

**COMMISSION REGULATION (EC) No 134/2006****of 26 January 2006****imposing a provisional anti-dumping duty on imports of lever arch mechanisms originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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 Communities <sup>(1)</sup>, (the basic Regulation) and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

**A. PROCEDURE****1. Initiation**

- (1) On 28 April 2005, pursuant to Article 5 of the basic Regulation, the Commission announced by a notice (notice of initiation) published in the *Official Journal of the European Union* <sup>(2)</sup>, the initiation of an anti-dumping proceeding with regard to imports into the Community of lever arch mechanisms originating in the People's Republic of China ('PRC').
- (2) The proceeding was initiated following a complaint lodged on 11 March 2005 by three Community producers, namely Interkov spol s.r.o, M.I.M.E.C.A s.r.l. and Niko — Metallurgical company, d.d. Zelezniki (the complainant) representing a major proportion, in this case more than 50 %, of the total Community production of lever arch mechanisms. In addition, the complaint was supported by I.M.L, another Community producer. The complaint contained evidence of dumping of the product concerned and of material injury resulting there from, which was considered sufficient to justify the initiation of a proceeding.

**2. Parties concerned by the proceeding**

- (3) The Commission officially advised the complainant, the exporting producers, importers, suppliers and users as well as user associations known to be concerned, and representatives of the PRC of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.
- (4) The complainant producers, other cooperating Community producers, exporting producers, importers, suppliers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) In order to allow exporting producers in the PRC to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent market economy treatment and individual treatment claim forms to the Chinese companies known to be concerned. Four companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment should the investigation establish that they did not meet the conditions for MET, and one company requested only IT.

<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 C 103, 28.4.2005, p. 18.

- (6) In the notice of initiation, the Commission indicated that sampling may be applied in this investigation for the importers. Given the number of importers which indicated their willingness to cooperate, it was decided that sampling was required.
- (7) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from three complaining Community producers, two other Community producers, five exporting producers in the PRC, 12 suppliers of raw materials, two unrelated importers and eight unrelated users in the Community.
- (8) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and community interest and carried out verifications at the premises of the following companies:
- (a) *Community producers:*
- Interkov spol s.r.o.
  - MI.ME.CA s.r.l.
  - Niko — Metallurgical company, d.d. Zelezniki
  - IML Industria Meccanica Lombarda S.r.l.
  - EJA international;
- (b) *Community users:*
- Esselte Leitz GmbH & Co.;
- (c) *Exporting producers in the PRC:*
- Dongguan Nanzha Leco Stationery
  - Wah Hing Stationery Manufactory Limited

A further three exporting producers submitted MET claim forms and stated their willingness to cooperate in the proceeding. However, they withdrew their cooperation before the verification of the MET claim forms was carried out.

- (9) In light of the need to establish a normal value for exporting producers in the PRC to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following companies:

*Producer in Iran:*

- Metalise Co.

### 3. Investigation period

- (10) The investigation of dumping and injury covered the period from 1 January 2004 to 31 December 2004 (IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2001 to the end of the investigation period (period considered).

#### 4. Product concerned and like product

##### 4.1. General

- (11) Lever arch mechanisms (LAM) are a metal product which can be one of the components of binders for storing sheets and other documents. The specification of the product mainly depends on the material used, the size of the mechanisms and the treatments of the steel.

##### 4.2. Product concerned

- (12) The product concerned is lever arch mechanisms 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.
- (13) Despite differences in some factors such as, *inter alia*, the quality and thickness of the steel, the size of the mechanisms and the surface treatment, the investigation has shown that all types of the product concerned as defined in the preceding recital, have the same basic physical and technical characteristics and are used for the same purposes. Therefore, and for the purpose of the present anti-dumping proceeding, all types of the product concerned are regarded as one single product.

##### 4.3. Like product

- (14) No differences were found between the product concerned and the lever arch mechanisms produced and sold on the domestic markets in the PRC and Iran, which served as an analogue country for establishing the normal value with respect to imports from the PRC. Indeed, these lever arch mechanisms have the same basic physical and technical characteristics and uses compared with that exported from the PRC to the Community.
- (15) Likewise, no differences were found between the lever arch mechanisms produced by the Community Industry and sold on the Community market and those imported from the PRC. They both share the same physical and technical characteristics and uses.
- (16) Therefore, these products are provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

### B. DUMPING

#### 1. Market economy treatment (MET)

- (17) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation. Briefly and for ease of reference only, these criteria are set out in summarised form below:
- business decisions are made in response to market signals, without significant State interference, and costs reflect market values,
  - firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes,
  - there are no significant distortions carried over from the former non-market economy system,

