



**COUNCIL OF  
THE EUROPEAN UNION**

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**ANTIDUMPING 65  
COMER 181**

**PROPOSAL**

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from:	European Commission
dated:	9 August 2012
No Cion doc.:	COM(2012) 453 final
Subject:	Proposal for a Council Regulation imposing a definitive anti-dumping duty on imports of lever arch mechanisms originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009

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Delegations will find attached a proposal from the Commission, submitted under a covering letter from Mr Jordi AYET PUIGARNAU, Director, to Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union.

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Encl.: COM(2012) 453 final



EUROPEAN COMMISSION

Brussels, 9.8.2012  
COM(2012) 453 final

2012/0218 (NLE)

Proposal for a

**COUNCIL REGULATION**

**imposing a definitive anti-dumping duty on imports of lever arch mechanisms  
originating in the People's Republic of China following an expiry review pursuant to  
Article 11(2) of Regulation (EC) No 1225/2009**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

This proposal concerns the application of Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation') in the expiry review concerning imports of lever arch mechanisms originating in the People's Republic of China.

### 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

- **Consultation of interested parties**

Interested parties concerned by the proceeding have 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 contain provisions for a general impact assessment but contains an exhaustive list of conditions that have to be assessed.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

- **Legal basis**

Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community.

- **Subsidiarity principle**

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

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reasons:

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 Union, 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:

Other means would not be adequate because the basic Regulation does not provide for alternative options.

#### **4. BUDGETARY IMPLICATION**

The proposal has no implication for the Union budget.

#### **5. OPTIONAL ELEMENTS**

An expiry review investigation on imports of lever arch mechanisms originating in the People's Republic of China was initiated on 23 July 2011.

The investigation revealed a strong likelihood of recurrence of dumping and injury and there was no evidence that the extension of the measures would be against Union interest. Therefore, it is proposed to continue the measures.

On 22 June 2012, the Commission disclosed its findings in relation to the present investigation and allowed interested parties to comment thereon. No comments were received that were of a nature to alter the findings mentioned therein. Of particular note was that no cooperation was forthcoming from exporting producers in the PRC.

It is therefore proposed that the Commission adopts the attached proposal for a Council Regulation with a view to its transmission to the Council and its publication in the *Official Journal of the European Union* on 11 September 2012 at the latest.

Proposal for a

## **COUNCIL REGULATION**

**imposing a definitive anti-dumping duty on imports of lever arch mechanisms originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ('the basic Regulation')<sup>1</sup>, and in particular Articles 9(4), 11(2), 11(5) and 11(6) thereof,

Having regard to the proposal from the European Commission ('the Commission') after consulting the Advisory Committee,

Whereas:

### **A. PROCEDURE**

1. Measures in force

(1) By Regulation (EC) No 1136/2006<sup>2</sup> ('the original Regulation') the Council imposed a definitive anti-dumping duty of 27.1% and 47.4% on imports of lever arch mechanisms ('LAM') originating in the People's Republic of China ('PRC').

2. Request for an expiry review

(2) Following the publication of a notice of impending expiry<sup>3</sup> of the definitive anti-dumping measures in force, the Commission received on 26 April 2011 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of the basic Regulation. The request was lodged by LAMMA (Lever arch mechanism manufacturers association) on behalf of three Union producers ('the applicant') representing a major proportion, in this case more than 50%, of the Union production of lever arch mechanisms.

(3) The request provided sufficient evidence that the expiry of the measures imposed on imports of LAM originating in the PRC would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.

3. Initiation of an expiry review

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<sup>1</sup> OJ L 343, 22.12.2009, p. 51.

<sup>2</sup> OJ L 205, 27.7.2006, p. 1.

<sup>3</sup> OJ C 5, 8.1.2011, p. 11.

- (4) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 July 2011, by a notice published in the *Official Journal of the European Union*<sup>4</sup> ('the notice of initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

#### 4. Investigation

##### *4.1. Review investigation period and the period considered*

- (5) The investigation concerning the likelihood of continuation or recurrence of dumping covered the period from 1 July 2010 to 30 June 2011 ('the review investigation period' or 'RIP'). The examination of the trends relevant for the assessment of a likelihood of a continuation or recurrence of injury covered the period from 1 January 2008 to the end of the review investigation period ('the period considered').

