

MEMORANDUM OF DETERMINATIONS

Inconvertibility Claims of Caterpillar Financial Services Corporation Venezuela – OPIC Contracts of Insurance Nos. F107 and F314

I. CLAIM

By letters dated May 24, 2006, Caterpillar Financial Services Corporation (the “Insured”) filed Applications for Compensation (the “Applications”) under OPIC Contracts of Insurance F107 (the “F107 Contract”) and F314 (the “F314 Contract” and, together with the F107 Contract, the “Contracts”) for the inconvertibility of scheduled payments of principal and interest with respect to (a) a loan agreement dated March 29, 2000, and a subsequent Promissory Note dated April 11, 2000 in the original principal amount of \$29,280,307 with respect to Contract F107 (the “F107 Loan”) and (b) a loan agreement dated May 30, 2002, and a subsequent Promissory Note dated October 9, 2002 in the original principal amount of \$26,805,020 with respect to Contract F314 (the “F314 Loan” and, together with the F107 Loan, the “Loans”), in each case to Consolidada de Ferrys C.A. (the “Foreign Enterprise”). The amount claimed under the F107 Contract was \$1,302,917.36, for a payment due September 15, 2005. The amount claimed under the F314 Contract was \$1,342,071.79 for a payment due October 15, 2005¹. These two claims for payment shall collectively be referred to herein as the “Claims.”

OPIC finds the Claims that are the subject of the Applications to be valid, and that the Insured is entitled to compensation in the aggregate amount of \$2,644,989.15 in exchange for the eligible local currency, Venezuelan Bolivars.

II. BACKGROUND

The F107 Contract was issued and became effective on April 11, 2000; the F314 Contract was issued and became effective on July 30, 2002. The Contracts were based on OPIC’s Standard Form 234 KGT 5-73 PL, Contract of Institutional Lenders Insurance Against Inconvertibility, Expropriation, and Political Violence, amended to include certain special terms and conditions.

Under Venezuelan law, foreign investors are entitled to convert and transfer abroad the proceeds of their investments. However, the Law of the Central Bank of Venezuela No. 37,296 of October 2, 2001, as amended, contemplates the possibility of imposing restrictions to convertibility in certain circumstances. After a steep decline in the value of the national currency (the Bolivar) following a two-month general strike that brought oil production to a near standstill, the Central Bank of Venezuela halted trade in

¹ It should be noted that pursuant to a Forbearance Agreement, dated as of September 30, 2004 (the “Forbearance Agreement”), the Insured agreed not to seek enforcement of the Loans so long as “payments required under the Loan Documents are received by Lender within one hundred eighty days of the original payment due date.” The Forbearance Agreement was reviewed and approved by OPIC; it does not create an actual extension of the due dates under the Loans, but merely agrees that the Insured will not take any action to enforce upon default.

Bolivars on January 21, 2003. On February 5, 2003, the National Executive, acting through the Minister of Finance, and the Central Bank of Venezuela entered into an agreement imposing exchange controls. Simultaneously, by Presidential Decree, President Chavez announced the creation of an Exchange Administration Board, the Comision de Administracion de Divisas (“CADIVI”) on February 5, 2003 to regulate the purchase and sale of foreign currency. The new regime adopts currency controls, restricts access to foreign exchange at the fixed official rate, and requires prior authorization for most purchases from CADIVI. Nearly all purchases (other than servicing public sector external debt and special international agreements) must have the prior authorization of CADIVI.

As part of the authorization process, CADIVI issued Providencia No 025 on April 21, 2003, which establishes the requirements and procedures for the administration of foreign currency for the payment of private sector external debt. All customers are required to register through a rather complex application process. Following registration, individual authorizations are sought to acquire foreign currency.

The State Department reports that the CADIVI process was off to a slow start but has improved:

Initially, CADIVI was unable to process foreign currency requests efficiently and the Venezuelan Central Bank was only supplying currency to about 15-20 percent of approved authorizations. Over time, the system has improved, and the supply of foreign currency reached a level of approximately U.S. \$15 billion in 2004, or 55 percent of approved authorizations. In 2005, CADIVI authorized U.S. \$20.6 billion in foreign exchange requests and the Venezuelan Central Bank liquidated U.S. \$19.5 billion....While CADIVI appears to more efficiently process requests for importation of industrial inputs, it is less efficient processing requests for repatriation of profits, royalty payments, and payments for services.

