



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of lever arch mechanisms originating in the People's Republic of China**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

This proposal concerns the application of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005 ('the basic Regulation') in the proceeding concerning imports of lever arch mechanisms ('LAM') originating in the People's Republic of China.

- **General context**

This proposal is made in the context of the implementation of the basic Regulation and is the result of an investigation which was carried out in line with the substantive and procedural requirements laid out in the basic Regulation.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with other policies and objectives of the Union**

Not applicable.

### 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Interested parties concerned by the proceeding have already had the possibility to defend their interests during the investigation, in line with the provisions of the basic Regulation.

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

This proposal is the result of the implementation of the basic Regulation.

The basic Regulation does not foresee a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

An anti-dumping investigation on imports into the Community of lever arch mechanisms originating in the People's Republic of China was initiated on 28 April 2005.

In January 2006, the Commission imposed provisional anti-dumping duties on imports into the Community of the product concerned originating in China.

After the imposition of provisional anti-dumping duties, comments were received from the parties concerned. From a general perspective, the definitive findings confirm the need for anti-dumping measures as imports of the product concerned originating in China were dumped and were causing injury to the Community industry.

Market Economy Status was refused to all companies. The definitive findings confirmed that only one company could be granted individual treatment.

Since we have reverted to the data contained in the complaint, with some adjustments, to establish normal value, definitive dumping margins slightly decreased (from 33.3% to 27.1%) for the company granted IT, and from 48.1% to 47.4% for the other exporting producers. These margins remain lower than the injury margin.

Following provisional disclosure, the injury indicators and import and consumption figures have been reviewed but remain largely as at the provisional stage. It is likely that without measures, the Community industry would disappear since they are already in very vulnerable financial situation. This would mean full dependence of lever arch files producers on third country sources and a significant reduction of competition on the Community market. It is therefore concluded that the definitive measures would not be against the Community interest.

- **Legal basis**

Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as last amended by Council Regulation (EC) No 2117/2005 of 21 December 2005.

- **Subsidiarity principle**

The proposal falls under the exclusive competence of the Community. The subsidiarity principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The form of action is described in the above-mentioned basic Regulation and leaves no scope for national decision.

Indication of how financial and administrative burden falling upon the Community, national governments, regional and local authorities, economic operators and citizens is minimized and proportionate to the objective of the proposal is not applicable.

- **Choice of instruments**

Proposed instruments: regulation.

Other means would not be adequate for the following reason(s).

The above-mentioned basic Regulation does not foresee alternative options.

**4) BUDGETARY IMPLICATION**

The proposal has no implication for the Community budget.

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**imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of lever arch mechanisms originating in the People's Republic of China**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community<sup>(1)</sup> (the 'basic Regulation'), and in particular Article 9 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. Provisional measures

- (1) On 28 January 2006 the Commission imposed, by Regulation (EC) No 134/2006<sup>(2)</sup> ('the provisional Regulation'), a provisional anti-dumping duty on imports into the Community of lever arch mechanisms originating in the People's Republic of China ('PRC').
- (2) It is recalled that the investigation period of dumping and injury ('IP') covered the period from 1 January 2004 to 31 December 2004. The examination of trends relevant for the injury analysis covered the period from 1 January 2001 to the end of the IP ('period considered').

1.2. Subsequent procedure

- (3) Following the imposition of the provisional anti-dumping duty on imports of lever arch mechanisms from the PRC, some interested parties submitted comments in writing. The parties, who so requested, were also granted an opportunity to be heard orally.
- (4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings. The oral and written comments submitted by the parties were

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<sup>1</sup> OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

<sup>2</sup> OJ L 23, 27.1.2006, p. 13.

examined, and, where considered appropriate, the provisional findings were modified accordingly.

