

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES



**ORIGINAL**

Docket No. 9377

In the Matter of )  
Tronox Limited )  
a corporation, )  
National Industrialization Company (TASNEE) )  
a corporation, )  
The National Titanium Dioxide Company )  
Limited (Cristal) )  
a corporation, )  
And )  
Cristal USA Inc. )  
a corporation. )

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**NON-PARTY THE CHEMOURS COMPANY'S MOTION FOR *IN CAMERA*  
TREATMENT OF CONFIDENTIAL DOCUMENTS**

Pursuant to Rule 3.45 of the Federal Trade Commission's ("FTC") Rule of Practice, 16 C.F.R. § 3.45(b), non-party The Chemours Company ("Chemours") respectfully moves this Court for *in camera* treatment of certain competitively-sensitive, confidential business documents and testimony, as well certain testimony and documents provided in other proceedings it understands will be introduced by parties in this matter (collectively, the "Confidential Documents"). The FTC has notified Chemours that it intends to introduce twelve of Chemours' documents, including some of the Confidential Documents, into evidence at the administrative trial in this matter. *See* Letter from the Federal Trade Commission dated April 19, 2018 (attached as Exhibit A). Furthermore, Tronox Limited ("Tronox") also notified Chemours that it intends to introduce thirteen of Chemours' documents, including some of the Confidential Documents, into evidence at the trial as well. *See* Letter from Tronox Limited, dated April 19, 2018 (attached as Exhibit B).

Chemours has also been informed by Tronox that it will introduce certain documents or transcripts produced by or prepared, in whole or in part, by or on behalf of Huntsman International LLC in the consolidated case *In re Titanium Dioxide Antitrust Litigation*, No. 1:10-cv-00318, United States District Court for the District of Maryland, and in the case *Valspar Corp., et al. v. Kronos Worldwide, Inc., et al.*, No. 13-cv-3214-RHK-LJB, United States District Court for the District of Minnesota (collectively, “Prior Antitrust Litigation Documents”). While Tronox did not provide to Chemours a copy of these documents, Tronox notes the documents they intend to introduce include the Expert Report of Robert Willig, dated December 21, 2012, Corrections to the December 21, 2012 Expert Report of Robert Willig, dated February 5, 2013, the Expert Report of Daniel Lee Rubinfeld, dated December 21, 2012, the Expert Report of Kevin Murphy, dated December 21, 2012, the Expert Report of Robert Willig (Corrected), dated June 12, 2015, Cristal USA Inc.’s Memorandum of Law in Support of Motion for Summary Judgment, dated April 25, 2016, and Exhibits I-IV of Cristal USA Inc.’s Memorandum of Law in Support of Motion for Summary Judgment, dated April 25, 2016.

All of the materials for which Chemours is seeking *in camera* treatment are confidential business documents or testimony, such that if they were to become part of the public record, Chemours would be significantly harmed in its ability to compete. For the reasons discussed in this motion, Chemours requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, Chemours relies on the Declaration of Elaine Reilly (“Reilly Decl.”), attached as Exhibit C, which provides additional details on the documents for which Chemours is seeking *in camera* treatment.

## I. THE DOCUMENTS FOR WHICH PROTECTION IS SOUGHT

Chemours seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibits D-X.

Exhibit	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
Exh. D - PX3056	Confidential Production and Shipping Plan Spreadsheet	01/29/2018	PX3056-001	PX3056-001
Exh. E - PX6017	Confidential Email from Richard Olson to Jeffrey Keefer	06/16/2006	PX6017-001	PX6017-004
Exh. F - PX6018	Confidential Email from John Gallagher to Connie Hubbard	06/20/2006	PX6018-001	PX6018-003
Exh. G - PX6036	Confidential Email from Connie Hubbard to Jim Smith	09/27/2007	PX6036-001	PX6036-002
Exh. H - PX6037	Confidential Email from Richard Olson to Terry Caloghiris	10/06/2006	PX6037-001	PX6037-003
Exh. I - PX6042	Confidential Email from Lloyd Sommers to Victor Bell, et al.	09/13/2009	PX6042-001	PX6042-008
Exh. J - PX7052	Deposition Transcript of Peter O'Sullivan	04/18/2018	PX7052-001	PX7052-001
Exh. K - PX6049	Defendant's Opening Brief in Support of Motion for Summary Judgment – Filed Under Seal	09/01/2015	PX6049-001	PX6049-037
Exh. L - PX8004	Declaration of Peter O'Sullivan	10/25/2017	PX8004-001	PX8004-003
Exh. M - CHEM0000038	Global Commercial Plan Presentation	02/13/2017	CHEM0000038	CHEM0000038
Exh. N - CHEM0000153	First Look at the "New Tronox" Presentation	--/--/----	CHEM0000153	CHEM0000153
Exh. O - CHEM0000258	DTT Global TiO2 Supply/Demand Analysis	02/18/2014	CHEM0000258	CHEM0000258
Exh. P - CHEM0000304	McKinsey Regional Presentations	--/--/----	CHEM0000304	CHEM0000304
Exh. Q - CHEM0000345	Bain & Co. CTT Strategy – Executive Update	09/28/2016	CHEM0000345	CHEM0000345
Exh. R - CHEM0000500	The "New Tronox" Presentation	--/--/----	CHEM0000500	CHEM0000532

