



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal Nos. AP-2004-024 to
AP-2004-046

Mammoet Canada Eastern Ltd.
and Mammoet Canada Western
Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Tuesday, February 14, 2006*

*Corrigendum issued
Wednesday, February 15, 2006*

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IN THE MATTER OF appeals heard on July 19 and 20, 2005, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF certain decisions of the President of the Canada Border Services Agency dated August 4, 2004, with respect to a request for redeterminations under subsection 60(1) of the *Customs Act*.

BETWEEN

**MAMMOET CANADA EASTERN LTD. AND MAMMOET
CANADA WESTERN LTD.**

Appellants

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

DECISION OF THE TRIBUNAL

The appeals are allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

Hélène Nadeau
Hélène Nadeau
Secretary

Place of Hearing: Ottawa, Ontario
Dates of Hearing: July 19 and 20, 2005

Tribunal Members: Pierre Gosselin, Presiding Member
Zdenek Kvarda, Member
Meriel V. M. Bradford, Member

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Clerk of the Tribunal: Karine Turgeon

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REASONS FOR DECISION

1. These are appeals pursuant to section 67 of the *Customs Act*¹ from 23 decisions of the President of the Canada Border Services Agency (CBSA) dated August 4, 2004,² under subsection 60(1) regarding the classification of various heavy-duty transporters. By agreement of the parties at the outset of the hearing, the Tribunal did not proceed to hear the appeals on the six importations of Kamag self-propelled transporters in Appeal Nos. AP-2004-024 to AP-2004-027 and AP-2004-041 to AP-2004-042. This was based on the parties' understanding that the CBSA would reclassify those goods under tariff item No. 8427.20.99, as requested by Mammoet Canada Eastern Ltd. and Mammoet Canada Western Ltd. (Mammoet).

2. On July 6, 2005, Mammoet requested the Tribunal to exclude the CBSA's expert report, on the ground that it dealt with the meaning of "trailer", the very issue before the Tribunal. On July 18, 2005, the Tribunal ruled that the expert report would be admitted, but that the last part of paragraph 13 and the whole of paragraph 4, which contained the references to the meaning of "trailer", would be stricken.

3. On July 14, 2005, the CBSA notified the Tribunal that it intended to raise an objection, at the hearing, to tabs 16 to 18 of Mammoet's additional authorities. These tabs contained, among other things, the French language version of relevant passages from the schedule to the *Customs Tariff*.³ At the hearing, the Tribunal ruled that they were admissible, since it was the Tribunal's practice to look at both language versions of all legislation, whether or not tendered as evidence.⁴

4. The hearing proceeded on the remaining 17 appeals, i.e. the 4 importations of Goldhofer trailed transporters in Appeal Nos. AP-2004-043 to AP-2004-046 and the 13 importations of Scheuerle trailed transporters in Appeal Nos. AP-2004-028 to AP-2004-040. The issue in the 17 appeals was whether the imported goods were properly classified under tariff item No. 8716.39.30 of the schedule to the *Customs Tariff* as trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods, as determined by the CBSA, or should be classified under tariff item No. 8427.20.99 as other self-propelled trucks, as claimed by Mammoet.

AGREED STATEMENT OF FACTS

5. On July 18, 2005, the parties filed an agreed statement of facts⁵ containing, among other things, the following admissions:

...

5. The Transporters are permanently fitted with an independent functioning hydraulic lifting and levelling system, which is comprised of hydraulic lines, pistons, pump and reservoir, and separate control and motor systems. . . .

...

7. The operator uses the Hydraulic Lifting System as an integrated mechanical unit, to lift, lower and level the massive loads being carried by the Transporters – movements aimed at maintaining the load's center of gravity constant. . . .

...

1. R.S.C. 1985 (2d Supp.), c. 1 [*Act*].

2. A list of the goods covered by the decisions is set out in a table in the Respondent's brief, Tab 6.

3. S.C. 1997, c. 36.

4. *Transcript of Public Hearing*, 19 July 2005, at 9-18.