## 2. PRODUCT CONCERNED AND LIKE PRODUCT

- (5) It is recalled that, in recital (12) of the provisional Regulation, the product concerned was defined as lever arch mechanisms ('LAM') generally used for archiving sheets and other documents in binders or files. They consist of arched sturdy metal elements (normally two) on a back plate and having at least one opening trigger that permits inserting and filing of sheets and other documents, originating in the PRC ('the product concerned'), normally falling within CN code ex 8305 10 00.
- (6) One interested party claimed that one specific type of LAM should be excluded from the definition of the product concerned because (i) that type is produced under a patented design owned by the interested party and is not available from any other manufacturer, (ii) there is an exclusive supply contract with a Chinese producer, (iii) the type is exclusively used in premium special lever arch files ('LAF') with a superior quality and design compared to standard LAM and is therefore not competing with the segment of standard LAM, and (iv) this type is not economically substitutable with standard LAM in view of its much higher cost of production.
- (7) However, another interested party claimed that all LAM have the same characteristics, end uses and channels of distribution. Moreover, it stated that the manufacturing processes and costs are irrelevant for the determination of the product concerned. It also stated that any preferential treatment of one type of LAM used by only one LAF producer would cause a serious distortion not only on the Community LAM market itself, but also on the Community market for LAF.
- (8) It is considered that a patented design or an exclusive contract between an exporting producer and a European user for a certain type of product does not, as such, justify the exclusion of this type from the definition of the product concerned or the like product. A LAM with all its characteristics remains the product concerned irrespective of whether it is patented or purchased via an exclusive contract. It should also be noted that manufacturing processes, production costs and quality differences are not, as such, relevant for the determination of the like product.
- (9) The investigation confirmed that all product types including the specific type of LAM which was claimed for exclusion in recital (6) above share the same technical and physical product characteristics and uses and that the LAM market does not distinguish amongst clear market segments. All LAM, are thus substitutable and are in competition with each other on the Community market. Therefore, all types of LAM fall under the definition of the product concerned and the like product. Consequently, the claim set out in recital (6) above had to be rejected.
- (10) In view of the above, the findings made in recital (11) to (16) of the provisional Regulation are hereby confirmed.

## 3. DUMPING

### 3.1. General methodology

- (11) The general methodology used to establish dumping of the imports of LAM into the Community market was described in the provisional Regulation in recitals (17) to (50). The general methodology as set out in the provisional Regulation is hereby confirmed, with due consideration being taken of the amendments mentioned below.

### 3.2. Market Economy Treatment ('MET')

- (12) One of the companies granted IT claimed that it should have been granted MET and that its situation especially with regard to criteria two (accounting and auditing) and three (distortion carried-over from the former non-market economy system) has not properly been assessed during the investigation. The company, however, did not provide any new evidence in support of its claim.
- (13) In the absence of new facts and other comments, the findings concerning MET as set out in recitals (17) to (25) of the provisional Regulation are hereby confirmed.

### 3.3. Individual treatment ('IT')

- (14) The findings in recital (29) of the provisional Regulation with regard to the first company granted IT, i.e. Dongguan Nanzha Leco Stationery are hereby confirmed.
- (15) As mentioned in recital (30) of the provisional Regulation, the other company which had been granted IT had subsequently been excluded from the investigation because of non-cooperation. In the absence of any reaction from the company, the finding as set out in recitals (30) of the provisional Regulation is hereby confirmed.

### 3.4. Normal value

- (16) The findings below concern the determination of normal value of all exporting producers not granted MET.

#### (a) Analogue country

- (17) Following further analysis of all the information available from the producer in Iran, it had to be concluded that the information was incomplete and/or inconsistent and thus could not be used as the basis for the calculation of the normal value at the definitive level. It was therefore resorted to another reasonable basis for the calculation of the normal value in accordance with Article 2(7)(a) of the basic Regulation.

#### (b) Determination of normal value

- (18) Due to lack of information from other third countries where LAM are produced, it was considered that the data available from the complaint and from the Community industry constituted the most reasonable basis to establish normal value at the definitive level. Adjustments were made to reflect specific verified data obtained during the investigation, in particular concerning prices of raw materials and freight.

### 3.5. Export price

- (19) The exporting producer granted IT claimed that errors were made in the level of SG&A and profit calculated for a related importer and that there was double counting of the SG&A applied to establish the ex-works export price. In addition, this exporter

claimed that the SG&A figures and profits from the related companies should be revised following new calculations provided by the company after the on-site visits.

- (20) The examination of the above claims confirmed that a clerical error occurred in the SG&A calculation. This error has been corrected accordingly. However, the new data provided by the company had to be rejected because they could not be verified any longer during the investigation.
- (21) The general methodology as set out in recitals (41) and (42) of the provisional Regulation are hereby confirmed.

### 3.6. Comparison

- (22) The normal value established as described in recitals (16) to (18) above and the export prices, revised as explained in recitals (19) to (21), were compared on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison between normal value and export price, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. The factors for which adjustments were accepted are commissions, transport, insurance, handling, loading costs, ancillary costs, and credit costs.

