SEA EUROPE POSITION PAPER ON THE REFORM OF THE WTO RULES

*Addressing the WTO rulebook gaps: for a global level playing field in the maritime technology industry**

18 April 2019

TABLE OF CONTENTS

<u>About SEA Europe:</u>

SEA Europe, the European Shipyards and Maritime Equipment Association, is the voice of the European "maritime technology industry". SEA Europe promotes and supports European business enterprises which are involved in the building, construction, maintenance and repair of all types of ships and other relevant maritime structures, including the complete supply chain of systems, equipment and services. The European maritime technology industry is currently the leading global region in terms of aggregated production value of shipbuilding and ship systems production (EUR 112.5 Billion) and an important generator of employment (900.000 direct and indirect jobs).

** The term "maritime technology industry" encompasses both the shipbuilding and the maritime equipment manufacturing sector.*

<u>**EXECUTIVE SUMMARY**</u>

- **SEA Europe urges the European Union to act in all possible ways to address all the severe deficiencies of the current WTO rulebook for shipbuilding and to urgently establish a much-needed global level playing field for the European maritime technology industry.**

- **The multilateral system of trade rules as governed by the WTO has, regretfully, 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 industrial plans from some third countries are now explicitly targeting Europe's global leadership in high-tech shipbuilding and maritime equipment.**

- **The current WTO trade rules and remedies are regretfully inadequate for shipbuilding due to the specificities of the "ship" product and its purchase transaction (ships are not "imported" in the common customs sense known for other products, i.e. no permanent entry into commerce in the affected economy). These and other characteristics of the sector render the application of traditional "border measures", like countervailing or antidumping duties, extremely difficult in the case of unfairly traded ships. Hence, while all manufacturing industries are covered by existing trade defense instruments, shipbuilding is *de facto* the only industry exposed to global, fierce competition without this type of effective protection against unfair trading practices.**

- **Largely as a result of this situation, European shipbuilding companies have seen a dramatic change of their business over the last decades with almost all orders for cargo ships (tankers, container-ships or bulkers) going to East Asia. The lack of effective safeguards for a level playing field for the European industry against the rise of trade distortions and the emergence of aggressive State-led plans from certain third countries puts Europe's current global leadership for complex high-tech shipbuilding and advanced maritime equipment at risk.**

- **If nothing is done, the European maritime technology sector runs a serious risk of losing the remaining ship types currently built in Europe to East Asia and its world leadership position also in the high-tech marine equipment manufacturing. This would create not only adverse knock-on consequences on employment and wealth creation In Europe. It would create irreparable damages due to the loss of capabilities, technology and infrastructure critical for Europe which, once disappeared, will be very hard to recreate.**

- **SEA Europe's priority and recommendations in the area of WTO reform are as follows:**

  - ✓ **Anti-subsidy rules need to be stricter but sufficiently flexible to address the extremely diverse forms of government support from third countries having a harmful effect on shipbuilding and maritime equipment and the lack of transparency in implementation.**

  - ✓ **New rules are needed to address State-led plans that promote an array of domestic industries, or even single sectors, as well as to tackle unfair practices from State-**

directed companies and entities. Effective sanctions for failure to respect notification and transparency obligations are needed.

- ✓ **To ensure a global level playing field in shipbuilding, measures on state intervention alone are not enough. Effective means to avoid price-undercutting and trade defense safeguards against ship offer prices below costs are key. As the current WTO and EU rules do not effectively capture unfair pricing practices in shipbuilding, the adoption of a sector-specific instrument is strongly needed in order to facilitate the application of a core pillar of the WTO system (antidumping and normal value pricing) to this sector.**

SEA Europe strongly urges the EU to take leadership in addressing all the afore-mentioned problems and ensuring that the WTO modernization process can lead to a trading system that is able to ensure fair trade treatment of our industry on a global scale.

However, In the meantime, given the tremendous global challenges currently faced by the sector and the lack of effective trade remedies available, SEA Europe calls for sector-specific measures to be developed at EU level that can urgently and effectively safeguard the European maritime technology industry against unfair pricing behaviors and trade distortions from third countries.

1. *Introduction*

SEA Europe, representing both the European shipbuilding and maritime equipment manufacturing (referred to as "European maritime technology industry"), wishes to provide a concrete contribution to the ongoing discussions regarding the reform of the World Trade Organization (WTO).

The present document outlines first the **industry's vision concerning the multilateral trading system, the gaps in the current WTO rulebook and the reforms that are needed to address them** and to establish the much-needed global level playing field for the maritime technology industry.

SEA Europe welcomes the **EU concept paper on the WTO modernization** as published on 18 September 2018 (hereinafter "the Concept paper") and has taken the latter into consideration in the analysis and proposals contained in the present document.

2. *General comments: new solutions needed to ensure global level playing field*

Today the maritime technology industry in Europe consists **of more than 22,000 companies**. Together they **employ more than 900,000 skilled people** and generate an annual **production value of € 112.5 billion**. European shipyards, maritime equipment manufacturers and maritime service suppliers are today global leaders in the production and development of complex high-tech ship types, advanced and technology intensive maritime equipment, and sophisticated marine engineering solutions.

This leadership position is a direct result of the sector's continuous investments in research and innovation as well as in a very highly skilled workforce. **However, the sector's global leadership is at stake since third countries are clearly targeting the European success markets through aggressive State-led industrial policies and strategies as well as unfair (trade) practices**.

It must be borne in mind that commercial shipbuilding and the maritime equipment industry operate in a **truly global market** which makes international trade rules vitally important for ensuring a level playing field worldwide. Vessels can be sourced from anywhere in the world without significant technical, commercial or legal restrictions. And shipowners can reflag their vessels and effectively choose the country's laws to which they will be subject.

While the European maritime technology industry is a strong supporter of the multilateral system of trade rules as governed by the WTO, the latter has regretfully proved to be largely ineffective in ensuring normal competitive conditions in world shipbuilding and ensuring that unfair trade practices in third countries can be addressed based on the global trade rules.

In this respect, SEA Europe shares the European Commission's assessment in the concept paper concerning the WTO rulemaking process and the meagre results achieved throughout the years in creating rules that can ensure a genuine market-based trading system and a level playing field globally.

