

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

In the Matter of

Tronox Limited,
a corporation,National Industrialization Company
(TASNEE),
a corporation,National Titanium Dioxide Company
Limited (Cristal),
a corporation, andCristal USA Inc.
a corporation.Docket No. 9377
PUBLIC

ORIGINAL

NON-PARTY MASCO CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Masco Corporation ("Masco" or the "Company") respectfully moves this Court for *in camera* treatment of certain competitively-sensitive, confidential business documents and deposition testimony (the "Confidential Documents"). Masco produced these Confidential Documents, among others, in response to a civil investigative demand and third-party subpoenas in this matter. The Federal Trade Commission ("FTC") and Tronox Limited, National Industrialization Company, National Titanium Dioxide Company, and Cristal USA Inc. (collectively, "Respondents") have now notified Masco that they intend to introduce *the entirety* of Masco's discovery responses, including the Confidential Documents that are the subject of this motion, into evidence at the administrative trial in this matter. *See* Letter from the FTC dated April 19, 2018 (attached as Exhibit A); Letter from Respondents dated April 19, 2018 (attached as Exhibit B).

All of the materials for which Masco is seeking *in camera* treatment are confidential business documents, such that if they were to become part of the public record, Masco would be significantly harmed in its ability to compete in the architectural coatings industry. For the reasons set forth in this motion, Masco requests that this Court afford its Confidential Documents *in camera* treatment indefinitely. In support of this motion, Masco relies on the Declaration of Mario Pschaidt, attached as Exhibit C, which provides additional details regarding the documents for which Masco is seeking *in camera* treatment.

I. Documents for Which Protection is Sought

Masco seeks *in camera* treatment for all or part of the following Confidential Documents, copies of which are attached as Exhibit D.

Ex. No(s). ¹	Description	Bates Range
PX4137 RX0072-75	Masco's Responses to FTC CID	MAS-SDT-0000001-05
RX0076	Behr TiO2 Strategic Plan (2016)	MAS-SDT-0000006-54
RX0077	Behr TiO2 Strategic Plan (2017)	MAS-SDT-0000055-115
PX4140 RX0078	Behr TiO2 Strategic Plan (2018)	MAS-SDT-0000116-178
PX4141 RX0079	Behr TiO2 Usage by Plant	MAS-SDT-0000179
PX4142 RX0080	Behr R&D Project Review (CR-510 Dry TiO2)	MAS-SDT-0000180-195
RX0081	Kronos Supply Agreement	MAS-SDT-0000196-201
RX0082	Kronos Vendor Managed Inventory Agreement	MAS-SDT-0000202-209
RX0083	Kronos Rebate Schedule (2018)	MAS-SDT-0000210
PX4146 RX0084	Kronos Pricing Schedule (2018)	MAS-SDT-0000211
RX0085	DuPont Seller-Owned Inventory Agreement	MAS-SDT-0000212-216
RX0086	DuPont Seller-Owned Inventory Agreement (Am.)	MAS-SDT-0000217-219

¹ For ease of reference, both FTC and Respondent exhibit designations are listed where appropriate.

Ex. No(s). ¹	Description	Bates Range
PX4149 RX0087	Chemours Pricing Schedule (2018)	MAS-SDT-0000220
RX0088	Chemours Rebate Schedule (2018)	MAS-SDT-0000221-223
RX0089	Millennium Consignment Agreement	MAS-SDT-0000224-226
RX0090	Millennium TiO2 Supply Agreement	MAS-SDT-0000227-236
PX4153 RX0091	Cristal Pricing Schedule (2018)	MAS-SDT-0000237
RX0092	Supplier Pricing Communications (2015-2017)	MAS-SDT-0000238-263
PX7027 RX0141	Mario Pschaidt Deposition Transcript ²	N/A
PX8006	Declaration of Mario Pschaidt	N/A

II. Masco's Confidential Documents are Secret and Material and Disclosure Would Result in Serious Injury to Masco

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 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, 1980 FTC LEXIS 99, at *9 (Mar. 10, 1980); *In re Bristol-Myers Co.*, 90 F.T.C. 455, 1977 WL 189054, at *1 (Nov. 11, 1977). 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).

