



**Prekršajna odgovornost za
pogrešno tarifiranje robe pri uvozu (Deo I)
Misdemeanour Liability for
Incorrect Tariffing of Imported Goods (Part I)**

JPM

PARTNERS



Misdeemeanour Liability for Incorrect Tariffing of Imported Goods (Part I) /
Prekršajna odgovornost za pogrešno tarifieranje robe pri uvozu (Deo I)

Publisher: JPM | Partners

Delta House, 8a Vladimira Popovića street

www.jpm.law

Authors: Ivan Milošević, Partner, Dr. Janez Vončina, Senior Associate

Design and prepress: JPM | Partners

Copyright: © JPM | Partners 2023 All rights reserved.

Disclaimer:

The sole purpose of this publication is to provide information about specific topics.

It makes no claims to completeness and does not constitute legal advice.

The information it contains is no substitute for specific legal advice.

If you have any queries regarding the issues raised or other legal topics, please get in touch with your usual contact at JPM & Partners.

Izmenama i dopunama Carinskog zakona iz decembra 2022. godine izmenjene su odredbe kojima se propisuju prekršaji za povredu ovog zakona. Izmene unose veću izvesnost u vezi sa prekršajnom odgovornošću uvoznika i carinskih zastupnika za podnošenje carinskih deklaracija i pratećih isprava u cilju zakonitog sprovođenja carinskih postupaka. U ovom članku iznosimo naše tumačenje pomenutih izmena.

Naša je namera da u narednim člancima dodatno analiziramo praksu prekršajnih sudova Republike Srbije i sudova EU u vezi sa odgovornošću uvoznika i carinskih zastupnika za radnje ili propuštanja koja bi mogla da dovedu do pogrešnog tarifiranja robe.

Amendments and supplements to the Customs Law, enacted in December 2022, amended the misdemeanour provisions for violations of this law. The amendments introduce greater certainty regarding the misdemeanour liability of importers and customs representatives for submitting customs declarations and accompanying documents with the goal of legitimate conducting of customs procedures. In this article we present our interpretation of the respective amendments.

In the following articles we intend to further analyse practice of the misdemeanour courts of the Republic of Serbia and EU courts in relation to the liability of importers and customs representatives for actions or omissions that could result in incorrect tariffing of goods.

1. Pojam pogrešnog tarifiranja robe

Saglasno odredbi člana 139 Carinskog zakona ("Sl. glasnik RS", br. 95/2018, 91/2019 - dr. zakon, 144/2020, 118/2021 i 138/2022; u daljem tekstu: CZ) sva roba za koju postoji namera da se stavi u carinski postupak, osim u postupak slobodne zone, mora da bude obuhvaćena deklaracijom za taj carinski postupak.

Prilikom uvoza robe u carinsko područje Republike Srbije sa namerom stavljanja robe u slobodan promet na srpskom tržištu podnosi se deklaracija za stavljanje robe u slobodan promet. Deklarant mora da ima sve podatke koji su potrebni za zakonito sprovođenje carinskog postupka (slučajevi podnošenja redovne i pojednostavljene carinske deklaracije). Budući da stavljanje robe u slobodan promet može da podleže plaćanju carinskih dažbina, pri čemu carinski dug nastaje u vreme prihvatanja deklaracije od strane carinskih organa (član 65 stav 2 CZ), deklaracija mora da sadrži sve elemente za utvrđivanje carinskih dažbina.

To je, pre svega, tarifna oznaka robe iz važeće nomenklature Carinske tarife koju Vlada Republike Srbije, na osnovu člana 8 stav 3 Zakona o carinskoj tarifi ("Sl. glasnik RS", br. 62/2005, 61/2007, 5/2009, 95/2018 - dr. zakon i 91/2019) uredbom najkasnije u novembru tekuće godine za narednu godinu usklađuje sa Kombinovanom nomenklaturom Evropske unije (trenutno važeća je Uredba o usklađivanju nomenklature Carinske tarife za 2023. godinu ("Sl. glasnik RS", br. 132/2022 i 141/2022 - ispr.)).