The limitations of the current system are particularly acute in the shipbuilding sector. The specific nature of the "ship" product and its market as well as the ship-purchase transactions render the application of the **current WTO rules and its trade remedies largely ineffective in shipbuilding.**

Moreover, the present "WTO-minus situation" for shipbuilding on a global level is tremendously at odds with the "WTO-plus approach", based on a strict state aid control discipline and enforcement mechanisms, to which the European maritime technology is subject in the EU.

Throughout the years, the European maritime technology industry has raised concerns about the lack of effective trade policy instruments and safeguards against unfair competition and trade practices from third countries. A number of approaches have been pursued over the past decades (for instance in the context of OECD-sponsored international negotiations[1]) but none have been able to generate significant progress in resolving the problems.

SEA Europe urges the European Union to act in all possible ways to address the industry's concerns with regard to the severe deficiencies in the current WTO rulebook and develop tools and solutions able to effectively tackle unfair competition and trade practices in the global shipbuilding market.

3. The problem of government interventions and unfair trade practices in world shipbuilding:

The world shipbuilding industry has always been characterized by **cyclicality, strong government intervention (particularly in Asia) and overcapacity**.

Shipbuilding is of **strategic** importance in many respects. It develops advanced technologies that offer considerable spin-offs to other sectors; it provides essential means of transport for international trade; and it supplies modern navies with advanced vessels, a key element for effective military operations. That is why countries around the globe regard shipbuilding as a particularly sensitive industry sector, which underpins their export-led strategies and continues to receive political support.

Large volumes and various forms of state support, government interventions and unfair practices (e.g. injurious pricing in the form of dumping) from third countries have therefore a long track record, causing distortions to normal market functions.

Due to the specific nature of shipbuilding, notably a global and cyclical industry with long production cycles and capital-intensive investments, the negative effects of certain market distortions can be and have been long lasting as well as damaging for the whole international shipbuilding community.

Considering the strategic role of this industry, **the creation of new or additional shipbuilding capacity** in third countries is often supported by political decision makers as it symbolizes economic development, future prosperity and – in some cases – geo-political power. Removal or deletion of shipbuilding capacity on the other hand is painful for the company as well as its consistency.

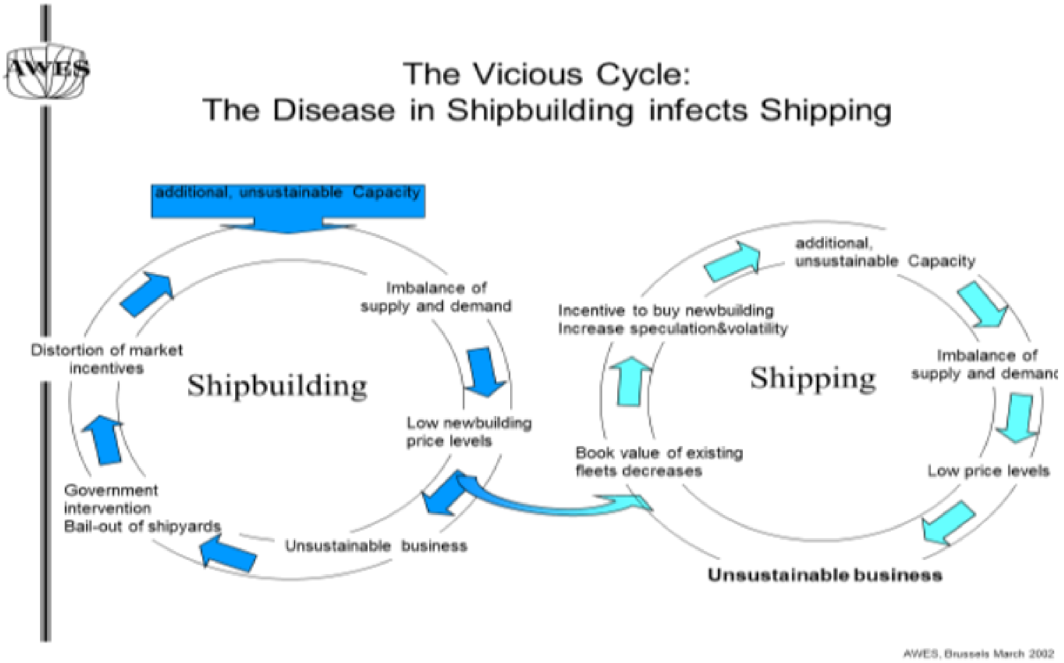
Over the last decades, massive state aid in South Korea and China to expand shipbuilding activities and/or to prevent ailing shipyards to exit the market have contributed to global overcapacity. This in turn induced shipbuilding companies to engage in **injurious pricing practices which resulted in tremendous distortions of competition, with European companies being the main victims**.

Indeed, when unsustainable capacity is kept in existence, shipyards accept loss-making orders to fill production facilities. The resulting losses lead to **new government interventions to save shipyards from bankruptcy.** This has been the prevalent situation among Asian shipbuilders for many years and the present efforts in South Korea to save their shipbuilding industry is "pouring gasoline on the fire".

This in turn creates a continuous **"vicious circle"** with dramatic consequences not only to the detriment of the shipbuilding industry itself but also to the detriment of the **shipping industry's**

[1] In the framework of the OECD Council Working Party on Shipbuilding (WP6), an International Shipbuilding Agreement was concluded in December 1994 by the EC, Finland, Japan, South Korea, Norway, Sweden and the US. Government support and private dumping practice (later called "injurious pricing") were the two targets of the Agreement. However, the US was unable to ratify the Agreement, hence it did not enter into force. In 2002 most of the signatories to the 1994 Shipbuilding Agreement called on the OECD to re-launch a new round of negotiations and sought for broad consensus among the majority of economies including non-OECD countries with significant shipbuilding activities. Due to the deadlock on several key issues in particular with regard to the issue of pricing, the negotiations were suspended in 2005. In April 2010 the OECD re-launched for the second time the negotiation process for an international shipbuilding agreement. However, due to significant differences, mainly between Europe and the rest of the major shipbuilding countries, on the pricing issue, the negotiations were soon terminated in December 2010.

profitability, consequently making the capital that is needed to invest in clean and safe technology scarce, as illustrated in the picture below.



Largely as a result of unfair competition**, European companies in the shipbuilding industry have seen a dramatic change of their business over the last decades** with almost all orders for cargo ships (tankers, containers or bulkers) going to East Asia.

Today, due to the current collapse of most market segments in standard ship types, shipbuilding nations, particularly in Asia, continue their policies of state support measures, through a wide range of tools to support their local shipyards and/or their local maritime equipment manufacturers.