- bankruptcy and property laws guarantee stability and legal certainty,
  - exchange rate conversions are carried out at market rates.
- (18) Four exporting producers in the PRC requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers.
- (19) However, three of these exporting producers withdrew their cooperation before the verification visit took place. It was therefore not possible to verify whether these companies fulfilled the criteria set in Article 2(7)(c) of the basic Regulation.
- (20) For the remaining exporting producer, the Commission sought and verified at the premises of the company all information submitted in the MET application as deemed necessary.
- (21) The investigation revealed that the MET claim had to be rejected. The determinations for the company against each of the five criteria as set out in Article 2(7)(c) of the basic Regulation showed that the company did not meet the requirements of the above mentioned criteria two and three. In addition no conclusion could be reached with regard to criterion one.
- (22) With regards to criterion two it could not be concluded that the company had a clear set of basic accounting record which were independently audited in line with international accounting standards and applied for all purposes.
- (23) For criterion three the company failed to provide supporting documents and a comprehensive explanation as to the privatisation of the company and the re-evaluation of the assets. In light of this, the company did not demonstrate that there were no distortions carried over from the former non-market economy system.
- (24) No conclusion could be taken on criterion one due to remaining doubts on possible State interference with regard to the approval of labour contracts as well as the impossibility to determine whether all costs reflect market values. However, in view of the conclusions for criteria two and three, it is not necessary to take a decision in this respect.
- (25) The interested parties were given an opportunity to comment on the above findings.

## 2. Individual treatment (IT)

- (26) Further to Article 2(7)(a), of the basic Regulation a country-wide duty, if any, is established for countries falling under Article 2(7)(a) of the basic Regulation, except in those cases where companies are able to demonstrate, in accordance with Article 9(5) of the basic Regulation, that their export prices and quantities as well as the conditions and terms of the sales are freely determined, that exchange rates are carried out at market rates, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty.
- (27) The exporting producer to which MET could not be granted also claimed IT in the event it was not granted MET. On the basis of the information available it was found that the company met all of the requirements to be granted IT in accordance with Article 9(5) of the basic Regulation.

- (28) One additional exporting producer, not having claimed MET, requested only IT. This company had, via related companies, sales to independent customers in the Community during the IP and cooperated in the investigation. The investigation showed that the company met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.
- (29) It was therefore concluded that IT should be granted to the following two exporting producers in the PRC:
- Dongguan Nanzha Leco Stationery,
  - Wah Hing Stationery Manufactory Limited.

### 3. Normal value

- (30) The exporting company which only requested IT failed to provide a comprehensive and fully substantiated reply to the exporter questionnaire within extended deadlines. On that basis, a determination of the dumping margin was not possible and the company had to be regarded as a non-cooperating party in the investigation.

#### 3.1. Determination of normal value for all exporting producers not granted MET

##### (a) Analogue country

- (31) According to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers not granted MET has to be established on the basis of the prices or constructed value in an analogue country.
- (32) In the Notice of Initiation, the Commission indicated its intention to use India as an appropriate analogue country for the purpose of establishing normal value for the PRC and invited the interested parties to comment on the choice of the analogue country.
- (33) One user, one cooperating exporter and one non-cooperating producer objected to this proposal. The main arguments against India as an analogue country were that:
- there are only few Indian producers and there is no competition on the domestic Indian market,
  - India only produces for its domestic market and not for export,
  - the production in India is with different specifications and the production process is therefore also different,
  - the Indian volume of production is minor compared to the Chinese production,
  - the Indian production is not stable with regard to quantity and quality.
- (34) The interested parties, however, were not able to suggest a more appropriate alternative nor could they provide any details or substantiate their allegation that India was not an appropriate analogue country.
- (35) The Commission therefore sought cooperation from India but also from all other known potential analogue countries such as: Turkey, South Africa, Iran and Thailand.

- (36) It emerged however that from among those countries mentioned in the preceding recital, lever arch mechanisms are currently only produced by very few producers in India and Iran. Moreover, it was not possible to obtain full cooperation from India but the producer in Iran agreed to fully cooperate with the Commission.
- (37) The analysis of the reply showed that Iran has one producer and that this producer had domestic sales. In addition, it was found that there were substantial imports of the Chinese products on the Iranian market. It is clear therefore that the Iranian and Chinese products compete on the Iranian market.
- (38) In view of the foregoing it is provisionally concluded that Iran is the most appropriate and reasonable analogue country in accordance with Article 2(7) of the basic Regulation.

(b) Determination of normal value in the analogue country

- (39) Pursuant to Article 2(7)(a) of the basic Regulation, the normal value for the exporting producers not granted MET was established on the basis of information received from the producer in the analogue country. The normal value was established on the basis of all prices paid or payable on the domestic market of Iran for comparable product types as the transactions by the producer in Iran were found to be made in the ordinary course of trade.
- (40) As a result, normal value was established as the weighted average domestic sales price to unrelated customers by the cooperating producer in Iran.

