



Canadian International
Trade Tribunal

Tribunal canadien du
commerce extérieur

CANADIAN
INTERNATIONAL
TRADE TRIBUNAL

Appeals

DECISION AND REASONS

Appeal AP-2022-028

Best Buy Canada Ltd.

v.

President of the Canada Border
Services Agency

*Decision and reasons issued
Monday, June 17, 2024*

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IN THE MATTER OF an appeal heard on July 6, 2023, pursuant to section 67 of the *Customs Act*;

AND IN THE MATTER OF a decision of the President of the Canada Border Services Agency pursuant to subsection 60(4) of the *Customs Act*, dated October 11, 2022, with respect to a request for re-determination.

BETWEEN

BEST BUY CANADA LTD.

Appellant

AND

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

Respondent

DECISION

The appeal is allowed.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

Place of Hearing:	Via videoconference
Date of Hearing:	July 6, 2023
Tribunal Panel:	Susan D. Beaubien, Presiding Member
Tribunal Secretariat Staff:	Emilie Audy, Counsel Charlotte Saintonge, Counsel Jennifer Mulligan, Paralegal Morgan Oda, Registry Officer

PARTICIPANTS:**Appellant**

Best Buy Canada Ltd.

Counsel/RepresentativesThang Trieu
Allison Blackler**Respondent**

President of the Canada Border Services Agency

Counsel/Representatives

Narin Sdieq

Intervener

Kanto Living Inc.

Counsel/Representatives

Michael Kaylor

WITNESS:Korry Hoglan
OSP Home Furnishings (Office Star Products)
Furniture Design Director

Please address all communications to:

The Deputy Registrar
Telephone: 613-993-3595
Email: citt-tcce@tribunal.gc.ca

STATEMENT OF REASONS

OVERVIEW

[1] Best Buy Canada Ltd. (Best Buy) appeals from a decision of the Canada Border Services Agency (CBSA) concerning the classification, for the purposes of the *Customs Tariff*,¹ of certain models of television wall mounts.

[2] The goods are used to attach a flat screen television² to a wall. They function to securely hold the television while allowing the user to tilt, swivel, extend, retract or reposition the television screen. Wall mounts may differ in their construction and features. Only the following models of wall mount, imported and sold by Best Buy, are at issue in this appeal:

- Insignia 47”-80” Full Motion TV Wall Mount (NS-HTVMM1703-C)
- Insignia 33”-46” Full Motion TV Wall Mount (NS-HTVMM1702-C)

[3] The CBSA has classified the goods (Insignia Wall Mounts) under tariff item 8302.50.00 as “hat racks, hat-pegs, brackets and similar fixtures”.

[4] Best Buy contests this classification. It contends that the Insignia Wall Mounts should instead be classified in heading 85.29 as “parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28” and more particularly under tariff item 8529.90.90 or, in the alternative, under tariff item 8302.49.00 as “other mountings, fittings and similar articles”.

BACKGROUND AND PROCEDURAL HISTORY

[5] Best Buy imported the Insignia Wall Mounts in a series of five transactions that took place between August 2019 and March 2020. At the time of importation, Best Buy declared the goods and classified them under tariff item 8302.50.00 as a “base metal bracket”.

[6] On July 16, 2020, Best Buy filed adjustment requests, seeking to change the tariff classification of the goods to tariff item 8302.49.00 as “other mountings for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like”.³ The CBSA denied Best Buy’s requests on March 29, 2022, which left the goods classified under tariff item 8302.50.00.

[7] Best Buy then filed a request for a review of the CBSA’s re-determination. On October 11, 2022, the CBSA issued a further re-determination of the tariff classification of the goods. That re-determination was made pursuant to subsection 60(4) of the *Customs Act* and maintained the classification of the goods under tariff item 8302.50.00.⁴

¹ S.C. 1997, c. 36.

² The evidence, and the submissions made by the parties, use the terms “flat screen television” and “flat panel television” interchangeably. These reasons do likewise. There is no practical significance or difference between these two terms.

³ Exhibit AP-2022-028-17 at 6.

⁴ By way of letter dated October 11, 2022. Exhibit AP-2022-028-01 at 5–15.

[8] Best Buy appealed the CBSA's decision to the Canadian International Trade Tribunal on January 5, 2023.⁵

[9] On April 27, 2023, Kanto Living Inc. (Kanto) requested standing as an intervener in this appeal. Kanto identified itself as an importer of goods that are similar to the Insignia Wall Mounts that are the subject of this appeal. The goods imported by Kanto are classified under tariff item 8203.50.00.⁶

[10] The Tribunal granted Kanto leave to intervene on May 19, 2023.⁷

The CBSA's decision

[11] The CBSA found that the Insignia Wall Mounts were hinged metal supports or brackets that are fastened to a wall as a permanent appendage in order to support the vertical load of a television.⁸

[12] The CBSA concluded that the goods are not "parts" of televisions, since they are not essential to the functioning of a television.⁹ Accordingly, the goods did not fall in heading 85.29 as "parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28". The CBSA also concluded that the goods could not be classified in heading 85.29 because they are not cases or cabinets.

[13] After considering relevant provisions of the *Customs Tariff* and several dictionaries for the definition of the terms "mounting", "bracket" and "fixture", the CBSA concluded that the goods were best described as "brackets" of heading 83.02.¹⁰

[14] The CBSA noted that the only conditions for goods to be classified in heading 83.02 as "brackets" are that the goods be made of base metal and meet the definition of brackets and similar fixtures.

[15] In conducting its analysis, the CBSA considered that note 1(f) to Section XV excludes articles of Section XVI, and note 1(k) to Section XVI excludes articles of Chapter 82 or Chapter 83. As the goods were described and covered by the terms of heading 83.02 (i.e., as "brackets"), the CBSA determined that they were excluded from classification in heading 85.29.

[16] As the goods support flat screen televisions and are fixed to the wall, they were best described in heading 83.02 as "bracket and similar fixtures" by virtue of Rule 1 of the General Rules for the Interpretation of the Harmonized System¹¹ (General Rules).

[17] The CBSA then concluded that the goods should be classified in subheading 8302.50 and under tariff item 8302.50.00 as "hat-racks, hat-pegs, brackets and similar fixtures".

⁵ Exhibit AP-2022-028-01.

⁶ Exhibit AP-2022-028-05.

⁷ Exhibit AP-2022-028-09.

⁸ Exhibit AP-2022-028-17 at 12.

⁹ *Ibid.* at paras. 4, 54.

¹⁰ *Ibid.* at para. 40.

¹¹ S.C. 1997, c. 36, schedule.

Best Buy's appeal to the Tribunal

[18] Best Buy disputes the correctness of the CBSA's tariff classification. It says that the goods should be classified "according to what they specifically are"¹² and summarizes the characteristics of the Insignia Wall Mounts as follows:

The TV Mounts are designed, manufactured, and marketed as mounting hardware:

- (a) to receive flat panel televisions;
- (b) to meet the compatibility standards of the Video Electronics Standards Association ("VESA") for mounting flat panel televisions;
- (c) to display flat panel televisions at optimum viewing heights and angles;
- (d) to contribute to the safe and prudent use of flat panel televisions;
- (e) to support the size and weight of flat panel televisions in accordance with industry standards;
- (f) to provide for the integrated management of cables that must be connected to flat panel televisions.¹³

[19] Best Buy submits that the goods in issue should be classified as "parts suitable for use solely or principally with [flat panel televisions] - other" as described in heading 85.29 and subheading 8529.90; or, alternatively, in heading 83.02 and subheading 8302.49.

[20] In support of its appeal, Best Buy submitted a brief comprising written submissions, relevant extracts pertaining to the *Customs Act* and *Customs Tariff*, their accompanying notes and World Customs Organization (WCO) Explanatory Notes, together with the following materials:

- (a) Copies of the CBSA's decision in respect of the Insignia 47"-80" Full Motion TV Wall Mount (NS-HTVMM1703-C) and Insignia 33"-46" Full Motion TV Wall Mount (NS-HTVMM1702-C) rendered pursuant to subsection 60(4) of the *Customs Act* and dated October 11, 2022;¹⁴
- (b) A printout of Best Buy's website for the Insignia 33"-46" Full Motion TV Wall Mount and Insignia 47"-90" Full Motion TV Wall Mount;¹⁵
- (c) A copy of the installation guide for the Full Motion Mounts for TVs 33"-46" (NS-HTVMM1702-C) and the installation guide for Full Motion Mount for TVs 47"-90" (NS-HTVMM1703-C);¹⁶

¹² Exhibit AP-2022-028-03 at p. 6.

¹³ *Ibid.* at 6-8.

¹⁴ Exhibit AP-2022-028-01 at 5-15; Exhibit AP-2022-028-01 at 26-39.

¹⁵ Exhibit AP-2022-028-03 at 20-25.

¹⁶ Exhibit AP-2022-028-01 at 40-57; Exhibit AP-2022-028-01 at 58-76.