Exchange control authorities have repeatedly said that the exchange control system will be eased but will remain in place permanently.²

Nonetheless, OPIC has consulted with large international banks, that have reported, in some cases, long delays in the CADIVI process.

OPIC began communications with the Insured regarding the Contracts in July 2003. At that time, in response to new foreign exchange regulations imposed by the Venezuelan government, OPIC contacted each of its insured parties with inconvertibility contracts in Venezuela, including the Insured. On July 14, 2003, OPIC held a training session for its insured parties along with CADIVI in Caracas.

In the spirit of cooperation with CADIVI established in 2003, OPIC encouraged its insured parties, including the Insured, to continue to process payments through the CADIVI process. These payments were generally eventually approved but with some

² 2006 Investment Climate Report, <http://www.state.gov/e/eb/ifd/2006/62050.htm#thirtytwo>.

delays, often extending past the waiting period in the Contracts. Thus, since 2003, OPIC has received three claims from the Insured for payments under the Contracts, each of which was withdrawn when the payment was belatedly obtained through the CADIVI process. In particular, OPIC received claims applications from the Insured in September 2003 that were withdrawn in January 2004, applications in May 2004 that were withdrawn in August 2004, and, in September 2004 applications that were withdrawn later the same month. OPIC continued to use advocacy efforts to speed up the process with CADIVI, including setting up a meeting between CADIVI and the Foreign Enterprise in December 2003, meetings with the Venezuelan embassy in 2003 and 2004, and various calls with the Insured and the Foreign Enterprise throughout 2005 to assist with delays in the process. In early 2005, the Insured reported that payments were being approved, albeit slowly, and no claims were filed that year.

III. DETERMINATIONS UNDER THE CONTRACTS

A. The local currency is deemed inconvertible in accordance with Section 2.01 of the Contracts.

Section 2.01 of the Contracts set forth the following requirements for inconvertibility coverage: “(1) the Insured or the foreign enterprise is unable legally to convert local currency ... (2) held by or for the account of the foreign enterprise for conversion into U.S. dollars to discharge a scheduled payment (or part thereof) into United States dollars (3) through any customary legal channels for transactions of the type contemplated in the loan agreement on any business day (4) during the 60 successive days following a scheduled payment date....” OPIC finds that each of these requirements has been met.

1. The Foreign Enterprise is unable legally to convert local currency.

The Foreign Enterprise has been unable legally to convert local currency in Venezuela through the official channel. On November 9, 2005 the Foreign Enterprise submitted a completed application to CADIVI for both Loans in accordance with the official procedures. The Insured stated in the Applications that it has “exhausted all known solutions for obtaining payment from CADIVI.”³ The Insured arranged for a meeting between CADIVI and the Foreign Enterprise in February 2006. OPIC’s local counsel also attended the meeting and reported that the Legal and Financial Departments of CADIVI acknowledged general delays in the processing of authorizations for the payment of debt due to the new requirements, including that each authorization be unanimously approved by the members of the Commission.

Since the request for authorization was submitted in its entirety over nine months ago and has still not been granted, nor has it been rejected, it is clear that the Foreign Enterprise, using the official legal channel, is unable to convert local currency.

³ Applications, page 3.

2. The local currency is held by or for the account of the Foreign Enterprise for conversion into U.S. dollars to discharge a scheduled payment.

As part of its Applications, the Insured provided OPIC with bank certificates from the Foreign Enterprise's processing bank, Banco del Caroni, demonstrating the average Bolivar balances of the accounts in which the Foreign Enterprise has been holding local currency to discharge the scheduled payments. The bank certificates reference two different accounts, which, in the aggregate, hold the Bolivar equivalent of approximately \$2,930,000. These certificates demonstrate adequately that the local currency is being held at the bank account of the Foreign Enterprise. The statements are dated May 24, 2006.

3. The conversion may not be made through any customary legal channels for transactions of the type contemplated in the loan agreement.

Under the exchange control regulations of 1994-96, Executive Decree No. 714 authorized the free and unrestricted trading of foreign currency denominated securities issued by Venezuela for a Bolivar price, which includes dollar-denominated Venezuelan debt instruments, commonly known as "Brady Bonds." Article 35 of Exchange Agreement No. 1, which was passed in 2003, expressly precluded the sale of Brady Bonds. Brady Bonds are dollar-denominated Venezuelan Government bonds that historically could be purchased on the Caracas Stock Exchange and resold for dollars in New York. Currently, the Brady Bond market is still suspended and unavailable as a means of converting Bolivars into dollars.