Furthermore, some third countries are seeking **to target the European success markets** of advanced and complex high-tech ship types, including cruise ships, as well as the European markets for sophisticated maritime technologies, systems and technologies through dedicated **State-led plans**.

Finally, the structure of the global shipbuilding industry has changed over the last decades, primarily due to the significant increase in shipbuilding activities in Asia with a much stronger focus on global value chains within shipbuilding and increased trades in marine equipment. **Discretionary Government measures, such as local content requirements or other measures favoring local shipyards and marine equipment producers, investment caps, joint venture requirements and forced technology transfers** have an increasingly significant impact on the interests of the European companies operating in third markets.

*A non-exhaustive list of concrete cases/examples of government support measures and unfair practices in third countries is enclosed in the **Annex**.*

4. *Why a global level playing field is urgently needed: what is a stake for Europe.*

European shipyards, maritime equipment manufacturers and maritime service suppliers are **today global leaders** in the production and development of complex high-tech ship types, advanced and technology intensive maritime equipment, and sophisticated marine engineering solutions.

Besides the economic importance of the industry in terms of employment, growth and wealth, the sector is also a **strategic driver** for a future competitive and sustainable sea-borne transport as well as for the wide range of business activities linked to the exploration and exploitation of the oceans, seas and inland waterways (e.g. offshore wind and marine renewable energies, fishing, aquaculture, deep-sea mining, oceanographic research and other “Blue Growth” activities).

The **advanced and innovative technological capabilities** of European producers help in satisfying the increasing regulatory and societal demands for cleaner, safer, and more secure ships which in turn contribute to the waterborne transport’s environmental sustainability, climate protection and higher (energy) efficiency, in line with EU policy goals. The ship types and equipment made in Europe are also key for Europe’s energy and food supply needs as well as for the security and defense interests (i.e. Navy and coastguards) and thus for the strategic autonomy of Europe.

However, in the current context of lack of global level playing field, growing protectionism and aggressive State-led industrial policy strategies pursued by some third countries, **the European industry’s global leadership position is under serious threat. And with that, also the core capabilities on which Europe’s competitive position is based upon risk being lost triggering irreparable damages.**

Regrettably, in the past decades, Europe has not been vigilant enough and has therefore already lost almost its entire market for the building of tankers, bulkers and containerships. A loss not caused by industry or business transformation under normal market conditions but by strategic industry policies and government intervention introduced first in Japan, subsequently in Korea and now in China.

What happened in the past with traditional merchant ship building can easily happen again with the sophisticated and high added value niche shipbuilding segments in which European shipbuilders are world market leaders today**.** Equally, another lack of vigilance from Europe can also adversely impact the position of the European maritime equipment industry which today is world leader in supplying safe, environmental and climate friendly marine products and maritime technology solutions.

5. *Why the current WTO rules are inadequate for shipbuilding: the main gaps in the rulebook*

- **Subsidies rules**

The **WTO Agreement on Subsidies and Countervailing Measures (The ASCM)** applies general disciplines to the use of subsidies and regulates the actions that countries can take to counter the effects of subsidies where these exist.

Regretfully, 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 from March 2005.

The ASCM does not provide an ideal framework for the shipbuilding sector 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 tailor made to 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”. These can be subject to challenge, either through multilateral dispute settlement or through countervailing action, 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.**

Moreover, because ships are not imported in the common customs sense (no permanent into commerce into the affected economy) the application of “border measures”, like customs duties, is extremely difficult if not impossible with respect to unfairly subsidized ships.

Hence, **instead of the classic "two-track" approach to disciplining subsidies i.e. countervailing duties (CVD) at the border and dispute settlement in the WTO, there is currently only a single "track" available,** in the form of a dispute settlement case on the basis of "serious prejudice". The latter is a potentially effective weapon for remedying injurious subsidies, but the lack of a CVD option reduces the remedies available.

Moreover, even if a complaint should be successful, the ASCM does not provide effective remedies. Usually, the WTO dispute panel will rule that the subsidies in question must be withdrawn. However, for a shipbuilding case, the transactions have been already completed, and the ships have been delivered. Theoretically the dispute panel could also rule that illegal subsides have to be refunded. But so far, the Panel has rarely used this option.

Finally, the existing subsidy provisions in the WTO ASCM are considered largely ineffective owing to the **lack of transparency and comprehensive information** on trade-distorting subsidies and state support measures provided by some shipbuilding countries.

- **Anti-Dumping rules**

The **WTO Anti-dumping agreement (ADA)** is intended to provide a mechanism for governments to defend domestic industries from goods that are exported at prices below their normal value. Such actions can serve as effective weapons to address market distortions.

Regretfully, existing WTO ADA rules do not effectively address distorting pricing practices in shipbuilding for the reasons explained above, notably the fact that ships are rarely “imported” in the common customs sense, i.e. no permanent entry into commerce into the affected economy. Commercial vessels are generally put into service upon delivery at the yard, and neither physical delivery, customs clearance nor registration take place in the buyer country.

While the principles and objectives of the WTO ADA 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.

6. ***What European maritime technology industry needs: SEA Europe Policy Recommendations***

Taking into account the afore-mentioned problems, SEA Europe would like to recommend and support the following changes to the WTO rules and solutions:

a) Strengthening the anti-subsidy rules and better capturing SOEs market distorting behaviors

- ***The definition of "Prohibited subsidies"***

SEA Europe fully supports the suggestion in the Concept paper that the SCM Agreement should be able to **more effectively capture the most trade distortive types of subsidie**s.

In the case of shipbuilding and maritime equipment it has often been difficult to classify subsidies as either "prohibited" or "actionable" with trade distortive effects since such subsidies most often are granted irrespective of either export performance or import substitution. And, as mentioned above, it is furthermore often difficult to demonstrate any "adverse trade effect".

Anti-subsidy rules need to be stricter but sufficiently flexible to address the extremely diverse forms of government support in world shipbuilding deployed by third countries and the lack of transparency in implementation.

