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Contentious submission in Algerian customs law

Benatmane Farida*

Faculty of Law, University of Blida 2, (Algeria)

f.benatmane@univ-blida2.dz

<https://orcid.org/0009-0001-5263-5222>

Abstract

Contentious submission in Algerian customs law is an option available to perpetrators of customs violations, allowing them to acknowledge the violation and accept the customs decision issued by the Customs Administration without having to resort to the judiciary. This is done by settling the dispute amicably by paying fines or fees imposed for the violation. This measure aims to speed up customs procedures and reduce the burden on the courts, as violators can settle matters quickly without waiting for a judicial ruling. However, the violator still has the right to resort to the judiciary in the event of dissatisfaction with the settlement.

Keywords: Customs submission, Customs crime, Customs reconciliation

*Corresponding author

Introduction:

Customs administration is one of the independent groups that helps keep the national economy strong by watching over trade between countries, collecting taxes and fees owed to the state, and working to stop economic crimes like fraud and smuggling. But as businesses grow and criminals find new ways to avoid paying taxes, customs-related crimes have changed, making it harder for regular court follow-ups to work as well as they should in terms of time and results.

In this case, the Algerian legislator found new ways to settle customs disputes that didn't involve going to court. This was done to protect the public treasury's interests on one side and to make sure that disagreements were settled quickly and well on the other. The "Contentious submission" system is one of these methods. It is explained in Article 263 of the Customs Code. Customs administration can use this legal tool to get back money it owes without going to court. A contentious submission is a formal document from the customs administration that lists the violations and the offender's clear acceptance of the administration's conclusions, as well as their promise to pay the amount set by the administration according to the law. This process is a way to deal with customs problems without violence, but it is not the same as customs reconciliation because it is based on the idea that everyone must follow the rules set by the administration without any bargaining or giving in from either side.

Law professors in Algeria are interested in this system because it raises legal questions about what it is: Is it a standard-form contract or a contract for administrative work? Is it a way to make peace, or is it just a process that has administrative parts? There are also questions about what the law means for both the violator and the customs department. This is particularly applicable regarding the conclusion of the public prosecution and the methods of fine collection.

So, this study looks at the question of:

How much following a customs dispute can be seen as a valid way to settle disagreements between the customs authority

and the person who broke the law. What is its nature and what are its consequences according to Algerian laws and regulations?

To address this inquiry, our research utilizes descriptive and analytical methodologies to comprehend legal documents, examine their provisions, and correlate them with the practical implementation of customs administration.

We divide our research into two parts. The first thing we will talk about is the rules and laws that govern how to settle customs disputes. We will look at the rules that govern how to handle customs disputes and then the legal nature of those rules. In the second part, we talked about what happens legally when the Customs Administration and the violation follow the rules for Customs disputes.

1. The Legal and Institutional Framework for Resolving Customs Disputes

Contentious submission is regarded as a relatively modern legal framework within Algerian customs legislation, as it did not receive formal acknowledgment in earlier versions of the Customs Code before the substantial reforms introduced by Law 98-10 and later by Law 17-04. The legislation put this system in place as part of its efforts to modernize the customs system to keep up with changes in business and give the government more flexible legal tools to fight economic crimes.

Contentious submission isn't just a simple administrative task; it's also a way to settle legal disputes. Under certain conditions, the customs administration can suggest a settlement for the violation. In return, the person who broke the rules must agree to the settlement amount and the results that the administration came up with. In this case, submission shows how the administration has the power to make decisions about customs taxation. This is a big change from a deterrent approach to a legally structured way to settle things peacefully.

In this section, we will examine the legal texts to understand how they regulate contentious submission, focusing on their legal foundation and nature, as well as the organizational framework of the authorities responsible for enforcement.

1.1. a legal basis for following customs disputes.

The Algerian Customs Law has come a long way since the release of Ordinance No. 79-07¹, which includes the Customs Law. This is why customs disputes are now easier to resolve. The customs legal system has gone through a number of phases of reform, with the main goal being to find a balance between the need to deter crime and the need to make dispute resolution simpler and more efficient. As the economy grows and cross-border trade grows, the laws that govern customs disputes need to be updated to keep up with the fast changes in the economy and the way businesses are run².

