

KEN LEWENZA

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*Quebec Director
Directeur québécois*

PETER KENNEDY

*National Secretary-Treasurer
Secrétaire-trésorier national*

205 PLACER COURT, TORONTO, ONTARIO M2H 3H9
PHONE (416) 497-4110 FAX: (416) 495-6559

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By hard copy and e-mail – faste@parl.gc.ca

The Honourable Ed Fast
Minister of International Trade
125 Sussex Drive
Ottawa, ON K1A 0G2
Canada

Dear Minister Fast,

Re: Trade Policy Response to Caterpillar's Closure of London Facility

I am writing in regard to the recent lamentable events involving the Electro-Motive Canada (EMC) assembly facility in London, Ontario. As you know, EMC was acquired by Caterpillar Inc. (through its Progress Rail subsidiary) in 2010. The Investment Canada process did not even subject the acquisition to a review. Almost immediately after acquiring EMC, the company began expanding alternative production facilities in other countries (including a facility in Indiana, U.S., and a subcontracted facility in Mexico). On New Year's Day of this year, the company demanded compensation rollbacks averaging 50% from its 450 Canadian workers in London. In retrospect, this was a final offer that was never intended to be accepted; a month later the company announced the facility would close, and it is now clear the company had long-standing plans to close the facility.

Canadians are offended at the actions of this company, which only recently declared the highest annual profits in its history: almost \$5 billion (U.S.) in 2011, on sales of \$60 billion (U.S.), an increase of 41 percent from 2010. It is hard to imagine a more outrageous scenario: a global company, earning record profits, a substantial portion of which were generated on sales here in Canada, would demand of its only Canadian manufacturing employees that they slash their standard of living in half, on pain of total disinvestment from Canada. No wonder this terrible episode touched such a nerve with large numbers of Canadians.

Canada is a lucrative market for Caterpillar's products, including the locomotives which it will now produce elsewhere, and the many other products in the company's catalogue. While Caterpillar does not break out its Canadian sales, it is safe to say that the company's sales to Canada's growing mining, transportation, and construction sectors will measure in the billions of dollars in coming years.

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Given the company's destructive actions in London, its withdrawal from active manufacturing in Canada, and its determination to continue to profit from large sales to Canadian markets, there is clearly a role for trade policy in fashioning a response to Caterpillar's actions.

I am writing on behalf of the 450 workers in London, their families, and the entire community, to ask that you impose special punitive sanctions on Caterpillar's future imports of machinery (including locomotives such as those it used to manufacture in London) to Canada.

There are several potential grounds within Canada's existing trade policy, and consistent with our international commitments, on which your government could take such an action.

For example, our existing trade agreements have "safeguard" clauses which allow the government to take action in situations in which a surge of imports causes unacceptable damage to the viability of an entire industry. The EMC situation clearly passes this test: Caterpillar's closure of that facility would represent the complete extinction of an important, growing industry (namely, the manufacture of railway locomotives).

An alternative channel for your government to respond to Caterpillar's actions would be through the field of countervail. There is a reasonable argument to be made that Caterpillar's decision to relocate locomotive production out of Canada was influenced significantly as a result of policies in other jurisdictions which distort normal relative production costs. By artificially altering and manipulating the normal relative cost considerations which are supposed to ensure that international trade and investment linkages are economically efficient, these distorting policies are fair and reasonable targets for the application of countervailing duty or similar sanctions.

There are several distorting policies which seem particularly relevant to Caterpillar's actions:

1. The U.S. government imposes strong "Buy America" conditions on purchases of railway equipment for federally-funded transportation projects. Under these conditions, contractors must meet stringent targets for the share of U.S. value-added in the total purchase price of equipment which is sold to those projects. It is acknowledged that Buy America provisions have been a key factor in Caterpillar's decision to expand the capacity of its facility in Indiana.
2. Caterpillar's facility in Indiana has also benefited from the provision of substantial fiscal support from the state and the municipality, including favourable tax benefits, fiscal assistance for training and other human resources expenses, and the provision of land and other assets at distorted prices. Caterpillar's operation there has benefited from municipal subsidies which are prohibited in Ontario.

3. The operating costs of the Indiana facility will be artificially suppressed over the long-term as a result of Indiana's recent passage of a so-called "right-to-work" law. This provision, allowable under U.S. federal labour law, prohibits normal union security provisions (such as automatic dues check-off, or Rand provision formulae) that are common practice in Canada. Based on the experience of other right-to-work states in the U.S., this law will make unionization effectively impossible in private sector facilities in Indiana. Right-to-work laws have been an important factor in explaining why collective bargaining coverage in the U.S. business sector is far lower than the norm in other democratic industrialized nations. Effectively eliminating the right to join a union and bargain collectively (and even eliminating the effective *threat* that mistreated workers might unionize) will clearly suppress labour costs (and living standards) below what would normally be expected in a highly productive, industrialized society. This is not only an affront to principles of labour and human rights; it also represents a distortion in normal production costs that has far-reaching but welfare-reducing impacts on relative production costs, trade flows, and investment location.
4. Caterpillar will also import locomotive equipment to Canada from a sub-contracted facility that operates in Mexico. That facility is nominally unionized – but as a result of a long-standing pattern of repression and violence against independent trade unionists in that country, it cannot be said to reflect a normal democratic practice of labour relations. Indeed, the elected leader of the union which represents workers at that facility in Mexico (Mr. Napoleon Gomez, president of the 'Los Mineros' union) is in fact living in British Columbia at present as a result of repeated threats against his life from paramilitary and security forces (linked to employers). Mexico's failure to guarantee norms of security and democracy, and its violent labour relations environment, also produces an unnatural suppression of labour compensation. This pattern helps explain, for example, why real wages in Mexican manufacturing have in fact declined during the almost two decades under NAFTA, despite the enormous expansion since 1994 in Mexico's manufacturing output and exports (including its exports to Canada).

