DETAILED COMMENTS ON THE "WHITE PAPER ON LEVELLING THE PLAYING FIELD AS REGARDS FOREIGN SUBSIDIES"

14 September 2020

On 17 June 2020, the European Commission published a White Paper[1] dealing with the distortive effects caused by foreign subsidies in the Single Market. The White Paper, which is structured around "Modules", sets out options for a possible new EU legal instrument to be put forward in 2021. The Commission now seeks views and input from all stakeholders on the options set out in the White Paper. A public consultation, open until 23 September 2020, was launched to help the Commission to prepare appropriate legislative proposals in this area. The questions stakeholders can answer during the consultation process are set out in ANNEX II of the White Paper. The present document, submitted in the context of the White Paper's on-line consultation, includes an executive summary of SEA Europe's core requests, contains detailed input as well as a background Annex with additional supporting statistical information and data to complement the on-line responses.

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[1] COM (2020) 253 final

EXECUTIVE SUMMARY

- **SEA Europe[2] welcomes the** "**White Paper on levelling the playing field as regards foreign subsidies**" (hereafter "***The White Paper***"). The White Paper recognizes the existence of major regulatory gaps in EU legislation in addressing distortions from foreign subsidies in the Internal Market. These gaps relate to EU rules on competition, trade, public procurement and EU funding.

- **For Europe's shipyards and maritime equipment sector** (hereafter **"*European maritime technology sector*"), distortions from foreign subsidies in the Internal Market are a matter of urgent and serious concern**. In the last decades, Europe has gradually lost entire ship market segments as well as technical competences and capabilities to Asia as a result of aggressive Asian (State-led and supported) competitive distortions. However, these distortions have not been addressed by existing trade instruments. For example, contrary to most manufacturing sectors, Trade Defence Instruments (TDIs) under WTO or EU rules are not fit for shipbuilding amongst others because ships are generally not imported into the EU customs territory (in the sense of "released for free circulation").

- **Furthermore, the European Union is regretfully reinforcing the distortions of competition on the internal market by currently allowing heavily subsidized foreign operators to benefit directly or indirectly from EU funding programmes**. In some instances, the use of EU funds has *de facto* contributed - and still contributes - to "**double subsidization"** to the benefit of oversea competitors (already massively subsidised in their home countries) and to the detriment of EU producers.

- **To date, Asia is targeting Europe's remaining global leadership in complex shipbuilding as well as in advanced maritime equipment manufacturing** (e.g. "Made in China 2025"), through existing or new distortions and unfair practices resulting from foreign subsidies. However, 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.

- **The White Paper has recognised the existence of "*Regulation 2016/1035 on protection against injurious pricing of vessels*". ** 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, however, 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).

- **For SEA Europe, the White Paper offers a perfect opportunity for the EU to finally solve the longstanding regulatory gap for shipbuilding and, in doing so, to achieve a level playing field by means of robust, sector-specific measures, adapted to the specificities of the maritime technology sector. In this respect, SEA Europe suggests that the Commission proposes a complete update of EU Regulation 2016/1035, a sector-specific tool, to address foreign subsidies to operators in the maritime technology sector, possibly**

[2] SEA Europe represents close to 100% of the maritime technology industry in 16 nations, including EU Member States, Norway and Turkey. The maritime technology 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 with the various producers of maritime systems, equipment material, technologies and services.

inspired by some principles from Module I of the White Paper but adapted to make them fit and effective for the European maritime technology sector *(see relevant paragraphs below).*

- Even though the European Commission favours horizontal policies, SEA Europe calls for sector-specific measures to secure the survival of Europe's maritime technology sector, i.e. because:

  - **The sector cannot wait any longer for (new) horizontal tools as they will take too much time and have been ineffective in the past** (e.g. contrary to other manufacturing sectors, TDIs are ineffective and inadequate for shipbuilding). Moreover, with the economic impacts of Covid-19 and related government measures, the very survival of Europe's maritime technology sector is at risk.

  - **A sector-specific tool for maritime technology will be a powerful signal towards Europe's competitors in Asia** (which all consider their local maritime technology sector as strategic and therefore apply sector-specific policies), and create leverage for the EU towards foreign countries.

- At the same time, SEA Europe agrees that the "horizontal" gaps and transversal problems, identified in Module 2 (acquisitions), Module 3 (public procurement) and the section on EU funding, should be addressed by new, comprehensive and robust horizontal tools specific to those situations.

- As regards the individual Modules of the White Paper, SEA Europe has the following comments:

(a) Module 1

This Module may offer a basis **for the development of a sector-specific tool that could effectively create a level playing field for the European maritime technology industry.** To be effective, a new tool based on Module 1 needs to be adapted to fit with the specificities of shipbuilding, based *inter alia* on the following elements:

- It must cover all foreign subsidies insofar as they directly or indirectly cause distortions within the Internal Market, notably foreign subsidies providing benefits to any operator (wherever established) in relation to production, sale and/or operation of ships or maritime equipment used in EU waters

- The definition of subsidies must be broad, e.g. taking into account the lack of third country transparency, lax third country regulations, and the timing of subsidies and their impact.

- Subsidies must be recognised already from the moment an operator is entitled to benefit from it, even if only conditionally. Distortions caused by foreign subsidies similarly may occur long before the delivery of the ship.

- At the same time, because of the extended period over which a given subsidy causes injury, as well as the challenges of identifying and quantifying foreign subsidies, the limitations period for taking action against a given subsidy in our sector should start only from the later of the actual moment of receipt of the subsidy or the moment at which a ship is delivered which is then operated in EU waters. Indeed, in the shipbuilding and maritime equipment sector, while the impact of a subsidy often begins already at the time a contract is concluded, a ship may only be delivered years later and the subsidy may also be paid only at a later date (and may even have been conditional on the signing of the contract and additional conditions to be fulfilled in relation to the ship's production and/or delivery).

- The new tool must equally recognise that distortive impacts can occur even before an operator is fully entitled to a foreign subsidy.

- Certain foreign subsidies should be considered distortive on a *per se* basis, e.g. all those listed in section 4.1.3.1 of the White Paper. As stated in the White Paper, "subsidies in the form of export credits" should be considered distortive unless they are in line with the OECD Arrangement on officially supported export credits. Therefore, **all** export financing subsidies granted by countries which are **not** signatories to this OECD arrangement should, in SEA Europe's view, be equally considered *per se* "distortive".

- In the context of an EU interest assessment, the new tool should recognize that a strong maritime technology industrial base in Europe is itself a primary public policy objective, which therefore needs particular safeguards from foreign subsidy distortions.

- Redressive measures need to be effective and dissuasive and include remedies specifically tailored to the needs and specificities of shipbuilding and maritime equipment sector.

(b) Module 2

This Module adequately tackles distortions of the EU Internal Market through **foreign subsidies that facilitate the acquisition of undertakings established in the EU**, provided that the improvements suggested by SEA Europe during the public consultation are taken into account.

For instance, the definition of what is to be considered an "acquisition" should cover acquisition of both direct or indirect control, but also of a certain material influence" in an undertaking e.g. achieved through a certain percentage of the shares or voting rights. In this regard, joint venture arrangements should also be covered by Module 2, at least to the extent they allow joint control of EU activities and/or involve technology or other significant know-how transfers. It is, equally, important to also address smaller transactions of a strategic nature that might affect European companies with important critical assets, high growth or technology development prospects.

For SEA Europe, this Module is relevant in the context of foreign countries with explicit State-led industrial strategies aiming at expanding their stakes in (European) shipyards and maritime technology companies or at accelerating the development of indigenous technologies and innovation in high-tech segments, currently in European hands. The economic impact of Covid-19 has made it crucial for the EU to adopt quickly an instrument that prevents foreign-subsidised companies to exploit (financial) difficulties in European maritime technology companies.

(c) Module 3

This Module addresses **distortions from foreign subsidies in public procurement procedures** and is very important for the European maritime technology. Both European shipbuilders and equipment manufacturers have experienced *de jure* and/or *de facto* barriers hampering their access to foreign public procurement markets. At the same time, foreign companies have been able to fully benefit from the EU's open public procurement market policy and were awarded with European public procurement contracts even though these companies were state-subsidised, state-backed and/or state-owned and competed with artificial low prices.

SEA Europe believes that Module 3 is vital to assess whether an economic operator has received foreign subsidies and whether these subsidies have distorted the procurement process, leading to potential decisions to exclude the foreign subsidised operator from participating in the ongoing procedure as well as in future public tenders across the EU for a certain period of time. However, since this Module could also have far-reaching implications for public procurement procedures – both for contracting authorities and economic operators – a right balance is necessary between effectiveness and burden so as to achieve the most practical

solutions. Besides, it remains important to pursue the adoption of the International Procurement Instrument (IPI) in order to open-up foreign procurement markets. Furthermore, SEA Europe underlines that the promotion of Most Economically Advantageous Tenders (MEAT), in the sense of banning awarded funds based on price only, and EU localisation content safeguards fostering growth and jobs in the EU should be considered.

(d) EU funding

SEA Europe agrees **on the need for additional measures addressing distortions of the Internal Market from subsidies granted by non-EU authorities in the context of EU funding**. For maritime technology, there are several examples of EU funds being directly or indirectly granted to foreign manufacturers, such as the cases highlighted in the White Paper itself but also cases of EU co-funding granted to European companies ordering new ships at foreign (state-supported) shipyards.

For SEA Europe, the EU needs to set-up a robust EU framework to grant EU funds on the basis of the following principles:

- ***Reciprocity*****:** Access to EU funding for foreign companies should be made conditional upon EU companies having access to that foreign market too and considering the public funding possibilities of the foreign country.

- ***Conditionality*****:** EU investments from EU co-funded programmes should be made based on parameters such as a return on investment in e.g. EU job and economic added value creation throughout the full (European) value chain.

- ***Due diligence****:* EU co-funded grants to projects involving foreign suppliers or providers of goods and services should be made conditional upon the enforcement of a rigorous due diligence assessment, in order to ensure a true level playing field for European maritime technology companies. In this regard, the European Investment Bank (EIB) Transport Lending policy criteria relating to shipbuilding should be extended, *mutatis mutandis*, across all EU public support programmes and financing tools for maritime projects. For Connecting Europe Facility (CEF), moreover, there should be a required commitment on beneficiaries from grants (e.g. in the case of public authorities) not to award contracts to entities that already benefit from distortive foreign subsidies, based on investigations as mentioned in Module 1 or 3.

SEA EUROPE DETAILED RESPONSES TO THE WHITE PAPER CONSULTATION QUESTIONS

The present document is submitted in the context of the European Commission's Public Consultation on the White Paper on Foreign Subsidies to complement, with the necessary additional details, the (shorter) replies provided by SEA Europe within the space-limits of the on-line consultation questionnaire format.