### 3.7. Dumping margin

- (23) Following the adjustments to normal value and to export price, the definitive dumping margin expressed as a percentage of the CIF import price at the Community border, duty unpaid, applicable to the exporter granted IT, should be as follows :

Company	Definitive dumping margin
Dongguan Nanzha Leco Stationery	27.1%

- (24) Following provisional disclosure, no comments were received concerning the methodology for calculating the dumping margin for all other exporting producers. However, the adjustments made to normal value led to an amended definitive dumping margin of 47.4% of the CIF Community frontier price for all other exporting producers.

## 4. INJURY

### 4.1. Community production

- (25) Some interested parties claimed that one producer provisionally included in the definition of the Community production and Community industry should be excluded because of an alleged relationship with a Chinese exporting producer and because of large imports of Chinese LAM, in particular during the IP. Hence, they claimed that the company should be excluded both from Community production and for the purpose of assessing injury.
- (26) It is recalled that the situation of the said producer was described in detail in recitals (55) to (57) of the provisional Regulation. When examining again its situation in the

light of the provisions of Article 4 of the basic Regulation, it has to be recalled that the producer did not behave differently from other complainant non-related Community producers. Moreover, it was found that the Community producer was not in a position neither legally nor operationally to control the exporting producer from whom it imported. The claim was therefore rejected.

- (27) In the absence of any new comments concerning the Community production, the provisional findings concerning the total Community production as set out in recitals (51)-(58) of the provisional Regulation are hereby confirmed.

#### 4.2. Definition of the Community industry

- (28) One interested party argued that another Community producer should be excluded from the definition of the Community industry. Firstly, because the producer allegedly sells large quantities of LAM to related customers and is also using LAM for captive use. Secondly, because the said producer did not fully cooperate in the investigation, in particular, it did not submit a complete file accessible to all interested parties within the deadline.
- (29) After having analysed this claim, it was confirmed that the cooperation of the said producer in the investigation was not sufficient. This producer should hence be excluded from the definition of the Community industry and its output should also be excluded from the Community production.
- (30) The production of the four remaining Community producers which cooperated fully in the investigation and supported the complaint was established at around 205 million units of LAM during the IP.
- (31) The above four Community producers represent around 75% of the total Community production. Hence, these companies are sufficiently representative to constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (32) In this Regulation the absolute figures in the tables below could not always be provided. These data cannot be disclosed because one Community producer was excluded between the provisional and the definitive stage, hence its data could be derived by comparison.

#### 4.3. Community consumption

- (33) Some interested parties alleged that the volume of Community consumption was wrongly calculated. In particular, they addressed the issue that the data concerning the imports from the country concerned was based on the complaint. They claimed that the parties that participated in the investigation, in particular LAF producers and LAM importers provided the Commission with more reliable data to establish consumption.
- (34) The volume of consumption was thus recalculated on the basis of data provided by cooperating parties in the investigation. The figures shown in the table below are based on the European producers' verified sales, the imports from the PRC and on other sources made available by those users and importers which participated in the investigation. Given the high cooperation of Community producers, importers and

users, these data are considered the most reliable, even though it cannot be excluded that a small number of other users/importers exist and therefore the imports are slightly underestimated.

Table 1

<b>Consumption volume (million pieces)</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004 (IP)</b>
European Community	271	313	327	381
Index	100	116	121	141

- (35) A comparison shows that the trends in consumption volume are similar to the one described in the recital (63) of the provisional Regulation, but they indeed appear to be more accurate. In particular, it appears that the major increase in consumption occurred between 2003 and the IP, amounting to 17%. During the same period the Community industry only increased its sales volume by 3% (cf. Table 6) and that imports from the PRC significantly increased by 28% or by more than 42 million pieces (cf. Table 2).

4.4. Imports into the Community from the PRC and market share

- (36) Based on the claim made in recital (33) above, the import volume of LAM originating in the PRC was also revised. Trends relatively similar to those found in recital (65) of the provisional Regulation were observed. These trends are illustrated in table 2 below.

Table 2

<b>Import volumes (million pieces)</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>IP</b>
PRC	98.47	135.38	152.73	195.59
Index	100	137	155	199

- (37) The major difference in comparison to the import volumes established in the provisional Regulation was found for 2001 where the proposed method shows that imports of Chinese LAM were below 100 million pieces. However, it should be underlined that there exist other importers and users which imported LAM on the Community market but did not provide any input in the investigation; hence as stated in recital (34) it cannot be excluded that the import data are slightly underestimated.