The notion of "prohibited subsidies" should be expanded to cover at least the most fundamental trade and competition distortions having a harmful effect in the shipbuilding and maritime supply industry. SEA Europe would therefore recommend the following market-distorting state support measures be considered as "prohibited subsidies":

- ✓ Below market financing and preferential financing arrangements (inconsistent with market-based conditions);
- ✓ equity infusions and conversions (e.g. equity swaps), inconsistent with market-based conditions;
- ✓ Supply of goods and services by governments to e.g. a shipyard below market price;
- ✓ Transfers of funds to cover operating losses;
- ✓ Loans to uncreditworthy enterprises or loans to insolvent enterprises without a restructuring plan which ensures genuine reduction of production capacities;
- ✓ Provision of inputs at below market value;
- ✓ Subsidies creating or maintaining overcapacity;
- ✓ Domestic cargo-reservation schemes (directly linked to domestic shipbuilding and repair requirements);
- ✓ Domestic build, repair or domestic content requirements (e.g. maritime equipment) that discriminate in favour of the domestic industry;
- ✓ Any government regulation, practice or other measure aimed at shipowners and other third parties intended to facilitate the purchase of domestically produced vessels.

- ***State-led industry plans***

WTO subsidy rules do not address State-led plans that promote an array of domestic industries, or even single sectors. Today Current WTO rules only address subsidies to specific producers of a single product. This needs to change as it does not reflect the magnitude today's distortions. Change could be achieved by, for example, shifting burdens of proof (particularly where subsidy programmes are not reported) and reducing evidentiary burdens.

- ***State support granted via SOE's in countries with systemic industrial policies***

SEA Europe would welcome effective improvements in the WTO-rulebook that could tackle effectively, and through new rules, unfair trade practices from State-directed companies or from State-owned companies (SOEs) which are subject to tight links or control by governments in some major third country shipbuilding nations. In the EU, strict anti-subsidies and state aid disciplines have been enacted, but at international level there are no comprehensive rules for SOEs.

b) Notification and transparency: The difficulty of providing sufficient evidence for initiation

WTO rules require Members to report annually on their subsidy programmes. SEA Europe fully supports the proposal in the concept paper to improve transparency concerning subsidies provided by WTO members by increasing the number and quality of subsidy notifications. SEA Europe supports in particular the recommendations whereby **all subsidy programmes not notified to the WTO be classified as 'prohibited'.** SEA Europe furthermore considers that **effective sanctions for a failure to respect transparency obligations are needed** (e.g., introduction of adverse presumptions or other means for reducing evidentiary burdens, in any case, more is needed than simply denying a violating Member the right to chair a WTO committee). These sanctions should apply already at the complaint stage, effectively reducing the evidentiary burden for complainants**.**

c) Anti-dumping rules: tackling injurious pricing practices in shipbuilding

To effectively ensure a global level playing field and restore or safeguard market balance in shipbuilding, measures on state intervention alone are not sufficient.

Experience has showed that extreme cases of indebtedness and consequent bail-outs were mainly the result of lasting unsustainable pricing policies. Particularly in a sector like shipbuilding, with a limited number of very large transactions, companies suffer primarily damage from abnormal competitive conditions in the moment when contracts are lost due to abnormally low offer prices by a competitor. The mechanisms (e.g. ex-ante state aid) that have brought about the abnormally low offer price are ultimately irrelevant to the damaged competitor. This is all the more the case when such mechanism surface only with a large time gap (ex-post) as e.g. may be the case with state backed bail-out.

Effective means to avoid price-undercutting and safeguards against ship offer prices below costs are key. Since the specific nature of the shipbuilding product and market make the current horizontally applicable WTO and EU anti-dumping rules[2] difficult to apply, solutions are needed to facilitate the application of one of the core pillars of the WTO system to the shipbuilding industry.

SEA Europe believes that a new, sector-specific instrument to deter injurious pricing in shipbuilding should be created in order to tackle such a fundamental gap in the international trade rulebook. SEA Europe would also support the negotiation of a plurilateral agreement linked to the WTO rule-book, similarly to the already existing Plurilateral Agreement on Trade in Civil Aircraft but involving the main shipbuilding nations and including an injurious pricing mechanism.

However, **in the meantime, given the current lack of effective trade remedies and the tremendous global competitive pressure, SEA Europe calls for specific measures at EU level to protect and safeguard the European maritime technology sector from unfair pricing and other trade distortions.**

d) Other issues where SEA Europe would like to see results:

- ***Forced technology transfers and investment barriers***

From SEA Europe perspective, a clear and predictable legal framework to pursue and conduct investments, which protects industrial know-how and intellectual property rights, is essential. A major

[2] It must be noted that the EU adopted a Regulation on "protection against injurious pricing of vessels" (Council Regulation (EC) No 385/96) which was in recent years amended and codified in REGULATION (EU) 2016/1035. However, this Regulation has never entered into force because the *Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry* ('the Shipbuilding Agreement') concluded in 1994 following multilateral negotiations under the auspices of the OECD, to which this Regulation was tied, was not ratified by the U and, as a result, did not enter into force.

impediment to foreign direct investments is represented by **forced technology transfers and other trade distortive policies** where foreign maritime technology businesses, in order to be allowed to enter a market, are obliged to share their innovation and technology with a local partner or to give access to it to licensing authorities. This is a major threat for an industry like the European maritime technology sector which over the years has heavily invested in research, development and innovation generating accumulated knowledge assets of very high value. Indeed, maritime technology is one of the most research-intensive sectors in Europe, with more than 9% of its turnover invested in RDI.

SEA Europe welcomes the efforts by the EU in the ongoing work on investment facilitation and would support any initiative to update the WTO rulebook to effectively address market access barriers, discriminatory treatment of foreign investors and behind the border distortions.

- ***Progress in rules on Services Liberalization***

In recent years, the European Maritime Technology industry has become more complex and technology intensive. This trend is expected to continue in light of new disruptive trends, such as Big Data. An even more sophisticated and technology intensive industry will most likely involve an increase of the share of services out of the industry's total turnover. The most important services categories for the maritime technology industry are business services such as, consultancy and advisory services, engineering and integrated engineering services and maritime and inland waterway transport related services (especially services related to maintenance and repair of sea going vessels as well as services related to repair and maintenance of inland waterway barges etc.). *For more information, see* ***SEA Europe Position paper "European maritime technology industry and trade in services: an area not to be missed".***

SEA Europe considers that further action is urgently needed at plurilateral or multilateral level to liberalize trade in services. Since negotiations under a Trade in Service Agreement (TiSA) are currently blocked, WTO Members should explore ways of either relaunch TiSA or start discussing or another, more comprehensive agreement on the liberalization of services.