Exh. S - CHEM0000098	2017 Budget: MICI Update Presentation	09/19/2016	CHEM0000098	CHEM0000098
Exh. T - CHEM0000226	TT Global 12+18 Demand Review Presentation	12/29/2016	CHEM0000226	CHEM0000226
Exh. U - CHEM0000229	TT Global 1+18 Demand Review Presentation	02/06/2017	CHEM0000229	CHEM0000229
Exh. V - CHEM0000240	Global 11+18 Demand Review Presentation	12/01/2015	CHEM0000240	CHEM0000240
Exh. W - CHEM0000296	TT Growth Capacity Value and Capital Framework Presentation	06/--/2017	CHEM0000296	CHEM0000296
Exh. X - CHEM0000346	Chemours TT BOR Presentation	01/20/2016	CHEM0000346	CHEM0000346

Because Chemours was not provided by Tronox the Prior Antitrust Litigation Documents, it has not provided those as exhibits to this Motion, though Chemours is seeking *in camera* treatment for those documents as well, as discussed below.

## II. THE CONFIDENTIAL DOCUMENTS ARE HIGHLY CONFIDENTIAL SUCH THAT DISCLOSURE WOULD RESULT IN SERIOUS COMPETITIVE INJURY TO CHEMOURS

*In camera* treatment of material is appropriate when its “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment. 16 C.F.R. § 3.45(b). The proponent of *in camera* treatment demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, \*5 (1999). In this context, courts generally attempt “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). Indeed, the Commission found *in camera* treatment of business records to be appropriate on a number of occasions. See *In re Jerk, LLC*, 2015 FTC LEXIS 39, \*14 (Feb. 23, 2015).

In considering both secrecy and materiality, the Court may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456-457 (1997).

In light of the Commission's recognition that “[t]he likely loss of business advantages is a good example of a clearly defined, serious injury,” courts generally attempt to protect such confidential business information from being unnecessarily shared publicly. *See H.P. Hood & Sons, Inc.* 58 F.T.C. at 1188. As discussed in the Reilly Decl., the Confidential Documents are both secret and material to Chemours' business and, as set forth below, satisfy the standard for *in camera* treatment. Indeed, when Chemours produced the Confidential Documents in response to subpoenas and civil investigative demands in this matter, it took steps to maintain confidentiality by designating the documents “Confidential” and produced them specifically with the understanding they would be used only by counsel pursuant to the Protective Order in this case.

PX3056 represents a data file produced in this matter, which contains historical and current information relating to Chemours' shipping plan from its entire production chain, including the volume of titanium dioxide product that has and will originate at each production facility and the transportation network that is used to move product from production facilities to customers. Chemours relies on this historical information to make future decisions on how to best manage its production capacity and shipping processes, all of which give Chemours a competitive advantage vis-à-vis its competitors. This information is not otherwise publicly available, nor is Chemours

aware of any way it would be accessible to its competitors or the public. The database from which this data originates has limited access among Chemours employees. Disclosure of this information would severely undermine Chemours' ability to compete for the sale of titanium dioxide.

Similarly, CHEM0000038 and CHEM0000258 are ordinary course confidential business documents that provide detailed information on Chemours' marketing, pricing, and customer acquisition strategies, as well as detailed analyses of market conditions, the understanding of which Chemours uses to compete effectively against other titanium dioxide producers. Certain portions of the documents also specifically address Chemours' strategy in responding to its competitors. The information in these documents is unavailable to the public and is specifically used by senior employees within Chemours to make important strategic business decisions that are material to the success of Chemours' business. Their disclosure would give Chemours' competitors a significant competitive advantage—at Chemours' expense—and would unfairly equip them to compete with Chemours by exploiting knowledge regarding Chemours' strategy and outlook.

CHEM0000304, and CHEM0000345 are documents created by outside consultants retained by Chemours. These documents reflect analyses that are highly sensitive and confidential in nature and which were created using confidential information from Chemours employees. These documents provide detailed information on Chemours' marketing, pricing, and customer acquisition strategies, as well as detailed analyses of market conditions, the understanding of which Chemours uses to compete effectively against other titanium dioxide producers. Certain portions of the documents also specifically address Chemours' strategy in responding to its competitors. The information in these documents is unavailable to the public and is specifically used by senior employees within Chemours to make important strategic business decisions that are material to the success of Chemours' business. Their disclosure would give Chemours' competitors a significant

competitive advantage—at Chemours’ expense—and would unfairly equip them to compete with Chemours by exploiting knowledge regarding Chemours’ strategy and outlook.

CHEM0000153 and CHEM0000500 are documents created to evaluate the impact of the proposed merger between Cristal and Tronox. These documents contain highly confidential material about Chemours’ marketing and customer acquisitions strategies, all of which is unavailable to the public. More importantly, the documents also discuss strategy in how Chemours will compete effectively against the merged company post-transaction. The disclosure of this information will certainly give Chemours’ titanium dioxide competitors, and Tronox in particular, a significant competitive advantage and would unfairly equip them to compete with Chemours by exploiting the disclosed information.

