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**Committee on Safeguards**

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**NOTIFICATION UNDER ARTICLE 12.1(B) OF THE AGREEMENT  
ON SAFEGUARDS ON FINDING A SERIOUS INJURY OR  
THREAT THEREOF CAUSED BY INCREASED IMPORTS**

**NOTIFICATION UNDER ARTICLE 12.1(C) OF THE  
AGREEMENT ON SAFEGUARDS**

**NOTIFICATION PURSUANT TO ARTICLE 9, FOOTNOTE 2  
OF THE AGREEMENT ON SAFEGUARDS**

UKRAINE

*(Flexible porous plates, blocks and sheets of polyurethane foams)*

The following communication, dated 7 June 2016, is being circulated at the request of the Delegation of Ukraine.

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On 7 July 2015 was initiated the investigation on imports of flexible porous plates, blocks and sheets of polyurethane foams regardless of country of origin and export in accordance with Decision of the Interdepartmental Commission of Foreign Trade of 03.07.2015 No. SP- 332/2015/4442-06 "On initiation and conduction of safeguard investigation on import in Ukraine of the flexible porous plates, blocks and sheets of polyurethane foams regardless of country of origin and export" (G/SG/N/6/UKR/11 of 17 July 2015).

The investigation has been initiated pursuant to the application of the Interform Manufacturing Ltd, Interform-Dnipro LLC, Interform-West LLC and Interform-M (hereafter – the Applicant).

Taking into consideration that collective output of these entities in production of the like products constitutes a major proportion of the total domestic production of those products (more than 50%), these entities represent the domestic industry in the meaning of the Article 4.1.(C) of the Agreement on Safeguards.

On 26 May 2016 the Interdepartmental Commission on International Trade took a Decision No. SP-356/2016/4411-05 on application of safeguard measures on imports into Ukraine of flexible porous plates, blocks and sheets of polyurethane foams regardless of their country of origin and export.

Notice on the Decision No. SP-356/2016/4411-05 on application of safeguard measures on imports into Ukraine of flexible porous plates, blocks and sheets of polyurethane foams regardless of their country of origin and export published in the newspaper "Uryadovyi Courier" No. 100 as of 28.05.2016 (Governmental Courier).

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## **1 EVIDENCE OF SERIOUS INJURY OR THREAT THEREOF CAUSED BY INCREASED IMPORTS**

### *1. A. Evidence of serious injury*

In order to determine the serious injury to domestic production of the like product in Ukraine as a result of growing imports into Ukraine, an evaluation of all relevant factors of an objective and quantifiable nature affecting the situation in this industry has been undertaken.

The period of investigation was from 1 January 2012 – till 31 December 2014.

During this period an evaluation of growth of imports into Ukraine has been carried out, as well as the state of industrial, commercial and financial situation of the domestic industry. This period of investigation consists of three comparable periods: 1 January 2012 – 31 December 2012 (2012), 1 January 2013 – 31 December 2013 (2013), 1 January 2014 – 31 December 2014 (2014).

Analysis has shown, that during the period of investigation:

- Applicant's production of goods in 2014 compared to 2013 decreased by 12.39%, in 2014 compared to 2012 by 11.78%;
- Applicant's percentage of capacity utilization in 2014 compared to 2013 decreased by 12.54%, in 2014 compared to 2012 by 42%;
- Applicant's sales of goods on the domestic market in 2014 compared to 2013 decreased by 12.83%, in 2014 compared to 2012 by 12.6%;
- total balance of goods in 2014 compared to 2013 increased by 64.52%, in 2014 compared to 2012 by 500.00%;
- employment rate on the Applicant's enterprises in 2014 compared to 2013 decreased by 11.28%, in 2014 compared to 2012 by 14.37%;
- liquidity index in 2014 compared to 2013 decreased by 16.13%, in 2014 compared to 2012 by 50.51%;
- Applicant's income from goods sales on the domestic market in 2014 compared to 2013 decreased by 48.78%, in 2014 compared to 2012 by 67.91%;
- goods ratio of the Applicant in consumption in 2014 compared to 2013 decreased by 6.24%, in 2014 compared to 2012 by 4.95%;
- enterprises of the Applicant haven't had capital investment profit.

Table 1.A.1.