##### *4.2. Parties concerned by the investigation*

- (6) The Commission officially advised the applicant, other known Union producers, exporting producers in the country concerned, unrelated importers, users in the Union known to be concerned, as well as the representatives of the country concerned of the initiation of the expiry review.
- (7) 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. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (8) In view of the apparent large number of exporting producers in the PRC, unrelated importers and Union producers, sampling was envisaged in the notice of initiation in accordance with Article 17 of the basic Regulation.
- (9) In respect of exporting producers in the PRC and unrelated importers, in order to enable the Commission to decide whether sampling would be necessary and, if so, to select a representative sample, those parties were requested to make themselves known within 15 days of the initiation of the review and to provide the Commission with the information requested in the notice of initiation. Given that no exporting producer in the PRC made itself known and provided the Commission with the information requested in the notice of initiation and that only one unrelated importer made itself known but did not provide the Commission with the information requested in the notice of initiation, sampling was not considered necessary in either case.
- (10) The Commission announced in the notice of initiation that it had provisionally selected a sample of Union producers. This sample consisted of two companies, out of the six Union producers that were known prior to the initiation of the investigation, selected on the basis of their sales and production volume of the product concerned in 2010 as well as geographic location in the Union. The sample represented over 50% of the total estimated Union production and sales during the RIP. Interested parties were invited to consult the file and to comment on the appropriateness of this choice within

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<sup>4</sup> OJ C 217, 23.7.2011, p. 35.

15 days of the date of publication of the notice of initiation. No interested party opposed to the proposed sample.

- (11) The Commission sent questionnaires to the two sampled Union producers, the importer that made itself known and all users known to be concerned.
- (12) Replies to the questionnaires were received from the two sampled Union producers and two users. The unrelated importer mentioned in recital (9) above that made itself known neither replied to the sampling questions nor filled in a questionnaire reply.
- (13) The Commission sought and verified all the information it deemed necessary for a determination of the likelihood of continuation or recurrence of dumping and resulting injury and of the Union interest. Verification visits were carried out at the premises of the following interested parties:
  - (a) Union producers
    - Industria Meccanica Lombarda S.r.l., Offanengo, Italy
    - NIKO Metallurgical company, d.d. Zelezniki, Slovenia
  - (b) user
    - HIT OFFICE s.r.o. Teplice, Czech Republic

## **B. PRODUCT CONCERNED AND LIKE PRODUCT**

- (14) The product concerned by this review is the same as the one in the original Regulation, namely lever arch mechanisms generally used for archiving sheets and other documents in binders or files currently falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 50) ('the product concerned') and 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. Ring binder mechanisms classified within the same CN code are not included in the scope of the product concerned for the purpose of this investigation.
- (15) The present review investigation confirmed that, as in the original investigation, the product concerned and that produced in the Union by the Union producers have the same basic technical and physical characteristics and the same uses. They were therefore considered to be like products according to Article 1(4) of the basic Regulation.

## **C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

- (16) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
  1. Preliminary remarks

- (17) As mentioned above, in recital (9), none of the known Chinese exporting producers contacted at initiation cooperated in the investigation. The Chinese authorities were notified of this fact, the possible application of Article 18(1) of the basic Regulation and were given an opportunity to present their comments. No comments were received in this regard.
- (18) Therefore, and in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below had to be based on facts available, in particular publicly available information such as official company websites and product web search engines, information in the request for review and information obtained from cooperating parties in the course of the review investigation (namely the applicants and the sampled Union producers).

## 2. Dumping of imports during the RIP

- (19) For the purpose of establishing normal value, the notice of initiation made reference to the use of an analogue country.
- (20) As concerns the export price, due to the lack of cooperation from both exporting producers in the PRC and unrelated importers in the Union market the Commission was unable to establish any export sales quantities or prices on a transactional basis. In this respect, the Commission considered alternative means to determine the export price.
- (21) Firstly, it was considered whether Eurostat, cross-checked with other available data, could be used as an alternative means to establish export prices. These were considered unsuitable insofar as one of the sources also covered other imports than the product concerned and the other sources did not allow for the possibility to compare export prices with those of the Union industry on a type per type basis.
- (22) Secondly, the Commission also considered having recourse to the export prices contained in the request for review. It is recalled that this methodology was used in the original investigation and that it permits a comparison on a type per type basis. However, the invoices contained in the request for review were for export prices to other third countries.
- (23) Accordingly, no dumping calculation could be made on the basis of export prices to the Union and it was not possible to establish an affirmative determination of dumping. The investigation therefore focused on the likelihood of a recurrence of dumping.

