

Historical Dutch customs policy for bulk storage

Continuity of purpose and relevance of the historical policy

The legislative development discussed above demonstrates that the core function and objective of the common-storage arrangement remained materially the same before and after 1 May 2016. Both former Article 534(2) of the Customs Code Implementing Provisions and current Article 177 UCC DA address situations in which Union and non-Union goods are stored together in a storage facility and it is impossible, or would be possible only at disproportionate cost, to maintain continuous physical identification of the goods concerned. Under both regimes, this practical difficulty is addressed by attributing customs status to quantities recorded in the accounts, subject to the requirement that customs supervision remains fully safeguarded.

The amendments introduced since 2016 did not abandon this fundamental function. After the original wording of Article 177 UCC DA had not expressly reproduced the former product-identity conditions, those conditions were codified again in 2020. Article 177(2) now expressly requires the Union and non-Union goods held in common storage to share the same eight-digit CN code, commercial quality and technical characteristics. According to recital 30 of Commission Delegated Regulation (EU) 2020/877, this amendment was introduced to prevent possible misuse of the arrangement, rather than to abolish the practical facilitation of common storage itself [EUR-Lex](#).

The legislature also codified a specific safeguard for goods subject to trade-defence measures. Under Article 177(3), non-Union goods which, at the intended time of common storage, would be subject to, among other measures, anti-dumping duties, countervailing duties, safeguard measures or specified additional duties are deemed **not to have the same commercial quality** as the Union goods concerned. Such goods are therefore excluded by law from the ordinary equivalence assessment, subject to the specific exception in Article 177(4) for Union goods in respect of which the relevant duties were previously paid.

These additional safeguards limit the arrangement where differences between the goods are relevant to their customs treatment or could give rise to unjustified duty advantages. They do not, however, alter the underlying premise that common storage and accounting segregation are intended to accommodate equivalent bulk goods whose physical identity and customs status cannot be tracked separately at all times during ordinary storage operations.

Against this background, the Dutch administrative policy applicable before 1 May 2016 remains relevant to the interpretation and practical application of the current arrangement. That policy cannot constitute an independent legal basis for operations under the present UCC framework, but it demonstrates how the Customs authorities previously gave practical effect to the continuing purpose of common storage in the bulk industry. This is particularly relevant to the assessment of equivalence, the tank location as the relevant operational unit, the administrative allocation of customs status and the treatment of unavoidable tank heels and pipeline residues. The former Customs Handbook expressly explained that common storage was made available for bulk goods because, in the ordinary course of business, it was not always possible to distinguish their status **“at all times”**, also referring to environmental considerations, security of energy supply and energy conservation former Dutch Customs Handbook, § 8.2.

The historical policy should therefore not be regarded merely as an obsolete departure from a fundamentally different present-day arrangement. Rather, it provides relevant context for determining how the same underlying facilitation can be applied in practice within an integrated and continuously operating bulk terminal, subject to the product-identity and trade-defence safeguards that have since been expressly codified.

The Dutch Customs Handbook applicable before 1 May 2016 contained various facilities tailored to the practical circumstances of the bulk industry. These arrangements recognised that, in the ordinary course of business, mineral oils are stored, moved and mixed within an integrated system of tanks and pipelines. Permanent physical segregation or identification of each original lot was not always possible or practical. Subject to certain conditions, the policy therefore allowed for the administrative allocation of customs status, the interchange of goods between tanks and special treatment of unavoidable residual stocks.

Equivalence of mineral oils

For the common storage of oil and oil products, the former Customs Handbook provided that products classifiable under the same CN code could be regarded as equivalent. The explanatory text referred to the designations, quality standards and technical characteristics customarily used in commercial trade and reflected in the CN classification. Subject to additional conditions for specific products, the same CN code therefore served as the practical starting point for determining equivalence.

These additional conditions were set out in Annex 3. Specific distinctions applied, among other things, to light oils with and without biofuel content, certain gas oils and lubricating oils. The approach therefore did not entail the unconditional equivalence of all goods falling under the same CN code, but neither did it require each lot to be identical in every analytical respect. The Customs Handbook illustrated this by reference to the common storage of Community and non-Community fuel oil with different sulphur contents but falling under the same CN code applicable at the time.

References: former Customs Handbook, 15.50.00, § 8.2.2; Annex 3 to section 15.50.00; 15.00.00, Annex 7, § 13.2.1.

The tank location as the unit for allocating customs status

For oil and oil products, the former Customs Handbook expressly identified the tank location, rather than the individual tank, as the relevant boundary for determining customs status:

“For these types of goods, the boundaries of the tank location are decisive for determining customs status.”