PX6017, PX6018, PX6036, PX6037, and PX6042 are documents provided to Chemours by Complaint Counsel in this matter. Chemours is unaware of the source of these documents, but understands they may have been provided to the Commission by an unknown party in this matter. These documents appear to be confidential business documents produced by E. I. du Pont de Nemours and Company (“DuPont,” and Chemours’ predecessor) in an unrelated proceeding. These documents are under seal in that proceeding and Chemours believes the third party that produced these documents to the Commission in this matter likely had access to these documents from that other proceeding. Disclosure of this material would not only be disruptive to Chemours’ business, but would negate the precautions taken by another court to protect this confidential information by placing it under seal. As such, Chemours requests that these documents be given *in camera* treatment in this proceeding. Chemours is not aware of how these documents would otherwise be available publicly.

Chemours is also seeking *in camera* treatment for PX6049, a memorandum in support of a motion filed under seal in court in the above referenced unrelated proceeding. This memorandum cites extensive private Chemours data and metrics, including some of the same data and material found in other Confidential Documents. In addition, the memorandum discusses Chemours' marketing practices, strategies, customer acquisition methods, and tools used to implement such strategies. Throughout, the memorandum examines Chemours' internal pricing methodologies, business practices, and sales strategies, and other highly sensitive business information. This document remains under seal in the proceeding in which it was filed. Disclosure of this material would not only be disruptive to Chemours' business, but would negate the precautions taken by another court to protect this highly confidential information. There is also risk that disclosure of the material in this brief would violate the protective order in the other proceeding, as the memorandum contains confidential business information of other third parties.

Chemours also seeks *in camera* treatment for PX8004. This document is a declaration submitted in this matter by Peter O'Sullivan, Commercial Transformation Executive at Chemours, on October 25, 2017. Mr. O'Sullivan's declaration provides insight into Chemours' business strategies, customer acquisition methods, and implementation of such strategies and methods. Similarly, Mr. O'Sullivan explains Chemours' internal pricing methodologies, business practices, and sales strategies, as well as other highly sensitive business information. Public disclosure of this information would cause Chemours serious competitive injury.

Chemours seeks *in camera* treatment for PX7052, which is the deposition transcript for Peter O'Sullivan, taken on April 18, 2018 by Tronox. Tronox has informed Chemours that it also plans to introduce the transcript in this matter. As in his declaration discussed above, Mr. O'Sullivan testified in his deposition at length about private Chemours data and metrics, including

some of the same data and material found in the Confidential Documents. In addition, Mr. O'Sullivan provided significant insight into Chemours' marketing practices, strategies, customer acquisition methods, and tools used to implement such strategies. Similarly, Mr. O'Sullivan discussed Chemours' internal pricing methodologies, business practices, and sales strategies, and other sensitive business information. Public disclosure of this information would cause Chemours serious competitive injury.

Chemours is seeking *in camera* treatment for CHEM0000098, CHEM0000226, CHEM0000229, CHEM0000240, CHEM0000296, and CHEM0000346. These ordinary course business documents contain material that is unique to Chemours and unavailable in the public domain. Specifically, the material includes very detailed information on Chemours' marketing, pricing, and customer acquisition strategies. They also contain detailed analyses of market conditions and how Chemours would respond to those conditions, including future projections that are still relevant today. These documents also contain materials that highlight Chemours' strategy in responding to its competitors. It is unquestionable that disclosure of this information to Chemours' competitors would give those competitors a significant competitive advantage and would unfairly equip them to compete with Chemours by exploiting knowledge regarding Chemours' strategy and outlook.

Further, these documents contain information from and about proprietary methods for forecasting demand that are specific to and created by Chemours. Reilly Decl. at ¶ 13. Chemours considers this information to be proprietary to Chemours and an important business secret that, if revealed, would allow competitors to undermine Chemours' ability to compete.

Chemours is also seeking *in camera* treatment for the documents identified in Tronox's letter (Exhibit B) and referred to herein as the Prior Antitrust Litigation Documents, which include documents produced or filed in unrelated proceedings, all of which are under seal in court in the above-referenced unrelated proceedings. The Prior Antitrust Litigation Documents cite extensive private DuPont data and metrics, including some of the same data and material found in other Confidential Documents. In addition, the Prior Antitrust Litigation Documents discuss DuPont's marketing practices, strategies, customer acquisition methods, and tools used to implement such strategies, some of which are still relevant to Chemours today. Throughout, the Prior Antitrust Litigation Documents, in particular the memorandum and expert reports, examine DuPont's internal pricing methodologies, business practices, and sales strategies, and other highly sensitive business information, much of which is still relevant to Chemours today. Disclosure of this material would not only be disruptive to Chemours' business, but would negate the precautions taken by another court to protect this highly confidential information. These Prior Antitrust Litigation Documents are also the subject of protective orders entered in the respective litigation matters, which govern disclosure of such information, and disclosure of these materials risks exposing the protected, confidential information of other third parties as well.

Finally, Chemours' third-party status entitles it to "special solicitude" in its request for *in camera* treatment for its confidential business information. *See in re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500, 500 (1984). This is true because, as a policy matter, extending confidential treatment or *in camera* treatment in appropriate cases involving third parties encourages continued cooperation with future adjudicative discovery requests. *See ibid.*

Therefore, because the Confidential Materials are and continue to be sufficiently secret and sufficiently material such that their disclosure would result in serious competitive injury to Chemours, they must be entitled to *in camera* treatment.