## 3. Likelihood of recurrence of dumping

- (24) As regards the investigation of the likelihood of recurrence of dumping, the following elements were analysed: the relationship between normal value and export prices to third countries; production capacity, production and spare capacity in the PRC; and the attractiveness of the Union market in relation to imports from the PRC.

### *3.1 Relationship between the normal value and export prices to third countries*



- (25) In view of the lack of cooperation from exporting producers in the PRC, normal value was compared to export prices from the PRC in accordance with Article 2(7) of the basic Regulation.

#### *3.1.1 Basis for determining normal value*

- (26) Since the PRC is an economy in transition, in accordance with Article 2(7)(a) of the basic Regulation normal value had to be determined on the basis of the price or constructed value in an appropriate market economy third country (the analogue country), or the price from the analogue country to other countries, including the Union, or, where those are not possible, on any other reasonable basis, including the price actually paid or payable in the Union for the like product, duly adjusted if necessary to include a reasonable profit margin.
- (27) The request for review by the Union industry cited a number of producers in market economy countries other than the Union (namely in India, Iran and Thailand). Upon initiation, these producers were duly contacted by the Commission as well as other potential producers in such countries that could be identified from publicly available sources.
- (28) The notice of initiation specified that if no cooperation was forthcoming from producers in market economy countries other than the Union, the Commission envisaged using the prices actually paid or payable in the Union as the basis for determining the normal value. Indeed, the prices actually paid or payable in the Union was the basis used to determine normal value in the original investigation.
- (29) No interested party commented on the appropriateness of the above-mentioned basis for determining normal value.
- (30) No producer in market economy countries other than the Union contacted by the Commission decided to cooperate in the present review.
- (31) In the above context, the Commission was left with no other alternative than to rely on the prices actually paid or payable in the Union as the basis to determine normal value.

#### *3.1.2 Normal value*

- (32) Pursuant to Article 2(7)(a) of the basic Regulation and as explained at recitals (26) to (31) above, normal value was established using the price actually paid or payable in the Union for the like product which were found to be in the ordinary course of trade.
- (33) As a result, normal value was established as the weighted average domestic sales price to unrelated customers of the sampled Union producers.
- (34) It was first established whether the domestic sales of the like product to independent customers of the sampled Union producers were representative in accordance with Article 2(2) of the basic Regulation, i.e. whether the total volume of such sales represented at least 5% of the total sales volume of the product concerned exported to the Union. Given the lack of cooperation from exporting producers in the PRC, information in relation to the total sales volume exported to the Union had to be determined according to facts available. As mentioned at recital (21) above, Eurostat and other statistics were considered unsuitable for the purposes of establishing a

continuance of dumping, however, they can be used to indicate a level of imports (needed for the overall volume exported from the PRC) to the Union. On that basis, the domestic sales of the sampled Union producers were considered to be overall sufficiently representative during the RIP. In view of the lack of cooperation from exporters in the PRC, it was not possible to analyse representativity on a type per type basis.

- (35) The Commission subsequently examined whether the domestic sales of each sampled Union producer could be considered as having been made in the ordinary course of trade, i.e. whether for each sampled Union producer the average sales prices were equal or above the average costs of production and therefore profitable.
- (36) On this basis it was established that sales of the Union producers were on average profitable and normal value was consequently determined on the basis of the weighted average sales prices of the sampled Union producers

#### *3.1.3 Export price*

- (37) In the absence of cooperation from exporting producers, the most appropriate basis was found to be the information on the export prices from the PRC to third countries contained in the request for review.

#### *3.1.4 Comparison*

- (38) The comparison between the weighted average normal value and the weighted average export price was made on an ex-works basis. This comparison showed that the export price to third countries in the request for review was significantly lower than the normal value (over 30%). This indicates that prices to the Union will be very likely dumped should measures be repealed.

#### *3.2 Production capacity of the exporting producers*

- (39) Since no cooperation from exporting producers was forthcoming, the following conclusions rely mainly on the information contained in the request for review, cross-checked where possible against publicly available information.
- (40) On this basis, it was found that the PRC production capacity of LAM is estimated to be at least within a range of between 600 million and 700 million pieces, which is based on information provided by the Union industry.
- (41) In addition, information obtained during the investigation shows that the production capacity in the PRC for LAM can be easily increased, inter alia, through the employment of additional workforce and by limited investment in tooling, in case of increased demand.
- (42) No interested party has come forward with other comments and/or information in relation to production capacity in the PRC.
- (43) On this basis, production capacity in the PRC is around 170%-350% higher than the Union consumption and significantly more than the Union production.