² Portions of the transcript of Mr. Pschaidt's deposition that contain highly confidential, competitively-sensitive, information include, but are not limited to, the following: 27:21-29:14; 30:16-30:24; 31:02-34:24; 35:08; 35:14-39:04; 39:19-39:22; 52:25-53:08; 53:14-53:23; 54:14-55:02; 55:09-55:14; 55:17-57:11; 58:07; 58:21-58:22; 59:24-60:13; 62:21-64:09; 64:13-64:25; 65:19-65:25; 66:12-66:14; 67:12-67:13; 67:16-67:25; 80:25-85:13; 86:01-86:03; 86:11-86:14; 87:12-88:13; 88:20-89:25; 91:01-91:11; 91:18-91:24; 92:06-92:20; 93:03-95:11; 96:03-96:14; 97:13-97:20; 98:07-99:08; 100:06-100:09; 104:12-104:25; 105:17-106:12; 113:03-113:06; 113:17-113:18; 114:07-115:05; 115:09-115:11; 116:19-116:23; 117:01-119:05; 119:21-119:24; 120:04-121:15; 122:18-122:20; 123:18-132:11; 134:09-145:17; 146:14-146:17; 146:23 149:19; 151:09-151:16.

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.*, 1977 WL 189054, at *2. Each of these factors weighs strongly in favor of granting Masco's Confidential Documents *in camera* treatment.

As explained in the Declaration of Mr. Pschaidt, the Confidential Documents are both secret and material to Masco's business. The documents fall into the following categories: high-level strategic plans; R&D testing and qualification reviews; supplier-level purchasing data and pricing negotiations; supplier contracts and pricing schedules; and testimony relating to the foregoing topics and all aspects of the Company's TiO₂ strategy. The Confidential Documents contain detailed, current, and/or forward-looking information of extreme competitive significance to Masco, including Masco's TiO₂ strategy, supplier-specific purchases, pricing, rebates, terms and conditions of sale, costs, negotiations, R&D efforts, and internal assessments of TiO₂ supply sources and other aspects of the industry. This information is commercially sensitive, proprietary to Masco, and not publicly known outside of the Company. Indeed, much of the information is closely held *within* Masco. Masco has taken significant steps to protect the confidential nature of the Confidential Documents, including following internal policies and practices to limit disclosure both outside and inside the Company. Masco produced the Confidential Documents only pursuant to compulsory process, designated all of the Confidential Documents as confidential under the Protective Order entered in this case, and has raised confidentiality concerns with respect to the materials during numerous discussions with the FTC and Respondents.

Furthermore, disclosure of the materials will likely result in the loss of a business advantage and serious competitive injury to Masco. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at *7 (Dec. 23, 1999) (“The likely loss of business advantage is a good example of a ‘clearly defined, serious, injury.’”). As explained above, the Confidential Documents contain information that is critical to Masco’s business, such that disclosure would have a significant and direct impact on its competitive position in the architectural coatings industry. The information contained in the Confidential Documents is highly confidential, unavailable to the public, not easily acquired or duplicated, and would be extremely valuable to competitors as well as current and potential suppliers of TiO₂. For example, detailed information regarding Masco’s R&D evaluation of specific TiO₂ grades would give competitors transparency into Masco’s proprietary technology, formulations, pricing, costs, plans, and strategic partnerships, all of which would seriously injure its ability to compete. Details regarding Masco’s consideration of alternative TiO₂ suppliers and grades would give suppliers direct visibility into Masco’s sourcing strategy and destroy its leverage in negotiations, resulting in grave financial consequences. These are but a few examples of the many ways in which denial of *in camera* treatment for the Confidential Documents would very likely result in serious business injury to Masco.

Finally, Masco’s status as a third-party is relevant to the treatment of its Confidential Documents. The Commission has held that “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons*, 1961 WL 65882, at *2. This is especially so in the case of a third-party, which deserves “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) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Masco’s third-party status weighs in favor of granting *in camera* status to its Confidential Documents.