**IV. THE CONFIDENTIAL DOCUMENTS WILL REMAIN SENSITIVE OVER TIME AND THUS, PERMANENT *IN CAMERA* TREATMENT IS JUSTIFIED**

Given the highly sensitive nature of the information contained in the Confidential Documents, Chemours requests that they be given *in camera* treatment indefinitely. The key consideration in determining the duration of the treatment is the balancing of two interests: the public interest in disclosure and the private interest in avoiding injury resulting from disclosure. *See Union Oil*, 2005 FTC LEXIS 9, at \*1 (Jan. 19, 2005). Where the injury from the disclosure of information is likely to wane over time such that it ceases to be “serious,” the public interest in disclosure will eventually outweigh the private interest, thus justifying disclosure at some future point. *See* 16 C.F.R. § 3.45(b). But if the “competitive sensitivity or the proprietary value of the information” is not likely to decrease with the passage of time, then neither is the seriousness of the injury and thus the private interest outweighs the public interest in disclosure; hence, indefinite *in camera* treatment is necessary in such circumstances. *See* 16 C.F.R. § 3.45(b)(3); *Jerk*, 2015 WL 926508, at \*2 (quoting *In re Coca-Cola Co.*, 1990 FTC LEXIS 364, at \*7 (Oct. 17, 1990)); *Dura Lube Corp.*, 1999 FTC at \*7-8.

Here, the information contained in the Confidential Documents will retain its competitive sensitivity for an indeterminable amount of time. *See* Reilly Decl. ¶ 14. The information will continue to inform Chemours’ competitors of highly sensitive information, the release of which would give Chemours’ competitors (including the parties to this current matter) a significant competitive advantage, short of a change in the current dynamics of the relevant market.

Furthermore, it is unclear that any public interest in disclosing the Confidential Documents is of the kind relevant to the determination of how long *in camera* treatment should last. The relevant public interests “weighing in favor of disclosure [is] the importance of the information in explaining the rationale of our decisions.” *Gen. Foods*, 95 F.T.C. at 353-54. But where the public’s understanding of the main proceeding before the court does not depend on access to confidential data or documents submitted by Chemours pursuant to a subpoena, the public interest in its disclosure fails to outweigh the harm caused. *Kaiser*, 103 F.T.C. at 500. Here, the FTC initiated the action to enjoin the merger of Tronox and Cristal based on a likelihood that the merger would reduce competition in the titanium dioxide market. *See Compl.* The specific information contained in the Chemours’ Confidential Documents are not necessary pieces of information for the public to understand the proceeding.

Because the Confidential Documents will remain sensitive or become more sensitive with the passage of time, and considering the degree of injury that would result from their disclosure, indefinite protection from public disclosure is appropriate.

In the alternative, if the Commission finds that permanent *in camera* treatment is not proper here for any of the documents identified, then Chemours requests that *in camera* treatment be afforded to the Confidential Documents for at least five years.

**V. CONCLUSION**

For the reasons set forth above and in the accompanying Declaration, Chemours respectfully requests that the Court grant permanent *in camera* treatment for the Confidential Documents in their entirety.

Dated: May 1, 2018

Respectfully Submitted,

CROWELL & MORING LLP

/s/ Ryan C. Tisch  
Ryan C. Tisch  
1001 Pennsylvania Ave. NW  
Washington, DC 20004  
202-624-2674  
rtisch@crowell.com

**Attorney for Non-Party,  
The Chemours Company**

**CERTIFICATE OF SERVICE**

I certify that on May 1, 2018, I electronically filed a document entitled "Non-Party The Chemours Company's Motion for *In Camera* Treatment of Confidential Documents" with the Federal Trade Commission using the FTC E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Rm. H-113  
Washington, DC 20580

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Rm. H-110  
Washington, DC 20580

Dated: May 1, 2018

By: /s/ Ryan C. Tisch  
Ryan C. Tisch

**CERTIFICATE OF ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: May 1, 2018

By: /s/ Ryan C. Tisch  
Ryan C. Tisch

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of )  
                     )  
                     )  
 Tronox Limited     )  
                     a corporation,     )  
                     )  
 National Industrialization Company (TASNEE)     )  
                     a corporation,     )  
                     )  
 The National Titanium Dioxide Company     )  
 Limited (Cristal)     )  
                     a corporation,     )  
                     )  
 And     )  
                     )  
 Cristal USA Inc.     )  
                     a corporation.     )  
                     )  
                     )

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**Docket No. 9377**

**[PROPOSED] ORDER**

On May 1, 2018, Non-Party The Chemours Company (“Chemours”) filed a motion for *in camera* treatment of certain confidential business documents and testimony identified by the parties in this matter as potential exhibits.

IT IS HEREBY ORDERED that Chemours’ Motion is GRANTED. The following documents are to be provided permanent *in camera* treatment under 16 C.F.R. § 3.45 from the date of this Order in their entirety and will be kept confidential and not placed on the public record of this proceeding.