- (d) A printout from Sanus’s website for the Flat-Panel/Plasma TV Stand Sleek lines and innovative structure support large TVs with grace, and a copy of the cover assembly instruction;¹⁷
- (e) A printout of Sanus’s website for the Two-Shelf Flat-Panel/Plasma TV Stand Sleek lines and innovative structure support large TVs with grace, and a copy of the cover assembly instruction;¹⁸
- (f) A printout of Best Buy’s website for the Sanus Advanced 42”-90” Full Motion TV Wall Mount;¹⁹
- (g) A printout of Sanus’s website for the Elite Advanced Full-Motion TV Mount for 42”-90” TVs;²⁰
- (h) A printout of Best Buy’s website for the Kanto LDX690 40”-90” Full Motion TV Wall Mount;²¹
- (i) A printout of Kanto’s website for the LDX640 Full Motion TV Mount;²²
- (j) A copy of the instruction manual for the Z-Line Venetian “X” 3 in 1 Hybrid Mount ZLN #FS565-44Mxiv;²³
- (k) A copy of the instruction manual for the Z-Line Makena Flat Panel 3 in 1 Television Mount System ZLN #FS434-503xvii;²⁴
- (l) A copy of the CBSA’s rulings dated March 22, 2016, June 21, 2016, and November 9, 2016;²⁵
- (m) A copy of the CBSA’s rulings for TRS No. 277203 issued on March 29, 2017, and for TRS No. 282213 issued on March 7, 2019;²⁶
- (n) A copy of the detailed adjustment statement dated July 2, 2019, and September 26, 2019;²⁷
- (o) A printout of the online Oxford English Dictionary from Google for “bracket”, “mounting” and “mount”;²⁸
- (p) Copies of jurisprudence proposed to be relied upon.²⁹

[21] Best Buy also filed an expert report of Korry Hoglan on June 5, 2023.³⁰

¹⁷ Exhibit AP-2022-028-01 at 77–80, 81.

¹⁸ *Ibid.* at 82–85, 86.

¹⁹ *Ibid.* at 189.

²⁰ *Ibid.* at 190–192.

²¹ *Ibid.* at 193.

²² *Ibid.* at 194.

²³ *Ibid.* at 87–110.

²⁴ *Ibid.* at 111–168.

²⁵ Exhibit AP-2022-028-03 at 169–182.

²⁶ *Ibid.* at 183–188.

²⁷ *Ibid.* at 195–203.

²⁸ Exhibit AP-2022-028-01 at 483–484.

²⁹ *Ibid.* at 300–482.

³⁰ Exhibit AP-2022-028-24.

[22] The CBSA contends that the goods fall squarely within the definition of “bracket” and are properly classified as such in heading 83.02 and under tariff item 8302.50.00. It filed a brief comprising written submissions, relevant extracts pertaining to the relevant chapters of the *Customs Tariff*, their accompanying notes and WCO Explanatory Notes, together with the following material:

- (a) A copy of Best Buy’s notice of appeal and attachments;³¹
- (b) A printout of Best Buy’s website for the Insignia 22”-46” Full Motion TV Wall Mount and the Insignia 47”-90” Full Motion TV Wall Mount;³²
- (c) A copy of the Video Electronics Standards Association (VESA) Standard Guide;³³
- (d) A copy of the VESA Standards Classification;³⁴
- (e) A copy of the “Parts identification” of the Sanus Systems International Assembly Instruction;³⁵
- (f) Copies of jurisprudence proposed to be relied upon.³⁶

[23] The intervener Kanto filed a notice of intervention, comprising written submissions, a copy of an advance CBSA ruling pertaining to the goods imported by Kanto relevant to this appeal³⁷ and representative documents referable to an example of Kanto’s importation of such goods.³⁸ Kanto also filed a Book of Authorities.

[24] In essence, Kanto submits that the goods in issue are “mountings or fittings”³⁹ and should be classified under tariff item 8302.49.00 or, alternatively, under tariff item 8302.50.00.

[25] The Tribunal conducted an oral hearing by way of videoconference on July 6, 2023. All the parties were represented throughout.

Korry Hoglan

[26] Best Buy called Korry Hoglan as a witness. Mr. Hoglan is an industrial designer with over 20 years of work experience. After studying engineering at Spokane College for four years, Mr. Hoglan then studied industrial design at Arizona State University. He obtained a Bachelor of Science in Industrial Design, with honors, in 2002.

[27] Following university, Mr. Hoglan has worked as a freelance industrial designer and for several companies including Rockford Corp., OmniMount, Z-Line Designs and OSP Home Furnishings. Over the course of his career, Mr. Hoglan has designed and developed products that

³¹ Exhibit AP-2022-028-17 at 43–59.

³² *Ibid.* at 31–35, 37–41.

³³ *Ibid.* at 100–171.

³⁴ *Ibid.* at 180.

³⁵ *Ibid.* at 182–183.

³⁶ *Ibid.* at 85–98.

³⁷ Exhibit AP-2020-028-05 at para. 1; Exhibit AP-2020-028-05.A (protected) at 11–13.

³⁸ Exhibit AP-2020-028-05 at para. 4; Exhibit AP-2020-028-05.A (protected) at 14–29.

³⁹ Exhibit AP-2020-028-05 at para. 32.

have been sold in Canada, the United States and internationally by major retailers including Walmart, Target, Costco, Staples/Office Max, Wayfair, Best Buy, Radio Shack and Amazon.

[28] From April 2000 to August 2006, Mr. Hoglan worked as Product Manager and Senior Designer for OmniMount. In that capacity, he was involved with the design and development of over 100 commercial products, predominantly flat television wall mounts and furniture for the home and office. Mr. Hogan is a named inventor in over 30 patents,⁴⁰ most of which pertain to television wall mounts. He testified that the subject matters of these patents were developed and marketed as commercial products.⁴¹

[29] Counsel for Best Buy sought to have Mr. Hoglan qualified as an expert witness with respect to “industrial design, especially for home furnishings such as flat-panel TV mounts.”⁴²

[30] Following examination in chief by counsel for Best Buy concerning Mr. Hoglan’s qualifications as an expert witness, counsel for the CBSA cross-examined Mr. Hoglan with respect to his educational background and work experience.

[31] Counsel for the CBSA submitted that Mr. Hoglan has particular expertise in floor stands for flat panel televisions and furniture at large.⁴³

[32] Counsel for Kanto had no questions for Mr. Hoglan.

[33] The Tribunal considered the applicable legal test factors for the admissibility of expert evidence.⁴⁴ Mr. Hoglan’s qualifications, as set out in his expert report, curriculum vitae and testimony at the oral hearing do not support the conclusion that his expertise should be as narrowly construed as suggested by counsel for the CBSA. Mr. Hoglan is named as inventor on at least one⁴⁵ design patent (U.S. D538,415S) whose subject matter is directed to a wall mount for a flat panel television. The drawings of U.S. D538,415S also bear some general resemblance to the drawings and photos shown in the product instructions for the goods at issue.⁴⁶

[34] However, the Tribunal was not persuaded that Mr. Hoglan’s expertise could be framed as broadly to extend to home furnishings in general, as suggested by Best Buy, bearing in mind the issue of relevance and the issues to be decided in this appeal. Accordingly, the Tribunal admitted Mr. Hoglan as an expert with respect to “the industrial design of audio-visual equipment and associated mountings and supports, particularly mounts for flat panel televisions”.⁴⁷ His written report was deemed to be incorporated as testimony before the Tribunal.

[35] In his testimony, Mr. Hoglan provided a brief historical overview of the development of mounts for flat panel televisions, beginning with the introduction of this technology in the late 1990s. At that time, flat panel televisions used plasma displays. These televisions were heavy, weighing

⁴⁰ Both U.S. design and utility patents.

⁴¹ *Transcript of Public Hearing* at 39–40.

⁴² *Transcript of Public Hearing* at 30.

⁴³ *Transcript of Public Hearing* at 37.

⁴⁴ *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23.

⁴⁵ *Transcript of Public Hearing* at 40–41.

⁴⁶ Exhibit AP-2022-028-024 at 17–19; Exhibit AP-2022-028-03 at 40–41, 58–60.

⁴⁷ *Transcript of Public Hearing* at 42.

about 100 pounds for a model with a 42-inch screen. The product was also very expensive, selling for around US\$17,000.

[36] As plasma televisions became more popular, new LCD technology for screen display overtook the use of plasma-type displays. LCD technology had several advantages: it was much less expensive, easier to produce and could be scaled to much larger sizes.

[37] Flat panel mounts are designed to accept a flat panel television and mount the television to a wall or a post.⁴⁸ Both plasma and LCD televisions were designed to be mounted to a wall. In 1998, wall mounts were designed specifically for each brand and model of flat panel televisions. Wall mounts were not interchangeable but customized for each model of flat panel televisions. Eventually, this situation led to the development by VESA of a uniform industry standard for the safe wall mounting of televisions.

[38] The VESA standards prescribed size specifications for hole patterns used on the back of a flat panel television to accommodate a mount. The specifications were premised on the weight and size of the television, as well as the size of screws used to attach the mount to the television. Prior to the development of the VESA standards, every model of flat panel televisions had a different hole pattern on the back panel of the television that functioned to accept a mount.

[39] The use of LCD technology led to an increase in consumer demand for flat panel televisions, which were lighter, more scalable and less expensive. Lower prices for televisions meant that manufacturers of wall mounts likewise had to reduce their prices. This led to the development of “universal mounts” that were designed specifically for flat panel televisions and adapted for use with virtually all brands, models and weights of flat panel televisions.

[40] These universal mounts featured adjustable vertical rails and a back plate for mounting to a wall while allowing for both vertical and horizontal lateral movement and adjustment in order to align the mount with the characteristics, size and weight range of most models of flat panel televisions.

[41] Mr. Hoglan further testified that there are three types of universal mounts: fixed, tilt and cantilever. He explained their features and characteristics, which are summarized below.