**4. Export prices**

- (41) For the export sales to the Community of the exporter granted IT which were made via related companies outside the Community, the export price was established on the basis of resale prices to independent customers in the Community.
- (42) In all cases where the product concerned was exported to independent customers in the Community, the export price was established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

**5. Comparison**

- (43) The normal value and export prices 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.
- (44) On this basis, allowances for differences in transport, insurance, handling, loading and ancillary costs, credit, commissions and after sales costs (warranty/guarantee) could be granted to the extent that they were sufficiently substantiated. Adjustments were also made where the export sales were made via a related company located in a country other than the country concerned or the Community, pursuant to Article 2(10)(i) of the basic Regulation.

## 6. Dumping margin

### 6.1. For the cooperating exporting producer granted IT

- (45) For the company granted individual treatment, the weighted average normal value for each type exported to the Community established for the analogue country was compared with the weighted average export price of the corresponding type exported to the Community, as provided in Article 2(11) of the basic Regulation.
- (46) The provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price duty unpaid are:
- Dongguan Nanzha Leco Stationary 33,4 %.

### 6.2. For all other exporting producers

- (47) In order to calculate the countrywide duty applicable to all other exporters in the PRC, the Commission first established the level of cooperation. In this respect it is recalled that three of the four companies originally applying for MET withdrew their cooperation, and, except for one further company applying for IT only but which had to be regarded as non-cooperating, there was no cooperation from other Chinese exporting producers.
- (48) Given that there was no cooperation from exporters not granted either MET or IT, the calculation was based on facts available. The countrywide dumping margin was consequently calculated based on the most representative PCN, exported from the PRC by exporters not granted MET or IT. The export price was then compared with the normal value established for the analogue country. To ensure that this indeed was a fair comparison, the Commission additionally sought market information to establish the import prices from other exporting producers. No information found during this exercise showed that the calculations were not fair and reasonable.
- (49) On this basis, the countrywide level of dumping was provisionally established at 48,1 % of the cif Community frontier price.
- (50) This margin applies to all the producers to which no IT was granted.

## C. INJURY

### 1. Community production

- (51) The investigation established that LAM were manufactured by the following producers in the Community during the investigation period: the three complainant Community producers, two other producers who supported the complaint and fully cooperated with the Commission during the investigation and Esselte who was only producing LAM for its own use.
- (52) Another company was producing and importing lever arch mechanisms exclusively for its own use during the IP. However, it stopped production in the course of the IP. The company replied to the questionnaire intended for Community producers and provided the data on its own production.
- (53) One further producer who submitted a letter of support to the complaint was found not to have produced the product concerned during the IP.

- (54) The complainants alleged that some other companies were producing the product concerned during the IP, however in limited quantities. These companies did not make themselves known nor did they provide their production figures in the context of the investigation. These quantities will provisionally not be included in the community production.
- (55) It was found that one of the cooperating producers who supported the complaint also imported the product concerned from the PRC. Whilst the majority of the EC sales of that producer during the IP were produced in the Community, it emerged that about 25 % of the Community sales volume was purchased from the PRC. This represented around 39 % of its total production.
- (56) Although this is a relatively important share of the company's business it was found that these imports were made as a matter of self-defence against low-priced dumped imports from the PRC. Indeed, already in the beginning of the period considered when the producer realised that he could not fully compete with low price dumped imports from the PRC, he decided to ship his old machineries to China and form a joint venture with a Chinese producer. The verification of the financial data submitted by that Community producer for the period considered showed that he was selling Chinese LAM in order to recover some of the high losses incurred on the sales of own produced products on the Community market. Importing Chinese LAM has certainly allowed the company to survive until now.
- (57) It was also found that the core activity of this company is located in the Community and its behaviour is clearly that of a Community producer. The cooperation of that company shows that it has a similar behaviour and interests as the other complainants in the investigation. It is therefore considered that the production of that producer should be included in the definition of the Community production.
- (58) Hence, the volume of Community production for the purpose of Article 4(1) of the basic Regulation has been provisionally calculated by adding the production of the five cooperating Community producers which supported the complaint to the production data available for one additional producer.

## **2. Definition of Community industry**

- (59) The production of the five Community producers that fully cooperated in the investigation and supported the complaint was established at around 220 million units during the investigation period. This represents over 90 % of total Community production. These companies therefore constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.
- (60) It should be noted that even if the producer which imported Chinese LAM was excluded from Community production and Community industry the remaining producers still constitute a major proportion of the total Community production, as defined in Article 5(4) of the basic Regulation.

## **3. Community consumption**

- (61) Consumption was established on the basis of the sales volume of the known producers to unrelated customers in the Community plus imports from third countries. Sales by Community producers were largely based on the questionnaire replies they submitted. The volume of imports, however, had to be based on the complaint due to the low level of cooperation from Chinese exporting producers and to the fact that Eurostat data was not specific enough. Indeed, the CN code for LAM also includes ring binder mechanisms and is expressed only in tonnes, not in units.