1. The Concept of Incorrect Tariffing of Goods

Pursuant to the Article 139 of the Customs Law (“Official Gazette of the RS”, no. br. 95/2018, 91/2019 – other law, 144/2020, 118/2021 and 138/2022; henceforth: CL) all goods intended to be placed in a customs procedure, except in the free zone procedure, must be included in a declaration for the respective customs procedure.

When importing goods into the customs territory of the Republic of Serbia with the intention of placing the goods into free circulation on the Serbian market, a declaration for placing the goods into free circulation must be submitted. A declarant must possess all data required for legitimate conducting of customs procedure (cases of submission of regular and simplified customs declaration). Since placing of goods into free circulation may be subject to payment of customs duties, whereby the customs debt occurs at the moment of acceptance of the declaration by the customs authorities (Article 65 Paragraph 2 of CL), the declaration to be submitted on this occasion must encompass all of elements, required for determining customs duties.

That is, above all, the tariff code of goods from the valid Customs Tariff Nomenclature, which the Government of the Republic of Serbia, on the basis of the Article 8 paragraph 3 of the Law on Customs Tariff (“Official Gazette of the RS”, no. 62/2005, 61/2007, 5/2009, 95 /2018 - other law and 91/2019), harmonizes with the Combined Nomenclature of the European Union by way of adopting an ordinance no later than in November of the current year for the following year (currently in force is the Ordinance on Harmonization of the Customs Tariff Nomenclature for the year 2023 (“Official Gazette of the RS”, no. 132/2022 and 141/2022 – corr.)).

Tarifna oznaka koja se unosi u carinsku deklaraciju mora da odgovara prirodi robe koja je predmet carinskog postupka stavljanja robe u slobodan promet. Ukoliko to nije slučaj, reč je o svrstavanju robe pod pogrešan tarifni broj – svrstavanje robe u tarifni broj sa nižom carinskom stopom ima za posledicu naplatu manjeg iznosa carina i PDV-a od strane carinskog organa (pogrešno tarifiranje robe).

Uvozne formalnosti prilikom uvoza robe, pa tako i popunjavanje i podnošenje carinske deklaracije, u poslovnoj praksi za račun uvoznika obavljaju carinski zastupnici. Kako su zakonom za pogrešno tarifiranje robe predviđene prekršajne sankcije, postavlja se pitanje, ko u slučaju takvog propusta snosi prekršajnu odgovornost – uvoznik, carinski zastupnik ili i jedan i drugi.

The tariff code to be entered in the customs declaration must correspond to the nature of goods which are subject of the customs procedure of free circulation. If this is not the case, we are dealing with classification of goods under the incorrect tariff code – classification of the goods in tariff code with lower customs rate results in collection of lower amount of customs duties and VAT by customs authorities (incorrect tariffing of goods).

Import formalities by the import of goods, including filling and submission of the customs declaration, are in business practice conducted by customs representatives on behalf of importers. As the law sets forth misdemeanor sanctions for incorrect tariffing of goods, the question is, who in the event of such misconduct bears misdemeanor responsibility - the importer, the customs representative or both.

2.Prethodni Carinski zakon i praksa sudova

U sudskoj praksi u vreme primene prethodno važećeg Carinskog zakona (“Sl. glasnik RS”, br. 18/2010, 111/2012, 29/2015, 108/2016 i 113/2017 - dr. zakon; u daljem tekstu: Prethodni CZ) prekršajni sudovi su, u slučajevima kada je bilo ugovoreno neposredno carinsko zastupanje, odgovornim za pogrešno tarifiranje redovno oglašavali uvoznike jer su isti postupali u svojstvu deklaranta (npr. presuda Prekršajnog apelacionog suda, br. Prž 908/2020 od 27.1.2020. godine).

Ipak, u našoj praksi susreli smo se i sa presudama u kojima su, po ovom pitanju, bili izraženi drugačiji stavovi u odnosu na raniju sudsku praksu. U svim ovim slučajevima uvoznik je ugovorio neposredno zastupanje sa carinskim zastupnikom.