INTRODUCTION

1. Please introduce yourself and explain your interest and motivation to participate in this public consultation.

SEA Europe is the umbrella association representing the European shipyards' and maritime equipment sector, otherwise referred to as the "European maritime technology sector". SEA Europe represents close to 100% of the maritime technology sector in 16 nations, including EU Member States, Norway and Turkey. The maritime technology 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 with the various producers of maritime systems, equipment material, technologies and services.

The European maritime technology sector is strategic to Europe's (maritime) autonomy, defence and security, its access to trade, seas, and energy, and a key driver for Europe's twin "green" and "digital" transitions.[3] With a production value of €120 billion, more than 22.000 large and SME companies and more than 1 million jobs, the European maritime technology sector is also key for Europe's economic growth, employment creation and regional development.

In this regard, SEA Europe welcomes the European Commission's "White Paper on Levelling the playing field as regards foreign subsidies", based on a recognition that there are major regulatory gaps in EU legislation with regard to the distortive impact of foreign subsidies on the EU internal market. **The European maritime technology sector has a particular interest that the White Paper leads to the adoption of effective measures to deal with foreign subsidies because this sector has been and is being ravaged by unfairly subsidised and undercutting shipbuilding activities in third countries**. For far too long, European shipyards have suffered – and continue to suffer – from foreign, trade-distortive subsidies and other unfair practices which have already for example resulted in a nearly complete disappearance of merchant cargo shipbuilding (i.e. the building of tankers, bulkers and containerships) in Europe. Such foreign subsidies and unfair practices are now having a major adverse impact on the building of complex ship types in Europe (e.g. cruise, ferries, dredgers, offshore) as well as Europe's (advanced) maritime equipment manufacturing (see e.g. "Made in China 2025").

Neither the WTO's multilateral trade rules and its dispute settlement system nor the present EU trade toolbox have been able, nor are they adequate, to effectively address the situation. In particular, contrary to most manufacturing sectors, Trade Defence Instruments (hereinafter "TDIs") are not fit for shipbuilding, and a sector-specific 2016 EU Regulation is entirely ineffective because its application is tied to a 1994 OECD Agreement which will never enter into force.

Hence, for SEA Europe, the White Paper offers a prime opportunity for the EU to finally solve this longstanding regulatory gap for shipbuilding and, in doing so, to achieve an effective level playing field by means of robust – sector-specific – measures, adapted to the specificities of the maritime technology sector.

[3] This latter feature has been specifically acknowledged by the Commission, *inter alia*, in the Communication on a "New Industrial Strategy for Europe" of 10 March 2020 (COM (2020) 102 final).

Without such measures, and in the current absence of effectively applicable TDIs for shipbuilding, Europe will lose its remaining civilian shipyards and thereby its current global leadership and remaining EU market share in complex shipbuilding, as a result of unfair foreign (i.e. Asian) subsidies.

Against this background, SEA Europe wishes to offer the following comments on the White Paper with the aim of helping the Commission to develop adequate proposals which can effectively restore an urgently needed level playing field for the European maritime technology sector.

Unless otherwise specified, the SEA Europe comments apply generally to all modules but, in particular to the tool described in Module 1 of the White Paper. Module 1, in SEA Europe's view, can indeed offer a promising basis for the development of a sector-specific tool to adequately address the long-standing regulatory gap relating to shipbuilding. At the same time, SEA Europe agrees that the "horizontal" gaps and transversal problems, identified in Module 2 (acquisitions), Module 3 (public procurement) and the section on EU funding, should be addressed by new, comprehensive and robust horizontal tools specific to those situations.

The SEA Europe comments do not address these latter Modules of the White Paper with the same level of detail as the comments on Module 1. Although these Modules are also highly relevant for SEA Europe, the problems addressed are common to other EU manufacturing industries as well. For this reason, besides some important sector-specific considerations included in these latter sections, SEA Europe refers to the more detailed comments submitted by the umbrella coalition for EU manufacturing, "AEGIS Europe"[4], which it fully supports.

QUESTIONS RELATING TO THE THREE MODULES

GENERAL QUESTIONS

1. Do you think there is a need for new legal instruments to address distortions of the internal market arising from subsidies granted by non-EU authorities ('foreign subsidies')? Please explain and also add examples of past distortions arising from foreign subsidies.

Yes, SEA Europe strongly believes that there is an urgent need for new EU legal instruments to address the variety of distortions on the Internal Market arising from foreign subsidies. It is important to highlight, however, that these legal instruments need to fill **all the existing gaps** in the EU regulatory toolbox, in order to effectively restore a level playing field between EU producers and third country competitors, **and take into due account sectoral industry specificities by means of tailor-made measures**.

For instance, while some EU instruments (e.g. Trade Defence Instruments, "TDIs") already exist and have been used to protect European manufacturing industries from unfair foreign trade practices, these Trade Defence Instruments do not cover all trade in goods. Specifically, they do not effectively apply to shipbuilding products, because ships are generally not "imported" into the EU in the sense of "cleared for free circulation" as required

[4] AEGIS Europe brings together 25 European associations representing a broad variety of industries including traditional industries, consumer branches, SMEs and renewable energy sectors, accounting for more than €500 billion in annual turnover and millions of jobs across the EU. This industry alliance is committed to European manufacturing as the fundamental driver of innovation, growth and jobs in Europe. More information is available here

by the TDI rules[5]. Therefore, these instruments do not provide any effective remedy for our sector to competitive distortions arising from foreign subsidies, as explained further in the following sections.

In addition, the notion of distortive impact in the EU internal market, at least as regards shipbuilding which operates in a world-wide market, should be construed in a broad manner, so as to capture any foreign subsidies insofar as they directly or indirectly cause distortions within the EU internal market (*see below our response to the other questions under Module 1)*, notably foreign subsidies providing benefits to any operator in relation to the production, sale and/or operation of ships or maritime equipment used in EU waters.

In the last decades, Europe has gradually lost entire ship market segments as well as technical competences and capabilities to Asia as a result of aggressive Asian – State-led and supported – competitive distortions. More recently, Asia has been targeting Europe's remaining global leadership in complex shipbuilding as well as in advanced maritime equipment manufacturing, through existing or new distortions and unfair practices resulting from foreign subsidies. As an example, in 2015, the Chinese government launched 'Made in China 2025', a national industrial strategy aiming to transform China into a technology-driven country by 2025 and ultimately turn the nation into a leading manufacturing power by 2049. That policy explicitly mentions ten sectors, including high-tech ships and maritime equipment.

The gradual loss of market shares by EU yards in increasingly technologically complex sectors, as a result of unfair competition from Asian shipyards, is well documented *inter alia* in the European Commission's Reports to the Council on the World Shipbuilding Market which had been adopted pursuant to former Council Regulation 1540/98. These reports include detailed cost investigations for shipbuilding orders awarded to Asian yards concluding that Asian competitors (South Korean at the time) benefitted from state-linked finance enabling them to build vessels at extremely low prices and thereby penetrate into increasingly sophisticated market segments in which EU yards were leaders. ***A background note with statistical evidence and examples is provided as an Annex.***

In sum, in the 1990's the European shipbuilding industry was already pushed out from the standard (merchant) ship segments (e.g. bulk carriers and oil tankers), largely as a result of fierce and unfair competition from Asian shipyards. However, it was still maintaining significant market presence in the more sophisticated and technologically advanced ship types of wet cargo (product and chemical carriers) and mid-sized container ships. Unfortunately, in recent years, European shipbuilders have progressively lost market share in the more high-tech, complex segments in which they were market leaders (e.g. containerships, LNG carriers and, more recently, ferry ships and offshore wind vessels).

By way of illustration, orders for newbuilt LNG carriers are recently mostly ordered and built in South Korean shipyards, while orders from European customers for newbuilt ferries mostly destined to operate in Europe are now massively ordered and built in China. Recent analysis within SEA Europe indicates that all Chinese newbuild ferries for European customers are unfairly priced. Indeed, Chinese yards make price offers which are estimated to be on average 30% below the Chinese cost of production (based on very conservative estimation parameters) which illustrates the existence of projects with systematic and heavy financial losses.

As explained in the responses to the following questions, there is no effective tool currently available to EU operators in our sector to address either foreign subsidies with a distortive effect on the EU market or injurious pricing by third country producers. The current lack of effective applicable trade instruments, as

[5] 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.

well as the emergence of aggressive State-led plans from certain third countries, put Europe's current global leadership in complex high-tech shipbuilding and advanced maritime equipment seriously at risk.

This risk was clearly acknowledged *inter alia* in a Commission-sponsored Study released in October 2017 which concluded that "***the next decade will determine whether Europe's shipbuilding sector will continue to grow and survive or instead decline and ultimately disappear***" (BALance, *New Trends in Globalisation in Shipbuilding and Marine Supplies: Consequences for European Industrial and Trade Policy*, 2017).

2. Do you think the framework presented in the White Paper adequately addresses the distortions caused by foreign subsidies in the internal market? Please explain.

SEA Europe welcomes the framework presented in the Commission's White Paper as it provides an initial good basis to develop effective measures aiming to address distortions caused by foreign subsidies in the internal market. However, in order for such measures to be effective and enforceable for our sector, sectorial specificities need to be carefully taken into account.

In particular, given the current situation of the European maritime technology sector and the existing regulatory gap in the trade toolbox specifically concerning shipbuilding products, it is critical **that effective measures will be found quickly to address and counteract the impact of foreign subsidies on our sector**. The nature of the shipbuilding and maritime equipment sector and its current state favour developing a new and sector-specific tool. Indeed, considering the time and work that may be needed to obtain an EU-wide consensus on a more horizontal tool, as well as the inadequacy of existing tools to address competitive distortions in shipbuilding, a tailored and effective sector-specific tool is indispensable.

Such a new sector-specific tool would also constitute an appropriate initiative in light of the actions by certain third countries that have for a long time been undermining international efforts, e.g. under the auspices of the OECD, to devise sector-specific trade disciplines to safeguard fair competition in the world shipbuilding market (see more recently e.g. Lloyds List, 18.12.19 "South Korea frustrates OECD's efforts in new shipbuilding competition regime"). Besides filling a major regulatory gap in the EU domestic toolbox, such a tool would thus also contribute to providing the EU with much-needed negotiating leverage vis-à-vis those third countries.

In fact, the EU legislator has already recognised the need for a sector-specific trade tool for the shipbuilding industry by adopting Regulation (EU) 2016/1035 on protection against injurious pricing of vessels. EU Regulation 2016/1035, recital (3), indeed recalls that *'(…) 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*".

Footnote 59 of the White Paper notes that this 2016 Regulation has formally entered into force but has never been applied because its applicability had (pursuant to Article 18(2) of the Regulation) been made conditional on the entry into force of an OECD Agreement which has not been ratified by all Parties.

