

Land border areas between development requirements and customs zone restrictions

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Abstract---The conceptual framework of the customs zone, the laws and regulations that control it, the characteristics of border regions, and the development elements they have will all be covered in this study. We will also discuss the special procedures and authority given to customs officers in this area, the implications of these authorities within the land area's customs zone, and the limitations placed on bringing about real development in these regions.

Keywords---Customs domain, customs territory, development, customs crime, investment, trade.

Introduction

Development is one of the most crucial objectives that nations aim to accomplish over their whole geographic area by creating plans and systems to carry it out locally and encouraging different industries, whether they be commercial, investment, or economic.

By creating plans and programs that aim to find the best ways and means to create guarantees that ensure comprehensive and sustainable development throughout its territory, the Algerian state is doing just that. This is done by taking into account a number of factors, such as the characteristics of each region, its location, its components, and its wealth, which enable these regions to engage in real development, raise the standard of living for their citizens, and provide for their basic needs. Additionally, the policy helps activate the guarantee of development within the framework of stability and the preservation and development of the national economy throughout its territory.

Development strategy, in turn, focuses on border regions, taking into consideration their unique features as a result of their position. In light of stability, especially security, and safeguarding the

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country's economy, this has led Algerian lawmakers to swiftly take the required actions to advance them in a number of areas, most notably enhancing living standards and creating the right environment for development.

The lawmaker has given land border areas unique, unusual rules that are not applicable to other parts of the state because of their geographic features and their position as the state's interface with neighboring nations.

In an effort to control the economic process there and regulate commercial activity and the movement of goods within the framework of combating smuggling and maintaining the national economy, the most significant of these exceptional measures is subjecting it to the provisions of the land zone's customs zone as well as a set of legal and regulatory rules.

With consideration for the features of these areas, such as their proximity to borders and their own legal provisions, the study aims to shed light on the legal and regulatory aspects of the wilderness areas' customs zone and the development strategies used.

Regarding the scientific significance, it resides in the endeavor to resolve the uncertainty in some ideas pertaining to the study's topic and the actual justifications for the legislator's allocation of these extraordinary measures to the land regions' borders. Practically speaking, it is an effort to comprehend the benefits of border area regulations, both their good developmental elements and their drawbacks that impede the achievement of real development objectives in these regions.

The issue is: How do the provisions of the customs zone affect the development of the land zone's border areas?

In order to investigate this subject, we used both the descriptive and analytical approaches, defining terms and concepts that were useful for the study and examining relevant legal and regulatory documents.

Two sections are included in each of the two chapters of the plan that we adopted.

1/ The Border Areas and the Development Components

1/1/ The Conceptual framework for border regions

"Those areas extending from the border line separating two neighboring countries towards a predetermined distance within the territory of the two countries" is the definition of a border area.¹

Three terms in the English language are related to the idea of borders: first: This term, which comes from the French word "border," encapsulates the widely accepted idea that a boundary is a line that separates two independent states. boundary, which refers to the outer edge of something. In American use, borders are also denoted by two additional terms: frontier Wilson and Dunant claim that this word describes regional zones of varied width that stretch both along and away from borders, and that the people who live there have distinct behaviors and ideas about the features of their respective nations.²

According to another definition, borders are the lines that encircle a state's entity and geographic extent, emphasizing the land region over which the state has jurisdiction and attempting to define its water area. Therefore, boundaries are the geographic points where two states' powers converge and where each state's sovereignty terminates.

Since borders serve as boundaries between the sovereignties of adjacent states, they constitute a political phenomenon in both the legal and political sense. Because they contain the spread of the state's internal law over its area in a way that ensures the state's unity and coherence, they are a legal reality.³

1/1/1 The customs zone's definition and legal foundation

According to jurisprudence, the customs zone is the area designated by the state inside its borders where the customs administration has extra authority beyond what is granted to it throughout the entire state, allowing it to increase control and inspection and set up gates for surveillance.⁴

Some individuals believe that a number of factors, such as the length of the land and sea borders and the complexity of the routes that make it impossible for customs officials to exercise control, are taken into account when deciding on a customs zone. The principle of customs control within a certain area, whether land or sea, was thus approved by the legislator.⁵

In order to prevent smuggling and suppress fraud, the customs administration uses its extraordinary powers in the customs zone, which is defined as an area along the state's maritime or land border strip, including internal waters, territorial waters, and areas adjacent to them, as well as a certain depth of land along the land borders. "The customs zone includes...-A maritime zone consisting of territorial waters, the zone adjacent to them, and internal waters," reads Article 29 of the Customs Law, providing the legal foundation for the customs zone.