2.Previous Customs Law and Court Practice

In court practice, rendered in the period of validity of the previous Customs Law (“Official Gazette of the RS”, no. 18/2010, 111/2012, 29/2015, 108/2016 and 113/2017 – other law; henceforth: Previous CL), misdemeanor courts, in cases where direct customs representation was contracted, regularly declared importers liable for incorrect tariffing, because they acted in the capacity of declarants (e.g. judgment of the Misdemeanor Appellate Court, no. Prž 908/2020 as of 27 January 2020).

However, in our practice we also came across judgments in which different standpoints on this issue were taken compared to the earlier court practice. In all of these cases the importer has contracted direct representation with the customs representative.

Prethodni CZ je u svom članu 294 stav 1 tačka 5 kao prekršaj predviđao neunošenje u deklaraciju svih podataka o robi, koji su odlučujući za utvrđivanje tarifnog svrstavanja prema nomenklaturi ili unošenje u deklaraciju tarifnu oznaku koja je drugačija u odnosu na podatke o prirodi te robe, pri čemu takvo činjenje prouzrokuje, ili može da prouzrokuje plaćanje uvoznih dažbina ili drugih naknada u umanjenom iznosu.

U dve presude novijeg datuma koje smo primili sud je zauzeo stav da za pomenuti prekršaj može da odgovara samo carinski zastupnik, budući da je on taj ko je popunjavao carinsku deklaraciju i u istu uneo tarifnu oznaku za koju je naknadno utvrđeno da nije pravilna, odnosno da uvoznik i ovlašćeno lice uvoznika nisu učestvovali u postupku carinjenja te samim tim nisu mogli da odgovaraju za prekršaj za koji se zahtevom terete jer nisu ni unosili u deklaraciju podatke o robi.

The previous CZ in its Article 294 Paragraph 1 Item 5 prescribed as a misdemeanor failure to insert in the declaration all the data on the goods, which are decisive for determining the tariff classification according to the nomenclature, or entering in the declaration a tariff code that is inadequate in relation to the data on nature of the respective goods, whereby such actions cause or may cause payment of import duties or other fees in a lower amount.

In two more recent judgments that we received, the court took a stance that only the customs representative can be held responsible for the aforementioned misdemeanor, since he was the one who completed the customs declaration and entered the tariff code therein, which was subsequently determined as incorrect, respectively that the importer and the authorized person of the importer did not participate in the customs clearance procedure and consequently they could not be held responsible for such violations, since they did not even enter the data of the goods in the declaration.



U trećoj presudi koju smo primili sud je pak posredno zauzeo stav da za pogrešno tarifiranje robe, odnosno unošenje pogrešnih podataka u carinsku deklaraciju, u slučaju ugovaranja neposrednog zastupanja, odgovaraju i carinski zastupnik i uvoznik.

Ovakav stav, iako zauzet kod primene Prethodnog CZ, zapravo je već reflektirao rešenja koja je doneo aktuelni CZ.

In the third judgment that we received, the court indirectly took the position that in case of contracting direct representation both the customs representative and the importer are to be held liable for incorrect tariffing of goods respectively entering incorrect data in the customs declaration.

Such a stance, although taken while applying the Previous CL, as a matter of fact already reflected solutions, enacted by the new/current CL.

3. Aktuelni Carinski zakon

Članom 12 stav 2 tačkom 1 CZ propisano je da je podnositelj deklaracije, deklaracije za privremeni smeštaj, ulazne sažete deklaracije, izlazne sažete deklaracije, deklaracije za ponovni izvoz, obaveštenja o ponovnom izvozu ili zahteva za izdavanje odobrenja ili neke druge odluke, odgovoran za tačnost i potpunost podataka datih u deklaraciji, obaveštenju ili zahtevu.

Tačkom 2 istog stava istog člana CZ propisano je da se obaveza iz stava 1 odnosi i na verodostojnost, tačnost i punovažnost svih isprava koji prate deklaraciju, obaveštenje ili zahtev.