However, the White Paper neglects to mention that this **OECD agreement, signed in 1994 and "*scheduled to enter into force on 15 July 1996* after all Parties to it had concluded their national ratification procedures"[6],**

[6] "*In December 1994, the Commission of the European Communities, and the Governments of Finland, Japan, the Republic of Korea, Norway, Sweden and the United States signed the Final Act of the "Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry". The Agreement was scheduled to enter into force on 15*

has no chance of ever being ratified by all Parties and consequently will never into force. Even worse, the 1994 OECD agreement is now in any event completely outdated and inadequate in relation to the present context (one important reason being that China was never a Party to the 1994 Agreement and therefore this agreement would not in any event be able to tackle trade distortions resulting from Chinese subsidies). **Hence, besides the fact this EU Regulation has never been applied, the White Paper fails to recognise that the Regulation, as currently designed and worded, is entirely inadequate to address the impact of foreign subsidies on the sector.**

In this respect, it is worth adding that since the 1994 OECD agreement could not enter into force, over the last decades there have been subsequent attempts, under the auspices of the OECD, to negotiate new plurilateral agreements (2002-2005, 2010) which all failed despite the best efforts of the EU. Already in 2011, the European Investment Bank (EIB) Transport Lending Policy, Article 97, noted that "*There are strong imbalances in the global shipbuilding market and the global trade rules of the World Trade Organisation or other internationally recognised fora are very difficult to apply and enforce in the sector.* ***Attempts to create a specific Shipbuilding Agreement in the OECD failed after many years of negotiations***." More recently, a new attempt to "explore" the possibility to negotiate a plurilateral OECD shipbuilding agreement was initiated in 2016 and was "suspended" in December 2019 due to the lack of willingness/commitment from South Korea.

In sum, what is needed urgently is a new and robust European sector-specific tool, which is adapted to the present context as well as to the specificities of the shipbuilding and maritime equipment sector. In this respect, SEA Europe asks that the Commission proposes a complete update of EU Regulation 2016/1035, a sector-specific tool, to address foreign subsidies to operators in the maritime technology sector, making use of the elements of Module I of the White Paper but adapted to make them fit and effective for the European maritime technology sector (*see SEA Europe recommendations in the responses below to the Module I related Questions*).

At the same time, SEA Europe agrees that the "horizontal" gaps and transversal problems, identified by the White Paper through Module 2 (acquisitions), Module 3 (public procurement) and the section on EU funding, should be addressed by new, comprehensive and robust horizontal tools specific to those situations.

MODULE 1 – GENERAL MARKET SCRUTINY INSTRUMENT

1. Do you consider that Module 1 appropriately addresses distortions of the internal market through foreign subsidies when granted to undertakings in the EU?

Module 1, as currently designed in the White Paper, does not seem to fit the specific features of the maritime technology industry and therefore to provide an effective tool to address competitive distortions of the EU internal market through foreign subsidies faced by our sector. Yet, it offers a good basis for the development of a sector-specific tool inspired by the same underlying principles that could effectively apply, with the necessary adaptations, to the maritime technology industry. In this regard, SEA Europe offers the following initial comments. Additional concrete recommendations are provided in response to Question 3.

First of all, Module 1 speaks of a tool which would generally apply only to benefits provided to "*an undertaking established in the EU*", and then goes on to say that consideration should also be given to covering benefits to "*certain undertakings that benefit from foreign subsidies and are otherwise active in the EU*". Annex 1 of the White Paper limits consideration to subsidies benefiting an undertaking established in the EU or one related to an entity established in the EU, except in relation to acquisitions of EU undertakings or participation in EU

July 1996 after all Parties to it had concluded their national ratification procedures" See: https://www.oecd.org/sti/ind/shipbuildingagreement-overview.htm

public procurement procedures. However, if the new tool is going to tackle distortions effectively in the internal market, and not be easily circumvented by companies established offshore, it is essential that the focus be the fact that distortive activities are taking place in the EU internal market rather than the place of establishment of the recipient. **In other words, the tool must cover all subsidies granted to any undertaking – wherever established – which facilitate any activity that distorts the EU internal market**.

To achieve this as a general matter, which would effectively be a consistent application of the "qualified effects" principle already recognised in EU competition law (including effects which are "probable", i.e. not yet actual), **the following modifications of the definition of subsidies in Annex I are needed:**

- The entire second paragraph should be replaced with a single sentence: "***Foreign subsidies would fall under any new legal instrument insofar as they directly or indirectly cause distortions within the single market*.**"
- The last sentence of the penultimate paragraph should be deleted.

For any tool to be effective with specific regard to the shipbuilding and maritime equipment sector, it must cover foreign subsidies benefiting any operator in relation to the production, sale and/or operation of ships or maritime equipment used in EU waters. It is important to underline that without this breadth of scope, a new tool would be largely ineffective for our sector.

Secondly, it is important to underline that **a new tool must specifically apply to the shipbuilding and maritime equipment sector, precisely because TDI measures do not provide an effective remedy.** In this regard, it is noted that Footnotes 24 and 25 of the White Paper expressly exclude from Module 1 foreign subsidies provided for "goods and agricultural products imported into the EU" because they are covered by the EU trade defence instruments (TDIs). However, with regard to the shipbuilding and maritime equipment industry, **our products (the ships) are rarely "imported into the EU" in the sense of "cleared for free circulation" into the EU customs territory, which is a key requirement for the imposition of TDIs[7].** Indeed, due to the nature of the sale and the use of ships, they are rarely if ever "released for free circulation" as ships are generally put into service upon delivery at the yard, and neither physical delivery, customs clearance, nor even registration, take place in the country where the buyer is established. Accordingly, whatever would be the relationship between a new tool and TDI measures, a tool which covers the shipbuilding and maritime equipment industry must be built on the recognition that TDIs do not effectively apply to this sector.

In this regard, there are other factors specific to the maritime technology sector which reinforce the conclusion that existing TDI measures are inadequate to provide relief against foreign subsidies, and which provide indications of key features needed for a new tool to be effective for our sector. For example, the aspect of timing significantly limits the applicability of existing TDIs to shipbuilding. Indeed, under current TDI rules, a complaint requires imports which have already taken place in sufficient volumes to cause or threaten to cause injury to the EU producers of that product. However, there are sectors (such as our sector) where foreign subsidies may cause major distortions of the EU market already at the time sales contracts are entered into, which may be long before any product is actually delivered. This is indeed typically the case for shipbuilding which is a manufacturing industry characterised by a very long lead production time as the time gap between the signing of a shipbuilding contract and the delivery of the ship is at least 2-3 years.

The importance of the timing element in shipbuilding cannot be overstated. Firstly, shipbuilding is characterised by a rather small number of large-value contracts, so if one contract is lost, an EU producer loses

[7] 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.

a major part of its annual production (unlike many other sectors, e.g. footwear). Ships are not produced in big quantities (they are rarely produced in series) but are rather unique and tailored products. Generally, they are one-off or small series orders (i.e. a single digit number of units) and are constructed to meet specific buyer needs. Furthermore, ships are large capital investments and buyers rarely purchase multiple units. A single order can be critical, and injury is suffered already when orders are lost. Secondly, when a competitor benefiting from foreign subsidies is able to win one contract at unfairly low prices, this has an immediate depressing impact on market prices and is treated as a precedent in future contract negotiations. **Hence, 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 due to abnormally low price offers.**

2. Do you agree with the procedural set-up presented in the White Paper, i.e. 2-step investigation procedure, the fact-finding tools of the competent authority, etc.? (See section 4.1.5. of the White Paper)

In general, SEA Europe believes that to respect principles of good administration and to provide timely relief to affected EU industries, it is essential that there are deadlines for action by the supervisory authority and the possibility of an administrative appeal of any decision not to pursue an investigation, either initially or beyond the preliminary stage.

Also, in terms of the proof of subsidies needed to justify the opening of the preliminary review, the supervisory authority must *inter alia* accept as sufficient evidence DG Trade findings of subsidies benefiting third country producers made in relevant and recent TDI investigations, or subsidies documented in reports published by international intergovernmental organisations (e.g. OECD).

There should also be the possibility for the authority to impose provisional interim and/or conservatory redressive measures, ideally from the start of the preliminary review but at least by the end of the preliminary review, to ensure that an effective remedy can be imposed once a final assessment is reached.

In the introduction to Module 1, the White Paper states that the supervisory authority would close the case at the end of the preliminary review inter alia if "the case is not a priority". This sounds like a summary application of the "EU interest test" and is not appropriate at the state of the preliminary review, which should be focused only on the existence of foreign subsidies causing material distortions in the EU internal market. In this regard, it should be expressly provided that an examination of the EU interest is to take place as part of the in-depth investigation, with full respect for the procedural rights of the relevant EU industries, and is not a ground for termination of the preliminary review without further action. For example, a stricter approach should be taken for: sectors that are targeted by national strategic plans (such as Made in China 2025) and/or affected by structural excess capacities and or the presence of State-Owned Enterprises.

It is also essential to clarify that as a general matter, partial non-cooperation is sufficient to allow the supervisory authority to ignore information provided by the party in question and to proceed on the basis of facts available, at least when major subsidies, strategic and/or sensitive sectors, and/or State-owned or directed companies are involved. In this respect, the EU industry should also be able to appeal the decision of the supervisory authority, whenever it considers that a case is not a priority.

3. Do you agree with the substantive assessment criteria (section 4.1.3) and the list of redressive measures (section 4.1.6) presented in the White Paper?

First of all, concerning the **assessment criteria**, the **definition of subsidies covered must be broad,** especially to take into account the lack of third country transparency, lax third country regulations, and the timing of subsidies and their impact. More specifically:

- The definition of "foreign subsidies" set out in Annex 1 of the White Paper essentially takes over the definition of subsidies set out in the EU anti-subsidy regulation, which in turn is based on the WTO Agreement on Subsidies and Countervailing Measures (ASCM). However, that definition was predicated on an obligation of WTO Members to declare their subsidy regimes to the WTO, an obligation that very few WTO Members have actually complied with. It would therefore be appropriate to start from a broader base definition, particularly to include all benefits derived from bodies which are not clearly private and acting independently of government policy, especially in relation to countries where the economy is subject to significant distortions in general.

- For the same reason, it would be appropriate to have a **basic – rebuttable – presumption that all subsidies to producers of upstream inputs are passed through to the benefit of downstream operators**, whether those operators are manufacturers or suppliers of services (or both). For **shipbuilding**, this would encompass the following scenarios:

    - subsidies granted to foreign input suppliers (as 'upstream operators') which are presumed to be passed through to the benefit of a shipbuilder (as 'downstream operator');
    - subsidies granted to foreign shipbuilders (as 'upstream operators') which are presumed to be passed through to the benefit of a shipowner/ship operator (as 'downstream operator').

- The definition of a subsidy should make clear that **absence of similar levels of regulatory requirements, such as environmental and social obligations lower than those in effect in the EU, can be considered as having a similar distortive effect of a subsidy**.