Exhibit	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
Exh. D - PX3056	Confidential Production and Shipping Plan Spreadsheet	01/29/2018	PX3056-001	PX3056-001
Exh. E - PX6017	Confidential Email from Richard Olson to Jeffrey Keefer	06/16/2006	PX6017-001	PX6017-004
Exh. F - PX6018	Confidential Email from	06/20/2006	PX6018-001	PX6018-003

	John Gallagher to Connie Hubbard			
Exh. G - PX6036	Confidential Email from Connie Hubbard to Jim Smith	09/27/2007	PX6036-001	PX6036-002
Exh. H - PX6037	Confidential Email from Richard Olson to Terry Caloghiris	10/06/2006	PX6037-001	PX6037-003
Exh. I - PX6042	Confidential Email from Lloyd Sommers to Victor Bell, et al.	09/13/2009	PX6042-001	PX6042-008
Exh. J - PX7052	Deposition Transcript of Peter O'Sullivan	04/18/2018	PX7052-001	PX7052-001
Exh. K - PX6049	Defendant's Opening Brief in Support of Motion for Summary Judgment – Filed Under Seal	09/01/2015	PX6049-001	PX6049-037
Exh. L - PX8004	Declaration of Peter O'Sullivan	10/25/2017	PX8004-001	PX8004-003
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Exh. N - CHEM0000153	First Look at the "New Tronox" Presentation	--/--/----	CHEM0000153	CHEM0000153
Exh. O - CHEM0000258	DTT Global TiO2 Supply/Demand Analysis	02/18/2014	CHEM0000258	CHEM0000258
Exh. P - CHEM0000304	McKinsey Regional Presentations	--/--/----	CHEM0000304	CHEM0000304
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Exh. R - CHEM0000500	The "New Tronox" Presentation	--/--/----	CHEM0000500	CHEM0000532
Exh. S - CHEM0000098	2017 Budget: MICI Update Presentation	09/19/2016	CHEM0000098	CHEM0000098
Exh. T - CHEM0000226	TT Global 12+18 Demand Review Presentation	12/29/2016	CHEM0000226	CHEM0000226
Exh. U - CHEM0000229	TT Global 1+18 Demand Review Presentation	02/06/2017	CHEM0000229	CHEM0000229
Exh. V - CHEM0000240	Global 11+18 Demand Review Presentation	12/01/2015	CHEM0000240	CHEM0000240
Exh. W - CHEM0000296	TT Growth Capacity Value and Capital Framework Presentation	06/--/2017	CHEM0000296	CHEM0000296
Exh. X - CHEM0000346	Chemours TT BOR Presentation	01/20/2016	CHEM0000346	CHEM0000346
Prior Antitrust Litigation	Expert Report of Robert Willig	12/21/2012	N/A	N/A

Documents				
Prior Antitrust Litigation Documents	Corrections to the December 21, 2012 Expert Report of Robert Willig	02/05/2013	N/A	N/A
Prior Antitrust Litigation Documents	Expert Report of Daniel Lee Rubinfeld	12/21/2012	N/A	N/A
Prior Antitrust Litigation Documents	Expert Report of Kevin Murphy	12/21/2012	N/A	N/A
Prior Antitrust Litigation Documents	Expert Report of Robert Willig (Corrected)	06/12/2015	N/A	N/A
Prior Antitrust Litigation Documents	Cristal USA Inc.'s Memorandum of Law in Support of Motion for Summary Judgment	04/25/2016	N/A	N/A
Prior Antitrust Litigation Documents	Exhibits I-IV of Cristal USA Inc.'s Memorandum of Law in Support of Motion for Summary Judgment	04/25/2016	N/A	N/A

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel, and court personnel concerned with judicial review may have access to the above-referenced information, provided that I, the commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

**ORDERED:**


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D. Michael Chappell  
Chief Administrative Law Judge

DATED: \_\_\_\_\_

## **EXHIBIT A**



Bureau of Competition  
Mergers II Division

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

**PUBLIC RECORD VERSION - REDACTED**

April 19, 2018

**VIA EMAIL TRANSMISSION**

The Chemours Company  
c/o Britton Davis  
Crowell & Moring LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004-2595  
[BDavis@crowell.com](mailto:BDavis@crowell.com)

RE: *In the Matter of Tronox Limited et al.*, Docket No. 9377

Dear Britton:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, a copy of the documents and testimony will be sent to you in a separate email with an FTP link.

The administrative trial is scheduled to begin on May 18, 2018. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS 39 (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party motion (and the accompanying declaration or

affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge. Also, you or your representative will need to file a Notice of Appearance in the administrative proceeding. For more information regarding filing documents in adjudicative proceedings, please see <https://www.ftc.gov/faq/ftc-info/file-documents-adjudicative-proceedings>.

Please be aware that under the current Second Revised Scheduling Order (revised on February 23, 2018), **the deadline for filing motions seeking *in camera* treatment is May 1, 2018.** A copy of the February 23, 2018 Second Revised Scheduling Order and the December 20, 2017 original Scheduling Order, which contains Additional Provisions, can be found at <https://www.ftc.gov/enforcement/cases-proceedings/171-0085/tronoxcristal-usa>.

If you have any questions, please feel free to contact me at (202) 326-2397.