Članom 12 stav 4 CZ je, dalje, predviđeno to da ako carinski zastupnik podnese deklaraciju, obaveštenje ili zahtev ili pruži informacije, u skladu sa odredbom člana 13 CZ, taj carinski zastupnik podleže obavezama iz člana 12 stav 2 CZ, samim tim, dakle, i odgovornosti za tačnost i potpunost podataka datih u deklaraciji.

3. The Current Customs Law

Article 12 Paragraph 2 Item 1 of the CL prescribes that the person lodging declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration, re-export notification, request for an authorization or any other decision, shall be responsible for accuracy and completeness of the information given in the declaration, notification or request.

Item 2 of the same paragraph of the same Article prescribes that obligation from paragraph 1 is also related to the authenticity, accuracy and validity of any document accompanying the declaration, notification or request.

Further, the Article 12 Paragraph 4 of the CL envisages that in the event, when the declaration, notification or request is submitted or information is provided by the customs representative in line with the Article 13 of the CL, the customs representative shall be bound by the obligations from the Article 12 Paragraph 2 of the CL. Hence, the customs representative shall also be held liable for accuracy and completeness of the data included in the declaration.

Kada je u pitanju carinsko zastupanje, član 13 aktuelnog CZ, na sličan način kao i Prethodni CZ, razlikuje između neposrednog i posrednog carinskog zastupanja. Dok u prvom slučaju carinski zastupnik postupa u ime i za račun drugog lica (principala/uvoznika), u drugom slučaju carinski zastupnik postupa u svoje ime, a za račun drugog lica.

Naše razumevanje je da je namera zakonodavca ta da CZ usaglasi sa Uredbom (EU) br. 952/2013 Evropskog parlamenta i veća od 09.10.2013. godine o Carinskom zakoniku Unije (u daljem tekstu: Carinski zakonik EU).

Aktuelni CZ u pomenutim odredbama predviđa gotovo identična rešenja kao što su predviđena Carinskim zakonikom EU.

When it comes to customs representation, Article 13 of the current CL, similarly to the Previous CL, distinguishes between direct and indirect customs representation. While in the first case the customs representative acts in the name and on behalf of another person (principal/importer), in the second case the customs representative acts in his own name and on behalf of another person.

Our understanding is that the intention of the legislator is to harmonize CL with Regulation (EU) no. 952/2013 of the European Parliament and Council as of 9 October 2013 laying down the Union Customs Code (henceforth: EU Customs Code).

The current CL encompasses in the respective provisions nearly identical solutions as envisaged by the EU Customs Code.

Carinski zakonik EU u članu 15 propisuje da obavezu da obezbede tačne i istinite podatke u cilju pravilne primene propisa imaju sva lica koja su neposredno ili posredno uključena u obavljanje carinskih formalnosti, dakle kako uvoznici tako i carinski zastupnici. U ovom članu se izričito navodi da su carinski zastupnici, u slučaju kada podnose carinske deklaracije, takođe vezani obavezama u vezi sa tačnošću i potpunosti podataka u carinskim deklaracijama, odnosno verodostojnošću, tačnošću kao i punovažnošću svih isprava koji prate deklaraciju.

Ova odredba ima utemeljenje u prirodi odnosa između uvoznika i carinskih zastupnika koji popunjavaju i podnose carinskom organu carinske deklaracije, odnosno njihovoj obavezi da sarađuju i dostavljaju jedni drugima potpune i tačne podatke i informacije u cilju pravilne primene carinskih propisa.

EU Customs Code, in Article 15, prescribes that obligation of providing accurate and truthful information in the aim of correct application of the customs regulations have all persons, who are either directly or indirectly involved in performing customs formalities, hence importers as well as the customs representatives. It is explicitly stated that the customs representatives, when lodging customs declaration, are also bound by obligations related to accuracy and completeness of information in customs declarations as well as authenticity, accuracy and validity of documents accompanying the declaration.

This provision is rooted in the nature of relationship between the importers and customs representatives which fill out and submit customs declarations to the customs authority, respectively in the obligation between to the two to cooperate and deliver to each other complete and accurate data and information for the purpose of correct application of customs regulations.