- In addition, for our sector, it is essential – for the reasons mentioned above with regard to the timing of the start of injury – that **subsidies be recognised already from the moment an operator is entitled, even if only conditionally, to a benefit**. At the same time, because of the extended period over which a given subsidy causes injury, as well as the challenges of identifying and quantifying foreign subsidies, the limitations period for taking action against a given subsidy in our sector should start only from the later of the actual moment of receipt of the subsidy or the moment at which a ship is delivered which is then operated in EU waters. **Indeed, in shipbuilding, while the impact of a subsidy often begins already at the time a contract is concluded, a ship may only be delivered years later and the subsidy may also be paid only at a later dat**e (and may even have been conditional on the signing of the contract and additional conditions to be fulfilled in relation to the ship's production and/or delivery).

Secondly, the definition of "distortions in the internal market" needs to be sufficiently flexible and recognise cases of *per se* distortive effects. In particular:

- It is important to recognise that a **distortive impact occurs in some situations even before an entity is fully entitled to, let alone before an entity receives, a subsidy**.

- In addition, certain foreign subsidies should be considered to have distortive effects on a *per se* basis. These would include all those the White Paper lists in section 4.1.3.1, except that the first item listed there should be extended to include **all export financing subsidies granted by countries which are not signatories to the OECD arrangement on officially supported export credits**. Additional subsidies which should be considered distortive *per se* are:

    - subsidies to beneficiaries active in sectors characterised by structural excess capacity;
    - subsidies to beneficiaries active in sectors featuring high-tech and/or dual-use products to a significant extent; and,

- subsidies to beneficiaries active in sectors designated as strategic by the government providing the subsidies.

SEA Europe considers that **redressive measures need to be sufficiently effective and dissuasive.** In this regard:

- The supervisory authority operating in the framework of the new tool envisaged by the White Paper should be provided with a sufficient variety of alternative redressive measures from which to choose. That said, the authority must start from the basic principle that **structural or other non-financial remedies would be the most appropriate base measure**, at least when major subsidies, strategic and/or sensitive sectors, and/or State-owned or directed companies are involved.
- **For the shipbuilding and maritime equipment sector, effective redressive measures would need to include specific structural remedies tailored to the sector, for example, relating to the conditional access of the vessel produced by foreign subsidised shipbuilders to EU ports and/or to EU waters more generally.**
- Given the difficulties in establishing that a foreign subsidy is actually and irreversibly paid back to the third country, it should be recognised as **a fundamental basic principle that payments to the third country or countries would never constitute an appropriate redressive measure on their own**, at least with regard to countries which are not subject to the jurisdiction of the European Court of Justice or the EFTA Court in State aid matters. That said, financial and other penalties should be possible **in addition to** structural remedies.
- **Thorough reporting and transparency obligations should be imposed whenever redressive measures are applied, as well as effective and dissuasive measures to address non-compliance.**
- With regard to the choice of redressive measures, as well as commitments to mitigate the distortion(s), it will be essential that the supervisory authority **consult in a timely manner with the affected EU industry and allow effective input from that industry,** especially into the assessment of whether or not commitments (and which ones) should be accepted.
- In any case where there are Commission findings of distortive foreign subsidies, and regardless of the redressive measures finally imposed, there needs to be the right of private parties to undertake legal action with a view to obtaining **compensation for damages for injury** caused to them by those distortions.

4. Do you consider it useful to include an EU interest test for public policy objectives (section 4.1.4) and what should, in your view, be included as criteria in this test?

SEA Europe holds the view that **an EU interest test must start from the presumption that there is a strong EU interest in removing the effects of distortive foreign subsidies, especially those endangering sustainable and diversified supply chains and the preservation of a strong (maritime technology) industrial base in Europe**.

Once it is established that a foreign subsidy is capable of distorting the internal market, the White Paper suggests that there should be an assessment of the "*possible positive impact*" of the supported economic activity or investment in the EU, and that if on balance, the positive impact "*sufficiently mitigates*" the distortion on the internal market, "*the ongoing investigation would not need to be pursued further*". Based on the application of a similar type of test in the context of trade defence proceedings, SEA Europe believes that for a new tool to be effective, there must be:

- **a baseline premise that there is a fundamental and strong EU interest in favour of removing the distortions caused by foreign subsidies; and,**

- a recognition that even when the supported economic activity or investment appears to be furthering EU public policy objectives in the very short term, the impact of the distortions may easily be such that in the medium term those public policy objectives would be less likely to be realised if measures are not taken.

Further, in relation to EU public policy objectives, there needs to be a recognition that **a strong (maritime technology) industrial base in Europe is itself a public policy objective of primary importance, and that there is an even stronger premise in favour of removing distortions which endanger that objective.**

To the extent that public policy objectives might be considered to "mitigate" distortions caused by foreign subsidies, that may justify limiting the redressive measures, but it would not justify an absence of redressive measures, at least not where the distortions cause material harm to EU operators in a strategic sector such as maritime technology which employs over 1 million persons in the EU.

In any event, it would be crucial that there is an adequately transparent and coherent analysis of both short- and medium-term impacts of the distortions in question, as well as a full and timely consultation of relevant EU industries and consideration of their input.

7. Do you agree that the enforcement responsibility under Module 1 should be shared between the Commission and Member States (section 4.1.7)?

Given the Commission's powers and experience with investigating foreign subsidies in the international trade context, the need for a harmonised EU approach to the existence of foreign subsidies and their distortive effects, and the need for the Commission to act as guarantor of the EU interest in addressing distortions caused by foreign subsidies, SEA Europe believes it is essential that the Commission has exclusive competence for investigations under Modules 1 and 2.

In any event, it should at least be clarified that **in any case involving distortions affecting activities in more than one Member State, the Commission must have exclusive responsibility**, whether acting *ex officio*, at the request of a Member State or at the request of EU operators which can demonstrate that they are directly impacted by distortions resulting from the subsidy in question and represent a significant portion of an affected EU industry.

Further, the White Paper would have the Member States bound in any event by the Commission's view on whether the EU interest test is met. To the extent Member States would have any competence for investigations under Modules 1 or 2, SEA Europe believes it also essential that any negative Member State determinations as to the existence of foreign subsidies and/or the existence of distortions on the internal market be subject to binding review by the Commission upon the request of affected EU operators, especially in order to ensure a harmonised EU approach to these essential issues.

MODULE 2 – ACQUISITIONS

1. Do you consider that Module 2 appropriately addresses distortions of the internal market through foreign subsidies that facilitate the acquisition of undertakings established in the EU (EU targets)?

Yes, SEA Europe believes that Module 2 appropriately addresses the distortions of the internal market through foreign subsidies that facilitate the acquisition of undertakings established in the EU. However, some improvements are needed to make the tool more effective, as highlighted in the following responses.

In SEA Europe's view, there is a need for such an instrument at EU level because in some 3rd countries overseas expansion of foreign shipbuilding and maritime technology companies is an explicit objective of State-led

industrial strategies and plans[8] which aim to accelerate indigenous technology development and innovation in order to acquire a major market presence in high-tech segments in Europe. Moreover, the current economic crisis makes it crucial to quickly adopt an instrument in order to prevent foreign subsidised companies from exploiting opportunities to take over European maritime technology companies affected and weakened by COVID-19.

In this regard, SEA Europe refers to the more detailed comments submitted by the umbrella coalition for EU manufacturing, "AEGIS Europe", which it fully supports. Some of these are included in the responses below for ease of reference.

2. Do you agree with the procedural set-up for Module 2, i.e. ex ante obligatory notification system, 2-step investigation procedure, the fact-finding tools of the competent authority, etc. (See section 4.2.5 of the White Paper)

SEA Europe believes that the *ex-ante* notification system, as outlined in the White Paper, is appropriate as the competent supervisory authority could ultimately decide on whether to allow or unwind the transaction. The proposed 2-step procedural set-up (preliminary review, in-depth investigation) seems balanced and reasonable.

To avoid circumvention, it is crucial for the competent supervisory authority to be able to review *ex officio* an acquisition which should have been notified by the acquirer but was not, regardless of whether or not the acquisition has already been completed. The EU industry should also be able to file a complaint/to inform competent authorities on the suspected existence of unfair foreign subsidies.

The White Paper foresees a two-phase notification system similar to that envisaged by the EU Merger Regulation, hereinafter "EUMR", (phase 1, phase 2, stop the clock and extensions) which seems appropriate. However, coordination with EUMR provisions is essential. In the event the operation is subject to a double notification obligation (pursuant to the EUMR and the legislation on foreign subsidies), one procedure must not create delays / obstacles in terms of the timing of the other.

3. Do you agree with the scope of Module 2 (section 4.2.2) in terms of:

- ***definition of acquisition***
- ***definition and thresholds of the EU target (4.2.2.3)***
- ***definition of potentially subsidised acquisition***

As regards thresholds, please provide your views on appropriate thresholds.

As regards the **definition of what is to be considered an acquisition** subject to Module 2, SEA Europe believes it is crucial to cover acquisition of both direct or indirect control, but also of at **least a certain percentage of the shares or voting rights or otherwise of "material influence" in an undertaking**. Indeed, minority shareholdings can confer material influence over a firm, without the necessity of taking full control. In this regard, joint venture arrangements should also be covered by Module 2, at least to the extent they allow joint control of EU activities and/or involve technology or other significant know-how transfers.

It seems appropriate therefore to:

[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".

1. introduce a definition of "substantial influence", taking into account the notion of "decisive influence" envisaged by Regulation 139/2004 (the EU Merger Regulation) which is configurable on the basis of certain rights or contracts recognized to the parties to the operation;[9]

2. determine a specific percentage requiring notification, for example 25%.

Regarding the **definition of what is considered an EU target**, SEA Europe agrees with the proposed quantitative t**hreshold** set at EUR 100 million, in order to focus on the most significant transactions. However, SEA Europe supports a qualitative threshold in parallel to examine smaller transactions of a strategic nature that might affect companies with important critical assets, high growth or technology development prospects.

In compliance with the principle of "guaranteeing the balance between efficacy and efficiency", it might be appropriate to adopt a single threshold system which provides:

1. a quantitative threshold based on turnover, set at EUR 100 million; but even where turnover is lower,

2. a qualitative threshold with regard to those EU target companies that meet defined criteria regarding their assets, products and/or sector of activity.

4. Do you consider that Module 2 should include a notification obligation for all acquisitions of EU targets or only for potentially subsidised acquisitions (section 4.2.2.2)?

SEA Europe supports a **notification obligation for potentially subsidised acquisitions (i.e. planned acquisitions of an EU target where a party has received a financial contribution by any third country government) only**, as a notification obligation for all acquisitions would create a significant administrative burden for companies (and for the competent supervisory authority) and could have a deterrent effect on foreign direct investment, which the EU economy needs.

