UT Neutral citation number: **[2025] UKUT 00176 (TCC)**

UT (Tax & Chancery) Case Number: UT/2023/000087

Upper Tribunal
(Tax and Chancery Chamber)

Hearing venue: Rolls Building
Fetter Lane
London

Heard on: 4 and 5 March 2025
Judgment date: 06 June 2025

CUSTOMS DUTIES – Union Customs Code – importation of civil aircraft – retroactive authorisation for end-use relief pursuant to Article 172 Commission Delegated Regulation (EU) 2015/2446 – FTT directing a further review of HMRC's refusal to grant authorisation – directions given by the FTT for the purposes of that review – whether the FTT erred in finding that the application was not for the renewal of an authorisation for the same kind of operation and goods – whether the FTT erred in its approach to "exceptional circumstances" – equal treatment – whether the FTT erred in failing to direct that HMRC must deal with the appellant's application consistently with end-use applications by other operators and in accordance with guidance as it stood at the time of the application.

Before

JUDGE JONATHAN CANNAN
JUDGE NICHOLAS PAINES KC

Between

DHL AIR (UK) LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Jeremy White, counsel instructed by KPMG LLP, and Christopher Leigh of KPMG LLP

For the Respondents: Mark Fell KC, instructed by the General Counsel and Solicitor for His Majesty's Revenue and Customs

DECISION

Introduction

1. This is an appeal against a decision of the First-tier Tribunal Tax Chamber ("the FTT") released on 13 February 2023. It concerns customs duties on the importation from the United States of seven civil aircraft by the appellant between June 2016 and February 2017 and, in particular, the operation of end-use relief and the appellant's authorisation for end-use relief. The appellant's principal contention is that the FTT was wrong to hold that its application for authorisation could not be backdated to cover the seven importations. The appellant imported the aircraft for use in its business as a cargo airline.

2. At the time of the importations, civil aircraft were relieved from customs duty where they were registered with the Civil Aviation Authority and delivered to the operator if the importer was authorised for that end-use. In the absence of end-use relief, duty was chargeable at 2.7%. There was also a relief for aircraft parts that were incorporated into aircraft. We refer to these reliefs for brevity as "end-use relief".

3. The appellant had been authorised for end-use relief in relation to civil aircraft and aircraft parts between 8 March 2002 and 6 March 2015. At the time of the importation of the seven aircraft the appellant did not hold authorisation for end-use. The appellant had applied to renew its end-use authorisation on 30 March 2015 ("the 2015 Application") but, in circumstances described by the FTT, no decision was ever made by HMRC on that application. A further application for end-use authorisation was made by the appellant on 4 April 2017 including an application for that authorisation to operate retroactively ("the 2017 Application").

4. HMRC refused the 2017 Application and that decision was confirmed on a statutory review ("the Decision"). The effect of the Decision was that a sum of approximately £3m remained due by way of customs duty on the importation of the aircraft. The appellant appealed the following matters to the FTT pursuant to section 16(4) Finance Act 1994 ("FA 1994"):

(1) The Decision whereby end-use authorisation was refused.

(2) A subsequent post-clearance demand for the customs duty.

(3) A subsequent decision by HMRC to refuse an application by the appellant for repayment of the customs duty on the grounds of equity.

5. The FTT made careful and detailed findings of fact and law on the appeals. Many of those findings are no longer relevant to the issues in this appeal. In short, the FTT allowed the appeal against the Decision on the ground that in certain respects HMRC's decision to refuse the 2017 Application could not reasonably have been arrived at. The FTT therefore required HMRC to conduct a further review of the Decision in accordance with directions which it gave for the purposes of the further review. The FTT also decided that the appeals against the post-clearance demand and the refusal to repay on the grounds of equity should be dismissed, unless HMRC were to make a decision on the further review granting authorisation with retroactive effect to the date on which the aircraft were imported.

6. There is no challenge from HMRC to the FTT's decision to allow the appeal against the Decision. The appellant does however challenge the directions given to HMRC by the FTT for the purposes of conducting its further review. The principal issues on this appeal arise in connection with those directions. The appellant does not challenge the FTT's decision in relation to the post-clearance demand or in relation to the refusal of its application for repayment on the grounds of equity.

7. Following the FTT's decision, HMRC conducted a further review pursuant to the FTT's directions. In a decision sent to the appellant on 23 January 2024, HMRC granted authorisation for end-use for civil aircraft. Authorisation was granted retroactively but only with effect from 4 April 2017, the date of the 2017 Application. The authorisation therefore did not apply to the seven aircraft imported by the appellant. The appellant has appealed that decision to the FTT and that appeal is presently stayed pending the outcome of this appeal.

8. The issues on this appeal are considerably narrower than the issues before the FTT. It is now common ground that the appellant was entitled to end-use authorisation, retroactive until at least 4 April 2017. It is also common ground that the aircraft had in fact been put to the prescribed end-use. The overarching issue between the parties is whether the FTT erred in law in construing the relevant provisions in relation to the retroactive effect of authorisations and in the directions it gave as to the basis on which HMRC should conduct the further review. In short, HMRC refused in the Decision to grant any authorisation, whether retroactive to 6 March 2015 or otherwise. There was an issue before the FTT as to whether HMRC could in any event grant such retroactive authorisation. HMRC's position was that they could not do so, based on their understanding of changes to the legislative framework when the Community Customs Code was replaced by the Union Customs Code with effect from 1 May 2016.

9. We have included the relevant EU law provisions referenced below as an appendix to this decision. In the following section we provide a broad overview of those provisions and the legislative framework.

Legislative provisions

10. The Community Customs Code ("the CCC") was established in 1992 by Council Regulation (EEC) No 2913/92 to charge customs duty on goods imported into the EU at rates set out in the Common Customs Tariff ("the Tariff"). The CCC was supplemented by other legislative measures including the CCC Implementing Provisions ("the CCC IP") in Commission Regulation (EEC) No 2454/93.

11. A Modernised Customs Code set out in Regulation (EC) No 450/2008 was intended to replace the Community Customs Code, but did not take effect. It recited that amendments to the CCC were necessary as a consequence of recent legal changes and that the time had come to streamline customs procedures taking into account electronic declarations and processing.

12. The Union Customs Code ("the UCC") in Regulation (EU) No 952/2013 "recast" the Modernised Customs Code "in the interests of clarity". It was supplemented by Commission Delegated Regulation (EU) 2015/2446 known as the UCC Delegated Act ("UCC DA"). Relevant provisions of the UCC and the UCC DA took effect from 1 May 2016.

13. End-use relief in relation to civil aircraft and parts was contained in the Tariff itself. The Tariff is amended on an annual basis with ad hoc amendments during the year. The 2016 Tariff took effect from 1 January 2016. End-use relief for civil aircraft and goods used in civil aircraft appears at Annex 1, Part One Section II B. Paragraph 4 stated that the relief was subject to conditions "laid down in the relevant provisions of the European Union with a view to customs control of the use of such goods (see Articles 291 to 300 of the [CCC IP])". The same provisions were included in the 2017 Tariff with effect from 1 January 2017, although the conditions were identified by reference to Article 254 UCC. The effect of these provisions was that customs supervision under the end-use procedure would end when the goods were used for the purposes laid down. In relation to civil aircraft, this was when the aircraft was imported and registered with the Civil Aviation Authority, or its equivalent in another member state, and delivered to the operator.

14. Mr White relied in his submissions on the Tariff for 2018, which was introduced with effect from 1 January 2018 by Commission Implementing Regulation (EU) 2017/1925. Recital (5) of that regulation stated that to reduce the administrative burden, where a civil aircraft had been registered as such and declared for free circulation, the requirement of the end-use procedure would be abolished. The aircraft's registration certificate, which every aircraft was required to carry, was considered sufficient proof of the aircraft's civil character.

15. Annex 1 to the Tariff for 2018 was therefore amended to exclude certain civil aircraft from the conditions in paragraph 4 where the aircraft was registered with the Civil Aviation Authority and the certificate of registration was referenced in the declaration for free circulation. The civil aircraft excluded from the conditions were aircraft falling under Tariff subheading 8802 40 being aircraft of unladen weight exceeding 15,000kg. This included the aircraft imported by the appellant.

The CCC provisions

16. End-use under the CCC provisions involved the application of a "favourable tariff treatment" and was subject to customs supervision and customs controls.

17. Article 4(13) CCC defined "supervision by the customs authorities" as action taken by the customs authorities to ensure that customs rules for goods subject to customs supervision were observed. Article 4(14) defined "customs controls" as specific acts performed by customs authorities in order to ensure the correct application of customs rules including those governing the end-use of goods.

18. Article 4(16) CCC listed various "customs procedures", including release for free circulation, customs warehousing and inward processing. End-use relief did not involve a customs procedure under the CCC, but became a "special procedure" under the UCC (see paragraph [30] below).

19. Article 6 CCC made provision for where a person requires the customs authorities to take a decision relating to the application of customs rules, which would include a decision on authorisation for end-use. The decision was required to be taken and notified to the applicant at the earliest opportunity and within a period laid down by the provisions, which was 30 days from when all information requested by the customs authority had been provided.

20. Article 21 CCC provided that favourable tariff treatment by virtue of end-use was subject to certain conditions. Where an authorisation was required, Articles 86 and 87 were to apply. Relief for end-use for civil aircraft fell within the term "favourable tariff treatment" pursuant to the CCC.

21. Section 3 of the CCC made general provisions for several customs procedures, such as inward processing and temporary importation. Article 85 provided that the use of any "customs procedure with economic impact" was conditional on authorisation by the customs authorities. Those procedures were specifically defined by Article 84(1)(b) and included customs procedures such as customs warehousing and inward processing. Article 86 provided that authorisation should only be granted to persons "who offer every guarantee necessary for the proper conduct of the operations" and where customs could supervise and monitor the procedures without disproportionate administrative arrangements. Article 87 provided that the conditions under which the procedure in question was to be used should be set out in the authorisation. Article 88 provided that the customs authorities "may" make the placing of goods under a suspensive arrangement conditional upon the provision of security to ensure that any customs debt which may be incurred in respect of the goods would be paid.

22. Article 243 CCC made provision for appeals. Article 243(1) provided that a person who had applied to the customs authority for a decision but had not obtained a ruling within the required time

period should be entitled to exercise a right of appeal. The UK did not implement that aspect of Article 243 in its domestic law.

23. The 2016 Tariff provided that end-use as a favourable tariff treatment was subject to conditions, and specifically cross-referenced Articles 291 to 300 CCC IP. These provisions applied where it was provided that goods released for free circulation with a favourable tariff treatment on account of end-use were subject to end-use customs supervision. Article 292 required written authorisation for favourable tariff treatment and set out the procedure for applications. This included the procedure for "single authorisations" which were defined by Article 1(13) CCC IP as authorisations involving customs administrations in more than one member state.

24. Article 293 set out the general conditions for authorisation. These included the applicant offering every guarantee necessary for the proper conduct of the operations to be carried out and undertaking to assign the goods to the prescribed end-use. Adequate records were required to be maintained and security was to be provided "where the customs authorities consider this necessary".

25. Article 294 CCC IP made provision for customs authorities to grant retroactive authorisation. In the ordinary course this would take effect from the date the application was submitted. However Article 294(2) provided that where an application concerned "renewal of an authorisation for the same kind of operation and goods", then it may be granted from the date the original authorisation expired.

26. Article 294(3) provided that in "exceptional circumstances", the retroactive effect could be extended further where a proven economic need existed, but not more than one year before the date the application was submitted. This was also conditional on the application not being related to attempted deception or to obvious negligence.

27. Article 300 CCC IP provided that goods imported under an end-use authorisation should remain under customs supervision until first assigned to the prescribed end-use.