Following a full empirical investigation by your government of these (and potentially other) distorting policy measures in the U.S. and Mexico, your government would be legally entitled under the NAFTA to impose countervailing duties against the company's imports to Canada.

Another option would be for your government to finally implement stronger Buy-Canadian provisions (including offset-type measures) to level the playing field with the Buy America policies which importantly influenced Caterpillar's production location decisions. Those policies could require suppliers to meet Canadian-content targets in order to bid for work in federally-funded construction projects, federally-regulated transportation industries, and even in resource and mining sectors (such as the oil sands sector) which are subject to any federal regulations. Apart from imposing a reasonable and just cost on Caterpillar for its destructive actions in London, such a policy would also generate a benefit for other competing companies which *do* respect

Canadians by manufacturing here and employing Canadians (companies such as Hitachi, which profitably manufactures heavy mining equipment in a unionized facility in Guelph, just an hour down the road from the EMC facility in London).

The range of remedies available to your government is also flexible. The sanctions against Caterpillar could consist of high tariffs on the company's future imports, quantitative limitations on import volumes, and/or requirements for "offsets" under which Caterpillar would have to make significant value-adding contributions to Canadian employment and production in order to continue to qualify for its existing preferential access to our market. (Our preference, of course, would be for those offsets to include continuing to produce locomotives in London.) By being ready to impose formal sanctions on the company, your government would considerably strengthen its ability to negotiate with the company behind-the-scenes, in order to attain a more beneficial outcome in London, and find other ways that Caterpillar can contribute meaningfully to our future economic development (rather than continuing to view Canada solely as a market).

Caterpillar's competitors are capable of ensuring that Canadian construction, mining, and transportation projects have access to the equipment they need, at competitive prices. More importantly, by helping to alter Caterpillar's decision to close the London facility, this 'carrot-and-stick' approach would aim to maintain Caterpillar's production presence here – in which case the trade sanctions would be removed.

I suggest that any revenues generated from your trade sanctions against Caterpillar imports to Canada be channelled to fund economic development and job-creation initiatives in London. This community has borne more than its share of the costs of recession and deindustrialization over the past decade (including the effects of an overvalued currency). It is only fair that Caterpillar make a monetary contribution, through trade policy measures designed and implemented by your Ministry, to the very community which has been so unfairly damaged by its self-interested actions.

In the context of the "free trade" thinking which has shaped Canada's general trade policy outlook in recent years, my proposal will seem unusual. However, Caterpillar's actions have highlighted that in a world in which global corporations are beholden to no national accountability, pure free trade approaches are inadequate for protecting Canadians and maximizing our economic opportunity. Indeed, Caterpillar's actions in London, so rightly reviled by most Canadians, perhaps represent only the extreme, logical extension of the powers we have granted corporations under NAFTA and similar free trade arrangements. We have followed an economic recipe which assumes that if we grant maximum advantage, freedom, and power to corporations which are interested only in maximizing the return to their shareholders (as Caterpillar has so ably done), then Canadians will somehow benefit as a result of their self-interested decisions. We have said through our policies to companies like Caterpillar that they are welcome to continue selling as much as they can in lucrative Canadian markets, no matter how unfairly they treat Canadian workers and citizens. Why should we expect any company to behave differently than Caterpillar has, within such a naïve and toothless policy framework?

So while my proposals would certainly represent a shift in tone on the part of Canada's trade policy, I believe they are consistent with Canada's formal legal obligations, and are both morally and economically justified. Most important, it is incumbent on your government, as the protector of Canadian interests, to send a powerful signal to Caterpillar, and to other corporate and financial interests, that their ability to profit from Canadians is not to be taken for granted. Corporations must treat Canadians with dignity and decency, and they must put something back into our economy (in the form of investment, production, and employment) if they expect to profit from our resources, our markets, and our government programs (as Caterpillar has so richly done).

If your government allows Caterpillar to abuse 450 families in London, and shut down an entire industry, without any financial penalty or sanction whatsoever, it will send a terrible signal to every corporation on the planet that Canadians are just waiting to be further exploited. With the full research, legal, and political resources of your Ministry, guided by the suggestions that I have made above, I am sure that you can find a way to attain some just compensation from this abusive company. A failure on the part of your government to use the tools of trade policy to try to attain a more satisfactory outcome from this situation, would represent acquiescence to one of the most extreme and destructive manifestations of corporate greed that Canadians have experienced in many years.

Thank you for your attention to this egregious issue. I would be very glad for the opportunity to discuss the situation further in person with you. And I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Ken Lewenza".

Ken Lewenza
National President

kl:rlcope343

Copy: Nycole Turmel, Leader of the Opposition
Hon. Bob Rae, Leader of the Liberal Party
Ken Georgetti, President, Canadian Labour Congress
Tim Carrie, President, CAW Local 27
Bob Scott, Plant Chairperson, Electro-Motive, CAW Local 27