#### *3.3 Production and spare capacity of exporting producers in the PRC*

- (44) Since no cooperation from exporting producers was forthcoming, information in relation to actual production and spare capacity relied mainly on the information contained in the request for review, cross-checked where possible against publicly available information.
- (45) In the request for review, production of LAM was estimated at between 200-400 million pieces and the spare capacity of between 200-500 million pieces. This spare capacity corresponds roughly to the equivalent of Union consumption.
- (46) The submitted estimates were found to be reasonable after being cross-checked by reference to publicly available sources where possible.
- (47) In relation to spare capacity, as mentioned in recital (41) above, the information obtained during the investigation shows that the production capacity in the PRC for LAM can be easily increased, inter alia, through the employment of additional workforce and by limited investment in tooling, in case of increased demand.
- (48) Based on the above, it can reasonably be concluded that substantial spare capacity exists in the PRC. As explained at recitals (49) to (55) below, there is a strong likelihood that such spare capacity would be directed towards the Union market should measures be repealed.

#### *3.4 Attractiveness of the Union market*

- (49) Information gathered during the present review reveals that the Union market would be an attractive market for imports of LAM from the PRC, should measures be repealed. It is recalled that prior to the imposition of the measures in force, consumption in the Union was substantial and close to 400 million pieces. At the same time, imports from the PRC were over 200 million pieces accounting for over 50% of the entire Union consumption.
- (50) The investigation has demonstrated that Union demand for LAM remained substantial. The Union consumption has only modestly declined over the period considered as determined at recitals (63) to (64) and (98) below and the Union market remains the largest worldwide for LAM, representing over 50% of the world market.
- (51) Furthermore, there are few other markets for LAM, which are not likely to accommodate the excess PRC capacity
- (52) Moreover, as established at recital (38) above, a comparison between the export prices of imports from the PRC to third countries with prices in the Union market shows that the Union market would be attractive for such low-priced imports, if measures were repealed. This is also due to the fact that the prevailing prices are generally higher in the Union market than in other export markets.
- (53) Given the above considerations, if measures were to be repealed, the likelihood would be that the exports from the PRC would be directed towards the Union market.
- (54) Publicly available information in respect of producers in the PRC reveals that such companies often primarily or exclusively direct their sales to the export market.

- (55) Finally, it should be observed that since the imposition of definitive measures a number of cases of misclassification of LAM imports have been observed whereby large volumes of separate LAM and covers were declared as complete lever arch files. This resulted in no duties being paid for such imports. This misclassification prompted the Customs Code Committee (in November 2010) to clarify in a statement that LAM imported under such circumstances must be separately declared. It is too early to determine whether such a statement has had the required effect and the Commission intends to monitor the situation closely. However, the practice constitutes further evidence that, in spite of measures, the Union market continues to be attractive for exporting producers in the PRC.

### *3.5. Conclusion on the likelihood of a recurrence of dumping*

- (56) As mentioned in recital (38) above, a comparison between the export prices to other third countries contained in the request for review with the price on the Union market reveals a strong likelihood that dumping may recur.
- (57) In addition, considering the significant production capacity available in the PRC, the ability of Chinese producers to increase rapidly their production volumes and direct them for export, the likely low prices of such exports and the attractiveness of the Union market for such exports, it is reasonable to assume that a repeal of the measures would result in increased exports at dumped levels of LAM from the PRC to the Union.

## **E. DEFINITION OF THE UNION INDUSTRY**

- (58) During the RIP LAM were manufactured in the Union by six known producers, out of which three were the applicants in the present case. No other companies came forward as Union producers in the course of this investigation. It is therefore considered that these six producers represent the Union industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation (hereinafter referred to as the ‘Union industry’).

## **F. SITUATION ON THE UNION MARKET**

### **1. Preliminary remark**

- (59) For the purpose of the injury analysis data were obtained from Eurostat statistics and other statistical sources available to the Commission, the request for review, the responses to the questionnaire and information gathered during the verification visits.
- (60) The macroeconomic indicators, namely production, production capacity, capacity utilisation, sales in the EU and to third markets, market share, growth, employment and productivity, magnitude of the actual dumping margin and the recovery from the past dumping are based on the data submitted by the Union industry. In this context the questionnaire responses obtained from the two sampled Union producers were complemented by information provided by all other Union producers.
- (61) The microeconomic indicators, namely stocks, wages, sales prices, profitability, investment, return on investment, cash flow and ability to raise capital refer to data supplied by the two sampled Union producers. Due to the fact that the sampled companies represent over 50% of the total estimated Union production and sales, the sampled Union producers were deemed to be representative of the Union industry for

the purposes of this review. Data relating to the two sampled companies can only be provided in indexed form, so as to preserve confidentiality of business sensitive information pursuant to Article 19 of the basic Regulation.