- (38) In any event, the said parties claimed that the revised figures of consumption and imports would show that market share of the Chinese imports remained relatively stable since 2002. The development of market share based on revised data is as follows:

Table 3

<b>Market shares of the imports</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>IP</b>
PRC	36%	43%	47%	51%
Index	100	119	128	141

- (39) The revised data on market share indicates that Chinese imports consistently increased their presence on the Community market during the period considered: by 7 percentage points in 2002, by 4 percentage points in 2003 and again by 4 percentage points during the IP. These trends are similar to those observed in recital (65) of the provisional Regulation.
- (40) To sum up, the data provided by parties show that consumption of LAM in the Community significantly increased by 41%, or by 110 million units during the period considered. In the meantime, the imports from the PRC have significantly and consistently grown, well above the growth in consumption. The revised data show an increase by more than 97 million pieces and a market share increasing from 36% to 51%.
- (41) Although some calculations concerning imports were revised, the findings and conclusions made in recital (66) of the provisional Regulation, in particular those regarding trends between 2002 and the IP, are not contradicted by the above analysis and can therefore be confirmed.

#### 4.5. Prices of imports and undercutting

- (42) Following the claims received by interested parties, the data available on import prices was also re-examined. However, it was found that the parties that participated in the investigation could not provide complete, reliable and consistent data on prices and value of the imports from the PRC. Only partial information was available and this information was based on different sales conditions. These partial data could therefore not be used to reliably establish the import value and CIF prices of Chinese imports. Hence, the data available in table 3 of the provisional Regulation, which was based on Eurostat prices, is hereby confirmed.
- (43) Following the change in composition of the Community industry as outlined in recital (29) above, undercutting by all Chinese exporting producers of LAM was recalculated. The undercutting margin established in recital (69) of the provisional Regulation needs to be revised upwards to 38% when expressed as a percentage of the Community industry price.
- (44) On that basis, the methodology and the conclusions reached under recitals (67) to (69) of the provisional Regulation are hereby confirmed.

#### 4.6. Economic situation of the Community industry

- (45) Following the change in composition of the Community industry as discussed in recital (29), the examination of the impact of the dumped imports on the newly defined Community industry was conducted according to the methodology as outlined in recital (70) of the provisional Regulation.
- (46) The conclusions drawn below are based on the aggregated and verified Community industry data for the four remaining cooperating Community producers. Due to the exclusion of one Community producer and the fact that in the provisional Regulation, data from five producers were included in the injury assessment, the confidential data of the excluded Community producer could be derived by comparing the data of the provisional Regulation with the data in the definitive Regulation. Hence, at this stage the verified data are provided in an indexed format. It should, however, be noted that the injury indicators for the four remaining cooperating Community producers are not substantially different as compared to those established previously in the provisional Regulation for the five producers.

#### 4.7. Production capacity

- (47) Some interested parties argued and substantiated that the calculation of the production capacity in the provisional Regulation did not reflect the reality. It was stated that the production capacity should take the factual market position of each producer included in the Community industry and its real production possibility into account. This claim was accepted given that the Community industry is composed only of small and medium sized enterprises, some of them are even family businesses, which usually operate only five working days a week.
- (48) Based on the above comments, a new estimation regarding the production capacity is presented below. Adjustments have been made to establish production capacity on the basis of the five working days time-schedule, instead of seven days as done originally.

Table 4

Indices 2001 = 100	2001	2002	2003	IP
Index production (2001=100)	100	96	97	98
Index production capacity	100	95	105	106
Index capacity utilisation	100	102	92	92

- (49) As outlined above, the change in the composition of the Community industry in recital (29) did not affect the conclusions drawn in recital (73) of the provisional Regulation.

#### 4.8. Stocks

(50) The figures below represent the volume of stocks at the end of each period.

Table 5

Indices 2001 = 100	2001	2002	2003	IP
Index stocks	100	51	95	131

(51) However, as already explained in recital (75) of the provisional Regulation, it is considered that stocks held by the Community industry are not a relevant indicator for the assessment of the economic situation of the Community industry.

#### 4.9. Sales volume, market shares, average unit prices in the Community and growth

(52) The figures below represent the Community industry's sales volume to independent customers on the Community market.

