



April 18, 2023

Case No. A-533-840

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Seventeenth Administrative Review

PUBLIC VERSION

Business Proprietary Information Released Under the APO
Contained in Brackets ([]) DELETED for Megaa Moda on Pages 4-5, 7-10

BY ELECTRONIC SUBMISSION

The Honorable Gina M. Raimondo
Secretary of Commerce
Attn: Enforcement and Compliance
APO/Dockets Unit, Room 18022
U.S. Department of Commerce
14th Street and Constitution Avenue, NW
Washington, DC 20230

Re: Antidumping Duty Administrative Review of Certain Frozen Warmwater Shrimp from India (2021-2022): Rebuttal Brief

Dear Secretary Raimondo:

On behalf of Domestic Producers,¹ domestic interested parties in the above-captioned administrative review, we hereby submit a rebuttal brief in response to the case brief filed by Megaa Moda Private Limited (“Megaa Moda”)² regarding the U.S. Department of Commerce’s

¹ Ad Hoc Shrimp Trade Action Committee (“AHSTAC” or “Domestic Producers”). AHSTAC is an interested party to this proceeding under 19 U.S.C. § 1677(9)(F) (2006) and the Petitioner in the underlying investigation. The members of AHSTAC are: Nancy Edens; Trico Shrimp Company, Inc.; Tarvin Seafood Inc.; Bosarge Boats, Inc.; Anchored Shrimp Company; Big Grapes, Inc.; Versaggi Shrimp Co.; Craig Wallis; and the Southern Shrimp Alliance.

² See Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Apr. 11, 2023).

(the “Department”) announcement of the Preliminary Results, published in the *Federal Register* on March 3, 2023.³ Pursuant to the Department’s revised briefing schedule, this rebuttal brief is timely filed.⁴

Proprietary information released to Domestic Producers’ counsel under the Administrative Protective Order (“APO”) is contained within single brackets in this submission. The Department’s regulations instruct that “{a} submitter should not create a public summary of business proprietary information of another person.”⁵ Accordingly, Domestic Producers have not provided public summaries of the business proprietary information contained within single brackets in the “Public Version” of this submission, as this information is the proprietary information of another person released to Domestic Producers’ counsel under the APO in this proceeding.

Domestic Producers are filing both the business proprietary and public version of this submission today. Due to the COVID-19 pandemic, the Department announced that it would temporarily deem service of submissions containing business proprietary information (“BPI”) to be effectuated when the BPI submissions are filed by parties in ACCESS “until further notice.”⁶

³ See Certain Frozen Warmwater Shrimp from India, 88 Fed. Reg. 13,430 (Dep’t Commerce March 3, 2023) (Preliminary Results of Antidumping Duty Administrative Review; 2021-2022) (“Preliminary Results”).

⁴ U.S. Department of Commerce Memorandum from E. Eastwood to All Interested Parties, Case No. A-533-840 (Mar. 23, 2023) (“{T}he The deadline for all interested parties to submit rebuttal briefs is now no later than 5:00 p.m. ET on Tuesday, April 18, 2023.”).

⁵ 19 C.F.R. § 351.304(c)(1).

⁶ Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19, 85 Fed. Reg. 17,006 (Dep’t Commerce Mar. 26, 2020). See also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period,

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Additionally, a copy of the public version of this submission will be served on all parties included in the Department's public service list in accordance with 19 C.F.R. § 351.303(f).

Consistent with the Department's clarification of its certification requirements, no other certifications are appended to this submission.⁷ Please do not hesitate to contact the undersigned should you require clarification of any aspect of this submission.

Respectfully submitted,

/s/ Nathaniel Maandig Rickard
Nathaniel Maandig Rickard
Patrick F. O'Connor, Senior Trade Analyst

PICARD KENTZ & ROWE LLP
Counsel to Domestic Producers

85 Fed. Reg. 41,363 (Dep't Commerce July 10, 2020) ("Through this extension, Commerce extends the duration of these temporary modifications until further notice.").

⁷ See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings, 78 Fed. Reg. 42,678, 42,690 (Dep't Commerce July 17, 2013) ("We will not require certification for case and rebuttal briefs . . .").