Indicator	2012	2013	2014
<b>Quantity of production</b>			
<b>Production, tons</b>			
<i>Dynamics compared to previous year, %</i>	-	0.70	-12.39
<i>Dynamics compared to 2012, %</i>	-	0.70	-11.78
<b>Production capacity</b>			
<b>Capacity, tons</b>			
<i>Dynamics compared to previous year, %</i>	-	52.17	-
<i>Dynamics compared to 2012, %</i>	-	52.17	52.17
<b>Utilization of production capacity</b>			
<b>Utilization, %</b>			
<i>Dynamics compared to previous year, %</i>	-	-33.68	-12.54
<i>Dynamics compared to 2012, %</i>	-	-33.68	-42.00
<b>Total amount of stock of goods at the end of period</b>			
<b>Amount of stock, tons</b>			
<i>Dynamics compared to previous year, %</i>	-	264.71	64.52
<i>Dynamics compared to 2012, %</i>	-	264.71	500.00
<b>Sales volume on the domestic market of Ukraine</b>			
<b>Sales volume, tons</b>			
<i>Dynamics compared to previous year, %</i>	-	0.26	-12.83
<i>Dynamics compared to 2012, %</i>	-	0.26	-12.60
<b>Share of goods in total production of domestic producer</b>			
<b>Share of goods in production, %</b>			
<i>Dynamics compared to previous year, %</i>	-	-0.44	-0.50
<i>Dynamics compared to 2012, %</i>	-	-0.44	-0.93
<b>Share in consumption</b>			
<b>Share, %</b>			
<i>Dynamics compared to previous year, %</i>	-	1.37	-6.24
<i>Dynamics compared to 2012, %</i>	-	1.37	-4.95
<b>Price on the domestic market of Ukraine</b>			
<b>Price, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	-3.38	-5.04
<i>Dynamics compared to 2012, %</i>	-	-3.38	-8.25
<b>Production cost</b>			
<b>Production cost, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	0.86	-2.94
<i>Dynamics compared to 2012, %</i>	-	0.86	-2.10
<b>Profitability from sales of unit on the domestic market</b>			
<b>Profitability, %</b>			
<i>Dynamics compared to previous year, %</i>	-	-44.61	-39.66
<i>Dynamics compared to 2012, %</i>	-	-44.61	-66.57
<b>Employment</b>			
<b>Quantity, people</b>			
<i>Dynamics compared to previous year, %</i>	-	-3.49	-11.28
<i>Dynamics compared to 2012, %</i>	-	-3.49	-14.37
<b>Labour productivity</b>			
<b>Productivity, tons per capita</b>			
<i>Dynamics compared to previous year, %</i>	-	4.35	-1.26
<i>Dynamics compared to 2012, %</i>	-	4.35	3.03
<b>Profit/loss of the domestic producer from sales on the domestic market</b>			
<b>Profit, ths. dollars. USA</b>			
<i>Dynamics compared to previous year, %</i>	-	-37.34	-48.78
<i>Dynamics compared to 2012, %</i>	-	-37.34	-67.91
<b>Liquidity conditions</b>			
<b>Coefficient, %</b>			
<i>Dynamics compared to previous year, %</i>	-	-41.00	-16.13
<i>Dynamics compared to 2012, %</i>	-	-41.00	-50.51
<b>Investments</b>			
<b>Investments, ths. dollars. USA</b>			
<i>Dynamics compared to previous year, %</i>	-	-33.64	39.98
<i>Dynamics compared to 2012, %</i>	-	-33.64	-7.11

Together, all these factors give grounds to the investigation authority to conclude about the fact of serious injury to the domestic industry during the period of investigation.

### *1.B. Causality and non-attribution analysis*

#### **The impact of rising imports of goods**

In the framework of the investigation was determined that during 2012-2014:

- price of imports into Ukraine of goods in 2014 compared to 2012 increased by 6.11%, in comparison with 2013 by 1.8%;
- price of like products in 2014 compared to 2012 decreased by 8.25%, in comparison with 2013 by 5.04%;
- production cost of like products of the domestic producer in 2014 decreased compared to 2012 by 2.94%;
- prices of imported goods declined to a level lower than prices of like products, though the difference between prices decreased totally by 71.84%. Indicated reduction was achieved not through the growth in import prices but in connection of decrease in selling prices of domestic producers;
- prices of imported goods declined not just to a level lower than prices of like products, but lower than production cost of like products, though the difference between import prices and production cost of domestic producers decreased totally by 76.56%;

At the same time, data on the level of import prices, prices and production cost of like products indicates that prices of imported goods declined much lower than prices of domestic producer and even lower of its production cost. Herein domestic producer in connection with cheap and increasing import had to lower his selling prices faster than reducing the production cost of like products.