III. **Permanent *In Camera* Treatment is Justified Because the Confidential Documents Will Remain Sensitive Over Time**

In camera treatment may be extended indefinitely where the competitive sensitivity of the information is unlikely to diminish over time. *See, e.g., In re Coca Cola Co.*, Docket No. 9207, 1990 WL 10081418, at *3 (F.T.C. Oct. 17, 1990). Due to the highly sensitive, strategic, and technical nature of the information contained in the Confidential Documents, the documents should be granted indefinite *in camera* treatment. Commission Rule 3.45(b)(3) recognizes that indefinite *in camera* treatment is warranted in circumstances where “the need for confidentiality of the material . . . is not likely to decrease over time” 16 C.F.R. § 3.45(b)(3). Trade secrets are granted greater protection than ordinary business records. *Hood*, 58 F.T.C. at 1189. Trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, and other secret technical information. *Id.*; *General Foods*, 1980 FTC LEXIS 99, at *10; *In re Textron, Inc.*, 1991 FTC LEXIS 135 (Apr. 26, 1991). The key consideration in determining the duration of *in camera* treatment is the balancing of the public interest in disclosure against the private interest in avoiding injury resulting from such disclosure. *See In re Union Oil Co. of Calif.*, 2005 FTC LEXIS 9, at *1 (Jan. 19, 2005).

As explained in the Declaration of Mr. Pschaidt, the Confidential Documents include trade secrets such as Masco’s proprietary R&D processes (including test design, methodology, procedures, and time horizons); R&D evaluation test results across numerous proprietary Masco formulations; and information about Masco’s internal manufacturing processes. Several Confidential Documents include the sensitive personal information of Masco’s employees and suppliers and proprietary third-party information subject to non-disclosure requirements. *All* of the Confidential Documents contain highly confidential, competitively sensitive information, the disclosure of which would inflict serious competitive injury on Masco.

Given the often strategic, technical, and/or institutional nature of Masco's Confidential Documents, their competitive sensitivity (and, concomitantly, the risk of disclosure and need for confidentiality) is not likely to diminish with the passage of time. For example, Masco's proprietary R&D processes, formulations, and manufacturing processes – the fruits of innovation – could be just as valuable to a competitor and harmful to Masco 20 years from now. The same considerations apply to Masco's long-term TiO₂ strategy, its strategy review process, and its playbook for pricing negotiations, among other categories of information. The potential for serious competitive harm from disclosure of the Confidential Documents thus extends indefinitely into the future.

Moreover, the risk of injury to Masco stemming from the disclosure of the Confidential Documents outweighs the public's interest in disclosure. Where the confidential business information is likely to cause serious competitive injury, the, "the principal countervailing consideration weighing in favor of disclosure should be the importance of the information in explaining the rationale of our decisions." *General Foods*, 1980 FTC LEXIS 99, at *10. But where the public's understanding of the main proceeding before the Commission does not necessitate access to the confidential information submitted by a non-party pursuant to a subpoena, the public interest in disclosure fails to outweigh the competitive injury. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 500 (1984). Here, Masco has a compelling and continuing commercial interest in obtaining and preserving *in camera* treatment of the Confidential Materials. Such treatment will not infringe on the public's interest in disclosure or the Court's ability to develop a fulsome record and effectively reach a disposition in these proceedings.

CONCLUSION

For the reasons set forth above and in the accompanying Declaration of Mr. Pschaidt, Masco respectfully requests that this Court grant indefinite *in camera* treatment for the Confidential Documents.

Dated: May 1, 2018

Respectfully Submitted,

/s/ John M. Taladay

John M. Taladay
Vishal Mehta
BAKER BOTTS L.L.P
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
T: 202.639.7700
E: john.taladay@bakerbotts.com
E: vishal.mehta@bakerbotts.com

Counsel for Non-Party Masco Corporation

EXHIBIT A

Letter from FTC dated April 19, 2018



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

WASHINGTON, D.C. 20580

Bureau of Competition
Mergers II Division

April 19, 2018

VIA EMAIL TRANSMISSION

Masco Corporation
c/o Vishal Mehta
Baker Botts L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400
vishal.mehta@bakerbotts.com

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

Dear Vishal:

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/tronoxcrystal-usa>.

If you have any questions, please feel free to contact me at (202) 326-2823.