**PUBLIC CERTIFICATE OF SERVICE
ANTIDUMPING DUTY SEVENTEENTH ADMINISTRATIVE REVIEW
FROZEN WARMWATER SHRIMP FROM INDIA
CASE NO. A-533-840**

I, Nathaniel Maandig Rickard, hereby certify that a copy of the foregoing submission was served on this 18th day of April, 2023, by electronic mail on the following parties:

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EXECUTIVE SUMMARY

- 1) In its case brief, Megaa Moda argues that the Department improperly declined to grant an offset to the company's interest expenses for revenue earned through an interest subvention program administered by the Government of India. However, the income obtained by Megaa Moda from the Government of India's scheme is not a gain on investments. Instead, the Government of India's interest subvention scheme is an export subsidy program that the Department has repeatedly found to be countervailable. Accordingly, the Department should not only continue to deny this offset in the Final Results, but, consistent with 19 U.S.C. § 1671a, the agency should consider whether the initiation of a countervailing duty investigation is warranted because the elements necessary to impose a countervailing duty pursuant to 19 U.S.C. § 1671(a) exist with respect to shrimp imports from India.

- 2) Megaa Moda additionally argues that the Department also inappropriately declined to offset the company's interest expenses for certain other purported short-term interest income. Megaa Moda claims to have submitted evidence on the administrative record establishing that this revenue was interest earned on short-term investments of the company's working capital. Alternatively, Megaa Moda asserts that even if the company failed to populate the administrative record with such evidence, the Department's refusal to grant an offset for this income constitutes an unwarranted application of an adverse inference. Because Megaa Moda misunderstands the company's obligations to build an adequate administrative record in support of its claims, the Department should reject the respondent's argument. The Department is not obliged to correct Megaa Moda's deficiencies by obtaining the information that the respondent failed to provide. Accordingly, the Department should continue to decline to grant this offset in the Final Results.

**BEFORE THE
UNITED STATES DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION
ENFORCEMENT AND COMPLIANCE**

_____))
In the Matter of:))
))
CERTAIN FROZEN WARMWATER))
SHRIMP FROM INDIA))
_____)

**REBUTTAL BRIEF ON BEHALF OF THE
AD HOC SHRIMP TRADE ACTION COMMITTEE**

I. INTRODUCTION

On behalf of Domestic Producers in the seventeenth (17th) administrative review of the antidumping duty order on certain frozen warmwater shrimp from India, we hereby submit a rebuttal brief in response to the case brief filed by Megaa Moda Private Limited (“Megaa Moda”)¹ regarding the U.S. Department of Commerce’s (the “Department”) announcement of the Preliminary Results, published in the *Federal Register* on March 3, 2023.²

In the Preliminary Results, the Department observed that it had “disallowed certain interest income offsets because either the interest earned did not relate to short-term investments of the company’s working capital or Megaa Moda did not provide evidence that the interest was earned on short-term investments of the company’s working capital.”³ Megaa Moda challenges this determination, arguing, first, that the respondent “has provided sufficient documentation and

¹ See Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 (Apr. 11, 2023) (“Megaa Moda Case Brief”) (PV).

² See Certain Frozen Warmwater Shrimp from India, 88 Fed. Reg. 13,430 (Dep’t Commerce March 3, 2023) (Preliminary Results of Antidumping Duty Administrative Review; 2021-2022) (“Preliminary Results”).

³ Preliminary Decision Memorandum (at 13) accompanying Preliminary Results.

other evidence demonstrating that the interest subvention income was short-term in nature,”⁴ and, second, that disallowing another offset to interest expenses constituted an unjustified “adverse facts available decision” by making “an adverse inference” that the interest income at issue “was not short-term in nature.”⁵ Both assertions are unsupported and should be rejected in the Final Results. First, Megaa Moda is not entitled to an offset to its interest expenses for the benefits it receives from a countervailable export subsidy program granted to the respondent by the Government of India. Second, the burden of demonstration lies with Megaa Moda in establishing that an offset or adjustment is appropriate. Megaa Moda’s failure to meet that burden does not mean that Department applied an adverse inference; rather, it is a reasonable and appropriate response to Megaa Moda’s failure to build an evidentiary record in support of its claims.

