

## ATP ANTITRUST GUIDANCE

1. All attendees acknowledge receipt and review of the Association's document entitled *ATP Antitrust Policy and Guidelines -- Statement of Policy*.
2. Neither the ATP nor any Division shall be used for the purpose of bringing about any agreement among competitors with regard to prices, terms or conditions of sale, distribution, territories or customers.
3. No ATP activity or communication shall include discussion of pricing methods, sales or dealings with customers.
4. No ATP activity or communication shall include any language which might be construed as an attempt to prevent any business entity from gaining access to any market or to prevent any business entity from obtaining a supply of goods/services freely in the market.
5. In informal discussions at the site of ATP meetings, but beyond control of its Chair, all board members, officers and other participants are expected to observe the same standards of personal conduct as are required of ATP in its compliance with these antitrust guidelines.

## ATP ANTITRUST POLICY AND GUIDELINES

### STATEMENT OF POLICY

The purpose of this statement is to assist all members, officers, and participants in gaining an insight into those portions of the Federal antitrust laws applicable to the day-to-day business and activities of the ATP and the association's policies to assure compliance with these laws.

Antitrust laws are generally applicable to the private business community. However, they also apply to trade associations and their members to a particular degree. A trade association by nature is a combination of competitors which has the capacity of being a conduit for collusive action resulting in an illegal restraint of trade. Being continually cognizant of this fact, and desiring to emphasize the on-going commitment of the ATP to achieve full compliance, it is the policy of the ATP to comply strictly and in all respects with the antitrust laws. As a practical matter, such compliance is almost always a safeguard against violation of state or federal antitrust statutes.

Portions of two of the principal federal antitrust laws are particularly applicable to trade associations. They are Sections 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. Because these laws speak in general philosophic terms, it is oftentimes difficult to know whether a certain course of action or an association practice specifically violates the law. It is for this very reason that the ATP feels it is imperative to publish at least the basic principles it follows in the conduct of its business, with the intention of having a living document to be amended and updated when a particular principle needs to be added or an existing one needs to be restated to comply with new statutory or case law.

These basic principles are:

1. Price fixing and boycotts, express or implied, are in and of themselves (per se) violations of the law. Price fixing may include agreement on discounts, allowances, terms of warranties, terms of credit, etc. Price fixing may be between competitors or between suppliers and customers as to resale prices. The ATP will not knowingly countenance any improper discussion of prices at any association meeting or other meetings of competitors to which it is a party. Pricing agreements may be inferred and, consequently, appearance of such agreements must be avoided.
2. The ATP will not deny membership to any party within the classes specified in the By-Laws as eligible for membership, if such denial unreasonably restrains trade. Administrative or disciplinary action against members or the expulsion of members may result in economic injury to the affected members and thus, may constitute an illegal boycott or restraint of trade. Therefore, these sensitive areas must be discussed in accordance with strictly-defined legal guidelines and only in the presence or with the advice of counsel.

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3. Whenever the ATP becomes involved in developing or reporting industry-wide statistics, it will clearly spell out its purposes and uses as designed to assist government agencies in decision-making and not to restrict competition. Statistical surveys shall deal with past transactions and be reported in composite form. All such programs will be conducted in accordance with the ATP policy guidelines and with approval of legal counsel.
4. Antitrust problems arise when the effect of standardization is to deprive customers of legitimate choices, to discriminate against competitors, or to fix prices or boycott suppliers. Consequently, all standards or guidelines participated in, developed or maintained by the ATP will offer wide participation in their development by affected parties.
5. The ATP will not sponsor or knowingly be a party to agreements, express or implied, which restrict the members' freedom in any way to make independent decisions in matters that affect competition.
6. Whenever collective industry-wide research is undertaken by the ATP, care will be exercised so as not to unreasonably restrain competition. Attention also will be taken to see that no significant anticompetitive effects are realized.
7. Another area of potential antitrust violation involves association-sponsored efforts to petition government agencies for action which may have an adverse economic impact on some competing companies or industries. A delicate balance always must be maintained between the First Amendment right to petition government and the antitrust laws' prohibition against restraint of trade. The First Amendment does not protect parties which seek to persuade government agencies to impose trade restrictions by misleading them or by engaging in other dishonest activities. Any effort designed to insure competitors clearly is prohibited.
8. To help assure continuing compliance with antitrust laws it is necessary to maintain proper legal supervision of the association's activities. To this end, it is the ATP's policy to recommend strongly that legal counsel attend all meetings of the Board of Directors and general membership.
9. To assist the ATP's Division chair in carrying out their responsibilities in this regard, legal counsel will periodically review with them the relevant antitrust statutes, case law and regulatory developments of concern.