In addition, recent trends showed that in January-February 2016 import prices decreased by 24.44% compared with January-February 2015 and by 24.43% compared with January-February 2012.

As the results of the investigation, the investigation authority has found that during the investigation period there has been the growth of imports of goods in Ukraine, subject to investigation, both in absolute and relative terms to production of domestic industry.

Thus indicated significant increase of imports of goods was in 2013-2014, before and during the period when sales volume and production volumes of domestic producer decreased (sales volume by 12.60%; production volumes by 11.78%).

The trend of imports growth to Ukraine of goods subject to investigation, and terms of imports led to losses in activity of enterprises of domestic industry.

Indicated conditions of import goods to Ukraine subject to investigation, led to the displacement from the internal market and reduction of the proportion of applicants in consumption in the domestic market of Ukraine and, consequently, a decrease in production, capacity utilization percentage, increase in finished goods inventory balance, reduction in sales of goods on the domestic market of Ukraine, reducing the number of employees in Applicant's enterprises and the liquidity ratio etc. It should be noted that share in consumption of goods imports subject to investigation in the domestic market of Ukraine on the contrary increased.

**Table 1.B.1**

<b>Indicator</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Import price, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	4.23	1.80
<i>Dynamics compared to 2012, %</i>	-	4.23	6.11
<b>Like product price on the domestic market of Ukraine, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	-3.38	-5.04
<i>Dynamics compared to 2012, %</i>	-	-3.38	-8.25
<b>Like product production cost, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	0.86	-2.94
<i>Dynamics compared to 2012, %</i>	-	0.86	-2.10
<b>Difference on which imports prices of goods are lower than like products prices, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	-37.08	-55.25
<i>Dynamics compared to 2012, %</i>	-	-37.08	-71.84
<b>Difference on which imports prices of goods are lower than like products production cost, US dollars/tonne</b>			
<i>Dynamics compared to previous year, %</i>	-	-29.69	-66.67
<i>Dynamics compared to 2012, %</i>	-	-29.69	-76.56

**Other Factors**

In the framework of the investigation the Ministry examined other factors not depending on imports, but have a significant impact on the Ukrainian market in general and situation in the field of national industry, namely, significant investments to increase production capacity, and the negative impact of such investments may not affect imports and decrease the exports volumes of domestic producers.

On the results of the investigation the Ministry determined that the domestic producer during the investigation period has repeatedly underlined on the interest of further development of domestic production, establishment of new enterprises and creating new working places. In this regard, in 2012 national producer invested in new equipment purchasing, which allowed significantly increase the production capacity. Further expansion of production, creation of working places, measures to improve social infrastructure of enterprises are planned. However, due to increasing imports of goods at low prices, conditions of the domestic producer significantly deteriorated in recent years. Thus, domestic producer had to refuse a number of planned investment projects and take measures on reducing salaries and quit employees. During the investigation period annual investments in production decreased by 7.11%.

Regarding export activity of the domestic producer the Ministry determined that the share of sales for export in the total production of the domestic producer remained stable and averaged 7.5%. In 2014 compared to 2012 exports of national producer decreased by 12.5%.

Thus, other factors didn't have a determining effect in relation to the impact on socio-economic indicators of the domestic producer and causing him a serious injury.

*Conclusion on causality and non-attribution*

By the results of the investigation the Ministry confirmed the conclusions of the determination according to which the injury suffered is caused by massive imports and cannot be attributed to other factors, most notably investments (new production) and exports reduction.

**2 INFORMATION ON WHETHER THERE IS AN ABSOLUTE INCREASE IN IMPORTS OR AN INCREASE IN IMPORTS RELATIVE TO DOMESTIC PRODUCTION***(i) Unforeseen developments and effect of the obligations incurred by Ukraine under the GATT 1994*

In accordance with the Appellate Body's findings with respect to Article XIX of the GATT 1994 and the Agreement on Safeguards, the Ministry has examined whether unforeseen developments resulted in increased imports causing serious injury to the domestic industry producing the like product.

