

[Public Version]

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



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In the Matter of  
Tronox Limited et al.  
  
Respondents.

**ORIGINAL**  
DOCKET NO. 9377

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**NON-PARTY BASF 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 BASF Corporation ("BASF") respectfully moves this Court for *in camera* treatment of 16 competitively sensitive, confidential business documents as well as the deposition transcript of its 30(b)(6) witness in this matter (the "Confidential Documents"). BASF produced these Confidential Documents, among many others, in response to a Civil Investigative Demand and Subpoenas served by (1) the Federal Trade Commission ("FTC") and (2) Respondents National Industrialization Company (TASNEE), National Titanium Dioxide Company Limited and Cristal USA Inc. (collectively with Tronox, "Respondents"). BASF previously designated each of these documents "Confidential" pursuant to the Protective Order Governing Confidential Material (Dec. 7, 2017).

The FTC notified BASF that it intends to offer into evidence at the administrative trial of this matter seven BASF's documents, including the Confidential Documents, as well as the deposition testimony of BASF's Global Category Buyer Manojkumar Shah. Letter from Attorney for Federal Trade Commission (Apr. 19, 2018) (Exhibit 1). On that same date, Respondents notified BASF that they intend to introduce into evidence another 11 documents

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from BASF's production and the same transcript of Mr. Shah. Letter from Respondents' Attorney (Apr. 19, 2018) (Exhibit 2).

BASF's Confidential Documents, which contain highly sensitive business information and trade secrets, warrant protection from public disclosure and the severe competitive injury that would result from it. BASF submits this Motion requesting permanent *in camera* treatment of the Confidential Documents in their entirety.

The materials for which BASF is seeking *in camera* treatment are confidential business documents, all created within the past year and many from the past few months, reflecting internal communications among members of BASF's procurement group that reflect the strategic thinking developed over time by BASF to decide how best to source product from its suppliers. [REDACTED]

[REDACTED] If these documents were to become part of the public record and if its confidences were revealed, BASF would be significantly harmed in its ability to purchase TiO<sub>2</sub> and other products from multiple suppliers at competitive prices. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

For the reasons discussed in this motion, BASF requests that this Court afford its confidential business documents *in camera* treatment indefinitely. In support of this motion, BASF relies on the Declaration of Manojkumar Shah (the "Shah Declaration"), attached as

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Exhibit 3, which provides additional details on the documents for which BASF is seeking *in camera* treatment.

**I. The Documents for Which Protection is Sought**

BASF seeks *in camera* treatment for the following Confidential Documents, copies of which are attached as Exhibit 4:<sup>1</sup>

Attached Ex. No.	Ex. No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
4A	PX4182	[REDACTED]	1.12.18	BC-FTC-Tronox-001292	BC-FTC-Tronox-001293
4B	PX4183	[REDACTED]	1.11.18	BC-FTC-Tronox-001302	BC-FTC-Tronox-001303
4C	PX4184	[REDACTED]	11.15.17	BC-FTC-Tronox-002017	BC-FTC-Tronox-002018
4D	PX4185	[REDACTED]	8.11.17	BC-FTC-Tronox-03908	BC-FTC-Tronox-003919
4E	PX4230	[REDACTED]	7.31.17	PX4230-001	PX4230-006
4F	PX7031	[REDACTED]	3.22.18	PX7031-001	PX7031-083
4G	Not Provided	[REDACTED]	12.17	BC-FTC-Tronox-00023	BC-FTC-Tronox-000033
4H	Not Provided	[REDACTED]	2.27.18	BC-FTC-Tronox-000291	BC-FTC-Tronox-000294

<sup>1</sup> BASF has made a careful review of the documents sought to be introduced by the parties and seeks *in camera* treatment only for those Confidential Documents that meet the legal standard. It does not seek *in camera* protection for PX4186 (BC-FTC-Tronox-005952-53) or PX4188 (BC-FTC-Tronox-007006-10).

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Attached Ex. No.	Ex. No.	Document Title/Description	Date	Beginning Bates No.	Ending Bates No.
4I	Not Provided	[REDACTED]	2.1.18	BC-FTC-Tronox-000766	BC-FTC-Tronox-000768
4J	Not Provided	[REDACTED]	12.6.17	BC-FTC-Tronox-001655	BC-FTC-Tronox-001661
4K	Not Provided	[REDACTED]	11.29.17	BC-FTC-Tronox-001820	BC-FTC-Tronox-001829
4L	Not Provided	[REDACTED]	11.27.17	BC-FTC-Tronox-001869	BC-FTC-Tronox-001888
4M	Not Provided	[REDACTED]	10.25.17	BC-FTC-Tronox-002206	BC-FTC-Tronox-002207
4N	Not Provided	[REDACTED]	10.23.17	BC-FTC-Tronox-002336	BC-FTC-Tronox-002338
4O	Not Provided	[REDACTED]	6.28.17	BC-FTC-Tronox-005109	BC-FTC-Tronox-005113
4P	Not Provided	[REDACTED]	6.17	BC-FTC-Tronox-005422	BC-FTC-Tronox-005430
4Q	Not Provided	[REDACTED]	5.22.17	BC-FTC-Tronox-006191	BC-FTC-Tronox-006193

