

The Role of Customs Criminal Policy in Enhancing Legal Certainty for Investment in Algerian Legislation

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Received
24/04/2026

Accepted
30/09/2026

Published
31/10/2026

Abstract:

This study aims to highlight the role of customs criminal policy in enhancing legal certainty for investment under Algerian legislation by analyzing the specific features of criminalization and punishment in customs matters as mechanisms for protecting the economic system and ensuring transparency in trade transactions. The study demonstrates that the Algerian legislator has adopted a flexible punitive framework primarily based on financial penalties such as fines and confiscation, alongside custodial sanctions in serious cases, while also promoting customs reconciliation as an alternative mechanism for dispute settlement and for reducing legal risks associated with economic activity. It concludes that an effective customs criminal policy contributes to strengthening the stability of the legal environment and enhancing investment attractiveness.

key words: Customs criminal policy, legal certainty for investment, customs offenses, customs reconciliation, fines, confiscation, investment climate, Algerian legislation.

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Introduction:

The contemporary economic system is undergoing rapid transformations driven by the dynamics of international trade and the increasing cross-border movement of capital, which have rendered the stability of the legal environment a fundamental pillar for strengthening legal security for investment and promoting the business climate. In this context, the role of economic criminal policy in general, and customs criminal policy in particular, has emerged as a legal mechanism for protecting the national market, ensuring the transparency of commercial transactions, and combating unlawful practices liable to undermine economic competition and the financial stability of the State.

Customs offenses constitute one of the most prominent forms of economic crime affecting the financial and commercial order of the State, as they involve a direct infringement on the public treasury's interests and a disruption of the regulatory framework governing foreign trade transactions. This has prompted the Algerian legislator to establish a specific legal framework based on a balance between the requirements of deterrence and the imperatives of economic efficiency, in a manner that ensures the protection of the national economy and strengthens confidence in the legal environment governing investment, particularly in light of the recent legislative orientations embodied in Law No. 22-18 relating to investment.

The importance of studying customs criminal policy lies in the fact that it is no longer confined to achieving penal deterrence and safeguarding the State's financial resources alone; rather, it has come to play a pivotal role in enhancing legal security for investment through protecting the market from unfair competition, ensuring transparency in commercial exchanges, and providing a stable legal framework that encourages economic operators to conduct their activities within an environment characterized by clarity and legislative stability.

On this basis, the present study raises the following central research question:

To what extent does customs criminal policy contribute to enhancing legal security for investment under Algerian legislation?

In order to address this issue, the study adopts a descriptive-analytical approach through the examination of the legal provisions

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governing customs offenses, the analysis of the specific features of the rules of criminalization and punishment applicable thereto, and the clarification of their role in supporting the stability of the legal environment governing economic and investment-related transactions.

To achieve the objectives of the study, the subject is structured around two main sections:

Section I: The Role of Customs Criminalization in Protecting the Economic Order and Enhancing Legal Security for Investment

Section II: The Role of Customs Penalties in Supporting the Stability of the Legal Environment for Investors and Promoting the Business Climate

Section I: The Role of Customs Criminalization in Protecting the Economic Order and Enhancing Legal Security for Investment

Criminalization in the customs field constitutes one of the most complex and distinctive forms of legal protection, given the specific nature of the activities governed by customs law, which fundamentally affect the State's financial and economic interests. The customs legislator does not criminalize conduct merely because it violates an administrative rule; rather, criminalization is based on its direct impact on the national economic order and on the consequences it may entail, such as the smuggling of goods or the deprivation of the public treasury of its fiscal revenues.

The particularity of the rules governing criminalization in customs offenses is reflected in their grounding in both economic and administrative considerations, resulting in a dual legal framework in which the requirements of penal deterrence intersect with the imperatives of administrative control. This explains the legislator's reliance on flexible and comprehensive forms of criminalization that cover both direct material acts, such as actual smuggling, and constructive offenses inferred from legal presumptions or the mere breach of customs obligations.

This specificity is also evident in the foundations upon which customs criminalization is based, as the scope of criminal protection extends beyond the traditional concept of safeguarding public funds to encompass the protection of the economic order as a whole, including national production and fair commercial competition. Accordingly,

examining the rules of criminalization in customs offenses requires an analysis of the conceptual and legislative framework upon which they are founded and of the characteristics that distinguish them from other economic offenses (First), as well as an examination of their legal elements (Second).

First: The Conceptual and Legislative Framework of Customs Offenses

It is not possible to fully grasp the particular nature of the legal regime governing customs offenses without examining their meaning and position within the broader system of economic crimes, given their direct connection with the regulation of cross-border commercial and financial exchanges and the consequences they entail for the stability of the national market and the protection of the economic order. This regulatory framework is also of particular importance in the investment sphere, as it helps ensure the transparency of commercial transactions and limits unlawful practices that may undermine economic operators' confidence in the legal environment governing investment.

From this perspective, analyzing the conceptual and legislative framework of customs offences requires addressing their definition and distinguishing them from other economic crimes, followed by an examination of their legal basis and the determination of their distinctive legal nature and their role in strengthening the stability of economic transactions in a manner that supports legal security for investment, particularly in light of the recent legislative orientations embodied in Law No. 22-18 relating to investment, which has made the stability of the legal framework governing economic exchanges one of the fundamental pillars for attracting investment.