In the beginning, customs law was based on the traditional French model, which said that all customs disputes should be settled in court. But in real life, the judicial process moves slowly, and it is hard to collect treasury dues quickly, especially since there are so many cases and they are all very complicated. This has prompted the exploration of developing more adaptable alternative mechanisms.

The 1998 Customs Law was the first step in the change. It let the idea of "customs reconciliation" become a new way for the administration and violators to settle their differences. As amended, Article 265 made it possible for both the administration and the offender to agree to the terms of the reconciliation, which would lead to an amicable settlement. However, field application has revealed the constraints of this mechanism, as it presupposed the presence of negotiation or bargaining regarding amounts and fines, which occasionally conflicts with the inherent nature of public authority in the customs domain. And so, the idea of creating the " submission " mechanism came about. This mechanism is based on the violator agreeing to the administration's terms without any negotiation³.

Law No. 17-04⁴, which changed and added to the Customs Law, was the first time that the legislation officially recognized acknowledgment as a separate legal tool. This change added Article 263, which said that "the debt instruments used by the Customs Administration include documents proving fines and

records of submission in disputes." This text gave the acknowledgement the power of an executive, turning it into a document for collecting debts without having to go to court.

This change in the law shows that the state is moving toward modernizing how it manages its money in line with the principles of modern governance. The Customs Administration can now settle disagreements with just a signature from the offender, as long as it is done within a clear and precise legal framework. This is better than waiting for court decisions and the appeals and procedures that go along with them. This process is an example of what administrative law calls the "automatic administrative settlement" principle for financial disagreements⁵.

In terms of ideas, contentious submission is a quasi-contractual administrative legal act that is based on an offer from the administration and an explicit acceptance from the violator. This ends the customs case and turns the obligation into a debt that can be collected. It is not the same as "conciliation," which is a civil law term for a contract, because the will in this submission does not come from bargaining but from willingly following an organized administrative decision⁶.

And for the contentious submission to be real, it has to be given out in accordance with very clear institutional rules. To do this, Executive Decree No. 19-136 was issued on April 29, 2019. It set up customs reconciliation committees and spelled out the powers of the officials who could make settlements. It also said that those committees would be in charge of making sure that people follow the rules, especially when it comes to big amounts of money or serious economic crimes. This order has given the government the ability to use its discretionary power within clear legal limits⁷.

The General Direction of Customs also issued a decision on November 14, 2019, that outlined the official forms for contentious submission and reconciliation documents. These included the submission form for disputes, the temporary reconciliation form, and the final reconciliation form. The decision made it very clear what information needed to be in the

submission report. This included the case number, the date of the seizure, the name of the person involved, the amount owed, and the signatures of both parties⁸. The roots of this system can be traced back to how things were done in France in the early 1900s, when the French customs administration used "soumission contentieuse" mechanisms to settle some disputes. This concept was imported to Algeria during the adaptation of customs law to the French model after independence. It was later modified to suit the unique features of the Algerian legal system, which is based on the unity of the judiciary⁹.

From a legal point of view, following customs rules is a practical use of the idea of administrative discretion in settling financial disputes. It gives the court the power to choose the right settlement without breaking the law, since this process can always be reviewed by a higher court if it is found to violate the rights of the parties or go beyond its authority. So, contentious submission is not a way to get around the law; it is a way to make it work better for the public good.

It is noted that this system has effectively contributed to reducing the volume of customs disputes referred to the judiciary, as reports from the General Direction of Customs have shown a significant decrease in the number of cases since 2019, thanks to the adoption of contentious submission as a primary settlement mechanism¹⁰.

Reports from the General Direction of Customs show that this system has helped cut down on the number of customs disputes that go to court. Since 2019, the number of cases has dropped significantly, thanks to the use of contentious submission as the main way to resolve them. It also helped the government collect more money, especially in cases of land and sea smuggling¹¹.

1.2. The legal nature of contentious submission with customs disputes

The legal aspect of contentious submission poses a complex challenge in the realm of administrative and financial law, as it relates to the concepts of administrative contract, administrative decision, and mixed legal act. This is because the customs area is different from both public and criminal law. To understand its

legal and procedural effects, you need to know exactly what this process is.