Kako bi dodatno naglasio ovu povezanost, Carinski zakonik EU koristi termin „shall be also bound by obligations...“, a koja formulacija ukazuje da bi za ispunjenje pomenutih obaveza mogla postojati odgovornost i uvoznika i carinskih zastupnika.

Drugim rečima, u slučaju podnošenja carinske deklaracije za tačnost i potpunost podataka, sadržanih u njoj i za verodostojnost, tačnost i punovažnost isprava, u načelu bi mogli biti odgovorni kako uvoznik tako i carinski zastupnik, odnosno, ni jedan od njih neće biti a priori oslobođen te odgovornosti samo zbog činjenice da se radi o carinskom zastupanju, bez obzira na to da li je u konkretnom slučaju reči o neposrednom ili posrednom zastupanju ili zbog toga što carinski zastupnik fizički podnosi carinsku deklaraciju carinskom organu.

To emphasise this correlation, EU Customs Code uses formulation “shall be also bound by obligations...”, whereby this formulation indicates that responsibility of both importers and customs representatives for fulfillment of the said obligations may exist.

In other words, in case of lodging a customs declaration responsibility for accuracy and completeness of the data contained therein and for authenticity, accuracy and validity of documents, responsibility may in principle be borne by both the importer and the customs representative, respectively neither of them will a priori be exempted from such responsibility merely on account of the fact that the parties have contracted customs representation, regardless of whether representation is direct or indirect or the fact that customs representative physically submits customs declaration to customs authority.

U zavisnosti od okolnosti konkretnog slučaja, za pogrešno tarifiranje robe pri njenom uvozu robe prekršajno će odgovarati ili samo uvoznik ili samo carinski zastupnik ili oba.

Pre izmena CZ koje su stupile na snagu u decembru 2022. godine, CZ je propisivao odgovornost pravnog lica i odgovornog lica u pravnom licu u slučajevima kada:

1. iznošenjem netačnih ili neistinitih podataka ili na bilo koji drugi način navođenjem carinskog organa na pogrešan zaključak, stekne ili pokuša da stekne plaćanje dažbina u manjem iznosu, preferencijalni tarifni tretman, oslobođenje od plaćanja uvoznih dažbina, olakšicu u plaćanju uvoznih i drugih naknada, plaćanje smanjenog iznosa, povraćaj ili otpust od plaćanja dažbina ili bilo koju drugu olakšicu (član 266 stav 1 tačka 1 u vezi sa članom 12 stav 3 CZ pre izmena);

Depending on the circumstances of individual case, either only the importer or only the customs representative or both will be held liable for incorrect tariffing of the imported goods.

Prior to the amendments enacted in December 2022 CL prescribed liability of a legal entity and responsible person in a legal entity in cases of:

1. accomplishing or attempting to accomplish payment of duties in a lower amount, preferential tariff treatment, exemption from payment of import duties, relief in payment of import duties and other fees, payment of reduced amount, refund or remission of duties or any other relief by way of presenting incorrect or untruthful data or in any other manner persuading the customs authority to a wrong conclusion (Article 266 Paragraph 1 Item 1 in connection with the Article 12 Paragraph 3 of CL before its amendments);

2. iznošenjem netačnih ili neistinitih podataka ili na bilo koji drugi način stekne plaćanje dažbina u manjem iznosu, preferencijalni tarifni tretman, oslobođenje od plaćanja uvoznih dažbina, olakšicu u plaćanju uvoznih i drugih naknada, plaćanje smanjenog iznosa, povraćaj ili otpust od plaćanja dažbina ili bilo koju drugu olakšicu (član 267 stav 1 tačka 2 u vezi sa članom 12 stav 3 CZ pre izmena).
2. accomplishing payment of duties in a lower amount, preferential tariff treatment, exemption from payment of import duties, relief in payment of import duties and other fees, payment of reduced amount, refund or remission of duties or any other relief by way of presenting incorrect or untruthful data or in any other manner (Article 267 Paragraph 1 Item 2 in connection with the Article 12 Paragraph 3 of CL before its amendments).

