

Evaluation of the biodiesel judgments

The judgments of the District Court of Noord-Holland of 1 September 2023, ECLI:NL:RBNHO:2023:8715, and the Amsterdam Court of Appeal of 25 February 2025, ECLI:NL:GHAMS:2025:990, provide no basis for a general prohibition on common storage and the administrative allocation of customs status across multiple tanks. A reasoned argument can be made that they do not undermine the current terminal practice described, where that practice is based on authorised common storage of equivalent goods that cannot, within the relevant storage facility, be physically distinguished by customs status at all times.

1. The judgments concern physically separated and identifiable consignments of biodiesel

In ECLI:NL:RBNHO:2023:8715, the District Court finds that the biodiesel concerned had remained physically separated in different tanks and individually identifiable. Treating all the biodiesel as a single common stock in the records did not change that factual situation.

In ECLI:NL:GHAMS:2025:990, the Court of Appeal confirms that the common storage arrangement could not justify the specific practice whereby physically separated biodiesel from third countries was administratively substituted for EU biodiesel. In paragraph 4.5, the Court expressly links its conclusion to the “particular characteristics of this case”, especially the physical separation. The substantive assessment concerns transactions under the Community Customs Code and its Implementing Provisions (CCC/CCIP), not an authorisation for an integrated tank pit under the current Union Customs Code (UCC). Amsterdam Court of Appeal, paragraphs 2.9 and 4.4–4.6

2. The District Court recognises the separate policy for mineral oils

In ECLI:NL:RBNHO:2023:8715, the District Court expressly describes the exception in the former Handbook for petroleum and petroleum products: equivalent goods from different tanks could be substituted subject to certain conditions. It rejects reliance on that exception because biodiesel is not a mineral oil, rather than because every allocation across tank boundaries would, as such, be impermissible. The Court also leaves the alleged new policy for mineral oils outside its assessment because the case concerns biodiesel. District Court of Noord-Holland, paragraphs 75–78 and 88

The former Handbook therefore provides a relevant interpretative reference point. It reflected normal bulk-storage operations, in which customs status cannot always be physically distinguished. For petroleum and petroleum products, the boundaries of the tank site were decisive. Substitution between tanks was possible for equivalent goods belonging to the same owner at the same location, without anticipating future arrivals. Former Dutch Customs Handbook, sections 8.2–8.2.3

3. Current European guidance supports common storage across multiple tanks

Under the UCC, this site-based approach receives specific support from the example “Common storage in different tanks connected with each other” in the European Commission’s guidance.

The example describes a group of interconnected tanks—a “tank pit”—in which products with different customs statuses are stored. The Commission confirms that common storage may be authorised under Article 177 of the UCC Delegated Regulation where all tanks contain the same Union and non-Union product, with the same CN code, technical characteristics and commercial quality. An individual tank therefore does not necessarily define the boundary of common storage. European Commission, Special Procedures Guidance, revision 26, p. 122

The arrangement’s core function has therefore been preserved: where identification at all times is impossible, or would only be possible at disproportionate cost, accounting segregation enables customs supervision.

4. Common storage and accounting segregation are closely connected, but they are not the same

Common storage concerns the actual storage of qualifying goods. Accounting segregation concerns the recording and accounting of quantities by type of goods, customs status and, where applicable, origin.

The records therefore preserve the legal distinction where that distinction cannot be made physically at all times. They do not necessarily require separate physical stocks or independent customs-status balances for each tank. Conversely, a fully reconciled set of records does not, by itself, establish authorisation for common storage. European Commission, guidance, pp. 49–50 and 120

5. Customs status is allocated on the basis of the relevant customs warehouse records

The current Handbook provides that, in authorised common storage, the authorisation holder is free to choose the customs status allocated. However, the quantity allocated may not exceed the quantity present in the customs warehouse with that status. The quantitative limit is therefore not automatically applied to each individual tank. Current Dutch Customs Handbook, section 6.4

Where the authorised common storage encompasses the integrated tank site, the relevant stock records for that site form the basis for allocation. Upon loading, the quantity allocated to a particular status cannot exceed the quantity of qualifying goods actually available with that status.

Conclusion

The biodiesel judgments do not generally call into question a duly authorised practice of common storage and accounting segregation. The former policy for mineral oils and the current European tank-pit example support the proposition that common storage may encompass several connected tanks and that customs status is subsequently allocated on the basis of the relevant customs warehouse stock.

This conclusion nevertheless depends on a demonstrable difference from the circumstances adjudicated: the decisive factors are actual common storage and the inability to physically distinguish the goods at all times, not merely connected pipelines or a single authorisation. The tanks in the biodiesel case were also connected by pipelines; this was insufficient because the consignments concerned remained physically separated.

Subject to those factual and authorisation-related conditions, there is a substantiated basis for continuing the practice described. Specific statutory restrictions, including Article 177(3) of the UCC Delegated Regulation for certain goods subject to anti-dumping or countervailing duties, continue to apply separately. European Commission, disclaimer and p. 120
