EUROPEAN UNION
DELEGATION TO THE UNITED STATES OF AMERICA

COMMENTS BY THE EUROPEAN UNION TO THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

REQUEST FOR COMMENTS: INITIATION OF SECTION 301 INVESTIGATION: CHINA'S ACTS, POLICIES, AND PRACTICES TARGETING THE MARITIME, LOGISTICS, AND SHIPBUILDING SECTORS FOR DOMINANCE (FR VOL. 89, NO. 78 OF 22 APRIL 2024)

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The European Union ("EU") takes note of the initiation by the United States ("U.S."), on 17 April 2024, of an investigation under Section 301 of the Trade Act of 1974, as amended (19 U.S.C. §§2411-2420), to determine "China's Acts, Policies and Practices Targeting the Maritime, Logistics and Shipbuilding Sectors for Dominance". The EU notes that the investigation has been launched in response to a 12 March 2024 petition ("Petition") filed by five U.S. labour unions ("U.S. Petitioners"). In response to the public request for comments via the Federal Register notice[1], the EU takes this opportunity to provide the following comments.

From the outset, the EU wishes to highlight the importance that it attaches to advancing EU-U.S. transatlantic cooperation, to deepening transatlantic trade and economic relations based on shared interests, and to avoiding unnecessary trade tensions, in particular via the work undertaken in the Trade and Technology Council. These joint aims have been reflected in various EU-U.S. Summit statements and Trade and Technology Council Joint Statements. Against this important background, we stress the importance that the outcomes of this Section 301 investigation do not have any discriminatory or unintended negative economic effects on close U.S. trading partners, like the EU.

1. The EU's long-standing concerns on the subsidies affecting the global shipbuilding sector

The EU fully understands the importance the U.S. attaches to its domestic production capabilities in the shipbuilding, maritime, and logistics sectors. Subsidies in the global shipbuilding sector are a long-standing concern for the EU, which is committed to market-based competitive conditions in those sectors. European shipyards have the know-how to build any commercial ship type. However, over the past years, Europe has lost nearly its entire merchant shipbuilding sector (including tankers, bulkers, carriers, and container ships) to Asia, along with a substantial portion of its non-cruise passenger ship production (such as ferries), and a large part of its offshore construction[2]. Europe currently holds a dominant position in the construction of cruise ships. Nonetheless, China is rapidly emerging as a significant competitor.

To this end, the EU has worked to address this, inter alia, by taking part in the work of the Organisation for Economic Cooperation and Development ("OECD"), including in the context of Shipbuilding Committee ("Shipbuilding Committee"). The core mission of this Committee is to work towards and assist governments in the reduction of factors that distort normal competitive conditions in the shipbuilding industry, and in designing and implementing policies that foster normal competitive conditions. The EU is firmly of the view that government measures and practices that hinder free and fair competition and distort the level playing field in the shipbuilding industry should be discouraged.

The EU recognises that the special characteristics of ship purchase transactions have made it impractical to apply countervailing and anti-dumping duties. The reason is that trade defence measures apply only when goods are formally imported into the EU, and this is generally not the case of ships operating in the international transport sector.

With the objective of overcoming the challenges in applying standard trade defence rules to the shipbuilding sector, the EU has since 1988 supported negotiations on a sector-specific agreement at

[1] As indicated at Federal Register Notice: FR Vol. 89, no. 78 of 22 April 2024; Federal Docket Number: USTR–2024–0004, USTR–2024–0005).

[2] SEA Europe – Shipbuilding Market Analysis. Available at the following link: 2023_Shipbuilding_Market_Analysis_April_2024.pdf (seaeurope.eu) (accessed on 22 May 2024).

the OECD and welcomed the conclusion in December 1994 of the negotiations for an "Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry" ("OECD Shipbuilding Agreement"). We welcomed the broad support for this reflected by the fact that the Agreement was concluded by the EU, Japan, Norway, South Korea, as well as the U.S.