The self-assessment by undertakings carries a risk of circumvention, but the ability of the Commission to act ex officio to unwind an acquisition or to sanction the non-disclosure of the subsidies could counterbalance that risk. In general, the involvement of a foreign State-owned company should lead to the presumption that there are financial contributions of a distortive nature, and the burden of proof should then be on the State-owned enterprise to show it is not subsidised.

5. Do you agree with the substantive assessment criteria under Module 2 (section 4.2.3) and the list of redressive measures (section 4.2.6) presented in the White Paper?

As regards the **substantive assessment criteria**, SEA Europe agrees that foreign subsidies may facilitate an acquisition directly or de facto (i.e. in cases where foreign subsidies reinforce the financial strength of the acquirer), and therefore that a tool under Module 2 must cover both aspects in order to avoid circumvention.

SEA Europe agrees with most of the indicators proposed by the Commission but does not support the simple inclusion of the level of activity on the internal market as an indicator. Indeed, there are many sectors where initially a limited presence of a subsidised foreign entity and/or its acquisition target can evolve quite quickly

[9] Article 3(2) of the EUMR provides: *Control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regards to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by (a) ownership of the right to use all or part of the assets of an undertaking; b) rights or contracts with confer decisive influence on the composition, voting or decisions of the organs of an undertaking.*

to the detriment of EU players. This is especially true for strategic acquisitions, as a subsidised operator can, for example, acquire significant global market share or major technologies through a single acquisition. In addition, a distortive foreign subsidy may result from a third country's industrial strategy to penetrate a new market in which the beneficiary of the subsidy was not yet active. In other words, while a high level of activity in the EU internal market could certainly be an indicator of distortions arising from a subsidised acquisition, the absence of a high level of activity in the internal market cannot by itself be taken as an indicator for the absence of a distortion.

Further, it is crucial to consider privileged access to/dominance on the domestic market as a full criterion[10] (i.e. market access conditions for EU companies in the subsidising third country), as the dominant position of a single player on a domestic market can enable it to leverage its position worldwide, including in the EU. **Finally, the strategic nature and economic or geographical importance of an acquisition should be more clearly emphasized and be part of the assessment**. This is particularly true for State-led strategies such as Made in China 2025.

As regards the **redressive measures**, SEA Europe supports the focus on structural remedies due to the nature of Module 2. We also insist on the need for sufficiently deterrent measures that match the distortions caused on the Single Market. **In particular, a decision prohibiting the proposed transaction must be adopted if foreign subsidies create distortions that cannot be remedied with commitments**. Furthermore, in cases where there is a failure to supply the information requested in a timely manner, or where the information supplied is materially incomplete, incorrect or misleading, there must be effective and dissuasive sanctions (e.g. fines and periodic penalty payments, and potentially a prohibition of the transaction).

6. Do you consider it useful to include an EU interest test for public policy objectives (section 4.2.4) and what should, in your view, be included as criteria in this test?

We refer to our general comments on the EU interest test above in the context of Module 1.

7. Do you agree that the enforcement responsibility under Module 2 should be for the Commission (section 4.2.7)?

SEA Europe agrees with the White Paper position that the Commission should be exclusively responsible for enforcing Module 2. For an *ex-ante* system based on notifications, a system centralised at Commission level would lead to lower overall costs and increased legal certainty (i.e. one-stop shop) for companies. It would also guarantee more efficiency in the process and a harmonised approach to the EU interest assessment at European level without undue political considerations at the level of the individual Member State(s).

MODULE 3 – PUBLIC PROCUREMENT

1. Do you think there is a need to address specifically distortions caused by foreign subsidies in the specific context of public procurement procedures? Please explain.

Yes, SEA Europe strongly supports a module tackling the specific distortions caused by foreign subsidies in public procurement procedures, in line with the position outlined by AEGIS Europe.

[10] The White Paper states that '*consideration will be given to the possibility that the competent supervisory authority could take into account whether the beneficiary has privileged access to its domestic market (through measures equivalent to special or exclusive rights) leading to an artificial competitive advantage that could be leveraged in the EU internal market and thereby exacerbates the distortive effect of any subsidy*'.

While the customer base of civilian shipbuilding is largely made up of private commercial operators, public authorities also have a role as "buyers in the market" in niche shipbuilding product segments that are important for several European maritime technology companies. The range of contracts awarded by government contracting authorities for projects in the (civilian) maritime sector ranges from the procurement of dedicated vessels, e.g. for shipping and transport administrations, ports, customs or fisheries inspection authorities, to repair work for ships and component procurement through to maritime services[11].

European shipbuilders and equipment manufacturers have been facing several barriers hampering *de jure* and or/*de facto* their access to third country public procurements markets. At the same time, it is a fact that the EU is the world's most open public procurement market. **In recent years European public procurement contracts have been awarded to shipyards in third countries, like South Korea and China, where generally massive state-backed finance and government support are provided to the domestic maritime technology industry**. In those countries, the maritime technology sector is considered of strategic importance supported by export-led government strategies enabling local companies (often state-owned companies) to compete globally with artificial low prices.

Therefore, the European maritime technology industry supports the EU to establish strong leverage in order to be able to push for market opening and reciprocity vis a vis third countries. Simultaneously, the EU needs to enforce effective safeguards to protect itself against unfair competition from third countries based on low prices.

In this regard, SEA Europe holds the view that Module 3 of the White paper is vital to concretely assess whether foreign subsidies have been received by an economic operator and whether these subsidies have distorted the specific procurement process. Such assessment must then lead to potential decisions of excluding the foreign subsidised operators the specific public tender as well as other future EU public tender procedures. At the same time, however, this Module could have a far-reaching impact on public procurement procedures, both for contracting authorities and for economic operators. **Therefore, a right balance between effectiveness and burden should be found in order to find the most practical solution**.

More generally, it will also be important to pursue in parallel the adoption of the **International Procurement Instrument (IPI)**. Its objective is clearly different (i.e. to open third country procurement markets) and complementary to the instrument on foreign subsidies, but redressive measures are similar and may overlap (i.e. exclusion of third country economic operators) and coherence should therefore be ensured.

2. Do you think the framework proposed for public procurement in the White Paper appropriately addresses the distortions caused by foreign subsidies in public procurement procedures? Please explain.

In general, SEA Europe believes that the system proposed by Module 3 can address distortions within the internal market caused by foreign subsidies in public procurement procedures. However, we would like to raise concerns about the practical feasibility of such a system, which bears the risk of adding considerable burden for companies (including European ones) while potentially disrupting specific procurement procedures (i.e. suspension during the investigation). **In this regard, SEA Europe supports AEGIS Europe's proposal for a double-side system** as illustrated hereunder for ease of reference:

- **For general procurement above agreed thresholds, the *ex-ante* notification system should be shifted to an investigation launched before the final award of the contract**. This would enable action to be taken in the framework of a specific procedure, but not automatically and without adding further burden on European companies.

[11] Examples of vessels and related equipment that may be contracted by public authorities include local (public) ferry ships, LNG bunkering vessels, oceanographic research vessels, dredging vessels, buoy-tenders, ice-breaking vessels, "workboats" (multi-role vessels often used as auxiliary vessels in port construction, dredging and offshore construction projects), pollution control vessels, buoy tenders, pilot vessels, search & rescue vessels, training ships and salvage vessels.

- **For EU-funded projects**, which call for a close scrutiny and have a particular importance since it is EU taxpayers' money**, the *ex-ante* notification system should be maintained**.

The functioning of the alternative system (i.e. outside EU-funded projects) during the 'standstill period' before the final award would be as follows.

In accordance with Article 41 of Directive 2004/18/EC, when the evaluation process is completed, all tenderers need to be notified of the outcome. This information must be sent as soon as the decision to award the contract has been made and at least 10 days before the contract is signed with the preferred bidder (the so-called 'standstill' period). After the bidders have received that information, i.e. during the 'standstill' period, competitors should have the possibility to inform the competent authority of the distortive foreign subsidies that the preferred bidder may have benefitted from. That authority could be the national supervisory authority as it is also the authority in charge of potential litigation related to public procurement. The investigation could lead to the elimination of the economic operator from the ongoing procedure.

The major advantage of this system is that it is attached to a specific procurement procedure, but potentially disrupts it only at the end of the process – which coincides with the timing when other litigation is brought to national authorities already today. Furthermore, this system might be efficient for 'one-offs' types of distortions in sectors where foreign subsidised players are not so established.

With regard to **redressive measures,** SEA Europe equally supports the AEGIS Europe view that **exclusion from the ongoing procedure should be automatic,** whatever the competent supervisory authority is. Regarding the potential exclusion for a certain period of time, the White Paper remains vague as to whether this would only concern the contracting authority concerned by the investigation under Module 3 or whether it would be across the EU.

As already stressed, the system needs to be credible and, therefore, redressive measures deterrent enough. Exclusion from procedures of a specific contracting authority for a period of maximum 3 years alone is not sufficient, as in some sectors there will not be any new tender by the same contracting authority in that timespan. Furthermore, it would be extremely cumbersome for other contracting authorities and economic operators to suffer the delays in various procurement procedures linked to subsequent investigations when ultimately the problematic bidder might always be the same.

Therefore:

- **Exclusion from a procurement procedure should be automatic and applicable to the contracting authority for a sufficient long period of time**, following the assessment of the competent supervisory authority (Member State or Commission depending on the cases).
- Any economic operator that has been excluded from a procurement procedure following an investigation will have to prove that it does not benefit from distortive foreign subsidies when bidding on other projects for that same period of time.
- Transferability of results from a closed case to a new one must be ensured, and any relevant Commission findings under Module 1 should be sufficient to justify **stronger and EU-wide measures (exclusion from all EU future procurement procedures for the same product category for a maximum of 3 years, following the assessment of the European Commission)**.

Finally, in case of failure to timely supply the information requested or for supplying incomplete, incorrect or misleading information, strong financial and other sanctions have to be available to the competent authority.

This is also appropriate where third countries refuse to cooperate for fact finding visits, which should lead to immediate exclusion from EU procurement for the enterprises concerned. Inspiration could be taken from Art. 14(1) of the EU Merger Regulation.

3. Do you consider the foreseen interplay between the contracting authorities and the supervisory authorities adequate e.g. as regards determination of whether the foreign subsidy distorts the relevant public procurement procedure?

SEA Europe does not support the proposed interplay between the contracting authorities and the supervisory authorities. The White Paper suggests that the supervising authority will determine whether there is a subsidy but the contracting authority will determine whether the subsidy has distorted the public procurement procedure (with a guidance 'to ensure a uniform practice of assessment of distortion throughout the EU'). However, contracting authorities may have limited incentives to exclude a (low price) bidder from a procurement procedure, and therefore also limited incentives to conclude that the foreign subsidies were distortive. Furthermore, it would make contracting authorities responsible for a critical part of the investigation whereas many contracting authorities lack professionalisation and resources. **In sum, the competent supervisory authority should be responsible for the whole investigation, and the contracting authority should only enforce redressive measures.** Commission guidance would however be useful for national competent authorities to guarantee a uniform practice of assessment of distortion across the EU, and the Commission should also have the possibility to intervene – bringing in its expertise and knowledge – in the investigation.