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### II. Disclosure of BASF's Secret and Material Confidential Documents Would Result in Serious Injury to BASF

*In camera* treatment of material is appropriate when “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). Applicants like BASF “must ‘make a clear showing that the information concerned is sufficiently secret and sufficiently material to their business that disclosure would result in serious competitive injury.’” *In re Jerk, LLC*, 2015 FTC LEXIS 39, at \*2 (Feb. 23, 2015) (quoting *In re General Foods Corp.*, 95 F.T.C. 352, 1980 FTC LEXIS 99, at \*10 (Mar. 10, 1980); *In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at \*6 (Dec. 23, 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, 1961 WESTLAW 65882, at \*4 (March 14, 1961).

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, 1977 WESTLAW 189054, at \*2 (Nov. 11, 1977). These factors, taken together, plainly warrant *in camera* treatment of BASF's Confidential Documents.

First, BASF safeguards the confidentiality of the Confidential Documents, satisfying the first part of the *Jerk* test and the first three factors of the *Bristol-Myers* test outlined above. The Confidential Documents reflect internal, confidential communications among members of BASF's procurement group and, if and when appropriate, with the specific internal BASF

**[Public Version]**

businesses that they support.<sup>2</sup> The Confidential Documents, generated primarily within the procurement group, are shared only on a need-to-know basis with individual BASF businesses and not otherwise shared widely within the company. Mr. Shah and his colleagues maintain the secrecy of their business analyses and purchasing strategies, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Second*, the information contained in the Confidential Documents is highly material to BASF's business, which invests substantial resources into its procurement group, both in the United States and globally, to facilitate the purchase of necessary raw material inputs into the chemical products it manufactures and sells into the marketplace. The disclosure of these Confidential Documents would cause serious competitive injury, plainly satisfying the second part of the *Jerk* test and the final three factors of *Bristol-Myers*. Indeed, disclosure of this information would be substantially harmful to BASF's ability to obtain reliable sourcing of TiO<sub>2</sub> at competitive prices. On a document-by-document basis, as described by Mr. Shah ([REDACTED]):

**EX. 4A (PX4182):**

[REDACTED]

**EX. 4B (PX4183):**

[REDACTED]

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<sup>2</sup> BASF's procurement group works to ensure that BASF's manufacturing sites are reliably supplied with the raw materials they need, at competitive prices, to operate in North America.

[REDACTED]

**EX. 4C (PX4184):**

[REDACTED]

**EX. 4D (PX4185):**

[REDACTED]

**EX. 4E (PX42**

[REDACTED]

**EX. 4F (PX7031) (Shah Deposition Transcript):**<sup>3</sup>

[REDACTED]

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<sup>3</sup> To the extent BASF is required to designate specific transcript pages warranting *in camera* treatment, BASF designates pages [REDACTED]. But the burden of doing so should not fall in the first instance upon BASF, a non-party to this proceeding, especially given the fact that the Order Granting Joint Motion To Revise the Scheduling Order and Issuing Second Revised Scheduling Order (Feb. 23, 2018) (“Second Revised Scheduling Order”) required the parties to disclose witness testimony summaries to each other by April 9 and April 19, respectively. *Id.* at 2. BASF has not been advised of any specific portions of the testimony that the parties intend to use.

**EX. 4G (BC-FTC-Tronox-000023-33):**<sup>4</sup>

[REDACTED]

**EX. 4H (BC-FTC-Tronox-000291-94):**

[REDACTED]

**EX. 4I (BC-FTC-Tronox-000766-68):**

[REDACTED]

**EX. 4J (BC-FTC-Tronox-001655-61):**

[REDACTED]

**EX. 4K (BC-FTC-Tronox-001820-29):**

[REDACTED]

**EX. 4L (BC-F**

[REDACTED]

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<sup>4</sup> We did not receive “RX” numbers from Respondents, so we cite the “BC-FTC-Tronox-000000” Bates numbers here.



**EX. 4M (BC-FTC-Tronox-002206-07):**

[REDACTED]

**EX. 4N (BC-FTC-Tronox-002336-38):**

[REDACTED]

**EX. 4O (BC-FTC-Tronox-005109-13):**

[REDACTED]

**EX. 4P (BC-FTC-Tronox-005422-30):**

[REDACTED]

**EX. 4Q (BC-FTC-Tronox-006191-93):**

[REDACTED]

The highly confidential, strategic analyses contained in these Confidential Documents share a common theme: their disclosure in the marketplace would directly and substantially harm BASF's purchasing efforts and [REDACTED]

[REDACTED]

[REDACTED] This plainly would result in the loss of a business advantage to BASF. See *In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at \*7 (“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’”). The Confidential Documents are material to the procurement processes BASF applies to compete with others that (1) purchase TiO<sub>2</sub> and (2) use TiO<sub>2</sub> to manufacture chemical products sold in the marketplace. Permitting public access to such documents would result in a loss of business advantage that BASF has built as the result of its own substantial investments in the development of its proprietary systems and processes.

