

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,**

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

And

**Cristal USA Inc.
a corporation.**

Docket No. 9377

**NON-PARTY A. SCHULMAN, INC.'S MOTION FOR
IN CAMERA TREATMENT OF PROPOSED EVIDENCE**

A. Schulman, Inc. ("A. Schulman") is not a party to the above-captioned matter.

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b),

A. Schulman respectfully requests that this Court grant *in camera* treatment of several documents that Complaint Counsel has designated for inclusion into evidence in the administrative trial of this matter. A. Schulman produced these documents in response to a civil investigative demand in this matter. A. Schulman seeks *in camera* treatment for the following documents:

Complete Non-Disclosure is sought for:

- Exhibit B: PX4237.
- Exhibit C: PX4238.

A. SCHULMAN’S CONFIDENTIAL DOCUMENTS QUALIFY FOR *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION’S RULES OF PRACTICE.

A. Schulman’s documents are entitled to *in camera* treatment under the standards set out in 16 C.F.R. § 3.45(b). That section provides for *in camera* treatment of certain business-related information where public disclosure of the document in question “will result in a clearly defined, serious injury to the . . . corporation requesting in camera treatment.” *Id.* The requisite showing can be made by establishing that the document in question is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, *6 (Dec. 23, 1999) (quoting *General Foods Corp.*, 95 FTC 352, 355 (1980)). In this context, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

Previous cases have identified six factors to be weighed in determining whether the documents in question are sufficiently secret and sufficiently material that disclosure would result in serious competitive injury:

- (1) the extent to which the information is known outside of the applicant’s business;
- (2) the extent to which the information is known by employees and others involved in the applicant’s business;
- (3) the extent of measures taken by the applicant to guard the secrecy of the information;
- (4) the value of the information to the applicant and its competitors;
- (5) the amount of effort or money expended by the applicant in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Dura Lube, 1999 F.T.C. LEXIS 255 at *6-*7 (quoting *Bristol-Myers Co.*, 90 F.T.C. 455, 456

(1977)).

**PUBLIC DISCLOSURE OF A. SCHULMAN'S BUSINESS DOCUMENTS WOULD
RESULT IN SERIOUS COMPETITIVE INJURY TO A. SCHULMAN**

A. Schulman's documents meet the standards for secrecy and materiality necessary to justify *in camera* treatment.

**A. A. Schulman Has Preserved the Secrecy of the Documents and Information in
Question**

A. Schulman has taken significant measures to protect the confidentiality of its information. Such information, which is included as Exhibits B and C hereto, is only disclosed to a limited number of A. Schulman employees and is not disclosed, nor otherwise known, outside of A. Schulman except where disclosure is necessary to engage in contract negotiations with third parties. (Dragich Decl. at 3). The measures adopted by A. Schulman to maintain the confidentiality of its information would make it extremely difficult for its competitors or other third parties to obtain access to or duplicate the information contained in the documents at issue. *Id.*

**B. Disclosure of the Information Contained in the Documents in Question Would
Result in Serious Competitive Injury to A. Schulman.**

Exhibits B and C contain sensitive information regarding A. Schulman's manufacturing facilities, including estimated annual manufacturing capacity and information relating to the titanium dioxide requirements for each facility relative to A. Schulman's overall demand for titanium dioxide. (Dragich Decl. at 4). These documents also contain sensitive information regarding A. Schulman's supply arrangements for the purchase of titanium dioxide. *Id.* The information includes the identity of the suppliers with whom A. Schulman has arrangements for the supply of titanium dioxide, the types of titanium dioxide purchased from each such supplier,

and the volume and dollar value of A. Schulman's titanium dioxide purchases from each such supplier. *Id.* All of this information is highly confidential and commercially sensitive. *Id.* Disclosure of this information would reveal valuable information regarding A. Schulman's business operations and strategies for the purchase of titanium dioxide, as well as could be used to determine the pricing and other competitively sensitive terms of A. Schulman's supply arrangements for the purchase of titanium dioxide. *Id.* Disclosure of this information would severely jeopardize A. Schulman's ability to negotiate effectively for the purchase of titanium dioxide and could otherwise result in serious damage to A. Schulman in the marketplace. *Id.*

C. The Likelihood of Serious Competitive Harm to A. Schulman Outweighs the Public Interest in Disclosure of the Documents in Question.

As a non-party to this matter, A. Schulman deserves "special solicitude" as a non-party requesting *in camera* treatment for its confidential business information. *In the Matter of Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500, 500 (1984) (order directing *in camera* treatment for five-year-old sales statistics of non-parties). Affording *in camera* treatment to the information of non-parties, for reasonable time periods, encourages non-parties such as A. Schulman to cooperate with future discovery requests in adjudicative proceedings. *Id.* A. Schulman has cooperated with the discovery demands in this case. Moreover, "public understanding of this proceeding does not depend on access to" A. Schulman's highly confidential information. *Id.* The balance of interests clearly favors *in camera* protection for

Exhibits B and C. *See Bristol*, 90 F.T.C. at 456 (describing six-factor test for determining secrecy and materiality).

Respectfully submitted,



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Attorney for A. Schulman, Inc.

