

ANTITRUST COMPLIANCE GUIDELINES INTERNATIONAL STAINLESS STEEL FORUM

1. INTERNATIONAL STAINLESS STEEL FORUM ANTITRUST POLICY

The International Stainless Steel Forum (ISSF) is an international trade association with high public visibility. The Members of ISSF represent most of the globe's international stainless steel output.

ISSF operates as a separate affiliated division of the World Steel Association (worldsteel) which is the legal entity incorporated in Belgium for both activities. ISSF applies the same stringent antitrust compliance rules and guidelines as worldsteel.

It is the policy of ISSF to comply with all laws that relate to the conduct of its activities, including the antitrust laws of the many jurisdictions that affect its Members. Thus, ISSF governs its activities by the standards of the strictest and most developed antitrust principles, principally those of the United States and the EU. ISSF also acknowledges that multiple jurisdictions in addition to the US and EU have become increasingly vigorous with respect to antitrust enforcement.

The purpose of these Guidelines is to ensure that the conduct of ISSF, its Staff and its Members, does not raise antitrust issues in any relevant jurisdiction. Also, various antitrust authorities have recognized that a strong antitrust policy and compliance guidelines can serve as factors in determining whether to pursue investigations or prosecution. Thus it is the obligation of each Member and of ISSF Staff to be familiar with these Guidelines and to abide by them.

To ensure compliance with these Guidelines, ISSF and worldsteel have the same antitrust Legal Counsel. Our Legal Counsel attends Executive, Board and General Membership meetings of both Worldsteel and the International Stainless Steel Forum (ISSF). Legal Counsel also attends Committee meetings where sensitive antitrust issues may be raised. For example, ISSF Legal Counsel attends meetings of the ISSF Raw Materials Committee as deemed advisable. ISSF Staff is responsible for antitrust compliance at ISSF meetings that Legal Counsel does not personally attend. Legal Counsel is available to Staff and each Member to respond to any questions or concerns. No ISSF meetings or conferences are permitted without the presence of ISSF Staff or Legal Counsel.



2. WHY IS ANTITRUST COMPLIANCE SO IMPORTANT?

Antitrust law is concerned with monopolization and concerted activity (conspiracies) that substantially affect competition. Importantly, trade association activities are automatically deemed to constitute concerted conduct, and where members are in competition to any degree, concerted conduct among competitors. Thus, ISSF, with a membership of the leading stainless steel companies in the world and the representative of the international stainless steel industry, must be very antitrust sensitive. Because the activities of ISSF are evaluated as concerted conduct, conduct that is permissible for individual Members or independent consultants may not be permissible for ISSF as a trade association. This is the important antitrust legal distinction between concerted activity and unilateral conduct.

It is fundamental that none of the foregoing should deter membership in ISSF, or discourage Members from participation in trade association activities. The courts (including the United States Supreme Court) and antitrust enforcement authorities have recognized that legitimate trade association activities can promote competition and efficiency. Furthermore, they can provide industry and public benefits, such as ensuring safety and protecting the environment. In addition, trade association activities can create a better and more informed marketplace, permitting individual Members to make more educated decisions as to what makes business sense for themselves, the industry and the public at large. In sum, trade associations can promote the exchange of ideas and vital market information that individual Members could not accomplish on their own. ISSF is recognized as one of the most advanced providers of stainless steel industry statistical and market information.

3. ISSF AS A VOICE FOR THE INTERNATIONAL STAINLESS STEEL INDUSTRY

One of the prime missions for ISSF is to inform its Members, governments, and the public, on international developments and statistics relating to the stainless steel industry. Trade associations routinely issue industry-relevant bulletins or newsletters. Importantly, given a significant industry issue, trade associations can serve as the "voice" of their industries by presenting position papers and testimony, and by petitioning and lobbying on their industries behalf before governmental bodies, antitrust agencies, and the public. For example, ISSF has represented the international stainless steel industry on environmental issues and has been the advocate for the industry in opposing unwarranted supplier consolidation. This type of unified activity is recognized as a fundamental mission of an international trade association, and is consistent with the antitrust laws.

4. UNILATERAL DECISION MAKING VERSUS CONCERTED CONDUCT

ISSF activities are legally deemed joint conduct among competitors. Joint competitive conduct is very different in legal terms from unilateral decisions made by individual Members based on legitimate information provided by ISSF. ISSF does not make "recommendations" or



“suggestions” or “disguised” inferences to its Members on competitively sensitive topics. Rather, it serves to educate its Members and others on the facts and statistics relating to the international stainless steel industry. Individual Members are free to make their own unilateral educated decisions based on this information or information from other sources they deem appropriate. Except as expressly cleared by Legal Counsel, ISSF and its Members never agree to take joint industry action on any competitively-sensitive issue.

5. APPEARANCES VERSUS REALITY

Trade associations and their members, and even individuals, have at times been prosecuted more for what appears to be a "conspiracy", rather than what the actual facts may be. Conspiracies can legally be “inferred” from ill-advised statements, notes or documents. The classic example is a statement: "I don't care what others may do. I am raising prices next week." Actual cases have found this to be conspiratorial conduct where price rises by competitors have followed such statements. Such statements can also be viewed as “invitations to collude”. Thus, comments at trade association meetings, or notes made or e-mails sent, however well-intentioned, can be misinterpreted and misused. A good rule of thumb to view any comments or notes at trade association meetings, or discussion at attendant social activities, from the standpoint of a skeptical government investigator unwilling to give the benefit of the doubt, or, if you were under oath at a deposition.

