In the Matter of

Tronox Limited
a corporation,

National Industrialization Company
(TASNEE)
a corporation,

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

AND

Cristal USA Inc.
a corporation.

Docket No. 9377

NON-PARTY PPG INDUSTRIES, INC.'S SUPPLEMENTAL MOTION FOR IN CAMERA TREATMENT PURSUANT TO FTC RULE 3.45

PPG Industries, Inc. ("PPG"), by and through its undersigned counsel and pursuant to 16 C.F.R. § 3.45(b), respectfully moves the Commission for in camera treatment of a certain PPG document moved into evidence by Respondents at the administrative hearing in this matter (the "Confidential Document"). PPG produced this document in response to third party subpoenas from Complaint Counsel and Respondents. As explained more fully below, this document is entitled to in camera treatment because it contains competitively sensitive information that is material to PPG's business, such that public disclosure of this information would result in serious
competitive injury to PPG. PPG also requests that any hearing testimony concerning this
document be maintained in camera.

BACKGROUND

PPG is a manufacturer and distributor of coatings products, for which one of the key
input materials is TiO2. On May 23, 2018 and May 24, 2018, Mr. Paul Malichky testified on
behalf of PPG at trial. On May 24, on cross-examination, Respondents introduced a PPG
document bearing Bates number PPG-TROX-00002256 – PPG-TROX-00002260, which had
been designated Confidential pursuant to the Protective Order in this matter. Respondents
marked this document RX2003 and moved it into evidence.

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Document Title/Description</th>
<th>Date</th>
<th>Beginning Bates No.</th>
<th>Ending Bates No.</th>
<th>Full or Partial Treatment</th>
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<tbody>
<tr>
<td>RX2003</td>
<td></td>
<td>08/08/17</td>
<td>PPG-TROX-00002256</td>
<td>PPG-TROX-00002260</td>
<td>Full</td>
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As PPG noted at trial, PPG seeks full in camera treatment of this document, a copy of
which is attached hereto as Exhibit A. This document is a confidential business document that
contains competitively sensitive, proprietary, or trade secret information about material aspects
of PPG’s business, such that PPG would be significantly harmed in its ability to compete if this
information were disclosed to the public. In support of this motion, PPG relies on the
Declaration of Mr. Paul Malichky (“Malichky Decl.”), which is attached hereto as Exhibit B. As
he testified at trial, Mr. Malichky is the Director of Raw Material Purchasing for PPG. Mr.
Malichky’s declaration provides specific information about the document for which PPG is
seeking in camera treatment.

Accordingly, for the reasons stated herein and in the Declaration of Mr. Paul Malichky,
PPG respectfully requests that *in camera* treatment be granted for RX2003 for a period of ten years.

**LEGAL STANDARD**

Under FTC Rule 3.45(b), *in camera* treatment is appropriate where “public disclosure would likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. 3.45(b). Stated differently, *in camera* treatment should be granted where the information is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

In assessing whether information is sufficiently secret and material, the Commission 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 (1977). Applying these factors, the Commission has held that “[t]he likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *See In re Dura Lube Corp.*, No. 9292, 1999 FTC LEXIS 255, at *7 (Dec. 23, 1999) (quoting *Gen. Foods*, 95 F.T.C. at 355).

Requests for *in camera* treatment that are made by non-parties should be given “special solicitude.” *See In re Crown Cork & Seal Co.*, 71 F.T.C. 1714, 1715 (1967); *see also In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984).
ARGUMENT

I. PPG'S DOCUMENT IS SECRET AND MATERIAL SUCH THAT DISCLOSURE WOULD RESULT IN SERIOUS HARM TO PPG.

As the Commission has held, “confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” In re H.P. Hood & Sons, Inc., 58 F.T.C. 1184, 1185 (1961). Here, protection is warranted because the Confidential Document for which PPG is seeking in camera treatment is both secret and material to PPG’s business and would cause serious competitive injury to PPG if disclosed to the public.

First, as explained in Mr. Malichky’s declaration, the Confidential Document contains information that is material to PPG’s business. Because TiO2 is a key ingredient in PPG’s coatings products, PPG must have sufficient volume of TiO2 at a competitive price to compete with other coatings manufacturers, who also use TiO2 in their products. The Confidential Document contains competitively sensitive information about PPG’s purchase and use of TiO2, including its pricing, volume, and a draft memorandum of understanding with a TiO2 supplier, see, e.g., Malichky Decl. ¶¶ 6, 10; and its negotiating strategy and status of negotiations with a TiO2 supplier, see, e.g., id.