- ***Public procurement***

Finally, transparency and reciprocal market access in public procurement, e.g. when governments, also at the local levels, publish tenders for building ferry boats, fishing vessels, or tenders related to repair or conversion contracts, are also important priorities for the European maritime technology industry.

SEA Europe is of the opinion that the Government Procurement Agreement (GPA) rules should be reformed to 1) be better equipped to disallow discriminatory "Buy-in" practices and 2) remove any obligation to provide access to government procurement for those WTO Members which are not signatories.

7. Conclusions

The specific nature of the shipbuilding product (the ship) and its market prevent an effective application of the existing WTO rules. Consequently, shipbuilding operates de facto under a unique absence of trade defense rules and remedies. **Contrary to most other manufacturing industries, the shipbuilding sector is today left without any safeguard that guarantees a level playing field globally**.

If nothing is done, the European maritime technology sector runs a serious risk of losing the remaining ship types currently being built in Europe to East Asia as well as its world leading position in the high-tech maritime equipment manufacturing.

This would create not only adverse knock-on consequences on employment and wealth creation In Europe. It would create **irreparable damages** resulting from the loss of capabilities, technology and infrastructure which are critical for Europe and which, once disappeared, would be very hard to recreate.

Hence, SEA Europe urges the EU to take leadership in ensuring that the WTO modernization process can lead to a trading system that is able to ensure fair trade treatment of our industry on a global scale. In the meantime, however, SEA Europe urgently calls on the EU to develop and adopt new, sector specific measures to effectively address the problem of unfair pricing in shipbuilding given the limitations of the current horizontally applicable WTO and EU law tools.

SEA Europe stands ready to play a constructive role in the context of the ongoing WTO reform discussions and remains available for any information or detail that may be required at any stage.

Contact Information :

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

ANNEX

NON-EXHAUSTIVE LIST OF EXAMPLES OF MARKET-DISTORTING GOVERNMENT INTERVENTIONS, UNFAIR PRACTICES AND TRADE BARRIERS AFFECTING THE SECTOR

a) 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.

In 2015 the three biggest Korean shipyards suffered a deficit of more than USD 7.2 bn. Since South Korean shipbuilding is one of the country's most important industries, the Government-owned banks and financial institutes have come forward with rescue measures, including financial schemes and other support policies[3]. State-owned Korea Development Bank (KDB) and KEXIM (Export-Import Bank of Korea) lending to the shipbuilding and shipping industries amounted to KRW 58 Trillion as of March 2016 (IMF 2016).

In 2018, the Korean government implemented a plan to order 200 large cargo vessels[4] in the next three years to help the ailing shipping and shipbuilding industry in the current difficult global market environment. South Korea's Financial Services Commission announced moreover that financial relief will be offered to (local) equipment suppliers of local shipbuilders to produce eco-friendly products[5]. The government also unveiled a new package of financial measures potentially worth as much as $1.5bn to support the country's ailing smaller yards, including by backing newbuilding orders of 140 liquefied natural gas-powered vessels by 2025[6].

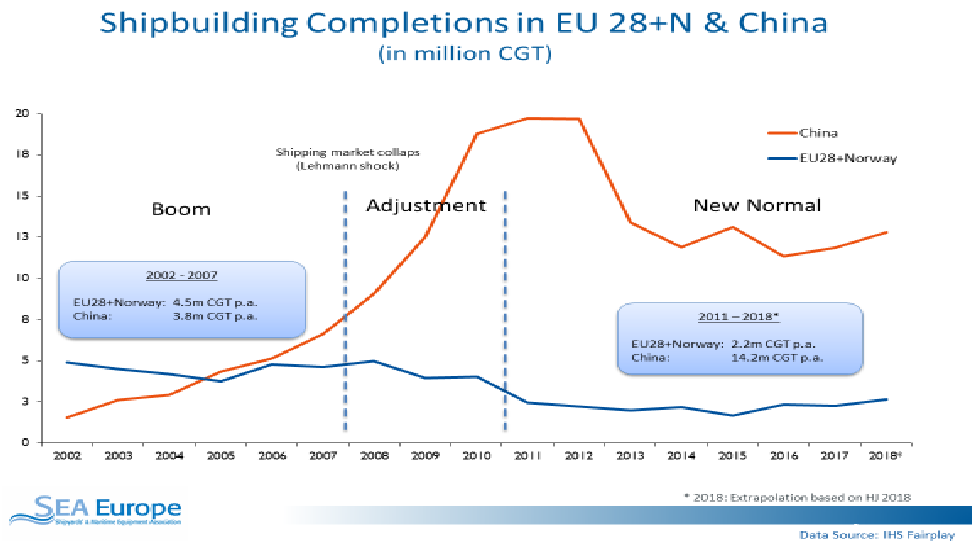
Being one of the world's largest shipbuilding economy, the massive state support measures provided by the South Korean Government create distortion of competition and further aggravate the overcapacity problem in the global shipbuilding and shipping market, to the detriment of the European maritime technology industry.

Finally, European maritime equipment manufacturers are facing discriminatory trade barriers in accessing the local market due to onerous or unjustified local testing requirements enforced by the South Koreans Authorities. For example, recently enforced approval procedures for the sale of Ballast Water Management Systems on board South Korea's flagged vessels have put European manufacturers of such systems at a competitive disadvantage compared to local Korean manufacturers.

b) CHINA

[3] By way of example, since 2015 South Korea provided a total of $11 billion in financial assistance to Daewoo Shipbuilding & Marine Engineering Co. through government-affiliated financial institutions.
[4] https://www.ship-technology.com/news/south-korea-order-200-ships-three-years/
[5] https://fairplay.ihs.com/commerce/article/4303271/seoul-offers-financial-aid-for-marine-equipment-makers?utm_source=Eloqua&utm_medium=email&utm_campaign=CL_FDN%20200618_PC9157_e-production_E-11060_FP_0620_0420
[6] https://worldmaritimenews.com/archives/265325/south-korea-unveils-financial-boost-for-smaller-shipbuilders/?uid=91013

In 2006, the Chinese government identified shipbuilding as a strategic industry, and introduced a plan for its development. In a short time, its market share doubled from 25% to 50%, at the expense of Japan, South Korea, and the countries of Europe.



The figure shows in a relatively short timeframe China has grown to now reach 7 times the "output" (production) level of Europe (EU 28 +Norway), as measured in newbuilding completions in Compensated Gross Tonnage (CGT).