5. Tribunal Exhibit AP-2004-024 to 046-31A.

20. The Transporters are designed to move and handle extremely heavy loads, over relatively short distances. On occasion, at least, the Transporters are capable of moving several miles when laden.
21. The types of structures that the Transporters were designed for are massive in size and weight and would include rockets, transformers, nuclear steam generators, turbines, herzig^{6]} modules, barges and boilers. . . .
- . . .
25. If the Trailed Transporters are required to travel over public road ways, while loaded with extremely heavy and large cargo, special permits are required (the Trailed Transporters being wider than vehicles permitted on most roadways). Police escorts are also usually required.
26. Even then, because roads themselves are not built to withstand the large loads capable of being moved by the Transporters, before the Trailed Transporters can travel on these public road ways, an engineering analysis is required, and the Appellants are required to prepare an engineering report, examining the route to be taken, and any physical or engineering obstacles. . . .
33. . . .
- A “4 axle configuration” is a modular unit. . . .
- . . .
38. What that means, at least in the context of the most basic configuration used by the Appellants for any particular job (which would be a single “6 axle configuration” Trailed Transporter), is that each Transporter will carry a minimum of 204 metric tonnes (448,800 lbs) of weight. While the Transporters are capable of carrying any lighter load, the expected minimum load remains at 204 metric tonnes per 6 axle configuration.
- . . .
43. The Hydraulic Lifting System consists of, among other things, hydraulic cylinders affixed to each independent axle, at the bottom end and to a lifting platform at the top end, all of which is interconnected with hydraulic lines, and a hydraulic pump, and a motor powered and controlled at the rear of the Transporter.
44. In its most basic sense, the Hydraulic Lifting System is capable of lifting a Transporter’s load upward, up to 24 inches from its base — or viewed another way, capable of lifting or lowering the load 12 inches up or down, from dead-center. . . .
- . . .
46. For example, by adjusting which axles are lifting and which are lowering, the Hydraulic Lifting System is capable of “tilting” the Transporters loading platform attitudinally (i.e., from side to side) or longitudinally (i.e., from front to back). . . .
47. This “tilting” capacity, when applied on a multi-levelled basis across all sets of axles, allows the Hydraulic Lifting System’s operator to keep the Transporter’s loading platform level on all surfaces (i.e., whether banked, sloped, bumpy or uneven terrain).
- . . .

6. Heat recovery steam generator.

52. For both the Self-propelled and Trailed Transporters, the operation of the Hydraulic Lifting System is done through the manual control of a human operator, usually walking behind the load, monitoring the terrain and the “level”, and making adjustments to the hydraulic controls located at the back of the Transporters.

...

58. ... a difference between the Self-propelled and Trailed Transporters is their means of propulsion, with the Self-propelled Transporters carrying an additional “power pack” module that allows for self-propulsion (the “Power Pak”). . . .

...

60. In addition to allowing for the levelling of massive loads, another function of the Hydraulic Lifting System is that it allows the Transporters — sometimes with certain additional equipment and specialized processes — to load and unload without the use of a crane (the “Loading and Unloading Process”), which is a significant competitive advantage for the Appellants.

...

62. In the “skid-on/skid-off” approach, a load is transferred to a Transporter from (assume) a railcar, with the Transporter is positioned parallel to the railcar. The Transporter is then either lifted upward or lowered downward to level it to the same level as the railcar. The load, sitting on the railcar, is then jacked upward using separate hydraulic jacks and wood beams. Two hydro-slide skids (graphite covered beams) are positioned across the Transporter and the railcar, forming a railway like bridge, onto which the load is then lowered.

Through a special process involving numerous jacking devices, the load is then skidded from the railcar to the Transporter — effectively pushed from one side to the other. As the level of the railway car begins to rise (i.e., as it loses the weight of the load), the Hydraulic Lifting System is again used to compensate, and maintain the “level” between the Transporter and the railway car.

...

63. In the “self-load” or “self-unloading” process, which involves heavier masses, the Transporter either slips under an existing supported structure, and raises it off its supports, to “self-load” it, or alternatively, lowers a loaded structure onto independent supports, before slipping away from the supported structure, to “self-unload” it.

...

ADDITIONAL EVIDENCE

6. Mr. Timothy Sittler, President and Chief Executive Officer, and Mr. Don Mahnke, Senior Vice-President, both at Mammoet Canada Eastern Ltd., testified on behalf of Mammoet. Mr. Jeff Patten, Manager of Test & Evaluation Engineering, Centre for Surface Transportation Technology, National Research Council of Canada, testified on behalf of the CBSA. The Tribunal qualified Mr. Patten as an expert in mechanical engineering, with a particular expertise in motor vehicles, towing vehicles and trailers.