*Third*, under many circumstances, antitrust law scrutinizes sharing of the kind of pricing and cost information reflected in BASF’s documents. See *United States v. Container Corp. of America*, 393 U.S. 333, 335 (1969) (carefully reviewing exchanges of recent price information among sellers); see also *id.* at 337 (communication of price information in a highly concentrated industry and a fungible product with inelastic demand “had an anticompetitive effect in the industry, chilling the vigor of price competition”). The notion that this kind of information would be *affirmatively* disclosed to suppliers, competitors and to the public would be anathema to the very purpose of the laws that the FTC enforces in the first place.

*Fourth*, BASF invests human and monetary resources into marketplace research and the development and application of strategies it uses to procure lower priced raw materials that, in turn, relieve cost pressures on the price of its own products. Documents reflecting these efforts, which BASF keeps confidential and are proprietary to BASF, are of substantial competitive significance.

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*Fifth*, when BASF produced the Confidential Documents, it took appropriate steps to maintain their confidentiality by expressly designating the documents “Confidential” under the Protective Order Governing Confidential Material (Dec. 7, 2017) (Exhibit 5); *see* 16 C.F.R. § 3.31(d) (authorizing the entry of a protective order to protect the parties and third parties from the improper use and disclosure of confidential information). Because of the highly confidential and proprietary nature of the information and its materiality to BASF’s business, *in camera* treatment is appropriate and necessary.

*Sixth*, and finally, BASF’s status as a third party is relevant to the treatment of its documents. The FTC 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 WESTLAW 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, 1984 FTC LEXIS 60, at \*2-3 (May 25, 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.”). BASF’s third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents.

### **III. Permanent *In Camera* Treatment Is Justified Because the Confidential Documents Contain Trade Secrets that Will Remain Sensitive Over Time**

Given the highly sensitive nature of the information contained in the Confidential Documents, BASF requests that they be given *in camera* treatment indefinitely.<sup>5</sup> The strategic analyses and trade secrets contained in the Confidential Documents are “likely to remain sensitive or become more sensitive with the passage of time” such that the need for confidentiality is not

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<sup>5</sup> To the extent such permanent treatment is not given, BASF requests that the period of *in camera* treatment of the Confidential Documents be no fewer than 10 years.

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likely to decrease over time. *In re Dura Lube Corp.*, 1999 FTC LEXIS, at \*8-9. “Trade secrets” – including secret technical information – are granted greater protection than ordinary business documents. *Id.* at \*7-8. Here, as described in the Shah Declaration, the Confidential Documents contain business and trade secrets in the form of strategic analyses that apply confidential strategies in connection with BASF’s procurement practices that are critical to its ability to source raw materials at competitive prices. Shah Declaration ¶ 4-8. Although market prices change over time, the competitive significance of the strategies themselves does not. As a result, indefinite protection from public disclosure is appropriate and necessary to protect BASF’s material interests. *Id.* at ¶ 9.

**IV. Conclusion**

For the reasons set forth above and in the Shah Declaration (Exhibit 3), BASF respectfully requests that this Court grant permanent *in camera* treatment for the Confidential Documents in their entirety.

Dated: April 27, 2018

Respectfully submitted,

NON-PARTY BASF CORPORATION

/s/ Andrew S. Marovitz  
Andrew S. Marovitz  
MAYER BROWN LLP  
71 S. Wacker Drive  
Chicago, IL 60606-4637  
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[amarovitz@mayerbrown.com](mailto:amarovitz@mayerbrown.com)

Counsel for non-party BASF CORPORATION

EXHIBIT 1  
FTC'S NOTICE LETTER  
(4.19.18)



**[Public Version]**  
UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Competition  
Mergers II Division

April 19, 2018

**VIA EMAIL TRANSMISSION**

BASF Corporation  
c/o Andrew S. Marovitz  
Mayer Brown LLP  
71 S. Wacker Drive  
Chicago, IL 60606-4637  
[amarovitz@mayerbrown.com](mailto:amarovitz@mayerbrown.com)

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

Dear Andy:

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

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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
PX4182	[REDACTED]	1/12/2018	BC-FTC-Tronox-001292	BC-FTC-Tronox-001293
PX4183	[REDACTED]	1/11/2018	BC-FTC-Tronox-001302	BC-FTC-Tronox-001303
PX4184	[REDACTED]	11/15/2017	BC-FTC-Tronox-002017	BC-FTC-Tronox-002018
PX4185	[REDACTED]	8/11/2017	BC-FTC-Tronox-003908	BC-FTC-Tronox-003919
PX4186	Email from Manoj Shah to manfred Haag re: Monthly report	6/1/2017	BC-FTC-Tronox-005952	BC-FTC-Tronox-005953
PX4188	Email from Jason Guan to Michael Meyer, Manoj Shah, Manfred Haag re: Complaints: LOMON TiO2 DELIVERY TO THE GREENVILLE SITE.	4/25/2017	BC-FTC-Tronox-007006	BC-FTC-Tronox-007010
PX4230	[REDACTED]	7/31/2017	PX4230-001	PX4230-006
PX7031	[REDACTED]	3/22/2018	PX7031-001	PX7031-083

EXHIBIT 2  
RESPONDENTS' NOTICE LETTER  
(4.19.18)

# Arnold & Porter

Seth Wiener  
+1 202.942.5691 Direct  
Seth.Wiener@arnoldporter.com

**CONFIDENTIAL**

April 19, 2018

**VIA EMAIL AND UPS**

Andrew S. Marovitz  
Mayer Brown LLP  
71 S Wacker Dr #3200,  
Chicago, IL 60603

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

Dear Andrew:

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 in the above-captioned matter before the United States Federal Trade Commission, that Tronox Limited, 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 BASF Corporation at the hearing before Judge Chappell:

<b>Begin Bates</b>	<b>End Bates</b>
BC-FTC-Tronox-000023	BC-FTC-Tronox-000033
BC-FTC-Tronox-000291	BC-FTC-Tronox-000294
BC-FTC-Tronox-000766	BC-FTC-Tronox-000768
BC-FTC-Tronox-001655	BC-FTC-Tronox-001661
BC-FTC-Tronox-001820	BC-FTC-Tronox-001829
BC-FTC-Tronox-001869	BC-FTC-Tronox-001888
BC-FTC-Tronox-002206	BC-FTC-Tronox-002207
BC-FTC-Tronox-002336	BC-FTC-Tronox-002338
BC-FTC-Tronox-005109	BC-FTC-Tronox-005113
BC-FTC-Tronox-005422	BC-FTC-Tronox-005430
BC-FTC-Tronox-006191	BC-FTC-Tronox-006193

# Arnold & Porter

Andrew S. Marovitz

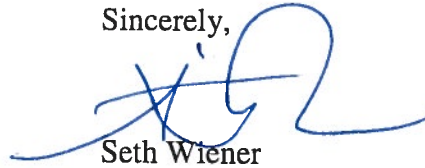
April 19, 2018

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- Deposition Transcript of Manojkumar Shah (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).<sup>1</sup> 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,



Seth Wiener

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<sup>1</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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# EXHIBIT 3

DECLARATION OF MANOJKUMAR B. SHAH  
(4.26.18)

[Public Version]

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

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In the Matter of

Tronox Limited et al.

DOCKET NO. 9377

Respondents.

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**DECLARATION OF MANOJKUMAR B. SHAH IN SUPPORT OF  
NON-PARTY BASF CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT**

I, Manojkumar B. Shah, hereby declare as follows:

1. I am a Global Category Buyer for BASF Corporation ("BASF"). I make this Declaration in support of Non-Party BASF Corporation'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 personally familiar with the highly confidential documents and the deposition transcript (the "Confidential Documents") that the parties have requested be admitted into evidence at trial. I also am personally familiar with the type of information contained in the Confidential Documents and its competitive significance to BASF. Based on my review of the Confidential Documents, my knowledge of BASF's procurement business, and my familiarity with the confidentiality BASF affords this type of information, I submit that the disclosure of these documents to the public and to suppliers and competitors would cause serious competitive injury to BASF.

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3. BASF is the second largest producer and marketer of chemicals and related products in North America, posting sales of approximately \$16.2 billion in 2016. It is the North American affiliate of BASF SE, which is located in Ludwigshafen, German.

4. BASF operates more than 100 production and research and development sites throughout North America. Its mission to serve customers by creating chemistry for a sustainable future depends, among many other things, upon its ability to establish reliable sources of competitively priced raw materials for its operations. It invests substantial resources into the development and use of confidential information to establish those sources of competitively priced raw materials as part of its overall processes. [REDACTED]

5. As a Global Category Buyer, I am part of a team responsible for ensuring that sufficient raw material inputs are available to support our requirements for producing chemical products and thereby serving our North American customers. One of the raw materials for which I have procurement responsibilities is TiO<sub>2</sub>, [REDACTED]

[REDACTED] To discharge these responsibilities, my colleagues and I regularly analyze BASF's TiO<sub>2</sub> requirements. We internally and confidentially communicate strategic analyses to ensure that we can reliably obtain competitively priced product. We work directly with the business units to understand their manufacturing needs, with research and development officials to test raw materials (to ensure that they meet the required specifications and performance standards) and with other BASF procurement officials to obtain qualified product [REDACTED].