Second, given the competitive significance of this information, PPG has taken great care to protect this information from public disclosure. As explained in Mr. Malichky’s declaration, PPG does not share information relating to TiO2 pricing, volume, supply agreements, or negotiations with employees of PPG generally. Instead, it limits distribution of this information to a limited set of PPG employees, which generally includes a handful of employees in purchasing and a small number of employees in senior management. To protect disclosure of this information more broadly, PPG does not save or store this information in places that are generally accessible to PPG employees. PPG does not share any of this information with its
customers, competitors, or suppliers. Nor does it share this information with non-PPG personnel in the ordinary course of business. In producing this document to the parties, PPG designated all of this information “Confidential” pursuant to the Protective Order.

Third, PPG is likely to suffer severe financial harm and competitive disadvantage if the Confidential Document is made public. For example, if information about PPG’s pricing, volume, and negotiating strategy for TiO2 is made public, Respondents, and other TiO2 suppliers, may use this information to PPG’s disadvantage in future negotiations. TiO2 suppliers may refuse to offer a lower price, knowing that PPG has accepted a higher price from other suppliers. PPG could also lose bargaining leverage with TiO2 suppliers to the extent they know the degree to which PPG was willing to negotiate over certain TiO2 supply terms. Alternatively, PPG’s competitors, who also use TiO2, may use this information to their advantage to disrupt PPG’s supply, particularly when the market is tight and supply is low. Put simply, disclosure of the Confidential Documents will result in serious loss of business advantage to PPG.

Moreover, the Third Circuit recently found that “[t]here is little doubt” that the TiO2 industry “was conducive to price fixing” because it is a “highly concentrated market for a commodity-like product with no viable substitutes and substantial barriers to entry.” Valspar Corp. v. E.I. Du Pont De Nemours and Co., 873 F.3d 185, 197 (3d Cir. 2017). Making PPG’s pricing, volume, and other information related to TiO2 draft supply agreements public only heightens the risk of price coordination among TiO2 suppliers, which is likely to result in higher prices to PPG.

Finally, as a non-party to this case, PPG’s request for in camera treatment deserves “special solicitude.” In re Crown Cork & Seal Co., 71 F.T.C. at 1715. PPG complied with the substantial discovery requests made by the parties with the understanding that its information
would remain Confidential. Moreover, the serious competitive harm that PPG would suffer substantially outweighs any interest in disclosing PPG’s confidential information to the public.

II. PPG’S DOCUMENT SHOULD BE GIVEN IN CAMERA TREATMENT FOR TEN YEARS.

Where confidential information “is likely to remain sensitive or become more sensitive with the passage of time,” in camera treatment for more than five years is appropriate. In re Dura Lube Corp., 1999 FTC LEXIS 255, at *8-9. Here, this document is likely to remain competitively sensitive for more than five years because the pricing cycle in the TiO2 industry typically lasts three to five years. See Malichky Decl.¶ 7. Even when a pricing cycle terminates, PPG’s competitors and TiO2 suppliers can use information about pricing and volume to back-calculate PPG’s price and volume relative to the market, which can be used to PPG’s disadvantage during supply negotiations. Id. ¶ 8. Moreover, the Commission recently granted ten years of in camera treatment for similar information in this case. See Order on Non-Parties’ Motions for In Camera Treatment, Dkt. No. 9377 (May 15, 2018). Accordingly, to protect this competitively sensitive information, PPG requests in camera treatment for RX2003 for a period of 10 years.

CONCLUSION

For the foregoing reasons, PPG respectfully requests that the Commission grant its motion for in camera treatment pursuant to FTC Rule 3.45(b) for a period of ten years.
Dated: May 30, 2018

Respectfully submitted,

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Attorneys for PPG Industries, Inc.
Notice of Electronic Service

I hereby certify that on May 30, 2018, I filed an electronic copy of the foregoing Supplemental Motion for In Camera Treatment - PUBLIC, Exhibit A - PUBLIC, Exhibit B - Declaration of Paul Malichky, Proposed Order, Certificate of Service, with:

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EXHIBIT A

DOCUMENT MARKED CONFIDENTIAL IN FULL

IN CAMERA TREATMENT REQUESTED
Notice of Electronic Service

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EXHIBIT B

DECLARATION OF PAUL MALICHKY
UNIVERSAL STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph Simons, Chairman
Maureen Olrhausen
Rohit Chopra
Noah Phillips
Rebecca Slaughter

In the Matter of

Tronox Limited  
a corporation,

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AND

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Docket No. 9377

DECLARATION OF PAUL MALICHKY IN SUPPORT OF NON-PARTY PPG INDUSTRIES, INC.'S SUPPLEMENTAL MOTION FOR IN CAMERA TREATMENT

I, Paul Malichky, hereby declare as follows:

1. I am the Director of Raw Material Purchasing for PPG Industries, Inc. ("PPG"). I make this declaration in support of Non-Party PPG Industries, Inc.'s Motion for In Camera Treatment (the "Motion"). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. PPG, based in Pittsburgh, Pennsylvania, is a global manufacturer of coatings products, for which one of the key input materials is titanium dioxide ("TiO2"). I joined PPG in
2008 and have worked in various capacities at PPG since then, including as Manager, Regulatory and Emerging Issues; Director, Product Stewardship; and now as Director of Raw Material Purchasing.