28. Favourable tariff treatment applied not only to civil aircraft, but also to certain goods imported for use in civil aircraft. Separately, where aircraft parts and components were imported with an airworthiness certificate, Council Regulation (EC) No 1147/2002 provided for duties to be suspended.

The UCC provisions

29. Recital (12) of the UCC recognises that important legal changes had occurred since the CCC had come into force. Recital (15) recognises that the facilitation of legitimate trade and the fight against fraud require simple, rapid and standard customs procedures and that it was appropriate to simplify customs legislation to allow the use of modern tools and technology and to promote efficient and simple clearance procedures. Customs procedures should be reduced to those that were economically justified with a view to increasing the competitiveness of business.

30. Recital (34) stated that the rules for "special procedures", which now included end-use, should allow for the use of a single guarantee for all categories of special procedures. Recital (47) stated that there should be common and simple rules for special procedures, supplemented by a small set of rules for each category of special procedure, thus making it simple for operators to choose the right procedure and avoid errors.

31. Whilst the UCC was introduced with effect from 1 May 2016, the 2016 Tariff was not amended and continued to cross-reference to the CCC provisions in relation to end-use. The 2017 Tariff changed the cross-references to the UCC provisions with effect from 1 January 2017.

32. “Special procedures” are dealt with under Title VII Chapter 1 of the UCC. It is relevant that end-use became a special procedure pursuant to Article 210(c), along with other procedures which had been customs procedures under the CCC such as transit, storage and processing. Pursuant to the UCC, “customs procedure” was defined in Article 5 as release for free circulation, special procedures and export.

33. Article 211 UCC made general provisions in relation to authorisations for all special procedures. It is common ground that Article 211 UCC governed the appellant’s application for authorisation and set out the relevant conditions for an authorisation to have retroactive effect. Article 211(1) provides that an authorisation is required for various special procedures including the end-use procedure. It provides that the conditions under which use of the procedure is permitted shall be set out in the authorisation.

34. Article 211(2) provides that customs authorities shall grant an authorisation with retroactive effect where all of the conditions set out therein are fulfilled. Those conditions include:

> (a) there is a proven economic need;
>
> (b) the application is not related to attempted deception;
>
> (e) no authorisation with retroactive effect has been granted to the applicant within three years of the date on which the application was accepted;
>
> (h) where an application concerns renewal of an authorisation for the same kind of operation and goods, the application is submitted within three years of expiry of the original authorisation.

35. Article 211(3) provides that authorisation shall only be granted to persons satisfying certain conditions. Article 211(3)(c) provides that an authorisation shall only be granted where a customs debt may be incurred for goods placed under the special procedure if they provide a guarantee in accordance with Article 89. Article 89 contains general provisions for guarantees in relation to potential or existing customs debts.

36. Chapter 4 UCC deals with “specific use”, and Section 2 deals with end-use. Article 254(4)(a) provides that customs supervision under the end-use procedure shall end in various situations, including where the goods have been used for the purposes laid down for the application of the duty exemption - in other words, where they have been put to the end-use which has been authorised.

37. Article 172 UCC DA makes provision for when an authorisation granted with retroactive effect pursuant to Article 211(2) UCC shall take effect. Article 172(1) provides such authorisations shall take effect at the earliest on the date of acceptance of the application. Article 172(2) provides that in exceptional circumstances the customs authorities may allow an authorisation to take effect at the earliest one year before the date of acceptance of the application. Article 172(3) provides that if an application concerns “*renewal of an authorisation for the same kind of operation and goods*”, the authorisation may be granted with retroactive effect from the date on which the original authorisation expired.

38. Recital (56) of the UCC DA states that in order to ensure the continued validity of authorisations granted under the CCC, it is necessary to establish transitional provisions “to allow for the adaptation of those … authorisations to the new legal rules”. The transitional provisions are in Title IX UCC DA. Article 250 makes provision for the re-assessment of CCC authorisations already in force on 1 May 2016 which were not time limited. Article 251 provides for CCC authorisations in force on 1

May 2016 to remain valid. Where an authorisation was time limited, it was valid until the end of that time period or 1 May 2019, whichever is the earlier. Where an authorisation was not time limited it remained valid until reassessed in accordance with Article 250.

39. Article 254 provides that where a CCC authorisation remains valid by virtue of Article 251, the conditions under which the authorisation is applied shall be those laid down in the corresponding provisions of the UCC, the UCC DA and Commission Implementing Regulation 2015/2447. It was not suggested that the latter regulation was relevant for present purposes. Annex 90 of the UCC DA sets out provisions under the CCC and the corresponding provisions under the UCC.

The FTT's findings of fact

40. Appendix 1 of the FTT Decision set out facts that were agreed. The FTT also made further findings of fact in the body of its decision. There is no challenge to the FTT's findings of fact and we can briefly set out the relevant facts.

41. The appellant is a cargo airline based at East Midlands Airport. It is part of the Deutsche Post DHL Group. The appellant was first granted an end-use authorisation for civil aircraft and parts on 8 March 2002; this expired on 7 March 2007. The appellant then applied for and was granted an end-use authorisation on 15 January 2008 with retroactive effect from the date of expiry of the previous authorisation. This authorisation was valid until 6 March 2010. The appellant applied for and was granted in February 2010 a further authorisation for the period 7 March 2010 to 6 March 2015. The authorisation specified the place of the end-use as being East Midlands Airport.

42. On 30 March 2015 the appellant made an application to renew its authorisation retroactively. That application was never decided by HMRC.

43. HMRC commenced a review of the appellant's past operation of the end-use procedure. The review revealed irregularities and led to an assessment to customs duty which, following various reductions, was confirmed by HMRC in March 2016 at £154,280.91. The assessment related to end-use procedures for civil aircraft parts. The appellant appealed against the assessment but the appeal was withdrawn by the appellant in February 2017.

44. The FTT found at [115(3)] that it was clear from the circumstances that HMRC were not going to grant an authorisation pursuant to the 2015 Application in the light of the review which ultimately led to the customs duty debt of £154,280. Further, it was fully evident to the appellant that HMRC were not going to grant the authorisation. That is why the appellant did not chase HMRC for a decision and why it started to import aircraft parts with airworthiness certificates using tariff suspension rather than the favourable tariff treatment for end-use. The FTT concluded at [116]:

> 116. In sum, although it is quite clear, as a practical matter, why HMRC never made a decision on the appellant's 2015 application to renew its end-use authorisation – both sides knew what the answer would be – HMRC's failure to do so appears to be at odds with CCC article 6. I do not therefore consider that no reasonable panel of commissioners could conclude that the circumstances were exceptional, or that such a conclusion would be "perverse". But the opposite conclusion would also be within the scope of "reasonableness"…

45. Between 14 June 2016 and 21 February 2017, the appellant imported seven Boeing 757 civil aircraft from the United States of America. At the time of the importation they were eligible to be imported with an appropriate end-use authorisation at a zero rate of duty by reason of their end-use as civil aircraft. The aircraft were in fact applied to the prescribed end-use. However they were incorrectly declared using the customs procedure code applicable to aircraft parts with airworthiness certificates.

46. The appellant made a retrospective application for end-use authorisation on 4 April 2017. This was the 2017 Application and it was in a standard form. Question 2 identified 8 "customs procedures" including "Aircraft and parts" which the appellant ticked. The FTT found at [25] that the appellant was seeking renewal of an existing authorisation which had expired on 6 March 2015, with the authorisation to last for five years until 5 March 2020. In answer to the question where will the goods be used, the appellant's response was "Intra EU, Trans Continental (EU-USA & EU-BAH)"

47. The 2017 Application was refused on 10 July 2017. The refusal was upheld on a statutory review on 30 November 2017. The appellant appealed that decision on 22 December 2017.

48. HMRC subsequently issued a post-clearance demand notice for a customs debt of £3,010,108.52 and in due course the appellant appealed that decision. A request for a refund of the customs duty was also refused and that decision was also appealed.

The FTT's decision and the grounds of appeal

49. It is not necessary for us to refer extensively to the reasoning of the FTT. The appellant has rightly described the issues before the FTT as "both myriad and complex". Many of those issues are no longer live issues between the parties, in this appeal at least. At this stage, we can simply record the FTT's principal findings in so far as they are relevant to this appeal.

50. The FTT found at [50(1)] and [88] that HMRC's Decision had been unreasonable in that it failed to take into account a proposal by the appellant at the time of the 2017 Application that authorisation should be subject to a condition that the appellant would not use the end-use procedure in relation to parts either retroactively or for a period of 12 months from the date the authorisation was granted. This proposal had been made to answer failures by the appellant in relation to end-use for civil aircraft parts referred to above. In the circumstances, the FTT directed HMRC to undertake a further review of their decision to refuse authorisation.

51. The FTT found at [103] that the 2017 Application did not qualify as a renewal of an authorisation for the purposes of Article 172(3) UCC DA. That was because the FTT had found at [95] that a UCC authorisation was different in kind from a CCC authorisation:

> 95. In my view the "UCC authorisation vs CCC authorisation" point turns on the meaning of the phrase, "renewal of an authorisation." I understand HMRC's essential argument to be – to *renew* an authorisation means to grant a new authorisation *of the same kind* as the old one; and UCC authorisations are different from CCC authorisations. In my view, this is the correct reading of this phrase: the requirements for end-use authorisation under the CCC were similar in many ways to, but materially different from, the requirements for end-use authorisation under the UCC. Consistent with this (and as mentioned previously), although recital (1) to the UCC refers to itself as the CCC "recast", it also states that this was as a result of a number of amendments having to be made to the CCC.
>
> …
>
> 103. It follows that, in response to agreed issue 2c, the appellant's 2017 application for end-use authorisation did not qualify as a renewal application under article 172.3 DA.

52. The FTT also found at [102] that in any event the 2017 Application did not concern "the same kind of operation and goods" as the expired CCC authorisation. Article 172(3) UCC DA was therefore not engaged:

> 102. Having concluded that the appellant's application did not fall within article 172.3, as it did not concern "renewal of an authorisation", it is strictly unnecessary to consider whether the 2017 application concerned the "same kind of operation and goods" as the appellant's "old" authorisation. However, as the

point was argued at the hearing, my view, in brief, is that whilst the 2017 application and the "old" authorisation concerned the same kind of *goods*, they did not concern the same kind of *operations*: the geographical scope of end-use operations in the former ("Intra EU, Trans Continental (EU-USA & EU-BAH)") was materially different to that of the latter (East Midlands Airport – see [65] above).

53. The FTT then considered whether there were any circumstances which could be considered "exceptional circumstances" within Article 172(2) UCC DA to justify retroactive authorisation. It identified the circumstances relied on by the appellant as constituting exceptional circumstances at [109] but held that only item 5 could amount to an exceptional circumstance:

> 109. The appellant submitted that the circumstances of its 2017 application for end-use authorisation were "exceptional" because of:
>
> (1) the nature of the relief for aircraft;
>
> (2) the changes of law in relation to the relief for aircraft;
>
> (3) the different application of the law by different member states;
>
> (4) the end-use authorisation application made by the appellant on 30 March 2015;
>
> (5) HMRC's failure to make a decision on that application;
>
> (6) the proposal made by the appellant (in its 5 May 2017 letter); and
>
> (7) proposals made by the appellant subsequent to HMRC's decision.
>
> 110. The starting point for this analysis is that article 172.2 DA comes into play only where the customs authority has decided to grant an authorisation – in this case, the authorisation sought by the appellant on 4 April 2017 – with retroactive effect. Hence, when analysing article 172.2 DA, that has to be taken as a "given". The question is whether the retroactive effect must be granted from (no earlier than) 4 April 2017 (per article 172.1 DA), or whether it may be granted from as far back as 4 April 2016 (per article 172.2 DA). This depends on whether there are exceptional circumstances or not.
>
> 111. Items (1), (2), (3) of the appellant's list above are, like the circumstances discussed in *Unipack*, descriptions of customs legislation with which the appellant (like everyone else in its circumstances) was required to comply: although *Unipack* is not binding on me, I have had regard to it and consider it correct in finding that such things are not "exceptional circumstances" in the context of allowing a further one year of retroactive effect. As the European court said, such an interpretation would set non-compliant operators at an advantage over compliant ones.
>
> 112. I cannot see that items (4) and (6) of the appellant's list answer to the expression, "exceptional circumstance"; and item (7), even if it did, post-dates HMRC's decision.
>
> 113. Item (5) of the appellant's list is the only one capable of answering to the expression, "exceptional circumstances".