II. THE DEPARTMENT SHOULD REJECT MEGAA MODA’S REQUEST TO INCLUDE AN OFFSET FOR INCOME FROM A COUNTERAVAILABLE EXPORT SUBSIDY IN THE INTEREST EXPENSE CALCULATION

In its case brief, Megaa Moda argues that the Department “should offset interest expenses with the interest subvention income the company received because Megaa Moda has provided sufficient documentation and other evidence demonstrating that the interest subvention income was short-term in nature.”⁶ Megaa Moda claims that “interest subvention relates to the refund of interest expenses that have been paid on certain export financing loans.”⁷ Perhaps for obvious reasons, what Megaa Moda does not mention is that the interest subvention received by the company – through which it now seeks to reduce its dumping margin – is an export subsidy

⁴ Megaa Moda Case Brief at 7 (PV).

⁵ Id. at 10 (PV).

⁶ Id. at 7 (PV).

⁷ Id. (footnote omitted) (PV).

program that the respondent utilizes to unfairly trade in the U.S. market and, in response to which, the domestic shrimp industry has no existing trade remedy. The Department is familiar with the interest subvention program Megaa Moda refers to and has repeatedly found the Government of India's various "interest subvention" schemes to be countervailable subsidies in multiple countervailing duty proceedings.⁸

Megaa Moda's argument in this administrative review belies the basic definitional terms of the words the company relies upon. The dictionary definition of the term 'subvention' is as follows: "the provision of assistance or financial support: such as {an} endowment {or} a subsidy from a government or foundation."⁹ The dictionary definition of the term 'working capital' is as follows: "capital actively turned over in or available for use in the course of business activity: {such as} the excess of current assets over current liabilities {or} all capital of a business except that invested in capital assets."¹⁰ As such, the receipt of repayment of interest expenses from the Government of India for export sales is not equivalent to receiving a return on an investment on working capital.

⁸ See, e.g., Issues and Decision Memorandum (at Cmt. 4) accompanying Glycine From India, 87 Fed. Reg. 76,611 (Dep't Commerce Dec. 15, 2022) (Final Results of Countervailing Duty Administrative Review; 2020); Issues and Decision Memorandum (at Cmt. 9) accompanying Organic Soybean Meal From India, 87 Fed. Reg. 16,453 (Dep't Commerce Mar. 23, 2022) (Final Affirmative Countervailing Duty Determination); Issues and Decision Memorandum (at Cmt. 6) accompanying Glycine From India, 87 Fed. Reg. 2,761 (Dep't Commerce Jan. 19, 2022) (Final Results of Countervailing Duty Administrative Review; 2018-2019); and Issues and Decision Memorandum (at pp. 18-19) accompanying Large Diameter Welded Pipe From India, 83 Fed. Reg. 56,819 (Dep't Commerce Nov. 14, 2018) (Final Affirmative Countervailing Duty Determination).

⁹ *Subvention Definition* MERRIAM-WEBSTER.COM: <https://www.merriam-webster.com/dictionary/subvention> (Last visited April 12, 2023).

¹⁰ *Working Capital Definition* MERRIAM-WEBSTER.COM: <https://www.merriam-webster.com/dictionary/working%20capital> (Last visited April 12, 2023).

In its case brief, the respondent states that:

In Exhibit SD1-12, Megaa Moda provided a screenshot from a website of the Industrial Development Bank of India, which describes these particular loans as “packing credit” loans, which are “granted to an exporter for financing the purchase, processing, manufacturing, or packing of goods prior to shipment”; and that such “packing credit can also be extended as working capital assistance to meet expenses such as wages, utility payments, travel expenses, etc.”¹¹

As Megaa Moda recognizes, the “screenshot” submitted by the respondent indicates that this subsidy program is designed to help Indian companies ship merchandise abroad as it “is intended to make short-term working capital finance available to exporters at internationally comparable interest rates.”¹² Although not quoted in Megaa Moda’s case brief, the Industrial Development Bank of India’s website further explains that, [