[42] A fixed mount is the simplest mount design. It secures the flat panel television to a wall in a fixed position. Vertical rails are mounted to the rear surface of the television and a horizontal mounting plate or rail is mounted to the wall. The television is then hung on the wall, like a picture frame. A locking mechanism serves to hold the television in place in case it is accidentally bumped while hanging on the wall. A fixed mount may be used where the television is intended to be viewed at eye level.

[43] A tilt mount is generally similar to a fixed mount, except that the screen of the television can be tilted by the user within a range of movement such as 15–35 degrees downwardly and 5–15 degrees upwardly.⁴⁹ As with a fixed mount, vertical rails are mounted to the rear surface of the television and a mounting plate is mounted to the wall. The television hangs on the mounting plate, but the vertical rails also comprise a tilt mechanism to hold the television in a tilted position. As with

⁴⁸ *Transcript of Public Hearing* at 43

⁴⁹ Exhibit AP-2022-028-024 at 7; *Transcript of Public Hearing* at 50.

a fixed mount, a locking mechanism protects against inadvertent movement that could destabilize the television. A tilt mount may be used where the television is intended to be viewed from a higher angle, such as where the television is mounted over a fireplace or a bedroom dresser.

[44] A cantilever mount has a more complex design, including multiple pivot points. It has two metal plates. One plate is mounted to the wall and the other is mounted to vertical rails which are in turn secured to the rear surface of the flat panel television. The tilting mechanism may form part of either the rails or on the metal plate that is secured to the television. A series of arms or metal links are operatively connected between the two metal plates. The cantilever mount tucks flat against the wall but also enables the television to be pulled out and extended horizontally from the wall surface and tilted, swivelled and panned. This may allow the television to be viewed from a range of angles, or even in a different room, as the screen can be swivelled at angles up to 180 degrees.

[45] Mr. Hoglan stated that both models of the Insignia Wall Mounts are cantilever mounts.⁵⁰ The added functionality of cantilever mounts commands a price premium, as compared to fixed and tilt models of the mount.⁵¹

[46] Several other factors are important to the design of wall mounts, as further explained by Mr. Hoglan's testimony. Optimal viewing angle is important to both ergonomics and picture quality and is thus an important factor in the design of wall mounts for flat panel televisions. Safety is also an important factor. Television manufacturers will design the chassis of the television to include four metal threaded insert attachment points in a specific pattern conforming to VESA's integrated safety requirements. The mounting holes must allow for load-bearing to support the weight of the television while not damaging or impeding the internal components of the television.⁵²

[47] Wall mounts also have a mechanism serving to lock the television-mounted rails to the mounting plate on the wall or to the extension arms where the wall mount has a cantilever design. Wall mounts will also be designed and tested to comply with the specifications of the Underwriters Laboratories (UL), particularly with respect to weight loading; the mount must be able to support the weight of the television without risk of deformation or breakage.

[48] The Insignia Wall Mounts are UL-certified and VESA-compliant.⁵³

[49] In Mr. Hoglan's opinion, a flat panel television must be used or supported by either a wall mount or another support system or stand. It is unsafe for a flat panel television to rest on the floor, as it may be knocked over, become damaged or cause injury.⁵⁴

[50] Mr. Hoglan further testified that flat panel television wall mounts may also be designed to manage cables associated with the television and other equipment so that the cords will not become pinched or tangled.⁵⁵

⁵⁰ *Transcript of Public Hearing* at 48–52; Exhibit AP-2022-028-24 at 7–9.

⁵¹ *Transcript of Public Hearing* at 71.

⁵² *Transcript of Public Hearing* at 53–54.

⁵³ Exhibit AP-2022-028-24 at 10, *Transcript of Public Hearing* at 58.

⁵⁴ *Transcript of Public Hearing* at 54–56.

⁵⁵ *Transcript of Public Hearing* at 56–58.

[51] Mr. Hoglan expressed the categorical view that flat panel television wall mounts, such as the Insignia Wall Mounts, have “no practical or alternate functions other than to receive and display flat panel TVs”.⁵⁶

[52] During his oral testimony, Mr. Hoglan described the components, assembly, structure and functioning of the Insignia Wall Mounts, with reference to the product instructions and installation guide.⁵⁷ The wall mount is a large piece of metal which acts as a template to position the mounting of the television and the receiving of the bolts that are needed to securely support the television.⁵⁸

[53] With respect to the components identified in the product installation guide as “brackets”, Mr. Hoglan stated that these components are also known as “rails”. For practical purposes, these terms are used interchangeably, although one expression may be selected over the other, depending on the intended audience. For example, the term “brackets” would be used in dealing with an engineer whereas “rails” could be used in a document intended for a consumer audience.⁵⁹

[54] In specific reference to the product installation guide for one of the Insignia Wall Mounts (Full Motion Mount for TVs 47”-90” NS-HTVMM1703-C), Mr. Hoglan explained that the vertical rails are attached to the television, and the wall mount is attached to the wall. The vertical rails are hooked onto the horizontal rails and a latching mechanism locks the television onto the cantilever mount for safety purposes.⁶⁰

[55] Neither the wall plate nor brackets alone are capable of supporting the weight of a television or enable it to be securely mounted to a wall. The television cannot be affixed directly to the wall mount.⁶¹ Both components must be present and work together as a system.⁶²

[56] Mr. Hoglan was cross-examined by counsel for the CBSA.

[57] During cross-examination, Mr. Hoglan was questioned about the features and installation guides for other television mount designs, namely the Venetian X 3-in-1 and Makena Flat Panel 3-in-1 mount models, both products of Z-Line Designs. Those models are not at issue in this appeal, but documents pertaining to these products formed part of the evidence submitted to the Tribunal, ostensibly for the purpose of comparison with the structure and features of the Insignia Wall Mounts.

[58] The Z-Line Venetian X 3-in-1 model provides a mounting system that can be assembled and used in three different optional configurations. The first option allows the television to be supported on a flat stand without wall mounting. A second option provides a stand with the television mounted on a vertical spine attached to the stand and underlying shelving. The third option provides for the television to be wall-mounted with a stand and shelving below the mounted television. Mr. Hoglan conceded that a consumer wanting a television wall mount would not purchase this product and that

⁵⁶ Exhibit AP-2022-028-24 at 11

⁵⁷ *Transcript of Public Hearing* at 58–66.

⁵⁸ *Transcript of Public Hearing* at 60.

⁵⁹ As such, the “TV brackets” described in the installation guide are the same as the “vertical rails” from Mr. Hoglan’s expert report. See *Transcript of Public Hearing* at 95.

⁶⁰ *Transcript of Public Hearing* at 63.

⁶¹ *Transcript of Public Hearing* at 94.

⁶² *Transcript of Public Hearing* at 61.

the shelving portion of the product would be regarded as a separate item of furniture.⁶³ He also conceded that the Z-Line products have a larger number of component parts than the Insignia Wall Mounts but disagreed that this rendered it a simpler product to assemble, given the complexities associated with the cantilever mechanism. They are different products having a similar function.⁶⁴

[59] Mr. Hoglan also testified that a “bracket” is usually a “single piece” that may be used in conjunction with other items to “make a product” such as a shelf. A bracket, on its own, is not a system and cannot function, for example, as a shelf that would hold an object that might be placed upon it.⁶⁵

[60] Mr. Hoglan further explained that there is no difference between the terminology “brackets” and “rails”; the words are interchangeably used to describe the same article with the same function. A vertical rail can support a vertical load.⁶⁶ There is no other terminology besides these two terms.⁶⁷ The term selected for use depends upon the intended audience. The term “bracket” would be used in dealing with an engineer, whereas the term “rail” would be used in materials intended for a consumer audience.⁶⁸

[61] Best Buy also directed the Tribunal to previous classifications for other goods described as “wall mounts” that were classified by the CBSA under tariff item 8302.49.00, ostensibly on the basis of research conducted by the CBSA.⁶⁹

[62] The CBSA and Kanto called no witnesses.

[63] Following the testimony given by Mr. Hoglan at the hearing, counsel for Best Buy and the CBSA both submitted oral arguments to the Tribunal. Counsel for Kanto did not provide any oral arguments.⁷⁰

POSITIONS OF THE PARTIES ON APPEAL

Best Buy

[64] Best Buy contends that the goods in issue are classified in heading 85.29 as “parts suitable for use solely or principally with the apparatus of heading 85.24 to 85.28”, because a television, such as a flat-panel television, is an apparatus of heading 85.28. Best Buy further submits that the Explanatory Notes to heading 85.29 set out a non-exhaustive list of the kinds of parts that are to be considered under that heading, including non-electrical components such as “cases and cabinet specialized to receive the apparatus of heading 85.25 to 85.28” and well as “frames (chassis)”.⁷¹

⁶³ *Transcript of Public Hearing* at 74–77; Exhibit AP-2022-028-03 at 87.

⁶⁴ *Transcript of Public Hearing* at 86–87.

⁶⁵ *Transcript of Public Hearing* at 104–105.

⁶⁶ *Transcript of Public Hearing* at 91.

⁶⁷ *Transcript of Public Hearing* at 105–108.

⁶⁸ *Transcript of Public Hearing* at 105–107.

⁶⁹ *Transcript of Public Hearing* at 113–118.

⁷⁰ *Transcript of Public Hearing* at 165.

⁷¹ Exhibit AP-2022-028-03 at paras. 19–33.