- (62) The following table shows that demand of the product concerned in the Community significantly increased over the period considered:

Table 1

(1 000 pieces)	2001	2002	2003	2004 (IP)
Consumption	301 440	301 990	337 300	399 670
Index	100	100	112	132

- (63) The main increase occurred in the period from 2003 up to the end of the IP when consumption increased by 18 % or by more than 62 million units. The Community industry increased its sales volume by 8 % or by 14 million units. During the same period, imports from China increased by 29 % or by 48 million units.

#### 4. Imports into the Community from the PRC

##### 4.1. Volume, market share and average price of imports concerned

###### (a) Import volume and market share

- (64) As mentioned in recital 61, the volume of Chinese imports was based on the data contained in the complaint. However, this data was cross-checked with Eurostat data and compared with the export data verified at the premises of the largest exporter in China representing over 65 % of total Chinese exports which cooperated in the investigation. Both sources confirmed that the trends in volume were comparable to those contained in the complaint.
- (65) The evolution of imports from the country concerned, in volume and market share, has been the following:

Table 2

Import volumes (1 000 pieces)	2001	2002	2003	IP
PRC	135 000	130 000	166 000	214 000
Index	100	96	123	159

  

Market shares of the imports	2001	2002	2003	IP
PRC	44,8 %	43,1 %	49,2 %	53,6 %
Index	100	96	110	120

- (66) As shown in table 1 above, consumption of lever arch mechanisms in the Community increased by 32 %, or by 98 million units during the period considered. In the meantime, the imports from the country concerned have risen by around 59 %, namely an increase by 79 million units. In consequence, their market share has increased from 44,8 % to 53,6 % during the period considered. This means a gain of 8,8 percentage points of market share. It is worth noting that the main increase in imports and market share held by Chinese exporting producers occurred between 2003 and the IP when dumped imports increased by 48 million units and market share by 4,4 percentage points.

## (b) Prices of imports and undercutting

Table 3

Import prices from the PRC	2001	2002	2003	IP
EUR/1 000 pieces	120	110	96	107
Index 2001 = 100	100	92	80	89

- (67) Table 3 shows how average import prices from the PRC developed over the period considered. Import prices decreased from EUR 120 for 1 000 LAM in 2001 to EUR 107 during the IP. The import price level was so low in 2003, coinciding with a 20 % increase in consumption, that it could be increased by 11 % between 2003 and the IP. This price level remains however far below that of the Community industry. Overall the price decrease of dumped imports was as high as 11 % during the period considered.
- (68) A comparison of selling prices on the Community market during the IP was made between the prices of the Community industry and those of the Chinese exporting producers. This comparison was made after deduction of rebates and discounts and adapting for any post importation costs. The prices of the Community industry were adjusted to ex-works prices, and the prices of the imports were cif Community frontier.
- (69) The comparison showed that during the IP Chinese LAM were imported in the Community at prices which were significantly undercutting the Community industry's prices. When expressed as a percentage of the latter price, the undercutting margin was as high as 24,3 %. From this level of undercutting and the price development of the Community industry as well as its profitability situation, as explained below, it is clear that substantial price depression had already taken place during the period considered.

### 5. Economic situation of the Community industry

- (70) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Community industry included an evaluation of all economic factors and indices having a bearing on the state of the industry for the period considered, namely from 2001 to the IP.
- (71) The Community industry data below represent the aggregated information verified for the five cooperating Community producers.

#### 5.1. Production, production capacity and capacity utilisation

- (72) The evolution of production, production capacity and capacity utilisation is the following:

Table 4

Indices 2001 = 100	2001	2002	2003	IP
Production (1 000 units)	225 065	222 036	221 472	219 990
Index production (2001=100)	100	99	98	98
Production capacity (units)	454 423	439 504	488 387	490 172
Index production capacity	100	97	107	108
Capacity utilisation %	50 %	51 %	45 %	45 %
Index capacity utilisation	100	102	92	91

- (73) Despite the existence of an increased demand the Community industry's production slightly decreased by 2 % during the period considered. In view of the good market prospective and the increasing consumption, investments to increase production capacity of the Community industry were made. However, capacity utilisation decreased by 9 %, also because of a slight decrease of production.

### 5.2. Stocks

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

Table 5

	2001	2002	2003	IP
Stocks (1 000 pieces)	11 750	8 242	15 201	15 236
Index 2001 = 100	100	70	129	130

- (75) The investigation showed that stocks held by the Community industry was not a relevant indicator for the assessment of the economic situation of the Community industry. Indeed, the Community industry is mainly producing on order and the level of stock represented a limited share of production and around three to four weeks' deliveries during the period considered.

