

The control role of the customs service in addressing economic crime

الدور الرقابي لإدارة الجمارك في التصدي للجريمة الاقتصادية

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Abstract:

The economic crime is characterized by a specificity compared to other crimes, which intervene in order to combat it, several statutory agencies and bodies, including the customs service, with wide powers intervene to uncover this crime affecting the economy and financial rights, where the previous and subsequent customs control mechanism operates in accordance with legal provisions, activated, It plays a big role, it representing the Algeria states that strives towards ensuring economic and financial stability.

Keywords: customs service, control, crime, economic.

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Introduction

Crime phenomenon has a great impact on society, state and its economic development, especially crimes of an economic and financial nature, spread have mushroomed in many countries in the world,¹ affecting the State's wealth and treasury, the Algerian State's economy becomes threatened, enriching people at the expense of others, in line with economic globalization, and overcoming all barriers as a result of economic openness.

However, crimes of an economic nature have been addressed since the nineteenth century, in view of its negative effects, particularly with the adoption by the Algerian State of the capitalist system and the emergence of the principle of freedom of industry and trade,² dealers have free to engage commercial activities and they perform transporting and move across different countries,³ economic intervention has become an imperative, despite of its progress or underdevelopment, those that are in the process of economic, social or political development,⁴ to ensure economic stability, by controlling all transactions by its structures and organs, including the customs administration, which embodies state control of transport.

Let's talk about the role of the customs service in detecting economic crimes, as one of the most important challenges facing them, it does not constitute an obstacle to the economy of third world but even developed countries, which is required of Algerian legislature's intervention and the obligation of the Customs service to impose pre and post control on exchanges of goods and capitals to and from Algeria, as a supervisory system for all transactions operating across transnational, contributing to the protection of the State's national economy.

From this point of view, we will try to answer the problem posed by this topic, the role played by the customs service control to address crimes of an economic nature?

And is it sufficient state previous control by customs service when perpetration of crime? Or its effectiveness is achieved only supplementing it with post control?

In response to this problem, we have divided the topic into two points relying on the analytical approach and the descriptive approach:

Firstly: Customs service intervention in economic crime

Secondly: Combating economic crime through customs control

Firstly: Customs service intervention in economic crime

Before discussing the control role of the customs service that intervene to combat economic crime, the meaning of economic crime and customs service, must be identified and distinguished the economic crime from customs crime due to its multiple characteristics:

1. The concept definition of economic crime

Write Economic crime is a kind of privacy compared to other crimes, which has characteristics that distinguish it from other crimes especially customs crime, we will try to talk about here:

- **Defining economic crime and distinguishing it from customs crime**

The Various definitions identify economic crime are characterized by their negative effects on the economy and rights of financial value in terms of the protection of public treasury, the national economy, resources and wealth, is often referred to “white collar crime”,⁵ “crimes of the powerful”, is associated with economic crime, crime against the economy itself,⁶ and expressed most frequently in the form of misrepresentation in financial statements of corporations, manipulation in stock exchange, commercial bribery.⁷

Economic crime has a legal dimension represented by a infringement of the law and an economic dimension when did he threaten the public interest, and the concept of this crime a transnational nature is multifaceted, as it includes not only violations of criminal law but also accompanying violations of other branches of law(administrative, financial, customs, civil).⁸

This crime is defined as any ‘illegal act committed by an individual or a group of individuals to obtain a financial or professional advantage’,⁹ and this phenomenon is define by jurist E.H. Sutherland as a crime that occurs in the field of economic operations and whose forms of offenses are related to the purchase and sale of various shares, false advertising goods, false expression of financial condition of individual corporations, bribery of business partners, direct or indirect bribes of civil servants, in order to provide favorable arrangements, embezzlement, misappropriation of funds, tax evasion,¹⁰ and smuggling crime, which Algerian legislators regulates mechanisms to combat them according order N° 06-09 of 15 July 2006 on combating smuggling.¹¹

Also, the economic crime is “all illegal acts and deeds committed by individuals, associations, companies, or organizations, in connection with the conduct of business, customs, commercial transactions, through the use of fraud, fraud, breach of trust, forgery of turnover, money laundering, fraudulent bankruptcy, tax evasion, insurance policies”.¹²

In view of the legislative development, a chapter on economic crimes had been devoted to the Penal law, and some legislations has even issued an economic crimes law independent of other common law crimes, The United Nations, states and organizations worked to combat economic crime by various means and methods, and concluded international conventions through the imposition of legal obligations on states with respect to the provision of legal assistance, extradition and regulation of such economic crimes in the structure of domestic law.