Some studies[7] have demonstrated that China's rapid rise as shipbuilding nation was driven by hidden government subsidies that reduced shipyard production costs, not least because the industry benefited from new shipyards that were constructed as a consequence of this government plan.

In 2009, the Chinese Ministry of Industry and Information (MIIT) issued the **Chinese Shipbuilding Scrapping & Newbuilding Subsidy Programme[8]**. The scheme, originally running until 2013, was later extended until 2015 and subsequently to 2017. The aim of this policy is to promote the scrapping of old and polluting vessels which have not yet reached their service life, stimulating demand for newbuilds at Chinese yards. Under the scheme, the old polluting vessels must be registered in China and the newbuilding had to take place on a Chinese shipyard.

The share of Chinese owners placing orders at Chinese shipyards increased from 28% in 2013 to 51% in 2015. Chinese state-owned shipyards have attracted 94% of the orders placed by Chinese ship-owners[9]. In September 2017 Cosco Shipping Holdings reported that it received CNY 510 million (USD 78.3 million) of the subsidy (Seatrade Maritime News, 2017). This comes after Cosco Shipping Energy Transportation, another subsidiary of China Cosco Shipping Corporation Ltd., also announced a few days earlier that it had benefited from CNY 355 million (USD 53.7 million) scrap and build subsidy. In both cases it was reported that the subsidy would be recognized in the 2017 financial year as non-operating income (Lloyd's List, 2017). In its annual report 2017 Cosco Shipping Energy Transportation

---

[7] Kalouptsidi, Myrto (2017), 'Detection and Impact of Industrial Subsidies, the Case of Chinese Shipbuilding'. CEPR Discussion Paper No. 12080

[8] A description of the subsidy can be found in the UE Market Access Advisory Committee Database: http://madb.europa.eu/madb/barriers_details.htm?isSps=false&barrier_id=11820

[9] DANISH SHIP FINANCE (2015)

declared a total of CNY 365 464 657.73 shipbreaking assistance" (拆船补助), with CNY 212 582 700.00 reported for 2016 (SSE, 2018).

Foreign equipment manufacturers were apparently allowed to participate subject to complying with certain conditions, i.e. a) the percentage of "local" marine equipment must be at least 70%; b) "local" supply referred only to manufacturing companies. Sales offices of a foreign marine equipment supplier or subsidiaries despite having operated in China for several years did not qualify as local suppliers. As a result, European engine manufacturers were not able to sell engines to these subsidized ships, regardless of whether they had factories in China or not.

In 2014, the Chinese government published a **'white list'** of shipyards who are benefitting from prioritized policy support and access to domestic bank loans. In the years after the initial list, several yards were added and removed from the white list. The latest alterations were made in 2018 and the white list now contains approximately 70 shipyards of which several yards are focused on shipbuilding for the (international) offshore oil & gas industry. Shipyards on the white list have a prominent position in the Chinese shipbuilding industry. Approximately 90% of all vessels build in China were built at a shipyard on the white list.

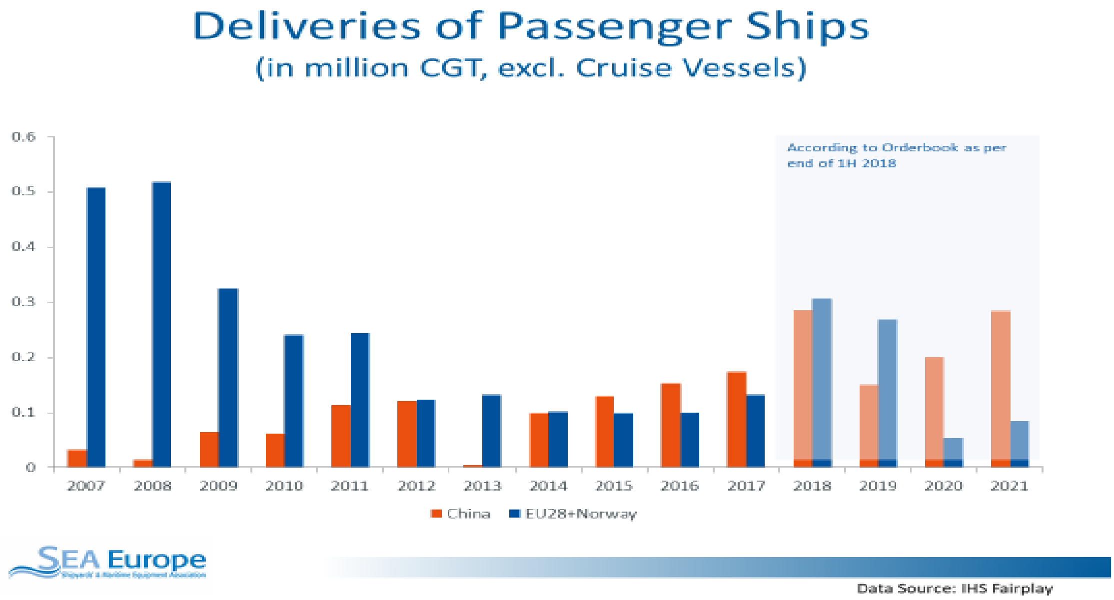
In "**Made in China 2025",** China declared its ambition to take over Europe's global leadership position in complex shipbuilding and in advanced maritime technologies by 2025 latest[10]. Consistent with such objective, at the beginning of 2017 the Chinese Ministry of Industry and Information Technology (MIIT) updated the five-year Shipbuilding Action Plan (2016-2020) through several "safeguard measures" targeting the higher-value ship segment as well as increased domestic content for marine equipment. These include increasing financial support and encouraging and guiding financial institutes to implement differentiated credit policies for the shipbuilding industry.

To complement the Shipbuilding Action Plan (2016-2020), at the end of 2016 MIIT launched a five-year action plan specially dedicated at "**Boosting Capabilities of Marine Equipment**" whereby "*Different financial support measures as import taxes, newbuilding credit, development finance and insurance shall be mobilized for the development of marine equipment"*. [11]

In this regard it is worth noting that through aggressive low pricing strategies in 2017-18 China has been already successful in winning several European ferry newbuilding orders (a niche segment in which European shipyards were until recently global leaders), as can be seen from the graph on the next page. Some publicly reported ship prices provided seem to indicate **offer price well below cost of production**.

[10] See J. Holslag, "The Silk Road Trap" (2018).