6. A FIRE CAN WARM A HOUSE; IT ALSO CAN BURN DOWN A THEATER

Before addressing potential Guideline violations, an important caveat is the misuse of legitimate trade association information and functions. Even the best of trade association conduct and intentions can be subverted. Thus, ISSF and its Legal Counsel must recognize that even legal trade association activities may be viewed as a “disguise” or "front" for anticompetitive ancillary activities not consistent with the antitrust laws. For example, subject to the specific guidelines established by Legal Counsel, ISSF may make certain industry forecasts. As noted below, such forecasts are generally multi-regional or global, and have little prospect for competitive abuse. However, antitrust authorities have cautioned that industry forecasts can be misused to implement or monitor cartel behavior. Thus, it is fundamental to ISSF antitrust policy that legally-approved activities can never be used to mask or implement anticompetitive conduct.

7. ANTITRUST- SENSITIVE AREAS

Theoretically, many forms of otherwise neutral conduct could be used to implement a conspiracy to restrain trade. However, the major antitrust--sensitive area for trade associations is *per se* (no defense or justification) violations of the antitrust laws. These areas must be totally avoided, and are subject to civil and criminal prosecution in the US, as well as consumer and competitor treble damage and class actions. Such conduct is deemed illegal in



itself, and applies whether the perpetrators are large or small, or, indeed, could realistically bring about the conspiracy. Motive is irrelevant. If concerted, conduct does not fall in the *per se* categories, it is judged under a standard of "reasonableness", which generally requires a weighing of anticompetitive effects against pro-competitive benefits.

These basic violations are agreements that, directly or indirectly, fix or artificially distort: (a) prices charged to customers, or any component of price (e.g., discounts or payment terms); (b) capacity; (c) production or output; (d) geographical or product markets; and (e) customers or classes of customers. In the US there is an entire body of legal case law spanning over 100 years interpreting these principles. However, for precautionary reasons, ISSF follows these prophylactic rules: (1) current or future stainless steel prices are never discussed at ISSF functions; and (2) any discussions of historical pricing, present or future capacity, production, or market division must be monitored or approved by Legal Counsel. These principles apply both at ISSF meetings and social events.

8. INDUSTRY ESTIMATES

Trade association providing estimates of future production, capacity, and the like – is especially complex and requires the assistance of Legal Counsel. Price forecasts by ISSF are not permitted. Beyond price, the legal considerations are multiple. In general, because ISSF is a global association, such forecasts generally do not reflect individual or country-specific situations, and are unlikely to cause competitive harm. ISSF has worked closely with Legal Counsel to create legal safeguards to forecasts. No forecasts are permitted unless in accordance with these safeguards. ISSF's safeguards include: the use of a third party or ISSF staff in creating such forecasts; limiting access to data; masking the identities of submitters; "homogenizing" (aggregating) data such that the identity and information of submitters is not disclosed; and utilization of publicly available information, such as that provided by regional stainless steel trade associations and industry consultant services.

9. SUPPLIER AND CUSTOMER RELATIONS

The antitrust laws also apply to dealings between steel companies and: (i) suppliers of raw materials, and (ii) their steel customers. The antitrust considerations here are different and less clear. Business interests of stainless steel companies and suppliers and customers differ. Moreover, stainless steel companies may have equity interests and agreements ("vertical relationships") with certain suppliers, and these companies must consult their individual legal counsel concerning such relationships.

Some legal observations are relatively clear. First, to date, the relative bargaining power between suppliers and buyers has been deemed legally irrelevant. Given time, this may change: antitrust scholars and economists have questioned this premise.

Second, concerted action by stainless steel companies against suppliers, such as prices paid, terms of payment, or boycotting supplier, is highly suspect. (This is to be distinguished from supplier-imposed terms of pricing or pricing volatility that may be important industry topics).



Third, there is a significant exemption from the antitrust laws based on free speech and government petitioning principles, that permits competitors legally to collectively address suspected illegal activities imposed upon them. The application of this exemption is complex, and subject to guidance by Legal Counsel.

Obviously, steel companies can never agree on prices to customers. Also, Members can never agree to "pass on" increased raw material costs to customers. This topic is prohibited at ISSF events: For example, "What do you plan to do about the increase in Nickel prices?" Each Member must unilaterally decide what is appropriate in dealing with their customers.

10. PETITIONING GOVERNMENTS

Petitioning governmental bodies, such as international forums, courts, or government agencies, is an important exemption from the antitrust laws for trade associations. This exemption permits trade associations to approach and present industry positions to inform governments, and seek aid or redress on important industry issues. Thus Worldsteel and ISSF have participated in WTO, G20 and other international groups on such issues as overcapacity and market volatility. The legal rationale here is free speech and government involvement. Motive, even self-interested motive, is legally not relevant. The classic historical precedent is the aluminum industry's seeking capacity and subsidy limitations following the collapse of the Soviet Union. Similarly, ISSF has submitted position papers and testimony concerning steel mill subsidies and irrational capacity expansion. Invoking an antitrust exception is subject to strict supervision by Legal Counsel. As noted above, this activity can not be used as a "disguise" or "sham" for individual anticompetitive conduct.

11. YOUR MEMBERSHIP IN ISSF

Nothing in these Guidelines is intended to discourage Members from actively participating in ISSF activities. Quite the contrary, ISSF has adopted these Guidelines and other safeguards to assure that Members can feel comfortable in attending ISSF meetings and participating in leadership and Committee work. Further, ISSF recognizes that the ISSF meetings frequently serve as an occasion for individual Members to conduct legitimate business with each other. Nothing in these Guidelines prohibits Members from engaging in bona fide commercial transactions attendant to ISSF functions.

Finally, Members are free to consult with the Secretary General or ISSF Legal Counsel as to any question relating to antitrust. There are no "foolish" questions.