Table 6

Indices 2001 = 100	2001	2002	2003	IP
Index Sales Volume	100	103	103	106
Index Market Share	100	89	85	75
Index Average sales prices (EURO/ thousand pieces)	100	93	90	86

(53) The analysis of the revised data confirms the conclusions in recitals (77) to (80) of the provisional Regulation. It shows that the Community industry could slightly raise its sales volume during the period considered by 6%. In the same period the Community consumption grew by 41%, or by 110 million pieces as outlined in the table 1 above.

(54) The Community industry also suffered from significantly dropping average sales prices (by 14%), while more low-priced dumped imports were penetrating the Community market. Their market share decreased as well.

#### 4.10. Profitability

(55) The profitability margins shown below are established as outlined in recital (81) of the provisional Regulation. The margins changed only slightly for the IP:

Table 7

Profitability on Community Sales (RoT)	2001	2002	2003	IP
Index Profitability on EC sales		-4%	-6%	-14%

(56) Profitability was negative throughout the period considered. The conclusions as contained in recital (82) of the provisional Regulation are hereby confirmed.

4.11. Return on investments, cash flow, investments and ability to raise capital

(57) The revised trends for the return on investments, cash flow and investments are shown in the following table.

Table 8

Indices 2001 = 100	2001	2002	2003	IP
Index Return on Investments (total companies)	100	-191	-45	-364
Index Cash Flow (total companies)	100	39	56	-79
Index Investments (product concerned) in EUR	100	136	130	105

(58) As already outlined in recitals (84) to (86) of the provisional Regulation, the decreasing trend of the Community industry's sales prices significantly affected its profitability. Accordingly, this had a negative impact on the injury indicators linked to the profitability level. It can be noted that the above negative trends observed for return on investments and cash flow reflect to a large extent those on profitability shown in Table 7 above.

(59) The Community industry increased its investments by 5% only. It can also be seen that the investments diminished significantly in the period between 2003 and the IP.

(60) As far as the ability to raise capital is concerned, the findings set out in recital (86) of the provisional Regulation are hereby confirmed.

4.12. Employment, productivity and wages

Table 9

Indices 2001 = 100	2001	2002	2003	IP
Index Number of employees	100	97	94	90
Index Productivity (thousand units/employee)	100	99	104	108
Index Wages (average per employee, per annum in EUR)	100	100	97	100

(61) It is shown that also these indicators, with the new composition of the Community industry, confirm the conclusions as contained in recitals (87) and (88) of the provisional Regulation.

4.13. Magnitude of the actual margin of dumping

(62) In the absence of any comments regarding the magnitude of the actual margin of dumping, recital (89) of the provisional Regulation is hereby confirmed.

4.14. Effects of past dumping or subsidization

(63) As outlined in the recital (90) of the provisional Regulation, the Community industry is not recovering from the effects of past dumping or subsidization.

#### 4.15. Conclusion on injury

(64) The investigation showed that imports from the PRC had significantly increased both in absolute and relative terms during the period considered. The revised import data show that the volume imported increased by 97 million pieces and that the gain in market share was as high as 15 percentage points over that period. Following the revised calculations, as outlined in recital (43) above, the prices of LAM imported from the PRC were undercutting Community industry's prices by 38%.

(65) During the period considered, in view of the significant increase in consumption to which it could not participate, the Community industry sales volumes increased by 6%, but it suffered a significant loss in market shares. Faced with low priced dumped imports it also suffered from an average price decrease of 14%. The analysis of the evolution of certain other injury indicators, such as cash flow and return on investments also confirms the trends presented in recital (92) of the provisional Regulation.

(66) Furthermore, the conclusions contained in recitals (93) to (94) of the provisional Regulation are also confirmed.

(67) Based on the above, it is confirmed that the Community industry suffered material injury within the meaning of Article 3 of the basic Regulation.

### 5. CAUSATION

#### 5.1. Effect of imports from the PRC

(68) As mentioned in table 2 above, the data provided by the cooperating parties showed that during the period considered import volumes from the PRC significantly increased by 99 %, while their market share increased by 15 percentage points. During the same period the import prices of LAM originating in the PRC fell by 11%, and the overall price undercutting found for all Chinese exporting producers on the Community market during the IP was as high as 38%.