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

- (76) 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
Sales volume (1 000 pieces)	166 440	171 990	171 300	185 670
Index	100	103	103	112
Market share	55,1 %	56,6 %	50,7 %	46,4 %
Index	100	103	92	84
Average sales prices (EUR/1 000 pieces)	152	142	137	132
Index	100	93	90	87

- (77) The investigation revealed that the Community industry could somewhat benefit from the increase of consumption by raising its sales by 12 % during the period considered, or by around 19 million units.
- (78) Nevertheless, the Community industry's market share declined from 55,1 % in 2001 to 46,4 % at the end of the IP. This represents a loss of 8,7 percentage points of market share. The main decrease in market share was observed between 2003 and the IP when the Community industry lost 4,4 percentage points.

(79) It is therefore clear that the Community industry did not fully benefit from the market growth.

(80) The above table indicates that Community industry suffered from significantly dropping average sales prices (by 13 %), as more low-priced dumped imports were penetrating the Community market.

#### 5.4. Profitability

(81) The profitability margins shown below are established by expressing the financial result achieved by the Community industry as a percentage of the turnover achieved on the Community market.

Table 7

Profitability on Community sales (RoT)	2001	2002	2003	IP
Profitability on EC sales	- 13 %	- 17 %	- 19 %	- 26 %
— trend		- 4 %	- 6 %	- 13 %

(82) Profitability was negative throughout the period considered. However, the extent of losses worsened considerably mainly due to the reduced level of prices. Even though the Community Industry optimised its production in order to compete with the Chinese imports and adjusted all the technical parameters possible of the product concerned, the loss continuously increased during the period considered. The result achieved during the IP cannot be sustained even in the short term.

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

(83) The 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
Return on Investments (total company)	- 18 %	- 22 %	- 17 %	- 55 %
Cash flow (total company in EUR)	1 737 465	720 972	- 259 997	- 2 757 046
Index	100	176	45	73
Investments (product concerned in EUR)	1 839 277	2 453 440	2 353 561	2 601 880
Index	100	133	128	141

(84) As suggested in recitals 78 and 82, the decreasing trend followed by the Community industry's sales prices significantly affected its profitability. Accordingly this also had a negative impact on the injury indicators linked to the profitability. It can be noted that the above negative trend observed for return on investments and cash flow reflect to a large extent those on profitability shown in table 6 above.

- (85) As already explained in recital 73, the Community industry increased its investments on the product concerned because the market conditions were very good during the period considered. The Community industry's investments mainly consisted in replacements in plant and machinery rather than investments in new production facilities.
- (86) The Community industry pointed out that it had increased difficulties in raising capital. The above findings, and in particular the 26 % negative profitability, indeed clearly suggest that the Community industry's ability to raise capital, either from external providers of finance or parent companies, is heavily hampered by its catastrophic financial situation.

#### 5.6. *Employment, productivity and wages*

Table 9

Indices 2001 = 100	2001	2002	2003	IP
Number of employees	792	773	746	713
Index	100	98	94	90
Productivity (1 000 units/employee)	284	287	297	309
Index	100	101	104	109
Wages (average per employee, per annum in euro)	15 619,65	15 747,02	15 338,60	15 545,16
Index	100	101	98	100

- (87) The Community industry decreased its number of employees from 2001 to the IP. Productivity could be improved over the period considered due to an increased level of investment coupled with the decrease in the number of employees.
- (88) Total wages and related costs paid by the Community industry remained stable during the period considered. Whilst in that period the number of employees decreased by 10 % it even decreased in relative terms due to inflation.

#### 5.7. *Magnitude of the actual margin of dumping*

- (89) The dumping margins are specified above in the dumping section. These margins established are clearly above *de minimis*. Furthermore, given the volume and the price of the dumped imports, the impact of the actual margin of dumping cannot be considered to be negligible.

#### 5.8. *Effects of past dumping or subsidisation*

- (90) The Community industry is not recovering from the effects of past dumping or subsidisation since no such previous investigations have been made.

### 5.9. Conclusion on injury

- (91) Already at the beginning of the period considered, the PRC had half of the LAM Community market. The PRC strengthened this already strong position considerably. It is recalled that import volumes from the PRC have increased considerably, both in volume terms (+ 79 million units) and market share (+ 8,8 percentage points) during the period considered. Furthermore, the average unit price of those imports decreased by 11 %, which is reflected in the price undercutting found in the investigation.
- (92) While the sales volumes of the Community industry increased, that industry did hardly benefit from the significant growth of the Community market (+ 32 % or + 98 million units) during the IP. They lost significant market share and suffered from an average price decrease by 13 %. This led to a doubling of losses, reduced cash flow and return on investment, decreasing production and utilisation of the production capacity, stagnating wages and the obligation to decrease the employment during the period considered. Notwithstanding the effort deployed to become more competitive the financial situation of the Community industry significantly worsened during the IP.
- (93) It has also to be noted that some Community producers stopped production or went out of business in recent years.
- (94) Bearing in mind all indicators it is concluded that the Community industry suffered material injury during the IP within the meaning of Article 3 of the basic Regulation.