A- Definition of Customs Offenses and Their Distinction from Other Economic Crimes:

The Algerian legislator did not provide an explicit and direct definition of customs offenses in the amendment to the Customs Code of 2017; rather, it limited itself to establishing a general framework defining the nature and scope of customs activity, as Article 02 of Law No. 17-04¹ provides that "customs laws and regulations aim to

¹ Law No. 17-04 of 16 February 2017 amending and supplementing Law No. 79-07 containing the Customs Code, Official Gazette, No. 11, issued on 19 February 2017.

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organize customs activity in general through the application of a set of legislative and regulatory provisions." Accordingly, the concept of a customs offense derives its meaning more from the spirit of the legal texts governing customs activity than from a specific legislative definition.

Legal doctrine has followed the same approach, treating customs offenses within its general framework as any positive or negative conduct that breaches customs legislation and regulations. Some scholars consider them to be "acts contrary to customs rules confronted by the legislator with an appropriate penal or administrative sanction, while others define them as "any violation ¹" of legal and regulatory provisions issued by bodies that contribute directly or indirectly to the implementation of the State's economic policy²".

Based on the foregoing, a customs offense may be defined as any act or omission constituting a breach of customs legislation or regulations that results in prejudice to the rights of the public treasury or to the economic order protected by the customs administration. As such, it represents an infringement upon the State's financial system, not merely because it violates an administrative procedure, but because of the actual harm it causes to the State's fiscal and economic interests.

The effects of customs offenses are not limited to harming the State's fiscal interests; they also affect the stability of international commercial transactions and the transparency of the national market, which may negatively impact investors' confidence in the legal environment governing economic activity. This highlights the importance of customs criminalization as a mechanism for enhancing legal security for investment, particularly given that modern customs systems play a pivotal role in securing global supply chains and ensuring the safety and stability of international trade flows, as confirmed by recent studies highlighting the strategic role of customs

¹Shawqi Ramez Shaaban, **The General Theory of Customs Offenses**, University Press for Printing and Publishing, Beirut, Lebanon, 2000, p. 28.

² Baghdadi Jilali, **Judicial Jurisprudence in Criminal Matters**, Vol. 1, National Publishing and Advertising Corporation, Algeria, 1996, p. 296.

administrations in protecting global supply chains and strengthening the security of international commercial exchanges¹.

Customs offenses are characterized by specific features that distinguish them from other economic crimes; they generally arise from violations of procedural or regulatory obligations related to the movement of goods across borders and are subject to a special legal framework that combines both administrative and penal characteristics.

By contrast, other economic crimes—such as currency offenses, corruption offenses, or unfair competition practices—target different areas of economic activity and are not directly connected with customs transactions or the State's financial sovereignty. Moreover, the particular nature of customs offenses is reflected in their direct impact on the regulation of foreign trade and the stability of economic exchanges, making their combat an essential factor in protecting fair competition and improving the investment climate.

B- The Legal Basis and Distinctive Characteristics of the Criminalization of Customs Acts:

The criminalization of customs offenses within the Algerian legal system is grounded in a set of legislative and regulatory provisions that constitute the general framework for protecting the State's financial and economic order. The Customs Code issued pursuant to Ordinance No. 79-07², Law No. 17-04 of 2017 as amended and supplemented by Law No. 17-04 of 2017, serves as the primary foundation for such criminalization, as it includes the substantive and procedural rules governing customs transactions, defines the acts subject to criminalization, and prescribes the penalties for them. It is further complemented by the provisions of the Penal Code and special economic legislation, which shape the contours of criminal protection of public finances.

This reflects the legislator's orientation toward establishing an integrated legal framework to protect the economic order and ensure the stability of the legal framework governing commercial exchanges,

¹ M. Pourakbar and R. Zuidwijk, “**The Role of Customs in Securing Containerized Global Supply Chains**,” *European Journal of Operational Research* 271, no. 1 (2018): 331–340, <https://doi.org/10.1016/j.ejor.2018.05.012>

² Law No. 79-07 of 21 July 1979 **containing the Customs Code**, Official Gazette, 1979.

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thereby contributing to the establishment of a secure and investment-friendly legal environment, in line with the objectives set out in Law No. 22-18 on investment promotion¹.

The justification for such criminalization derives from the economic and financial function of the customs administration as an institution responsible for safeguarding the State's financial sovereignty, ensuring compliance with legislation governing foreign trade, and securing the collection of customs duties and charges. Accordingly, any violation of these rules does not merely constitute an administrative irregularity but rather amounts to an infringement upon a fundamental public interest related to the State's economic and fiscal security. Consequently, the legislator has criminalized any act likely to violate customs legislation or prejudice the rights of the public treasury, whether material (such as smuggling or the concealment of goods) or immaterial (such as fraudulent declarations or collusion)².

The distinctive feature of customs offenses lies in their dual nature, combining an administrative dimension, insofar as they affect the regulatory system supervised by the customs administration, with a penal dimension, given that they involve acts subject to criminal sanctions imposed by the legislator. This duality entails specific procedural and legal characteristics in the prosecution of offenders, as the customs administration enjoys broad powers to initiate proceedings, assess settlements, and pursue violations, unlike what is generally applicable in offenses of a purely criminal nature.

Accordingly, the criminalization of customs acts is based simultaneously on preventive and economic considerations, aiming to protect the State's financial interests and ensure the transparency of cross-border commercial exchanges through a special legal framework that responds to the specific nature of customs activity and the complexity of its relations.