(69) As laid down in recital (97) of the provisional Regulation, the investigation confirmed that there was a coincidence in time between the surge of low-priced and dumped imports and the worsening of the situation of the Community industry. In particular, between 2003 and the IP, the Chinese imports increased by over 42 million pieces while significant price undercutting was found to exist. Hence, Chinese imports gained 4 percentage points of market share. During the same period the Community industry lost 12% of their market share even though they decreased their prices by around 4% and managed to increase their sales volume. With due regard to these findings, the conclusions as outlined in recital (97) of the provisional Regulation are confirmed.

(70) It is confirmed, as mentioned in recital (98) of the provisional Regulation that Chinese exporters practicing dumping managed to increase their market share and became the major players on the Community market, supplanting the Community industry during the IP.

## 5.2. Effects of imports from third countries

- (71) Based on the data provided by cooperating parties and as set out in recital (34) above, import volumes from other third countries are as follows:

Table 10

	2001	2002	2003	IP
<b>Imports other than PRC (million pieces)</b>	5.63	5.31	2.53	0
Index	100	94	45	-
Market share	2.1%	1.7%	0.8%	0

- (72) Based on the above data, it was concluded that the small quantities of imports from other third countries amounting to around 2% of the market in 2001 and decreasing to 0% during the IP, could not have caused the injury suffered by the Community industry.
- (73) Therefore, the conclusions as contained in recitals (99) to (101) of the provisional Regulation are hereby confirmed.

## 5.3. Effects of Chinese imports made by the Community industry

- (74) As no new information was supplied, the conclusion as contained in recitals (102) to (105) of the provisional Regulation is hereby confirmed.

## 5.4. Effects of the export performance by the Community industry

- (75) Given that the definition of the Community industry was revised, the export performance of the Community industry and whether or not the Community industry's export performance of LAM may have been a cause of the injury suffered during the IP were re-examined. The quantities exported by the Community industry are given in the table below:

Table 11

Indices 2001 = 100	2001	2002	2003	IP
Index Exports	100	66	59	46

- (76) This re-examination confirmed that the core market of the Community industry has always been the Community market. Exports outside the Community represented 17% of total sales in 2001 and only 7% during the IP. The main decrease in export sales occurred between 2001 and 2002 when export sales decreased by 34%. Subsequently, exports have consistently decreased until the end of the IP. The information available indicates that this situation is similar to that described in recitals (107) to (109) of the provisional Regulation.

- (77) One party claimed that the loss of sales in export markets suffered by the Community industry during the IP was the reason for the injury it suffered. This party also claimed that in the face of competition in its core market, a healthy industry would be expected to divert its export sales to third countries. However, the investigation showed that the Community industry, when facing injurious dumping in the Community market, was not in a position to compensate for lost sales by expanding exports to third countries.
- (78) It should also be pointed out that the Community is the main worldwide market for LAM and its downstream product, i.e. lever arch files (LAF). In addition, the investigation concentrated on the economic situation on the Community industry on the Community market. Accordingly, the analysis made on a number of injury indicators such as sales volume, sales prices and profitability, is based on the situation of the Community industry on the Community market only and is not affected by the export performances.
- (79) Furthermore, even if the decrease in export sales volume may have contributed to a certain worsening of some injury indicators such as production and may have affected the situation of the Community industry as a whole it cannot explain the significant decrease in Community industry's prices, the losses in market share and decreased profitability incurred by the Community industry during the IP in relation to LAM sold on the EC market. Therefore, the export performance could not break the causal link between the injury suffered by the Community industry and the dumped imports of LAM originating in the PRC.
- (80) The conclusion as contained in recital (110) of the provisional Regulation is therefore confirmed.

#### 5.5. Exchange rate

- (81) Some interested parties indicated that the exchange rate variation EUR/USD which amounted to around 40% between 2001 and 2004 was the main cause of any injurious situation suffered by the Community industry. It was alleged that the fluctuation in the exchange rate was one of the main drivers of the users' sourcing selection between the Community and the PRC producers. It was also claimed that Chinese exporters generally invoice their sales to EU-based customers in USD or, if invoiced in EUR, the price is linked to the EUR/USD exchange rate usually agreed at the time of the order. This allegedly had the effect of off-setting the increases in USD prices that were charged by Chinese exporters in that period. Hence, any finding of injury was claimed to be unrelated to any alleged dumping from the PRC.
- (82) It is confirmed that the exchange rate variation between the EUR and the USD was significant during the period considered. Between 2003 and the IP, however, the fluctuation was found to be limited to 10%. In any event, it is clear that the exchange rate variation cannot explain the massive dumping margin found in the PRC during the IP because the dumping calculations were not influenced by this variation.
- (83) A simulation on the impact of the exchange rate on the sales prices practiced on the Community market indicates that even without currency fluctuations significant undercutting by Chinese exporters would still continue to exist during the IP. More importantly, the alleged effect of fluctuations in the exchange rate cannot be an "other factor" within the meaning of Article 3(7) of the basic Regulation. Indeed, other

factors within the meaning of the aforementioned provision only refer to factors other than the dumped imports. However, the applicable exchange rate determines the export price of the dumped imports, i.e. it concerns the dumped imports themselves and not something else which could have injured the Community industry.