Izmenama i dopunama CZ iz decembra 2022. godine:

- a. član 266 stav 1 tačka 1 je postao član 265 stav 1 tačka 3;
- b. član 267 stav 1 tačka 2 je brisan i za povredu obaveza koje bi mogle da imaju za posledicu umanjenje carinskih dažbina ili sticanje drugih olakšica, a u vezi sa sprovođenjem carinskih formalnosti CZ, nakon izmena, propisuje (član 266 stav 1 tačke 2 i 3).

As a result of supplements and amendments to the CL enacted in December 2022:

- a. Article 266 Paragraph 1 item 1 became Article 265 Paragraph 1 Item 3;
- b. Article 267 Paragraph 1 item 2 was deleted and CZ, after the amendments, prescribes in regard to conducting customs formalities the following actions as violations that could result in reducing the customs duties or accomplishing other reliefs (Article 266 Paragraph 1 Items 2 and 3).

- i. podnošenje deklaracije ili deklaracije za privremeni smeštaj, deklaracije za ponovni izvoz ili zahteva za izdavanje odobrenja ili neke druge odluke, sa netačnim ili nepotpunim podacima navedenim u deklaraciji ili sa netačnim podacima navedenim u zahtevu, osim u slučaju da takvi podaci nemaju nikakav uticaj na postupak po deklaraciji ili zahtevu, odnosno u slučaju da izmene ili dopune podataka u deklaraciji ili izmena podataka u zahtevu, pre preduzimanja bilo koje radnje carinskog organa u vezi sa učinjenom radnjom ili propustom, odnosno pre otpočinjanja carinske kontrole;
 - ii. prilaganje neverodostojne ili netačne ili isprave koja nije punovažna uz deklaraciju, deklaraciju za privremeni smeštaj, deklaraciju za ponovni izvoz ili uz zahtev za izdavanje odobrenja ili druge odluke.
- i. lodging a declaration or a temporary storage declaration, re-export declaration or a request for an authorization or any other decision, with incorrect or incomplete data stated in the declaration or with incorrect data stated in the request, except in case when such data have no influence on the procedure, initiated upon the declaration or request, respectively in case of changes or supplements to the data in the declaration or changes to the data in the request, before undertaking any action by the customs authority in connection with the action or omission, i.e. before starting customs control;
 - ii. enclosing unauthentic, incorrect or invalid document to the declaration, temporary storage declaration, re-export declaration or to the request for authorization or other decision.

Prema presudi Apelacionog Prekršajnog apelacionog suda, Odeljenje u Novom Sadu, III-306 Prž broj 18618/21 od 7. 9. 2021. godine, formulacija u članu 267 stav 1 tačka 2 (CZ pre izmena iz decembra 2022. godine) „iznošenje netačnih ili neistinitih podataka“ uključuje potencijalnu odgovornost i carinskog zastupnika i uvoznika. Termin „iznošenje“ znači aktivnu radnju ili propust carinskog zastupnika i uvoznika koji imaju za posledicu plaćanje carinskih dažbina u smanjenom iznosu.

U konkretnom slučaju, sud je zauzeo stav da uvoznik nije odgovoran jer je posrednom carinskom zastupniku dostavio sve informacije i isprave koje su od značaja za pravilno tarifiranje robe. Ovaj stav ukazuje da bi uvoznik bio odgovoran ukoliko nije dostavio sve potrebne informacije i isprave carinskom zastupniku.

According to the judgment of the Misdemeanour Appellate Court, Department in Novi Sad, III-306 Prž no. 18618/21, dated September 7, 2021, the wording in the Article 267 Paragraph 1 Item 2 (CL prior to the amendments enacted in December 2022) “presenting incorrect or untruthful data” implies potential liability of both the customs agent and the importer. The term “presenting” indicates an action or omission of the customs agent and the importer resulting in payment of customs duties in a lower amount.