4. Do you think other issues should be addressed in the context of public procurement and foreign subsidies than those contained in this White Paper?

In parallel to the White Paper and future Instrument on foreign subsidies, the promotion of Most Economically Advantageous Tender (MEAT – understood here as **banning the possibility to award funds on the basis of price only**) and of **EU localisation content** to foster growth and jobs in the EU should also be addressed. They will be commented further in the section on foreign subsidies in the context of EU funding.

Finally, SEA Europe reaffirms the need to adopt as soon as possible the International Procurement Instrument (IPI) as it is a complementary tool aiming at opening up public procurement markets in third countries.

INTERPLAY BETWEEN MODULES 1, 2 AND 3

1. Do you consider that

a. Module 1 should operate as stand-alone module;

b. Module 2 should operate as stand-alone module;

c. Module 3 should operate as stand-alone module;

d. Modules 1, 2 and 3 should be combined and operate together?

In general, as the existence of tools under each of the three Modules is fully justified on its own, they should operate in parallel in a coordinated manner, so as to best address foreign subsidies in an effective and coherent manner, and to address circumvention most effectively.

SEA Europe wishes to highlight, however, the White Paper focusses, in all three modules, on the actions of economic operators in specific transactions or markets. There is insufficient focus on the accumulated impact of subsidies from the same source distorting the EU market though different economic operators. Therefore, redressive measures under each of the Modules must take adequately into account the situation where a single country repeatedly subsidises different enterprises in a given market segment or segments.

QUESTIONS RELATING TO FOREIGN SUBSIDIES IN THE CONTEXT OF EU FUNDING

1. Do you think there is a need for any additional measures to address potential distortions of the internal market arising from subsidies granted by non-EU authorities in the specific context of EU funding? Please explain.

Yes, SEA Europe agrees that there is a need for any additional measures to urgently address potential distortions of the internal market arising from subsidies granted by non-EU authorities in the specific context of EU funding. To a very large extent, regretfully, the European Union is reinforcing the distortions of competition on the internal market by currently allowing heavily subsidized foreign operators to benefit directly or indirectly from EU funding programmes. **Examples of EU funds directly or indirectly benefitting foreign manufacturing companies regretfully abound, including in the shipbuilding and maritime equipment industry,** despite the lack of symmetrical reciprocal treatment for European companies in the markets of the respective third countries. Besides, in some instances the use of EU funds has *de facto* contributed - and still contributes - to "**double subsidization" to the benefit of oversea competitors (already massively subsidised in their home countries) and to the detriment of EU producers**.

By way of a sector-specific example, in December 2019 a Chinese-led consortium, including Hudong-Zhonghua Shipbuilding Co., Ltd, a wholly owned subsidiary of China State Shipbuilding Corporation, CSSC, the country's biggest state-owned shipbuilding conglomerate, was awarded in Cyprus a public tender contract valued at 290-million EUR for the construction of a liquefied natural gas (LNG) terminal. The contract included the construction of a floating storage and regasification unit (FSRU), i.e. special type of ship used for LNG transfer, and related infrastructure. The project will be financed by **a 101-million EUR grant from the European Union (Connecting Europe Facility, CEF**)[12] with additional financing support from international lenders, such as the European Investment Bank (150 million EUR loan)[13] and the European Bank for Reconstruction and Development.

Besides the case where (subsidised) foreign operators have direct access to EU funding , there have also been instances where **EU co-funding was granted to European companies which unfortunately placed their fleet renewal or newbuilding orders at State-supported shipyards in third countries**. For instance, under the CEF programme European co-funding was granted to EU commercial shipping companies for short-sea shipping projects. Unfortunately, the shipping companies placed their newbuilt orders in Chinese shipyards (despite the ships being destined to operate between two EU ports).

Hence, in addition to the fact that these distortions are currently not addressed, it is a fact that these foreign shipyards can benefit directly or indirectly 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. This situation confirms the need for additional measures to address distortions in the internal market arising from subsidies granted by non-EU authorities in the specific context of EU funding.

Moreover, it is also urgent to question the use of EU funds beyond the mere aspect of subsidies. **In the current crisis recovery context and debate on strategic autonomy, EU funds and EU-supported International Financing Institutes should play a greater role in supporting EU companies who want to do business in the EU and create added value in Europe.**

In sum, it is vital to ensure that European taxpayer's money focuses only on projects of real European added value, especially in terms of EU employment creation and investments. This should ultimately favour EU-

[12] http://www.xinhuanet.com/english/2019-12/14/c_138629509.htm

[13] https://www.financialmirror.com/2020/06/12/eib-approves-e150-mln-for-cyprus-lng-terminal/

grown maritime technology development (rather than oversea competitors). These efforts will eventually contribute to boost EU's long-term industrial growth and competitiveness.

2. Do you think the framework for EU funding presented in the White Paper appropriately addresses the potential distortions caused by foreign subsidies in this context? Please explain.

SEA Europe believes that **the proposed framework for EU funding as outlined in the White Paper should be significantly reinforced, on the basis of stronger EU added value-based conditionality, reciprocity and due diligence criteria.** Equally, the Commission's powers in particular should be strengthened as there is EU money involved. It will also be important to strengthen the role of the European Union's Anti-Fraud Office (OLAF) to protect the Union's financial interests when EU funds are involved. More specifically:

- As regards EU funds under co called "*direct management*", the White Paper does not address a broader need for **reciprocity** which goes beyond the question of whether there are distortions related to EU funding. It is not acceptable that European companies are excluded from several foreign markets or have to deal with significant investment and public procurement barriers while their foreign competitors can win contracts on the European market or elsewhere with financial support of the European Union.

- Rules similar to Module 1 or Module 3 should apply to EU funding programmes, but the Commission should be the exclusive supervisory authority as EU funds are involved. As decisive criterion, a **strict principle of reciprocity** should be applied and 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 or development aid). In other words, **access to EU funding by non-EU companies should be made conditional to both EU companies' access to the market and public funding possibilities of the third country**.

- The White Paper mentions grants but not explicitly the crucial – yet somewhat more complex – case of the **Connecting Europe Facility (CEF)**, which aims at funding key infrastructure and transport projects with a budget of EUR 30.5 billion for the years 2014 to 2020. With regard to CEF there should be a required commitment on their grants beneficiaries (in the case of public authorities) **not to award contracts to entities benefitting from distortive foreign subsidie**s, according to investigations that have resulted or may result from Module 1 or Module 3 findings. It will be essential to ensure that grant beneficiaries follow these rules and foresee sanctions when this is not the case.

- Equally, SEA Europe holds the view that investments co-funded by European programmes should be guided by **conditionality parameters aimed at prioritizing return of investment in European economy** and by stronger selection and award criteria focusing on **creation of EU employment and added value, including throughout the full European (maritime) manufacturing value chain**.

- Equally, the provision of EU co-funding grants to projects involving third country suppliers or providers of goods and services should be conditional upon the **enforcement of rigorous due diligence assessment to ensure level playing field for European shipyards and equipment manufacturers**. In this regard, the current **EIB Transport Lending policy**[14] **criteria relating to the specific situation of shipbuilding should be considered and extended *mutatis mutandis* across all European public support programmes and financing tools for maritime projects, including CEF**. EIB Transport Lending Policy Article No 97 states "*There are strong imbalances in the global shipbuilding market and the global trade rules of the World Trade Organisation or other internationally recognised fora are very*

[14] The EIB adopted a revised transport lending policy on 13 December 2011. The revised transport lending policy sets the EIB's guiding financing principles and selection criteria https://www.eib.org/en/publications/eib-transport-lending-policy

difficult to apply and enforce in the sector. Attempts to create a specific Shipbuilding Agreement in the OECD failed after many years of negotiations. Therefore, the EIB will satisfy itself inter alia after its procurement review, that vessel prices in projects that it finances are in line with market prices and will check, in close cooperation with the Commission services responsible for the existence of any outstanding issues concerning (i) Intellectual Property Rights, (ii) potential breaches of trade agreements and, (iii) as far as possible, the risk of distortions caused by anti-competitive practices (including, inter alia, state aid, direct subsidisation, injurious or below-cost pricing, or subsequent public rescue of bankrupt companies) in the producer country or in the shipyard concerned; ***The Bank will not finance shipping projects where such satisfaction cannot reasonably be obtained****. Given the regulated environment in the EU, it is expected that most shipping projects the Bank finances will be performed in European shipyards".*

- Finally, with regard to EU funds under "*Indirect management*", i.e. by which the Commission entrusts budget implementation tasks to other entities (e.g. International Financial Institutions, IFIs, such as EIB or EBRD), SEA Europe welcomes the innovative proposals made in this respect and calls for an ambitious approach of streamlining disciplines on foreign subsidies across all projects implemented by IFIs with the support of the EU budget. In practice, this would mean that **IFIs should develop rules to tackle foreign subsidies and abnormally low tenders and exclude these while blacklisting bidders for a sufficiently deterrent period of time.**

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ANNEX

THE PROBLEM OF FOREIGN SUBSIDIES IN SHIPBUILDING AND THEIR ADVERSE IMPACT ON THE EUROPEAN MARITIME TECHNOLOGY INDUSTRY

Historical and statistical evidence

"*EU yards have continuously lost market shares to Asian competitors even in segments which they traditionally dominated, despite major efforts to innovate and to raise productivity*" First Report from the European Commission to the Council on the Situation in World Shipbuilding, COM (1999) 474 final).

"Asian competitors have a track record of attracting orders for sophisticated tonnage through extremely low prices" Second Report from the European Commission to the Council on the Situation in World Shipbuilding, COM(2000) 263 final.

1. Introduction

Countries around the globe, notably in Asia, traditionally regard shipbuilding as a particularly sensitive industrial sector to protect and to financially support. Shipbuilding is indeed of strategic importance in many respects. Amongst others, it develops advanced technologies that offer considerable spin-offs to other sectors, including marine renewable energy for instance; it provides essential means of transport for international trade; it supplies modern navies with advanced vessels, a key element for effective military operations, and is an important generator of export income. Therefore, large volumes and various forms of state support to shipbuilding and unfair practices (e.g. injurious pricing in the form of dumping) from third countries and foreign shipbuilders have a long track record, causing tremendous distortions to normal market functions with very adverse impacts on European shipyards.

2. Types and magnitude of market-distorting foreign government subsidies and support measures in shipbuilding

Different forms of direct and indirect subsidies and other support measures, especially practised for decades by Asian shipbuilding nations, include: entry subsidies, production subsidies, investment subsidies, debt forgiveness, debt-for-equity-swaps and interest relief by government-owned and government-controlled banks; reservation of the domestic market for local shipyards; import restrictions, "home built" preferences linked to national shipping services (cargo-reservation schemes); loans and loan guarantees to shipyards and shipowners below normal market conditions or linked to domestic build-in requirements.