## D. CAUSATION

### 1. Preliminary remark

- (95) In accordance with Articles 3(6) and 3(7) of the basic Regulation, it was also examined whether there is a causal link between the dumped imports from the PRC and the material injury suffered by the Community industry. Known factors other than the dumped imports, which could at the same time have injured the Community industry, were also examined according to Article 3(7) of the basic Regulation to ensure that the possible injury caused by these other factors was not attributed to the dumped imports.

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

- (96) It is recalled that import volumes from the PRC increased by around 43 % as did its market share by 8,8 percentage points during the period considered. In addition, as explained in recital 67, the import prices from the PRC fell by 11 % and Chinese import prices undercut those of the Community industry by 24 %. Moreover, there Community industry's prices were depressed.
- (97) During the period considered, there was also a coincidence in time between the further surge of low-priced dumped imports and the significant worsening of an already bad situation of the Community industry. This is best illustrated by comparing the economic results achieved by both Chinese exporters and the Community industry between 2003 and the IP. In that period the volume of LAM imported from China increased by 48 million units while significant price undercutting was found to exist. As a result the Chinese exporting producers were able to gain 4,4 percentage points of market share. During the same period the sales volume of the Community industry only increased by 14 million units thus resulting in a loss of market share of 4,3 percentage points in a rapidly increasing market. Simultaneously, the Community industry had to decrease average sales price by around 4 %. The dramatic worsening in its financial situation during this period is for instance evidenced by an increase of its losses by 7 percentage points. It should be noted that the imports from China was already at a high level at the beginning of the period considered and that the community industry was therefore in a vulnerable situation from the beginning of this period.

- (98) As shown by the increasing market share in Table 2, Chinese exporters practicing dumping became the major players on the Community market supplanting the Community industry during the IP.

### **3. Effects of imports from third countries**

- (99) As explained in recital 36, there are not many companies in the world producing and exporting LAM. In the context of the choice of an analogue country, some producers were identified in India and in Iran but the information available suggest that only limited quantities of LAM, if any, were exported by the known producers in these countries. The core market of these producers was clearly their domestic market.
- (100) It is therefore very unlikely that imports originating in other third countries, such as India could have contributed to the injury suffered by the Community industry. The information available is extremely limited so that it is not even possible to make a reliable estimate of this limited quantity, if any, of imports from other third countries.
- (101) It is therefore considered that the imports of LAM originating in other third countries could not have affected the economic situation of the Community industry.

### **4. Effects of Chinese imports made by the Community industry**

- (102) As explained in recital 55, it was found that one of the cooperating producers included in the definition of the Community industry imported the product concerned from the PRC during the period considered. The vast majority of the EC sales of that producer during the IP were produced in the Community — about 25 % of the sales volume was purchased from the PRC.
- (103) The investigation showed that the said producer imported LAM from China which were produced by a Chinese exporter with whom he had a commercial agreement. It was also found that the resale price at which he was selling the imported LAM was comparable to the price he was selling LAM of its own production.
- (104) On this basis, it is not considered that such imports have contributed to the material injury suffered by the Community industry. While it is true that these imports represent clearly more than a negligible volume (namely around 6 %, of total Community industry's sales during the IP), the following should be noted. Firstly, the resale prices corresponded to the selling prices of its own produced merchandise. Moreover, the sales of this trade product completed its own product range. Secondly, as already explained in recitals 55 and 56, these imports have partly allowed the said producer to reduce some of the high losses incurred from selling its own produced products on the Community market. Importing Chinese LAM has certainly allowed the company to survive until now. Thus, completion of its product range by importing Chinese merchandise was a sort of self-defence in order to cope with Chinese dumped imports. This producer also clearly supports the current proceeding.
- (105) It is therefore very unlikely that the imports made by the said producer contributed to the injury found.

### **5. Effects of the export performance by the Community industry**

- (106) It was also examined whether or not the export of LAM made by the Community industry may have been a cause of the injury it suffered during the period considered.

- (107) As suggested by Table 10, the core market of the Community industry has always been the Community market. Exports outside the EU represented between 7,4 % and 16,2 % of total sales of the Community industry during the period considered.