¹ Law No. 22-18 of 24 July 2022 **relating to Investment**, Official Gazette, No. 50, issued on 28 July 2022

² Rachachi Nassim, "**The Specificity of Customs Offenses between General Legal Principles and the Achievement of Security and Economic Objectives**," Journal of Human Rights and Public Liberties, Vol. 09, No. 01, 2024, Faculty of Law and Political Science, University of Abdelhamid Ibn Badis, Mostaganem, p. 235.

Such criminalization also constitutes one of the legal mechanisms for protecting the national market from unlawful practices associated with smuggling and commercial fraud, thereby enhancing the transparency of economic exchanges and reducing legal risks for investment activity. This reinforces the role of customs criminal policy in supporting legal security for investment and reflects the close relationship between the effectiveness of customs criminalization and legislative stability in international economic exchanges, as one of the fundamental pillars for strengthening legal security for investment.

Second: The Legal Elements of Customs Offenses

A customs offense is established upon the fulfillment of specific legal elements forming the basis of criminal liability; however, its particular nature is reflected in its dual character, combining both an administrative violation and a criminally punishable act, thereby illustrating the preventive role of customs legislation in protecting the economic order and regulating foreign trade exchanges. Accordingly, analyzing the elements of a customs offense requires examining the legal element, followed by the material element, and finally the moral element, given their importance in highlighting the role of customs criminalization in enhancing legal security for investment.

A- The Legal Element of Customs Offenses:

The legal element constitutes the foundation upon which criminal liability is established, as it reflects the principle of the rule of Law in matters of criminalization and punishment, requiring that acts may not be classified as offenses. Penalties may not be imposed except based on explicit written legal provisions ¹. This principle represents one of the most important guarantees of criminal legality, as it aims to protect individuals from arbitrary authority by confining the power of criminalization and punishment exclusively within the scope of the Law, whereby legislation determines in advance the acts subject to criminalization and the penalties prescribed for them in terms of both type and duration.

In light of this, the legal element of customs offenses consists of the existence of an explicit legal provision criminalizing conduct

¹ Bouzina Mohamed Yassine, “**The Specificity of the Elements of Economic Crime**,” Academic Journal of Legal and Political Research, Vol. 01, No. 03, 2018, University of Ammar Thliji, Laghouat, p. 144.

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contrary to customs rules and prescribing a specific penalty. The Algerian legislator has embodied this principle in Article 1 of the Penal Code.¹ which provides that: "No offense, no penalty, and no security measure may be imposed except by virtue of a legal provision," a principle known in legal doctrine as the principle of criminal legality. This principle assumes particular importance in the investment sphere, as it constitutes one of the fundamental guarantees of the stability of the legal framework governing economic exchanges by ensuring legislative clarity that reduces legal risks associated with investment activity and strengthens the confidence of economic operators in the national legal system.

On this basis, the Customs Code provides in Article 240 bis that: "A customs offense shall be deemed to exist in the event of any breach of the laws and regulations whose enforcement falls within the competence of the customs administration and which this Code provides shall be subject to repression." It thus becomes clear that the classification of conduct as a customs offense depends on the existence of a legal provision imposing a specific obligation, prohibiting particular conduct, and prescribing an explicit sanction in the event of its violation.

However, the particular nature of customs offenses renders their legal elements more flexible and extensive than those of traditional offenses, owing to their complex technical and economic character and their evolving connection with foreign trade movements, patterns of smuggling, and changing economic and fiscal policies of the State. For this reason, the Algerian legislator has granted the executive authority broad powers to determine certain forms of criminalized conduct in the customs field through legislative delegation, allowing the issuance of regulatory provisions with penal effect².

Although the general rule in criminal Law is that provisions relating to criminalization and punishment fall within the exclusive competence of the legislative authority, the Customs Code constitutes

¹ Ordinance No. 66-156 of 8 June 1966 **containing the Penal Code**, Official Gazette, No. 49, issued on 11 June 1966.

² Ziane Mohamed Amine, **Customs Offenses between General Rules and Modern Trends in Criminal Policy**, PhD Thesis in Law, Public Law specialization, Faculty of Law and Political Science, University of Yahia Fares, Medea, 2018/2019, p. 22.

an exception to this principle, as evidenced by the broad scope of intervention granted to the executive authority, represented by the Minister of Finance and the Director General of Customs, in issuing regulatory decisions and orders specifying the acts considered customs violations or determining the modalities for applying the penalties prescribed for them. This extension of delegated authority is justified by the evolving nature of customs offenses and the technical expertise and continuous monitoring of international economic and commercial developments that they require, which may not always be achievable through lengthy legislative procedures ¹.

This approach reflects what contemporary legal doctrine refers to as flexible or pragmatic legality, which seeks to reconcile the strict requirements of the principle of legality on the one hand with the demands of legal effectiveness on the other, particularly in fields characterized by rapid change and dynamic development, such as customs. Such legislative flexibility also enables the legal system to keep pace with rapid transformations in international trade, thereby ensuring the stability of the legal rules governing customs transactions and enhancing the legal system's adaptability to the requirements of investment and the dynamics of cross-border economic exchanges.

Nevertheless, this legislative delegation, although justified by practical and technical considerations, raises questions concerning its compatibility with the principle of separation of powers and with the guarantees of criminal legality, as it effectively leads to an expansion of the scope of criminalization and a multiplicity of its sources, thereby granting the administration non-traditional powers in an area that originally falls within the exclusive competence of the legislator².