- (62) Due to the lack of cooperation from the Chinese exporting producers and unrelated importers, the development of import price and undercutting is based on alternative sources such as the request for review, Eurostat and other confidential statistics available to the Commission as well as information collected during the verification visits. Import data were based on the request for review which was based on Eurostat data. Given that these data covered also other imports than the product concerned, they were cross-checked and duly adjusted against other confidential statistical sources available to the Commission. Therefore, some figures below have been indexed or bracketed to protect confidential statistics.

## 2. Consumption on the Union market

- (63) The Union consumption was established on the basis of the sales volume of the Union industry on the Union market and imports. It was established that the consumption during the RIP was within the range between 200 and 350 million pieces.
- (64) The consumption of LAM in the Union decreased by 12% over the period considered. This could be partly attributed to the economic crisis as well as changing patterns in consumption (e.g. promotion of green office and electronic filing, general decrease in administrative jobs).

**Table 1**  
*Consumption*

	2008	2009	2010	RIP
Volume				
<i>Index (2008=100)</i>	100	84	90	88

*Source: Questionnaire replies, Review request, Eurostat and other statistical sources available to the Commission*

## 3. Volume and market share of imports from the PRC

- (65) As described in Table 2 below, market share decreased by 54% during the period considered.
- (66) Moreover, since the imposition of anti-dumping duties in 2006 the Chinese imports considerably decreased from 51% market share in the IP of the original investigation to between 7-15% during the RIP. Concerning import volumes from the PRC, they remained low during the period considered due to the anti-dumping measures in force. However, the Chinese imports continued to be a major source (between 85-95% in RIP) of total imports in the Union, due to the limited exports of LAM by other third countries. In the period considered imports decreased by 59%.

**Table 2**  
*Imports from PRC*

	2008	2009	2010	RIP
<i>Volume of imports</i>				
<i>Index (2008=100)</i>	100	56	44	41

<i>Market share of imports Index (2008=100)</i>	<i>100</i>	<i>66</i>	<i>48</i>	<i>46</i>
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*Source: Questionnaire replies, Review request, Eurostat and other statistical sources available to the Commission*

#### 4. Trend in prices of imports from the PRC and price undercutting

##### *4.1 Trend in prices*

- (67) Due to the lack of cooperation of the Chinese exporting producers and lack of alternative sources it was not possible to establish an accurate import price. This is because, as explained in recital (21) above, statistics were considered unsuitable insofar as one of the sources also covered other imports than the product concerned and the other sources did not allow for the possibility to compare export prices with those of the Union industry on a type per type basis.
- (68) Nevertheless, it is considered that the other confidential statistical sources available to the Commission were suitable to indicate the overall trend in import prices from the PRC. The trend in import prices shows a price increase over the period considered.

**Table 3**

*Prices of imports of the product concerned*

	2008	2009	2010	RIP
PRC				
<i>Index</i>	<i>100</i>	<i>102</i>	<i>118</i>	<i>118</i>

*Source: Questionnaire replies, Review request, Eurostat and other statistical sources available to the Commission*

##### *4.2 Price undercutting*

- (69) Due to the lack of cooperation of the Chinese exporting producers and lack of alternative sources, the undercutting calculation was, for the reasons set out in recitals (37) above, based on the export prices to third countries contained in the request for review. The level of undercutting indicatively established amounts to about 20%.

#### 5. Import volumes and market shares of imports from other third countries

- (70) The main producers of LAM in the world are located in the Union and the PRC. Imports from other third countries such as India were found to be negligible, below 1%.

#### 6. Economic situation of the Union industry

- (71) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Union industry.

##### *6.1. Macroeconomic elements*

###### *(a) Production*

- (72) The production volume in the Union remained within the same range over the period considered with the exception of 2009. The decrease in 2009 due to a certain degree to the global economic crisis was compensated by an increase in 2010.
- (73) Despite the downward trend in sales in the Union as explained in recitals (75) to (77) below, the Union producers could maintain the production levels during the period considered as they were able to increase their exports to third markets as explained in recital (78).

<i>Total Union production</i>				
	2008	2009	2010	RIP
Volume ('000 pieces)				
Production	351,480	301,661	360,007	354,646
<i>Index (2008=100)</i>	<i>100</i>	<i>86</i>	<i>102</i>	<i>101</i>

Source: Questionnaire replies.