By way of illustration, a study undertaken in 2019[15] estimated the amount of government support to Chinese domestic shipbuilding companies between 2006 and 2013 to stand at USD 90 billion. The lion's share goes to entry subsidies, followed by production subsidies and investment subsidies. According to the same study, this has boosted China's domestic investment and entry by 270% and 200% respectively, and increased its global market share by 40%, creating sizeable distortions. **Another report, published on 8 July 2020 by the US Centre for Strategic and International Studies[16], estimates that the combined state support to Chinese firms in the shipping and shipbuilding industry totalled roughly $132 billion between 2010 and 2018.** This includes financing from state banks ($127 billion) and direct subsidies ($5 billion). Owing to data limitations and the opacity of China's political system, this conservative estimate does not include direct subsidies to unlisted firms, indirect subsidies, state-backed fundraising, preferential borrowing rates, and other nonmarket advantages from China's state capitalist system.

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[15] "***China's Industrial Policy: an Empirical Evaluation***", Panle Jia Barwick, Myrto Kalouptsidi, Nahim Bin Zahur; NBER Working Paper No. 26075 Issued in July 2019,

[16] **"Hidden Harbors"** by Jude Blanchette, Jonathan E. Hillman, Maesea McCalpin and Mingda Qiu, CSIS-briefs, July 2020.

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 in shipbuilding and shipping. This has in turn induced (Asian) shipbuilding companies to engage in injurious pricing practices which resulted in tremendous distortions of competition, with European maritime industry 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, fuelling the perpetuation of the same (vicious) circle of trade distortive practices. 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. In the meantime, shipyards which lose a lot of money in market segments with strong price distortions are tempted to try to enter, with very low prices, into market segments with look less distorted as the "losses" to make inroads in such healthier markets are seen as an acceptable "entry fee", with the backing of the domestic government in the context of aggressive state-led strategies.

3. The lasting damaging impact of foreign subsidies on European shipbuilding industry

Unfair competition resulting from aggressive State-led policies from Asian shipyards have led Europe to suffer over the last three decades from a continuous loss of global market shares, loss of entire ship market segments and subsequently loss of technical competences and capabilities => domino effect. The process already started with the strategic expansion of Japan in the 70ies, followed by that of Korea in the 90ies (in the case of Korea, extensive government support has continued to play a vital role until today). Europe first tried to hold against the outside pressure of these unfair prices by allowing operating aids to shipyards. However, gradually, Europe exited from this line of policy and, in 1998, decided to abandon the system of "operating aid".

In the 90ies, European shipbuilding industry had already been pushed out from the standard ship segments (e.g. bulk carriers and oil tankers) by Asian shipyards, but was still maintaining a good presence in the more sophisticated and technological ship types of wet cargo (product and chemical carriers) and mid-sized container ships. In the following years and till today the European shipbuilding industry has progressively lost market shares, including in those high tech, complex segments in which EU yards were leaders. With the shipbuilding crisis sparked by the Lehmann collapse in 2008, Europe lost its container shipbuilding business, which e.g. in Germany made up 50% of the orderbook at that time. In the remaining niche (high-tech) segments, a highly competent and competitive shipbuilding industry has evolved in Europe. However, now China is entering into these markets with aggressive Government-led strategies (e.g. Made in China 2025) enabling their yards to purse unsustainably low pricing towards (European) customers to the detriment of European shipbuilders.

It is interesting to recall that under EU Council Regulation 1540/98, the European Commission was required to present to the Council regular reports on the world shipbuilding market situation and appraise whether European yards were affected by anti-competitive practices. These reports adopted by the European Commission include detailed cost investigations for shipbuilding orders awarded to Asian yards which illustrates the gradual loss of market shares experienced by EU yards even in (increasingly) technologically complex sectors as a result of unfair competition.

Finally, it should be highlighted that Europe still controls the most advanced and sophisticated supplier industry to shipbuilding. The European maritime equipment industry is world leading in developing and manufacturing green and climate friendly maritime products and solutions. The European maritime equipment industry still captures a significant pie of the world market for shipbuilding supplies including the markets in Asia. However, the sector's market share has been declining in recent years while the market shares of notably China's as well as South Korea's supplying industries have been on the rise. Partly responsible for

this decline has also been state support measures often combined with local content requirements in order to promote local Asian marine equipment manufacturers.

SPECIFIC EXAMPLES:

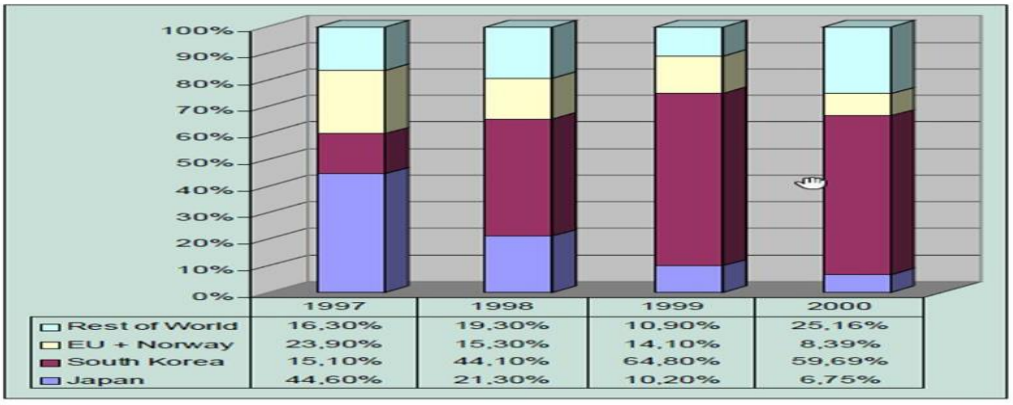
a) The Container ships Segment

The afore-mentioned Commission reports, around 20 years ago, highlighted that "*European yards have had a particular expertise in very large container ships (Post Panamax), as these vessels are technologically demanding and follow different and more complex design paradigms*".

In terms of Compensated Gross Tonnage, container vessels represented globally the largest market segment in 1998. The European Commission reports observe that "*Post-Panamax ship-type has been invented in Europe in 1988 and until recently was a domain of EU and Japanese yards. (…) It should be in the EU's strategic maritime interest to maintain the competence for the construction of these vessels. Moreover, Post-panamax container ships are a product of the EU's most modern and technologically advanced shipyards and if these yards cannot attract these orders the reasons must be sought beyond the question of industrial competitiveness as such".*

The reports note that "*Korean yards have made very significant inroads into the market for container vessels since 1997"* expressing the concern that the developments in the market for container vessels could be repeated for ferries and cruise vessels.

Fig. 3 - Market shares in new orders for containerships in percent and based on cgt, 1997-2000 (*)



	1997	1998	1999	2000
Rest of World	16,30%	19,30%	10,90%	25,16%
EU + Norway	23,90%	15,30%	14,10%	8,39%
South Korea	15,10%	44,10%	64,80%	59,69%
Japan	44,60%	21,30%	10,20%	6,75%

Source: Lloyd's Register of Shipping

Source: Second Report from the European Commission to the Council on the Situation in World Shipbuilding, COM(2000) 263 final.

b. LNG Carriers

The afore-mentioned Commission reports[17] recall that "*LNG carriers are highly specialised and expensive vessels. Considerable know-how is required for the construction of the cargo tanks and the ship's machinery, and EU yards have been a key player in this market segment in the past"*.

Looking at the period 1990 to 1998, the reports note that 63% of all LNG carrier orders were placed in Japan, with the EU holding 27% of the market and Korea standing at 10%. The report then notes that in the year 1999

[17] Second Report from the European Commission to the Council on the Situation in World Shipbuilding, COM(2000) 263 final

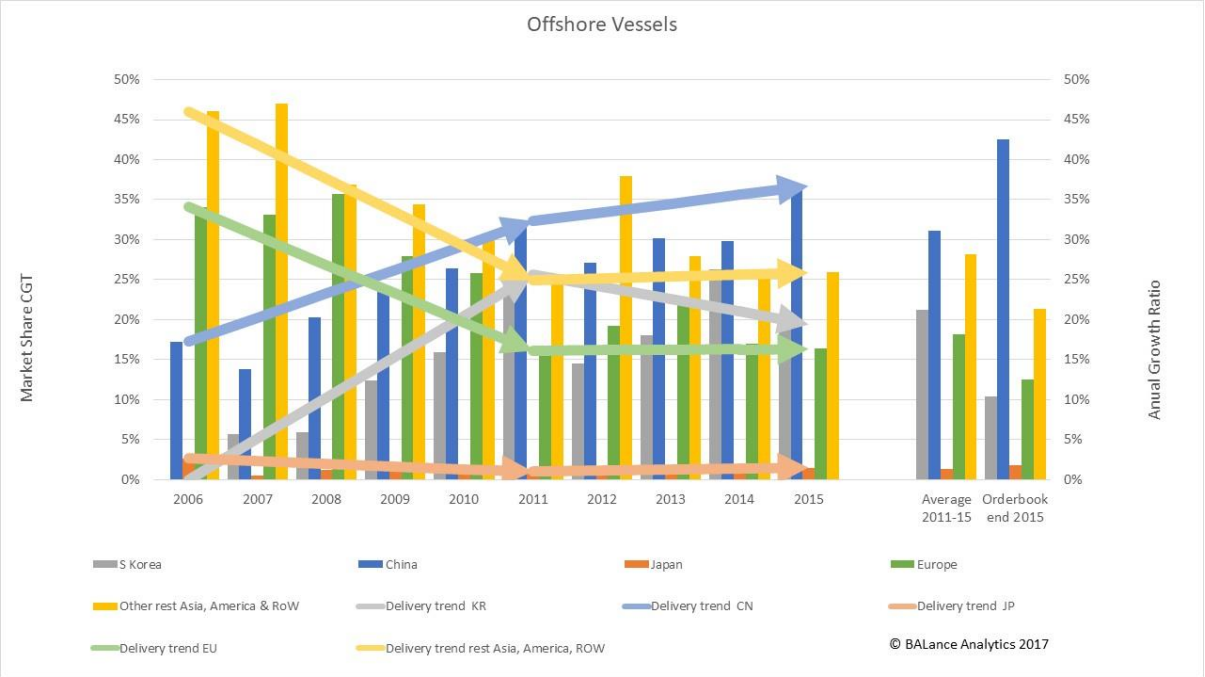
the LNG carrier orderbooks showed 43% for Japan and 57% for Korea. No orders were placed in the EU. The report notes that "*This is another example of Korea making inroads into a high-value market segment previously held by Japan and the EU and (…) the erosion of another EU market niche should raise concern*".