Antitrust laws are wide ranging, complex and subject to changing interpretations. This statement is not intended to be complete; it is intended to highlight and summarize certain basic precautions designed to avoid antitrust problems. Consult your company attorney or ATP legal counsel immediately if you have any questions about the legality of any proposed association action.

## GUIDELINES FOR MEETINGS OF DIVISIONS AND THE BOARD

1. These guidelines are established to ensure that all voluntary committee, Division, and Board activities of the ATP are conducted on a uniform basis in accordance with the law, the goals and objectives of the association, and high professional standards.
2. The following procedures are established for the operation of all ATP committees, Divisions, and Board. The relevant chair will have responsibility for ensuring that these procedures are

followed and members participating in ATP organized activities agree to abide by the association's procedures as adopted by the Board of Directors.

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### 3. Meeting Procedures:

a. Every effort shall be made to have legal counsel present, at all meetings of the ATP Board of Directors. Meetings of Divisions and committees may also have counsel present, if warranted and appropriate.

b. All meetings shall be conducted from a formal written agenda. The committee chair shall have responsibility for preparing or reviewing the agenda. Rump sessions involving the discussion of business matters should be avoided.

c. All written agendas shall be submitted to the ATP legal counsel for approval prior to each meeting. Counsel or Divisional and committee chair shall have responsibility for supervising discussions at association meetings and assuring that meetings follow the approved agenda.

d. If a member has a reservation about a remark or discussion at a meeting, he or she should officially state the reservation. If the discussion on that topic is not terminated or resolved satisfactorily by counsel or the chair, then the concerned member should leave the meeting and request that his or her departure be noted in the minutes.

e. The Association Secretary, or the secretary of the relevant Division or committee, shall write or review minutes of each meeting and will assure that the minutes accurately reflect what transpired at the meeting.

f. All minutes shall be submitted to legal counsel for review prior to being released.

4. All agendas and minutes shall become part of the permanent records of the association.

The above procedures are designed to assure to the degree possible that the Association's activities are conducted in accordance with all applicable federal and state antitrust laws. Any questions concerning these procedures, or any matters which any member believes have antitrust implications, should be addressed promptly to the ATP's legal counsel.

## POLICIES AND GUIDELINES REGARDING COLLECTION, COMPILATION DISSEMINATION OF STATISTICS

### I. Responsibility for Statistical Activities

1. Board of Directors - The ATP Board of Directors shall have final authority over all industry-wide statistical policies, activities, surveys and studies carried on by the association.

2. Legal Counsel - Authority is delegated to legal counsel to pass upon the acceptability of new statistical policies, activities, surveys and studies carried on by the association.

### II. Operating Guidelines

1.- Any Division or committee wishing to undertake collection of industry-wide statistical information must have formal approval of legal counsel prior to initiating such program. Any questionnaires, summaries, forms to be used must have legal approval prior to distribution.

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2. All statistical information provided by individual members will be handled on a strictly confidential basis by the ATP. No member will have access to raw statistical data provided by those members participating in the program.

3. To help ensure confidentiality, individual companies will not be required to be identified by name on survey forms, questionnaires, or statistical summaries.

4. All statistical information will be collected by an independent third party (e.g., management agent, accounting firm, consultant or legal counsel) and all reports will be reviewed by legal counsel before being released.

### III. Policy Guidelines

1. As a general rule, the ATP will not collect or disseminate statistics concerning prices.

2. All statistics will be reported in composite form, without identification of participating companies. Only information concerning past transactions will be collected.

3. Participation in any statistical program is voluntary. Any member may decline to participate.

4. No statistical activity shall ever be undertaken that is contrary to the law, or the By-Laws or policies of the Association.