A wilderness area that stretches from the customs territory limit to a line drawn 30 kilometers from it along the land border.⁶The Anti-Smuggling Law defined it as: "A special area for monitoring along the maritime and land borders in accordance with the Customs Law."⁷

If necessary, the land region's depth can be increased from 30 to 60 kilometers to make it easier for the customs officials to do their duties within this area. But given their size and the features that set them apart from other northern states, this distance can be increased to 400 km in each of the states of Tindouf, Adrar, Tamanrasset, and Illizi.⁸

Executive Decree No. 18-300 of November 26, 2018, which addresses the transportation of specific commodities within the customs zone's land area, was issued in order to execute the Customs Law's regulations pertaining to the customs zone. Executive Decree No. 20-73 of March 28, 2020, revised it.

According to Article Two of the aforementioned Executive Decree, the areas that are closest to the land borders are those that are within a range of up to 15 km in a straight line beginning from the land borders, whose lists are determined by the decisions of the regionally competent governors.⁹

It should be mentioned that the aforementioned executive decree set the customs zone distance in wilderness areas at 15 km in a straight line and gave the governors the latitude to choose the ideal distance while considering the location and unique features of each governorate, as well as the provisions of Article 29 of the Customs Law.

Sometimes, as was the case in the border state of El Tarf, it is based on the recommendation of a special committee charged with researching issues pertaining to state-level exemptions from freight transport licensing.

1/1/2/The Distinction between the Customs Zone and the Customs Territory

The customs territory is the general framework within which customs law applies, and it is therefore broader than the customs zone, which is geographically defined by specific distances according to the applicable legislation and regulations. The customs territory encompasses the general framework in which customs law is generally applied, unlike the customs zone where the customs administration has exceptional powers that are not granted to it in the customs territory.¹⁰

In this regard, the Official Gazette No. 71 of 2007 published a number of ministerial directives that defined and demarcated the Algerian Republic's states' customs zone. The Minister of Finance issued a decision on June 22, 2024, defining a wilderness area within the state of El Tarf's customs zone that is

exempt from movement permits despite being within the customs zone. This includes the municipalities of El Tarf, Ben M'hidi, El Kala, Bouteldja, and others. This decision was made in order to regulate and amend the provisions applied to the customs zone.¹¹⁾

For a number of reasons, including the lack of smuggling, the facilitation of business in these areas, and the facilitation of the entry and exit of goods and commodities in the public interest, municipalities located within the customs zone were free from movement permits.

Like other nations, the Algerian state strives to delineate and safeguard its borders. It has reached numerous agreements with neighboring nations in this regard. The principles of international border law have served as the foundation for Algeria's accords with Tunisia, including the 1970 agreement that governed the Algerian-Tunisian borders and the 1983 treaty and its annexes.¹²⁾

1/2/ The development components in border areas

1/2/1 The Natural Components

Despite the significant natural components that characterize the border areas in Algeria, such as the diversity of its terrain between mountains and forests in the northeast and east, and its extension across the Sahara Desert rich in oases and groundwater resources, in addition to its underground wealth of oil, gas, and strategic minerals, the reality of development in these areas has remained limited. Since independence, Algeria has worked to regulate its borders and develop them through economic and social programs, as well as signing cooperation agreements and memorandums of understanding with neighboring countries; however, the field results have remained weak. The border areas suffer from geographical isolation and a lack of infrastructure, which has reflected in the spread of poverty and developmental disparities compared to coastal areas, increasing the severity of security and social challenges. Thus, the contradiction between the richness of these areas in strategic natural components and the difficulty of actually exploiting them to achieve comprehensive and sustainable development becomes evident. These border areas possess natural potentials that qualify them for advancement on all levels and dimensions if they receive special attention and care from the highest authorities in the state.¹³⁾

- **Natural resources:** These include raw materials and precious metals that are in high demand in both domestic and foreign markets, such phosphate in Bir El Ater and iron ore in Ghar Djebilet and Ouenza in Tebessa, as well as petroleum in the same area.