The Commission's detailed cost investigations for orders placed in South Korean yards confirm that Korean yards made inroads in this area due to very low offer prices (not covering cost of production), as has been the case before in certain tanker segments and for containerships.

c. Offshore vessels

Offshore vessels (including drilling/production/lifting units) rank amongst the most technologically complex ship types existing. A report from the OECD WP6[18] notes that "*despite similarities regarding input used, the re-orientation of shipyards into the offshore sector involves various and elevated risks. These are notably linked to complicated construction processes, strict regulations, high levels of investment needed and the absence of a level playing field in the market".*

According to an EU-sponsored study carried out by BALance in 2017[4] "*Europe lost 30% market shares in the period 2006 to 2011 and levelled out at 15% market share by 2015. China and South Korea inherited all those lost market shares and stand at the end of that period with a market share of 35% and 20% respectively. With regard to the orderbook China has the largest share with >40%* ."



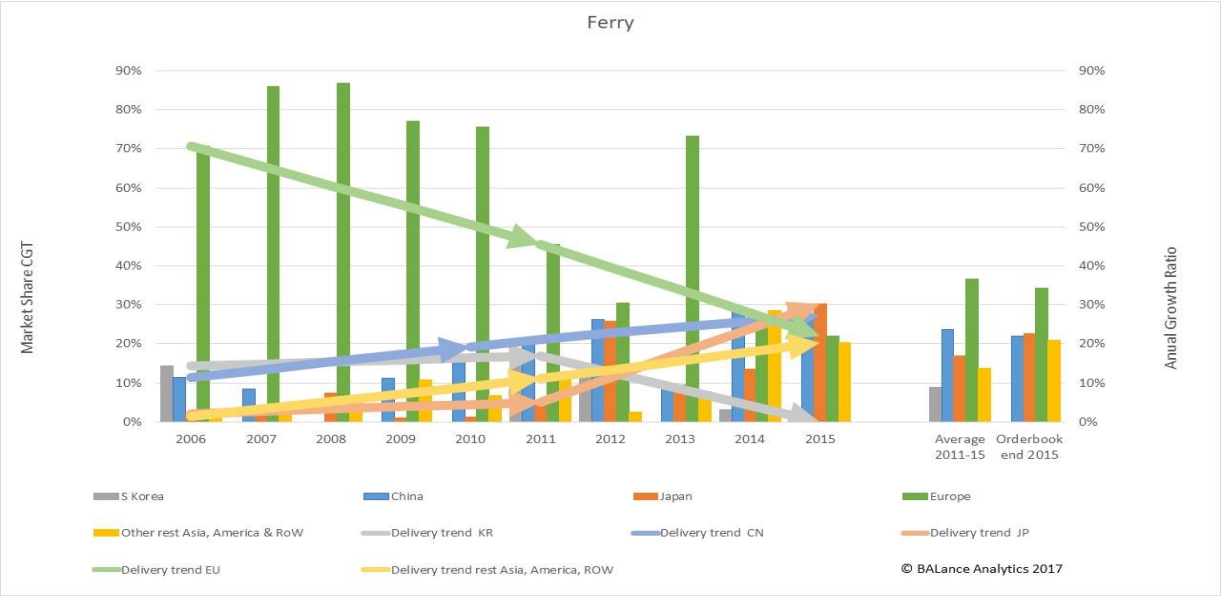
Source: Balance, New Trends in Globalisation in Shipbuilding and Marine Supplies: Consequences for European Industrial and Trade Policy, 2017.

d. Ferries

The same study from BALance highlights that "*ferries, very interestingly, showed a declining delivery record for Europe losing market share from 70% in 2006 down to 20% in 2015. Over the same period China, Japan and*

[18] See: (2015) OECD WP6 Report "SHIPBUILDING AND THE OFFSHORE INDUSTRY"

Rest of the World equally gained market shares of up to 20% each (…). *It seems that ferries are seen as a kind of bridge market to cruise ships where countries hope to build up experience*".



Source: Balance, New Trends in Globalisation in Shipbuilding and Marine Supplies: Consequences for European Industrial and Trade Policy

More recent figures show the complete shift of ferry newbuilding from EU shipyards to Chinese yards:

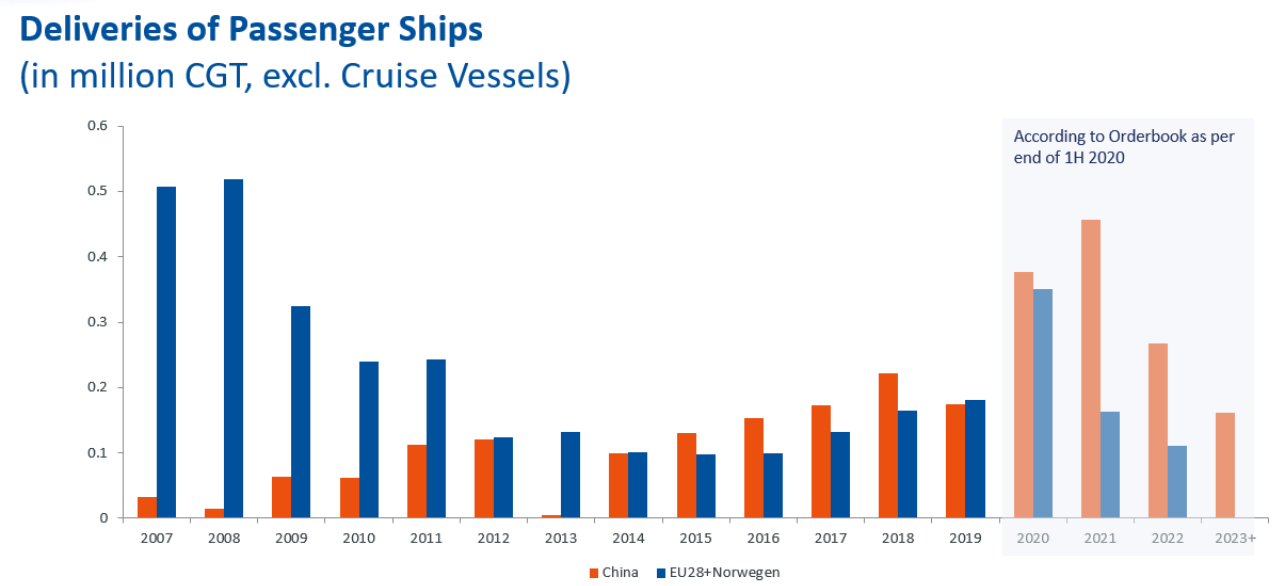
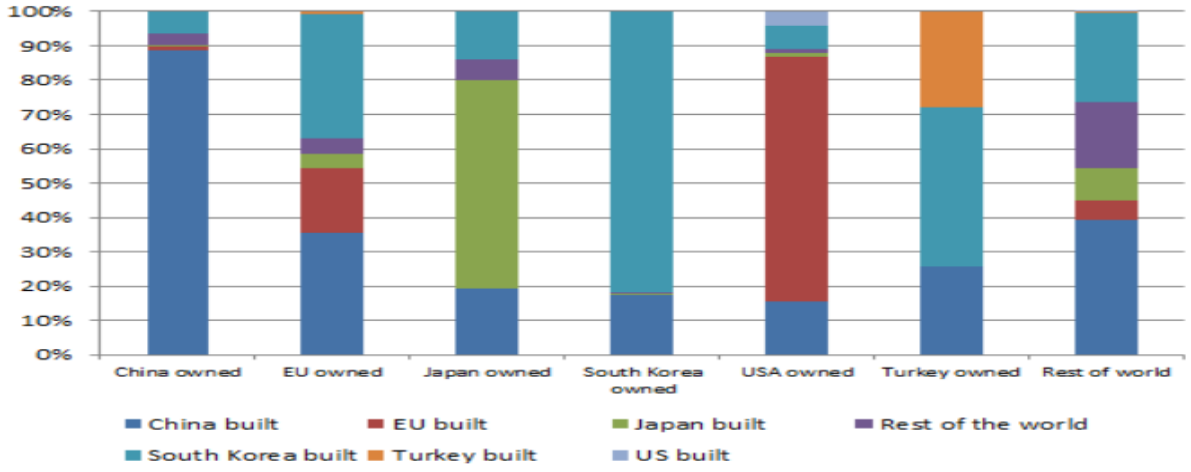


Chart: VSM. Data source: IHS Fairplay

In this respect, recent analysis within SEA Europe indicates that all Chinese newbuild ferries for European customers are commercially unrealistically priced, i.e. offer prices below cost of production. Even under best case (conservative) assumptions, when comparing the Chinese ferry contract prices with Chinese production costs, the analysis shows a price/cost gap ranging from -9% to -58%, with an average - 30%, illustrating projects with systematic and heavy financial losses.

Finally, the picture below shows that less than 20% of the ship order book of EU ship-owners is with EU shipyards in sharp contrast to the main Asian ship-owning nations that place a majority of orders with their domestic shipyards:

Figure 10. Orderbook by ownership and building areas, 2018



Source: "Maritime Subsidies - Do They Provide Value for Money?" (2019) International Transport Forum (ITF) - OECD

4. Conclusions

In sum, foreign subsidies and unfair trading practices (e.g. injurious pricing of ships) have a long track record in shipbuilding and more recently aggressive State-led industrial plans in some third countries are explicitly targeting Europe's leadership in high-tech shipbuilding and maritime equipment.

Contrary to most other manufacturing industries, European shipbuilding is not properly covered by WTO and EU trade defence instruments and has thus been exposed to global and fierce unfair competition for decades, without any effective protection tool against these foreign (mainly Asian) trading practices. At the same time, the present "WTO-minus situation" for shipbuilding on a global level – de facto determined by the lack of effectively applicable trade remedies - is tremendously at odds with the "WTO-plus approach" within the EU based on a strong subsidy control and enforcement regime.

For the reasons above, SEA Europe has been urging the European Union to act in all possible ways to address all the severe deficiencies of the current WTO and EU trade defense rules for shipbuilding and to urgently develop new tools to establish a much-needed global level playing field to safeguard the European maritime technology industry from the distortive impact of foreign subsidies and unfair trade practices.

Without any concrete action taken soonest, Europe risks to lose its current global leadership in the (remaining) complex civilian shipbuilding segments as well as within the maritime equipment segment. Without any action, Europe's (maritime) autonomy, defence and security, access to trade and seas, global leadership in complex shipbuilding and maritime equipment manufacturing, added value creation and 1 million jobs will be at stake. All this especially due to a lack of a level EU playing field in the shipbuilding and maritime equipment industry.

This risk was clearly acknowledged in the afore-mentioned BALance Study carried out for DG GROW in October 2017, which concluded that "***the next decade will determine whether Europe's shipbuilding sector will continue to grow and survive or instead decline and ultimately disappear***".