7. In his expert report, Mr. Patten opined that each of the goods in issue was a “trailer” within the meaning applied by the Ministry of Transportation of Ontario (MTO), which is the following: “[a] vehicle that is at any time drawn upon a highway by a motor vehicle . . . temporarily drawn, propelled or moved upon such highway . . . and shall be considered a separate vehicle and not part of the motor vehicle by

which it is drawn”.⁷ He also stated that many trailers, currently available on the market, have lifting or sliding capabilities similar to those of the goods in issue, such as drive-on/drive-off float trailers, double-decker car-carrier trailers, side-tip trailers and end-dump trailers. Moreover, in the case of double decker car carrier trailers, a human operator controls the hydraulic rams to lift the ramps and horizontal plates necessary to maximize the number of cars that may be carried on one trailer.⁸

8. The Tribunal also received evidence of significant differences between the typical highway trailers regulated by the MTO and the goods in issue. The main feature of the goods in issue is that they contain an advanced and complex hydraulic system, which allows the operator to lift, level and steer oversized and extremely heavy loads.⁹ By way of contrast, highway trailers use very basic hydraulic controls and do not allow any intentional steering.¹⁰ Moreover, the operation of the hydraulic system in the goods in issue requires extensive, specialized skill. No one is permitted to handle the lifting, levelling or steering equipment in the goods without first completing 6,000 hours of mandatory training.¹¹

THE LAW

9. On appeals under section 67 of the *Act* concerning tariff classification matters, the Tribunal hears the matter and determines the proper classification of the goods under appeal in accordance with the *General Rules for the Interpretation of the Harmonized System*¹² and the *Canadian Rules*.¹³ Section 11 of the *Customs Tariff* provides that, in interpreting the headings and subheadings in the schedule, regard shall be had to the *Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System* and the *Explanatory Notes to the Harmonized Commodity Description and Coding System*.¹⁴ The *General Rules* are structured in a cascading form. If the classification of an article cannot be determined in accordance with Rule 1, then regard must be had to Rule 2, etc. The *Canadian Rules* reiterate that the classification of goods under the tariff item of a subheading or heading shall be determined according to the *General Rules*. This process has been explained in greater detail in other Tribunal decisions.¹⁵

10. The relevant provisions of the schedule to the *Customs Tariff* are set out below:

| | |
|------------|---|
| ... | |
| 84.27 | Fork-lift trucks; other works trucks fitted with lifting or handling equipment. |
| 8427.10 | -Self-propelled trucks powered by an electric motor |
| ... | |
| 8427.20 | -Other self-propelled trucks |
| ... | |
| 8427.20.99 | ----Other |
| ... | |
| 8427.90 | -Other trucks |

7. Tribunal Exhibit AP-2004-024 to 046-17A, para. 6.

8. *Ibid.*, para. 9.

9. *Transcript of Public Hearing*, 19 July 2005, at 147.

10. *Ibid.* at 206, 218.

11. *Ibid.* at 78.

12. *Supra* note 3, schedule [*General Rules*].

13. *Supra* note 3, schedule.

14. Customs Co-operation Council, 2d ed., Brussels, 1996 [*Explanatory Notes*].

15. See *BioNova Medical Inc. v. Commissioner of the CCRA* (24 February 2004), AP-2002-111 (CITT).

| | |
|------------|--|
| 8427.90.10 | ---Industrial hand trucks with a lift height not exceeding 1 m |
| 8427.90.90 | ---Other |
| ... | |
| 87.16 | Trailers and semi-trailers; other vehicles, not mechanically propelled; parts thereof. |
| ... | |
| | -Other trailers and semi-trailers for the transport of goods: |
| 8716.31.00 | --Tanker trailers and tanker semi-trailers |
| 8716.39 | --Other |
| ... | |
| 8716.39.30 | ---Trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods (excluding non-commercial snowmobile, utility, boat or horse trailers and trailers for use as permanent mountings for machinery or equipment) |
| ... | |

11. The Tribunal is particularly interested in tariff item No. 8716.39.30 and in whether the goods in issue are included under that tariff item as “[t]railers and semi-trailers for road tractors or for motor vehicles for the transport of goods” or whether they are excluded by the text in parentheses, which excludes “. . . trailers for use as permanent mountings for machinery or equipment”.

12. The *Explanatory Notes* to heading No. 87.16 provide assistance by giving examples of the types of trailers that are included in the heading. They read as follows:

...