- **Pastoralism and agriculture:** In addition to agricultural land, which includes large tracts of arable and fertile land, these border regions are rich in vast steppe areas that are suitable for grazing and animal husbandry. This is especially true in the state of El Oued, which has grown to meet a significant amount of the Algerian market's needs for a variety of agricultural products, such as fruits, vegetables, and grains.

As these are border areas subject to special regulations, this calls for direct state intervention to provide all necessary resources to maintain the level these areas have reached and develop these activities in terms of quantity and quality by removing all barriers and issues facing those in these professions and providing facilities, especially by facilitating movement within the customs zone.

1/2/2 The Commercial transit

To maintain stability in international relations, controlling trade activity at the border level and preventing all types of smuggling by tightening customs control over the entry and exit of goods and merchandise depend heavily on regional regulation of commercial transactions. Commercial activity in border regions is crucial for the following reasons: Increasing the standard of living and purchasing power of border area residents; promoting business activities within legal frameworks; and fortifying ties with neighboring nations, particularly in the political and economic spheres, which is a way to transfer cultures and foster good neighborly relations.¹⁴⁾

A joint ministerial decision dated July 6, 2020, was issued outlining the terms and conditions for conducting border barter trade with the Republic of Mali and the Republic of Niger. This decision was made in light of the Algerian state's efforts to cover border areas, particularly the far south, and the characteristics of these regions and neighboring countries.

According to Article 1, the purpose of this judgment is to ascertain the list of commodities that are subject to exchange as well as the terms and conditions of border barter. Facilitating the barter method is done so just to help the supply of people living in the states of Adrar, Illizi, Tamanrasset, and Tindouf.¹⁵⁾

- It seems that the government is attempting to address the demands of the populace by promoting trade in the southern areas by implementing this special policy for these border states. To lessen the occurrence of smuggling and its detrimental effects, the regulator ought to have extended these special rights to other border areas, including those in the north.
- The country's senior authorities pay close attention to the strategic priority of developing border areas. In a 2019 statement, the Secretary-General of the Ministry of Interior, Local Authorities, and Urban Planning affirmed that the nation aims to create an action plan as a tool to support important challenges, which includes:
 - Living conditions and human development.
 - Strengthening the local economy, cross-border development.
 - Road, transport and regional integration infrastructure.
 - Environment, biodiversity and major countries.¹⁶⁾
- Article 14 of the 2022 Supplementary Finance Law, which amends Article 128 of the Stamp Law in its third paragraph, states that "Citizens holding a residence certificate in border municipalities are exempt from paying this fee when traveling by land or rail to neighboring countries." This law was created to facilitate the movement of residents of border areas to neighboring countries.
- Additionally, whether they travel by land or train to the building sites of its projects in neighboring countries, Algerian personnel, entities, or institutions."¹⁷⁾

1/2/3/ The Legislative Guarantees for the Development of Border Areas

1/2/3/1 Developing the border areas in light of the national plan for regional planning and sustainable development

The National Regional Planning Plan includes four guidelines and twenty regional action programmes and aims to:

- **Moving towards a sustainable region:**It depends on achieving everything material and immaterial, taking into account the element of sustainability by following everything appropriate and taking into account the time and place circumstances to preserve capabilities and wealth.
- **Establishing mechanisms to restore regional balance:**This approach relies on a new division and polarization based on linking distinct spaces within a framework of integration and coordination between the region's major components, while seeking ways to contain the rural area.
- **Creating regional competitiveness and attractiveness:**This is achieved through the components of production and exchange, taking into account the modern economy and paying attention to expertise, technologies and foreign investments to create attractiveness and competitiveness.¹⁸⁾
- **Regional equity:** It is a principle that aims to achieve a fair balance between regions of a single state or different geographical areas by intensifying efforts to promote everything that enhances economic and social development and achieves sustainability in all sectors with the aim of reducing disparities and distributing resources and opportunities among the population in a fair manner.

1/2/3/2 The Development of border areas in light of Investment Law 22-18

Investment is crucial since it is the best way to advance different industries and a key component in sustaining and growing the national economy. The facilities and privileges provided to support different

investment projects are the most significant of the mechanisms the Algerian legislative has sought to create to fortify and unite it.