[11] "Study on New Trends in Globalisation in Shipbuilding and Marine Supplies – Consequences for European Industrial and Trade Policy", BALance Management Consulting



State support measures adopted in 2017 and reported in the press include[12]:

- **CSIC Ltd. share issuance:** The listed firm and State-Owned Enterprise (SOE) China Shipbuilding Industry Corporation Limited (CSIC Ltd) has issued shares worth RMB 3.9 billion (USD 566 million), as reported in May 2017. The shares were acquired to 81% by CSIC, 12% by Dalian Shipbuilding Investment and 7% by Wuhan Wuchuan Shipbuilding Investment, the latter two being subsidiaries of CSIC. The operation was reportedly undertaken in an effort to improve the company's cash flow situation and increase its ability to construct military vessels (Lloyd's List, 2017).
- **CSIC Ltd. debt-to-equity swap and ensuing share issuance.** In August 2017, it was announced that two of the subsidiaries fully owned by CSIC Ltd., Dalian Shipbuilding Industry Co Ltd (DSIC) and Wuchang Shipbuilding Industry Group Co Ltd (WSIG), would benefit from a total of CNY 22 billion (approximatively USD 3.3 billion) of debt-to-equity swap. This move comes after CSIC Ltd's debt-to-equity ratio reportedly reached 2.3 in March 2017 (Lloyd's List, 2017) and the shares of the Shanghai-listed company stopped trading in May 2017. Of the eight investing companies, China Cinda Asset Management Co Ltd and China Orient Asset Management Co Ltd, both controlled by the Chinese Ministry of Finance, swapped debt for equity for a total of CNY 7 billion. The other six companies, including State-owned enterprises, provided cash for equity, thus enabling the two shipbuilders DSIC and WSIG to service their debts (Lloyd's List, 2017; China Daily, 2017). In an effort to regain full ownership of its subsidiaries DSIC and WSIG, CSIC Ltd. announced in October 2017 that it would issue new shares worth CNY 22 billion to the eight investors in exchange for their shares of the subsidiaries. This would dilute the stake of the state-owned CSIC in CSIC Ltd. by approximatively 9% to 45.43% (Lloyd's List, 2017).
- **CSSC capital injection.** Two listed units of the China State Shipbuilding Corp. (CSSC) announced early 2018 that their subsidiaries would issue new shares in an effort to gain capital and reduce their leverage ratio. The move aims to raise a total of CNY 10.2 billion (USD 1.6 billion). Two subsidiaries of the CSSC unit China CSSC Holdings, Shanghai Waigaoqiao Shipbuilding and Chengxi Shipyard, want to issue

[12] Source: OECD WP6 (2018). See also https://fairplay.ihs.com/commerce/article/4303986/china-wavers-over-shipyard-state-aid-talks

shares worth CNY 5.4 billion, while the two subsidiaries of CSSC Offshore & Marine Engineering, Guangzhou Shipyard international and Huangpu Wenchong, aim to issue shares for CNY 4.8 bn (Lloyd's List, 2018). All investors have a state background, either being directly state owned or benefiting from government funding (Lloyd's List, 2018).

- **Government support for CSIC and CSSC**. China Shipbuilding Industry Corporation (中国船舶重工集团公司, CSIC) reported an amount of CNY 611 371 866 government subsidies as non-operating income in its third quarter statement of 2017. In the year 2016, CSIC reported a total of CNY 1 526 582 463 as government subsides under non-operating income (CSIC, 2017). China State Shipbuilding Corporation (中国船舶工业集团公司, CSSC) declared CNY 1925501.38 subsidies in the first nine months of 2017 and CNY 1 311 653 520 as government subsidies in its 2016 annual statement (CSSC, 2017).

c. UNITED STATES OF AMERICA

The Jones Act, Section 27 of the Merchant Marine Act of 1920, and subsequent similar restrictions require that any ship carrying merchandise between two American ports and points must be American made, owned by US citizens, operated by a crew of US citizens (at least 75%) and carry a US flag. The Act is an extreme form of protectionism and shields the domestic shipping and ship-building industries fully from the world market. It creates an inefficient domestic maritime production and transportation market sector with an artificial shortage of ships. The Jones Act also applies to the so called outer continental shelf and to platforms on the sea. As soon as a platform or windmill is attached to the seabed it counts as a ‘point’ under the Jones act. Therefore, windmills cannot be installed with foreign ships, because they cannot sail from the coast to the point in the sea.

In addition to the Jones Act, there also public procurement restrictions related to the “Buy American Act” and restrictions for American shipowners to repair their ships outside the US.

As a consequence of the Jones Act and its subsequent revisions, the European shipbuilding industry including ship repair[13]7 and maintenance has been effectively excluded from selling vessels to be used in American coastwise trades. Although some European marine equipment manufacturers have managed to sell certain products to US shipbuilders, the Jones Act prevents them from offering integrated marine equipment systems more widely in the US, because the use of foreign parts for ship construction is heavily restricted.

RECENT PRESS CLIPPINGS ABOUT OTHER (NON -EU) COUNTRIES

RUSSIA

- **Russia: financing of shipbuilding projects**

“*Eternal problem of Russian economy is the inaccessibility of "long" and cheap money, which has the highest impact on industries with long payback periods. Shipbuilding is among them. Starting from 2009, the problem has been handled through* ***subsidies provided to cover the leasing interest rates,***

[13] Under the Jones Act, ship repair work of more than 10% of steel weight must be done by an American yard.

***budget financing of manufacturers and leasing companies with preferential interest**. Now the discussion has unfolded around an even larger leasing program*". Source: PortNews, 18.04.2017

- **Russia introduces ban to local shipowners on purchase commercial ships from foreign shipyards.**

"Russian companies will have to buy commercial ships for ports operations and exploration work only from the domestic shipbuilders. The ban on the purchase of foreign dry cargo ships and tankers follows new amendments in the Code of Merchant Shipping. They were prepared in the Ministry of Industry and Trade on the instructions of Prime Minister Dmitry Medvedev. The department is convinced that the restrictions will accelerate the industry and increase the number of orders for the shipyards. The instruction to introduce such changes in the code was given by the Prime Minister Dmitry Medvedev at the end of December 2017. Now Russian ship owners prefer to buy tankers and dry cargo at foreign shipyards. Most of the orders are located in South Korea, China and Finland." *Source: Finance Apprise, 14.02.18*

