

The same commercial quality and technical characteristics: assessment in the biodiesel judgments

The District Court accepts that different types of biodiesel may be treated as equivalent for common storage, despite differences in feedstock and certain product specifications. The Court of Appeal subsequently expressly leaves this question open. The judgments therefore do not establish a general, definitive test under which every technical deviation is automatically either permissible or impermissible.

1. District Court: comparable basic properties and the same use are key considerations

In ECLI:NL:RBNHO:2023:8715, paragraphs 40–42, the District Court endorses the parties' common position that the different biodiesels satisfied the conditions for common storage under Article 534(2) of the Community Customs Code Implementing Provisions (CCIP).

It identifies the following supporting considerations:

- Comparable basic physical, chemical and technical properties.
- Use for the same purposes.
- Differences in feedstock and production processes do not necessarily alter the product's basic definition and properties.
- The way market participants regard the product also supports its comparability.

The District Court draws support from the European anti-dumping regulations concerning US biodiesel. These describe the different types of biodiesel as products with “the same or very similar” basic properties and the same uses. District Court of Noord-Holland, paragraphs 41–42

2. Differences in individual specifications do not automatically preclude equivalence

The company argued that differences in:

- CFPP — cold filter plugging point;
- oxidation stability;
- relative density;
- did not necessarily result in different commercial quality or technical characteristics.

This was the company's position, which the District Court reproduces in its reasoning. The Court does not conduct a separate technical assessment of each parameter, but follows the parties' common position on the permissibility of the storage. District Court of Noord-Holland, paragraphs 41–42

For CFPP, the District Court also refers to the Commission: the difference between US and European biodiesel identified in the anti-dumping investigation was minimal, could be compensated for by blending or additives, and was of little relevance to most blends sold on the EU market. This is not a general finding that every CFPP difference is insignificant, but support for the comparability of the products examined. District Court of Noord-Holland, paragraph 41

3. The same CN code is a separate requirement, not a complete quality assessment

According to the District Court, all the biodiesels concerned were classified under CN code 3826 00 10, irrespective of their CFPP. The same classification supports their similarity for tariff purposes, but the judgment does not establish that the same CN code, by itself, proves that commercial quality and technical characteristics are identical. The reasoning also considers the basic properties and uses. District Court of Noord-Holland, paragraphs 5 and 41–42

4. Court of Appeal: no definitive ruling on equivalence

In ECLI:NL:GHAMS:2025:990, the Court of Appeal identifies differences between palm, soybean and rapeseed biodiesel, including CFPP values of approximately +12 °C, –4 °C and –13 °C, respectively.

However, in paragraph 4.6, the Court expressly leaves unanswered whether these products have the same commercial quality and technical characteristics, and whether it is bound by the parties'

unanimous position on that issue. According to the Court, the specific practice was already impermissible because of the physical separation and subsequent removal of the goods. The Court therefore neither independently confirms equivalence nor definitively rules that equivalence is absent. Amsterdam Court of Appeal, paragraphs 2.4 and 4.4–4.6

Summary

The District Court's judgment indicates that differences in feedstock or individual product specifications do not automatically mean that products have different commercial quality or technical characteristics. The accepted comparability was based primarily on their corresponding basic properties, the same intended uses, and the significance of the differences in commercial practice.