Given Algeria's size and diversity, the legislator has granted some regions exceptional privileges based on their unique characteristics and geographic location. Since border regions are significant geographical areas, the legislator has granted them some privileges in order to achieve true development. According to Article 28 of the Investment Law, this is what was authorized:

The investments made in:

- Areas of the High Plateaus, the South, and the Great South.
- Areas whose development requires special support from the state.
- Sites that have potential for valuable natural resources.¹⁹⁾

In this context, Executive Decree No. 22-301 was issued on September 8, 2022, specifying the list of sites within the regions to which the state attaches special importance in the field of investment.

2/ Customs boundaries are a constraint on the development process in land border areas.

2/1/ The Customs zone is a restriction on freedom of trade and investment.

Commercial activities and investment are considered among the most important guarantees established by the Algerian constitution, as they are the optimal tool for achieving comprehensive development, improving the living standards of citizens, and supporting their purchasing power. They are also a mechanism for local development, which led to the amendment of the Algerian constitution to enshrine them in Article 61, which states: "The freedom of trade, investment, and entrepreneurship is guaranteed and practiced within the framework of the law."²⁰⁾

The utilization of savings to generate investments or production capacity needed to produce products and services and achieve complete development while maintaining and renewing the production components is known as the principle of freedom of commerce, investment, and entrepreneurship.²¹⁾

"Freedom of investment is for any natural or legal person, whether national or foreign, resident or non-resident, who chooses to invest and is free to pick his investment," reads Article 3 of Law 22-18 dealing to investments, which provides the statutory foundation for freedom of investment...."⁽²²⁾

Although the founder of the Algerian constitution clearly acknowledged that freedom of trade and investment was a fundamental principle that must be upheld and should not diverge from the goals of the constitution, he also gave the border regions certain privileges and acknowledged their right to development, making it a priority. Nevertheless, this recognition might be restricted and prevented from being widely applied. This is because of the physical characteristics of these land border regions, where the transportation of products and commerce necessitates intricate processes that could impede the free flow of investment and trade.

This is what Article 220 of the Customs Law stipulates and in its application,²³⁾The joint ministerial decision dated: 01/08/2023 was issued.²⁴⁾

It reads: "A documented license, known as a movement license, issued by the Customs Administration or the Tax Administration, as the case may be, is required for the movement of certain products inside the land area of the customs zone."

The Algerian legislator adopted these regulatory requirements to control the flow of commodities and merchandise from the land zone into the customs zone, however they could have a lot of unfavorable effects.

The unwillingness of investors and dealers to conduct business in certain sectors. In addition to the enlarged authorities used by customs officials within the customs zone, the customs zone also possesses extraordinary powers.

The Customs Law imposes special control on the movement of goods within the customs zone, and this control is strict, as the law requires that upon entering the customs zone, one approach the first customs or tax office to obtain a movement permit, otherwise the trader or investor will be subject to criminal accountability and will be facing a customs crime.²⁵⁾

The state's objectives of regional attractiveness and luring inhabitants and investment may also be impacted by the geographic extent, rendering certain locations unwelcome. Practically speaking, we discover that some contractors do not apply for or take part in public contracts within the customs zone areas because it is difficult to obtain the necessary materials, particularly when it comes to diesel fuel for work machines and equipment. This is because the decision made by the Minister of Finance mentioned above, which sets a minimum limit for the transfer of this material, requires complicated procedures to be followed if the quantity is greater. This could make it more difficult to carry out projects and discourage contractors and economic operators from taking part in contracts, particularly when it comes to work contracts.²⁶⁾ This negatively affects the good representation of development projects in these areas.

According to the previously mentioned joint ministerial decision, the goods that are not exempt are represented by code (1), meaning that the minimum amount is not allowed at all. For example, diesel is allowed in the land area (east and west) where 50 liters of diesel and 90 liters of gasoline can be transported without a license; if the quantity increases, a transportation license is required.

The challenge of getting a license from the appropriate authorities to use essential materials is one of the factors that could prevent projects from being implemented inside the customs zone. The work site's distance from public administrations, bureaucracy, administrative arbitrariness, a lack of cooperation amongst the many administrations, and the vagueness of regulatory texts could all be contributing factors.

2/2/ The customs zone is a criterion for the establishment of a customs crime.