CERTIFICATE OF SERVICE

I, Christopher H. Gordon, declare under penalty of perjury that the following is true and correct. On May 7, 2018, I caused to be served the following documents through the Federal Trade Commission's electronic filing system:

- NON-PARTY A. SCHULMAN, INC.'S MOTION FOR IN CAMERA TREATMENT OF PROPOSED EVIDENCE (PUBLIC VERSION)
- NOTICE OF APPEARANCE
- [PROPOSED] ORDER

Courtesy copies have been provided to:

The Office of the Secretary:

(via electronic mail)

Office of the Secretary
Federal Trade Commission

The Office of the Administrative Law Judge

(via electronic mail)

The Honorable D. Michael Chappell
Chief Administrative Law Judge



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

In the Matter of

Tronox Limited
a corporation,

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(TASNEE)
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a corporation,

And

Cristal USA Inc.
a corporation.

Docket No. 9377

PROPOSED ORDER

On May 1, 2018, Non-Party A. Schulman, Inc. (“A. Schulman”) filed a motion for *in camera* treatment of confidential business information contained in various documents that have been identified by Complaint Counsel as potential exhibits.

IT IS HEREBY ORDERED that A. Schulman’s Motion is GRANTED. The information set forth in A. Schulman’s exhibits numbered as follows will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for a period of five years.

- Exhibit B: PX4237.
- Exhibit C: PX4238.

PUBLIC

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: _____
D. Michael Chappell
Administrative Law Judge

DATED: _____

Public

EXHIBIT A

Public

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

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a corporation,

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(TASNEE)
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Docket No. 9377

DECLARATION OF GRETCHEN DRAGICH IN SUPPORT OF NON-PARTY A.
SCHULMAN, INC.'S MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED
EVIDENCE

I, Gretchen Dragich, declare as follows:

1. I am currently Global Procurement Senior Director A. Schulman, Inc. ("A. Schulman"). I have reviewed and am familiar with the documents A. Schulman produced in the above-captioned matter in response to a civil investigative demand from the Federal Trade Commission.

Public

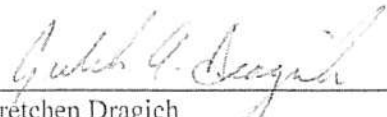
2. I have reviewed the documents for which A. Schulman seeks *in camera* treatment. As Global Procurement Senior Director for A. Schulman, I am familiar with the confidential information contained in the documents at issue. Based upon my review of the documents, my knowledge of A. Schulman's business, and my familiarity with the confidentiality protections afforded this type of information by A. Schulman, it is my belief that disclosure of these documents would cause serious competitive injury to A. Schulman.

3. A. Schulman has taken significant measures to protect the confidentiality of its information. The information contained in Exhibits B and C is only disclosed to a limited number of A. Schulman employees and is not disclosed, nor otherwise known, outside of A. Schulman except where disclosure is necessary to engage in contract negotiations with third parties. The measures adopted by A. Schulman to maintain the confidentiality of its information would make it extremely difficult for its competitors or other third parties to obtain access to or duplicate the information contained in the documents at issue.

4. Exhibits B and C contain sensitive information regarding A. Schulman's manufacturing facilities, including estimated annual manufacturing capacity and information relating to the titanium dioxide requirements for each facility relative to A. Schulman's overall demand for titanium dioxide. These documents also contain sensitive information regarding A. Schulman's supply arrangements for the purchase of titanium dioxide. The information includes the identity of the suppliers with whom A. Schulman has arrangements for the supply of titanium dioxide, the types of titanium dioxide purchased from each such supplier, and the volume and dollar value of A. Schulman's titanium dioxide purchases from each such supplier. All of this information is highly confidential and commercially sensitive. Disclosure of this information would reveal valuable information regarding A. Schulman's business operations and strategies

for the purchase of titanium dioxide, as well as could be used to determine the pricing and other competitively sensitive terms of A. Schulman's supply arrangements for the purchase of titanium dioxide. Disclosure of this information would severely jeopardize A. Schulman's ability to negotiate effectively for the purchase of titanium dioxide and could otherwise result in serious damage to A. Schulman in the marketplace.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 30, 2018.



Gretchen Dragich

EXHIBIT B

PX4237

MARKED CONFIDENTIAL
REDACTION IN THEIR ENTIRETY
REQUESTED

EXHIBIT C

PX4238

MARKED CONFIDENTIAL
REDACTION IN THEIR ENTIRETY
REQUESTED

Notice of Electronic Service

I hereby certify that on May 07, 2018, I filed an electronic copy of the foregoing Non-Party A. Schulman, Inc.'s Motion for In Camera Treatment of Proposed Evidence , 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 07, 2018, I served via E-Service an electronic copy of the foregoing Non-Party A. Schulman, Inc.'s Motion for In Camera Treatment of Proposed Evidence , upon:

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I hereby certify that on May 07, 2018, I served via other means, as provided in 4.4(b) of the foregoing Non-Party A. Schulman, Inc.'s Motion for In Camera Treatment of Proposed Evidence , upon:

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Attorney
Arnold & Porter Kaye Scholer LLP

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Respondent

Christopher Gordon
Attorney