Some criminal law jurists consider that this economic crime it has become widespread for the time being, in legislation and the judiciary, as it is defined by Algerian legislation under order N° 66-180 establishing special councils for the prevention of economic crimes that "The purpose of this Order is to prevent crimes against national wealth, the public treasury and the national economy committed by employees and agents of all levels of the State, and public institutions, and communal collectivities, and public communities, a national company or a mixed-economy

company, or by any institution with a private right operating a public interest or public funds".¹³

The economic crime is distinguished from customs crime in terms of the legally established interest of the criminal act, the purpose behind combating economic crime is to protect is the economic politic public treasury, while the interest of customs crime to preserving the interest of the public treasury, to realize the treasury's financial resources, which raises problems to define the economic form of economic crime, Customs crimes often target the economic system, although customs procedures are considered one of the economy's means.

Furthermore, customs politic is one of the elements of directing the national economy, because the customs remains a vital tool available to simulate trade and stem the flow of illicit goods that that weaken the economies, as an integrated program work planned and implemented by the State, based on economic means and instruments in order to have a desirable impact on all variables of economic, social and political activity for the achievement of society's objectives,¹⁴ and the customs crime as a crime of a mixed nature, combining fiscal and economic character,¹⁵ Or it is one of economic crimes that have spread out of the economic situation of the state, stealing its funds that are supposed to be owed to its public treasury, robbed of funds favor for persons and private companies, and after sight the customs law, it is not possible to adapt the description of a customs crime as an economic crime, but all customs crimes adjusting by the customs service can be considered as economic crimes, customs legislation applies, since one of the main functions of the customs service is to preserve Algeria's national economy.¹⁶

In addition to, we can't qualify the crime as customs except in the case committed in a customs office, in which the goods are monitored, or committed in customs area within of the State frontier, which may be land or maritime, where many privileges are granted to the customs service to impose control and inspection, or a customs territory of territorial lands and waters submit to the State's sovereignty.¹⁷

- Characteristics of economic crime

Economic crime is characterized by its gravity and seriousness, it varies from one state to another, and from time to time, it is difficult to count economic crimes on the basis of the State's economic policy,¹⁸ acquiring illegal profits after careful planning, through economic accounts and forecasting; because all economic crimes should include acts that have economic benefit as their motive, which is characterized by duration, regularity, carried out in the framework of legal economic activity, also this crimes are always intentional but can sometimes be committed through negligence.¹⁹

Typically, perpetrators of economic crime are educated and sophisticated, using financial resources to build connections with law enforcement officials,²⁰ since it's the perpetrators' high capacity to search economic gaps economic, which impede the performance of their functions by the protectionist organs in addressing these

economic crimes, including the specialized economic and financial penal pole to combat this crimes, created by virtue of the Order N° 20-04 of 30 August 2020 containing the Criminal Procedures law.²¹

Authorities often have to deal with the influence of officials and corrupt public servants, which complicates investigations and makes them even more expensive,²² even imposing penalties for economic crimes on a utilitarian basis,²³ which varies between complementary and accessory penalties that recognize the need to return funds acquired in the hands of economic offenders illegally, than required asset funds, confiscation or fines and compensations, which amount is much less than the amount of money received as a result of committing an economic crime.²⁴

2. Definition of the customs administration service

The Customs service,²⁵ means a public force providing services under the guardianship of the Ministry of Finance that defends Algeria's economic space, which is responsible for the administration of customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods,²⁶ It is a statutory State body with a strategic dimension characterized by a composite nature economic characteristics, is an economic, security, military, and also it is an economic and security body commit to control the commercial exchanges, and protect the country when moved prohibited items and control persons and goods transport...., and the activity of the customs service is submit to internal laws and regulations, sometimes to international conventions, of the World Trade Organization, the free Trade Agreement.

This service in various organs and bodies also performs functions to reflect the State's control over transport and moving. Also is one of the most important oversight organs on which the State depends, according article 28/2 of law N° 98-10: "... It shall regulate a special area of control along maritime and land borders, which shall constitute the customs land."

The development of commercial and export activities also depends on the evolution of the customs system, such as the most important organs charged with preventing and reducing the seriousness of economic crime, and the nature of their already border-centric activity on the international character of economic crimes, Often regarded as transnational crimes, this service has become important in preserving and ensuring the integrity of the national economy, by seeking to address economic crime.