Sincerely,

/s/ Joonsuk Lee

Joonsuk Lee

Counsel Supporting the Complaint

Attachment

Attachment A

Exhibit No.	Full Name	Date	BegBates	EndBates
PX4137	Masco Corporation's Responses to Civil Investigative Demand	7/17/2017	MAS-SDT-0000001	MAS-SDT-0000005
PX4140	Masco Presentation: TiO2 Strategy, January 2018	01/??/18	MAS-SDT-0000116	MAS-SDT-0000178
PX4141	Masco Document: Mehr Confidential, TiO2 in all plants	9/29/2017	MAS-SDT-0000179	MAS-SDT-0000179
PX4142	Behr Document: Project# 110095, CR-510 Dry TiO2 Raw Material Replacement Review	TBD	MAS-SDT-0000180	MAS-SDT-0000195
PX4146	Kronos (460000121) Price Schedule for Behr Process / Masterchem Ind.	2/1/2018	MAS-SDT-0000211	MAS-SDT-0000211
PX4149	Chemours Price Schedule for Behr Process / Masterchem Ind.	6/18/2015	MAS-SDT-0000220	MAS-SDT-0000220
PX4153	Cristal (4600001302) Price Schedule for Behr Process / Masterchem Ind.	2/1/2018	MAS-SDT-0000237	MAS-SDT-0000237
PX7027	Deposition Transcript: Mario Pschaidt	3/21/2018	PX7027-001	PX7027-061
PX8006	Declaration of Mario Pschaidt (Masco Corporation)	11/30/2017	PX8006-001	PX8006-004

EXHIBIT B

Letter from Respondents dated April 19, 2018

KIRKLAND & ELLIS LLP
AND AFFILIATED PARTNERSHIPS

655 Fifteenth Street, N.W.
Washington, D.C. 20005

Michael DeRita
To Call Writer Directly:
(202) 879-5122
michael.derita@kirkland.com

(202) 879-5000

www.kirkland.com

Facsimile:
(202) 879-5200

April 19, 2018

BY EMAIL AND FEDEX

Vishal Mehta, Esq.
Baker Botts LLP
The Warner
1299 Pennsylvania Avenue NW
Washington, D.C. 20004

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

Dear Mr. Mehta:

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 Masco Corp. at the hearing before Judge Chappell:

Bates Begin	Bates End
MAS-SDT-0000001	MAS-SDT-0000001
MAS-SDT-0000002	MAS-SDT-0000003
MAS-SDT-0000004	MAS-SDT-0000004
MAS-SDT-0000005	MAS-SDT-0000005
MAS-SDT-0000006	MAS-SDT-0000054
MAS-SDT-0000055	MAS-SDT-0000115
MAS-SDT-0000116	MAS-SDT-0000178
MAS-SDT-0000179	MAS-SDT-0000179
MAS-SDT-0000180	MAS-SDT-0000195
MAS-SDT-0000196	MAS-SDT-0000201
MAS-SDT-0000202	MAS-SDT-0000209
MAS-SDT-0000210	MAS-SDT-0000210
MAS-SDT-0000211	MAS-SDT-0000211
MAS-SDT-0000212	MAS-SDT-0000216

KIRKLAND & ELLIS LLP

Vishal Mehta, Esq.
April 19, 2018
Page 2

Bates Begin	Bates End
MAS-SDT-0000217	MAS-SDT-0000219
MAS-SDT-0000220	MAS-SDT-0000220
MAS-SDT-0000221	MAS-SDT-0000223
MAS-SDT-0000224	MAS-SDT-0000226
MAS-SDT-0000227	MAS-SDT-0000236
MAS-SDT-0000237	MAS-SDT-0000237
MAS-SDT-0000238	MAS-SDT-0000263
MAS-SDT-0000264	MAS-SDT-0000315

- Masco's response to the Federal Trade Commission's Civil Investigative Demand
- Deposition Transcript of Mario Pschaidt (and accompanying exhibits)

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).¹ Motions also must be supported by a declaration or affidavit by a 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

¹ "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).