1.2.1. contentious submission between administrative decision and administrative contract

In theory, following the customs dispute is a complicated legal act that requires the agreement of both the customs administration, which proposes the settlement, and the violator, who agrees to the terms without any negotiation. But this acceptance isn't seen as a negotiation or a deal like it is in civil contracts. Instead, the administration has the only power to set the terms, so the acceptance is up to them. Because of this, some lawyers think that acquiescence is like an administrative contract by acquiescence¹².

When the legislation uses a standard settlement model and forces it on the parties without negotiation, we are dealing with an administrative contract of adhesion. This is not because the parties are equal in the contract; rather, it is because the legislation is framing private will within the public interest. Waline says that when the government uses a standard settlement model and forces it on the parties without negotiation, we have an administrative contract of adhesion. This is not about equal contracts, but about making sure that private will is in line with the public interest¹³.

But this plan doesn't work in real life because the customs administration doesn't actually negotiate with people who break the law. Instead, they give them a contentious submission formula that tells them how much to do, when to do it, and what the penalties will be. So, the relationship is not mutual; it is one-sided. This means that the contentious submission is more like a decision made by an administrator based on a contract. This means that the administration can make the decision on its own, but it won't happen until the beneficiary agrees to it¹⁴.

Executive Decree No.19-136 says that the acknowledgment minutes are also executive records. This means that they are proof that can only be challenged in an administrative court if there is abuse of power or a violation of the law¹⁵.

The General Directorate of Customs said in its 2021 guidelines

that "following the customs dispute is not giving up the administration's rights, but rather activating prudent management in resolving disputes while protecting treasury resources¹⁶.

1.2.2 The two sides of following customs rules

Some parts of Algerian law see contentious submission as a kind of administrative behavior that is both a decision made by the administration and a contract. It is a decision because it comes from an administrative body that has the power to do so, but it is also a contract because it needs the other party's agreement to be valid¹⁷. This duality is based on the idea of "dependent consent," which means that the process can happen without the offender's consent, but only if the administration chooses to make it happen. The administration decides how much the fine will be, what the terms of the settlement will be, and what the settlement will be like. The person who broke the law has to either accept or refuse. The administration will go back to the normal court system if they don't agree¹⁸.

René Chapus described these actions as "legal acts of a dual nature, where the administration's will determine the legal content, and the contractor's consent gives the procedure binding force¹⁹.

1.2.3. The Legal Nature in Light of Judicial Precedents

Some court decisions have already said that the contentious submission system is an administrative act that can be challenged in the administrative court, even though it is new in Algerian law. The Algerian Council of State said on June 12, 2020 (File No. 10345/19) that a contentious submission report was not valid because it did not follow the rules in Article 265 of the Customs Code. The Council said that "contentious submission is an administrative regulatory act with a direct financial impact, subject to legality control²⁰.

So, it could be said that the legal nature of compliance has been decided by seeing it as a unique type of administrative act that is executive in nature, started by the will of the administration and finished with the violator's permission, without losing its original administrative nature.

2. The legal consequences of contentious submission with the customs dispute

The Algerian legislator has chosen to follow customs disputes as one of the current ways to strike a balance between the need to stop customs violations and the need for efficient government. The contentious submission system has made a big difference in how financial rules are enforced. It has made administrative will a way to settle disputes and impose penalties without a court ruling, instead of relying on litigation as the main way to settle disputes.

This method has a lot of legal effects that are connected to each other. Some of these effects are because the Customs Administration is a public body with executive powers, and some are because the person who breaks the law chooses to comply instead of going to court.

2.1. The legal implications of contentious submission for the Customs Administration

The Algerian legislator put the contentious submission system for customs disputes into place by changing the Customs Law in 2017. This made the procedure a legislative tool with two parts that work together:

The first is a financial goal that makes sure that the rights of the public treasury are collected quickly. The second is an administrative goal that gives the Customs Administration more power to settle disputes in a way that is both flexible and effective.