[Public Version]

6. Our internal communications regarding that work are highly confidential. We do not share with our suppliers or competitors our internal strategies and processes for obtaining raw materials at competitive prices. These internal strategies and processes are proprietary to BASF; we consider them to be critical both to our internal business practices and to our ability to compete in the external marketplace, on an upstream basis (for competitively priced raw materials) and a downstream basis (so that we can reduce cost pressure on the prices we charge to our customers for chemicals and related products).

7. The FTC and Respondents have informed BASF that, collectively, they intend to offer into evidence 18 documents BASF produced in response to a Civil Investigative Demand and Subpoenas served upon BASF in this matter, along with the transcript of my deposition. Of those, 16 Confidential Documents – as well as the deposition transcript – are especially sensitive and contain especially confidential business information, strategic analyses and trade secrets. As described in the Motion, these Confidential Documents should be granted *in camera* protection for the following reasons:

A. PX4182. [REDACTED]

[REDACTED]

B. PX4183. [REDACTED]

[REDACTED]



[Public Version]

[REDACTED]

C. PX4184. [REDACTED]

[REDACTED]

D. PX4185. [REDACTED]

[REDACTED]

E. PX4230. [REDACTED]

[REDACTED]

F. Shah Deposition Transcript and Accompanying Exhibits. [REDACTED]

[REDACTED]

[Redacted]

G. BC-FTC-Tronox-000023-33. [Redacted]

[Redacted]

H. BC-FTC-Tronox-000291-94. [Redacted]

[Redacted]

I. BC-FTC-Tronox-000766-68. [Redacted]

[Redacted]

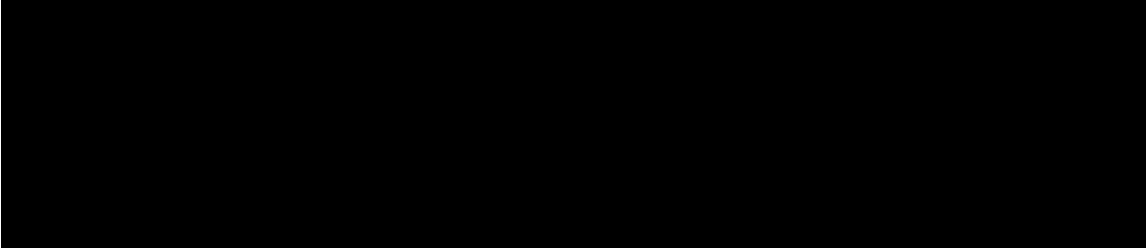
J. BC-FTC-Tronox-001655-61. [Redacted]

[Redacted]

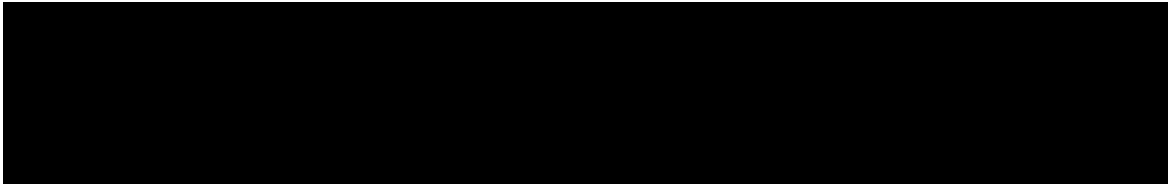
[Public Version]



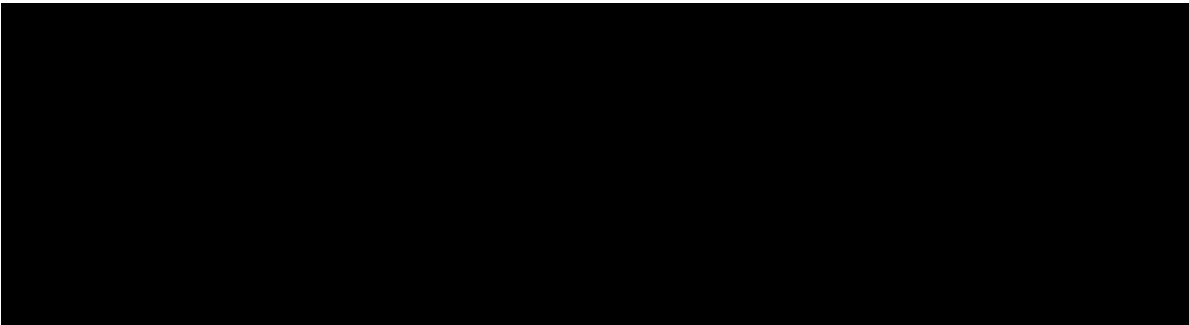
K. BC-FTC-Tronox-001820-29. 