EXHIBIT C
Declaration of Mario Pschaidt

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

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

DECLARATION OF MARIO PSCHAIDT IN SUPPORT OF NON-PARTY MASCO CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT

I, Mario Pschaidt, hereby declare as follows:

1. I am Vice President of Procurement for Masco Coatings Group, a division of Masco Corporation ("Masco"). I make this declaration in support of non-party Masco'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. I have reviewed and am familiar with the documents Masco produced in the above-captioned matter in response to subpoenas issued by the Federal Trade Commission ("FTC") and Tronox Limited, National Industrialization Company, National Titanium Dioxide Company, and Cristal USA Inc. (collectively, "Respondents").
3. Given my position at Masco, I am familiar with the documents for which Masco seeks *in camera* protection in its Motion ("Confidential Documents"), including how they were

prepared and maintained, their competitive significance to the company, and their potential value to third parties such as Masco's suppliers and competitors. I personally prepared, or supervised the preparation of, many of the Confidential Documents. I also oversaw the collection of the Confidential Documents in response to subpoenas issued by the FTC and Respondents. In this regard, I relied on assurances by the FTC that the confidentiality of commercially sensitive information would be maintained under the FTC's rules, policies, and practices, as well as the Protective Order in this case. Based on my knowledge and review of the Confidential Documents, disclosure of these materials would cause serious competitive injury to Masco.

4. Masco is a global manufacturer of brand-name products for the home improvement and new home construction industries. Masco Coatings Group ("MCG" or "Behr"), a division of Masco, manufactures architectural coatings, including paints and primers, primarily under the BEHR® and KILZ® brands. Masco's competitors in this segment include a range of brands, including Benjamin Moore, Glidden, PPG, Valspar, and Sherwin-Williams, among others.
5. Titanium dioxide ("TiO₂") is a key ingredient in the manufacture of architectural coatings. TiO₂ provides the hiding power that ensures a coating will fully cover the surface to which it is applied. In addition, TiO₂ can enhance the brilliance and brightness that are essential to achieving the Ultra Pure White feature in Masco's paints. Masco uses TiO₂ in many of its coatings and sources TiO₂ from various suppliers. Because TiO₂ is a critical input for Masco's coatings products, Masco's ability to (a) secure a reliable supply of quality TiO₂ at the best value and (b) qualify TiO₂ for use in its proprietary formulations are critical to its ability to compete in manufacture and sale of architectural coatings.

6. Disclosure of the following Confidential Materials would seriously injure Masco by diminishing its ability to compete in the architectural coatings industry:

Ex. No(s).	Description	Bates Range
PX4137 RX0072-75	Masco's Responses to FTC Civil Investigative Demand (CID)	MAS-SDT-0000001-05
RX0076	Behr TiO2 Strategic Plan (2016)	MAS-SDT-0000006-54
RX0077	Behr TiO2 Strategic Plan (2017)	MAS-SDT-0000055-115
PX4140 RX0078	Behr TiO2 Strategic Plan (2018)	MAS-SDT-0000116-178
PX4141 RX0079	Behr TiO2 Usage by Plant	MAS-SDT-0000179
PX4142 RX0080	Behr R&D Project Review (CR-510 Dry TiO2)	MAS-SDT-0000180-195
RX0081	Kronos Supply Agreement	MAS-SDT-0000196-201
RX0082	Kronos Vendor Managed Inventory Agreement	MAS-SDT-0000202-209
RX0083	Kronos Rebate Schedule (2018)	MAS-SDT-0000210
PX4146 RX0084	Kronos Pricing Schedule (2018)	MAS-SDT-0000211
RX0085	DuPont Seller-Owned Inventory Agreement	MAS-SDT-0000212-216
RX0086	DuPont Seller-Owned Inventory Agreement (Am.)	MAS-SDT-0000217-219
PX4149 RX0087	Chemours Pricing Schedule (2018)	MAS-SDT-0000220
RX0088	Chemours Rebate Schedule (2018)	MAS-SDT-0000221-223
RX0089	Millennium Consignment Agreement	MAS-SDT-0000224-226
RX0090	Millennium TiO2 Supply Agreement	MAS-SDT-0000227-236
PX4153 RX0091	Cristal Pricing Schedule (2018)	MAS-SDT-0000237
RX0092	Supplier Pricing Communications (2015-2017)	MAS-SDT-0000238-263
PX7027 RX0141	Mario Pschaidt Deposition Transcript	N/A