Unexpected events of 2014, such as the political situation in Ukraine and annexation of Crimea could not be foreseen. Therewith, they influenced not only on market conditions in Ukraine, but also on the market of the Russian Federation.

Regarding the market of Ukraine: import prices were lower, however, for various reasons, including lower living standards in Ukraine, the national consumer product oriented to domestic producer product. With the change of economic situation in the domestic market in 2014, consumers reoriented to cheaper imported goods that caused the reduction of national producer's prices. Regarding the market of the Russian Federation: sanctions against the Russian Federation complicated the doing business in its territory, foreign partners compelled to focus on other markets, including the market of Ukraine. Thus, all these circumstances are linked and influenced the growth in imports at low prices in Ukraine. Moreover, despite the loss of territory of Ukraine, the volume of imports increased both in absolute and in relative indicators, and was observed the loss of market share of domestic producer.

Ministry investigated the presence of other factors that could affect the deterioration of financial and economic situation of domestic producer. Ministry determined that other factors (currency depreciation, investment, exports) had no effect on domestic producer.

Thus, the Ministry determined that there was a direct logical connection between unforeseen developments and increasing of import volumes which led to significant injury to domestic producers.

Based on the relevant information collected and analyzed in the context of the investigation, the Ministry concluded that the existence of unforeseen developments has been demonstrated.

Also in line with the Appellate Body's findings, the Ministry (examined whether and) determined that Ukraine had incurred obligations under the GATT 1994, in the form of tariff concessions, for the product under investigation. The Schedule of Concessions attached to the Protocol of Accession of Ukraine to the WTO supports this conclusion.

*(ii) Increase of imports*

The Ministry examined imports of the goods in absolute terms and relative to consumption or production of goods in Ukraine.

The results of the study showed that during the investigation period there has been a growth of import to Ukraine of goods subject to investigation:

- in absolute terms in 2014 compared with 2013 – increased by 17.77%, and by 28.70% in 2014 compared with 2012;
- with regard to production of goods in Ukraine in 2014 compared with 2013 – increased by 31.93%; and by 45.72% in 2014 compared with 2012;
- relative to consumption of goods in 2014 compared with 2012 – increased by 26.67%; and by 39.96% in 2014 compared with 2012.

Recent trends in January-February 2016 showed imports increase in comparison with the same period in 2015 by 9.97% and compared to 2012 – by 79.58%.

**Table 2.1**

<i>Indicator</i>	<b>2012</b>	<b>2013</b>	<b>2014</b>
<b>Total imports of goods in Ukraine subject to investigation</b>			
<b>Imports, tons</b>	<b>2 005.46</b>	<b>2 191.56</b>	<b>2 581.02</b>
<i>Dynamics compared to previous year, %</i>	-	9.28	17.77
<i>Dynamics compared to 2012, %</i>	-	9.28	28.70
<b>Imports ratio to production of goods in Ukraine, %</b>			
<i>Dynamics compared to previous year, %</i>	-	10.45	31.93
<i>Dynamics compared to 2012, %</i>	-	10.45	45.72
<b>Imports ratio to consumption of goods in Ukraine, %</b>			
<i>Dynamics compared to previous year, %</i>	-	10.49	26.67
<i>Dynamics compared to 2012, %</i>	-	10.49	39.96

### **3 PRECISE DESCRIPTION OF THE PRODUCT INVOLVED**

Flexible porous plates, blocks and sheets of polyurethane foams imported to Ukraine and classified as per UKTZED code of 3921.13.10.19 (hereinafter – "the Product").

### **4 DESCRIPTION OF ANY PART OF THE IMPORTED GOODS THAT WILL NO LONGER BE SUBJECT TO THE MEASURE**

Not applicable.

### **5 PRECISE DESCRIPTION OF THE PROPOSED MEASURE**

The Interdepartmental Commission on International Trade took a decision of 26.05.2016 No. SP-356/2016/4411-05 on the application of safeguard measures in a form of imposition of a safeguard duty on imports into Ukraine of goods that are the subject of the investigation.

The safeguard duty rate at which domestic industry will not be suffered from injury is 13.09%.