In this specific case, the court took the stance that the importer is not responsible since he provided the indirect customs representative with all the information and documents of relevance for correct tariffing of the goods. Such stance indicates that the importer would be liable, had he not delivered all the necessary information and documents to the customs representative.

CZ, nakon izmena iz 2022. godine, u članu 266 stav 1 tačka 2 umesto formulacije „iznošenje netačnih ili neistinitih podataka“ uvodi formulaciju „podnošenje deklaracije ili deklaracije za privremeni smeštaj, deklaracije za ponovni izvoz ili zahteva za izdavanje odobrenja ili neke druge odluke, sa netačnim ili nepotpunim podacima navedenim u deklaraciji“. Ova formulacija ukazuje da bi za samu radnju podnošenja carinske deklaracije mogli biti odgovorni ili carinski zastupnik koji podnosi carinsku deklaraciju u ime uvoznika ili sam uvoznik, u slučaju kada samostalno podnese carinsku deklaraciju.

Uvoznik bi mogao biti odgovoran u slučaju kada carinskom zastupniku ne dostavi odgovarajuće isprave ili informacije od značaja za pravilno tarifiranje robe (član 266 stav 1 tačka 3 CZ) i ukoliko ne ispunji druge obaveze koje se odnose na ispunjavanje carinskih formalnosti u vezi sa tarifiranjem robe.

CZ, after the 2022 amendments, in its Article 266 Paragraph 1 Item 2 instead of the wording “presentation of incorrect or untruthful data” encompasses the wording “lodging of a declaration or temporary storage declaration, re-export declaration or request for authorization or other decision, with incorrect or incomplete data provided in the declaration”. This wording indicates that either the customs representative who submits the customs declaration on behalf of the importer or the importer himself in the event of submitting the customs declaration by himself, could be held responsible for the act of lodging the customs declaration.

The importer could be held liable in cases of failure to provide the customs representative with the required documents or information of relevance for correct tariffing of goods (Article 266 Paragraph 1 Item 3 of CL) and failure to perform other obligations related to fulfilment of the tariffing of goods-related customs formalities.

Za prekršaj iz člana 265 stav 1 tačka 3 CZ bi mogli da odgovaraju i carinski zastupnik i uvoznik – u slučaju kada postoji umišljaj lica angažovanih od strane carinskog zastupnika i uvoznika da, aktivnom radnjom ili propuštanjem koja dovodi do podnošenja carinske deklaracije sa netačnim ili neistinitim podacima, steknu plaćanje dažbina u smanjenom iznosu (saizvršilaštvo – član 23 Zakona o prekršajima (“Sl. glasnik RS”, br. 65/2013, 13/2016, 98/2016 - odluka US, 91/2019, 91/2019 - dr. zakon i 112/2022 - odluka US; u daljem tekstu: ZP), podstrekavanje – član 24 ZP ili pomaganje – član 25 ZP).

Pravilna primena propisa će u velikoj meri zavisiti od načina na koji carinski organi budu formulisali zahteve za pokretanje prekršajnih postupaka, dokaza podnetih uz zahtev kao i načina na koji će sudovi da utvrđuju činjenično stanje i stepen odgovornosti uvoznika i carinskih zastupnika.

When it comes to the misdemeanour from the Article 265 Paragraph 1 Item 3 of CL both the customs representative and the importer could be held liable in case of intent of persons engaged by the customs representative and the importer to accomplish payment of duties in a lower amount through an action or omission that leads to lodging of a declaration with incorrect or untruthful data (complicity - Article 23 of the Law on Misdemeanours (“Official Gazette of the RS”, no. 65/2013, 13/2016, 98/2016 - CC decision, 91/2019, 91/2019 - other law and 112/2022 – CC decision; henceforth: LM) , incitement - Article 24 of LM or aiding - Article 25 of LM).

Correct application of regulations will largely depend on how the customs authorities will formulate requests for instigating misdemeanour proceedings, the evidences submitted along with the request as well as on how the courts will determine the relevant facts and the level of responsibility of importers and customs representatives.

JPM | PARTNERS

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: +381/11/207-6850

E: office@jpm.law

www.jpm.law