortive behaviour from unfairly subsidized and undercutting activities in third countries. As argued for in the response to previous questions, these distortions have not been addressed by existing trade instruments neither in the WTO nor by EU trade defence provisions.

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 this regard, it should be noted that the last "exploratory" attempt at OECD level was halted in December 2019 after several years of unfruitful talks, while the lack of effective remedies in shipbuilding is not even addressed in the WTO reform discussions.

In SEA Europe's views, a level playing field for the maritime technology sector 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 leverage.

In its written response to the European Commission's consultation on the White Paper on foreign subsidies (hereafter the "White Paper"), Sea Europe has called for a prompt adoption of a sector specific solution to fill such a long-standing trade defence "gap". Indeed, while the White Paper provides an initial good basis, a tailored and effective sector-specific approach is urgently needed to address most of the competitive distortions from foreign subsidies faced by the European maritime technology sector.

In his written answer to the European Parliament INTA Committee, EVP and Trade Commissioner Dombrovskis announced that he aims at establishing a level-playing field for all European business by strengthening the trade toolbox including by amending the EU trade defense instruments if necessary.

We would therefore encourage DG TRADE to consider carefully, as a possible legislative avenue, the possibility to "activate" a thoroughly updated version of Reg. 2016/1035 to address foreign subsidies to operators in the maritime technology sector, making use of the elements of the White Paper's "Module I" but adapted to make them fit and effective for the maritime technology sector (*see the accompanying SEA Europe submission*). As recognised in the White Paper, this sectoral Regulation was adopted to safeguard fair competition in shipbuilding but – despite being legally in force – was never applied since its applicability had been made conditional upon the entry into force of an OECD Shipbuilding Agreement after ratification by all its Parties. As stated in the White Paper, this Agreement has not been ratified by all Parties and consequently has not entered into force. However, the White Paper regretfully neglects to mention that this OECD agreement, signed in 1994 and "scheduled to enter into force on 15 July 1996", has no chance of ever being ratified by all Parties and consequently will never enter into force. Just as important, it is nowadays also completely outdated and inadequate to solve present challenges (e.g. China was never a Party to the 1994 OECD Agreement and therefore this agreement would not in any event be able to tackle trade distortions resulting from Chinese subsidies). Besides the fact it has never been applied, the Regulation, as currently designed and worded, is entirely inadequate to address the impact of foreign subsidies on the sector.

To be effective, any alternative solution that may be considered by the Commission to fill this gap (i.e. through a dedicated discipline within the new horizontal tool on foreign subsidy) needs to be adapted to fit with the specificities of shipbuilding. In particular, it must cover foreign subsidies benefiting any operator (wherever established) in relation to the production, sale and/or operation of ships or maritime equipment used in EU waters. Without this breadth of scope, any new tool would be largely ineffective for our sector. Besides filling a major regulatory gap, such a tool would also contribute, thus; to providing the EU with stronger (negotiating) leverage vis-à-vis foreign shipbuilding nations.

Taking into account the importance of the European maritime technology industry and its leading role in complex shipbuilding and marine manufacturing activities, our sector should be considered as a key industry, among others, in Europe's economic recovery after the COVID-19 pandemic as well as achieving the EU's Green Deal and digital ambitions.

We hope that the European Commission will come forward with proposals for sector-specific instruments that can effectively counterbalance the existing unfair global trade regime for the European maritime technology industry.

Question 13: What other important topics not covered by the questions above should the Trade Policy Review address?

SEA Europe calls for greater coordination within the Commission on Trade Policy and greater consultation on policy issues which have a trade dimension. SEA Europe suggests the following topics not covered by the questions to be addressed by the Trade Policy review:

- **Adoption of a new instrument on reciprocity regarding access to EU funds.** Examples of EU funds benefiting non-European companies on the single market (and elsewhere) abound. Companies from certain countries can benefit from EU funds (i.e. EU taxpayers' money) at the expense of the European suppliers when foreign subsidies come into play; on top of that, European suppliers cannot equally access these third countries' markets, let alone benefit from domestic funding. This situation cannot be accepted any longer by the European Union and its Member States, as it is a blatant lack of reciprocity and puts European companies at a disadvantage. It is of utmost importance to stop setting the example for countries that do not follow the EU's lead and benefit from our openness without returning it. SEA Europe calls for the adoption of a new instrument on reciprocity regarding access to EU funds, which should be understood in two ways: a) reciprocity in terms of access to respective markets; b) reciprocity in terms of access to funding (e.g. research funds in the third country). In other words, access to EU funding by non-EU companies should be made conditional to EU companies' access to the market and public funding of the third country. Furthermore, EU-supported International Financial Institutions (IFIs) should not be allowed to finance foreign companies from countries that do not grant reciprocal market access to EU companies, and should play a greater role in supporting EU companies who want to do business in the EU or abroad. More generally on EU funds, European taxpayer's money should focus on projects of real European added value, especially in terms of EU employment and investments, ultimately favouring EU-grown technology development (rather than oversea competitors); these efforts will contribute to boost EU's competitiveness and long-term growth. With regard to the use of (foreign) subsidies in the context of EU public procurement procedures and EU funding, SEA Europe refers to the comments submitted in its response to the White Paper on Foreign Subsidies.
- **The adoption of the International Procurement Instrument (IPI) in order to guarantee a level-playing field with respect to international procurement.** Due to public procurement barriers (domestic content, discrimination in procurement procedures...) European maritime technology companies cannot always get equal access to procurement markets outside the EU, or, if access is granted, it comes with burdensome and de facto discriminatory conditions. This situation is all the more worrying as companies based in third countries that are partially or fully closed are bidding in the EU and the rest of world, winning significant contracts, often with the help of massive subsidies granted by their respective governments. SEA Europe calls EU institutions, and in particular the Council, to intensify discussions and reach agreement on this much-needed instrument to guarantee a level-playing field on international procurement markets.

On both issues, SEA Europe refers also to the more detailed submission from AEGIS Europe, the umbrella coalition for EU manufacturing industries of which SEA Europe is member.