54. The FTT declined to make a finding as to whether item (5) amounted to exceptional circumstances for the reasons given at [114]:

> 114. However, in my view, it is outside the scope of the tribunal's s16(4) FA 1994 jurisdiction for me to make a findings as to whether or not this circumstance is "exceptional" – that is a matter for HMRC's administrative discretion, subject to the tribunal's supervisory jurisdiction, if, upon a further reviewed ordered by the tribunal, HMRC were to decide to grant authorisation (and so come to consider whether it should have retroactive effect). The most I can do is decide, having made full findings of fact, whether no

reasonable panel of commissioners could conclude that item (5) of the appellant's list comprises exceptional circumstances.

55. Finally, so far as relevant to this appeal, the appellant argued before the FTT that even if HMRC's arguments on Article 172 were correct, it was unlawful for HMRC to treat the appellant differently from taxpayers in materially similar circumstances without objective justification. The FTT rejected that argument at [101]:

> 101. Leaving to one side the point that the immediate issue here is the interpretation of customs legislation, rather than the susceptibility of an administrative act to judicial review, it has not been shown here that HMRC have treated the appellant differently to other operators in their application of the customs legislation at issue; indeed, on the interpretation of "renewal of an authorisation" which I prefer for the reasons above, no such different treatment would seem likely, given that there was a coherent regime for transitioning from CCC authorisations to UCC authorisations.

56. When the FTT came to give directions for the further review, it did so in the following terms:

> **ORDER OF THE TRIBUNAL PURSUANT TO S16(4)(B) FINANCE ACT 1994**
>
> 144. HMRC are required to conduct, in accordance with the following directions, a further review of their decision on the appellant's 4 April 2017 application for end-use authorisation.
>
> 145. HMRC are directed, when conducting their further review, to have regard to relevant findings of fact and analysis of law in this decision, being:
>
> (1) as regards findings of fact: [25-34], [35(6)], [53-55], [58-59], [61-66], [68], [70-79], [115] and [122] above; the agreed facts; and Appendix 2 below; and
>
> (2) as regards analysis of law: [35(3)], [40-50], [80-87], [92-103] and [105-113] above.

57. HMRC were therefore directed to take into account the following matters:

> (1) The FTT's conclusion of law at [95] and [103] that the 2017 Application did not qualify as the renewal of an authorisation.
>
> (2) The FTT's conclusion at [102] that the 2017 Application did not concern "the same kind of operation and goods" as the expired CCC authorisation.
>
> (3) The FTT's conclusions at [109] – [113] as to what matters could and could not amount to exceptional circumstances for the purposes of Article 172(2) UCC DA.

58. For the reasons given at [101] set out above, the FTT did not direct HMRC to take into account in the further review that it must treat the 2017 Application consistently with its treatment of other end-use applications at the same time and consistently with guidance as it stood at the time the 2017 Application was made.

59. The Upper Tribunal granted the appellant permission to appeal on four grounds. There was a fifth ground for which the appellant did not seek permission because the further review effectively rendered it academic. Two of the remaining four grounds can be taken together. We therefore address three grounds of appeal in which the appellant alleges that the FTT erred in law as follows:

> (1) In concluding at FTT [102] and [103] and in directing at FTT [145(2)] that the appellant's 2017 Application did not qualify as the "renewal of an authorisation for the same kind of operation and goods" within Article 172(3) UCC DA.

(2) In limiting the scope of what could amount to exceptional circumstances for the purposes of Article 172(2) UCC DA.

(3) In failing to direct that on the further review HMRC must treat the 2017 Application consistently with the way it treated other end use applications in 2017 and deal with it on the basis of any guidance as it stood at that time.

60. We address each ground of appeal in the discussion below.

Discussion

61. Article 172 UCC DA is the key provision in relation to Grounds 1 and 2 and it is worth setting it out in full here:

Article 172

1. Where the customs authorities grant an authorisation with retroactive effect in accordance with Article 211(2) of the Code, the authorisation shall take effect at the earliest on the date of acceptance of the application.

2. In exceptional circumstances, the customs authorities may allow an authorisation referred to in paragraph 1 to take effect at the earliest one year, in case of goods covered by Annex 71-02 three months, before the date of acceptance of the application.

3. If an application concerns renewal of an authorisation for the same kind of operation and goods, an authorisation may be granted with retroactive effect from the date on which the original authorisation expired…

Ground 1

62. Ground 1 alleges that the FTT erred in law in concluding at [102] and [103], and in directing at [145(2)], that the 2017 Application did not qualify as the "renewal of an authorisation for the same kind of operation and goods" within Article 172(3) UCC DA. The issues raised under this ground concern the construction of Article 172(3). The provision falls to be construed in its context and by reference to the objectives pursued by the UCC and UCC DA (see the judgment of the CJEU in *Kaplan International Colleges UK Ltd v HM Revenue & Customs* Case C-77/19 at [39]).

63. It is well established that exceptions to liability for customs duties are to be strictly interpreted. In *Firma Sohl & Söhlke v Hauptzollamt Bremen* Case C-48/98 the Court of Justice set out the principle at [52]:

52. … the repayment or remission of import and export duties, which may be made only under certain conditions and in cases specifically provided for, constitutes an exception to the normal import and export procedure and, consequently, the provisions which provide for such repayment or remission are to be interpreted strictly.

64. We agree with the Opinion of Advocate General Tanchev in *Beeren v Hauptzollamt Erfurt* C-825/19, where he stated at [45]:

45. The authorisation for the end-use procedure may only be granted under certain conditions and that procedure thus constitutes an exception to the general customs rules. As such, the rules regulating that procedure should be interpreted strictly. The granting of an authorisation with retroactive effect pursuant to Article 211(2) of the UCC and Article 172(1) of the UCC DR likewise constitutes an exception to the general rule for the granting of authorisations, which is subject to specific conditions. The granting of an authorisation with retroactive effect from the date on which the original authorisation expired pursuant to Article 211(2)(h) of the UCC and Article 172(3) of the UCC DR is a yet further exception to the general

rules for authorisations with retroactive effect, which is subject to additional conditions. An expansive interpretation of the application, *ratione temporis*, of those rules does not, therefore, appear justified.

65. Beneficiaries of special procedures must also comply strictly with obligations in relation to those procedures. In *Döhler Neuenkirchen GmbH v Hauptzollamt Oldenburg* Case C-262/10 the Court of Justice said as follows:

> 40. It must be observed that the inward processing procedure in the form of a system of suspension constitutes an exceptional measure intended to facilitate the carrying-out of certain economic activities. That procedure involves the presence, on the customs territory of the European Union, of non-Community goods, which carries the risk that those goods will end up forming part of the economic networks of the Member States without having been cleared through customs (see Case C-234/09 *DSV Road* [2010] ECR I-7333, paragraph 31).
>
> 41. Since that procedure involves obvious risks to the correct application of the customs legislation of the European Union and the resulting collection of duties, the beneficiaries of that procedure are required to comply strictly with the obligations resulting therefrom. Similarly, the consequences of non-compliance with their obligations must be strictly interpreted (see Joined Cases C-430/08 and C-431/08 *Terex Equipment and Others* [2010] ECR I-321, paragraph 42).

66. Having said that, it is also established that a strict construction does not require a provision to be restrictively construed and the provision must not be deprived of its intended effect (see the CJEU in *Future Health Technologies Ltd v Revenue and Customs Commissioners* Case C-86/09 at [30] and most recently the Court of Appeal in *WTGIL Limited v HM Revenue & Customs* [2025] EWCA Civ 399 at [55]). We must also take into account that Article 172 is intended to apply to end-use relief covering many kinds of goods, not just aircraft and aircraft parts.

67. There are two aspects to this ground of appeal which may be summarised as follows:

> (1) Whether as a matter of principle a CCC authorisation for end-use can be the subject of a "renewal" under the UCC regime. Mr White submits that CCC authorisations can be renewed under the UCC regime and the FTT was wrong to find otherwise. Mr Fell submits that as a matter of principle, CCC authorisations cannot be "renewed" under the UCC regime because there are substantive differences between the two regimes in relation to end-use authorisation.
>
> (2) If a CCC authorisation can be renewed under the UCC regime, whether the 2017 Application was for the same kind of operation as the appellant's previous CCC authorisation. In particular, we must consider what is meant by the term "operation" in Article 172(3). Mr White submits that the relevant operation for these purposes is the importation and end-use of civil aircraft and parts. As such, the appellant's CCC authorisation and the 2017 Application for a UCC authorisation were for the same kind of operation and the 2017 Application fell within Article 172(3). Mr Fell submits that they were not for the same kind of operation because the two authorisations differed in material respects. Those differences concerned the geographical scope of the authorisations and the subject matter of the authorisations. In the case of the CCC authorisation it was restricted to importation and use at East Midlands Airport and covered civil aircraft and parts. In contrast, the 2017 Application was for use in multiple member states and would not cover parts retroactively or for the first 12 months following the authorisation.

68. In relation to Ground 1, Mr White submitted that HMRC were unduly focusing on the term renewal. He says that the focus ought to be on the compendious term "renewal of an authorisation for the same kind of operation and goods". We do not agree. In our view it is appropriate to consider whether as a matter of principle a CCC authorisation can be the subject of a "renewal" under the UCC

regime. It is logical to consider that issue first. We have found it a difficult issue, but on balance and for the reasons given below we have decided that the FTT was right to find that a UCC authorisation could not amount to a renewal of a CCC authorisation. Even if we are wrong on that aspect of Ground 1, it is clear to us on the facts found by the FTT that it was right to find that the 2017 Application did not concern the renewal of an authorisation "for the same kind of operation" as the CCC authorisation. We are satisfied therefore that the FTT was right to conclude at [103] that Article 172(3) UCC DA was not engaged. In our view, Ground 1 does not establish any error of law in the FTT's decision.

Renewal

69. The objective of the UCC at a general level is the collection and protection of revenue in the form of customs duties payable pursuant to the Tariff. The provisions in relation to customs supervision and customs controls are to ensure compliance with customs regulations. The UCC sought to simplify customs procedures, to make them more efficient and to facilitate legitimate trade. It is nevertheless clear from cases such as *Döhler* that obtaining the benefit of a particular customs treatment requires strict compliance with the relevant customs procedure.

70. It is convenient to start with Mr Fell's central submission that the term "renewal" in Article 172(3) UCC DA means to repeat or recreate an authorisation that has expired. He submitted that where there are significant differences between the original authorisation and the new authorisation then it cannot be said to be a renewal. He submits that the FTT was right to conclude at [95] that the differences between authorisations under the CCC and those under the UCC mean that a CCC authorisation cannot be renewed under the UCC regime.

71. We accept that submission. In our view, it is implicit in the term renewal that the authorisation which has expired is simply given a new lease of life. An authorisation is renewed where the only change is to the end-date. The new authorisation must be subject to the same conditions and be on the same terms as the original authorisation. It cannot be said that the appellant's previous CCC authorisation and the UCC authorisation which it had applied for were on the same conditions and the same terms.