- (84) Based on the above, it is considered that the parties did not provide any evidence demonstrating that the exchange rate fluctuations could break the causal link found between the material injury suffered by the Community industry and the dumped imports.

#### 5.6. Steel price increase

- (85) One user argued that there was a serious steel crisis which caused dramatic price increases of the main raw material used in the production of LAM in the period considered. The user alleged that the steel price increase was as high as 25-40% in the first quarter of 2004.

- (86) The price increases in the steel sector were indeed worldwide and should have had an impact on all steel users, in particular during the IP. Accordingly, the normal reaction of steel users would have been to reflect cost increases in the sales prices of their downstream products. The data available, however, indicate that overall Chinese export prices increased only by 5% between 2003 and the IP, i.e. at the time of the steel crisis. This finding points to the fact that despite the steel price increase up to 40%, Chinese exporting producers did not adjust their export prices and were found to be exporting at low and dumped prices to the Community market during the IP.

- (87) The investigation showed that the Community industry's raw material costs significantly increased, in particular during the IP, but that it was prevented from adjusting its sales prices because of the significant undercutting practiced by low-priced dumped imports from the PRC on the Community market.

- (88) It is thereby confirmed that the injury suffered by the Community industry was not to any significant extent caused by the steel price increases.

#### 5.7. Conclusion on causality

- (89) Based on the above analysis, the conclusion as contained in recital (111) of the provisional Regulation is hereby confirmed.

### 6. COMMUNITY INTEREST

#### 6.1. Interest of the Community industry and suppliers

- (90) In the absence of any information submitted with respect to the interest of the Community industry and suppliers, the findings as set out in recitals (114) to (121) of the provisional Regulation are hereby confirmed.

#### 6.2. Interest of users and importers

- (91) It is recalled that replies from eight users and two importers located in the Community market were received, representing 51% of the total Community consumption. Users are usually importers as well, in the sense that they import LAM and produce lever

arch files (LAF), the downstream product. The total business of these parties is significant but the production of LAF only represents 22% of their overall activity.

#### 6.2.1. Shortage of supply

- (92) Some users reiterated their claim that any anti-dumping measure imposed is causing a shortage of supply in the Community due to insufficient capacities of the Community industry. They argued that the shortfall of European production capacity versus the level of demand was as much as 40-50%. They argued that they are forced to import and thus to pay significant amounts of duty to keep their level of activity.
- (93) It should be noted that the users did not bring any substantiated evidence that there was a shortage of LAM in the Community market before or after the imposition of provisional measures. In addition, the Community industry and other producers present on the Community market have production capacity available. If necessary, additional investments could be made and workforce could easily be increased by the Community producers to meet the demand in a market not distorted by dumping practices. Moreover, the Community market is not closed to imports from the PRC and these products will continue to be available to all users at non-dumped prices. It is also considered that underlying this claim is a fear of reduced competitiveness of the user industry, which is addressed in recitals (94) to (97) below.

#### 6.2.2. Competitiveness of the user industry

- (94) The imposition of measures should not materially affect the overall competitiveness of the user industry given that all users in the Community would have access to alternative sources of supply. The anti-dumping measures should, in principle, have no impact on the export activity of this industry and an increase of cost of production would not be significant.
- (95) As regards possible cost increases, these may affect companies which are mainly purchasing low-priced dumped products from China. In the best case scenario, considering the current market share of the Community industry, the proposed measures may lead to an average cost increase of around 2,0% of the cost of the downstream product on average. In the worst case scenario, the cost increase would amount to 3%. However, this cost increase might even be diluted if the users are able to pass on part of this cost increase to their customers, which cannot be excluded.
- (96) However, as explained in recital (128) of the provisional Regulation, the imposition of anti-dumping measures should lead to an increase of effective competition on the Community market and to the recovery of the market share and economic situation of the Community industry. This should in the short term enhance effective competition and avoid any undue price increase on the Community market.
- (97) On balance, it is confirmed that any negative impact on the cost of certain users is not such as to prevent the imposition of measures.