### **6 PROPOSED DATE OF INTRODUCTION OF THE MEASURE**

Safeguard measures are coming into force in 40 days from the date of the notice publication in the newspaper "Uryadovyi Courier" (Governmental Courier) (No. 100 as of 28.05.2016).

### **7 EXPECTED DURATION OF THE MEASURE**

Safeguard measures are planned to impose for a period of 3 years.

### **8 PROPOSED DATE FOR THE REVIEW OF A MEASURES WITH A DURATION OF MORE THAN THREE YEARS**

Not applicable.

### **9 PROVIDE EXPECTED TIMETABLE FOR PROGRESSIVE LIBERALIZATION OF THE MEASURE**

According to the Article 18 of the Law of Ukraine "On Application of Safeguard Measures against Imports to Ukraine" and the Article 7.4 of the Agreement on Safeguards the WTO final safeguard measures will be liberalized by reducing the size of the rate of safeguard duty:

- 12 months from the date of application – by 12.44%;
- 24 months from the date of application – by 11.81%.

### **10 FINAL DATE FOR SUBMISSION OF COMMENTS INTERESTED PARTY AND DATE OF PRIOR CONSULTATION WITH THE MEMBERS HAVING A SUBSTANTIAL INTEREST AS EXPORTERS OF GOODS**

- (i) Interested parties may submit comments on this issue and participate in prior consultations before 24.06.2016.
- (ii) according to the Article 12.3 of the Agreement on Safeguards prior consultation with the interested parties, which reveal a substantial interest as exporters of goods, is proposed before 07.07.2016 in Kiev (Ukraine).

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**11 INFORMATION PROVIDED IN CASE OF PROLONGATION OF THE MEASURES**

Not applicable.

**12 INFORMATION ON MAJOR EXPORTING COUNTRIES AND EXCLUSIONS FOR REASONS OTHER THAN THOSE MENTIONED IN ARTICLE 9.1 OF THE SAFEGUARDS AGREEMENT***(i) Major exporting countries*

The share of the total imports into Ukraine of products subject to investigation indicated in the Table 12.1.

**Table 12.1.**

<b>Country of origin</b>	<b>2014</b>
<b>Total imports, %</b>	100.00
<b>Poland, %</b>	52.39
<b>Romania, %</b>	23.51
<b>Hungary, %</b>	21.15
<b>Republic of Turkey, %</b>	0.89
<b>The Federal Republic of Germany, %</b>	0.47

*(ii) Exclusions for reasons other than those mentioned in Article 9.1 of the Safeguards Agreement*

According to the Free Trade Agreement between the EFTA States and Ukraine dated 24.06.2010, between the Government of Ukraine and the Government of Montenegro dated 18.11.2011, Free Trade Agreement of the Commonwealth of Independent States, dated 18.10.2011 and taking into account chapter 8 of the Article XXIV of the General Agreement on Tariffs and Trade 1994, imports of goods originating from Iceland, Liechtenstein, Norway, Switzerland, Montenegro, Republic of Armenia, Kazakhstan, Republic of Azerbaijan, Turkmenistan, Uzbekistan, Tajikistan and Kyrgyzstan should be excluded from the application of safeguards.

**13 DEVELOPING COUNTRIES TO WHICH THE MEASURE IS NOT APPLIED UNDER ARTICLE 9.1 OF THE AGREEMENTS ON SAFEGUARDS**

According to the List of Least Developed Countries of United Nations special safeguards measures do not apply to such countries-WTO members as Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Chad, Democratic Republic of Congo, Central African Republic, Djibouti, Gambia, Guinea, Guinea-Bissau, Haiti, Lao People's Democratic Republic, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Samoa, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Vanuatu, Zambia.

Imports into Ukraine subject to investigation which should be excluded from the application of special measures, in 2014 amounted to 0.1% of total imports, and therefore it hasn't influenced on the main conclusions in the Ministry concerning the fact of the imports growth as a result of which there was a substantial injury to domestic industry.

**14 PUBLICLY AVAILABLE DOCUMENT CONTAINING THE RELEVANT DECISION MADE BY THE COMPETENT AUTHORITY IS ATTACHED, IN AN ELECTRONIC FORM, AND CAN BE FOUND BY THE FOLLOWING LINK**

<http://ukurier.gov.ua/uk/articles/mizhvidomcha-komisiya-z-mizhnarodnoyi-torgivli-inf/>