The Algerian legislature has clarified the scope of the customs service work and the nature of the crimes competent to adjudicate it, according to article 2 of law N° 17-04 of 16 February 2017, providing that the duty of the customs service shall be to execution legal and regulatory procedures that permit uniform application of customs legislation and regulation, and collect duties and taxes due when importing and exporting goods is the most effective tool for protecting the national economy and

contributing to the balance-of-payments assessment, reflecting a State's important financial source.²⁷

Action to combat fraud and fiscal evasion, combat the infringement of intellectual property rights and the illegal import and export of cultural property, and contribute to the protection of the national economy, and ensuring a concurrence of away from any illegal practices, and ensuring the preparation, analysis and publish of foreign trade statistics, also combating smuggling, money-laundering and transnational crime, illegality of importing and exporting goods, and ensuring that imported or destined goods are subject to control procedures.²⁸

Secondly : Combating economic Crime through Customs Control

The customs service has the right to interfere under its previous and subsequent customs control by taking all measures to ensure the application of applicable laws and regulations; in conformity with article 5/d of law N° 98-10 of 22 August 1998, to address economic crime prior to commit by commercial and economic operators, through customs declaration procedures and documentary screening in accordance with the provisions of the Algerian Customs law, even physical examination of goods transported maritime or air or inland and the collection of taxes and duties, other measures to which we shall be presented as follows:

1. Previous customs control

In this part, we speak of the most important preliminary procedures to which the Customs service to enforce its control, namely the customs declaration, the examination of documents, and finally the physical examination of the goods:

- Customs Declaration

The Customs declaration is the document submitted by the customs authorities containing all information of the goods, in conformity with article 75/2 of the customs law, which stipulates” that a detailed declaration shall be the document issued in accordance with this law, which the declarant indicates the customs regime to be determined for the goods, and shall provide all the elements required for the application of rights and duties, and the requirements of customs control.”²⁹

The purpose of the customs declaration is to control trade, imports and exports operations, which require the declaration to be recorded on a written and official document, comprising all items related to the customs base, intention to play customs rights and duties, is not reviewable once registered, but is considered a credit document by virtue procurement all rights, dues, and royalties, ...

It should be noted, no person can carry out the customs procedures related to the detailed declaration of goods, if he is not accredited as a customs agent, in conformity with article 78 bis of Order N° 08-02 of 24 July 2008, and the article 2 of executive decree N° 10-288 of 14 November 2010 mentions, persons who are eligible for a detailed statement are: customs agents, owners of goods who are licensed by custom, and licensed carriers.³⁰

One of the first procedures to be present imported or exported goods before the customs office, with a view to subjecting them to customs control, and the suspension of customs rights, internal consumption duties, and measures of an economic nature.

Economic customs regulations for assisting in securing the necessary transport goods along the seashore or from one vehicle to another,³¹ according to law N° 98-10 for the storage, transfer, use or movement of goods, is the transit, bonds, temporary admission, exempt resupply, customs controlled plant, Temporary export,³² as well as 'dry ports' comprising logistics facilities of various kinds and sizes, which are not necessarily a constituent or part of a port cluster, as the solution for port congestion and lists four logistics functions they may not ignore: modal transfer between two transport modalities, consolidating goods for transport preparation, stocking goods waiting for shipment, delivery to the recipient;³³ and carrying out customs clearance procedures;³⁴ This is confirmed by article 66 of act N° 02-11 of 24 December 2002 affirms that goods may be unloading in places designated for this purpose to stay under customs control pending the said declaration by Customs, unless the goods include the subject of a detailed declaration specified in article 75, which is termed dry ports, warehouses and temporary deposit spaces, considering the dry port is a temporary warehouse outside the port as a natural extension of the seaport.³⁵

And to ensure the good inspection of the goods, there are a technical devices must be used that help customs control; because the provision of technical support of customs controls allows customs authorities to elicit facts about the illicit movement of goods and to contract socially dangerous crimes.³⁶

- Inspection of documents

The obligation to examine documents derives from the obligation to declare customs; in order to verify the content of the customs file, such as invoice, insurance certificate, waybill and certificate of origin, requires admissibility control in relation to the formal aspect of the detailed declaration and documents attached to it, while examining all data to be mentioned in the permit, and recording all necessary documents before registration of the predication.