This duality has made contentious submission a point of convergence between public finance law and administrative law, expressing the notion of "collection by will" instead of "deterrence by litigation." We will try to look at the legal effects of contentious submission on executive power, internal control, and financial performance through this requirement. We will also look at how the Algerian customs system has changed over time.

2.1.1. the contentious submission and Administrative Enforcement Document

The first thing that happens when the Customs Administration follows the rules is that the contentious submission report becomes an official record that can be enforced right away without a court order. Article 263 of the Customs Law makes this clear by saying that "Adherence reports in dispute are considered enforceable debt instruments"²¹.

The legislator wanted to give the administration a unique privilege that lets it avoid the legal problems of proving and collecting the debt. In administrative law, this is called the principle of privileges given to public authority²². People think that the change to the customs law in 1998 was the first to allow "amicable settlement" of small disagreements. The 2017 change gave the acknowledgment report full power to make decisions.

So, the recognition changes the nature of the executive document because it is no longer the only way to prove a breach and get someone to pay. The acknowledgment alone is now enough to start the process of forced collection²³.

2.1.2. Contentious submission as a mechanism to reduce judicial disputes

In the past, customs cases have taken up a lot of time in commercial and administrative courts. For example, in the 1990s, more than 30% of all economic cases brought to court were customs cases²⁴. This number slowly went down as contentious submission became a way to settle disagreements. The General Direction of Customs says that contentious submission helped cut the number of cases brought to court by about 40% between 2016 and 2021²⁵.

It can be said that the contentious submission has shifted the focus from the courts to the administration, from "judicial penalties" to "administrative settlements." This is an example of the idea of administrative efficiency in getting people to pay their debts to the government²⁶.

This change also made things easier for judges and the administration, who could quickly process files, especially those related to minor crimes that don't need a judge's help. The

analytical approach shows its value here, as it sees contentious submission as a way to put the idea of agile administration into practice. This idea aims to achieve financial justice at the lowest cost and in the shortest amount of time²⁷.

2.1.3. Contentious submission as a tool for administrative control and transparency

Even though contentious submission gives the administration a lot of power to settle disagreements without going to court, it is also subject to oversight from within the institution. The executive decree No. 19-136, which was signed on April 29, 2019, said that regional customs direction should set up specialized committees to look over contentious submission files before they are approved²⁸.

The central administration and the general inspectorate are both represented on these committees. They are a way to make sure that legal texts are followed and that no one abuses or breaks the rules when it comes to the contentious submission.

This step is seen as a big step forward for the institution toward making the principle of transparency in financial decisions a reality. It makes the administration self-regulate before the courts do.

Members of the central administration and the general inspectorate are on these committees, which helps keep an eye on things and make sure that the contentious submission is followed and not abused or broken.

This method is thought to be a big step forward for institutions in making financial decisions more open because it puts the administration in charge of itself before the courts²⁹.

This system also helped calm fears about individual or discretionary practices in customs, especially when it came to deciding on fines or settlement amounts. This made businesses have more faith in the administration³⁰.

2.1.4. Enhancing the financial performance of the administration

The administration can quickly act on its decisions based on compliance reports, which speeds up the process of getting back money. This is better than waiting a long time for court

decisions.

Algerian customs records from 2022 showed that the total amount of customs fines collected through the contentious submission was over 70 billion Algerian dinars. This was a 25% rise from the previous year³¹.

The idea of economic efficiency that underlies modern financial regulations can help us understand this effect. This theory says that how quickly the money comes in is related to how well the public facility works.

This isn't just happening in Algeria; it's happening all over the world as part of a campaign to make financial crimes illegal. The French Customs Code, for example, has let the government make direct customs settlements since it was changed in 1981. This is how the contentious submission system works in Algeria³².

2.2. The legal consequences of contentious submission for the violator

It is hard for the offender to go through a customs dispute because they have to agree to it and pay a fine. When the offender agrees to the administrative settlement, they give up their right to go to court and accept the outcome. This has serious legal effects on their legal status, like the end of the public prosecution, the change of their status from offender to public debtor, or the loss of their right to appeal.

The contentious submission system was made to help people settle customs disputes without taking away their rights. The legislation put in place a number of legal and procedural protections to make sure that the contentious submission is always a choice and not a way to make people do something or take something without their knowledge.