The EU adopted the corresponding implementing regulation already in 1996[3] ("EU Regulation"). If applied, the EU Regulation would have allowed the EU to take action on a case-by-case basis against any injuriously priced vessel whose sale at less than normal value causes injury to the EU industry. Its application was, however, conditional on the entry into force of the OECD Shipbuilding Agreement. As the U.S. did not ratify the agreement, it did not enter into force, which in turn prevented the EU Regulation from entering into force.

Within the OECD Shipbuilding Committee, the EU discusses with Japan, Korea, UK and other shipbuilding countries how to improve transparency of subsidies and achieve normal competitive conditions in the shipbuilding sector. In this respect, a key exercise carried out by the OECD Shipbuilding Committee is the Inventory of Subsidies and Other Support Measures ("Inventory exercise"), an annual collection and exchange of information on government support measures granted by OECD Shipbuilding Committee members. The Inventory exercise is complemented by the OECD Shipbuilding Committee work on "Peer Reviews", which covers support measures in addition to industry and market developments.

Furthermore, OECD Shipbuilding Committee collects and analyses information on Policy and Market developments in non-Shipbuilding Committee economies. Recent reports in this area demonstrate the rapid growth of the Chinese shipbuilding industry in recent years and the high number of support measures it has benefitted from.

2. EU views on the potential negative impact of the remedies requested by the U.S. Petitioners

The EU is aware that the U.S. Government has yet to determine if there is a cause for action under the investigation and that the investigation is still ongoing. However, the EU takes note that the U.S. Petitioners have requested five potential remedies in their Petition as an outcome of the investigation[4]. The EU would like to share its views on these potential remedies.

A. First remedy requested by the U.S. Petitioners: "Port Fee for ships made in China"

The U.S. Petitioners request the establishment of a fee on all vessels built in China that will dock at U.S. ports. More specifically, the U.S. Petitioners outlined that "*given that major U.S. ports handle over 10,000 incoming vessels per year, a hypothetical fee of even one million per vessel would generate billions of dollars in revenue*." As a result, U.S. Petitioners envisage that a new port fee could generate up to $ 10 billion of revenues. At the same time, U.S. Petitioners highlighted that the U.S. Maritime Administration has available for use at least three Chinese-built vessels. Against this background, the

[3] Council Regulation (EC) No 385/96. Now codified via "Regulation (EU) 2016/1035 on Protection against Injurious Pricing of Vessels".

[4] Page 112 onwards of the Petition.

U.S. Petitioners suggest that Chinese-built vessels available for use by the U.S. Maritime Administration should be exempted from such a port fee[5].

The EU wishes to highlight that that the EU shipping sector is a global industry and active in all main trade lanes and segments, including tanker and bulk and of great benefit to the capacity of EU and U.S. economic operators to trade successfully across the Atlantic and with other countries. European lines are particularly important in the container segment[6].

According to publicly available statistics, EU economic operators in the container shipping sector account for 34.1% of the global shipping market (existing fleet and order book combined)[7]. Notably, four of the five largest shipping lines in the world (by capacity) are based in Europe. EU shipping companies own or operate between 30 and 40% of global tonnage in the key segments including LNG carriers, tankers, bulk, and container vessels.

The Port Fee – as requested by the U.S. Petitioners – would have a direct impact on ships carrying goods ordered by U.S. importers.

It should therefore also be noted that while a port fee for Chinese-built ships might be paid by third countries' economic operators, these costs will likely be passed on to U.S. importers and, ultimately, U.S. consumers. There is no need to recall that the shipping sector has been affected only in the past two years by the so-called Red Sea Shipping Crisis, as well as the dramatic increase of freight costs during the 2021/2022 period.

The Red Sea Shipping Crisis is already causing hundreds of vessels to avoid the Suez Canal, one of the world's most important waterways. These events had a sizeable economic impact worldwide, including in the EU and U.S., including an estimated increase of inflation[8]. The annual fees – as requested by the U.S. Petitioners - of up to or exceeding $10 billion at U.S. ports targeting all Chinese-built ships could thus lead to a potential increase of freight costs and ultimately increasing costs for U.S. importers and consumers and it could fuel inflation concerns.