72. End-use relief under the CCC was by way of favourable tariff treatment governed by Article 21. The 2016 Tariff provided that relief was subject to conditions and it identified Articles 291 to 300 CCC IP. Article 292 provided that relief was subject to written authorisation and Article 21 provided that Articles 86 and 87 would apply. Articles 86 and 87 would not otherwise have applied to end-use because it was not a customs procedure with economic impact as defined by Article 84(1)(b). We accept that favourable tariff treatment effectively mimicked the authorisation requirements for such customs procedures, however it was conceptually different to customs procedures under the CCC regime. In contrast, end-use under the UCC is one of a number of "special procedures" which are "customs procedures" for which authorisation is specifically required pursuant to Article 211 UCC. Favourable tariff treatment was replaced by a customs procedure. Mr White argued that there was no practical difference and the operator gets to the same end result. However, the end result is reached through a different framework.

73. There are other differences between the two types of authorisation pointed out by Mr Fell, the clearest of which is the position in relation to security. Pursuant to Article 293(1)(e) CCC IP, the customs authority could make authorisation conditional on the provision of security where it considered security was necessary. In contrast, authorisation under the UCC is subject to the mandatory provision of security pursuant to Article 211(3)(c). Recital (34) of the UCC stated that rules for special procedures should allow for the use of a single guarantee for all categories of special procedures. Articles 89-91 set out general provisions in relation to guarantees with separate provisions for compulsory and optional guarantees.

74. Article 86 CCC sets out the conditions for granting a CCC authorisation. Authorisation shall be granted only where the operator offers "every guarantee necessary for the proper conduct of the operations". Article 211(3) UCC sets out the conditions for granting a UCC authorisation. The operator must provide "the necessary assurance of the proper conduct of the authorisations". In our view this is not a significant difference and simply reflects different terminology. It is however the case that pursuant to Article 211(3) certain operators are deemed to fulfil the condition.

75. Retroactive authorisation was governed by Article 294 CCC IP. Article 294(2) provided that retroactive authorisation could be granted to the date the authorisation expired where it concerned the renewal of an authorisation for the same kind of operation and goods. Article 294(3) provided that the retroactive effect could be extended further, but not more than one year, if there was a proven economic need, no attempted deception or obvious negligence, certain accounting matters could be confirmed and all formalities to regularise the situation of the goods could be carried out. In contrast, a retroactive UCC authorisation has to be granted where the conditions in Article 211(2) UCC are fulfilled. Article 172 UCC DA deals with the date to which an authorisation can take retroactive effect. There is no reference in the UCC provisions to obvious negligence.

76. Article 294(3) sets out what is required in addition to exceptional circumstances for an authorisation to have retroactive effect under that provision. Article 172(2) is less prescriptive in relation to what is required if an authorisation is to have retroactive effect on the ground of exceptional circumstances.

77. Overall, the existence of these differences supports a conclusion that a UCC authorisation cannot amount to the renewal of a CCC authorisation.

78. There is also some support for that conclusion in *Beeren* at [34] where the Court described Article 211(2) of the UCC as a "new substantive rule". In *Beeren*, the operator's CCC authorisation for end-use expired. The operator continued to import the goods and subsequently applied for an authorisation with retroactive effect to the date of expiry of the previous authorisation. The customs authority granted that application but with retroactive effect only to the date the application was made. In a decision dated 13 May 2015, the customs authority refused to back date the authorisation to the date of expiry pursuant to Article 294(2) CCC. It also took the view that the operator could not rely on Article 294(3). A complaint against the decision was rejected on 6 April 2016 and the operator appealed the decision on 3 May 2016, after the UCC came into effect.

79. The operator contended that the decision refusing retroactive effect should be examined in the light of Article 211 UCC on the basis that it was a purely procedural provision. In the alternative, the operator contended that the customs authority had wrongly applied Article 294(2) and (3) CCC.

80. The CJEU re-formulated the first and third questions which had been referred as follows:

> 30. By its first to third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 211(2) of the UCC must be interpreted as applying to an application for renewal of an authorisation with retroactive effect submitted before 1 May 2016, the date on which that article became applicable pursuant to Article 288(2) of the UCC, if the decision on that application was adopted after that date.

81. The CJEU rejected the operator's argument that the UCC should govern an application for retroactive authorisation made and rejected prior to the introduction of the UCC. The provisions in the UCC were not purely procedural:

> 32 Article 211(2)(a) to (h) of the UCC lists exhaustively the conditions for the issue of an authorisation with retroactive effect required, under paragraph 1 of that article, for recourse to, inter alia, the end-use scheme. That system, provided for in Article 254 of the UCC, allows goods to be released for free circulation with under a duty exemption or at a reduced rate of duty on account of their specific use.
>
> 33 As the Advocate General observed in points 34 to 37 of his Opinion, the conditions to which such authorisation is subject, laid down in Article 211(2), are either entirely or mainly substantive conditions for the issue of an authorisation with retroactive effect. They are decisive for the existence, on the part of the applicant, of the customs debt relating to the goods in question.
>
> 34. Consequently, as is apparent from the case-law cited in paragraph 31 above, Article 211(2) of the UCC cannot, as a new substantive rule, be applied to legal situations which arose under the earlier legislation, unless it is clear from its terms, purpose or general scheme that it must apply immediately to such situations.

82. Mr White relied on a number of arguments in support of his submission that there was no "prohibition", as he called it, on renewing a CCC authorisation on or after 1 May 2016 when the UCC regime came into effect. He submitted that there was no express provision to that effect and that it would require clear words if that was the intention when the UCC regime was introduced. He also relied heavily on the terms of Article 211 UCC.

83. Article 211(1) UCC sets out the requirement for authorisations in relation to a number of special procedures, including end-use. It provides that the conditions under which those procedures are permitted shall be set out in the authorisation. Mr White submitted that if a CCC authorisation could not be renewed then it is necessary to give the word "authorisation" in Article 211(1) a different meaning to the same word in Article 211(2)(h).

84. Article 211(2) deals with retroactive authorisations. It provides that customs authorities shall grant an authorisation with retroactive effect where eight conditions are satisfied, labelled (a) to (h). Article 211(2)(h) echoes Article 172(3) UCC DA and provides for the following condition:

> (h) where an application concerns renewal of an authorisation for the same kind of operation and goods, the application is submitted within three years of expiry of the original authorisation.

85. HMRC's case is that the authorisation in Article 211(2)(h) refers only to a UCC authorisation. It is also implicit in HMRC's case that "authorisation" in Article 211(1) must refer only to a UCC authorisation. Mr White submitted that would be absurd because when the UCC came into force, many authorisations in existence would have been CCC authorisations; so Article 211(1) must also refer to CCC authorisations.

86. We do not accept the premise of Mr White's submission that authorisation in Article 211(1) must include a reference to CCC Authorisations and that it would be absurd if it did not. That is because the UCC DA contained transitional provisions which prevent any absurdity from arising. We must construe the UCC in its context and that context includes the UCC DA. It is clear from the transitional provisions that Article 211(1) UCC can be construed as referring only to UCC authorisations in the same way as Article 211(2)(h).

87. Recital (56) to the UCC DA states that to safeguard the interests of operators it is necessary to establish transitional provisions to allow for the adaptation of authorisations to the new legal rules. The fact that authorisations required adapting itself suggests that they could not simply be renewed. The transitional provisions operate as follows:

(1) Article 250 provides that CCC authorisations which do not have a limited period of validity shall be reassessed. We understand that authorisations without a time limit are mainly authorisations to operate as a customs warehouse.

(2) Article 251 provides that CCC authorisations which are valid on 1 May 2016 shall remain valid. Where they are valid for a limited period they are to remain valid until the end of that period or 1 May 2019, whichever is the earlier. Otherwise, they remain valid until reassessment in accordance with Article 250(1)

(3) Article 254 provides that where a CCC authorisation remains valid in accordance with Article 251, the conditions under which it is applied shall be those laid down in the UCC and the UCC DA as set out in a "table of correspondence" in Annex 90 to the UCC DA. Item 29 of Annex 90 provides for the applicable provisions in relation to end-use relief. Essentially, the conditions for an authorisation under UCC, including for example the requirement for a guarantee in Article 211(3)(c), are read into the CCC authorisation.

88. The transitional provisions do not simply validate all existing CCC authorisations. They also apply the UCC conditions to those authorisations. Further, the transitional provisions apply only to those CCC authorisations which were valid as at 1 May 2016. There is no reference in the transitional provisions to CCC authorisations which had already expired on 1 May 2016. In our view one would expect the transitional provisions to deal with renewal of expired CCC authorisations if there were to be provision for such renewal.

89. The transitional provisions serve to emphasise the substantive differences between CCC authorisations and UCC authorisations. Not only do CCC authorisations require reassessment but they only remain valid with UCC conditions being read into the authorisation. The scheme of the UCC clearly distinguishes CCC authorisations from UCC authorisations. In our view this distinction supports the FTT's conclusion that CCC authorisations could not be renewed under the UCC regime.

90. Further, it does not seem to us that there was any real need to make provision for CCC authorisations to be renewable under the UCC regime. The only reason to do so would be if the operator was unable to rely on Article 172(2) UCC DA because goods otherwise qualifying for relief were imported without an authorisation more than one year prior to an authorisation being granted. The UCC regime was enacted in 2013 and there was plenty of time for operators to ensure that CCC authorisations were in place before the introduction of the UCC.

91. Mr White also pointed out that if the FTT's construction of Article 172(3) was right, then Articles 211(2)(e) and (h) could not be used by operators for 3 years. That must be right, but the UCC was intended to apply for many years. The CCC had been introduced in 1993 and was in force until 2016. It is not surprising therefore that these provisions might not be used for the first three years of the UCC regime.

92. Overall, we are satisfied that as a matter of principle CCC authorisations could not be renewed by way of a UCC authorisation. In so far as this conclusion relies on a strict construction of Article 172(3), it is consistent with the objectives of the UCC provisions and does not involve going beyond a fair reading of the words used in the provisions.

93. Mr White made the point that *Döhler* involved a strict construction because of risks to the collection of duties but that there was no such risk on the importation of civil aircraft for end-use. Also, the recitals to the UCC emphasise the need for efficient and simple customs procedures and reducing those procedures to those which are economically justified. We do not consider that these points support a different conclusion. We accept that there may be little risk in relation to the

importation of civil aircraft and little scope for a customs debt to arise. Either the aircraft are imported having been registered with the CAA and the end-use requirement is satisfied on importation, or there is only a short period of time before registration and it is easy for customs authorities to confirm that an aircraft has been registered. However, there does still remain the risk that a customs debt will arise if the aircraft is not registered or if it is imported to a different airport to that named in the end-use authorisation. Mr White suggested that when end-use relief for civil aircraft was abolished in 2018 that was because the legislative body had originally made a mistake in placing civil aircraft under the end-use procedure. We cannot infer that is the case. We must apply the law as it stood at the time of the 2017 Application. We must also take into account that end-use authorisation applies not only to civil aircraft but to all goods imported using the end-use special procedure under the UCC.

94. Mr White submitted that it was clear there was no substantive difference between CCC authorisations and UCC authorisations because there was no amendment to end-use relief for civil aircraft and aircraft parts in the 2016 Tariff. The 2016 Tariff provided for relief subject to the conditions in Articles 291 to 300 of the CCC IP. There was no amendment to those provisions until the 2017 Tariff came into effect on 1 January 2017. At that stage, the relief was expressed to be subject to the conditions in Article 254 UCC. Throughout 2016 therefore, the applicable law in relation to the relief incorporated conditions from the CCC regime. This included a period of 8 months from 1 May 2016 to 31 December 2016 when the UCC regime was in force.