Ex. No(s).	Description	Bates Range
PX8006	Declaration of Mario Pschaidt	N/A

7. The Confidential Documents fall into the following categories: (a) high-level strategic plans; (b) R&D testing and qualification reviews; (c) supplier-level purchasing data and pricing communications; (d) supplier contracts and pricing schedules; and (e) my testimony regarding these topics and other key aspects of Masco's TiO2 strategy. The Confidential Documents contain detailed, current, and/or forward-looking information of great competitive significance to Masco's architectural coatings business. This information would be *extremely* valuable to Masco's competitors and current or potential suppliers of TiO2. Disclosure of the materials would seriously damage Masco's ability to compete in the architectural coatings industry. In addition, the competitive sensitivity of much of the information in the Confidential Documents (including Masco's trade secrets) is unlikely to diminish over time.
8. The Confidential Documents also contain business secrets and commercially sensitive information that is proprietary to Masco and is not publicly known outside of the company. Much of the information is closely held even *within* Masco. Masco has taken many steps to protect the confidentiality of the Confidential Documents, including employee and third party non-disclosure requirements, limiting distribution within the organization on a need-to-know basis, and encryption, among other internal policies and practices. Masco also produced the Confidential Materials only pursuant to compulsory subpoenas and in reliance on assurances that its business-sensitive information would receive protection in these proceedings.
9. RX0076, RX0077, and RX0078 (PX4140) are three, high-level strategic plans prepared by MCG between 2015 and 2018 detailing Masco's TiO2 purchasing strategy. These strategic plans are among the most (if not *the most*) sensitive documents that exist in the MCG

organization. The plans contain detailed analysis of TiO₂ feedstock availability, TiO₂ manufacturing processes, competitive dynamics in the TiO₂ segment; Behr's TiO₂ purchases by supplier and product; Behr's capacity and TiO₂ utilization; Behr's TiO₂ pricing and price trends; Behr's TiO₂ cost saving initiatives; Behr's consideration of alternative suppliers; Behr's R&D evaluation of TiO₂ grades; and Behr's mid- and long-term TiO₂ strategy. The plans also contain the sensitive personal information of several supplier contacts, as well as information purchased from third party sources such as TZMI, which is subject to non-disclosure obligations. In sum, the plans contain an abundance of extremely sensitive, current, and/or forward-looking information that goes to the very heart of Masco's architectural coatings business. Disclosure of these documents would give Masco's suppliers and competitors invaluable visibility into Masco's business and strategy and would be catastrophic to Masco's ability to compete.

10. RX0080 (PX4142) is a presentation prepared in March 2018 (less than two months ago) in collaboration with Behr's R&D division detailing Behr's evaluation and qualification of a grade of chloride-process TiO₂. This project review outlines Behr's proprietary R&D processes, including test design, methodology, procedures, and timetable (the document itself speaks to the substantial investment in man-hours that Behr has made in order to develop this information). The document also contains detailed R&D test results across numerous proprietary Behr formulations, as well as information about Behr's internal manufacturing processes. These trade secrets are all closely guarded, highly confidential, and critical to Masco's ability to innovate. Disclosure of this information would give Masco's competitors transparency into its innovation efforts and negate its competitive advantage stemming from such efforts. In addition, revealing the status of Masco's efforts to qualify additional TiO₂

grades would impact the company's ability to negotiate with its TiO2 suppliers, further undermining its competitive position.

11. RX0072-75 (PX4137), RX0079 (PX4141), and RX0092 consist of Masco's responses to a CID issued by the FTC in June 2017; a chart reflecting the specific TiO2 grade Behr uses in each of its products, further broken out by plant and supplier; and Masco's internal communications with its TiO2 suppliers. The CID response contains detailed information regarding the amount of Behr's TiO2 purchases from each of its suppliers from 2014 through 2017, broken out by year and grade. It also contains discussion of recent strategic investments by Behr. Finally, the response contains a chart documenting every price increase announced by Behr's TiO2 suppliers from December 2015 through February 2018, specifying the pricing ultimately negotiated by Behr, as well as a narrative description of Behr's price negotiation strategy. Masco's internal communications with its TiO2 suppliers consist of letters from suppliers announcing price increases from 2015 through 2017, including, in many cases, my sensitive personal information and that of my supplier contacts. Together, these documents reveal (a) from whom Behr is buying TiO2; (b) what type of TiO2 it is buying and when; (c) how much it is buying; (d) where and how the TiO2 product is currently being used; (e) how much Behr is paying; (f) and how it negotiates prices. This information is commercially sensitive, highly confidential, non-public, and closely held within the Purchasing group at MCG. The information is also current, reflecting Behr's TiO2 pricing and product utilization to date. Disclosure of the information would be tantamount to opening Behr's purchasing playbook for all to see and would put Masco at a serious competitive disadvantage with respect to its suppliers and other coatings manufacturers.