Sincerely,

*/s/ Cem Akleman*  
Cem Akleman  
Counsel Supporting the Complaint

Attachment

**PUBLIC RECORD VERSION - REDACTED**

# Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX3017	Chemours Presentation: The Chemours Company Investor Day 2017	??/?/17	CHEM0000457	CHEM0000484
PX3056	Chemours Spreadsheet: Production and Shipping Plan	TBD	FTC-CHEM_000001	FTC-CHEM_000001
PX3064	Chemours' Co. Responses to Civil Investigative Demand	7/18/2017	PX3064-001	PX3064-003
PX3065	Chemours Q3 2016 Earnings Call	11/7/2016	CHEM0001017	CHEM0001031
PX6017	Email from Richard Olson to Jeffrey Keefer re: CEFIC MAY - ENCOURAGING OVERALL	6/16/2006	FTC-PROD-0038981	FTC-PROD-0038984
PX6018	Email from John Gallagher to Connie Hubbard re: Kronos Worldwide, Inc. Announces a Price Increase for All of Its Titanium Dioxide Products in North America	6/20/2006	FTC-PROD-0038985	FTC-PROD-0038987
PX6036	Email from Colette Daney to Jim Smith re: Special Pricing for Spectra-kote	9/27/2007	FTC-PROD-0077172	FTC-PROD-0077173
PX6037	Email from Richard Olson to Terry Caloghiris re: Farrell Calhoune	10/6/2006	FTC-PROD-0077184	FTC-PROD-0077186
PX6042	Email from Lloyd Sommers to A. Victor Bell, Colette Daney, Daniel Rubin, et al. re: New Price Announcement w/Attach: New Price Increase Announcement.doc	9/13/2009	FTC-PROD-0082571	FTC-PROD-0082578
PX6049	Valspar Corp v. E.I. Du Pont De Nemours and Co. Defendant's Opening Brief in Support of Motion for Summary Judgment	9/1/2015	FTC-PROD-0064536	FTC-PROD-0064572
PX7052	RESERVED: Deposition Transcript: Peter O'Sullivan	4/18/2018	PX7052-001	PX7052-001
PX8004	Declaration of Peter O'Sullivan (Chemours)	10/25/2017	PX8004-001	PX8004-003
PX9121	The Chemours Company Form 10-K	TBD	PX9121-001	PX9121-151

## **EXHIBIT B**

**KIRKLAND & ELLIS LLP**  
AND AFFILIATED PARTNERSHIPS

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April 19, 2018

**BY EMAIL AND FEDEX**

Ryan Tisch  
Crowell & Moring LLP  
1001 Pennsylvania Avenue NW  
Washington, DC 20004

Re: In re Tronox Limited (FTC Docket No. 9377)

Dear Mr. Tisch:

This letter services as notice, per footnote one of the Second Revised Scheduling Order, entered February 23, 2018, and paragraph ten of the Protective Order Governing Confidential Material, entered December 7, 2017, that Tronox Limited ("Tronox"), National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited (Cristal), and Cristal USA Inc. (collectively "Respondents") plan to introduce the following documents or transcripts containing confidential material produced by The Chemours Co. at the hearing before Judge Chappell:

Begin Bates	End Bates
CHEM0000038	CHEM0000038
CHEM0000098	CHEM0000098
CHEM0000153	CHEM0000155
CHEM0000226	CHEM0000226
CHEM0000229	CHEM0000230
CHEM0000240	CHEM0000241
CHEM0000258	CHEM0000258
CHEM0000296	CHEM0000296
CHEM0000304	CHEM0000304
CHEM0000304	CHEM0000304
CHEM0000345	CHEM0000345
CHEM0000345	CHEM0000345
CHEM0000346	CHEM0000348
CHEM0000500	CHEM0000532
CHEM0000582	CHEM0000599
FTC-CHEM-000001	FTC-CHEM-000001

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Ryan Tisch

April 19, 2018

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- Deposition Transcript of Peter O'Sullivan (and accompanying exhibits)

Furthermore, respondents plan to introduce certain documents or transcripts produced by or prepared, in whole or in part, by or on behalf of Huntsman International LLC in the consolidated case *In re Titanium Dioxide Antitrust Litigation*, No. 1:10-cv-00318, United States District Court for the District of Maryland, and in the case *Valspar Corp., et al. v. Kronos Worldwide, Inc., et al.*, No. 13-cv-3214-RHK-LIB, United States District Court for the District of Minnesota.<sup>1</sup> These documents are as follows:

- Expert Report of Robert Willig, dated December 21, 2012
- Corrections to the December 21, 2012 Expert Report of Robert Willig, dated February 5, 2013
- Expert Report of Daniel Lee Rubinfeld, dated December 21, 2012
- Expert Report of Kevin Murphy, dated December 21, 2012
- Expert Report of Robert Willig (Corrected), dated June 12, 2015
- Cristal USA Inc.'s Memorandum of Law in Support of Motion for Summary Judgment, dated April 25, 2016
- Exhibits I-IV of Cristal USA Inc.'s Memorandum of Law in Support of Motion for Summary Judgment, dated April 25, 2016

Per paragraph seven of the Scheduling Order, entered December 20, 2017, I inform you "of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45, explained in *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).<sup>2</sup> Motions also must be supported by a declaration or affidavit by a

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<sup>1</sup> As you know, Cristal USA Inc. provided notice to you in August 2017 that it was producing these and other materials from these litigations to the Federal Trade Commission in connection with the Commission's investigation of the respondents' proposed transaction.