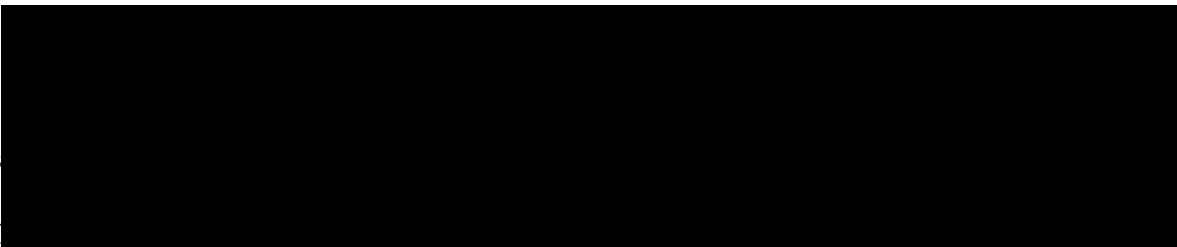
L. BC-FTC-Tronox-001869-88. 



M. BC-FTC-Tronox-002206-07. 



N. BC-FTC-Tronox-002336-38. 



[Public Version]

O. BC-FTC-Tronox-005109-13. [REDACTED]

[REDACTED]

P. BC-FTC-Tronox-005422-30. [REDACTED]

[REDACTED]

Q. BC-FTC-Tronox-006191-93. [REDACTED]

[REDACTED]

8. The information contained in these Confidential Documents is maintained confidentially within BASF and especially within the procurement group. [REDACTED]

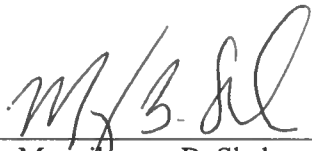
[REDACTED]

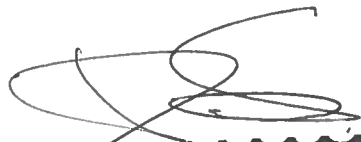
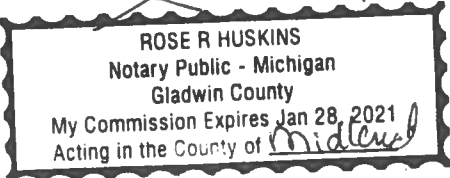
[REDACTED] BASF invests its resources in maintaining the confidentiality of these documents and the information contained in them.

**[Public Version]**

9. Further, the analyses contained in the Confidential Documents provide substantial insights into BASF's confidential procurement operations and strategy. Their value is not limited to a specific point-in-time, but instead would provide suppliers and competitors with materially important information about the way in which BASF conducts competitive analyses and negotiations for raw material inputs at competitive prices. The competitive significance of this highly confidential information is unlikely to decrease over time and thus, indefinite protection from public disclosure is appropriate.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 26, 2018.

  
\_\_\_\_\_  
Manoj Kumar B. Shah

 4-26-2018  


[Public Version]

# EXHIBITS 4A – 4Q

NOT INCLUDED IN THE PUBLIC VERSION

CONFIDENTIAL

SUBJECT TO PROTECTIVE ORDER

[Public Version]

EXHIBIT 5  
PROTECTIVE ORDER  
(12.7.17)



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, )  
)  
Respondents. )

DOCKET NO. 9377

**PROTECTIVE ORDER GOVERNING CONFIDENTIAL MATERIAL**

Commission Rule 3.31(d) states: "In order to protect the parties and third parties against improper use and disclosure of confidential information, the Administrative Law Judge shall issue a protective order as set forth in the appendix to this section." 16 C.F.R. § 3.31(d). Pursuant to Commission Rule 3.31(d), the protective order set forth in the appendix to that section is attached verbatim as Attachment A and is hereby issued.

ORDERED:

*Dm Chappell*  
\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: December 7, 2017



ATTACHMENT A

For the purpose of protecting the interests of the parties and third parties in the above-captioned matter against improper use and disclosure of confidential information submitted or produced in connection with this matter:

**IT IS HEREBY ORDERED THAT** this Protective Order Governing Confidential Material ("Protective Order") shall govern the handling of all Discovery Material, as hereafter defined.