12. RX0081-91 (PX4146, PX4149, PX4153) consist of Behr's operative TiO2 supply contracts and consignment agreements, as well as term sheets reflecting current TiO2 pricing and rebates. This information is commercially sensitive, highly confidential, non-public, and closely held within the Purchasing group at MCG. The pricing reflected in these contracts is current and/or prospective. Disclosure of this information would put Masco at a serious competitive disadvantage with respect to its suppliers and other coatings manufacturers.

13. Finally, RX 0141 (PX7072) and PX8006 consist of the transcript of my deposition in this matter and a declaration I gave to the FTC. These documents contain my detailed testimony regarding the Confidential Documents and topics described above, and various other aspects of Masco's TiO2 strategy. For the reasons outlined above, disclosure of this highly confidential, commercially sensitive information would put Masco at a serious competitive disadvantage.

I declare under penalty of perjury that the foregoing is, to the best of my knowledge, true and correct.

Executed on May 1, 2018



Mario Pschaidt
Masco Coatings Group
Vice President, Procurement

EXHIBIT D
Confidential Documents
(REDACTED IN ITS ENTIRETY)

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

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
PUBLIC

PROPOSED ORDER ON NON-PARTY MASCO CORPORATION'S
MOTION FOR *IN CAMERA* TREATMENT

Pursuant to Rule 3.45(b) of the Rules of Practice of the Federal Trade Commission ("FTC") and the Scheduling Order entered in this matter on December 20, 2017 and revised on January 19 and February 23, 2018, non-party Masco Corporation ("Masco") has filed a motion for *in camera* treatment of certain confidential materials that FTC Complaint Counsel and/or Tronox Limited, National Industrialization Company, National Titanium Dioxide Company, and Cristal USA Inc. (collectively, "Respondents") intend to introduce as evidence at the hearing in this matter. Non-party Masco has met its burden of demonstrating that the documents identified in Exhibit 1 to its motion are entitled to indefinite *in camera* treatment. Accordingly, it is HEREBY ORDERED that Masco's motion is GRANTED.

ORDERED:

D. Michael Chappell
Administrative Law Judge

Date: May __, 2018

CERTIFICATE OF SERVICE

I, Vishal Mehta, declare under penalty of perjury under the laws of the District of Columbia that the following is true and correct. On May 1, 2018, I caused to be served the following documents on the parties listed below by the manner indicated:

- NON-PARTY MASCO CORPORATION'S MOTION FOR IN CAMERA TREATMENT & EXHIBITS THEREIN
- [PROPOSED] ORDER

The Office of the Administrative Law Judge (via hand delivery (*In Camera* copy) and FTC E-Filing system)

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-110
Washington, D.C. 20580

The Office of the Secretary: (via hand delivery (*In Camera* copy), Email, and FTC E-Filing system)

Donald S. Clark
Office of the Secretary
Federal Trade Commission
Constitution Center
400 Seventh Street, S.W.
Fifth Floor
Suite CC-5610 (Annex B)
Washington, D.C. 20024
Dclark@ftc.com

Federal Trade Commission (via Email and FTC E-Filing system)

Joonsuk Lee
Bureau of Competition
600 Pennsylvania Ave., NW
Washington, DC 20580
Jlee4@ftc.com

Counsel to Respondents (via Email and FTC E-Filing system)

Michael DeRita
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
Michael.derita@kirkland.com

/s/ Vishal Mehta
Attorney

Notice of Electronic Service

I hereby certify that on May 01, 2018, I filed an electronic copy of the foregoing 2018.05.01 Masco Corporation's Motion for In Camera Treatment , 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 2018.05.01 Masco Corporation's Motion for In Camera Treatment , upon:

Seth Wiener
Arnold & Porter Kaye Scholer LLP
seth.wiener@apks.com
Respondent

Matthew Shultz
Arnold & Porter Kaye Scholer LLP
matthew.shultz@apks.com
Respondent

Albert Teng
Arnold & Porter Kaye Scholer LLP
albert.teng@apks.com
Respondent

Michael Williams
Kirkland & Ellis LLP
michael.williams@kirkland.com
Respondent

David Zott
Kirkland & Ellis LLP
dzott@kirkland.com
Respondent

Matt Reilly
Kirkland & Ellis LLP
matt.reilly@kirkland.com
Respondent

Andrew Pruitt
Kirkland & Ellis LLP
andrew.pruitt@kirkland.com
Respondent

Susan Davies
Kirkland & Ellis LLP
susan.davies@kirkland.com
Respondent

Michael Becker
Kirkland & Ellis LLP
mbecker@kirkland.com
Respondent

Karen McCartan DeSantis
Kirkland & Ellis LLP
kdesantis@kirkland.com
Respondent

Megan Wold
Kirkland & Ellis LLP
megan.wold@kirkland.com
Respondent

Michael DeRita
Kirkland & Ellis LLP
michael.derita@kirkland.com
Respondent

Charles Loughlin
Attorney
Federal Trade Commission
cloughlin@ftc.gov
Complaint

Cem Akleman
Attorney
Federal Trade Commission
cakleman@ftc.gov
Complaint

Thomas Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Krishna Cerilli
Attorney
Federal Trade Commission
kcerilli@ftc.gov
Complaint

Steven Dahm
Attorney
Federal Trade Commission
sdahm@ftc.gov
Complaint

E. Eric Elmore
Attorney
Federal Trade Commission
eelmore@ftc.gov
Complaint

Sean Hughto
Attorney
Federal Trade Commission

shughto@ftc.gov
Complaint

Joonsuk Lee
Attorney
Federal Trade Commission
jlee4@ftc.gov
Complaint

Meredith Levert
Attorney
Federal Trade Commission
mlevert@ftc.gov
Complaint

Jon Nathan
Attorney
Federal Trade Commission
jnathan@ftc.gov
Complaint

James Rhilinger
Attorney
Federal Trade Commission
jrhilinger@ftc.gov
Complaint

Blake Risenmay
Attorney
Federal Trade Commission
brisenmay@ftc.gov
Complaint

Kristian Rogers
Attorney
Federal Trade Commission
krogers@ftc.gov
Complaint

Z. Lily Rudy
Attorney
Federal Trade Commission
zrudy@ftc.gov
Complaint

Robert Tovsky
Attorney
Federal Trade Commission
rtovsky@ftc.gov
Complaint

Dominic Vote
Attorney
Federal Trade Commission
dvote@ftc.gov
Complaint

Cecelia Waldeck
Attorney

Federal Trade Commission
cwaldeck@ftc.gov
Complaint

Katherine Clemons
Associate
Arnold & Porter Kaye Scholer LLP
katherine.clemons@arnoldporter.com
Respondent

Eric D. Edmondson
Attorney
Federal Trade Commission
eedmondson@ftc.gov
Complaint

David Morris
Attorney
Federal Trade Commission
DMORRIS1@ftc.gov
Complaint

Zachary Avallone
Kirkland & Ellis LLP
zachary.avallone@kirkland.com
Respondent

Rohan Pai
Attorney
Federal Trade Commission
rpai@ftc.gov
Complaint

Rachel Hansen
Associate
Kirkland & Ellis LLP
rachel.hansen@kirkland.com
Respondent

Peggy D. Bayer Femenella
Attorney
Federal Trade Commission
pbayer@ftc.gov
Complaint

Grace Brier
Kirkland & Ellis LLP
grace.brier@kirkland.com
Respondent

I hereby certify that on May 01, 2018, I served via other means, as provided in 4.4(b) of the foregoing 2018.05.01 Masco Corporation's Motion for In Camera Treatment , upon:

Joonsuk Lee
Title...
FTC
jlee4@ftc.com
Complaint

Vishal Mehta
Attorney