**6a. ANTITRUST PROCESS**

Updated July 24, 2017

This process statement contains USSEC "Antitrust Guidelines" This statement is intended to make USSEC directors, staff and other participants aware that federal and state antitrust laws apply to USSEC’s activities and USSEC’s policy with respect to compliance with such laws and to serve as a basic guide to assist USSEC and its directors, staff and other participants in conducting meetings and other activities in compliance with the antitrust laws.

Antitrust laws apply generally to the private business community and apply to trade associations and their members to a particular degree. A trade association by nature is a combination of competitors that has the capacity to be a conduit for collusive action resulting in an illegal restraint of trade. Two of the principal antitrust laws are applicable to trade associations: Section 1 and 2 of the Sherman Act, which prohibit contracts, combinations and conspiracies in restraint of trade and monopolization and attempts and conspiracies to monopolize, and Section 5 of the Federal Trade Commission Act, which establishes broad prohibitions against unfair methods of competition and unfair or deceptive business acts or practices.

In addition to USSEC’s firm commitment to the principles of competition served by the antitrust laws, the penalties that may be imposed upon USSEC, its directors, staff and other participants for a violation of the antitrust laws are so severe that good business judgment demands every effort be made to avoid any such violation. Because a person's mere presence at a meeting at which an illegal discussion takes place, even if the person disagrees with it, can, in certain instances, be sufficient to conclude that the individual is part of an alleged conspiracy, everyone involved in USSEC meetings and activities must be mindful of any potential antitrust violation. If any director, staff member or other participant observes behavior not in compliance with this Antitrust Policy Statement, he or she must immediately contact USSEC’s Chief Executive Officer. Any violation of this Antitrust Policy Statement may result in immediate suspension from participation in USSEC activities, and if applicable, immediate removal from any office or director position or termination of employment.

**ANTITRUST GUIDELINES**

This section describes some of the types of activities and practices that courts have found to constitute violations of the Sherman Act. USSEC directors, staff and other participants must take extreme care to avoid even the appearance of engaging in these types of activities, as well as any others which could be construed as having an anticompetitive intent or purpose. At the end of these Guidelines are a list of rules (in the form of do's and don'ts) for USSEC to circulate on a regular basis, no less frequently than annually. In addition, each director, employee and contractor shall annually sign an Antitrust Affidavit that acknowledges such person's review and understanding of USSEC’s Antitrust Policy Statement.

*Per se* violations of the antitrust laws have traditionally included agreements among competitors that have the purpose and effect of "fixing prices," "allocating territories," or "boycotting third parties." Under the antitrust laws, "price fixing" includes much more than an agreement to set prices at a particular level, within a specific range, or in accordance with a particular formula. It potentially includes any agreement that tends to raise, fix, stabilize or otherwise affect price. Thus, even if the parties permit the price to vary somewhat under the agreement, the agreement is illegal if it has the effect of stabilizing the price among those participating in the conspiracy. Similarly, price fixing includes agreements to control other factors that directly or indirectly affect price, such as establishing production levels, setting uniform discounts, credit terms, or agreeing on matters relating to costs, especially when those costs account for a substantial percentage of the final price.

Territorial or market allocation involves an agreement among competitors operating at the same level of the market structure--such as growers, distributors, etc.--to divide the market in such a way as to allow each party to the agreement to serve its share of the market without competition from the others. Such prohibited allocations in the past have been made on the basis of geographical boundaries or particular types of customers.

Group boycotts or "refusals to deal" are considered *per se* violations in certain instances. Agreements or collective action to refuse to deal with certain suppliers, customers, or other competitors, or to undertake actions that tend to exclude certain participants from the marketplace or deny them access to a significant competitive benefit available to others in the market are prohibited. Before the *per se* rule is applied, however, several factors are considered, such as whether the activity was undertaken for an anticompetitive purpose, whether the group possesses market power, and whether it holds exclusive or unique access to a business element necessary for effective competition.

In the trade association context, group boycott issues may arise in relation to participation or exhibition restrictions, or in disciplinary or expulsion action against participants. Because these situations must be analyzed closely in accordance with strictly defined legal guidelines, counsel should be notified prior to USSEC’s consideration of any of these actions.

In addition to the issues described above, other antitrust problems may arise where trade association activities are undertaken which may have anticompetitive effects on non-members. Particular guidelines must be followed before undertaking any USSEC project, such as an industry survey or other statistical program, or petitioning industry or government organizations on matters that may have a competitive impact on non-members. Accordingly, counsel must be contacted before discussing or planning these programs.

*The following rules are applicable to all USSEC meetings and activities and must be observed in all situations and under all circumstances, without exception or qualification other than as noted below. They also serve as a checklist of antitrust "Do's" and "Don'ts" for use by USSEC directors, staff and other participants in the conduct of USSEC sponsored activities, including informal or social gatherings. Participants in USSEC sponsored meetings and activities should understand the purpose and authority of the groups or committees in which they participate and should comply with USSEC’s Antitrust Policy Statement. This is not intended as an exhaustive list, however, and directors, staff and other participants are encouraged to seek the guidance of USSEC’s Chief Executive Officer or counsel whenever questions arise.*

**Don'ts**

Do Not--in fact or appearance--discuss or exchange information with actual or potential competitors regarding any of the following matters, either on USSEC website, during USSEC sponsored meetings or activities or otherwise:

* Individual company prices, price changes, price differentials, mark-ups, discounts, allowances, credit terms, costs, production levels, capacity, sales, etc.
* Plans of individual companies concerning the design, production, distribution or marketing of particular products, including proposed territories or customers.
* Division or limitation of sales to particular territories, customers or classes of customers.
* Refusal to sell to or purchase from, or termination or modification of sales or purchase arrangements with representatives, distributors, or other third parties, or prices or terms of sale or resale by customers.
* Industry pricing policies, price levels, price changes, differentials and/or changes in industry production, capacity or inventories.
* Matters relating to actual or potential individual suppliers or customers that might exclude them from any market or of influencing the business conduct of firms toward such suppliers or customers.
* Limiting or eliminating competition in any way, or efforts to create a monopoly.
* USSEC participation, denial of participation, or expulsion of participants other than in formal meetings with the participation of counsel.

**Do's**

* Before meetings, prepare and have counsel review agendas of particular items of potential competitive significance to be discussed at meetings and adhere to the agenda unless additional matters for discussion have been approved in advance by USSEC staff or counsel.
* Ensure that draft meeting minutes are promptly prepared after each meeting and then circulated to meeting participants to determine that the minutes accurately reflect the proceedings.
* Protest any discussions or meeting activities that appear to violate the antitrust laws or this Antitrust Policy Statement, disassociate yourself from any such discussions or activities and leave any meeting in which they continue. Be sure that USSEC staff and counsel are made aware of any such activities.
* Provide USSEC directors, staff and other participants with a copy of this Antitrust Policy Statement and have a copy available for reference at all USSEC sponsored meetings.