<sup>2</sup> "Under Rule 3.45(b), the Administrative Law Judge may order that material offered into evidence 'be placed *in camera* only (a) after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting *in camera* treatment or (b) after finding that the material constitutes sensitive personal information.'" *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); see also *In re Jerk, LLC*, 2015 FTC LEXIS (Feb. 23, 2015).

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KIRKLAND & ELLIS LLP

Ryan Tisch  
April 19, 2018  
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person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for in camera treatment shall provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.”

Sincerely,



Michael DeRita

## **EXHIBIT C**

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of )

Tronox Limited )  
a corporation, )

National Industrialization Company (TASNEE) )  
a corporation, )

The National Titanium Dioxide Company )  
Limited (Cristal) )  
a corporation, )

And )

Cristal USA Inc. )  
a corporation. )

Docket No. 9377

**DECLARATION OF ELAINE C. REILLY IN SUPPORT OF NON-PARTY THE  
CHEMOURS COMPANY'S MOTION FOR *IN CAMERA* TREATMENT**

I, Elaine C. Reilly, hereby declare as follows:

1. I am a Vice President Associate General Counsel of The Chemours Company ("Chemours"). I make this declaration based upon my personal knowledge and in support of Non-Party Chemours' Motion for *In Camera* Treatment (the "Motion") of Confidential Documents in the above-captioned matter.

2. I have reviewed and am familiar with the documents and testimony Chemours produced in the above-captioned matter in response to subpoenas and civil investigative demands from the Federal Trade Commission and Tronox Limited ("Tronox"). Given my position at Chemours, I am familiar with the type of information contained in the documents at issue and its competitive significance to Chemours. Based on my review of the documents, my knowledge of Chemours' business, and my familiarity with the confidentiality protection afforded this type of

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information by Chemours, I submit that the disclosure of these documents to the public and to competitors of Chemours would cause serious competitive injury to Chemours.

3. Complaint Counsel has informed Chemours that it intends to use twelve of the documents that Chemours produced in response to a civil investigative demand and subpoena duces tecum, as well as testimony provided by Chemours in this matter. Of these documents, PX3056, PX6017, PX6018, PX6036, PX6037, PX6042, PX7052, PX8004, and PX6049 are particularly sensitive and contain confidential business information. As described in the Motion, Chemours seeks permanent *in camera* protection of these documents.

4. PX3056 represents a recent data file from this year containing historical and current information relating to Chemours' shipping plan from its entire production chain, including the volume of titanium dioxide product that has and will originate at each production facility and the transportation network that is used to move product from production facilities to customers. Chemours relies on this information to make decisions on how to best manage its production capacity and shipping processes, all of which give Chemours a competitive advantage vis-à-vis its competitors. This information is not otherwise publicly available, nor is Chemours aware of any way it would be accessible to its competitors or the public. Its disclosure would severely undermine Chemours' ability to compete for the sale of titanium dioxide.

5. PX6017, PX6018, PX6036, PX6037, and PX6042 are documents provided to Chemours by Complaint Counsel in this matter. I am unaware of the party that provided these documents to Complaint Counsel, but I understand they were produced to the Commission by another party and contain information that relates to Chemours' predecessor, E. I. du Pont de Nemours and Company ("DuPont"). These documents are the subject of another proceeding and,

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in that matter, were deemed to be highly confidential and were sealed by the judge in that proceeding. I believe the information in these documents was highly confidential to DuPont at the time and I believe should continue to be afforded such protection in this matter.

6. PX6049 is a legal memorandum in support of a motion filed under seal in court in another unrelated proceeding. This memorandum cites extensive private DuPont data and metrics. In addition, the memorandum discusses at length significant insight into DuPont's marketing practices, strategies, customer acquisition methods, and tools used to implement such strategies, all of which appear to be still relevant to Chemours today. Throughout, the memorandum examines DuPont's internal pricing methodologies, business practices, and sales strategies, and more highly sensitive business information. Disclosure of this information could enable competitors to align their strategies with Chemours and reduce the competitiveness of the market.

7. PX8004 is a declaration submitted in this matter by Peter O'Sullivan, Commercial Transformation Executive at Chemours, on October 25, 2017. Mr. O'Sullivan's declaration provides insight into Chemours business strategies, customer acquisition methods, and implementation of such strategies and methods. Similarly, Mr. O'Sullivan explains Chemours' internal pricing methodologies, business practices, and sales strategies, as well as other highly sensitive business information. Public disclosure of this information would cause Chemours serious competitive injury.

8. PX7052 is the deposition transcript for Peter O'Sullivan, taken on April 18, 2018, by Tronox. As in his declaration discussed above, Mr. O'Sullivan testified in his deposition at length about private Chemours data and metrics. In addition, Mr. O'Sullivan provided significant insight into Chemours' marketing practices, strategies, customer acquisition methods, and tools used to

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implement such strategies. Mr. O'Sullivan also discussed Chemours' internal pricing methodologies, business practices, and sales strategies, and other sensitive business information. Public disclosure of this information would cause Chemours serious competitive injury.