#### 6.3. Conclusion on Community Interest

- (98) The investigation has shown that it is likely that without any measures against dumped imports the Community industry would disappear since it is already in a very

vulnerable financial situation. This would certainly lead to the dependence of LAF producers on outside sources and to a significant reduction of competition. The imposition of anti-dumping measures should restore effective trade conditions, without undue burden or advantage, for all the parties selling and buying LAM on the Community market.

(99) It is therefore concluded that the definitive measures would not be against the Community interest.

7. DEFINITIVE ANTI-DUMPING DUTIES

7.1. Injury elimination level

(100) Based on the methodology explained in recitals (133) to (136) of the provisional Regulation, an injury elimination level was calculated for the purposes of establishing the level of measures to be imposed.

(101) When calculating the injury margin in the provisional Regulation, the target profit for the Community industry was set at 5%, a level deemed conservative and which could be reasonably expected in the absence of injurious dumping.

(102) One party argued that the injury margin should not be based on the Community industry's cost of production plus a reasonable profit, given that the Community industry is not efficient and its cost of production is higher than it should be. This party, however, did not submit any evidence to substantiate its claim. The investigation did not provide any reason to depart from the methodology followed in recital (134) of the provisional Regulation.

(103) In the absence of any other comments on this subject, the methodology set out in recitals (133) to (136) of the provisional Regulation is hereby confirmed.

7.2. Definitive measures

(104) In the light of the foregoing and in accordance with Article 9(4) of the basic Regulation, a definitive anti-dumping duty should be imposed at the level of the dumping margin calculated as regards imports of LAM originating in the PRC since it is confirmed that in all cases the injury margins were higher than the dumping margins found.

(105) On the basis of the above, the definitive duties are set as follows:

<b>Company</b>	<b>Dumping margin</b>
Dongguan Nanzha Leco Stationery	27.1%
All other companies	47.4%

(106) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of the findings of the present investigation. Therefore, it reflects the situation found during the investigation with respect to that company. This duty rate (as opposed to the country-wide duty applicable to 'all other companies') is thus exclusively applicable to imports of products originating in the country concerned

and produced by the company and thus by the specific legal entity mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to that specifically mentioned, cannot benefit from the rate and shall be subject to the duty rate applicable to 'all other companies'.

- (107) Any claim requesting the application of the individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission<sup>3</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Regulation will then be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (108) In order to ensure a proper enforcement of the anti-dumping duty, the residual duty level should not only apply to the non-cooperating exporters, but also to those companies which did not have any exports during the IP. However, the latter companies are invited, when they fulfil the requirements of Article 11(4) of the basic Regulation, second paragraph, to present a request for a review pursuant to that Article in order to have their situation examined individually.

## 8. COLLECTION OF PROVISIONAL DUTIES

- (109) In view of the magnitude of the dumping margins found and in the light of the level of the material injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by Commission Regulation (EC) No 134/2006, should be collected at the rate of the duty definitely imposed. Where the definitive duties are lower than the provisional duties, only the amounts secured at the level of the definitive duties should be definitively collected,

HAS ADOPTED THIS REGULATION:

### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of lever arch mechanisms for archiving sheets and other documents in binders and files and falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 50) originating in the People's Republic of China. These lever arch mechanisms consist of arched sturdy metal elements (normally two) on a back plate and having at least one opening trigger that permits inserting and filing of sheets and other documents.

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<sup>3</sup> European Commission  
Directorate-General for Trade  
Direction B, office J-79 5/16  
1049 Brussels/Belgium

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community frontier price, before duty, of the products described in paragraph 1, and manufactured by the companies listed below shall be as follows:

Manufacturer	Anti-dumping duty	TARIC additional code
Dongguan Nanzha Leco Stationery The First Industrial Camp, Nanzha, Humen, Dongguan, China	27.1 %	A729
All other companies	47.4 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

Amounts secured by way of provisional anti-dumping duty pursuant to Commission Regulation (EC) No 134/2006 on imports of lever arch mechanisms falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 50) and originating in the People's Republic of China shall be definitely collected at the duty rate definitively imposed by the present Regulation. The amounts secured in excess of the definitive rate of anti-dumping duties shall be released.

#### *Article 3*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*