In light of the foregoing, it may be stated that a dual specificity characterizes the legal element of customs offences in Algerian legislation: on the one hand, it is grounded in the principle of criminal legality as established in the Penal Code, and on the other hand, it is marked by a degree of legislative flexibility allowing the executive authority to participate in defining criminalized acts through regulatory provisions. This specificity constitutes a distinctive feature

¹ Ahsan Bousquia, **Customs Disputes**, 2nd ed., Dar Houma, Algeria, 2005, p. 16.

² Rabhi Farid, "**The Specificity of Criminalization and Punishment in Customs Offenses**," *Journal of Notebooks of Law and Political Science*, Vol. 03, No. 02, 2023, Institute of Law and Political Science, University Center of Maghnia, p. 31.

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of the customs system, differentiating it from offenses of a purely traditional nature, in which the scope of legislative delegation remains extremely limited.

Accordingly, customs offenses represent a particular model within the legal structure of economic crimes, combining the strictness of the principle of legality with the practical demands that necessitate multiple sources of criminalization, in an effort to achieve a balance between the protection of the legal order and the flexibility of legislative and administrative intervention in addressing the continuous transformations of global commercial and economic activity.

This balance contributes to strengthening legal security for investment by providing a clear and stable legislative framework that ensures transparency and predictability in customs rules, in line with the modern orientations embodied in Law No. 22-18 on investment promotion.

A- The Material Element of Customs Offenses:

The material element constitutes the essential component through which a customs offense is manifested in practice, as no offense can exist without a material act reflecting conduct in breach of binding customs obligations. This element is based on the violation of a customs obligation that establishes a specific legal relationship between the offender (the customs operator) and the State as a legal person under public Law.¹, whereby the customs administration constitutes the creditor of the obligation, while the declarant or the person concerned by the transaction represents the debtor party required either to perform specific duties or to refrain from conduct prohibited by Law. Once this obligation is breached, the material act constituting the customs offense is established.

The determination of this element is particularly important in the investment sphere, as it defines the scope of the legal obligations imposed on economic operators in the field of foreign trade, thereby enhancing the clarity of the rules governing customs activity and reducing legal risks associated with investment.

¹ Ahsan Bousquia, **The Crime of Smuggling in Algerian Law in Light of Judicial Practice and Recent Developments in the Customs Code**, Itelex Publications, Algeria, 2017, p. 26.

The material element of customs offenses consists of several integrated components, foremost among which is the criminal conduct that may take the form of either a positive act or an omission:

1-Positive conduct: This consists of engaging in material behavior contrary to customs obligations, such as introducing or exporting goods across borders without passing through customs offices¹, as provided for in Article 324 of the Customs Code. It also includes submitting false or forged declarations concerning the nature, value, or origin of goods, acts criminalized by the legislator under Article 322 of the same Code.

2-Negative conduct: This arises where the person concerned fails to perform a legal duty imposed by customs legislation, such as failing to submit the required data or documents, or omitting to include accurate information in customs declarations², as referred to in Articles 319 and 320 of the Customs Code.

In both cases, the material conduct, whether positive or negative, constitutes the external manifestation through which the customs offense is established, and liability arises once it is proven that the act was committed in violation of legal provisions. Customs offenses may take multiple forms, including importation or exportation without declaration or through the use of falsified declarations, commonly referred to in legal doctrine as "customs office offenses," that is, offenses detected during inspection and control operations carried out by the customs administration at border crossings, ports, or customs warehouses.³

The specificity of the material element of customs offenses is reflected in their classification as either formal or purely material offenses, whose establishment requires only the occurrence of the prohibited conduct, without the necessity of proving material or financial harm. They do not require the occurrence of actual damage to the public treasury or the economic order; rather, it is sufficient that the conduct itself is capable of exposing such interests to risk. Accordingly, customs offenses are offenses of danger rather than offenses of harm, in which the offender is punished merely for

¹ Article 324 of Law No. 17-04 cited above.

² Articles 319 and 320 of the same Law.

³ El Aid Saadna, **Evidence in Customs Matters**, 2nd ed., Iteks Publications, Algeria, 2010, p. 10.

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committing the prohibited act, without the need to establish the occurrence of a tangible harmful consequence.¹

The preventive nature of customs criminalization also helps protect the national market from unlawful practices such as fraud, smuggling, and inaccurate declarations, thereby enhancing the stability of commercial transactions and ensuring fair competition among economic operators, which is an essential component of strengthening legal security for investment.

The specific objective of customs legislation explains this approach: the prevention of threats to the national economy and the protection of the State's financial system from any conduct that affects economic sovereignty or disrupts the balance of commercial transactions. Accordingly, the customs legislator does not wait for actual damage to occur before intervening; rather, it adopts a preventive approach by criminalizing any conduct capable of harming the State's economic interests, even at the stage of risk or potential threat.

From an analytical perspective, the dangerous nature of customs offenses reinforces the principle of the preventive effectiveness of criminalization in addressing complex economic crimes, which are often characterized by secrecy and the difficulty of detection after their occurrence. For this reason, the legislator proposes expanding the scope of the material element to include preparatory or formal acts, thereby strengthening the authority of the customs administration in deterrence and prior control, and preventing the spread of practices harmful to the national economy.²

Accordingly, the material element of customs offenses represents the practical foundation of criminalization, as it translates the legal relationship between the liable person and the administration into a material reality that can be detected and sanctioned, while at the same time reflecting the balance sought by the legislator between the

¹ Madjoub Nawal, “**The Specificity of Criminalization and Punishment Policy in the Business Sector in Algeria**,” *Journal of Law and Political Science*, Vol. 07, No. 02, 2021, Institute of Law and Political Science, University Center Salhi Ahmed, Naama, p. 122.