95. We do not accept that is the case. The UCC and the UCC DA came into effect on 1 May 2016. The conditions applicable to any new authorisation were the UCC conditions. The UCC DA included the transitional provisions referred to above. The conditions attaching to a valid CCC authorisation were those in the table of correspondence at Annex 90 UCC DA. There is apparently an inconsistency between the conditions for authorisation in the 2016 Tariff and the conditions in the UCC regime. However, we are satisfied that at most this must have been a matter of oversight. The 2016 Tariff referred to relief being subject to "conditions laid down in the relevant provisions of the European Union". With effect from 1 May 2016, those conditions were in the UCC. The CCC was no longer in effect. Indeed, the CCC had been repealed by Article 286 of the UCC and Article 286(3) provides that references to the repealed regulations were to be read as references to the UCC. The CCC IP was itself repealed by Commission Implementing Regulation (EU) 2016/481 with effect from 1 May 2016. The wording of the 2016 Tariff was therefore effective as a matter of law to incorporate the UCC conditions.

96. Further, the 2016 Tariff does not say that relief is subject to the conditions in Articles 291 to 300 of the CCC IP. It is subject to "the relevant provisions of the European Union". In our view those provisions must be construed as being the UCC provisions. The reference in the Tariff to "see Articles 291 to 300" cannot be construed as reviving the CCC IP for certain limited purposes in connection with end-use relief for civil aircraft.

97. In his oral reply, Mr White pointed out for the first time that in other contexts the 2016 Tariff had been amended with effect from 1 July 2016. This was in relation to subheading 8443 91 which applied to parts and accessories of certain printing machinery and subheading 8803 90 in relation to parts for certain aircraft. Entry under those subheadings was amended so as to refer to Article 254 UCC. Mr Fell did not have an opportunity to respond to this argument given the circumstances in which it was raised. It is not clear why these amendments were made with effect from 1 July 2016 and not 1 May 2016, with no amendment being made in relation to end-use relief for civil aircraft. However, we do not infer that the absence of an amendment in relation to the conditions for end-use relief for civil aircraft was a deliberate or conscious decision on the part of the legislature. We remain of the view that the absence of an amendment in relation to end-use relief for civil aircraft was a matter of oversight which was corrected in the 2017 Tariff.

98. We were also referred to guidance published by HMRC and by the European Commission. Mr White submitted that such guidance could be persuasive but only to the extent that it was in existence at the time the dispute arose. When the dispute arose between the appellant and HMRC there was no direct guidance on the question of whether a CCC authorisation could be renewed under the UCC regime.

99. HMRC's guidance in *Notice 3001: Customs Special Procedures for the Union Customs Code* was published in May 2016 and republished in July 2016 and December 2016. Mr White pointed out that there was no reference in any version to a prohibition on renewing a CCC authorisation. The various versions simply referred to the conditions for retroactive authorisation. He submitted that if there was a prohibition, one would expect to see reference to it in Notice 3001. We do not consider that the absence of a reference to the fact that a CCC authorisation could not be renewed under the UCC regime assists in construing the UCC.

100. We were also referred to guidance for member states and traders published by the European Commission in a document described as *SPECIAL PROCEDURES – Title VII UCC "Guidance for MSs and Trade"*. The guidance came with a disclaimer stating that it was not legally binding and was explanatory in nature. Mr White submitted that the guidance when published on 15 July 2016 and on 24 March 2017 supported the appellant's case. It stated:

> Note: Authorisation with retroactive effect can be issued also for the time period before 1st May 2016 for which the rules of Community Customs Code apply. (Art.172 (2) DA)

101. We do not agree that the note supports the appellant's case. It references only Article 172(2) UCC DA which gives retroactive effect for up to a year where there are exceptional circumstances. It does not reference Article 172(3) which concerns renewals of an authorisation. We do not accept Mr White's suggestion that this omission can be explained on the basis that no-one imagined a CCC authorisation could not be renewed under the UCC regime.

102. We know from *Beeren* that if goods were imported without an authorisation prior to 1 May 2016, and an application for retroactive effect was made before that date, then a decision after 1 May 2016 had to be made on the basis of the CCC regime. The fact that Article 172(2) UCC DA could apply retrospectively tells one nothing about the meaning of the word "renewal" in Article 172(3). The note might also apply in a scenario where goods were imported before 1 May 2016 with an application for retroactive authorisation being made after that date. That scenario was not considered in *Beeren*. It may be that such an application would have been dealt with under the CCC even though the CCC had been repealed. Alternatively, it might have been dealt with under the UCC regime, applying the exceptional circumstances provision in Article 172(2). It is not necessary for us to express a view on that issue. What the note does not say or shed any light on is whether as a matter of principle a CCC authorisation could be renewed after 1 May 2016.

103. When an updated version of the Commission guidance was published on 23 January 2019 and in subsequent updates the note remained but the following passage was added:

> Every application for renewal of any authorisation has to be treated under the UCC provisions. It should be noted that renewal of an authorization means that all information, conditions and references to customs rules are unchanged. Only the period of validity of the authorization is different from the previous authorization. Taking into account that the UCC and its related COM acts are very different from the Community Customs Code and its Implementing Regulation, the 'old' authorisation cannot be renewed. Therefore an application for renewal of an Inward Processing or Processing under Customs Control authorisation granted before 1st May 2016 has to be rejected. The person concerned (holder of the expired 'old' authorization) must submit a new application for an authorization.

104. Mr White submitted that this guidance was not persuasive because it was not contemporaneous. Clearly the guidance is given after the events in this appeal and it contains little reasoning as to why Article 172(3) should not be taken as permitting renewal of a CCC authorisation under the UCC regime. It does refer to the UCC regime as being very different to the CCC regime. It also expresses the view of the Commission which carries some weight. Lord Sales JSC indicated in an extra-judicial speech at the Annual Lecture of the UK Association for European Law on 20 November 2023 that the views of the Commission whilst not binding are at least influential. That was said in the context of submissions by the Commission to the Court of Justice on a reference, but there is no reason we should not treat views expressed in official guidance as having some weight, albeit with an appropriate degree of caution. In the event it has not been necessary for us to rely on this material in reaching our conclusion that a CCC authorisation cannot be renewed under the UCC regime. It does however provide us with some comfort that our interpretation is correct.

105. For all the reasons given above we are satisfied that the FTT was right to conclude that the 2017 Application could not qualify as the "renewal" of an authorisation within Article 172(3) UCC DA.

Same kind of operation

106. The second aspect of Ground 1 raises a question of whether the FTT was right to conclude at [102] that whilst the 2017 Application concerned the same kind of goods as the previous CCC authorisation, it did not concern the same kind of operation. That was because of the different geographical scope of the 2017 Application and the CCC authorisation. The geographical scope of the 2017 Application was described by the FTT at [25]:

> 25. The goods to be covered were civil aircraft and goods for use in civil aircraft. Their use was describe[d] as "maintenance and operation of civil aircraft". In answer to the question "Where will the goods be used?", the completed form stated: "Intra EU, Trans Continental (EU-USA & EU-BAH)".

107. The geographical scope of the CCC authorisation was described in the FTT's findings of fact at [65] and [66] as follows:

> 65. I find that the appellant's 2010-15 end-use authorisation was restricted to the maintenance and operation of civil aircraft and civil aircraft parts *at East Midlands Airport*. It was clearly the intent of HMRC, in granting the authorisation, to limit it to end-use at certain premises, and it is clear enough from the context that the premises intended were those of the appellant at East Midlands Airport. I do not accept the appellant's argument that the reference in the authorisation to premises stated in the (blank) item 1(b) of the appellant's application form meant that the authorisation was for the carrying out of operations "anywhere": it is clear from the context that HMRC
>
> > (1) intended to limit where processing operations/prescribed end-use under the authorisation could be carried out; and
> >
> > (2) did not deem information about where the goods were to be assigned to their end-use, "unnecessary" in the language of CCC IP article 293.3(f) (as the authorisation indicated that there was to be a place where processing operations would be carried out).
>
> 66. This construction of the appellant's 2010-15 end-use authorisation is consistent with the relevant provisions of the CCC, which
>
> > (1) establish that customs supervision is to continue up to the point of prescribed end-use; and
> >
> > (2) expressly envisage authorisation specifying the places where the goods have to be assigned to the prescribed end-use.

108. There is no challenge to the FTT's findings in relation to the geographical scope of the 2017 Application and the CCC authorisation. The issue is what is meant by the same type of "operation" in Article 172(3) and whether any difference in geographical scope meant that the authorisations were not for the same type of operation.

109. Article 211(3)(b) UCC provides that as a condition of authorisation under the UCC regime the operator must provide the necessary assurance of the proper conduct of "the operations". Following the further review directed by the FTT, HMRC have granted an authorisation pursuant to Article 211. It must therefore be accepted that the appellant has provided the necessary assurance.

110. Article 211(2)(h) provides that as a condition of retroactive effect, where the application concerns renewal of an authorisation for the same kind of "operation" it must be submitted within 3 years of the expiry of the original authorisation.

111. Mr White submitted that in these contexts, and in the context of Article 172(3) UCC DA, the reference to "operation" is simply to a customs processing operation such as storage or end-use. Operation is to be construed in this way whatever goods are imported. In relation to end-use of a civil aircraft, the operation was importing a registered aircraft or importing an unregistered aircraft and subsequently registering the aircraft with the civil aviation authority. There was no basis for the FTT to say that there were different operations involved because of the different geographical scope. The fact that the CCC authorisation was subject to a condition as to geographical scope does not mean that the 2017 Application did not concern the same type of operation. A condition applying to an authorisation does not change the nature of the operation for which authorisation is granted.

112. Mr White submitted that civil aircraft are in a low-risk category. He identified 3 classes of operation under the UCC in ascending order of risk:

(1) Release for free circulation and end-use;

(2) Procedures without economic impact such as external transit;

(3) Procedures with economic impact such as inward processing.

113. That may be true, but in our view it sheds no light on what is meant by the term "operation" in Article 172(3).

114. Mr White further submitted that in 2017 and with effect for the 2018 Tariff it was realised that customs supervision and control for end-use relief in relation to civil aircraft was unnecessary, presumably because importation of civil aircraft for end-use was relatively risk free. Hence the requirements for supervision and control were removed completely. He described the original requirement for supervision and control as "an error" and submitted that one can make sense of the error if the operation is the importation of a registered aircraft or the importation and subsequent registration of an aircraft. We do not follow Mr White's reasoning in this regard. In any event, we cannot infer that the requirement for customs supervision and control in relation to civil aircraft was an error.

115. There is no definition of the term "operation" in the UCC provisions. We agree with Mr Fell that the term must be given a strict construction because retroactive authorisation is an exception to the general customs rules. We take into account that customs supervision and control is an essential element of the UCC to facilitate trade, fight fraud and avoid errors. The location at which a civil aircraft was imported into the EU was fundamentally important to customs supervision and control. In our view it would be inconsistent with the UCC regime if the 2017 Application, which permitted

importation and end-use at any airport in the EU, was treated as being for the same operation as the previous CCC authorisation where importation and end-use was restricted to East Midland's Airport. Whilst civil aircraft might pose little risk of a customs debt arising, they are also high value. Further, the provisions must be construed in the same way for all types of goods and authorisations.

116. The 2017 Application defined not only the place at which aircraft were to be imported and put to end-use, but also made provision for aircraft parts to be put to end-use throughout Europe. This is the equivalent of what was a "single authorisation" pursuant to Article 1.13 CCC IP and which was governed by Article 292(5) of the CCC IP. However, the appellant's CCC authorisation was not a single authorisation. Again, we are satisfied that in this regard the 2017 Application involved a different operation to that in the appellant's CCC authorisation.

117. The FTT found at [32] and [33] that the 2017 Application was concerned with civil aircraft and aircraft parts for a 5 year period, subject to a proposed condition or undertaking that the appellant would not use the end-use procedure in relation to aircraft parts retrospectively or for a period of 12 months from the date authorisation was granted. Mr Fell argued that this was also a material difference between the CCC authorisation and the UCC authorisation meaning that they were not for the same kind of operation. It is not necessary for us to determine whether this in itself would have been sufficient to prevent renewal of the CCC authorisation.