*(b) Production capacity and capacity utilisation*

- (74) Production capacity slightly increased due to the investments in extra capacity and modernisation undertaken by the Union producers over the period considered. Capacity utilisation remained rather stable, showing a slight decrease in the year 2009. This slight decrease is primarily attributable to the effects of the global economic crisis during that year.

<i>Production capacity and capacity utilisation</i>				
	2008	2009	2010	RIP
Volume ('000 pieces)				
Production capacity	452,407	453,323	465,984	465,401
<i>Index (2008=100)</i>	<i>100</i>	<i>100</i>	<i>103</i>	<i>103</i>
Capacity utilisation	77.7%	66.5%	77.3%	76.2%
<i>Index (2008=100)</i>	<i>100</i>	<i>86</i>	<i>99</i>	<i>98</i>

Source: Questionnaire replies.

*(c) Sales volume in the Union*

- (75) The figures below represent the Union industry's sales volume to independent customers on the Union market.

<i>Sales to unrelated customers</i>				
	2008	2009	2010	RIP
Volume ('000 pieces)	315,715	281,281	309,941	304,444
<i>Index (2008=100)</i>	<i>100</i>	<i>89</i>	<i>98</i>	<i>96</i>

Source: Questionnaire replies.

- (76) The sales in the Union decreased over the period considered by 4%.

- (77) In 2009, the sales dropped by 11%. This decline is to be attributed to the effects of the global economic crisis. In subsequent years the sales recovered and were close to 2008 figures during the RIP.

(d) *Sales to thirds markets*

- (78) The figures below represent the Union industry's sales volume to third markets and show a sharp increase in these sales over the period considered.

	2008	2009	2010	RIP
Volume ('000 pieces)	26,750	42,105	59,221	57,148
<i>Index (2008=100)</i>	<i>100</i>	<i>157</i>	<i>221</i>	<i>214</i>

Source: Questionnaire replies.

(e) *Market share*

- (79) Despite the decrease in sales in the Union, the market share of the Union industry increased by 9% over the period considered to reach a range of 80% to 93% during the RIP. The increase in the Union market share was a result of the decrease in consumption in the Union as well as the decrease of the market share of imports from the PRC.

	2008	2009	2010	RIP
<i>Index (2008=100)</i>	<i>100</i>	<i>106</i>	<i>109</i>	<i>109</i>

Source: Questionnaire replies, Review request, Eurostat and other statistical sources available to the Commission

(f) *Growth*

- (80) Between 2008 and the RIP, the Union consumption shrank by 12%. The volume of sales by the Union producers on the Union market decreased by 4%. The Union producers' market share increased by 9%.

(g) *Employment*

- (81) Employment in the sector decreased in the Union during the period considered. This decrease was linked to the modernisation and mechanisation of the production process by the Union industry.

	2008	2009	2010	RIP
Number of employees	710	588	561	552
<i>Index (2008=100)</i>	<i>100</i>	<i>83</i>	<i>79</i>	<i>78</i>

Source: Questionnaire replies.

(h) *Productivity*



- (82) The productivity of the Union industry's workforce, measured as output per person employed per year, developed positively over the period considered and remained stable through 2010 and the RIP.
- (83) This increase in productivity was linked to the modernisation process undertaken which is described in recital (93).

<i>Productivity</i>				
	2008	2009	2010	RIP
Productivity ('000 pieces/year)	495	513	642	642
<i>Index (2008=100)</i>	<i>100</i>	<i>104</i>	<i>130</i>	<i>130</i>

Source: Questionnaire replies.

(i) *Magnitude of the actual dumping margin and recovery from the past dumping*

- (84) It is recalled that due to the circumstances described in recitals (19) to (23), no dumping calculation could be carried out. However, a likelihood of recurrence of dumping was established based on a comparison between normal value established on the basis of the average Union industry sales prices and export price established on the basis of prices to third countries.
- (85) The analysis shows that the Union industry recovered to a large extent due to the imposition of the measures against dumped imports and the measures in force are proving to be effective.

*6.2 Microeconomic elements*

(a) *Stocks*

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

<i>Closing Stocks</i>				
	2008	2009	2010	RIP
<i>Index (2008=100)</i>	<i>100</i>	<i>43</i>	<i>61</i>	<i>83</i>

Source: Questionnaire replies.