2.2.1. Expiration of the public prosecution

This is one of the most important effects of the contentious submission because the violator's signature on the report ends the public prosecution for good. According to Article 265 of the Customs Law, "The acceptance of the settlement or contentious submission by the offender definitively ends the judicial proceedings and prevents any subsequent prosecution for the

same facts³³.

This book talks about the principle of non-cumul des voies, which says that a person can't be punished by both the court and the government for the same thing at the same time³⁴.

This idea was not part of Algerian customs law in the past because the courts would still go after someone even if they made a deal. The 1998 change, on the other hand, was the first to say that the public prosecution could end if a deal was made. The 2017 amendment made this idea even stronger by making compliance the last option before prosecution.

2.2.2. Acquisition of the status of a public debtor

The person who did the crime becomes a public debtor to the public treasury as soon as they sign the acknowledgment report. This is because Law 90-21 about public accounting says that debts owed to the public must be paid in a certain way.

Article 22 of Law 90-21, Official Gazette No. 53, 1990.

The fact that the criminal changed from being a "criminal offender" to an "administrative debtor" shows how modern financial laws work. They want to make punishment a financial obligation that can be quickly and effectively enforced instead of a criminal consequence.

This change also lets the administration start forceful collection actions like administrative seizure, executive notification, and bank account deduction without a judge's permission.

2.2.3. Contentious submission as a means of economic and social rehabilitation

In practice, contentious submission helps businesses get back on their feet because it lets them settle their legal status without having to go to court, which could hurt their reputation.

This practical aspect is in line with the global trend toward "restorative economic justice," which seeks to fix mistakes instead of punishing those who make them³⁵.

In France, for example, the "transaction douanière system" is seen as a way for traders and the administration to settle their differences without going to court by making a friendly financial deal. It has been demonstrated to effectively encourage individuals to adhere to customs regulations independently³⁶.

In Algeria, the contentious submission system has helped the administration and importers and exporters get along better. Disputes are no longer seen as "conflicts," but as "settlements" that protect the dignity of both sides and the rights of the state. According to the General Direction of Customs 2022 statistics, most contentious submission cases involve small and medium-sized businesses. This means that this process has become a way to encourage voluntary compliance instead of punishments³⁷.

2.2.4. Contentious submission as a means to entrench a culture of law

Conversely, it can be asserted that the contentious submission has facilitated the formation of a novel legal culture, predicated on the voluntary acceptance of obligation rather than the enforced acquiescence to punishment.

The violator who complies is not viewed as an enemy of the state, but as a collaborator in stabilizing the economic system, indicating a gradual shift from the "logic of deterrence" to the "logic of responsibility"³⁸.

The change in how people think about the law is directly related to modern legislative policy, which views settlement and contentious submission as ways to teach people not to break the law, not just as ways to punish them.

Conclusion

The new customs contentious submission system in Algeria is a big change for the country's legal and administrative systems. This method was put in place to make it easier to deal with customs violations, lighten the load on the courts, and make everything run more smoothly. The method has helped people settle customs disputes more quickly and manage their money better by giving them an option other than going to court. In the end, this has been good for the national treasury. Moving from a punitive strategy to one that focuses on following the rules and making decisions has been a big step forward in bringing the country's methods for stopping economic crime and settling legal disputes up to date.

Results:

- The system has made it much faster to settle customs disputes.
- Between 2016 and 2021, the number of cases sent to court dropped by almost 40%. The number of customs fines collected has gone up a lot.
- More than 70 billion Algerian dinars were collected in 2022, which is 25% more than the year before. People who break the law are now public debtors instead of criminals, and it's easier to deal with their debts through administration channels.
- The system has made the customs administration more open and self-regulated, which means that customs officials are less likely to do things on their own.

Suggestions

- Use targeted ads and training sessions to help businesses, importers, and exporters learn more about the contentious submission system.
- Make a full electronic platform to make it easier to pay fines and submit contentious submission requests. This would make the process faster and more open.
- Make sure that judges can keep an eye on the system so that it isn't abused and that the rights of criminals are protected. Keep changing customs laws to keep up with how the economy is changing. This will make sure that the law can still handle modern issues in customs administration.

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