In addition, a particular impact of such a port fee is likely to be felt in the U.S. energy sector. In a move away from Russia, Europe is importing an increasing amount of U.S. LNG, reaching roughly 50 % of U.S. exports in 2023[9]. At least four new terminals are expected to open in Europe between 2024 and 2027. In the absence of a U.S.-built fleet, the transport of the gas requires advanced new vessels usually

[5] Page 116 of the Petition: "*Given the Maritime Administration's current reliance on vessels that are not made in the United States for the MSP and TSP programs, any Chinese-built vessels currently enrolled in these programs should be temporarily exempted from the port*"

[6] The European Commmunity Shipowners' Associations (ECSA) estimated in 2020 the direct economic impact of the sector to be 685,000 jobs representing a €65 billion contribution to GDP. The broader economic impact is of course much larger, accounting for 2 million jobs and €149 bn in GDP once supply chain and worker spending multiplier impacts are taken into account. Source: ECSA – Infographic: The Economic Value of the EU Shipping Industry, 2020 Update. Available at the following link: https://www.ecsa.eu/resources/infographic-economic-value-eu-shipping-industry-2020-update (accessed on 22 May 2024).

[7] Top 100 shipping companies worldwide. Full list available at the following link: https://alphaliner.axsmarine.com/PublicTop100/ (accessed on 22 May 2024).

[8] Source: https://www.jpmorgan.com/insights/global-research/supply-chain/red-sea-shipping (accessed on 22 May 2024).

[9] U.S. Energy Information Administration | Natural Gas Monthly. Available at the following link: https://www.eia.gov/naturalgas/monthly/ (accessed on 22 May 2024).

sourced in Asia. Subjecting these vessels to a port fee could disrupt LNG supply chains, with possible effects on transatlantic energy security at this critical juncture of the Russian invasion of Ukraine

Any fee on vessels built in China docking at U.S. ports would hit European shipping companies directly and would risk leading to disturbances in the international maritime transport serving the U.S. economy. For example, for high-value containerised cargo, European operators provide at least half of global transport, and a lot is done with Chinese-built vessels. Furthermore, the ability to continuously adjust the capacity of European operators' global networks is essential, and a restriction on the use of a major asset, such as container vessels, would harm efficiency of the entire network and drive up costs (and freight rates globally, not only to the US).

It should also be noted that higher shipping costs and longer delivery times can cause frictions in supply chains, and less reliability for end-users. Disruption of services and changes in the global transportation networks may also lead to increased congestions in major U.S. ports. The disruptions and congestion during the COVID crisis, during which ports were closed or operated at reduced capacity, are a testimony to the potential knock-on effects of restrictions on the operational capacity of shipping lines.

Finally, the U.S. Petitioners single out the "EU Regulation" as a model that the U.S. could follow for the establishment of such a dock fee[10]. The EU wishes to clarify that no such blanket port fee was envisaged in the EU Regulation. Rather, the EU established a complaint system with detailed procedures and timelines for the launch of a complaint-based or ex-officio investigation against certain ships. The EU Regulation provides that the EU could apply a mechanism to investigate foreign sales of injuriously low-priced ships, impose injurious pricing charges on the shipbuilders involved, and deny docking privileges to such shipbuilders' vessels if the charges were not paid. However, any EU measure would have been the outcome of an ad-hoc and specific investigation for each vessel investigated. The approach taken by EU is to mimic what the EU – and the U.S. – already do via usual trade defence instruments namely, a case-by-case analysis rather than a one-size fits all mechanism, which would not take into account the specificities of each case.

For these reasons, the EU urges the U.S. to avoid that the outcome of the U.S. 301 investigation would lead to measures affecting – directly or indirectly – EU economic operators.