This heading covers a group of **non-mechanically** propelled vehicles (**other than** those of the preceding headings) equipped with one or more wheels and constructed for the transport of goods or persons. It also includes non-mechanical vehicles not fitted with wheels (e.g., sledges, special sleds running on timber trackways).

The vehicles of this heading are designed to be towed by other vehicles (tractors, lorries, trucks, motorcycles, bicycles, etc.), to be pushed or pulled by hand, to be pushed by foot or to be drawn by animals.

The heading includes:

(A) Trailers and semi-trailers.

For the purposes of this heading, the terms “trailers” and “semi-trailers” [mean] vehicles (other than side-cars) of a kind designed solely to be coupled to another vehicle by means of a special coupling device (whether or not automatic).

...

13. The *Explanatory Notes* also provide assistance for determining which trailers are *not* included in the heading, being used as permanent mountings for machinery and equipment. They read as follows:

VEHICLES FITTED WITH MACHINERY, ETC.

The classification of units consisting of vehicles with **permanently built-on** machines or appliances is determined according to the **essential character of the whole**. The heading therefore covers such units which derive their essential character from the vehicle itself. On the other hand, units deriving their essential character from the machine or appliance they incorporate are **excluded**.

...

POSITIONS OF THE PARTIES

Mammoet

14. Mammoet contended that the goods in issue are *not* covered by heading No. 87.16, since they are excluded by the phrase "... excluding... permanent mountings for machinery or equipment". In Mammoet's submission, the fact that the parties agreed that the trailers were "... fitted with lifting or handling equipment..."¹⁶ and that Mr. Patten conceded they were *permanently* fitted with the equipment,¹⁷ means that they are "... permanent mountings for machinery or equipment" within the meaning of the exception. Moreover, the goods derive their essential character from the hydraulic steering, lifting and handling equipment, not from the trailer platforms themselves. Without that equipment, the platforms cannot be used as trailers, since there would be too many bogies, and the wheels underneath each platform could not negotiate even a simple turn.¹⁸

15. Mammoet also submitted that the following factors distinguish the goods in issue from the trailers of heading No. 87.16: they are not suitable for road transport, as a permit is required and other special conditions apply when using a public road and they are normally moved to a job site by flatbed trailer; they are not designed for high speed; they are fitted with an engine that powers a hydraulic system, which, in turn, powers the lifting, levelling and steering equipment; they are fitted with their own controls so as to permit the operator to control the lifting, levelling, braking and steering functions; they require a separate, highly trained (6,000 hours) operator to operate the lifting, levelling, braking and steering equipment; and they are much more expensive than regular trailers.

16. Mammoet argued as well that, since the goods in issue are similar to the self-propelled trailers, which the CBSA agreed to classify under tariff item No. 8427.20.99 as other self-propelled trucks, the Tribunal should classify them under that tariff item as well.

CBSA

17. The CBSA argued that the goods in issue are clearly included within heading No. 87.16 under the plain meaning of "... [o]ther trailers and semi-trailers for the transport of goods..." Moreover, the *Explanatory Notes* to heading No. 87.16 confirm their inclusion in the heading, since they are coupled to and designed for use with a motor vehicle that pulls and steers the trailers.¹⁹ The CBSA added that the United States Court of International Trade classified goods identical to one of the goods in issue, a Goldhofer trailer, in this heading, which suggests that it is the proper one.²⁰

18. The CBSA also contended that the mere fact that the goods in issue are fitted with lifting and levelling equipment does not take them out of the scope of Chapter 87. It presented a number of examples of machines that were permanently mounted on trailers, but remained classified as trailers *per se*, e.g. hydraulic lifts, trailers fitted with side- or end-tipping devices and so forth. Moreover, the common definition of "trailer" includes the goods in issue, since they require a prime mover to make them function. Not only will the prime mover supply the trailers with motive power, but it will also feed them air pressure with which to operate the brakes. In addition, the manufacturers themselves, in their promotional literature, refer to the goods in issue as "trailers".

16. Tribunal Exhibit AP-2004-024 to 046-31A, para. 54.1.

17. *Transcript of Public Hearing*, 19 July 2005, at 187.

18. *Transcript of Public Argument*, 20 July 2005, at 37.

19. Respondent's brief at 7-9.

20. *Ibid.* at 9-10, tab 10.