² Asmae Moulay, **The Customs System under International Trade Law**, Dar Houma, Algeria, 2013, p. 88.

requirements of protecting the economic public interest and the necessity of respecting individual freedom in commercial activity.

This balance is positively reflected in the stability of the legal environment governing international economic exchanges through the provision of a clear regulatory framework that reduces risks associated with unlawful practices and strengthens investors' confidence in the effectiveness of the customs system, in line with the modern orientations embodied in Law No. 22-18 relating to investment promotion.

B- The Moral Element of Customs Offenses:

The moral element is an essential component of the traditional structure of criminal offenses, as it is based on criminal intent or unintentional fault. However, the Algerian legislator, in the field of customs offenses, has adopted an approach different from that prevailing in general criminal Law, whereby the moral element is legally presumed in most customs offenses, thus embracing what legal doctrine refers to as the principle of the materiality of customs offenses. According to this principle, liability in the customs field is established by the material act itself, without requiring proof of the offender's intent or criminal purpose.¹

This approach assumes particular importance in the investment sphere, as it enhances the clarity of the legal obligations imposed on economic operators and reduces uncertainty regarding the interpretation of elements of criminal liability in the customs field, thereby supporting the stability of the legal environment governing commercial exchanges.

The Algerian legislator expressly affirmed this approach in Article 281 of Law No. 17-04, which amends and supplements the Customs Code, providing that: "The judge may not acquit offenders based on their intent, nor reduce fiscal fines, a provision that ²". clearly excludes consideration of criminal intent as a necessary element for establishing customs offenses. Accordingly, the criterion for establishing customs liability lies in the violation of the legal obligation regardless of the offender's intent or good faith.

¹ Zadi Safia, "The Specificity of the Two Pillars of Customs Offenses under Algerian Legislation," *Journal of Legal and Social Sciences*, No. 11, September 2018, University of Ziane Achour, Djelfa, p. 257.

² Article 281 of Law No. 17-04 cited above.

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Nevertheless, the legislator allows the judge to grant mitigating circumstances where good faith is established. However, this does not amount to acquittal, as the act remains legally characterized as a customs offense so long as the material conduct in contravention of regulatory provisions is established.¹

This orientation appears consistent with the preventive and deterrent nature of customs legislation, which aims to protect the State's economic and financial system by requiring commercial operators to exercise diligence and vigilance in fulfilling their customs obligations, without allowing reliance on intent, ignorance, or good faith as justification for violations. The objective here is not to assess the offender's moral blameworthiness, but rather to safeguard the economic public interest from breaches of legal obligations.

This regulatory approach also contributes to strengthening confidence in the effectiveness of the customs control system by reinforcing the obligation of economic operators to comply with the rules governing foreign trade, which constitutes one of the essential components for ensuring the stability of economic transactions and enhancing legal security for investment.

The legislator continues to adhere to the principle of presumed material liability in the customs field, under which the offense is established by the mere occurrence of the material act, without the need to prove criminal intent. This legislative choice entails several important legal consequences, most notably:

1- Undermining the presumption of innocence, since the offender is presumed to have committed the offense once the material act is established, without granting the judge discretionary authority to verify the existence or absence of intent, thereby weakening the position of the defense and limiting the scope of application of the principle that "the accused is presumed innocent until proven guilty."

2- Restricting the discretionary authority of the criminal judge, who is deprived of the possibility of issuing a judgment of acquittal based on the absence of intent and whose role is limited to assessing mitigating circumstances without affecting the existence of the offense itself.

¹ Rabhi Farid, op. cit., p. 33.

3- Expanding the scope of customs liability, which may extend to persons whose will was not directed toward committing the infringing act, such as owners of goods or carriers who may be unaware of the violation yet remain materially liable for it.

Despite the practical considerations that led the legislator to presume the moral element—such as the difficulty of proving intent in technically complex offenses and their rapid evolution—this approach raises doctrinal debate regarding its compatibility with the constitutional principles of criminal justice, which are based on balancing deterrence requirements with the rights of the defense. Accordingly, a serious question arises as to whether the principle of the materiality of customs offenses should be reconsidered in light of comparative legislative developments to reconcile the protection of the economic order with the safeguarding of fundamental guarantees of individual freedom.

In a manner that ensures achieving a balance between the requirements of effective customs criminal policy and the protection of the rights of economic operators, such a balance is capable of enhancing the legal predictability of customs rules and consolidating legal security for investment, particularly in light of the modern orientations embodied in Law No. 22-18 relating to investment promotion¹.

Section II: The Role of Customs Penalties in Supporting the Stability of the Legal Environment for Investors and Promoting the Business Climate

Customs offenses are characterized by a distinct specificity in their penal framework, owing to their composite nature, which combines financial, administrative, and criminal dimensions. This specificity is reflected in both the diversity of the penalties prescribed and the modalities of their application, as the customs legislator has not confined itself to traditional punitive sanctions but has instead established a penal system predominantly financial and preventive in nature, aimed at protecting the economic order and ensuring the transparency of foreign trade transactions, thereby contributing to

¹ Law No. 22-18, op. cit.

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strengthening confidence in the legal environment governing economic and investment activity.

Accordingly, this axis examines the nature of the penalties prescribed for customs offences through a distinction between principal and supplementary penalties, followed by an analysis of the specific features of the enforcement of customs penalties, particularly the multiplicity of authorities competent in prosecution and adjudication, as well as the customs settlement mechanism as an alternative to punishment, given its role in supporting the stability of the legal positions of economic operators and enhancing legal security for investment.