1. As used in this Order, "confidential material" shall refer to any document or portion thereof that contains privileged, competitively sensitive information, or sensitive personal information. "Sensitive personal information" shall refer to, but shall not be limited to, an individual's Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver's license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual's medical records. "Document" shall refer to any discoverable writing, recording, transcript of oral testimony, or electronically stored information in the possession of a party or a third party. "Commission" shall refer to the Federal Trade Commission ("FTC"), or any of its employees, agents, attorneys, and all other persons acting on its behalf, excluding persons retained as consultants or experts for purposes of this proceeding.
2. Any document or portion thereof submitted by a respondent or a third party during a Federal Trade Commission investigation or during the course of this proceeding that is entitled to confidentiality under the Federal Trade Commission Act, or any regulation, interpretation, or precedent concerning documents in the possession of the Commission, as well as any information taken from any portion of such document, shall be treated as confidential material for purposes of this Order. The identity of a third party submitting such confidential material shall also be treated as confidential material for the purposes of this Order where the submitter has requested such confidential treatment.
3. The parties and any third parties, in complying with informal discovery requests, disclosure requirements, or discovery demands in this proceeding may designate any responsive document or portion thereof as confidential material, including documents obtained by them from third parties pursuant to discovery or as otherwise obtained.
4. The parties, in conducting discovery from third parties, shall provide to each third party a copy of this Order so as to inform each such third party of his, her, or its rights herein.
5. A designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of this Order.

6. Material may be designated as confidential by placing on or affixing to the document containing such material (in such manner as will not interfere with the legibility thereof), or if an entire folder or box of documents is confidential by placing or affixing to that folder or box, the designation "CONFIDENTIAL – FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, together with an indication of the portion or portions of the document considered to be confidential material. Confidential information contained in electronic documents may also be designated as confidential by placing the designation "CONFIDENTIAL – FTC Docket No. 9377" or any other appropriate notice that identifies this proceeding, on the face of the CD or DVD or other medium on which the document is produced. Masked or otherwise redacted copies of documents may be produced where the portions deleted contain privileged matter, provided that the copy produced shall indicate at the appropriate point that portions have been deleted and the reasons therefor.

7. Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question.

8. Disclosure of confidential material to any person described in Paragraph 7 of this Order shall be only for the purposes of the preparation and hearing of this proceeding, or any appeal therefrom, and for no other purpose whatsoever, provided, however, that the Commission may, subject to taking appropriate steps to preserve the confidentiality of such material, use or disclose confidential material as provided by its Rules of Practice; sections 6(f) and 21 of the Federal Trade Commission Act; or any other legal obligation imposed upon the Commission.

9. In the event that any confidential material is contained in any pleading, motion, exhibit or other paper filed or to be filed with the Secretary of the Commission, the Secretary shall be so informed by the Party filing such papers, and such papers shall be filed *in camera*. To the extent that such material was originally submitted by a third party, the party including the materials in its papers shall immediately notify the submitter of such inclusion. Confidential material contained in the papers shall continue to have *in camera* treatment until further order of the Administrative Law Judge, provided, however, that such papers may be furnished to persons or entities who may receive confidential material pursuant to Paragraphs 7 or 8. Upon or after filing any paper containing confidential material, the filing party shall file on the public record a duplicate copy of the paper that does not reveal confidential material. Further, if the protection for any such material expires, a party may file on the public record a duplicate copy which also contains the formerly protected material.

10. If counsel plans to introduce into evidence at the hearing any document or transcript containing confidential material produced by another party or by a third party, they shall provide advance notice to the other party or third party for purposes of allowing that party to seek an order that the document or transcript be granted *in camera* treatment. If that party wishes *in camera* treatment for the document or transcript, the party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives such notice. Except where such an order is granted, all documents and transcripts shall be part of the public record. Where *in camera* treatment is granted, a duplicate copy of such document or transcript with the confidential material deleted therefrom may be placed on the public record.

11. If any party receives a discovery request in any investigation or in any other proceeding or matter that may require the disclosure of confidential material submitted by another party or third party, the recipient of the discovery request shall promptly notify the submitter of receipt of such request. Unless a shorter time is mandated by an order of a court, such notification shall be in writing and be received by the submitter at least 10 business days before production, and shall include a copy of this Protective Order and a cover letter that will apprise the submitter of its rights hereunder. Nothing herein shall be construed as requiring the recipient of the discovery request or anyone else covered by this Order to challenge or appeal any order requiring production of confidential material, to subject itself to any penalties for non-compliance with any such order, or to seek any relief from the Administrative Law Judge or the Commission. The recipient shall not oppose the submitter's efforts to challenge the disclosure of confidential material. In addition, nothing herein shall limit the applicability of Rule 4.11(e) of the Commission's Rules of Practice, 16 CFR 4.11(e), to discovery requests in another proceeding that are directed to the Commission.

12. At the time that any consultant or other person retained to assist counsel in the preparation of this action concludes participation in the action, such person shall return to counsel all copies of documents or portions thereof designated confidential that are in the possession of such person, together with all notes, memoranda or other papers containing confidential information. At the conclusion of this proceeding, including the exhaustion of judicial review, the parties shall return documents obtained in this action to their submitters, provided, however, that the Commission's obligation to return documents shall be governed by the provisions of Rule 4.12 of the Rules of Practice, 16 CFR 4.12.