19. In terms of the exclusion under tariff item No. 8716.39.90, the CBSA argued that it was primarily meant to exclude only specific situations where trailers were already expressly excluded by other provisions in the schedule to the *Customs Tariff*, e.g. trailed concrete mixers.²¹ Any remaining situations not covered elsewhere by an express exclusion would still require the function of the trailer to be that of moving a machine, such as a sprayer, pump or compressor, and not that of moving cargo, which is the function of the goods in issue.²²

20. In any event, the CBSA submitted that the goods in issue cannot be classified under tariff item No. 8427.20.99 as other *self-propelled trucks*, as claimed by Mammoet, since the evidence clearly indicated that they required a tractor, or other prime mover, to move them.²³ By definition, therefore, they are not self-propelled.

ANALYSIS

21. The main issue in these appeals is whether the goods in issue are properly classified under tariff item No. 8716.39.30 as trailers and semi-trailers for road tractors or for motor vehicles for the transport of goods or whether they are excluded by the text in parentheses in that heading, which excludes trailers for use as permanent mountings for machinery or equipment. Furthermore, in the event that the goods in issue are excluded, the Tribunal must determine in what heading they should be classified.

22. There can be no doubt that the goods in issue are trailers for the transport of goods. The evidence was clear that they met the definition of “trailer” in the *Explanatory Notes* to heading No. 87.16, i.e. “. . . vehicles (other than side-cars) of a kind designed solely to be coupled to another vehicle by means of a special coupling device (whether or not automatic). . . .” The parties agreed that “. . . the Trailered Transporters are physically coupled to the tractors primarily by means of a drawbar, and sometimes by means of a tow cable.”²⁴ The evidence was also clear that the goods were used, virtually exclusively, for the transport of oversized and extremely heavy goods, e.g. rockets, transformers, nuclear steam generators, turbines, heat recovery steam generator modules, barges, boilers.²⁵

23. The Tribunal must decide whether the goods in issue are excluded from the above heading by virtue of being trailers for use as permanent mountings for machinery or equipment. There can be no doubt that the goods in issue are permanently fitted with specialized hydraulic equipment used to lift and level their special cargo. The evidence was uncontested on this point. The Tribunal must determine whether the affixation of the equipment suffices to place the goods within the exclusion in the above heading.

24. As mentioned above, the CBSA argued that, to fit within the exclusion, the trailer must be exclusively used for moving a single item of machinery or equipment covered by another tariff heading. According to the CBSA, the exclusion was never meant to exclude equipment affixed to a trailer, the purpose of which was to serve as a mere enhancement of the trailer’s ability to move cargo, whatever that cargo might be.

25. The Tribunal does not accept the argument. The *Explanatory Notes* for the exclusion specify that the “. . . classification of units consisting of vehicles with **permanently built-on** machines or appliances is determined according to the **essential character of the whole**. . . .” In this case, the specialized hydraulic

21. Which are included in heading No. 84.74.

22. *Transcript of Public Argument*, 20 July 2005, at 69-70.

23. *Transcript of Public Hearing*, 19 July 2005, at 115-121.

24. Tribunal Exhibit AP-2004-024 to 046-31A, para. 65.

25. *Ibid.*, para. 21.

equipment mounted on the goods in issue is not ancillary to the use of the latter as trailer platforms, but rather constitutes their entire purpose. The goods were used for lifting cargo, through their self-loading and self-unloading function, using, among other methods, the skid-on and skid-off approaches. In this sense, they may be likened to a crane or forklift truck. In addition, it is their complex tilting and levelling capacity that ensures the cargo remains perfectly stable while passing over sloped, bumpy or otherwise uneven terrain. The goods in issue clearly meet the criteria of the exclusion. Therefore, the Tribunal accepts Mammoet's contention that the goods in issue are excluded from tariff item No. 8716.39.30 by the exclusion in parentheses in that tariff item.

26. Having excluded the goods from heading No. 87.16, the Tribunal must now determine in which heading they *should* be classified. Mammoet submitted that they should be classified under tariff item No. 8427.20.99 as other *self-propelled* trucks. The Tribunal does not accept this submission. The evidence was clear that the goods in issue were not self-propelled. Instead, they required tractors or other prime movers to move around. However, this does not mean that the goods cannot be classified elsewhere in the same heading.