[65] Alternatively, if the goods in issue cannot be classified as parts suitable for use solely or principally with flat panel televisions in heading 85.29, Best Buy argues that they can only be classified in heading 83.02 and, ultimately, under tariff item 8302.49.00.

[66] Best Buy further argues that the goods cannot be classified under tariff item 8302.50.00 because they are not hat-racks, hat-pegs, brackets or similar fixtures. Since tariff item 8302.49.00 is a residual classification for mountings, fittings and similar articles, the goods in issue should be classified as such.⁷²

CBSA

[67] The CBSA argues that the goods at issue are “brackets and similar fixtures” of heading 83.02, because they are hinged metal supports or brackets that are fastened to a wall as a permanent appendage and they support the vertical load of a television. The goods are best described as “brackets” of subheading 8302.50 by virtue of Rule 1 of the General Rules; they are not “other mountings”.⁷³

[68] Notwithstanding that the goods are comprised of a multiplicity of components, the CBSA asserts that the resulting combination functions as a bracket, thus placing the goods within the ambit of heading 83.02.

[69] The CBSA further argues that any resemblance in function with television mounts that have been the subject of previous cases before the Tribunal are immaterial. Each case falls to be decided on its facts, having regard to the specific features of the goods at issue. In this case, the CBSA says that the Insignia Wall Mounts do not fall in heading 85.29 as “parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28” because they are not parts of televisions since they are not essential to their functioning.⁷⁴ At best, the goods could be considered accessories, but that does not place them within heading 85.29 for the purposes of tariff classification.

Kanto

[70] Kanto submits that the goods in issue should be classified in heading 83.02, as they are “parts of general use” and therefore cannot be “parts” of heading 85.29.⁷⁵ However, Kanto is of the view that the goods in issue are “mountings” or “fittings” of subheading 8302.49, rather than “brackets” of subheading 8302.50, as argued by the CBSA.⁷⁶

ANALYSIS

[71] Best Buy has filed this appeal in accordance with subsection 67(1) of the *Customs Act*, which provides that a “person aggrieved” by a decision of the CBSA may appeal that decision to the

⁷² *Ibid.* at paras. 34–49.

⁷³ Exhibit AP-2022-028-17 at para. 40.

⁷⁴ *Ibid.* at paras. 4 and 54.

⁷⁵ Exhibit AP-2022-028-05 at para. 26.

⁷⁶ *Ibid.* at para. 32.

Tribunal by filing a notice of appeal within the prescribed timeframe. There is no dispute that these requirements have been met and Best Buy is a “person aggrieved”.⁷⁷

[72] On appeal to the Tribunal, there is a legal burden on the appellant to show that the CBSA has adopted an incorrect tariff classification.⁷⁸

[73] Appeals to the Tribunal are determined *de novo*. The Tribunal is not limited to reviewing the record that was before the CBSA. The parties have the option of submitting evidence for the purposes of the appeal in addition to the materials which were considered by the CBSA at first instance. The Tribunal owes no deference to the CBSA’s decision and must reach its own decision concerning the correct tariff classification of the goods. In doing so, the Tribunal is free to assess the record before it, up to and including reweighing evidence placed before the CBSA and giving new consideration to any new evidence that may be presented on appeal.⁷⁹

Statutory framework

[74] Sections 10 and 11 of the *Customs Tariff* prescribe the analytical approach that the Tribunal must adopt when determining how goods are to be classified:

10 (1) Subject to subsection (2), the classification of imported goods under a tariff item shall, unless otherwise provided, be determined in accordance with the General Rules for the Interpretation of the Harmonized System and the Canadian Rules set out in the schedule.

(2) Goods shall not be classified under a tariff item that contains the phrase “within access commitment” unless the goods are imported under the authority of a permit issued under section 8.3 of the *Export and Import Permits Act* and in compliance with the conditions of the permit.

11 In interpreting the headings and subheadings, 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, published by the Customs Co-operation Council (also known as the World Customs Organization), as amended from time to time.

[75] The General Rules referred to in subsection 10(1) of the *Customs Tariff* comprise six rules. Those rules are intended to be applied in a sequential, hierarchical analysis of the goods, as described by the Supreme Court of Canada in *Canada (Attorney General) v. Igloo Vikski Inc.*⁸⁰

[76] The classification exercise begins with Rule 1 of the General Rules. It provides that classification shall be determined according to the terms of the chapter headings and any relevant section or chapter notes, provided that such headings or notes do not otherwise require.

⁷⁷ *Danson Décor Inc. v. President of the Canada Border Services Agency* (25 September 2019), AP-2018-043 (CIIT) [*Danson Décor*] at paras. 75–79.

⁷⁸ *Customs Act*, section 152.

⁷⁹ *Danson Décor* at paras. 82–93.

⁸⁰ *Canada (Attorney General) v. Igloo Vikski Inc.*, 2016 SCC 38 [*Igloo Vikski Inc.*] at paras. 19–29.

[77] Where Rule 1 does not conclusively determine the classification of the goods, the other General Rules become relevant to the classification process and are considered.⁸¹ Once the Tribunal has used this approach to determine the heading in which the goods in issue should be classified, the next step is to use a similar approach to determine the proper subheading.⁸² The final step is to determine the proper tariff item.⁸³

[78] Accordingly, the first step in the analysis is to determine whether the goods can be classified at the heading level according to Rule 1 of the General Rules, while taking into account any relative section or chapter notes in the *Customs Tariff*. In doing so, and in accordance with section 11 of the *Customs Act*, the Tribunal will also consider any relevant portions of the Compendium of Classification Opinions to the Harmonized Commodity Description and Coding System⁸⁴ and the Explanatory Notes to the Harmonized Commodity Description and Coding System (Explanatory Notes),⁸⁵ published by the WCO. The Tribunal is not bound to apply the Explanatory Notes but should only depart from their guidance when there is sound reason to do so. The Tribunal has no authority to ignore or rewrite the Explanatory Notes by redefining their terms.⁸⁶

Relevant classification provisions

[79] The parties have narrowed the classification dispute at the section, chapter and heading levels of the *Customs Tariff*. The goods fall to be classified either within Section XV, Chapter 83, in heading 83.02 or, in the alternative, within Section XVI, Chapter 85, in heading 85.29.

[80] The relevant provisions are as follows:

Section XV:
Base metals and articles of base
metal

Chapter 83
MISCELLANEOUS ARTICLES
OF BASE METAL

Section XV:
Métaux communs et ouvrages en ces
métaux

Chapitre 83
OUVRAGES DIVERS EN
MÉTAUX COMMUNS

⁸¹ *Igloo Viski Inc.* at para. 21.

⁸² Rules 1 through 5 of the General Rules apply to classification at the heading level. Rule 6 of the General Rules provides that “... the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules [i.e., Rules 1 through 5] ...” and that “... the relative Section and Chapter Notes also apply, unless the context otherwise requires.”

⁸³ Rule 1 of the Canadian Rules provides that “... the classification of goods in the tariff items of a subheading or of a heading shall be determined according to the terms of those tariff items and any related Supplementary Notes and, *mutatis mutandis*, to the [General Rules] ...” and that “... the relative Section, Chapter and Subheading Notes also apply, unless the context otherwise requires.” Classification opinions and explanatory notes do not apply to classification at the tariff item level.

⁸⁴ World Customs Organization, 7th ed., Brussels, 2021.

⁸⁵ World Customs Organization, 7th ed., Brussels, 2021.

⁸⁶ *Canada (Attorney General) v. Suzuki Canada Inc.*, 2004 FCA 131 at paras. 13, 17. See, more recently, *Canada (Attorney General) v. Mattel Canada Inc.*, 2021 FCA 162 at paras. 22–26; *Canada (Attorney General) v. Best Buy Canada Ltd.*, 2021 FCA 161 at paras. 30–33.

83.02 Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal.

...

-Other mountings, fittings and similar articles:

8302.49.00 - -Other

8302.50.00 -Hat-racks, hat-pegs, brackets and similar fixtures

83.02 Garnitures, ferrures et articles similaires en métaux communs pour meubles, portes, escaliers, fenêtres, persiennes, carrosseries, articles de sellerie, malles, coffres, coffrets ou autres ouvrages de l'espèce; patères, porte-chapeaux, supports et articles similaires, en métaux communs; roulettes avec monture en métaux communs; ferme-portes automatiques en métaux communs.

[...]

-Autres garnitures, ferrures et articles similaires :

8302.49.00 - -Autres

8302.50.00 -Patères, porte-chapeaux, supports et articles similaires

Section XVI:

Machinery and mechanical appliances; Electrical equipment; parts thereof; Sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles

Chapter 85

ELECTRICAL MACHINERY AND EQUIPMENT AND PARTS THEREOF; SOUND RECORDERS AND REPRODUCERS, TELEVISION IMAGE AND SOUND RECORDERS AND REPRODUCERS, AND PARTS AND ACCESSORIES OF SUCH ARTICLES

...

85.29 Parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28.

8529.90 -Other

Section XVI :

Machine et appareils, matériel électrique et leurs parties; appareils d'enregistrement ou de reproduction du son, appareils d'enregistrement ou de reproduction des images et du son en télévision, et parties et accessoires de ces appareils

Chapitre 85

MACHINES, APPAREILS ET MATÉRIELS ÉLECTRIQUES ET LEURS PARTIES; APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DU SON, APPAREILS D'ENREGISTREMENT OU DE REPRODUCTION DES IMAGES ET DU SON EN TÉLÉVISION, ET PARTIES ET ACCESSOIRES DE CES APPAREILS

[...]