118. For all these reasons we are satisfied that the FTT was right to find that the 2017 Application was not for the same kind of operation as the appellant's CCC authorisation.

Ground 2

119. Ground 2 is that the FTT erred in law in limiting the scope of what could amount to exceptional circumstances for the purposes of Article 172(2) UCC DA.

120. We can deal with Ground 2 relatively briefly. There is no issue as to the meaning of exceptional circumstances. However, the appellant says that the FTT erred in its approach at [113] of its decision. It was wrong to exclude from consideration of exceptional circumstances the fact that the 2015 Application had been made and if allowed would have authorised end-use. This was a factor to be considered individually and as part of the circumstances as a whole in deciding whether the circumstances were exceptional so as to justify granting authorisation with retroactive effect.

121. In this context Mr White pointed to the fact that Article 243(1) CCC made provision for a right of appeal where an operator had made an application to the customs authority but the customs authority did not provide a decision. However, the UK provisions do not provide for any such right of appeal. The parties did not make any submissions as to whether the possibility of judicial review might satisfy the requirements of Article 243(1) in this regard. In the event, it is not necessary for us to consider such arguments. We are satisfied that the FTT made no error of law.

122. The FTT set out at [109] all the circumstances relied upon by the appellant as amounting to exceptional circumstances for the purposes of Article 172(2). At [110] to [112] it discounted all those factors, including [109(4)] which was the fact that the appellant had made the 2015 Application. The one factor the FTT did not discount was [109(5)], which was the fact HMRC had failed to make a decision on the 2015 Application. As a result of that finding, the FTT directed at [145(2)] that in carrying out their further review, HMRC should take into account the FTT's analysis of law at [105] to [113].

123. The FTT referred at [111] to the decision of the CJEU in *Unipack v Bulgarian Customs Authority* Case C-391/19. In that case the operator had challenged the date on which a retroactive authorisation

for end-use was granted on the basis that there were exceptional circumstances within Article 172(2) UCC DA. The customs authority had granted authorisation from the date on which the application was made pursuant to Article 172(1). The question referred to the CJEU was whether certain circumstances constituted exceptional circumstances for these purposes. The CJEU stated at [22] and [23]:

> 22. As a preliminary point, it should be recalled that the Union Customs Code is based on a system of declarations … with the aim of keeping customs formalities and controls to a minimum while preventing fraud or irregularities that could harm the EU budget. Because of the importance of those prior declarations for the proper functioning of the customs union, the Union Customs Code, in Article 15, places an obligation on declarants to provide accurate and complete information.
>
> 23. More specifically, the end-use procedure provided for in Article 254 of the Union Customs Code allows goods to be released for free circulation with total or partial exemption from duties according to their specific use. It relies on a system of prior authorisation following the submission of an application by the operators concerned, in accordance with Articles 211 and 254 of the Union Customs Code. Under Article 172 of Delegated Regulation 2015/2446, when an authorisation is granted it takes effect at the earliest on the date of acceptance of the application. It is only by way of derogation, where there are 'exceptional circumstances', that paragraph 2 of that article provides that an authorisation may take effect earlier than the date of acceptance of the application.

124. It is clear to us that the FTT took the same approach to exceptional circumstances as the CJEU took in *Unipack*. In that case, the CJEU considered that the following were not exceptional circumstances: an amendment to the Tariff; the fact customs authorities did not object for 10 months; and the fact that the goods would have qualified for end-use if the importer had authorisation for end-use. At [30], the CJEU stated that none of those factors were capable of constituting exceptional circumstances:

> 30. It follows that none of the circumstances mentioned by the referring court is capable of constituting an 'exceptional circumstance' within the meaning of Article 172(2) of Delegated Regulation 2015/2446, without there being any need to define that concept further. The failure to comply with obligations under the Union Customs Code and measures resulting from it cannot justify more favourable treatment of the economic operator responsible for that failure.
>
> 31. In the light of all the foregoing considerations, the answer to the question referred is that Article 172(2) of Delegated Regulation 2015/2446 must be interpreted as meaning that matters such as the early expiry of the validity of a binding tariff information decision due to an amendment to the combined nomenclature, a failure by the customs authorities to take action in relation to imports bearing an incorrect code or the fact that goods have been used for a purpose exempted from anti-dumping duty cannot constitute 'exceptional circumstances' within the meaning of that provision, for the purposes of the grant under Article 254 of the Union Customs Code of a retroactive authorisation to use the end-use procedure provided for in that latter article.

125. The FTT was not saying that the fact an application for authorisation had been made in 2015 was irrelevant. Plainly that could not be the case because, as the FTT found, the fact the application had not been determined was relevant and it directed HMRC to have regard to that point in the further review. The question of exceptional circumstances would arise if HMRC decided to grant an authorisation following the further review which in the event it did. The FTT was simply saying that the mere making of the 2015 Application could not in itself amount to exceptional circumstances. That is unobjectionable.

126.The FTT correctly stated at [114] that it did not have jurisdiction to consider whether there was an exceptional circumstance:

> 114. However, in my view, it is outside the scope of the tribunal's s16(4) FA 1994 jurisdiction for me to make a findings as to whether or not this circumstance is "exceptional" – that is a matter for HMRC's administrative discretion, subject to the tribunal's supervisory jurisdiction, if, upon a further reviewed ordered by the tribunal, HMRC were to decide to grant authorisation (and so come to consider whether it should have retroactive effect). The most I can do is decide, having made full findings of fact, whether no reasonable panel of commissioners could conclude that item (5) of the appellant's list comprises exceptional circumstances.

127.Mr Fell accepted that the FTT was required to take into account the combination of factors in determining whether the decision on exceptional circumstances was one which was reasonably available to HMRC. We are satisfied that was what the FTT did. It referred at [114] to "having made full findings of fact". It went on to make findings of fact at [115] as to the circumstances in which HMRC never made a decision on the 2015 Application. When the FTT gave directions for the further review, it directed HMRC to have regard to its findings of fact, including its findings at [115] and at Appendix 2, which included detailed findings about the 2015 Application.

128.In the circumstances, we do not consider that Ground 2 identifies any error of law by the FTT.

Ground 3

129.Ground 3 is that the FTT erred in law in failing to direct that on the further review HMRC must treat the 2017 Application consistently with the way it treated other end-use applications in 2017 and deal with it on the basis of guidance as it stood at that time. In particular, the appellant says that the FTT ought to have made the following direction when it directed HMRC to conduct a further review:

> HMRC must treat the 2017 End-Use Application consistently with the way in which it treated other end-use applications at the same time. It must do so in accordance with the policy and guidance (including its own and that of the Commission) as it stood at the time of the application.

130.The appeal to the FTT against HMRC's original decision confirmed on review to refuse the 2017 Application for authorisation was brought pursuant to section 16(4) FA 1994 which provides as follows:

> (4) In relation to any decision as to an ancillary matter, or any decision on the review of such a decision, the powers of an appeal tribunal on an appeal under this section shall be confined to a power, where the tribunal are satisfied that the Commissioners or other person making that decision could not reasonably have arrived at it, to do one or more of the following, that is to say —
>
> > (a) to direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
> > (b) to require the Commissioners to conduct, in accordance with the directions of the tribunal, a review or further review as appropriate of the original decision; and
> > (c) in the case of a decision which has already been acted on or taken effect and cannot be remedied by a review or further review as appropriate, to declare the decision to have been unreasonable and to give directions to the Commissioners as to the steps to be taken for securing that repetitions of the unreasonableness do not occur when comparable circumstances arise in future.

131.We are concerned with the FTT's powers pursuant to section 16(4)(b). The FTT was satisfied that HMRC could not reasonably have arrived at the Decision because it failed to take into account

the appellant's proposal that authorisation should be subject to a condition that it would not apply to civil aircraft parts retrospectively or for a period of 12 months from the date it was granted.

132.Mr Leigh dealt with the appellant's submissions on Ground 3. He described what we accept is a 3-stage approach required by section 16(4) FA 1994, namely:

(1) Is the tribunal satisfied that HMRC's decision could not reasonably be arrived at?

(2) If so, should the tribunal direct a further review?

(3) If so, what directions should the tribunal give for the purposes of that further review.

133.The FTT was satisfied as to stages (1) and (2). For the purposes of Ground 3 we are concerned with the directions which the FTT gave for the purposes of the further review. Mr Leigh submitted that the only limit on the FTT was that its directions must relate to the subject matter of the further review and must reflect the fact that it is a further review and not a fresh decision. We did not hear argument as to the general scope of the FTT's jurisdiction as to the directions it can give for the purposes of a further review. We were however referred to a number of authorities as to the nature of the FTT's jurisdiction pursuant to section 16(4). The jurisdiction was considered by the Court of Appeal in *HM Revenue and Customs v Smart Price Midlands Ltd* [2019] EWCA Civ 841 where Rose LJ, as she then was, described the supervisory nature of the test under section 16(4) and went on to consider how that jurisdiction was to be exercised:

> 18. The nature of the exercise carried out by the FTT in an appeal under section 16(4) of the Finance Act 1994 was considered further in Gora v Customs and Excise Comrs [2004] QB 93 ("Gora") … The commissioners accepted in Gora that the tribunal's role would be to satisfy itself that the primary facts upon which the commissioners had based their decision were correct. The tribunal would not be limited to considering only whether there had been sufficient evidence to support the commissioners finding. The tribunal would then go on to decide whether, in the light of its findings of fact, the decision was reasonable. Counsel for HMRC in Gora submitted that the commissioners would then conduct any further review they were directed to undertake in accordance with the findings of the tribunal. Pill LJ accepted that view of the jurisdiction of the tribunal: see para 39 of his judgment with which Chadwick and Longmore LJJ agreed.

134. In *Gora v HM Customs & Excise* [2003] EWCA Civ 525, the Court of Appeal also considered the FTT's jurisdiction in relation to the policy applied by HM Customs & Excise in making the contested decision and endorsed the following submission of counsel for HM Customs & Excise:

> 38. … The Commissioners accept:
>
> (a) It would be open to the Appellants to contend in the Tribunal that the decision on restoration was not reasonable (within the meaning of s 16(4) of the Finance Act 1994) on the grounds that it was based upon an unreasonable policy…
>
> (b) For the purpose of deciding whether the policy was unreasonable, it is submitted that the Tribunal should not substitute its view for that of the Commissioners as to the appropriate policy in this area of administration. It should ask itself, applying judicial review principles, whether the policy was one that could reasonably be adopted. In a context where Article 1 Protocol 1 of the ECHR was engaged, the principles of judicial review would include that of proportionality.
>
> (c) The Appellants contend that the policy is 'unreasonable' in the above sense because it fails to take account of the alleged 'blameworthiness' of the Appellants. The Commissioners entirely accept that the Appellants are free to raise that contention in the Tribunal. If that contention were successful, the Tribunal would remit the matter to the Commissioners and impose such directions, requirements or declarations as it thought fit pursuant to s 16(4)(a)-(c) of the 1994 Act.

(d) The Commissioners would then retake the decision, in compliance with the Tribunal's ruling.