27. Heading No. 84.27 reads as follows: "Fork-lift trucks; other works trucks fitted with lifting or handling equipment." The goods in issue are not fork-lift trucks; therefore, the Tribunal must determine whether they are "works trucks". The ordinary meaning of "works" is "[a]n establishment where some industrial labour, esp. manufacture, is carried on, including the whole of the buildings and machinery used; a factory, manufactory, etc. . . .",²⁶ such as an iron works or gas works. A "truck" is "[a] wheeled vehicle for carrying heavy weights; variously applied . . . [a] motor vehicle for carrying goods, troops, etc., by road. . . ."²⁷

28. The CBSA submitted that "works trucks" means vehicles intended to be used in a ". . . manufacturing or industrial establishment or a yard . . .", which "generally . . . are used within the site and . . . not generally . . . on the roadway. . . ."²⁸ The Tribunal agrees and notes that the *Explanatory Notes* to heading No. 84.26 are consistent with that meaning and confirm that the heading covers the following: ". . . (11) **Works trucks fitted with a crane**, which are designed for moving loads over short distances in factories, warehouses, dock areas or airports. . . ."

29. The CBSA also referred the Tribunal to the *Explanatory Notes* to heading No. 87.09, which read as follows: ". . . This heading covers a group of self-propelled vehicles of the types used in factories, warehouses, dock areas or airports for the short distance transport of various loads (goods or containers) or, on railway station platforms, to haul small trailers. . . ." In particular, it cited paragraph (1), which reads as follows: "Their construction and, as a rule, their special design features, make them unsuitable for the transport of passengers or for the transport of goods by road or other public ways." It contended that the goods in issue were admitted to be used to move items over roadways and referred to a photograph in the evidence bearing the caption "longest move on roadways" as proof that they could not be classified as "works trucks".

30. With respect, the Tribunal disagrees. It is true that the goods in issue are physically capable of moving over roadways. However, in practice, they do not travel in the same way as highway tractors and motor vehicles at all. Rather, elaborate arrangements, which often include engineering studies and numerous permits, have to be made in advance. In the Tribunal's opinion, these arrangements are so burdensome that

26. *The Oxford English Dictionary*, 2d ed., s.v. "work", para. 18.

27. *Ibid.*, s.v. "truck", para. 3.

28. *Transcript of Public Argument*, 20 July 2005, at 74.

only those needing to carry out the most extreme moving jobs, those with no other possible options, would resort to using the goods. Indeed, the oversize and overweight cargos given as examples in the evidence confirm that the goods in issue would be used on the highway in only the most unusual circumstances. Therefore, the Tribunal accepts that the goods in issue are “works trucks”.

31. Heading No. 84.27 contains three subheadings: No. 8427.10 (self-propelled trucks powered by an electric motor); No. 8427.20 (other self-propelled trucks); and No. 8427.90 (other trucks). Given that the goods in issue are not self-propelled, the only applicable subheading is No. 8427.90. That subheading contains two tariff items: No. 8427.90.10 (industrial hand trucks with a lift height not exceeding 1 m); and No. 8427.90.90 (other). The evidence clearly indicated that the goods in issue were pulled (or pushed) by a tractor, winch or cable. There was no evidence that they were capable of being pulled by hand, and it would not be reasonable to infer such a capability, given the great weights that they are designed to carry. Therefore, the Tribunal concludes that the goods in issue should be classified in tariff item No. 8429.90.90 as other works trucks fitted with lifting or handling equipment.

DECISION

32. In light of the foregoing, the appeals are allowed.

Pierre Gosselin
Pierre Gosselin
Presiding Member

Zdenek Kvarda
Zdenek Kvarda
Member

Meriel V. M. Bradford
Meriel V. M. Bradford
Member

IN THE MATTER OF appeals heard on July 19 and 20, 2005, under section 67 of the *Customs Act*, R.S.C. 1985 (2d Supp.), c. 1;

AND IN THE MATTER OF certain decisions of the President of the Canada Border Services Agency dated August 4, 2004, with respect to a request for redeterminations under subsection 60(1) of the *Customs Act*.

BETWEEN

**MAMMOET CANADA EASTERN LTD. AND MAMMOET
CANADA WESTERN LTD.**

Appellants

AND

**THE PRESIDENT OF THE CANADA BORDER SERVICES
AGENCY**

Respondent

CORRIGENDUM

In the English version of the statement of reasons for the Tribunal's decision in the above matter, the reference to tariff item No. 8429.90.90 in the last sentence of paragraph 31 should have been to tariff item No. 8427.90.90.

By order of the Tribunal,

Hélène Nadeau
Secretary