Also, all documents must be carefully examined and made sure that they are in conformity with the information contained in the detailed declaration, for example, by ascertaining the amount of the invoice, the date of the invoice, when a declarant or their representative lodges a customs declaration, they are responsible for the accuracy of the information in the declaration, the authenticity of any documents attached to it, and compliance with all the obligations relating to the entry of the goods in respect of the procedure in question;³⁷ should be the accuracy and completeness of the information given in a declaration or notification; the existence, authenticity; accuracy and validity of documents.³⁸

Among eligible persons for access to documents are customs agents who have at least the rank of control officer, and the assistants in charge of the tasks of the clutch, they demand access to all kinds of operational documents relevant to their interests, such as invoices, delivery bonds, transmission schedules, transport contracts,

notebooks and records, in railway stations, offices of maritime and air transport companies, land transport stores...³⁹

These economic crimes are prove by records written by customs service agents, according to article 246 of the Customs law,⁴⁰ as a normal way of examining economic crimes, for fear of losing evidences relating to the crime, of escaping the perpetrators or of changing the truth, providing false, deceptive or counterfeit documents with the purpose to deviate from.⁴¹ it is permissible records may even be written in several places in accordance with article 106 of the Algerian customs law.⁴²

One of the controls to be taken into account is the writing of evidence records of economic crimes, namely, their authenticity, without removing one of their statements or including or restricting additions, which would affect their authenticity, as affirmed in article 108 of Act N° 17-04 of the Algerian customs law.⁴³

- Material inspection of goods

Based on the idea that the customs code regulates the movement of entry and exit of goods to and from the Algerian State, customs agents have the right to implement all legal and regulatory procedures, on imported or exported goods and goods of Algerian origin placed under the factory's system subject to customs control.⁴⁴

And the movement of goods is monitored at entry or exit across customs borders, and the obligation to inspect the goods before declaring them, by verifying their type, value and conformity with the statement and documents; when the customs clearance does not have all the information necessary for the preparation of the customs declaration, and submission of a viewing permit called examination, this is before proceeding to examine the packages, according to article 84 of act N° 98-10 of 22 July 1998, while refraining from any treatment that would alter the appearance of the goods under examination.⁴⁵

The customs service is intervening recently to ascertain the legality of doubtful goods, in order to prevent the import of counterfeit, fraudulent or counterfeit goods, especially when they are placed under an economic customs regime as confirmed by the provisions of the decision of 15 July 2002 establishing the applicability of article 22 of the Customs Act on the import of counterfeit goods.

2. Subsequent customs control

This control is complementary to previous control, in order to deter the perpetration of any economic crimes, especially as trade develop, which require a variety of export or import procedures, reflecting the efficiency of the business operation over the efficiency of the trade operation completion:

- Re-examine detailed statements

The obligation to monitor the authenticity of information and declarations provided in both form and subject, once all the necessary and ancillary documents are have been checked, it is a formality control, other than content control, according to which the detailed permit data is monitored with the data contained in the attached documents, in particular the value of the goods, the origin and the tariff type, and

once the examination has taken place, the customs authorities have an obligation to issue a document (the examination report).⁴⁶

- Preparing and analyzing trade exchange statistics

Article 3/4 of Act N° 98-10 of 22 August 1998 stipulates that the Customs service shall prepare and analysis foreign trade statistics, given its crucial importance in the preparation of foreign trade policy by the supreme authorities within the Algerian State, For example, customs stressed that Algeria's trade deficit had fallen to \$11.19 billion at the end of 2017, exports had risen markedly to an estimated \$34.76 billion, and imports had fallen by about \$47.08 billion.⁴⁷

Customs service intervention represented by customs brokers is not limited to the internal level in order to facilitate foreign trade and the preparation and analysis of statistics,⁴⁸ but even at the international level by some international bodies and organizations, including the World Customs Organization (WCO) s trade, which established standards for securing and facilitating trade in Juan 2005 in order to avoid any expected future violations, It affects the national economy. It is now necessary to coordinate the goods' information in advance, with missions from the country's customs authorities to inspect high-risk containers.

The Kyoto Convention on the Harmonization of Customs Procedures, which entered into force in 1974 and was amended in 1999, reflects the basic instrument of trade facilitation and has developed a system of harmonization for the classification and harmonization of goods in international trade, Under which foreign trade statistics are collected and widely used, to improve trade policy, follow up on all controlled goods, rules of origin, freight definitions, transport statistics, price control, commodity quota control, compilation of national accounts and economic analysis.⁴⁹

This is reflected, even relatively, in practice, when the customs service functions were limited to withholding taxes and duties, as the most important source of public revenues in order to achieve the state budget,⁵⁰ It seeks to entitle legally fixed financial rights to transport and mobility, it is a mission that has been maintained to this day, on the basis that the customs service is an organ of the Ministry of Finance, both organically and functionally, especially the economic crime threatens the State's financial interest and economic stability, This may cause serious damage to the public treasury as a result of the tax's incapacity.