85.29 Parties reconnaissables comme étant exclusivement ou principalement destinées aux appareils des n^{os} 85.25 à 85.28

8529.90 -Autres

8529.90.90 - - -Other

8529.90.90 - - -Autres

[81] The legal notes to sections XV and XVI make it clear that classification within headings 83.02 and 85.29 are mutually exclusive.

[82] Legal note 1(f) to Section XV provides as follows:

1. This Section does not cover:

...

(f) Articles of Section XVI (machinery, mechanical appliances and electrical goods);

...

[83] Legal note 1(k) to Section XVI provides as follows:

1. This Section does not cover:

...

(k) Articles of Chapter 82 or 83;

...

Order of analysis

[84] Best Buy contends that the goods in issue are classifiable in heading 85.29, whereas the CBSA submits that they are classifiable in heading 83.02. The dispute is therefore at the heading level. If the Tribunal finds that the goods are classifiable in heading 83.02, Best Buy's alternative position results in the dispute being at the subheading level.

[85] As mentioned above, the two headings at issue are mutually exclusive: Note 1(f) to Section XV excludes articles of Section XVI (which includes Chapter 85), and note 1(k) to Section XVI excludes articles of Chapter 82 or Chapter 83.

[86] During the hearing, the parties made submissions concerning the order in which the classification of the analysis should be approached. Best Buy submitted that, because there is a mutual exclusion, the order does not matter. Both headings must be considered and analyzed.⁸⁷ Best Buy referred to the decision of the Federal Court of Appeal in *B. Erikson Manufacturing Ltd. v. Canada (Border Services Agency)* as endorsing this principle, at least implicitly.⁸⁸

⁸⁷ Best Buy referred to *Rutherford Controls International Corp. v. President of the Canada Border Services Agency* (26 January 2011), AP-2009-076 (CITT) at para. 44, in which the Tribunal wrote, "... By virtue of these notes, it is clear that goods of heading No. 83.01 are excluded from classification in heading No. 85.05 and vice versa. Therefore, the goods in issue are not prima facie classifiable in both headings. In these circumstances, unlike in situations where there is only one exclusionary note, the Tribunal need not begin its consideration of the competing headings in any particular order." *Transcript of Public Hearing* at 123.

⁸⁸ *B. Erikson Manufacturing Ltd. v. Canada (Border Services Agency)*, 2023 FCA 37 [*B. Erikson Manufacturing Ltd.*].

[87] The CBSA submitted that the analysis should start with heading 83.02, as there are two levels of exclusionary notes. In its view, this conclusion is the result of the following three-step process:⁸⁹

Step 1: Explanatory Notes to heading 85.29 provide as follows: “**Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI)**, this heading covers parts of the apparatus of the five preceding headings ...” (emphasis added).⁹⁰

Step 2: Note 2 of the General Explanatory Note to Section XVI provides as follows: “**Subject to note 1 of this Section**, note 1 to Chapter 84 and note 1 to Chapter 85, parts of machine ... are to be classified according to the following rules ...” (emphasis added).⁹¹

Step 3: Note 1 of Section XVI provides as follows: “This Section does not cover ... (k) Articles of Chapter 82 or 83 ...”.⁹²

[88] In the CBSA’s view, the Federal Court of Appeal followed this approach, even implicitly, in *B. Erickson Manufacturing Ltd.* It interprets *obiter* statements by the Court as suggesting that chapters 82 and 83 could take priority over Section XVI.⁹³

[89] In tariff classification cases, the Tribunal has consistently held that, when considering mutually exclusive headings, the Tribunal need not begin its consideration of the competing headings in any particular order.⁹⁴ The Tribunal’s jurisprudence may be summarized as follows:⁹⁵

(a) Goods cannot be *prima facie* classifiable in two headings that are mutually exclusive by virtue of relevant legal notes.⁹⁶ Under Rule 1 to the General Rules, the Tribunal must consider both headings and determine which one provides the best fit for the goods.

(b) Unlike situations where there is only one exclusionary note, the Tribunal need not begin its consideration of the competing headings in any particular order.⁹⁷

⁸⁹ *Transcript of Public Hearing* at 187–190.

⁹⁰ Exhibit AP-2022-028-17 at 72.

⁹¹ *Ibid.* at 65.

⁹² *Ibid.* at 64.

⁹³ *B. Erickson Manufacturing Ltd.* at paras. 22–26.

⁹⁴ *Costco Wholesale Canada Inc. v. President of the Canada Border Services Agency* (18 July 2018), AP-2017-045 (CITT) [*Costco Wholesale*] at para. 35. See also: *Aexos Inc. v. President of the Canada Border Services Agency* (6 December 2021), AP-2020-011 (CITT) [*Aexos*] at para. 34; *Canac Marquis Grenier Ltée v. President of the Canada Border Services Agency* (11 September 2017), AP-2016-026 (CITT) [*Canac Marquis Grenier*] at para. 31.

⁹⁵ *Aexos* at para. 34; *Costco Wholesale* at para. 35.

⁹⁶ *Aexos* at para. 34; *Canac Marquis Grenier* at para. 30, at footnote 13; *Sher-Wood Hockey Inc. v. President of the Canada Border Services Agency* (10 February 2011), AP-2009-045 (CITT) at para. 37.

⁹⁷ See, for example, *Aexos* at para. 34; *Canac Marquis Grenier* at para. 31; *Entreprise Robert Thibert Inc. v. President of the Canada Border Services Agency* (20 October 2021), AP-2020-012 (CITT) at para. 43; *Atlas Trailer Coach Products Ltd. v. President of the Canada Border Services Agency* (25 October 2018), AP-2017-061 (CITT) at para. 49.

(c) In considering mutually exclusive headings, the Tribunal typically prefers a more specific heading to a general one.⁹⁸

[90] Since Best Buy does not appear to have any objection to the order of analysis and the CBSA contends that Chapter 83 should be given priority, the Tribunal will, in the exercise of its discretion, begin its analysis with a consideration of heading 83.02.

Heading 83.02

[91] The goods listed in heading 83.02 are grouped into four categories within the heading. This is indicated by the use of semicolons to identify and separate each grouping of goods. For ease of reference, these groups are reproduced and identified as follows:

- (a) base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like
- (b) base metal hat-racks, hat-pegs, brackets and similar fixtures
- (c) castors with mountings of base metal;
- (d) automatic door closers of base metal

[92] There is no dispute that the goods in groups (c) and (d) are irrelevant to the Insignia Wall Mounts.

[93] As an alternative argument, Best Buy contends that, to the extent heading 83.02 may be applicable, the goods are more aptly described as “mountings” in group (a) above. It relies upon the Oxford English Dictionary, which defines *mounting* to mean a backing, setting, or support for something and *mount* to mean to place or fix (an object) in its operating position.

[94] The CBSA’s argument focuses on the word “brackets” within group (b). It concedes that the Insignia Wall Mounts are not hat-racks or hat-pegs. However, the CBSA relies heavily on the dictionary meaning of the word “bracket” and the functions performed by brackets, as reflected by the following dictionary definitions:⁹⁹

“Bracket” Cambridge dictionary	A piece of metal, wood or plastic, usually L-shaped, that is fastened to a wall and used to support something such as a shelf.
“Bracket” Merriam-Webster dictionary	An overhanging member that projects from a structure (such as a wall) and is usually designed to support a vertical load or to strengthen an angle.
“Bracket” Oxford English Dictionary	A right-angled support attached to and projecting from a wall for holding a shelf, lamp, or other object.

⁹⁸ See, for example, *Produits Laitiers Advidia Inc. v. Commissioner of the Canada Customs and Revenue Agency* (8 March 2005), AP-2003-040 (CITT) at para. 40, citing General Rule 3(a); and *VGI Village Green Imports v. President of the Canada Border Services Agency* (13 January 2012), AP-2010-046 (CITT) at para. 94 (preferring the heading, the terms of which “squarely describe the goods in issue”).

⁹⁹ Exhibit AP-2022-028-17 at 51.

[95] Kanto submits that articles of heading 83.02 are considered “parts of general use” as provided by note 2(c) to Section XV. As such, they are excluded from Section XVI (and heading 85.29) by virtue of note 1(g) to Section XVI. Therefore, the goods must be classified in heading 83.02.¹⁰⁰

[96] In determining tariff classification, it is well established that the Tribunal must consider the goods as they are at the time of importation.¹⁰¹ In the case of the Insignia Wall Mounts, the evidence shows that the goods are imported as unassembled components for assembly by the purchaser or end user.

[97] The product instructions¹⁰² depict and identify a wall mount, two television brackets,¹⁰³ and a wall mounting plate. Also supplied are various items of hardware and fittings (i.e., screws, washers and spacers) that are selected and used to assemble the components into a functional apparatus. As such, the goods comprise distinct components described as **both** “mounts” and “brackets”. The Tribunal finds no grounds to conclude that these terms are misdescriptive of those components of the Insignia Wall Mounts. The goods also comprise various small hardware items that are used to assemble the mounts and brackets.