First: The Nature of the Penalties Prescribed for Customs Offenses

The customs legislator has established a penal framework for customs offenses comprising two types of penalties: principal penalties, namely imprisonment and criminal fines, and supplementary penalties, including compensatory fines and confiscation¹.

This reflects a legislative orientation toward prioritizing economic sanctions, thereby contributing to the stability of foreign trade transactions and strengthening legal security for investment.

Although these penalties do not depart from the traditional framework of criminal sanctions, penal policy in the customs field is characterized by a degree of specificity in both assessment and nature, with financial penalties generally prevailing over custodial sanctions, given the significant economic impact of customs offenses. They are also frequently characterized by severity, reflecting the legislator's concern to safeguard the national economy and to combat practices that undermine its integrity and stability.

¹ Magdi Mohib Hafez, **The Crime of Customs Smuggling in Light of Jurisprudence and the Rulings of the Court of Cassation and the Supreme Constitutional Court**, Dar Al-Fikr Al-Jami'i, Alexandria, Egypt, 1992, p. 135.

A- Principal Penalties for Customs Offenses:

About the principal penalties provided for under the Algerian Customs Code, they may be classified and analyzed as follows:

1- Financial Fine:

A fine consists of obliging the convicted person to pay a sum of money determined by judicial decision. As to its legal nature, the Algerian legislator had previously affirmed the material character of customs fines in favor of the public treasury in the last paragraph of Article 259 of the Customs Code prior to its amendment by Law No. 98-10; however, this paragraph was subsequently repealed, and no specific definition of customs fines or determination of their legal nature currently exists.

Fines are divided into two types: fixed fines, which are predetermined by the legislator as provided for in Articles 319 and 320 of the Customs Code relating to customs violations, and proportional fines, which are calculated based on a reference value depending on the circumstances, such as the value of the goods involved in fraud or used in fraud pursuant to Articles 325 and 325 bis, or the value of the duties or taxes evaded or unpaid in accordance with Article 320 of the same Code.¹

The legislator's reliance on financial fines reflects an orientation toward prioritizing economic sanctions, consistent with the nature of customs offenses, thereby ensuring effective deterrence without disrupting legitimate commercial activity and contributing to greater legal stability for economic operators engaged in foreign trade transactions.

A fine may constitute a principal penalty when imposed independently without imprisonment, or a supplementary penalty when combined with seizure or imprisonment. This is evident from Article 29 of Ordinance No. 05-06, which relates to the fight against smuggling.² , which provides that: "Penalties of temporary

¹ Rabhi Farid, op. cit., p. 37.

² Ordinance No. 05-06 of 23 August 2005 **relating to the Fight against Smuggling**, Official Gazette, No. 9, issued on 28 August 2005, as amended and supplemented.

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imprisonment, detention, and fines prescribed under this Ordinance shall be doubled in cases of recidivism," demonstrating the severity and strictness of sanctions, particularly in offenses related to smuggling.

Furthermore, the Algerian legislator has not granted the judge absolute discretion in determining customs fines, as they are either legally fixed and predetermined in cases of violations or determined by the judge in misdemeanors after the method of calculation has been established in accordance with the provisions of customs legislation, with their amount depending on the value of the smuggled goods.

This legislative regulation of customs fines also enhances the predictability of legal rules for economic operators by enabling them to assess in advance the legal risks associated with their commercial activities, which constitutes one of the fundamental pillars for strengthening legal security for investment.

2- Custodial Penalties:

Imprisonment constitutes one of the traditional criminal sanctions firmly established within the general principles of criminal Law and refers to the placement of the offender in detention for a period proportionate to the nature of the criminal conduct committed. Previously, this penalty was limited to short-term imprisonment for offenses detected at customs offices during inspection and control operations; however, with the issuance of Ordinance No. 05-06 on the fight against smuggling, the scope of these penalties was extended to include life imprisonment for the felony of smuggling.¹

The Algerian legislator provides for imprisonment in cases of customs misdemeanors, with penalties ranging from two (02) months to a maximum of six (06) months pursuant to Article 325 of the Customs Code. As for the misdemeanors provided for under Ordinance No. 05-06 relating to the fight against smuggling, imprisonment ranges from one (01) year to five (05) years for simple

¹ Sebaa Nassira, "Customs Offenses in Algerian Law," Sawt Al-Qanoun Journal, Vol. 10, No. 01, 2024, University of Djilali Bounaama, Khemis Miliana, p. 311.

smuggling offenses, in accordance with Article 10, paragraph 1, of the same Ordinance. Where acts of smuggling are accompanied by aggravating circumstances as provided by Law, the penalty may reach twenty (20) years' imprisonment.

This tightening of penalties for organized smuggling reflects a legislative orientation aimed at protecting the economic balance of the national market from unlawful practices that may undermine transparency in commercial exchanges and fair competition among economic operators.

The legislator has also provided for life imprisonment in specific cases, including the felony of arms smuggling, as stipulated in Article 14 of Ordinance No. 05-06, which provides that: "Arms smuggling shall be punishable by life imprisonment," as well as in cases of smuggling that constitute a serious threat to national security, the national economy, or public health, pursuant to Article 15 of the same Ordinance, which provides that: "Where acts of smuggling are of such gravity as to threaten national security, the national economy, or public health, the penalty shall be life imprisonment."