Article 23 of Order N° 22-01 of 03 August 2022 containing the Supplementary Finance Act of 2022 states that "The procedures for controlling foreign trade and exchange shall be exempt from clearance of new or used goods contained in dispatches that reach the addressees by letter mail, via postal packages or by courier parcels when their value exceeds the exemption value limit set out in article 213, paragraph 'T', of the Customs law.

The customs of imported goods under the provisions of this article shall be subject to a penalty of 30% of the value of the goods specified in article 16 of the Customs law.

The payment of the partial fee provided for in this article shall be exempted from mobile phones and automated information equipment intended for personal or family use."

It should be noted that the main objective of the protection and safeguarding of the public treasury's rights is to reduce the adverse effects of the crime of customs fraud, in order to ensure and control customs facilities for the benefit of economic dealers, and eliminate unfair competition, and this is expected to make customs supervision more efficient and effective.⁵¹

Conclusion

In conclusion, the most important results we draw from this paper, crime in all its various forms and types has a negative impact on the individual, family, society and state, in particular economic crime, which is constantly evolving with the development of the economic field of the state, it differs from the customs crime itself due to its privacy.

In addition a role of the customs service in imposing its previous control is not limited taking the necessary measures in order to address economic crime, however it must be supplemented by subsequent control, because both the pre and post control contribute to the detection of economic crime, which could reduce the proportion of its more disastrous effects on the state economy.

Among the recommendations that we propose and desirable in the future are:

- enhancement the State's control over such serious crimes of an economic and financial nature.

- emphasis control by agencies and agencies responsible for combating customs crimes.

- Supporting the customs service and using all means to detect and respond to economic and financial crimes.

- Increase of penalties for economic crimes.

- Use of advanced devices to physically examine the goods by the customs service.

- To ensure that international conventions are concluded in order to limit the spread of these economic crimes, which are now being committed by electronic means. The so-called "electronic economic crime" has emerged.

- Conclude agreements between Arab States and impose international cooperation between them in order to facilitate the task of detecting such crimes of an economic nature.

- Organizing training courses on information and communication technology for customs agents responsible for detecting economic crimes.

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³ Pursuant to the principle of freedom of movement enshrined by the Constitutional Founder in the 2020 Amendment in accordance with the provisions of article 49, "Every citizen who enjoys civil and political rights may freely choose his or her place of residence and move freely through the national territory.

Every citizen has the right to enter and exit the national territory....."

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⁴¹ Sergey Ovchinnikov, Op. Cit., p. 220.

⁴² Article 106 of Act N° 17-04, amending article 242 of Act N° 79-07, which contains the Algerian Customs Code, states that "after inspection of the customs offence, goods,

including means of transport and seized documents, must be directed to the nearest office or customs Centre from the place of detention and the record of the detention shall be written".

⁴³ Article 108 of Act N° 17- 04, amending article 245 of Act N° 79-07, which contains the Algerian Customs Code, states that "... it prohibits fillings or additions written between lines under the pretext of nullifying words stuffed between lines or additions."

⁴⁴ In accordance with article 3/2 of Act N° 98-10 of 22 August 1998, containing the Customs.

⁴⁵ According to article 85 of Act N° 98-10 of 22 August 1998.

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⁴⁸ Ewa Gwardzinska, The role of customs brokers in facilitating international trade, World Customs Journal, International Network of Customs Universities, Charles Sturt University, Australia, Vol 8, N° 1, March 2014, p 63.

⁴⁹ It should be noted that the World Customs Organization (WCO) is an intergovernmental organization based in Brussels, founded in 1952 as the Customs Cooperation Council, which has some 178 members from customs departments around the world.

<https://tfig.itcilo.org/AR/contents/org-wco.htm>

- 15/01/2023 at 14:00

⁵⁰ Ewa Gwardzinska, Op. Cit., p 63, 64.

⁵¹ Frank Heijmann/ Yao-Hua Tan/ Borianna Rukanova and Albert Veenstra, The changing role of customs: Customs aligning with supply chain and information management, World Customs Journal, International Network of Customs Universities, Charles Sturt University, Australia, Vol 14, N° 2, September 2020, p 136.