- **Russia ponders subsidy for smaller vessel newbuilds.**

"*Part of the Russian government has suggested subsidies for newbuild vessels too small to qualify for the investment quota scheme, reports Port News.Rosrybolovstvo -- the Russian Federal Fisheries Agency -- suggests compensating 25% of the total cost of construction for small fishing ships not covered by the 'keel quotas' program, its head, Peotr Savchuk, has said. According to Rosrybolovstvo, the demand for such ships in 2019-2030 is estimated at 70-100 units for a total of RUB 16". Source: Undercurrentnews, 29.07.18*

- **Rosneft seeks more support for Zvezda shipyard.**

"Russia's state-run oil company Rosneft has asked the Russian government for more supports for shipbuilding and offshore plant cluster at Zvezda shipyard which is under construction in Russian Far East. According to a report of RegNews on August 4, Rosneft CEO Igor Sechin, suggested a plan to the government to force domestic oil and gas companies such as Gazprom, Novatek and etc. to build vessels and offshore structures only at Far Eastern Shipbuilding and Ship Repair Center. For this, Igor Sechin is said to have proposed to Vladimir Putin, Russian President, a legislation of special incentive encouraging the newbuilding orders to be placed at Zvezda. Mr. Sechin suggested a policy to impose domestic companies a property tax on using foreign vessels. He also suggested that the government put sovereign wealth fund for successful Zvezda project". Source: Asiasis, 12.08.18

INDIA

- **Govt approves policy to boost shipbuilding in India**

*"The government cleared a ten-year policy on shipbuilding and ship repair industry in India under the 'Make in India' initiative. This policy implementation would require budgetary support of Rs.4,000 crore over a period of ten years. The policy includes a **grant of financial assistance to shipyards**, after delivery of ship, to counter cost disadvantages at 20% of the contract price or the fair price, whichever is lower. (…), "The proposals also include **grant of a Right of First Refusal for Indian shipyards for government purchases; tax incentives and grant of infrastructure status for shipbuilding and ship***

***repair industry**," the ministry said.(…) "The policy will give a big boost to the shipbuilding and ship repair industry and will facilitate the 'Make in India' initiative of the government of India," the ministry said". Source: the DollAr Business, 10.12.15*

- **Govt issues new guidelines for India's shipbuilding industry**

"*The shipbuilding policy approved by the cabinet grants a right of first refusal to Indian shipyards on government purchases and ship repairs, whereby local shipbuilders can take up state-funded contracts/works by matching the lowest price offered by overseas entities in a public auction. The **financial assistance to shipbuilders – both state-owned and private – will be valid for a 10-year period** beginning 1 April 2016, scaling down the quantum by three percentage points every three years, starting with 20% during the first three years, 17% for the next three years, 14% for the next three years and 11% in the 10th year. "**From 2025 onwards (when the financial assistance scheme ends), only Indian-built vessels shall be procured by such departments and agencies for governmental purposes or for own purposes"**. Source: Livemint, 3.6.2016*

- **India gives locally built ships priority in chartering**

"In order to promote the Make in India initiative and give incentives for ship building activity in the country, the Indian Ministry of Shipping revised its guidelines for chartering of ships by providing Right of First Refusal (RoFR) to ships built in India. As a result, whenever a tendering process is performed to charter a vessel, a bidder offering a ship built in India will be given the first priority to match the L1 quote. It is expected that this priority given to ships built in India will increase the demand for such vessels, providing them with further market access and business support. (…) The review also meets the need to provide a long term strategic boost to the domestic shipbuilding industry, the need to encourage the domestic shipping industry to support the domestic shipbuilding industry, and the need to develop self-reliance and a strong synergy between these industries". Source: Safety4sea, 19/02/19

<u>MALAYSIA</u>

- **Malaysia Reveals New Tax Incentives for Shipbuilders.**

"*In an effort to attract investments into the Malaysian shipbuilding and ship repairing industry, the country has decided to introduce new incentives for the sectors, according to the Malaysian Ministry of International Trade and Industry. The incentives would provide new companies with either a Pioneer Status with 70% of Income Tax Exemption on statutory income for a period of 5 years or Investment Tax Allowance of 60% on the qualifying capital expenditure incurred within 5 years from the date the first qualifying capital expenditure is incurred. Furthermore, existing shipbuilding and ship repairing companies are offered an Investment Tax Allowance of 60% on the additional qualifying capital expenditure incurred within a period of 5 years". Source: WorldMaritimeNews, 11.08.16*

<u>INDONESIA</u>

- **Indonesia earmarks investment to become a key maritime player**

"*In March the government passed new regulations expanding on the global maritime fulcrum (GMF) doctrine laid out by President Joko Widodo in 2014. The new policy – known as Presidential Regulation No. 16 of 2017 – sets out a range of measures to strengthen the maritime and logistics sectors, with* *an emphasis on developing port infrastructure and connectivity. (…) Other policies aim to expand Indonesia's shipbuilding capabilities. Proposed support mechanisms for this include a **ban on state-owned enterprises buying vessels from overseas, in place since 2015.** Supporting this are state incentives announced at the end of 2015 that exempt shipbuilders from paying value-added tax (VAT) on imported components. Together, these measures are likely to encourage investment in the sector, though up-scaling Indonesia's shipyards will also take time, especially when it comes to building large blue-water vessels, which will require significant knowledge transfer; most of the country's more than 200 shipyards are geared towards building smaller vessels or undertaking repair and maintenance. Source: Oxford Business, 23.6.17"*

<u>BRAZIL</u>

- **Brazil's ANP approves revised local content rules, appeases shipbuilders[14]**

"*Brazil's National Petroleum Agency (ANP) approved lower requirements for the use of locally produced goods and services in oil field development, including a concession to shipbuilders that should help avoid lawsuits aimed at blocking the cuts, it said. Oil companies will be required to use 50% local content during the exploration and production phases of onshore oil and natural gas projects, the ANP said in a statement late Wednesday. The local content level for offshore exploration will be 18%, while the offshore production phase will be divided into three subgroups: 25% for well construction, 40% for subsea systems and 40% for stationary production units*". *Source: SPGlobal, 12.04.18*

[14] Brazil has introduced local content requirements since 1999 in order to strengthen the local shipbuilding and marine equipment industries. The local content requirement rate was set at 15% in 1999 and increased to 40% on 2004 while the percentage of Brazilian local content requirement in the oil and gas sector increased to around 65% in the following years.