[98] The details of the method of assembly and the specific hardware components that are used are dependent on the configuration of the television model. Once assembled, the goods operate to secure a flat screen television to a wall and enable the screen to be tilted or moved so that the television screen can be viewed at different angles. The assembled Insignia Wall Mounts also serve to retain and organize cables that are plugged into the television to provide power and programming input for the operation of the television.¹⁰⁴

[99] Mr. Hoglan testified that flat panel televisions cannot be safely operated while resting on the floor whether lying flat or propped against the wall.¹⁰⁵ The Tribunal finds Mr. Hoglan’s evidence on this point to be persuasive.

[100] Although there may be different models of television mounts, the evidence shows that a flat panel television requires both vertical and horizontal support to resist lateral or longitudinal forces that would otherwise cause the television to tip over. The Insignia Wall Mounts are products that are designed for the purpose of providing the requisite support for a flat panel television.

[101] As shown by the product literature, an important feature of the Insignia Wall Mounts is that the goods not only provide secure support for a flat panel television but also allow for the screen to be tilted, adjusted or swivelled so that the screen can be viewed from different angles without compromising the stability of load-bearing support for the weight of the television. These product

¹⁰⁰ Note 1(g) to Section XVI provides that “[t]his Section does not cover ... [p]arts of general use, as defined in note 2 to Section XV, of base metal (Section XV) ...”. Note 2(c) to Section XV provides that “[t]hroughout the Nomenclature, the expression ‘parts of general use’ means ... [a]rticles of heading 83.01, 83.02 ...” Exhibit AP-2022-028-05 at para. 26.

¹⁰¹ *BSH Home Appliance Ltd. v. President of the Canada Border Services Agency* (27 October 2014), AP-2013-057 (CITT) at para. 49, aff’d by 2016 FCA 135.

¹⁰² Exhibit AP-2022-028-03 at 42, 60.

¹⁰³ Referred to as “rails” by Mr. Hoglan.

¹⁰⁴ Mr. Hoglan described this as a “cable management system”. See *Transcript of Public Hearing* at 57; Exhibit AP-2022-028-24 at 11.

¹⁰⁵ *Transcript of Public Hearing* at 56; Exhibit AP-2022-028-24 at 10.

features are achieved not by a mounting or bracket alone, but rather by using mountings and brackets that work in combination to achieve this result.

[102] The Tribunal finds that the **goods in issue, at the time of importation**, comprise four structural components: a wall mount, brackets (also referred to as “rails”), a mounting plate and hardware fasteners.¹⁰⁶ Upon assembly, those components function as an operative combination that is greater than the sum of its constituent parts. Each component is essential to the assembled combination.

[103] The wall mount and mounting plate attach to the wall which provides load-bearing structural support for the weight of the mounted television. The brackets are secured to the television and bridge the television and the wall mount. The hardware fasteners provide the requisite structural connections to ensure that the weight of the television is securely and evenly supported. When operatively assembled, the Insignia Wall Mounts balance the physical forces acting on the television, thus providing a stable system that enables safe operation of the television. Each of these individual components is essential for the goods to perform their intended function for which they are marketed and sold.

[104] In order for goods to be classifiable in heading 83.02, they must be found to fall within the scope of one of the heading subgroups that are demarcated by semicolons. The first of these subgroups pertains to “mountings”, and the second subgroup applies to “brackets”.

[105] These subgroups also pertain to other articles. Besides “mountings”, the first subgroup also covers “fittings and similar articles”, and the second subgroup encompasses items that are “similar fixtures” to base-metal hat-racks, hat-pegs and brackets.

[106] The structure and wording used in heading 83.02 thus contemplate that “mountings” and “brackets” are inherently different articles, at least for the purposes of tariff classification. Although both of these articles are of base metal composition, “mountings” and “brackets” are grouped into separate categories within heading 83.02 and are listed with other items that the legislator considered to be like items. If mountings and brackets had been considered to be directly analogous items having similar or overlapping nature and function for the purposes of heading 83.02, the use of semicolons to group and demarcate articles within the heading would be unnecessary. Indeed, the parties framed their respective arguments on this premise, although they disagreed with respect to whether the Insignia Wall Mounts were best described as “mountings” or “brackets” and the consequential implications for classification at the tariff item level.

[107] Accordingly, in the context of the goods at issue in this particular appeal, the Tribunal concludes that the wording and organization of heading 83.02 require that the goods be **either** a mounting of base metal **or** a bracket of base metal in order to be classified in heading 83.02.

[108] The Tribunal has previously held that descriptive wording used in the marketing of goods is relevant to the classification exercise. Both models of the Insignia Wall Mounts at issue are described as “mounts” and as comprising at least one component described as a “mount”. This raises an issue as to whether there is any relevant difference between the meaning of the words “mount” and “mounting”.

¹⁰⁶ *Transcript of Public Hearing* at 59, 86.

[109] The evidence, particularly the dictionary definitions, indicates that a “mounting” is an article that supports a load in a stationary, fixed position. The dictionary definitions provided to the Tribunal define “mount” as a noun and “mounting” as a verb.¹⁰⁷

[110] Having considered the evidence concerning the meaning of the word “mounting”, the Tribunal concludes that, in these circumstances, there is no meaningful distinction to be made between the words “mount” and “mounting”. In the context of heading 83.02, the word “mountings” is functionally describing one or more articles that may be characterized as being a derivative or variation of the noun “mount”.¹⁰⁸

[111] However, in order for a “mount” to be a “mounting” for the purposes of heading 83.02, the goods must also meet the condition of being “suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like.” Notably, this list does not include “walls”, which are the structural surface to which the Insignia Wall Mounts are secured. As such, the Tribunal must assess whether the residual wording “or the like” extends to walls.

[112] The phrase “or the like” is referable to the following listed items: “furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets ...” Having regard to the *ejusdem generis* rule, the Tribunal observes that these listed items do not have any obvious common feature, in terms of their structure and/or function. There is no useful evidence that could assist the Tribunal in reaching a definitive conclusion on this point.

[113] At least some of the listed items (i.e., doors, windows, staircases) may be stationary, fixed structures serving to provide some load-bearing support from adjacent lateral or longitudinal forces. Other listed items may be used as weight-bearing containers (i.e., trunks, chests, caskets) which may be moved or transported.

[114] The “wall mount” and “mounting plate” components of the Insignia Wall Mounts are secured, in combination, to a wall which serves primarily as a load-bearing structure, for the purpose of these particular goods and their function. Although walls are structural components of buildings (as can be said of doors, windows and staircases), doors and windows are also present in other contexts, such as vehicles, which do not have “walls”.

[115] The listed items can also be viewed as articles to which base metal mountings may be secured or attached for aesthetic or decorative purposes. The Tribunal’s observations in this regard are supported by the Explanatory Notes to heading 83.02.¹⁰⁹ The relevant portion of the Explanatory Notes is reproduced below:

*This heading covers general purpose classes of base metal accessory fittings and mountings, such as are used largely on furniture, doors, windows, coachwork, etc. Goods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles). The heading **does not**, however, **extend** to goods forming an essential part of the structure of the article, such as window frames or swivel devices for revolving chairs.*

This heading covers:

¹⁰⁷ Exhibit AP-2022-028-03 at 484.

¹⁰⁸ The same conclusion applies with respect to the use of the plural.

¹⁰⁹ There are no chapter notes for Chapter 83.

...

- (C) **Mountings, fittings and similar articles suitable for motor vehicles...**
- (D) **Mountings, fittings and similar articles suitable for buildings...**
- (E) **Mountings, fittings and similar articles suitable for furniture**

This group includes:

- (1) Protective studs (with one or more points) for legs of furniture, etc.; metal decorative fittings; shelf adjusters for book-cases, etc.; fitting cupboards, bedsteads, etc.; keyhole plates.
- (2) Corner braces, reinforcing plates, angles, etc.
- (3) Catches (including ball spring catches), bolts, fasteners, latches, etc. (**other than** key-operated bolts of heading 83.01).
- (4) Hasps and staples for chests, etc.
- (5) Handles and knobs, including those for locks or latches

[Bold in original, italics added for emphasis]

[116] The further descriptions provided by the Explanatory Notes above illustrate that the goods covered by heading 83.02 (and its first subgroup in particular) are items that tend to be relatively small and used for incidental or decorative purposes, although they may attach to a range of surfaces or structures. However, they are inherently dissimilar in structure and function to a “wall”, which is defined as “a vertical structure, often made of stone or brick, that divides or surrounds something”.¹¹⁰

[117] Accordingly, the Tribunal finds that “walls” are outside of the residual wording “or the like” as used in heading 83.02. Even in the alternative that the phrase “or the like” could be argued to include “walls”, the Insignia Wall Mounts could still not be aptly described as “mountings suitable for walls”, as would be required in order for the goods to be classified under the first subgroup of heading 83.02. That description could apply to only **part** of the goods as imported, namely, the wall mount and mounting plate. It could not apply to the brackets (or rails) which affix to the television as opposed to the wall.

[118] Moreover, the Explanatory Notes characterize the goods of heading 83.02 as being “base metal **accessory** fittings and mountings” (emphasis added). On a contextual reading, the articles that are listed within the Explanatory Notes indicate goods that are optional or incidental to the structure of the articles or structure to which they are accessories. Having regard to the evidence of Mr. Hoglan,¹¹¹ the Tribunal finds that flat panel televisions cannot be safely operated, or serve their

¹¹⁰ Online: <<https://dictionary.cambridge.org/dictionary/english/wall>>. Courts and tribunals may take judicial notice of relevant definitions from dictionaries, which may be published in electronic format and be accessible online. See: *Rona Inc. v. President of the Canada Border Services Agency* (18 October 2019), AP-2018-053 (CITT) at para. 111; *Envirodrive Inc. v. 836442 Alberta Ltd.*, 2005 ABQB 446, as cited in *Liverton Hotels International Inc v. Alicorp SAA*, 2007 CanLII 80870 at paras. 53–54; *R. v. Krymowski*, 2005 SCC 7 at paras. 22–24.