Table 10

	2001	2002	2003	IP
Exports (1 000 units)	32 419	23 114	18 303	14 551
Index 2001 = 100	100	71	56	45

- (108) Exports of the Community industry decreased by around 18 million units throughout the period considered. This decrease has to be seen in the light of the significant growth of the Community market which took place in that period. It should be borne in mind that during that period Chinese exports were also gaining market share in other worldwide markets, as evidenced by the analysis of the information gathered for the choice of the analogue country.
- (109) In addition, the investigation showed that Community industry production was rather stable and only decreased by 2 % during the period considered. The Community industry was able to control and even reduce its costs.
- (110) Based on the information currently available, it is therefore considered that even if the decrease in exports sales volume may have contributed to the injury suffered by the Community industry it cannot justify the significant price decrease on the Community market and the financial losses incurred by the Community industry during the IP.

## 6. Conclusion on causation

- (111) It must be underlined that the injury in this case primarily materialised in the form of price depression causing a further increase in losses. This coincided with the rapidly increasing imports at dumped prices from the PRC which undercut substantially the Community industry prices. There is no indication that the abovementioned other factors could have been a significant cause of the material injury suffered by the Community industry. No further other factors have been found in the course of the investigation that could have caused material injury.

Based on the above analysis of the effects of all known factors on the situation of the Community industry, it is provisionally concluded that there is a clear coincidence in time and thus a causal link between the dumped imports from the PRC and the material injury suffered by the Community industry pursuant to Article 3(6) of the basic Regulation.

## E. COMMUNITY INTEREST

### 1.1. General considerations

- (112) In accordance with Article 21 of the basic Regulation, it has been examined whether compelling reasons exist that could lead to the conclusion that it would be against the Community interest to impose anti-dumping duties against imports from the country concerned. The Commission services sent questionnaires to importers, traders and industrial users. Partial replies to the questionnaire were received from two users. Other users did not submit a reply to the questionnaire but made their views known in writing.



- (113) On the basis of the information received from the cooperating parties, the following conclusions were reached.

1.2. *Interest of the Community industry*

- (114) It is recalled that the Community industry consisted of five producers employing over 700 people in the production and sale of the product concerned. It is also recalled that the economic indicators of the Community industry showed deteriorating financial results during the period considered, leading to some producers in the Community to give up production in the Community in recent years. However, the Community industry is viable and not ready to give up this segment of sales as the actions taken to cope with the surge in dumped imports have shown. As an example, the investigation showed that the Community industry managed to improve its production process and shorten delivery time during the period considered.
- (115) If measures are not imposed it is likely that the price pressure from the dumped imports will increase, the financial situation of the Community industry will continue to deteriorate further and more Community producers will be forced to cease production, with adverse consequences for the broader sector already suffering from imports made at dumped prices.
- (116) If measures are imposed, it can be expected that the Community industry's production and sales volume will rise within a very short period, thus allowing the Community industry to spread its fixed costs over a higher output. In this context, it is noted that the Community industry's capacity utilisation is very low and that the Community industry could indeed significantly increase its output. This would also allow the Community industry to regain the market share it lost during the period considered and make economies of scale. It is likely that the financial situation of the Community industry will reach a more sustainable level once the determination of prices is no longer distorted by dumped imports.
- (117) It is therefore clear that anti-dumping measures would be in the interest of the Community industry.

1.3. *Interest of suppliers*

- (118) 12 suppliers of raw materials to Community producers wrote to the Commission concerning the present proceeding. These parties support the imposition of AD measures. It is considered that these suppliers are representative of the steel suppliers industry in this proceeding.
- (119) It is clear that the supplier industry risks seeing one sales segment disappearing in the short term in case no measures are taken against low-priced dumped imports. The high losses incurred by the Community industry cannot be sustained any longer.
- (120) The suppliers were also advocating the imposition of measures as it should lead to more security in the market starting with the supply of raw material to the delivery of LAM to the user's industry. They stressed the economic importance of the Community LAM industry from the point of view of the community users. However it is noted that these arguments are made on behalf of users, see below.
- (121) On the basis of the foregoing, it is therefore concluded that the imposition of anti-dumping measures would not be against the interest of Community suppliers.