13. The provisions of this Protective Order, insofar as they restrict the communication and use of confidential discovery material, shall, without written permission of the submitter or further order of the Commission, continue to be binding after the conclusion of this proceeding.

**[Public Version]**

**STATEMENT REGARDING MEET AND CONFER**

The undersigned certifies that counsel for non-party BASF Corporation (“BASF”) notified counsel for the parties by telephone on April 24, 2018, that BASF would be seeking *in camera* treatment of the Confidential Documents. The FTC’s counsel indicated that same day that the FTC would not object to BASF’s motion. Respondents’ counsel indicated the following day (April 25, 2018) that it also would not object to BASF’s motion.

/s/ Andrew S. Marovitz

Andrew S. Marovitz

MAYER BROWN LLP

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Chicago, IL 60606-4637

Tel: 312.782.0600

Fax: 312.701.7711

[amarovitz@mayerbrown.com](mailto:amarovitz@mayerbrown.com)

**[Public Version]**

**CERTIFICATE OF SERVICE**

I, Andrew S. Marovitz, declare under penalty of perjury under the laws of the State of Illinois that the following is true and correct. On April 27, 2018, I caused to be served the following documents on the parties listed below by the manner indicated:

- **NON-PARTY BASF CORPORATION'S MOTION FOR *IN CAMERA* TREATMENT (PUBLIC VERSION AND NON-PUBLIC VERSION)**
- **[PROPOSED] ORDER**

**The Office of the Secretary (both non-public and public versions through FTC E-File and [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov))**

Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
Constitution Center  
400 Seventh Street, SW, Suite 5610  
Washington, DC 20024

**The Office of the Administrative Law Judge (both non-public and public versions by overnight courier)**

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

**Federal Trade Commission (both non-public and public versions by e-mail)**

Joonsuk Lee  
Bureau of Competition, Mergers II Division  
Federal Trade Commission  
400 Seventh Street SW, Rm. 7563  
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**Counsel for Respondents (both non-public and public versions by e-mail)**

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**[Public Version]**

Matthew J. Reilly  
Kirkland & Ellis LLP  
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Washington, DC 20005  
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/s/ Andrew S. Marovitz  
Andrew S. Marovitz

[Public Version]

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

---

In the Matter of

Tronox Limited et al.

DOCKET NO. 9377

Respondents.

---

**[PROPOSED] ORDER**

Upon consideration of Non-Party BASF Corporation's ("BASF") Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided permanent *in camera* treatment from the date of this Order in their entirety:

Ex. No.	Date	Beginning Bates No.	Ending Bates No.
PX4182	1.12.18	BC-FTC-Tronox-001292	BC-FTC-Tronox-001293
PX4183	1.11.18	BC-FTC-Tronox-001302	BC-FTC-Tronox-001303
PX4184	11.15.17	BC-FTC-Tronox-002017	BC-FTC-Tronox-002018
PX4185	8.11.17	BC-FTC-Tronox-03908	BC-FTC-Tronox-003919
PX4230	7.31.17	PX4230-001	PX4230-006
PX7031	3.22.18	PX7031-001	PX7031-083
	12.17	BC-FTC-Tronox-00023	BC-FTC-Tronox-000033
	2.27.18	BC-FTC-Tronox-000291	BC-FTC-Tronox-000294
	2.1.18	BC-FTC-Tronox-000766	BC-FTC-Tronox-000768
	12.6.17	BC-FTC-Tronox-001655	BC-FTC-Tronox-001661
	11.29.17	BC-FTC-Tronox-001820	BC-FTC-Tronox-001829
	11.27.17	BC-FTC-Tronox-001869	BC-FTC-Tronox-001888

[Public Version]

<b>Ex. No.</b>	<b>Date</b>	<b>Beginning Bates No.</b>	<b>Ending Bates No.</b>
	10.25.17	BC-FTC-Tronox-002206	BC-FTC-Tronox-002207
	10.23.17	BC-FTC-Tronox-002336	BC-FTC-Tronox-002338
	6.28.17	BC-FTC-Tronox-005109	BC-FTC-Tronox-005113
	6.17	BC-FTC-Tronox-005422	BC-FTC-Tronox-005430
	5.22.17	BC-FTC-Tronox-006191	BC-FTC-Tronox-006193

**ORDERED:**

\_\_\_\_\_  
Chief Administrative Law Judge



Notice of Electronic Service

I hereby certify that on April 27, 2018, I filed an electronic copy of the foregoing Non-Party BASF Corporation's Motion For In Camera Treatment (Public Version), 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 April 27, 2018, I served via E-Service an electronic copy of the foregoing Non-Party BASF Corporation's Motion For In Camera Treatment (Public Version), upon:

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Respondent

**I hereby certify that on April 27, 2018, I served via other means, as provided in 4.4(b) of the foregoing Non-Party BASF Corporation's Motion For In Camera Treatment (Public Version), upon:**

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