¹¹¹ *Transcript of Public Hearing* at 56; Exhibit AP-2022-028-24 at 10.

intended function, without some form of support that maintains the television screen in a viewing position. Accordingly, a television mount that serves this purpose is not merely an accessory.

[119] The same reasons apply to preclude classification in heading 83.02 with respect to the second subgroup, namely, “base metal hat-racks, hat-pegs, brackets and similar fixtures”.

[120] As discussed above, the structure of heading 83.02 contemplates that “brackets” are distinguishable and different articles from “mountings”. Those articles are grouped separately within heading 83.02.

[121] For the purposes of the second grouping within heading 83.02, it is undisputed that the goods are not “hat-racks” or “hat-pegs”. With respect to the term “brackets”, the Tribunal observes that the dictionary definitions of “bracket” contemplate an L-shaped or horizontally projecting structure that is capable of providing support to another object.

[122] As illustrated in the product literature for the Insignia Wall Mounts, the components of the goods described in those instructions as “brackets” are rail-like structures that are fastened to the back of the flat panel television, and their functional orientation is generally parallel to both the front and back surfaces of the television.¹¹² This is distinguishable from the dictionary meaning of a bracket which contemplates an L-shaped or projecting article that provides perpendicular support in a horizontal plane. The CBSA’s argument that the fully assembled wall mount is a “bracket” requires expanding the definition of the word “bracket” to the point of distortion, especially when the full scope of the functions provided by the goods¹¹³ is taken into consideration.

[123] The Tribunal now turns to consider whether the goods could be classified within heading 83.02 as being “similar fixtures” to brackets. Notwithstanding Mr. Hoglan’s synonymous use of the term “rails”, the product instructions clearly use the term “brackets” to describe the product components which are secured to the television. As such, those components cannot be per se described as being “similar fixtures” to brackets, much less the goods in their entirety.

[124] The Explanatory Notes provide the following guidance:

This heading covers: ...

Hat-racks, hat-pegs, brackets (fixed, hinged or toothed, etc.) and **similar fixtures** such as coat racks, towel racks, dish-cloth racks, brush racks, key racks.

[Bold in original]

[125] The wall mount and mounting plate components of the Insignia Wall Mounts are not “brackets” nor can they be regarded as analogous in either structure or function to any “coat racks, towel racks, dish cloth racks, brush racks or key racks”, which allow for small, lightweight household or textile items to be hung or suspended. As such, those components, much less the goods as a whole, are not “similar fixtures” to brackets, having regard to the contextual examples provided by the Explanatory Notes.

¹¹² See, for instance, Exhibit AP-2022-028-03 at 42, 60.

¹¹³ Such as screen adjustment by tilting and cantilever movement, and cable management.

[126] In his expert report, Mr. Hoglan provides the following general definition that applies to the goods in issue: “Flat panel TV wall mounts are mounting systems that are specially designed to receive and display flat panel TVs.”¹¹⁴

[127] The Tribunal accepts Mr. Hoglan’s characterization of the Insignia Wall Mounts as a “mounting **system**” (emphasis added). A multiplicity of individual components that are assembled to form an operative combination is consistent with a “system” and is thus an apt description of the goods.

[128] It is also important to note that the system is designed not only to provide structural support for a flat panel television but to do so in a way that provides a range of motion that enables the user to adjust, tilt or swivel the television screen to facilitate viewing of the screen from different angles.¹¹⁵ The articles described in the Explanatory Notes are general purpose items of unitary or simple construction. They are unlike the goods in issue, which are specifically and exclusively designed for use with flat panel televisions and have multiple functional features.

[129] For the reasons given above, the Tribunal is unable to conclude that either model of the Insignia Wall Mounts can be described as either “brackets” or “mountings” within the scope and meaning of heading 83.02. Rather, the goods as imported comprise **both** a “bracket” **and** a “mounting” as well as other hardware items that are needed to assemble the goods by securely fastening the mount, mounting plate and brackets into a functioning apparatus.

[130] Moreover, the importance of the hardware, as a key component of the goods, cannot be discounted. The “TV hardware bag” that forms part of the goods requires the end user to select appropriate fasteners and tools from those supplied in order to tailor the assembly of the goods to a specific model of television. If the components are not securely fastened with the correct size and type of hardware, the television may be unstable and lack secure support, which will create a safety hazard, as described by Mr. Hoglan.

[131] The Tribunal is also unable to conclude that the goods in issue are “parts of general use”,¹¹⁶ as argued by Kanto. Based on the evidence on the record, the Tribunal finds that the goods were tailored and designed for a specific use¹¹⁷ and are not goods intended for general application.

[132] For all the foregoing reasons, the goods are not classifiable in heading 83.02 using Rule 1 of the General Rules.

Heading 85.29

[133] The Tribunal now turns to a consideration of whether the goods may be classified in heading 85.29 as “parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28”.

¹¹⁴ Exhibit AP-2022-028-24 at 6.

¹¹⁵ *Ibid.* at 9.

¹¹⁶ Exhibit AP-2022-028-05 at 7.

¹¹⁷ *Transcript of Public Hearing* at 43.

[134] Best Buy argues that a television, such as a flat panel television, is an apparatus of heading 85.28¹¹⁸ and that the Insignia Wall Mounts are parts suitable for use solely or principally with flat panel televisions.¹¹⁹ The CBSA counters that the goods are not parts, as they are not essential to the functioning of the television.¹²⁰

[135] In *Sanus Systems v. President of the Canada Border Services Agency (Sanus Systems)* and *Best Buy Canada Ltd. v. President of the Canada Border Services Agency (Best Buy 2017)*, the Tribunal concluded that flat panel televisions constitute an apparatus of heading 85.28.¹²¹

27. It is uncontested that televisions themselves are properly classified in heading No. 85.28, as reception apparatus for television. In this respect, the Tribunal agrees that flat panel televisions constitute an apparatus of heading No. 85.28.

[136] The Tribunal is not persuaded that this conclusion is clearly wrong or is distinguishable on its facts from the circumstances of this case. As such, the Insignia Wall Mounts will fall within the scope of heading 85.29 if they are “parts suitable for use solely or principally” with flat panel televisions.

[137] The Tribunal has previously held that the term “for use solely or principally with” an apparatus of heading 85.25 to 85.28 refers to goods that are designed to be used solely or principally with such an apparatus.¹²²

[138] The product literature of the Insignia Wall Mounts is confined to providing instructions for the mounting of flat panel televisions of different sizes, weights and models. An explicit warning and disclaimer caution that the goods should not be used “for any purpose not explicitly specified” by the manufacturer and that “[i]mproper installation may cause property damage or personal injury.” The instructions also specify weight and size limits for televisions that can be mounted using the goods.¹²³

[139] Based on this evidence and the testimony of Mr. Hoglan who described the history, design and development of television wall mounts, the Tribunal is satisfied that the goods are not generic items but are designed solely or principally for use with flat panel televisions. The goods have no alternative use and have not been designed for, nor are they suitable for, any other practical use.¹²⁴

[140] Moreover, the Tribunal observes that the intended use of the Insignia Wall Mounts does not appear to be contested. Best Buy submitted that the Insignia Wall Mounts are suitable for use solely or principally with flat panel televisions. The CBSA did not contest this assertion or argue otherwise.

¹¹⁸ Heading 85.28 reads as follows: “Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.”

¹¹⁹ Exhibit AP-2022-028-03 at para. 20.

¹²⁰ Exhibit AP-2022-028-17 at para. 4.

¹²¹ *Sanus Systems v. President of the Canada Border Services Agency* (8 July 2010), AP-2009-007 (CITT) [*Sanus Systems*] at para. 27. See also *Best Buy Canada Ltd. v. President of the Canada Border Services Agency* (26 July 2017), AP-2016-027 (CITT) [*Best Buy 2017*] at para. 20.

¹²² *Nokia Products Limited v. the Deputy Minister of National Revenue* (26 July 2000), AP-99-082 (CITT) at 6.

¹²³ Exhibit AP-2022-028-03 at 41, 59.

¹²⁴ Exhibit AP-2022-028-24 at 11.

[141] The Tribunal now considers whether the Insignia Wall Mounts are a “part” of a flat screen television.

[142] In determining whether a good is a “part” of an apparatus, the Tribunal has previously stated that each case must be determined on its own merits and that there is no universal test.¹²⁵ However, in previous cases, the Tribunal has also set out the following criteria for “parts”:¹²⁶

- whether the product is essential to the operation of other goods;
- whether the product is a necessary and valid component of other goods;
- whether the product is installed in the other goods in the course of manufacture;
- common trade usage and practice.

[143] Explanatory Notes to heading 85.29 list examples of the types of “parts” that are to be considered included under that heading. Indeed, the phrase “[t]he range of parts classified here includes” used open-ended language signalling that the list is illustrative rather than exhaustive.¹²⁷ As such, heading 85.29 includes the following:

- (1) Aerials of all kinds and aerial reflectors, transmission and reception.
- (2) Rotor systems for radio-broadcast or television-broadcast receiving aerials consisting essentially of an electric motor mounted on the aerial mast to rotate it and a separate control box to aim and position the aerial.
- (3) Cases and cabinets specialized to receive the apparatus of headings 85.25 to 85.28.
- (4) Aerial filters and separators.
- (5) Frames (chassis).