It was expressly permissible to interchange equivalent lots held in different tanks, provided that the goods belonged to the same owner and were located at the same site. Their customs status had to be demonstrable, and goods located elsewhere or still in transit could not be taken into account in anticipation of their arrival. A location could consist of several adjoining cadastral plots within the same operational site; the presence of a public road crossing the site did not necessarily prevent it from being treated as a single location.

This arrangement was consistent with the general explanation that, for certain flows of goods in the ordinary course of business, it was not always possible to distinguish their status **“at all times”**. In addition to practical considerations, the Customs Handbook referred to environmental considerations, security of energy supply and energy conservation. Customs status was therefore linked to the quantity accounted for in the records.

Reference: former Customs Handbook, 15.50.00, §§ 8.2 and 8.2.2.

Special treatment of tank heels and pipeline residues

The former policy recognised that storage tanks are not completely empty following ordinary deliveries. A limited residual quantity, referred to as the tank heel or permanent stock, remains in the tank and can generally be removed only when the tank is fully cleaned.

Subject to cumulative conditions, this tank heel could be excluded from the records maintained for the customs facilities concerned. The actual residual stock could not exceed 0.5% of the tank's total storage capacity, could not result in a change to the CN code of goods subsequently discharged into the tank and could not increase as a result of parts of new receipts being omitted

from the records. In principle, the tank heel had non-Community status, unless only Community mineral oils had been stored in the tank since it was last fully cleaned. The 0.5% threshold was not a fixed allowance: only the residual quantity actually present, up to that maximum, could be excluded from the records.

Of particular relevance is that Community goods falling under a different CN code could be stored on top of this residual stock. In such circumstances, the conditions for common storage were deemed to have been met, provided that the tank was otherwise empty and the CN code, commercial quality and technical characteristics of the goods discharged into the tank did not change.

The Customs Handbook also contained a specific exception for the unintended contamination of light oil by residual product containing biofuel, expressly referring to product remaining in a pipeline as an example. This exception was likewise subject to conditions concerning the product and the quantities involved.

These provisions did not constitute a general exemption for residual stocks. They nevertheless demonstrate that unavoidable physical mixing with residual product did not necessarily result in the entire subsequent lot losing its customs status.

References: former Customs Handbook, 15.00.00, Annex 7, § 13.5; 15.50.00, Annex 3, section on light oils.

Common storage and usual forms of handling

The former Customs Handbook distinguished between common storage and mixing as a usual form of handling.

Common storage was also permitted where its purpose was to bring the product within specification. The Customs Handbook stated that no single new lot arose in such circumstances, even where the product was brought within specification. The original quantities continued to exist administratively with their respective customs statuses. A worked example permitted the available quantity of Community goods to be written off first upon removal, with import formalities being completed only for the excess quantity.

A different approach applied, in the version of the Customs Handbook identified, to mixing as a usual form of handling. A mixture obtained from Community and non-Community components was treated as entirely non-Community; the customs status could not be allocated proportionately to the constituent components. However, for the purpose of calculating import duties, it was possible, upon request, to determine the nature, customs value and quantity of the goods as though the usual form of handling had not taken place. This made it possible to avoid the imposition of duties on the Community component.

This adjustment to the calculation of duties must be distinguished from the preservation of the Community status of the component itself. A potentially earlier policy under which the status of individual components could also be preserved following a usual form of handling has not yet been substantiated by an original dated source and is therefore not presented as an established part of this analysis.

References: former Customs Handbook, 15.00.00, Annex 7, §§ 13.2.1, 13.3.1, 13.3.2 and 13.4.1; 15.50.00, §§ 7.3–7.4.

Relevance to the current assessment

The common thread running through these historical arrangements is that physical mixing was not automatically equated with the loss of customs status. The policy allowed the necessary distinctions to be maintained administratively, taking account of product equivalence, the boundaries of the storage location, unavoidable residual stocks and accurate quantitative stock records.

This development in policy is relevant to the interpretation of Article 177 UCC DA, in particular the terms **“storage facility”**, **“at all times”** and **“disproportionate cost”**. It supports an assessment that considers the full operational cycle of a bulk terminal rather than focusing exclusively on the temporary physical distribution of goods among individual tanks.

The historical policy does not, however, constitute an independent legal basis for continuing every facility that existed under the former arrangements. Whether a particular arrangement is permissible today must be assessed by reference to the applicable EU customs legislation, the relevant authorisation and the specific facts. The historical provisions primarily demonstrate that location-based allocation of customs status and solutions for residual mixing were explicit and controlled elements of Dutch customs policy, rather than merely practices developed by the industry.

The cited sources form part of the official collection entitled **“Customs Handbook (HD), valid until 30 April 2016.”**