#### 1.4. *Interest of users and importers*

- (122) Replies from eight users and two importers located in the Community market were received. 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 LAM only represents 10 % of the overall activity.
- (123) Users and importers generally oppose the imposition of AD measures, as the product concerned represents a high share of the cost of the downstream product, namely around 20 % of total costs of the downstream product. These users and importers can be considered representative for the industry since they represent more than 50 % of this. They allege that if anti-dumping measures would be imposed, they would be in a disadvantaged position with their customers (mainly chain stores and big distributors). They allege that there is an over-production capacity in the LAF sector. Hence, they are not in a strong position to negotiate with those customers and they fear that LAF will be imported from China once measures on LAM are imposed. However their claims were not substantiated with evidence.
- (124) User companies usually have purchase agreements with Chinese producers to import LAM in the Community market. Users claim that the Chinese products have reached a very good quality compared to those produced in the Community following a long period of development with their Chinese partners. Therefore, they allege that they improved the availability of the material and competition on the market. They also claim that there would be a risk of shortage of supply if measures were imposed.
- (125) The cooperating importers raise similar concerns. Only one user supports the imposition of the measures but claims that measures on LAF should also be imposed.
- (126) In view of the large production capacity available in the Community (see Table 4) and since additional investments in production capacity could easily be made by Community producers to meet the demand in a market not distorted by dumping practices, the claim concerning possible shortages due to lack of capacity of the Community industry does not seem to be realistic and is certainly not substantiated. It is considered that this would not reduce effective competition on the Community market.
- (127) It is also considered that the imposition of measures should not affect the overall competitiveness of the user industries materially. The investigation has shown that some producers of LAM are also producing the downstream products and that there are still a large proportion of users which are mainly purchasing their LAM from non-dumped sources. All users would have the possibility to revert to non-dumped sources of supply.
- (128) As regards possible cost increases, it cannot be excluded that this would take place immediately after the imposition of AD measures. Such cost increase would in particular affect companies which are mainly purchasing low-priced dumped products from China. In the worst case scenario, considering the current market share of the Community industry, the proposed measures may lead to an average cost increase of 2,5 % of the cost of the downstream product on average. It should be noted though that the product concerned is only a minor part of the activities of the downstream industry and that in addition profitability of the product concerned is indeed very good. However, the Commission does not consider that this scenario will take place and a more realistic scenario, as explained in recitals 116 and 120, is that the imposition of AD 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 avoid any undue price increase on the Community market.

- (129) In any event any potential cost increase should also be seen in the light of the interest of the user companies which are mainly purchasing their LAM from the Community industry.
- (130) On balance, it is therefore provisionally considered that any negative impact on the cost of certain users is not such as to prevent the imposition of measures.

#### 1.5. *Conclusion on Community interest*

- (131) The imposition of measures on imports of LAM originating in the PRC would clearly be in the interests of the Community industry. As regards both the importers/traders and the user industries, any impact on prices of LAM is not expected to unduly affect their competitiveness and competition on the Community market. In contrast, the losses suffered by the Community industry and the supplier industries, and the risks of further production closings are clearly of great magnitude.
- (132) In view of the above, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures on imports of LAM originating in the PRC.

### F. PROVISIONAL ANTI-DUMPING MEASURES

#### 1. **Injury elimination level**

- (133) In view of the conclusions reached with regard to dumping, resulting injury and Community interest, provisional measures should be imposed in order to prevent further injury being caused to the Community industry by the dumped imports.
- (134) The measures should be imposed at a level sufficient to eliminate the injury caused by these imports without exceeding the dumping margin found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measure should allow the Community industry to cover its costs of production and to obtain overall a profit before tax that could be reasonably achieved by an industry of this type in the sector under normal conditions of competition, namely in the absence of dumped imports, on the sales of the like product in the Community. The pre-tax profit margin used for this calculation was 5 % of turnover. This margin is in line with what was achieved in the general category in the absence of dumped imports and is therefore provisionally considered to be a reasonable margin. On this basis, a non-injurious price was calculated for the Community industry of the like product. The non-injurious price was obtained by adding the abovementioned profit margin of 5 % to the cost of production.
- (135) The necessary price increase was then determined on the basis of a comparison of the weighted average import price with the weighted average non-injurious price of the like product sold by the Community industry on the Community market.
- (136) Any difference resulting from this comparison was then expressed as a percentage of the average import cif value. In all cases it was found that the injury margins were higher than the dumping margins found.

#### 2. **Provisional measures**

- (137) In light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not, in accordance with Article 7(2) of the basic Regulation, be higher than the injury margin calculated above.

- (138) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to all other companies) are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this document with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (139) Any claim requesting the application of these individual company anti-dumping duty rates (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>(1)</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. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.
- (140) On the basis of the above, the provisional duty rates are:

Dongguan Nanzha Leco Stationery	33,3 %
All other companies	48,1 %.

#### G. FINAL PROVISION

- (141) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this document are provisional and may have to be reconsidered for the purpose of any definitive measures,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A provisional 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.

2. The rate of the provisional anti-dumping duty applicable, before duty, to the net free-at-Community-frontier price shall be:

Company	Anti-dumping duty	TARIC additional code
Dongguan Nanzha Leco Stationery	33,3 %	A729
All other companies	48,1 %	A999

<sup>(1)</sup> European Commission, Directorate-General for Trade, Direction B, B-1049 Brussels, Belgium.

3. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provision of a security, equivalent to the amount of the provisional duty.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

*Article 2*

Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

*Article 3*

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

Article 1 of this Regulation shall apply for a period of six months.

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

Done at Brussels, 26 January 2006.

*For the Commission*  
Peter MANDELSON  
*Member of the Commission*

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