2/2/1 The legislative foundation of customs crime

Through the Customs Law and the Anti-Smuggling Law, the Algerian legislator has implemented special procedures and controls that control and regulate the movement of goods and merchandise within the customs zone from the land area, as stipulated in the texts of Articles 221, 222, 223, 224, and 225 of the Customs Law, and Articles 12, 16, and 19 of the Anti-Smuggling Law.

For the crime of "possessing items subject to a movement permit within the customs zone," any transporter of products and merchandise from the land zone into the customs zone who violates the aforementioned articles faces criminal punishment.

Goods entitled to a movement permit entering the land area of the customs zone from within the customs territory shall be directed to the closest customs office or tax administration office for declaration, according to Article 221 of the Customs Law.

The aforementioned Article 221 mandates that goods entering the customs zone must be declared, and Article 222 of the Customs Law highlights the need to notify the customs authorities or tax authorities of any goods removed from the customs zone's land area and entering the customs territory. The movement permit must also include the exact route, destination of the goods, the time taken by the carrier and the type of goods.²⁷⁾

2/2/2/ The penalties established for the misdemeanor of possessing goods subject to a transport license within the customs territory from the land area

The Algerian legislator has imposed harsh penalties for the misdemeanor of possessing goods subject to a transport license within the customs territory through the Anti-Smuggling Law, where the penalty

ranges from ten (10) years to twenty (20) years of imprisonment and a fine equal to 10 times the value of the goods and the means of transport. Smuggled goods and goods that have been confiscated due to smuggling, as well as means of transport, are confiscated in favor of the state.

Those prosecuted may also be subjected to some supplementary penalties stated in the Anti-Smuggling Law, such as: deprivation of residence, prohibition of residence, prohibition from practicing the profession or activity, permanent or temporary closure of the establishment, exclusion from public contracts, withdrawal or suspension of the driving license or its cancellation with a prohibition on issuing a new license.²⁸⁾

Lack of adequate and accurate information of the customs zone, particularly its beginning point, or total ignorance of its presence, constitutes one of the practical issues that carriers from the land area encounter when they are in the customs zone. They are exposed to this misdemeanor because of this. The legislation does not take good faith into account when it comes to smuggling crimes, which makes things more difficult. As a result, criminal prosecution is necessary in every situation and cannot be avoided. The Customs Law's Article 281, which reads, "Violators may not be acquitted on the basis of their purpose, nor may the tax fine be lowered," supports this.

Since the penalty is administered immediately after confirming the existence of the material act performed, this text views the customs offense as a purely material crime, which is a fundamental rule in customs law. Since the judge is obliged and does not grant acquittal even in cases where the offender does not have malicious intent, this does not imply that there is no moral component to customs crimes, but rather that it is weak and may exist in what is referred to as a mistake of violation.²⁹⁾

It is important to note that the penalties and the nature of the customs crime may cause economic operators to avoid doing business in the customs zone because they can be burdensome and have unfavorable effects on anyone who is subject to them, even if they are acting in good faith and are not aware of the rules that govern the customs zone from the land zone.

Conclusion

Border areas are subject to a set of exceptional measures due to their geographical characteristics, which has led the Algerian legislator to impose special provisions on the practice of economic and commercial activities within the customs zone, attempting to protect the national economy on one hand and to establish and enhance development guarantees for these areas. This may have negative effects and hinder actual development, and the following results can be reached:

- Border areas have the components for actual development and natural resources that help them advance and develop.
- The customs zone of the land area is subject to special provisions such as strict monitoring and inspection.
- The customs zone acts as a constraint on the practice of various activities.
- The customs zone reduces regional attractiveness and causes many to refrain, especially concerning the implementation of development projects.
- The nature of customs crime negatively affects those wishing to invest within the customs zone.
- The complexity of administrative and regulatory procedures can hinder the implementation of projects, especially vital ones.

Recommendations:

- Reduce the area of the customs zone.
- Exempt certain goods and commodities from licensing, especially widely consumed materials, or increase the quantity allowed for transport.

- Precisely define the customs zone and highlight its features to road users.
- Reconsider the moral element of smuggling crimes.
- It is necessary to place signs at the entry point to the customs zone to inform road users so they do not fall into the circle of criminal prosecution.
- Coordination among various administrative bodies within the customs zone is essential to facilitate access to everything necessary for economic operators.

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