- (87) The investigation showed that stocks held by the Union industry were not a relevant indicator for the assessment of the economic situation of the Union industry because the level of stocks varies on a seasonal basis.

(b) *Wages*

- (88) During the period considered the average wage increased by 33% per employee.

<i>Wages (cost per employee)</i>				
	2008	2009	2010	RIP
<i>Index (2008=100)</i>	<i>100</i>	<i>116</i>	<i>133</i>	<i>133</i>

Source: Questionnaire replies.

(c) *Sales prices*

- (89) Average unit prices of LAM in the Union increased slightly between 2008 and RIP. The relative decrease in 2010 as compared to 2009 is linked to fluctuation of the prices of the raw materials.

<b>Table 13</b>				
<i>Unit price EU market (EUR per 000 pieces)</i>				
	2008	2009	2010	RIP
<i>Index (2008=100)</i>	100	103	101	104

Source: Questionnaire replies.

(d) *Profitability*

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

<b>Table 14</b>				
<i>Profitability</i>				
	2008	2009	2010	RIP
<i>Index (2008=100)</i>	100	107	105	104

Source: Questionnaire replies.

- (91) Prior to the imposition of definitive measures in 2006 the Union industry was heavily loss making. Since then, the economic situation of the LAM industry improved over the period considered, however remaining below the target profit of 5% established in the original investigation during the RIP.

(e) *Investments, return on investments and cash flow*

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

<b>Table 15</b>				
<i>Investments, return on investment and cash flow</i>				
	2008	2009	2010	RIP
Investments				
<i>Index (2008=100)</i>	100	152	41	51
Return on investment				
<i>Index (2008=100)</i>	100	111	109	108
Cash flow				
<i>Index (2008=100)</i>	100	291	247	236

Source: Questionnaire replies.

- (93) Due to the recovery after imposition of the measures in 2006, the industry carried out significant investments into modernisation and expansion of the production facility, in particular in 2008 and 2009. The improved profitability and is also reflected in the improved cash flow.

*(f) Ability to raise capital*

- (94) The investigation did not reveal any particular problems in the ability of the Union industry to raise capital.

*6.3. Conclusion on the economic situation of the Union industry*

- (95) Based on the above-mentioned analysis, the economic situation of the Union industry has improved and the industry is proving to be viable after the imposition of the measures in 2006. Nonetheless, taking into account that the above mentioned positive developments occurred only after the imposition of measures, employment is decreasing and profitability is still below its target level, it is considered that the economic situation of the industry remains fragile and vulnerable. It may therefore be concluded that the evidence suggests that the removal of injury is partly or solely due to the existence of measures.

**G. LIKELIHOOD OF RECURRENCE OF INJURY**

- (96) Since the imposition of the measures in force the situation of the Union industry improved considerably. However, the findings of the present analysis show that the Union industry still remains fragile and vulnerable.
- (97) Under such circumstances it is appropriate to carry out an analysis of the likelihood of recurrence of material injury in order to examine whether — should the measures be repealed — projected developments in terms of volumes and prices of imports originating in the PRC would deteriorate the present situation, as detailed below from recital (98) to (106).
- (98) There are two main producers of LAM in the world – the PRC and the Union. The Union is the largest market for LAM worldwide, followed by South America and Russia. There are small producers in other countries, such as India, but these concentrate on their respective domestic markets.. The USA and Canada use different filing systems.
- (99) It is recalled that there is significant spare capacity in the PRC and that production of LAM in the PRC could be easily increased as explained in recitals (45) to (48) above.
- (100) It is also recalled that the spare capacity available in the PRC corresponds roughly the Union consumption (see recital (45) above).
- (101) It was also established that any increase of LAM production in the PRC would be likely to be exported to the Union, if measures were repealed (see recital (53) above). This is based on the fact that the EU market remains the largest market worldwide for LAM, with a relatively stable consumption and due to the fact that the prevailing prices are generally higher in the Union market than in other export markets (see recital (52) above). Also it should be taken into account that apart from the Union and the PRC there are no other significant exporting countries producing LAM.
- (102) In addition, as mentioned in recital (41) above, production capacity in the PRC can be increased easily by the simple provision of additional labour. Therefore, the PRC exports would be able to accommodate any increase in the Union consumption. In view of the potentially low price of Chinese imports, as shown by the comparison with

their prices to third country markets, and the apparent unlimited ability to supply at low prices, the Union industry would very likely not be able to benefit of any increase in demand which would lead to important losses of market share, should measures be repealed.