135. In *Behzad Fuels (UK) Ltd v HM Revenue and Customs* [2019] EWCA Civ 319 the Upper Tribunal had directed a further review to be carried out on the basis of published guidance and policy in force at the date of the original decision. The Court of Appeal rejected HMRC's submission that the Upper Tribunal ought to have directed a further review on the basis of its guidance and policy at the time of the further review. Henderson LJ stated as follows at [66] and [67]:

> 66 The short answer to these arguments, in my judgment, is that the Upper Tribunal only had jurisdiction to require HMRC to conduct "a further review of the original decision": see section 16(4)(b) of the 1994 Act. It did not have jurisdiction to require a fresh review to be undertaken in the light of circumstances and published guidance in force at the date when the review is carried out. The original revocation decision was made by reference to the published guidance contained in the then current form of Notice 192, from which it follows, in my view, that any review of that decision must likewise be taken by reference to the same guidance. If the question were whether the Company had complied with some statutory requirement, the original decision would obviously have had to be taken by reference to the version of the legislation then in force, and if a court or tribunal subsequently found an error of law in the decision and directed it to be reviewed, any such review would in the normal way also have to be conducted in accordance with the law in force at the date of the original decision. I can see no good reason why the position should be any different merely because we are concerned with published guidance rather than statutory requirements…
>
> 67. … The real reason, to my mind, lies in the limited nature of the Upper Tribunal's jurisdiction under section 16(4), and the general principle that when a decision is reviewed, the review should be conducted by reference to the facts as they existed, and the law as it stood, at the date of the original decision. That is the critical distinction between the review of a previous decision, on the one hand, and the taking of an entirely fresh decision, on the other hand.

136. It is clear from these authorities that the FTT can direct a further review to be carried out on the basis of the FTT's findings of fact and its findings as to the reasonableness of a policy being applied by HMRC. In considering the reasonableness of a policy being applied by HMRC, the FTT can apply judicial review principles. Where the decision depends on the application of a policy, it is the policy applicable at the time of the original decision which should be applied and the FTT should direct accordingly. The further review should also be conducted in accordance with the law as it stood at the time of the original decision.

137. Mr Leigh submitted that the further review decision in this case would only be reasonable if it complied with public law requirements of rationality. He referred us to *R (oao Gallaher Group Ltd) v Competition and Markets Authority* [2018] UKSC 25, in which the Supreme Court stated that where issues of consistency in decision-making arise, they do so generally as aspects of rationality and legitimate expectation rather than under a general principle of equal treatment. There is also the EU law principle of equal treatment which would apply in the context of customs duties (see *Marks & Spencer plc v Revenue and Customs Commissioners* Case C-309/06).

138. We are satisfied that the FTT made no error of law in not directing HMRC to treat the appellant in the same way as other operators in 2017 or to determine the 2017 Application in accordance with policy and guidance as it stood in 2017. We have reached that conclusion for two reasons.

139. Firstly, the FTT made a finding at [101] that the appellant had not shown that HMRC had treated it differently to other operators in applying the customs legislation. The appellant says that there was no burden on it to establish that other operators were treated differently. It had not asserted that the

original decision was unreasonable because of inconsistent treatment. However, having found that the decision was unreasonable and having directed a further review it was open to the FTT to make the direction sought. HMRC's argument that the 2017 Application could not be treated as the renewal of a CCC authorisation and their reliance on Commission guidance were raised for the first time in HMRC's skeleton argument shortly before the FTT hearing. The appellant had raised the question of unequal treatment in response to that argument. That may be the case, but in our view it does not remove the burden on the appellant of establishing at least some real possibility of HMRC breaching its obligation to treat the appellant consistently with other operators. In our view there was nothing in the FTT's findings that required the FTT to make the direction sought.

140. Secondly, the guidance which the appellant says the FTT ought to have referred to in its directions for the further review was that in existence in 2017. As we have found, the note referred to in that guidance does not say that a CCC authorisation could be renewed under the UCC regime. In any event, the FTT correctly found as a matter of law that a CCC authorisation could not be renewed under the UCC regime. As the Court of Appeal stated in *Behzad*, the further review must be conducted by reference to the law as it stood at the time of the original decision. That was a matter of law, and not a matter of policy or guidance.

141. The FTT was entitled not to make the direction sought. If it had done, it would simply have been directing HMRC to comply with their existing public law obligations in circumstances where there was no evidence that they would fail to comply with those obligations. In the circumstances, it is not necessary for us to consider on this appeal how HMRC should approach its further review in order to comply with domestic law requirements of rationality or the EU law principle of equal treatment. Any challenge to the approach of HMRC on the further review can only be made on the appeal against the further review decision. We make no observations as to whether any such challenge would have merit.

Conclusion

142. For the reasons given above we are satisfied that there were no errors of law in the FTT's decision and we dismiss the appeal.

JUDGE JONATHAN CANNAN
JUDGE NICHOLAS PAINES KC

RELEASE DATE: 09 June 2025

APPENDIX

EU Provisions

COMMUNITY CUSTOMS CODE

Council Regulation (EEC) No 2913/92

Article 4

For the purposes of this Code, the following definitions shall apply:

13) 'Supervision by the customs authorities' means action taken in general by those authorities with a view to ensuring that customs rules and, where appropriate, other provisions applicable to goods subject to customs supervision are observed.

(14) 'Customs controls' means specific acts performed by the customs authorities in order to ensure the correct application of customs rules and other legislation governing the entry, exit, transit, transfer and end-use of goods moved between the customs territory of the Community and third countries and the presence of goods that do not have Community status; such acts may include examining goods, verifying declaration data and the existence and authenticity of electronic or written documents, examining the accounts of undertakings and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official inquiries and other similar acts.

(16) 'Customs procedure' means:

(a) release for free circulation;
(b) transit;
(c) customs warehousing;
(d) inward processing;
(e) processing under customs control;
(f) temporary admission;
(g) outward processing;
(h) exportation.

Section 2

Decisions relating to the application of customs rules

Article 6

1. Where a person requests that the customs authorities take a decision relating to the application of customs rules that person shall supply all the information and documents required by those authorities in order to take a decision.

2. Such decision shall be taken and notified to the applicant at the earliest opportunity. Where a request for a decision is made in writing, the decision shall be made within a period laid down in accordance with the existing provisions, starting on the date on which the said request is received by the customs authorities. Such a decision must be notified in writing to the applicant.

However, that period may be exceeded where the customs authorities are unable to comply with it. In that case, those authorities shall so inform the applicant before the expiry of the abovementioned period, stating the grounds which justify exceeding it and indicating the further period of time which they consider necessary in order to give a ruling on the request.

Article 21

1. The favourable tariff treatment from which certain goods may benefit by reason of their nature or end-use shall be subject to conditions laid down in accordance with the committee procedure. Where an authorization is required Articles 86 and 87 shall apply.

2. For the purposes of paragraph 1, the expression 'favourable tariff treatment' means a reduction in or suspension of an import duty as referred to in Article 4 (10), even within the framework of a tariff quota.

Section 3

Suspensive arrangements and customs procedures with economic Impact

A. **Provisions common to several procedures**

Article 84

1. In Articles 85 to 90:

(a) where the term 'procedure' is used, it is understood as applying, in the case of non-Community goods, to the following arrangements:

— external transit;
— customs warehousing;
— inward processing in the form of a system of suspension;
— processing under customs control;
— temporary importation;

(b) where the term 'customs procedure with economic impact' is used, it is understood as applying to the following arrangements:

— customs warehousing;
— inward processing;
— processing under customs control;
— temporary importation;
— outward processing.

Article 85

The use of any customs procedure with economic impact shall be conditional upon authorization being issued by the customs authorities.

Article 86

Without prejudice to the additional special conditions governing the procedure in question, the authorization referred to in Article 85 and that referred to in Article 100 (1) shall be granted only:

— to persons who offer every guarantee necessary for the proper conduct of the operations;

— where the customs authorities can supervise and monitor the procedure without having to introduce administrative arrangements disproportionate to the economic needs involved.

Article 87

1. The conditions under which the procedure in question is used shall be set out in the authorization.
2. The holder of the authorization shall notify the customs authorities of all factors arising after the authorization was granted which may influence its continuation or content.

Article 88

The customs authorities may make the placing of goods under a suspensive arrangement conditional upon the provision of security in order to ensure that any customs debt which may be incurred in respect of those goods will be paid.

Special provisions concerning the provision of security may be laid down in the context of a specific suspensive arrangement.

TITLE VIII

Appeals

Article 243

1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

Any person who has applied to the customs authorities for a decision relating to the application of customs legislation and has not obtained a ruling on that request within the period referred to in Article 6 (2) shall also be entitled to exercise the right of appeal.

The appeal must be lodged in the Member State where the decision has been taken or applied for.

2. The right of appeal may be exercised:

(a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialized body, according to the provisions in force in the Member States.

COMMUNITY CUSTOMS CODE IMPLEMENTING PROVISIONS

Commission Regulation (EEC) No 2454/93

CHAPTER 1

Definitions

Article 1

For the purposes of this Regulation

…

13. Single authorisation means: an authorisation involving customs administrations in more than one Member State for one of the following procedures: —

…
— end-use pursuant to Article 21(1) of the Code;

CHAPTER 2

End-use

Article 291

1. This chapter applies where it is provided that goods released for free circulation with a favourable tariff treatment or at a reduced or zero rate of duty on account of their end-use are subject to end-use customs supervision.

Article 292

1. The granting of a favourable tariff treatment in accordance with Article 21 of the Code shall, where it is provided that goods are subject to end-use customs supervisions, be subject to a written authorisation.
…

2. Applications shall be made in writing using the model set out in Annex 67. The customs authorities may permit renewal or modification to be applied for by simple written request.
…

5. Where a single authorisation is applied for, the prior agreement of the authorities shall be necessary according to the following procedure

The application shall be submitted to the customs authorities designated for the place

- where the applicant's main accounts are kept facilitating audit-based controls, and where at least part of the operations to be covered by the authorisation are carried out; or
- otherwise, where the applicant's main accounts are held facilitating audit-based controls of the arrangements.

These customs authorities shall communicate the application and the draft authorisation to the other customs authorities concerned, which shall acknowledge the date of receipt within 15 days.

The other customs authorities concerned shall notify any objections within 30 days of the date on which the draft authorisation was received. Where objections are notified within the above period and no agreement is reached, the application shall be rejected to the extent to which objections were raised.

The customs authorities may issue the authorisation if they have received no objections to the draft authorisation within the 30 days.

The customs authorities issuing the authorisation shall send a copy to all customs authorities concerned.

6. Where the criteria and conditions for the granting of a single authorisation are generally agreed on between two or more customs administrations, the said administrations may also agree to replace prior consultation by simple notification. Such notification shall always be sufficient where a single authorisation is renewed or revoked.

7. The applicant shall be informed of the decision to issue an authorisation, or of the reasons why the application was rejected, within thirty days of the date on which the application was lodged or of the date on which any outstanding or additional information requested was received by the customs authorities.

That period shall not apply in the case of a single authorisation unless it is issued under paragraph 6.

Article 293

1. An authorisation using the model set out in Annex 67 shall be granted to persons established in the customs territory of the Community, provided that the following conditions are met:

(a) the activities envisaged are consistent with the prescribed end-use and with the provisions for the transfer of goods in accordance with Article 296 and the proper conduct of operations is ensured;

(b) the applicant offers every guarantee necessary for the proper conduct of operations to be carried out and will undertake the obligations:

- to whole or partly assign the goods to the prescribed end-use or to transfer them and to provide evidence of their assignment or transfer in accordance with the provisions in force,
- not to take actions incompatible with the intended purpose of the prescribed end-use,

- to notify all factors which may affect the authorisation to the competent customs authorities;

(c) efficient customs supervision is ensured and the administrative arrangements to be taken by the customs authorities are not disproportionate to the economic needs involved;

(d) adequate records are kept and retained;

(e) security is provided where the customs authorities consider this necessary.

Article 294

1. The customs authorities may issue a retroactive authorisation.

Without prejudice to paragraphs 2 and 3, a retroactive authorisation shall take effect on the date the application was submitted.

2. If an application concerns renewal of an authorisation for the same kind of operation and goods, an authorisation may be granted with retroactive effect from the date the original authorisation expired.