9. The Defendants have informed Chemours that they intend to use 13 of the documents that Chemours produced in response to a subpoena duces tecum. Of these documents, CHEM0000038, CHEM0000153, CHEM0000258, CHEM0000304, CHEM0000345, CHEM0000500, CHEM0000098, CHEM0000226, CHEM0000229, CHEM0000240, CHEM0000296, and CHEM0000346 are particularly sensitive and contain confidential business information.

10. CHEM0000038 and CHEM0000258 are ordinary course confidential business documents that provide detailed information on Chemours' marketing, pricing, and customer acquisition strategies, as well as detailed analyses of market conditions, the understanding of which Chemours uses to compete effectively against other titanium dioxide producers. Certain portions of the documents also specifically address Chemours' strategy in responding to its competitors. The information in these documents is unavailable to the public and is specifically used by senior employees within Chemours to make important strategic business decisions that are material to the success of Chemours' business. Their disclosure would give Chemours' competitors a significant competitive advantage—at Chemours' expense—and would unfairly equip them to compete with Chemours by exploiting knowledge regarding Chemours' strategy and outlook.

11. CHEM0000304, and CHEM0000345 are documents created by outside consultants retained by Chemours. These documents reflect analyses that are highly sensitive and confidential

in nature and which were created using confidential information from Chemours employees. These documents provide detailed information on Chemours' marketing, pricing, and customer acquisition strategies, as well as detailed analyses of market conditions, the understanding of which Chemours uses to compete effectively against other titanium dioxide producers. Certain portions of the documents also specifically address Chemours' strategy in responding to its competitors. The information in these documents is unavailable to the public and is specifically used by senior employees within Chemours to make important strategic business decisions that are material to the success of Chemours' business. Their disclosure would give Chemours' competitors a significant competitive advantage—at Chemours' expense—and would unfairly equip them to compete with Chemours by exploiting knowledge regarding Chemours' strategy and outlook.

12. CHEM0000153 and CHEM0000500 are documents created to evaluate the impact of the proposed merger between Cristal and Tronox. These documents contain highly confidential material about Chemours' marketing and customer acquisitions strategies, all of which is unavailable to the public. More importantly, the documents also discuss competitive strategy in how Chemours will compete effectively against the merged company post-transaction. The disclosure of this information will certainly give Chemours' titanium dioxide competitors, and Tronox in particular, a significant competitive advantage and would unfairly equip them to compete with Chemours by exploiting the disclosed information

13. CHEM0000098, CHEM0000226, CHEM0000229, CHEM0000240, CHEM0000296, and CHEM0000346 are ordinary course business documents that contain material unique to Chemours and unavailable in the public domain. Specifically, the material includes detailed information on Chemours' marketing, pricing, and customer acquisition strategies. They also contain detailed analyses of market conditions and how Chemours would respond to those

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conditions, including future projections that are still relevant today. These documents also contain material that highlight Chemours' strategy in responding to its competitors. Disclosure of this information to Chemours' competitors would give those competitors a significant competitive advantage and would unfairly equip them to compete with Chemours by exploiting knowledge regarding Chemours' strategy and outlook. Further, these documents contain information from and about proprietary methods for forecasting demand that are specific to Chemours. I consider such information to be proprietary to Chemours and an important business secret that, if revealed, would allow competitors to undermine Chemours' ability to compete.

14. The competitive significance of these documents is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.

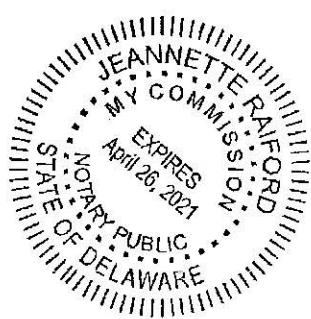
Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 1<sup>st</sup> day of May, 2018 at Wilmington, Delaware.



Elaine C. Reilly  
Vice President Associate General Counsel  
The Chemours Company



Jeannette Raiford  
Notary



**EXHIBITS D-X**

**MARKED CONFIDENTIAL REDACTION IN  
THEIR ENTIRETY REQUESTED**

**Notice of Electronic Service**

I hereby certify that on May 01, 2018, I filed an electronic copy of the foregoing Non-Party The Chemours Company's Motion for In Camera Treatment of Confidential Documents, with:

D. Michael Chappell  
Chief Administrative Law Judge  
600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

Donald Clark  
600 Pennsylvania Ave., NW  
Suite 172  
Washington, DC, 20580

I hereby certify that on May 01, 2018, I served via E-Service an electronic copy of the foregoing Non-Party The Chemours Company's Motion for In Camera Treatment of Confidential Documents, upon:

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Respondent

I hereby certify that on May 01, 2018, I served via other means, as provided in 4.4(b) of the foregoing Non-Party The Chemours Company's Motion for In Camera Treatment of Confidential Documents, upon:

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Arnold & Porter Kaye Scholer LLP  
Respondent

Peter Levitas  
Partner

Arnold & Porter Kaye Scholer LLP  
peter.levitas@apks.com  
Respondent

Ryan Tisch  
Attorney