OPIC encouraged the Insured and the Foreign Enterprise to continue attempting to convert local currency through the CADIVI process, as they had been successful until recently. Since the Insured first presented a claim in September 2003, OPIC has had sufficient doubt as to the adequacy of mechanisms other than the official channel as a means of servicing large international debt obligations. In addition, OPIC has had concerns about imposing risks, other than exchange rate risk, upon insured investors. Consequently, OPIC did not compel the Insured to use these mechanisms in order to comply with the Contracts. At the relevant times, OPIC was unable to determine that these other, indirect, known channels constituted "customary legal channels for transactions of the type contemplated in the loan agreement." At some point in the future, if exchange controls remain in effect and the CADIVI process continues to restrict the conversion of local currency, OPIC may re-examine the alternative channels and may determine that alternative channels have developed to the point where they have become "customary legal channels for transactions of the type contemplated in the loan agreement."

4. The inconvertibility continues for 60 successive days following a scheduled payment date.

Although the scheduled payment date on the Loans was September 15, 2005 and October 15, 2005 respectively, since the Foreign Enterprise had not yet completed an application to CADIVI to convert the funds on such dates, they cannot be used as a benchmark as to when the inconvertibility began. Rather, the date of the completed application, November 9, 2005, should be used, as this was the date when CADIVI had all the requisite information to process the foreign exchange. Sixty days from this date ended on January 9, 2006, this is the first date on which the Claims could have been filed. However, since the Applications were not received until May 24, 2006, no processing of the Claims could be done until several months later.

B. Section 2.02 Exclusions and 3.03 Limitations.

The duty to pay compensation by OPIC is subject to the limitations and exclusions in Sections 2.02 and 3.03 of the Contracts. None of the exclusions apply to this claim.

1. Pre-existing Restrictions.

No compensation is payable if, on the date of execution of the Contracts, a lender or the foreign enterprise would in comparable circumstances have been unable legally to convert local currency into United States dollars. The Contracts became effective on April 11, 2000, and the foreign exchange restrictions were put into place in February 2003. Therefore, on the date of execution of the Contracts, the Insured or the Foreign Enterprise would have been able legally to convert local currency into United States dollars, and this exclusion does not apply.

Furthermore, no compensation is payable if the Insured knew or should have known about the restriction. Again, since the exchange control regime was put into place several years after the Contracts were in place, this exclusion also does not apply.

2. Insured Diligence.

No compensation is payable unless the Insured has made all reasonable efforts to convert or cause the Foreign Enterprise to convert the local currency into United States dollars ... though all customary legal channels for transactions of the type contemplated in the loan agreement.⁴ The Insured has made extensive efforts to convert the local currency through the official channel, in consultation with OPIC, and has not to date used alternative legal channels, as discussed in detail in Section III.A.3 above. Therefore, OPIC finds that for the Claims at hand, this exclusion does not apply.

3. Reconversions; Provocation; Use Restricted by Expropriation.

No compensation is payable if “the local currency represents funds which were previously converted into another currency”; if “the preponderant cause of the loss is

⁴ See Section 2.02.2 of the Contracts.

unreasonable action attributable to the Insured or the foreign enterprise, including corrupt practices;" or if "the use of such local currency is restricted by an expropriatory action."⁵ None of these situations apply, as the local currency has always been held with the Foreign Enterprise's processing bank in Venezuela, no action by the Insured or the Foreign Enterprise was the cause for the inconvertibility, and there has been no expropriatory action to restrict the use of local currency.

4. Limitations.

Compensation shall not exceed the covered amount in effect 60 days before OPIC receives the application for compensation, plus interest.⁶ In this case, the covered amount as of March 24, 2006 was \$16,483,348 for the F107 Contract, and \$22,254,909 for the F314 Contract, both well in excess of the claimed amounts.

Penalty interest or penalty fees for late payment shall not be considered in the calculation of compensation.⁷ While late charges have been assessed by the Insured against the Foreign Enterprise, and those charges are included as part of its application to CADIVI, they are explicitly excluded under the Applications, as the only amounts claimed are scheduled principal and interest.