¹¹ Megaa Moda Case Brief at 7 (quoting Letter from Megaa Moda Private Limited to the U.S. Department of Commerce, Case No. A-533-840 at Exh. SD1-12 (Feb. 13, 2023) (“Megaa Moda Supp. Sec. D Response”) (PV). Megaa Moda’s initial submission of the Megaa Moda Supp. Sec. D Response claimed that all of the information now publicly disclosed by the respondent in its case brief was business proprietary information and no public summary was provided of the website screenshot or of any of the other public information contained within this exhibit. Accordingly, Megaa Moda’s public discussion of the interest subvention program in its case brief cannot be reconciled with the company’s prior claims regarding business proprietary information.

Prior to the issuance of the Final Results, the Department should require Megaa Moda to revise and resubmit its prior filings to correct the company’s erroneous claims for business confidential treatment, now contradicted by the case brief. Here, Megaa Moda is publicly reporting that it is benefitting from a countervailable subsidy program administered by the Government of India. Having publicly disclosed its participation in the interest subvention subsidy program, Megaa Moda has no basis for claiming that the operational details regarding the program are business confidential information.

¹² Megaa Moda Case Brief at 7 (quoting Megaa Moda Supp. Sec. D. Response at SD1-12) (emphasis omitted) (PV).

].¹³ Moreover, Megaa Moda is clear about the export subsidy nature of this program in the narrative description of the subvention scheme given by the respondent to the Department:

The scheme is available for exports of merchandise listed in 416 tariff lines (at ITC (HS) code 5 of 4 digit) as identified by the Reserve Bank of India and on all exports made by Micro, Small & Medium Enterprises (MSMEs) across all ITC (HS) codes. A copy of Reserve Bank of India's circular relevant for the POR is enclosed as **Exhibit SD1-12**. As Megaa falls under the category of Micro, Small & Medium Enterprises (MSMEs), hence it is entitled for Interest equalization scheme. In case of Megaa, bank has refunded the interest of 3 percent on its pre-shipment export finance in Rupees.¹⁴

Accordingly, record evidence *provided by* Megaa Moda makes clear that the interest subvention program is not a short-term return on its working capital, but, instead, a subsidy provided by the Government of India to encourage exports of merchandise like shrimp by MSMEs.

As noted above, the Department has treated the Government of India's interest subvention programs as providing countervailable subsidies across numerous different proceedings. The Department has described the agency's historical understanding and treatment of the Government of India's interest subvention programs as follows:

In prior CVD proceedings involving India, Commerce determined that, with respect to rupee-denominated export financing, the RBI had previously capped the interest rate that commercial banks could charge on these loans. However, beginning on July 1, 2010, the RBI eliminated the interest rate cap and allowed participating commercial banks to set the interest rates for these export loans based on the bank's own operating and lending costs. Commerce further determined that the RBI instituted an interest subvention program for certain exporting companies, including small and medium enterprises. Banks that participated in the interest subvention program were restricted to charging an interest rate not exceeding the Benchmark Prime Lending Rate minus 4.5 percentage points on pre-shipment credit up to 270 days and post-shipment credit up to 180 days on the outstanding amount. In addition, Commerce found that the RBI provided a two-percentage point interest subvention on the export loans and required the banks to completely pass on the two-percent interest subvention to

¹³ Megaa Moda Supp. Sec. D. Response at SD1-12 (APO).

¹⁴ Id. at 20 (emphasis in original) (PV).

small and medium enterprises. This means that if the commercial bank sets the interest rate for the export at nine percent, the RBI would then provide a two-percentage point interest subvention on the loan which would be passed on to the exporter. In *Steel Threaded Rod from India*, Commerce found that the mandatory respondent, Mangal Steel Enterprises Limited, qualified and received the interest subvention during the POI.¹⁵

Recently, the agency rejected arguments presented by the Government of India that exporters were no longer benefitting from its “subvention” schemes:

In its case brief, the GOI also argues that Commerce’s findings in other Indian CVD proceedings demonstrate that the program no longer confers any benefit to exporters. However, the GOI misrepresents Commerce’s prior findings. For example, in *Warmwater Shrimp from India*, Commerce did not find that the program was terminated or is no longer countervailable, rather, we stated that, pursuant to the changes to the program in 2010, “in order to receive this interest assistance, the interest rate on the rupee-denominated export financing had to be less than the bank’s benchmark prime lending rate minus 4.5 percent. Thus, rupee-denominated pre- and post-export loans that were eligible for the subvention were subject to an interest rate cap.” We also found in *Warmwater Shrimp from India* that the GOI adequately substantiated its claim that the export financing in *foreign* currency portion of the program was terminated in 2012, and for this reason, we have limited our examination of export financing received under the program in rupees. On this basis, Commerce determined that rupee-denominated pre-shipment and post-export loans which were eligible for the interest rate subvention confer countervailable subsidies. Commerce reached the same determination in this review in examining the rupee-denominated pre-shipment financing Kumar received under the program for exports to the United States.¹⁶

Based on Megaa Moda’s submissions to the Department in this administrative review, the Government of India’s arguments to the agency in *Glycine From India* were without factual basis, as exporters continue to benefit from these programs.

¹⁵ Issues and Decision Memorandum (at pp. 18-19) accompanying *Large Diameter Welded Pipe From India*, 83 Fed. Reg. 56,819 (Dep’t Commerce Nov. 14, 2018) (Final Affirmative Countervailing Duty Determination) (footnotes omitted).

¹⁶ Issues and Decision Memorandum (at Cmt. 4, p.36) accompanying *Glycine From India*, 87 Fed. Reg. 76,611 (Dep’t Commerce Dec. 15, 2022) (Final Results of Countervailing Duty Administrative Review; 2020) (footnotes omitted).

Notably, Megaa Moda not only intentionally mischaracterizes a countervailable export subsidy program in an effort to understate the company’s dumping margin, it unintentionally underscores the massive significance of this export subsidy program to its operations.

Specifically, Megaa Moda is seeking an offset to its interest expenses in the amount of

[

]. In other words, Megaa Moda is seeking an offset that is the equivalent of

[

].¹⁷ It is damaging enough for the domestic shrimp industry to have to compete for sales in the U.S. market with these subsidized Indian imports without additionally having the effectiveness of the trade relief obtained by the industry against dumped Indian shrimp imports undermined by the Government of India’s grant of a countervailable export subsidy.¹⁸

Because the purpose of the interest subvention program is to promote exports for Micro, Small & Medium Enterprises (MSMEs) in India, it would not be appropriate to include the revenue obtained through these export-oriented subsidies as an offset for the purposes of calculating normal value in the comparison market program. The interest subvention scheme is not a gain on investments; it is an export subsidy program administered by the Government of

¹⁷

The [

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¹⁸

Domestic Producers note that pursuant to 19 U.S.C. § 1671a, “{a} countervailing duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1671(a) of this title exist.” Here, Megaa Moda affirmatively asserts that it receives benefits under a countervailable export subsidy program administered by the Government of India. To the extent that the Department accepts Megaa Moda’s argument that receipt of these benefits requires any offset in the calculation of normal value, in the Final Results, the agency should also address whether it should simultaneously initiate a countervailing duty investigation as required by 19 U.S.C. § 1671a.

India. Accordingly, for the Final Results, the Department should continue to decline Megaa Moda's request that the calculation of the respondent's interest expense rate be offset by the Government of India's subvention program.

III. MEGAA MODA'S OTHER PURPORTED SHORT-TERM INTEREST INCOME SHOULD NOT BE TREATED AS AN OFFSET TO INTEREST EXPENSES

Megaa Moda argues that, in the Final Results, the Department should also "offset interest expenses with the [] that Megaa Moda reported as part of its financial (INTEX) ratio calculation."¹⁹ In the preliminary calculation memorandum for Megaa Moda, the Department explained that "{w}e also disallowed the [

] because Megaa Moda did not provide evidence that the interest was earned on short-term investments of the company's working capital."²⁰ Megaa Moda argues, first, that the company did provide such evidence on the administrative record of this review and, second, that if it did not, "by disallowing the offset, Commerce made an adverse inference that the interest income . . . was not short-term in nature."²¹ Megaa Moda is incorrect on both counts and the Department should continue to disallow this offset in the Final Results.