3. In my current position, I am responsible for procuring all of the TiO2 used by PPG, which includes negotiating volume, pricing, and other aspects of supply with TiO2 suppliers. I am also involved in developing and implementing PPG’s TiO2 supply strategies, which include among other things, developing alternative sources of supply and exploring TiO2 alternatives.

4. I testified in the administrative hearing in this matter on May 23 and May 24, 2018. During my cross-examination on May 24, counsel for Tronox asked me questions about a PPG document bearing the Bates range PPG-TROX-00002256 - PPG-TROX-00002260. This document was marked RX2003 and moved into evidence.

5. I have reviewed RX2003. As the Director of Raw Material Purchasing for PPG, I am familiar with the information in this document and its competitive significance to PPG. PPG is seeking full in camera treatment of the document because it contains especially sensitive and confidential business information. Based on my review of the documents, my knowledge of PPG’s business, and my familiarity with the confidentiality protection afforded this type of information by PPG, I submit that disclosure of this information to the public, including to PPG’s TiO2 suppliers and competitors, will cause serious competitive harm to PPG.

6. RX2003 is an email and a draft memorandum of understanding with a particular TiO2 supplier describing PPG’s proposed supply agreement with that supplier, including the price, volume, payterms, and grade of TiO2 covered by that agreement. It also describes PPG’s
negotiating strategy, including target and potential compromise positions for ongoing negotiations, pros and cons of the agreement, and whether PPG should sign such an agreement.

7. The foregoing information is material to PPG’s business. TiO2 is an essential raw material in most of PPG’s coatings products. It is used in thousands of different coatings formulations for products ranging from house paint to automotive and industrial coatings. As a result, TiO2 is one of the most significant raw materials that PPG purchases for use in its products. The TiO2 pricing cycle typically lasts three to five years.

8. PPG shares this information with only a small number of PPG employees. PPG maintains this information in strict confidence because it would cause serious harm to PPG’s negotiating position with TiO2 suppliers if they were aware of PPG’s volume, pricing, and negotiations with other TiO2 suppliers. For example, a supplier may refuse to offer (or accept) a lower price, knowing that PPG paid a higher price to another TiO2 supplier. Public disclosure of this information would also cause serious harm to PPG because its competitors could use this information to estimate a key cost input to PPG’s coatings products, which could result in a less competitive coatings offering, or to disrupt PPG’s TiO2 supply by negotiating volume away from PPG. PPG’s competitors and TiO2 suppliers can use information about pricing and volume to back-calculate PPG’s price and volume relative to the market, which can be used by suppliers to PPG’s disadvantage in supply negotiations or by PPG’s competitors to disrupt supply.


I declare under penalty of perjury that the foregoing is true and correct.


Paul Malichky
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Docket No. 9377

[PROPOSED] ORDER
ON NON-PARTY PPG INDUSTRIES, INC.’S
SUPPLEMENTAL MOTION FOR IN CAMERA TREATMENT

Upon consideration of non-party PPG Industries, Inc.’s Supplemental Motion for In Camera Treatment, and finding good cause, it is HEREBY ORDERED that the following document is to be provided in camera treatment of a period of ten years from the date of this Order in its entirety:

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ORDERED:

D. Michael Chappell  
Chief Administrative Law Judge

Dated: _____________________, 2018.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 2018, I filed the foregoing document electronically using the FTC’s E-filing system, which will send notification of such filings to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
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Washington, DC 20580

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

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Dated: May 30, 2018

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Notice of Electronic Service

I hereby certify that on May 30, 2018, I filed an electronic copy of the foregoing Supplemental Motion for In Camera Treatment - PUBLIC, Exhibit A - PUBLIC, Exhibit B - Declaration of Paul Malichky, Proposed Order, Certificate of Service, with:

D. Michael Chappell  
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600 Pennsylvania Ave., NW  
Suite 110  
Washington, DC, 20580

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

I hereby certify that on May 30, 2018, I served via E-Service an electronic copy of the foregoing Supplemental Motion for In Camera Treatment - PUBLIC, Exhibit A - PUBLIC, Exhibit B - Declaration of Paul Malichky, Proposed Order, Certificate of Service, upon:

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