[144] In *Sanus Systems* and *Best Buy 2017*, the Tribunal found that flat panel television stands and “Z-Line Designs” floor stands for flat panel televisions were specifically designed to receive an apparatus of heading 85.28, as the goods were equipped with large mounting brackets for the bolted attachment of flat-panel televisions, as well as centre channels for wire management. This led to the conclusion that the goods at issue in those cases were analogous to the goods explicitly listed in the Explanatory Notes to heading 85.29. The Tribunal ultimately found that the goods in issue were “cases and cabinets specialized to receive the apparatus of headings 85.25 to 85.28.”

[145] In this appeal, the CBSA argues that the Insignia Wall Mounts are not “parts” because they are not essential to the functioning of the television. However, the Tribunal has previously considered and rejected this argument in both *Sanus Systems* and *Best Buy 2017*. In *Best Buy 2017*, the Tribunal stated the following:

¹²⁵ 9291-9281 *Quebec Inc. DBA IMPEKK v. President of the Canada Border Services Agency* (22 August 2019), AP-2018-039 (CITT) at para. 33; *Alliance Mercantile v. President of the Canada Border Services Agency* (3 November 2017), AP-2016-038 [*Alliance Mercantile*] at para. 56; *Atomic Ski Canada Inc. v. Deputy Minister of National Revenue* (8 June 1998) [*Atomic Ski*] AP-97-030 and AP-97-031 (CITT) at 6.

¹²⁶ *Alliance Mercantile* at para. 56; *Atomic Ski* at 6; *York Barbell Company Limited v. Deputy Minister of National Revenue for Customs and Excise* (19 August 1991), AP-90-161 (CITT).

¹²⁷ The Tribunal came to the same conclusion in *Sanus Systems* at para. 54.

25. While conceding that the goods in issue are committed for use with flat-panel televisions, the CBSA argued that this fact alone was not enough to render the goods in issue “parts” of televisions. It contended, as it did in *Sanus Systems*, that since the goods in issue are not essential, necessary or integral to the operation of the televisions, they could not be classified as parts. That the goods in issue require televisions to fulfill their design function is irrelevant, as the question is whether the stand is essential to the functioning of the television and not vice versa.
26. In *Sanus Systems*, the Tribunal rejected these arguments of the CBSA. It does so again in this case. Echoing its views in *Sanus Systems*, the Tribunal finds that the reference to “parts” in heading No. 85.29 includes furniture committed by design for use solely or principally with flat-screen televisions. This conclusion necessarily follows from a reading of that heading in conjunction with, and in light of, note 1(g) to Chapter 94. In this respect, the Tribunal adopts the reasoning in *Sanus Systems* as set out in paragraphs 53 to 55 of that decision where it found that stands designed to support flat-panel televisions clearly fall within the “[c]ases and cabinets specialized to receive the apparatus of headings 85.25 to 85.28” as described in the explanatory notes to heading No. 85.29.

[Footnotes omitted]

[146] Additionally, in *Sanus Systems*, the Tribunal found the following:

52. ... As noted above, the *Explanatory Notes* to heading No. 85.29 provide that “[c]ases and cabinets specialized to receive the apparatus of headings 85.25 to 85.28” [emphasis added] are to be classified in heading No. 85.29 as parts.
53. Clearly, a case or cabinet, while physically supporting a flat panel television of heading No. 85.28, does not contribute to the technical functionality of the apparatus itself. Accordingly, and contrary to the CBSA’s submission, the Tribunal is of the view that, in order to constitute “parts”, the goods in issue would not necessarily have to be essential to the functionality of flat panel televisions in receiving incoming electrical signals and converting them into television pictures and sound.

[Footnotes omitted]

[147] The CBSA contends that the Insignia Wall Mounts are distinguishable from the goods in both *Sanus Systems* and *Best Buy 2017*, which were independent floor stands akin to items of furniture. Those goods had different mounting structures and included shelving for peripheral entertainment components.¹²⁸

[148] The goods at issue must be assessed, for tariff classification purposes, having regard to their own features and functions, and not by way of reference to a different product, which may or may not fall under a different tariff item.

[149] As was the case in *Sanus Systems*, the Insignia Wall Mounts do not contribute to the functionality of the television by “receiving incoming electrical signals and converting them into television pictures and sound.”¹²⁹ Notwithstanding, it is clear from the evidence that this functionality

¹²⁸ *Best Buy 2017* at para. 7.

¹²⁹ *Sanus Systems* at para. 53.

is not feasible unless the television has load-bearing support that will permit the screen to be seen by a viewer when displaying television pictures and sound. As discussed above, the Insignia Wall Mounts are designed for the sole purpose of securely providing wall-mounted support to a flat panel television. The goods have no other practical use.

[150] As such, the Insignia Wall Mounts are more than an accessory, which the Tribunal has previously regarded as being an article performing a “secondary or subordinate role, not essential to the function, which could improve the effectiveness of the host machine, equipment, apparatus or appliance”.¹³⁰

[151] The evidence demonstrates that a flat panel television cannot be safely operated or be used for its intended purpose without the provision of vertical support for the television.¹³¹ That support may take the form of a floor stand, tabletop stand or a wall mount. The selection of the specific type of support turns on the preferences of the consumer or end user.

[152] Accordingly, the Tribunal finds that the goods meet at least two of the criteria previously determined as being characteristics of “parts”.¹³² The Insignia Wall Mounts are essential for the safe operation of flat panel televisions and, similarly, they are designed to be necessary and valid components of flat panel televisions.

[153] In *Newtech Beverage Systems Ltd. v. Commissioner of the Canada Customs and Revenue Agency*, the majority of the Tribunal decided that specially designed coffee pots were “parts” of coffee makers, even though the coffee pots were not permanently affixed to the coffee makers. That decision reads, in part, as follows:¹³³

With respect to the third factor, the majority of the Tribunal considers that the goods in issue are installed in the coffee makers, even though they are not permanently attached, because they are designed to fit snugly in position in the coffee makers when the coffee is being brewed. As discussed above, several aspects of design were specifically aimed at creating physical complementarity between the goods in issue and other portions of the coffee makers. The testimony indicated that the fit of the goods in issue to the commercial coffee makers was critical, not only in terms of the need for guides to ensure that the goods in issue are correctly positioned under the coffee brewer’s outlet, but also with respect to height and clearance.

[154] Similarly, in this case, the Tribunal concludes that the Insignia Wall Mounts are designed to be installed with flat panel televisions, even if they are not permanently affixed in the course of manufacture of a flat panel television. The design and characteristics of the goods in issue are specifically aimed at making them compatible to “accept a flat panel TV”.¹³⁴ As such, the Insignia

¹³⁰ *Wal-Mart Canada Corporation v. President of the Canada Border Services Agency* (13 June 2011), AP-2010-035 (CITT) at paras. 62–64.

¹³¹ *Transcript of Public Hearing* at 56; Exhibit AP-2022-028-24 at 10.

¹³² See para. 143 of these reasons.

¹³³ *Newtech Beverage Systems Ltd. v. Commissioner of the Canada Customs and Revenue Agency* (3 June 2004), AP-2003-029 (CITT) at para. 25.

¹³⁴ *Transcript of Public Hearing* at 43.

Wall Mounts meet the test for being a component that is “installed in the other goods in the course of manufacture”.¹³⁵

[155] The Tribunal is also satisfied that the common trade usage and practices support the finding that the Insignia Wall Mounts should be regarded as “parts” of flat panel televisions. The evidence of Mr. Hoglan shows that the goods have no practical alternative function and are not only intended but necessary for the safe and prudent use of flat panel televisions.

[156] Even though the means of support may differ in terms of design, constituent parts or appearance, the core function remains the same. The Insignia Wall Mounts are designed and adapted to receive a flat panel television and are sufficiently analogous to the “cases and cabinets” or the “frames and chassis” goods listed in the open-ended list of items provided by the Explanatory Notes.¹³⁶ Accordingly, the Tribunal finds that the Insignia Wall Mounts are a “part” of a flat panel television, as contemplated by heading 85.29 when that term is considered in context and having regard to the Explanatory Notes relevant to heading 85.29.

[157] In view of the foregoing, the Tribunal finds, on application of Rule 1 of the General Rules, that the goods fall within the description of heading 85.29 as “parts suitable for use solely or principally with the apparatus of headings 85.25 to 85.28.”

[158] As discussed above, the two headings in issue (83.02 and 85.29) are mutually exclusive. As the goods fall in heading 85.29, they are excluded from being classified in heading 83.02.

[159] The parties agreed that the issue for decision was limited to ascertaining the correct heading classification. There is no dispute at the tariff item level.¹³⁷ Therefore, the Tribunal finds that both models of Insignia Wall Mounts are classified in subheading 8529.90 and under tariff item 8529.90.90.

DECISION

[160] For the foregoing reasons, the appeal is allowed.

Susan D. Beaubien

Susan D. Beaubien
Presiding Member

¹³⁵ The third of the criteria discussed above at para. 142 of these reasons.

¹³⁶ See para. 143 of these reasons.

¹³⁷ *Transcript of Public Hearing* at 13.