- (103) On this basis it is to be expected that the conditions of any future significant increase of LAM imports from the PRC to the Union would have serious negative consequences on the situation of the Union industry. As mentioned above, if measures are repealed, the import volume of LAM from PRC is expected to be important. Furthermore, those imports would most probably exert a significant price pressure on the Union market, thus on the Union industry, as suggested by the data on the level of prices in third country markets. Indeed, according to the data available it is estimated that the current Chinese prices do undercut Union prices by around 20% as described in recital (69) above, which points to a strong likelihood for the Chinese imports to occur at prices substantially below Union prices should the measures be lifted.
- (104) The attractiveness of the Union market for Chinese exporters is also underlined by the misclassification attempts to avoid the anti-dumping measures in place (recital (55) above).
- (105) On the basis of the above, it is likely that the expiry of the anti-dumping measures on imports of LAM originating in the PRC would result in a sharp increase in the volume of imports into the Union at very low prices, very likely undercutting substantially the Union sales prices. This would cause material injury and annihilate the investment and recovery efforts made by the industry in the past years.
- (106) On this basis, it is concluded that the repeal of measures in force of imports from LAM originating in the PRC would in all likelihood result in the recurrence of injury to the Union industry.

## **H. UNION INTEREST**

### **1. Preliminary remark**

- (107) In accordance with Article 21 of the basic Regulation, it was examined whether the maintenance of the existing anti-dumping measures would be against the interest of the Union as a whole.
- (108) The determination of the Union interest was based on an appreciation of all the various interests involved, i.e. those of the Union industry, the importers and users.
- (109) In the original investigation the adoption of measures was considered not to be against the interest of the Union. Furthermore, the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures are in place.
- (110) On this basis, it was examined whether, despite the conclusion on the likelihood of recurrence of dumping and injury, there are compelling reasons which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

### **2. Interest of the Union industry**

- (111) The continuation of the anti-dumping measures on imports from the country concerned would enhance the possibility for the Union industry to reach a reasonable level of profitability, as it would help avoiding that the Union industry is pushed out of the market by substantial volumes of imports from the PRC.
- (112) Indeed, there is a clear likelihood of recurrence of the injurious dumping in substantial volumes which the Union industry could not withstand. The Union industry would therefore continue to benefit from the maintenance of the current anti-dumping measures.
- (113) Accordingly, it is concluded that the maintenance of anti-dumping measures against the PRC would clearly be in the interest of the Union industry.

### 3. Interest of importers and users

- (114) As indicated above, none of the identified unrelated importers submitted questionnaire replies. Importers of LAM are normally also users of the product concerned since they use it for the production of lever arch files ('LAF').
- (115) Several users, i.e. producers of LAF, came forward in the course of the investigation. Only one user provided a questionnaire reply which, given the quality of the data submitted, was possible to verify only to some extent during the verification visit.
- (116) The user that was verified claimed that anti-dumping measures should also be imposed on imports of LAF from the PRC. However, these claims were not substantiated by any supporting evidence.
- (117) Two users expressed their opposition against the continuation of the measures. However, their allegations were not substantiated.
- (118) On the other hand, the analysis also showed that if the Chinese were to become the sole suppliers of LAM as a consequence of the repeal of the measures, the position of the producers of lever arch files would also be endangered due to the disappearance of the competition on the world LAM market. It was therefore considered that the existing measures contribute to variety of supply and competition on the world market for LAM, which ultimately is in the interest of the users.
- (119) Other three users using only the LAM produced in the Union remained neutral and one of them expressed its support for the continuation of the measures.
- (120) Given that the cost of LAM represents a minimal percentage of the retail price of LAF, the measures have practically no effect, if any, on the price of the final product (LAF), and therefore no impact on final consumers.

### 4. Conclusion on Union interest

- (121) Taking into account all of the factors outlined above, it is concluded that there are no compelling reasons against the maintenance of the current anti-dumping measures.

## I. ANTI-DUMPING MEASURES

(122) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that existing measures be maintained. They were also granted a period within which they could make representations subsequent to this disclosure. The submissions and comments were analysed but have not led to the alteration of the essential facts and considerations on the basis of which it was decided to maintain the anti-dumping measures.

(123) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of lever arch mechanisms originating in the PRC should be maintained,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of lever arch mechanisms generally used for archiving sheets and other documents in binders or files currently falling within CN code ex 8305 10 00 (TARIC code 8305 10 00 50) and 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 definitive anti-dumping duty applicable to the net, free-at-Union 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 Stationary 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*

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*