Megaa Moda claims that "it is apparent from Megaa Moda's financial statements and trial balance that the entirety of the [] was short term in nature."²² Nevertheless, throughout all of Megaa Moda's discussion of its financial statements and trial balance, at no point does the respondent explain what [

¹⁹ Megaa Moda Case Brief at 10 (APO).

²⁰ U.S. Department of Commerce Memorandum from A. Simons to The File, Case No. A-533-840 (Feb. 27, 2023) ("Preliminary Results Calculations for Megaa Moda") at 2 (APO).

²¹ Megaa Moda Case Brief at 10 (PV).

²² Id. at 12 (APO).

], much less provide information documenting how any income obtained through [] was short-term in nature.²³ Indeed, the difference between Megaa Moda’s extensive description of the subvention export subsidy program and Megaa Moda’s lack of any explanation as to the nature of [] is stark on this administrative record. Absent affirmative evidence that any revenue generated from [] is short-term income derived from working capital, the Department appropriately declined to allow an offset to Megaa Moda’s interest expenses for this amount.

Nevertheless, Megaa Moda argues that the Department should include those offsets in the calculation of its interest expenses, contending that “Commerce’s practice is not to deny a short-term income offset when the short-term component of total interest income is not documented.”²⁴ Megaa Moda further asserts that if there is no such documentation, the Department is obligated to notify the respondent and request “that such information be provided.”²⁵ Where the respondent has failed to substantiate its claim for an offset, Megaa Moda argues that a decision by the Department to decline such an offset constitutes “an adverse determination.”²⁶ However, Megaa Moda’s assertion reflects a fundamental misunderstanding of its obligations in a proceeding before the Department. As the U.S. Court of Appeals for the Federal Circuit has

²³ See id. (APO). Without explanation, while avoiding any description of what [], Megaa Moda treats this term as business confidential [

]. Having failed to explain what [] signifies, there is nothing on this record indicating that the term constitutes Megaa Moda’s business confidential information.

²⁴ Id. at 11 (PV).

²⁵ Id. at 10 (PV).

²⁶ Id. (PV).

explained, “{t}he burden of creating an adequate record lies with the interested parties and not with Commerce.”²⁷ Where, as here, a respondent contends that the Department must rely on the company’s characterization that lacks record support, it puts itself in “an awkward position to argue that Commerce abused its discretion not relying on evidence that {the company} itself failed to introduce into the record.”²⁸ Contrary to Megaa Moda’s argument, “{t}he law does not require Commerce to build the record on the plaintiffs’ behalf” nor can existing caselaw “be read as requiring Commerce to ferret out ‘necessary’ information for the record”²⁹ Given the “ambiguous and limited record”³⁰ created by Megaa Moda in this administrative review as to the nature of income obtained from [], the Department reasonably declined to allow this income as an offset. The Department should therefore continue to decline to make this offset in the Final Results.

²⁷ Qingdao Sea-Line Trading Co. v. United States, 766 F.3d 1378, 1386 (Fed. Cir. 2014) (citing QVD Food Co. v. United States, 658 F.3d 1318, 1324 (Fed. Cir. 2011)).

²⁸ QVD Food, 658 F.3d at 1323.

²⁹ Linyi City Kangfa Foodstuff Drinkable Co. v. United States, No. 15-00184, 2016 WL 5122648 (Ct. Int’l Trade Sept. 21, 2016).

³⁰ Ancientree Cabinet Co. v. United States, 532 F. Supp. 3d 1241, 1265 (Ct. Int’l Trade 2021) (citing QVD Food, 658 F.3d at 1323-24).

IV. CONCLUSION

For the reasons set forth above, Domestic Producers respectfully request that the Department decline to make the revisions to the preliminary margin calculation requested by Megaa Moda in the Final Results of this administrative review.

Respectfully submitted,

/s/ Nathaniel Maandig Rickard

Nathaniel Maandig Rickard

Patrick F. O'Connor, Senior Trade Analyst

PICARD KENTZ & ROWE LLP

Counsel to Domestic Producers

Dated: April 18, 2023