This reflects the legislator's concern to protect the State's higher economic interests from the serious risks associated with aggravated smuggling offenses, thereby strengthening the stability of the national market and providing a more secure legal framework for legitimate investment activities.

B- Supplementary Penalties for Customs Offenses:

Within the framework of customs penal policy, supplementary penalties constitute important instruments through which the legislator complements principal penalties to strengthen deterrence and protect the national economy. Among the most prominent of these supplementary penalties is customs confiscation, which represents an effective means of ensuring that the offense does not result in the offender benefiting from the goods or the means used in its commission.

Customs confiscation also contributes to protecting the national market from the circulation of unlawful goods and to limiting

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practices that undermine fair competition among economic operators, thereby enhancing the stability of the legal environment governing investment activity through ensuring that no unlawful competitive advantage results from violations of the rules governing foreign trade.

Article 15, paragraph 1, of the Penal Code defines confiscation as: "the final transfer to the State of specific property or a set of assets, or their equivalent value, where appropriate." Confiscation is also provided for as a sanction under Article 240 bis 1 of the Customs Code, and customs confiscation constitutes a mandatory rather than discretionary penalty, as the judge is required to order its application once the material element of the offense is established. It applies to smuggled goods, whether their circulation is permitted or prohibited, and whether they belong to the offender or to a third party.¹ Moreover, the scope of customs confiscation includes goods involved in fraud, the means of transport used to transport such goods, even where their owner acted in good faith, as well as goods in which the fraudulent conduct has been concealed.²

This broad scope of confiscation prevents the realization of any unlawful economic benefit from the infringing activity, thereby reinforcing the transparency of commercial exchanges and strengthening the confidence of economic operators in the effectiveness of the customs legal system.

As a general rule, confiscation is in rem; however, it may be replaced by monetary confiscation equivalent to the value of the property subject to such measure, in accordance with Article 336 of

¹ Manei Salma and Zawawi Abbas, "The Specificity of Customs Disputes," *Afaq for Sciences Journal*, Vol. 05, No. 12, 2018, University of Ziane Achour, Djelfa, p. 73.

² See Article 240 bis 1 of the Customs Code.

the Customs Code, which provides that: "The court shall, upon request by the customs administration, issue a judgment ordering payment of an amount equivalent to the value of the items subject to confiscation in substitution thereof, and this value shall be calculated based on the price of such items on the domestic market as of the date the offence is established."

Such substitution represents a form of legislative flexibility that enables the judiciary to address practical difficulties in the enforcement of in rem penalties, such as deterioration of goods or the impossibility of confiscating the means of transport, while ensuring the intended financial return and safeguarding the rights of the State. This approach reflects a balance between the strictness of the sanction and the realities of enforcement. It highlights the preventive and deterrent nature of confiscation, which aims to protect the national economy and prevent customs evasion even where in rem confiscation cannot be implemented.

This regulatory framework also contributes to ensuring the stability of foreign trade transactions by limiting unlawful practices associated with smuggling and commercial fraud, which constitutes one of the fundamental pillars for strengthening legal security for investment, particularly in light of the modern orientations embodied in Law No. 22-18 relating to investment promotion.

Second: The Specific Features of the Enforcement of Customs Penalties

Customs penalties display several practical features that distinguish them from traditional criminal sanctions, given their direct connection with the protection of the economic order and the regulation of foreign trade transactions. This is reflected in the authorities competent to enforce them and the mechanisms available for their settlement, thereby contributing to achieving a balance between the effectiveness of customs deterrence and the stability of economic operators' legal positions, while strengthening legal security for investment. The most significant manifestations of this specificity may be outlined as follows:

A- Multiplicity of Authorities Competent for Prosecution and Adjudication:

The customs administration, as the administrative authority entrusted with control and enforcement, is responsible for drafting reports, initiating proceedings for violations, and preparing preliminary records of customs offenses. Judicial authorities intervene at the stage of adjudication of criminal offenses, whether misdemeanors or felonies, through misdemeanor courts or criminal courts, depending on the seriousness of the violation and the nature of the penalty prescribed. In addition, financial and administrative bodies may intervene to monitor the recovery of supplementary and compensatory fines and to ensure the enforcement of economic penalties related to the offense.

This coordination between administrative and judicial authorities enhances the effectiveness of supervision over foreign trade transactions. It harmonizes mechanisms for applying customs legislation, thereby providing a clearer, more stable legal framework for economic operators and strengthening legal security for investment.

This multiplicity of authorities represents an integration of administrative oversight and judicial enforcement, ensuring the accuracy and proportionality of penalty enforcement and an effective distribution of responsibilities among the various authorities. It also strengthens procedural oversight and limits potential irregularities, particularly in technically and procedurally complex economic offenses, and confirms that customs penalties are not merely a punitive reaction but rather an integrated instrument for protecting the national economy and securing the recovery of the State's financial rights.

Such institutional coordination also helps reduce inconsistencies in the application of customs legislation. It enhances the predictability of procedures for economic operators, thereby positively affecting the stability of the legal environment governing investment.

B- Customs Settlement as an Alternative Mechanism to Punishment:

Customs settlement constitutes one of the modern and flexible mechanisms adopted by Algerian legislation to reduce recourse to direct criminal punishment. It represents an alternative means of sanctioning intended to resolve customs disputes before judicial prosecution. It allows economic operators to regularize violations relating to value, classification, documentation, or any breach of customs obligations, in exchange for payment of a financial fine determined by the customs administration, without the need for judicial proceedings.