OPIC will not pay compensation with respect to any portion of the loan (i) as to which the Insured has made or agreed to make a nonrecourse assignment or transfer or in which the Insured has sold or agreed to sell a nonrecourse participation, or (ii) for which the financial risk of nonpayment of the loan by the foreign enterprise is otherwise not borne by the Insured.⁸ The Insured has not assigned or participated any part of the loans, so this limitation does not apply.

C. Other Provisions of the Contracts.

1. Rate of Compensation; Assignment to OPIC.

Compensation shall be the United States dollar equivalent of the local currency at the exchange rate in effect 60 days before OPIC receives the completed application for compensation.⁹ The exchange rate shall be the official exchange rate applicable to the type of remittance involved.¹⁰ The Bolivar/dollar exchange rate, pursuant to Exchange Agreement No. 2 of March 2, 2005, is 2150, and this rate is still in effect (and was in effect 60 days before the Applications were submitted). Therefore, the total amount of local currency used to determine compensation is the dollar equivalent of \$2,644,989.15 * 2150, or 5,686,726,672.50 Bolivars. This amount is also relevant to determine the amount to be delivered or assigned to OPIC pursuant to Section 8.02 of the Contracts.

⁵ See Section 2.02.3, 2.02.4 and 2.02.5 of the Contracts.

⁶ See Section 3.03(a) of the Contracts.

⁷ See Section 3.03(b) of the Contracts.

⁸ See Section 3.03(c) of the Contracts.

⁹ See Section 3.03.1(a) of the Contracts.

¹⁰ See Section 3.01.2(a) of the Contracts.

The Insured presented to OPIC on June 30, 2006 a bank statement of the Foreign Enterprise showing a balance of over six billion Bolivars. Therefore, the Insured has demonstrated that the Foreign Enterprise has sufficient local currency available to cover the amount of the Claims, as required pursuant to Section 8.02 of the Contracts.

2. Adjustment.

OPIC may adjust its compensation if the Insured has made loans to the Foreign Enterprise and has not insured them with OPIC. The Insured has no other loans to the Foreign Enterprise, so no adjustment is necessary.

3. Application for Compensation.

An application for inconvertibility compensation must be filed within 90 days after the date of any payment default on a scheduled payment (or part thereof).¹¹ Although the scheduled payment defaults occurred in September and October of 2005, and the Applications were not submitted until May 24, 2006, OPIC waives this provision, in light of regular contact with the Insured regarding these payments, as well as the forbearance, agreed to by OPIC, of any action on the scheduled payment for six months after the default.

4. Duties.

Various duties are listed in the Contracts, including Sections 9.01.12-14 regarding other insurance. The Insured does not have other insurance, so none of these provisions apply. Other provisions deal with worker rights and environmental requirements, Section 9.01.15-16. The Insured has certified compliance with these provisions pursuant to a certificate provided in each of the Applications.

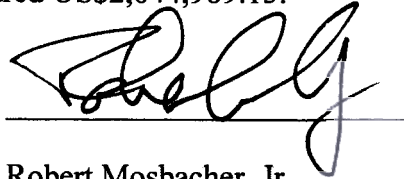
5. Ownership and Eligibility.

The Insured is a Delaware corporation wholly-owned by Caterpillar, Inc, also a Delaware corporation, which is listed on the New York Stock Exchange. Where shares of stock of a U.S. corporation with widely dispersed public ownership are held in the names of trustees or nominees (including stock brokerage firms) with addresses in the United States, such shares may be deemed to be owned by United States citizens unless the Insured has knowledge to the contrary. The Insured's legal counsel confirmed to OPIC that the Insured is approximately 98% owned by U.S. citizens. Therefore, the ownership and eligibility criterion of Section 9.01.2 of the Contracts is met.

¹¹ See Section 8.01(a) of the Contracts.

IV. CONCLUSION

Based upon the foregoing determinations and subject to the delivery of eligible local currency (Bs. 5,686,726,672.50) or an assignment of rights thereto prior to the claim payment, OPIC finds that the inconvertibility Claims submitted by the Insured are valid and that OPIC is liable to transfer to the Insured US\$2,644,989.15.

A handwritten signature in black ink, appearing to read "R. Mosbacher, Jr.", is written over a horizontal line.

Robert Mosbacher, Jr.
President and Chief Executive Officer

Date: August 21, 2006