3. In exceptional circumstances, the retroactive effect of an authorisation may be extended further, but not more than one year before the date the application was submitted, provided a proven economic need exists and:

(a) the application is not related to attempted deception or to obvious negligence;

(b) the applicant's accounts confirm that all the requirements of the arrangements can be regarded as having been met and, where appropriate, in order to avoid substitution the goods can be identified for the period involved, and such accounts allow the arrangements to be verified;

(c) all the formalities necessary to regularise the situation of the goods can be carried out, including, where necessary, the invalidation of the declaration.

...

Article 300

1. The goods referred to in Article 291(1) shall remain under customs supervision and liable to import duties until they are:

(a) first assigned to the prescribed end-use;

Council Regulation (EC) No 1147/2002

Article 1

The autonomous Common Customs Tariff duties shall be suspended for parts, components and other goods of a kind to be incorporated in or used for civil aircraft and falling within Chapters 25 to 97 of the Common Customs Tariff and in respect of which an airworthiness certificate has been issued by a party authorised by aviation authorities within the Community or in a third country.

UNIFORM CUSTOMS CODE

Regulation (EU) No 952/2013

Recitals:

(12) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code was based upon integration of the customs procedures applied separately in the respective Member States during the 1980s. That Regulation has been repeatedly and substantially amended since its introduction, in order to address specific problems such as the protection of good faith or the taking into account of security requirements. Further amendments to that Regulation were introduced … as a consequence of the important legal changes which have occurred in recent years, at both Union and international level …

(15) The facilitation of legitimate trade and the fight against fraud require simple, rapid and standard customs procedures and processes. It is therefore appropriate … to simplify customs legislation, to allow the use of modern tools and technology and to promote further the uniform application of customs legislation and modernised approaches to customs control, thus helping to ensure the basis for efficient and simple clearance procedures. Customs procedures should be merged or aligned and the number of procedures reduced to those that are economically justified, with a view to increasing the competitiveness of business.

(34) The rules for special procedures should allow for the use of a single guarantee for all categories of special procedures and for that guarantee to be comprehensive, covering a number of transactions.

(47) It is appropriate to lay down common and simple rules for the special procedures, supplemented by a small set of rules for each category of special procedure, in order to make it simple for the operator to choose the right procedure, to avoid errors and to reduce the number of post-release recoveries and repayments.

(48) The granting of authorisations for several special procedures with a single guarantee and a single supervising customs office should be facilitated and there should be simple rules on the incurrence of a customs debt in these cases. The basic principle should be that goods placed under a special procedure, or the products made from them, are to be assessed at the time when the customs debt is incurred. However, it should also be possible, where economically justified, to assess the goods at the time when they were placed under a special procedure. The same principles should apply to usual forms of handling.

(51) In order to supplement the rules on special procedures and ensure equal treatment of the persons concerned, the power to adopt delegated acts in accordance with Article 290 TFEU should be

delegated to the Commission in respect of the rules relating to cases where goods are placed under special procedures, movements, usual forms of handling and equivalence of those goods and discharge of those procedures.

Article 5

Definitions

"customs procedure" means any of the following procedures under which goods may be placed in accordance with the Code:

(a) release for free circulation;
(b) special procedures;
(c) export;

CHAPTER 2

Guarantee for a potential or existing customs debt

Article 89

General provisions

1. This Chapter shall apply to guarantees both for customs debts which have been incurred and for those which may be incurred, unless otherwise specified.
…

Article 90

Compulsory guarantee

1. Where it is compulsory for a guarantee to be provided, the customs authorities shall fix the amount of such guarantee at a level equal to the precise amount of import or export duty corresponding to the customs debt and of other charges where that amount can be established with certainty at the time when the guarantee is required.

Where it is not possible to establish the precise amount, the guarantee shall be fixed at the maximum amount, as estimated by the customs authorities, of import or export duty corresponding to the customs debt and of other charges which have been or may be incurred.

TITLE VII

SPECIAL PROCEDURES

CHAPTER 1

General provisions

Article 210

Scope

Goods may be placed under any of the following categories of special procedures:

(a) transit, which shall comprise external and internal transit;
(b) storage, which shall comprise customs warehousing and free zones;
(c) specific use, which shall comprise temporary admission and end-use;
(d) processing, which shall comprise inward and outward processing.

Article 211

Authorisation

1. An authorisation from the customs authorities shall be required for the following:

(a) the use of the inward or outward processing procedure, the temporary admission procedure or the end-use procedure;

(b) the operation of storage facilities for the customs warehousing of goods, except where the storage facility operator is the customs authority itself.

The conditions under which the use of one or more of the procedures referred to in the first subparagraph or the operation of storage facilities is permitted shall be set out in the authorisation.

2. The customs authorities shall grant an authorisation with retroactive effect, where all of the following conditions are fulfilled:

(a) there is a proven economic need;

(b) the application is not related to attempted deception;

(c) the applicant has proven on the basis of accounts or records that:

(i) all the requirements of the procedure are met;

(ii) where appropriate, the goods can be identified for the period involved;

(iii) such accounts or records allow the procedure to be controlled;

(d) all the formalities necessary to regularise the situation of the goods can be carried out, including, where necessary, the invalidation of the customs declarations concerned;

(e) no authorisation with retroactive effect has been granted to the applicant within three years of the date on which the application was accepted;

(f) an examination of the economic conditions is not required, except where an application concerns renewal of an authorisation for the same kind of operation and goods;

(g) the application does not concern the operation of storage facilities for the customs warehousing of goods;

(h) where an application concerns renewal of an authorisation for the same kind of operation and goods, the application is submitted within three years of expiry of the original authorisation.

Customs authorities may grant an authorisation with retroactive effect also where the goods which were placed under a customs procedure are no longer available at the time when the application for such authorisation was accepted.

3. Except where otherwise provided, the authorisation referred to in paragraph 1 shall be granted only to persons who satisfy all of the following conditions:

(a) they are established in the customs territory of the Union;

(b) they provide the necessary assurance of the proper conduct of the operations; an authorised economic operator for customs simplifications shall be deemed to fulfil this condition, insofar as the activity pertaining to the special procedure concerned is taken into account in the authorisation referred to in point (a) of Article 38(2);

(c) where a customs debt or other charges may be incurred for goods placed under a special procedure, they provide a guarantee in accordance with Article 89;

(d) in the case of the temporary admission or inward processing procedure, they use the goods or arrange for their use or they carry out processing operations on the goods or arrange for them to be carried out, respectively.

Chapter IV

Specific Use

Section 2

End-use

Article 254

End-use procedure

1. Under the end-use procedure, goods may be released for free circulation under a duty exemption or at a reduced rate of duty on account of their specific use.
…

4. Customs supervision under the end-use procedure shall end in any of the following cases:

(a) where the goods have been used for the purposes laid down for the application of the duty exemption or reduced rate of duty;

(b) where the goods have been taken out of the customs territory of the Union, destroyed or abandoned to the State;

(c) where the goods have been used for purposes other than those laid down for the application of the duty exemption or reduced duty rate and the applicable import duty has been paid.

Article 286

Repeal and amendment of legislation in force

1….

2. Regulation (EEC) No 3925/91, Regulation (EEC) No 2913/92 and Regulation (EC) No 1207/2001 are repealed from the date referred to in Article 288(2).

3. References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation tables set out in the Annex.

UNIFORM CUSTOMS CODE DELEGATED ACT

Commission Delegated Regulation (EU) 2015/2446

Recitals:

(56) In order to safeguard the legitimate interests of economic operators and ensure the continued validity of decisions taken and authorisations granted by customs authorities on the basis of the provisions of the Code and or on the basis of Council Regulation (EEC) No 2913/92 and Regulation (EEC) No 2454/93, it is necessary to establish transitional provisions in order to allow for the adaptation of those decisions and authorisations to the new legal rules.

Article 172

Retroactive effect

(Article 22(4) of the Code)

1. Where the customs authorities grant an authorisation with retroactive effect in accordance with Article 211(2) of the Code, the authorisation shall take effect at the earliest on the date of acceptance of the application.

2. In exceptional circumstances, the customs authorities may allow an authorisation referred to in paragraph 1 to take effect at the earliest one year, in case of goods covered by Annex 71-02 three months, before the date of acceptance of the application.

3. If an application concerns renewal of an authorisation for the same kind of operation and goods, an authorisation may be granted with retroactive effect from the date on which the original authorisation expired….

Title IX

Final Provisions

Article 250

Re-assessment of authorisations already in force on 1 May 2016

1. Authorisations granted on the basis of Regulation (EEC) No 2913/92 or Regulation (EEC) No 2454/93 which are valid on 1 May 2016 and which do not have a limited period of validity shall be re-assessed…

Article 251

Validity of authorisations already in force on 1 May 2016

1. Authorisations granted on the basis of Regulation (EEC) No 2913/92 or Regulation (EEC) No 2454/93 which are valid on 1 May 2016 shall remain valid as follows:

(a) for authorisations having a limited period of validity, until the end of that period or 1 May 2019, whichever is the earlier;

(b) for all other authorisations, until the authorisation is reassessed in accordance with Article 250(1).

Article 254

Use of authorisations and decisions already in force on 1 May 2016

Where a decision or an authorisation remains valid after 1 May 2016 in accordance with Articles 251 to 253, the conditions under which that decision or authorisation is applied shall, from 1 May 2016, be those laid down in the corresponding provisions of the Code, Commission Implementing Regulation 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 925/2013 and this Regulation as set out in the table of correspondence laid down in Annex 90.

Annex 90

29. Authorisation for end-use

Applicable provisions under [the CCC]

(Articles 21 and 82 of [CCC] and Articles 291 to 300 of [CCC IP])

Applicable provisions under [the UCC]:

(Articles 210 to 225, 254 of the [UCC] and Articles 161 to 164, 169, 171 to 175, 178, 179, 239 of [the UCC DA] and Articles 260 to 269 of Implementing Regulation (EU) 2015/2447)

COMMON CUSTOMS TARIFF
2016

Annex 1, Part One Section II

B Civil aircraft and goods for use in civil aircraft

1. Relief from customs duty is provided for:

— civil aircraft,

— certain goods for use in civil aircraft and for incorporation therein in the course of their manufacture, repair, maintenance, rebuilding, modification or conversion,

— ground flying-trainers and their parts, for civil use.

These goods are covered by headings and subheadings listed in tables in paragraph 5.

2. For the purposes of paragraph 1, first and second indent, 'civil aircraft' means aircraft other than aircraft used in military or similar services in the Member States which carry a military or non-civil registration.

…

4. Relief from customs duties shall be subject to the conditions laid down in the relevant provisions of the European Union with a view to customs control of the use of such goods (see Articles 291 to 300 of [the CCC IP])

COMMON CUSTOMS TARIFF
2017

[End-use relief was described in the same terms as 2016, save that paragraph 4 cross-referenced Article 254 of the UCC.]

COMMON CUSTOMS TARIFF
2018

[Amendment to the 2018 Tariff provided for by Commission Implementing Regulation (EU) 2017/1925]:

Recital:

(5) In order to reduce administrative burden, it is appropriate, in cases where a civil aircraft has been registered as such and declared for free circulation, to abolish the requirement of the end-use procedure. The aircraft's registration certificate is considered sufficient proof of the aircraft's civil character. The presence of that certificate on board of each aircraft is mandatory in accordance with the Convention on international civil aviation signed at Chicago on 7 December 1944. The preliminary provisions of the CN should therefore be amended.

Annex 1, Part One Section II

B Civil aircraft and goods for use in civil aircraft

…

4. Relief from customs duties shall be subject to the conditions laid down in the relevant provisions of the European Union with a view to customs control of the use of such goods (see Article 254 of [the UCC]).

However, these conditions shall not apply in cases where civil aircraft falling under subheadings …. 8802 40 have been duly entered on a register of a Member State or a third country in accordance with the Convention on International Civil Aviation dated 7 December 1944 and reference is made in the customs declaration for release for free circulation to the relevant certificate of registration.