This mechanism helps reduce legal risks associated with customs disputes that economic operators may encounter and enhances the stability of investors' legal positions in foreign trade.

Article 336 bis of the Customs Code provides that: "The customs administration may authorize persons prosecuted for committing a customs offence who submit a request within the framework of settlement to recover the goods in accordance with the applicable legal and regulatory conditions upon payment of their value on the domestic market in substitution for confiscation calculated as of the date of commission of the offence," reflecting the flexibility of customs legislation and the legislator's concern to ensure deterrence while alleviating judicial procedures whenever possible.

It also reflects a legislative orientation toward adopting alternative mechanisms for settling economic disputes, in line with requirements to improve the business climate and enhance the attractiveness of the investment environment.

The customs settlement system offers several advantages, most notably the acceleration of administrative and customs procedures, the reduction of the burden on courts, and the promotion of voluntary compliance with customs obligations. It further reflects the balance sought by the legislator between deterrence and administrative flexibility, ensuring that the operator does not benefit from the violation while simultaneously reducing judicial and administrative

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costs and procedures, thereby enhancing the effectiveness of customs penal policy and protecting the State's economic resources.

The customs settlement system also embodies a modern orientation in economic criminal policy based on achieving a balance between deterrence requirements and the stability of commercial transactions, which constitutes one of the fundamental pillars for strengthening legal security for investment, particularly in light of the orientations introduced by Law No. 22-18 relating to investment promotion.

Conclusion:

This study has demonstrated that customs criminal policy within Algerian legislation is no longer confined to protecting the State's financial interests or combating offenses related to the movement of goods across borders; rather, it has become one of the fundamental legal mechanisms for strengthening legal security for investment through regulating foreign trade transactions and ensuring the transparency, stability, and predictability of customs rules for economic operators. It has further been shown that the specificity of criminalization and penalty provisions in the customs field reflects a legislative orientation aimed at achieving a balance between the effectiveness of economic deterrence and the requirements of stable commercial transactions, in a manner consistent with the recent reforms introduced by Law No. 22-18 relating to investment promotion.

1-Results

1) Customs criminalization does not merely constitute an administrative regulatory violation but also serves as a legal mechanism for protecting the economic order and ensuring the transparency of foreign trade transactions, thereby supporting the stability of the legal environment for investment.

2) The Algerian legislator's reliance on the principle of the materiality of customs offenses in numerous cases reflects an orientation toward strengthening the effectiveness of economic

supervision, despite the doctrinal debate it raises concerning the balance between deterrence requirements and guarantees of individual justice.

3) The expansion of regulatory delegation in the customs field reflects a model of flexible legality that enables adaptation to the rapid transformations of international trade while preserving the stability of legal rules governing economic exchanges.

4) The predominance of the financial character of customs penalties, particularly fines, contributes to achieving deterrence without disrupting legitimate commercial activity and enhances the predictability of legal rules for economic operators.

5) Enhanced custodial penalties constitute an exceptional tool for addressing serious smuggling offenses that threaten the State's economic security, thereby protecting the national market from unlawful practices that distort competition.

6) Customs confiscation is an effective mechanism for preventing the realization of unlawful economic benefits from infringing activities and for safeguarding the transparency of commercial transactions and the equality of opportunity among economic operators.

7) The multiplicity of authorities competent for prosecution and adjudication reflects institutional integration between administrative oversight and judicial enforcement, thereby enhancing procedural clarity and ensuring the stability of the legal framework governing economic activity.

8) The customs settlement system constitutes a modern mechanism for resolving economic disputes through flexible procedures that reduce legal risks associated with judicial proceedings and support the stability of investors' legal positions.

9) The adoption of fines of an economic nature enables economic operators to anticipate legal risks associated with their foreign trade activities, thereby strengthening legal security for investment.

10) Alternative customs settlement mechanisms reflect a legislative orientation toward improving the business climate and

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enhancing the investment environment's attractiveness, in line with the objectives of the Investment Promotion Law.

2-Recommendations:

❖ Strengthening the legal controls governing legislative and regulatory delegation in the customs field in order to ensure a balance between the effectiveness of economic supervision and respect for the principle of criminal legality.

❖ Expanding the use of customs settlement as an effective mechanism for reducing economic disputes, accelerating the resolution of customs violations, and improving the business climate.

❖ Reassessing the scope of application of the principle of the materiality of customs offenses in order to achieve a balance between the requirements of economic deterrence and guarantees for the protection of the individual rights of economic operators.

❖ Developing specialized training and qualification programs for customs and judicial officials in order to enhance the effectiveness of the application of legal provisions relating to customs offenses of a complex economic nature.

❖ Strengthening institutional coordination among the various authorities involved in the enforcement of customs penalties in order to ensure uniformity in practice and the stability of legal procedures.

❖ Supporting comparative legal research in the field of customs criminal policy in order to benefit from leading international experiences in improving the effectiveness of customs systems and enhancing the attractiveness of the investment environment.

In light of the foregoing, it becomes evident that customs criminal policy within Algerian legislation is one of the fundamental pillars supporting the stability of the legal environment governing investment, achieving a balance between the effectiveness of customs deterrence, the transparency of commercial exchanges, and the protection of fair competition. This makes the continuous development of mechanisms of criminalization, penalties, and

customs settlement a requirement for keeping pace with international economic transformations and enhancing the attractiveness of the business climate, thereby consolidating legal security for economic operators and strengthening the effectiveness of legislative reforms aimed at promoting investment.

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