B. *Second remedy requested by the U.S. Petitioners: "U.S. Commercial Shipbuilding Revitalization Fund"*

The second remedy requested by the U.S. Petitioners provides for the use of the annually collected port fees for the establishment of a new fund. If such a fund were to be established, the EU wishes to recall that any support which would be granted to the U.S. Commercial Shipbuilding Sector should not discriminate between domestic and third countries' producers and workers.

C. *Third remedy requested by the U.S. Petitioners: "Support demand for U.S.-built vessels"*

With regard to this requested remedy, the EU wishes to highlight that both the EU and the U.S. workers and industries are affected by the subsidies in the sector. As a result, the EU wishes to recall that any support for vessels should not discriminate between domestic and third countries' producers. Notably,

[10] "*In compliance with these provisions, the EU proposed a mechanism to investigate foreign sales of injuriously low-priced ships, impose fees on the shipbuilders involved, and deny docking privileges to such shipbuilders' vessels if the fees are not paid*" – page 114 of the Petition.

the EU wishes to underline its long-standing concerns on the Jones Act. The EU continues to view the Jones Act as a piece of legislation that restricts fair competition in the shipbuilding and shipping markets. Shipping is essentially a global, competitive and capital-intensive industry. Any restrictions on the provision of maritime transport services, for general cargo and as well more specialised waterborne activities such as off-shore supply services or dredging work creates the risk of inefficient use of the available vessels. At the same time, any non-discriminatory measure which would increase the supply of specialised vessels would be welcome by the EU.

D. *Fourth remedy requested by the U.S. Petitioners: "Address Chinese port and logistics infrastructure platforms and equipment"*

The EU emphasises that in case the U.S would decide to take this kind of action, any remedy in this area should avoid disrupting the logistics sector.

E. *Fifth remedy requested by the U.S. Petitioners: "Consultations with other nations"*

The U.S. Petitioners highlight that U.S. could launch negotiations with other major shipbuilding countries to address any concerns about their own government support programs and coordinate measures to address China's unfair practices. The EU wishes to highlight that this could be a key outcome of the investigation. Due to long-standing concerns on the subsidisation of the shipping sector, the EU is open to explore with the U.S. the possibilities for advancing potential cooperation in this area, including the possibility to establish an international sector-specific instrument that would address the needs of the shipbuilding sector. The OECD Shipbuilding Committee could be the avenue for such cooperation.

Finally, the EU also takes note that the U.S. Petitioners allege that there could be a national security risk for the U.S. The EU wishes to underline that the U.S. analysis of national security must first identify the national security interest and that the measures taken should be narrowly tailored to address the national security interest. The EU urges the U.S. to take all relevant factors into account, and that it should avoid any unilateral action that could lead to negative effects on EU economic operators or potential disruptions of supply chains on either side of the Atlantic.

3. Conclusion

For the foregoing reasons, the EU requests the following:

- That the U.S. should focus on enhancing international cooperation with the EU and other like-minded countries in the shipbuilding, maritime and logistics sectors, rather than imposing unilateral measures which would directly or indirectly impact EU economic operators and workers. The focus of such international cooperation should be to restore competitive conditions in these sectors, revitalise industries and ensure well-diversified and resilient supply chains.

- Due to the predominant role of steel as a key input for shipbuilding, we reiterate our commitment to advance cooperation with the US and other like-minded partners on overcapacity and decarbonisation issues in the steel sector.

- The U.S. should take into account all factors and possible consequences. Any unilateral measures, including port fees, by the U.S. that could directly or indirectly affect the interests of the EU should be avoided. Notably, any exemption which would be granted to Chinese-built ships available to U.S. administration or U.S. economic operators should not discriminate against EU economic operators.

- Any type of measure or support which would be established – as an outcome of the investigation – should not discriminate between domestic and third countries' economic producers.

The EU reserves its right to provide further comments and to react to any U.S. measure resulting from this investigation, notably if they – directly or indirectly – impact EU economic operators and affect jobs in the EU shipbuilding, maritime and logistics sector.