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THE CHARACTERISTICS AND CLASSIFICATION OF TRADE BARRIERS ON THE SERVICES MARKET

Abstract

The paper analyses the most advanced methodologies of defining trade barriers and their effects on trade restrictions. The author summarizes major economic policy instruments used to support trade in services and comes to a conclusion that trade barriers in services differ by type of services.

Key words:

Trade restrictions, trade barriers, regulatory barriers, non-regulatory barriers, criteria, classification and types of trade barriers, public purchases.

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General Methodological Approaches

World economic integration, development of technologies and liberalization of trade broadened the range of services on the world market. International transactions, once too expensive, gained extensive usage. For example, the fall in airfreight costs in the last 25 years made numerous tourist services available for broad masses of population.

However, by introducing trade restrictions governments interfere with the effective functioning of the services sector and international trade on the whole. Influential local industrial groups lobby the imposition of trade barriers, which hold back the progress of national economy. In result, only few individuals or groups win, whereas the entire society loses.

The analysis of trade restrictions allows establishing both the losses of government from engaging in protectionist policy and the gains from trade liberalization, as well as provides an incentive for trade policy reformation.

The research of restrictions in the services sector is more complicated to undertake compared to trade in commodities. International trade in commodities means the exchange of material products between producers and consumers, and thus, the traditional restrictions here take the form of tariffs. The impact of those restrictions produced on the price of goods is measured very easily, i.e. via the tariff rate. Trade in services does not always provide for material exchange between producer and consumer, and the restrictions in this case take the form of state regulation. The barriers in the area of services tend to be of non-tariff rather than tariff nature, and their effect depends on the methods the government uses for implementation of its trade policy in the area of services. As B. Hoekman and C. Primo Braga note, the application of tariff as a trade policy instrument for the analysis of barriers to trade in services is very problematic, since it is impossible to observe the services when they are transited across the border [7].

The analysis of trade restrictions is very important for conducting negotiations about services market liberalization on the multinational, regional and bilateral levels, the results of which maximize the benefits and minimize the drawbacks of such liberalization. To determine the losses born by the trade partners, protectionist measures in different countries are compared, the impact of those measures on national economy is calculated, in particular, the impact on consumers in the sectors where barriers make domestic prices higher than the world ones.

Today services are becoming an even more significant part of trade agreements. The WTO members established new lines of negotiations on trade in services aimed at signing additional agreements concerning liberalization of services markets. Regional trade agreements follow the same line**:** thus, the EU countries enacted a directive on creation of common market for services in 2006.

Researchers mesure the impact of trade barriers on the market with the help of such indices as marginal profit or marginal cost value, prices, and expenditures. They provide needed data for general equilibrium models, which demonstrate global benefits of liberalizing trade in services.

Barriers can be *regulatory* and *non-regulatory*. An example of a regulatory barrier could be any law affecting competition, e. g. rigid licensing norms. Non-regulatory barriers limit effective competition on the market, e. g. exclusive positions of service providers on some markets. In some cases, regulation is needed for correcting the effects of non-regulatory barriers and guaranteeing effective competitive environment.

Regulatory and non-regulatory barriers to trade in services affect the free movement of international trade flows. Such restrictions often aim to *discriminate against* foreign suppliers of services and encourage the national ones. However, the restrictions can be *non-discriminatory* when they are applied to local and foreign sellers of services in pursuit of assuring service quality and safety in the consumers' interests.

When non-discriminatory barriers to trade in services prevail, it is rather difficult to distinguish between the legitimate governmental measures and the other deliberate or undeliberate measures. The majority of discriminatory measures are directed at trade restriction, although some of them are legitimate. Governments regulate markets to preserve their structure or to protect environment, as well as to solve social problems that cannot be solved by the economy itself [1]. With the help of most effective methods of regulation, trade restrictions help to solve these problems and achieve optimal economic results.

Usually trade barriers appear as instruments of state regulation of national and international service transactions. These instruments affect market entry and functioning of both national and international suppliers, which, in its turn, influences the costs and prices of services.

The instruments of state regulation are specific for each type of service, and thus vary greatly, which makes the classification of barriers to international trade in services a rather difficult task. Nevertheless, there are *two criteria* that are applied to almost all types of services and trade barriers in this area.

The first criterion is the *object of regulation*, including the following:

- *market presence, including commercial presence (access to the market);*
- *activity of service provider (national regime) after the market entry.*

The second criterion is the *nature of regulation*:

- *non-discriminatory*, when national and international suppliers of services face equal restrictions;
- *discriminatory,* when restriction apply only to foreign suppliers.

For example, main trade barriers to international trade in banking services are demonstrated in Table 1, which nevertheless excludes the cases when trade policy can be discriminatory for the benefit of foreign agents to encourage the inflow of competitive international suppliers of services [2].

Table 1.

Classification of Barriers to Trade in Banking Services

	Market Access	**National Regime**
	Form of trade in services: Commercial presence	Form of trade in services: trans-border, consumption abroad, mobility of individuals
Non-discriminatory	Number of bank licenses limited	Increasing of banks' share capital banned
Discriminatory	Number of foreign bank licenses limited	Increasing of foreign banks' share capital banned

Trade barrier differentiation is important in building a general model of economic equilibrium [3]. The difference between «*access to market*» and «*national regime*» consists in the following: the first barrier can be modeled as taxes on capital movement, while the second one – as taxes on production of services. This allows analyzing the results of cancelling certain types of restrictions, such as benefits from removing non-discriminatory restrictions on commercial presence.

Regulatory instruments that either ban or hinder *market access* of new suppliers of services decrease not only the number of companies on the market, but also the volume of services provided at each price. Such instruments include limited shares of coastwise traffic performed by foreign transportation companies; quotas on entry of foreign natural persons– producers of services; restrictions on operations of foreign service producers in certain areas or in certain geographic regions of the country.

On the other hand, the instruments that limit the provision of *national regime* do not decrease the number of service suppliers, but increase the costs of foreign agents, forcing them to provide a set volume of services on the market at higher prices.

The barriers connected with restrictions of national regime are divided into *two groups*. The first group implies the creation of such conditions under which the costs of foreign producers exceed the costs of national entrepreneurs (taxes, subsidies, credits, tariffs on transport, energy communication, etc). The second one includes different measures on facilitating national producers of services to decrease their costs and get advantages in price competition for providing services. For example, national banks can possess lower volumes of reserved capital compared to foreign banks, but the tax rates imposed on national banks is lower than on the foreign ones.

Direct discriminatory barriers to trade in services are usually made in the form of clear internal administrative or legislative norms that determine the share of foreign services, which can be used in certain sectors of services production. Sometimes these barriers manifest themselves in banning or restricting the use of foreign services in separate sectors of economy. For example, these barriers include prohibition of employment for foreign citizens and foreign enterprises in the area of law services (juridical and notary); obligatory share of national programs on radio and TV broadcasting; restrictions to capital investment and foreign citizens employment in certain sectors of services production. Many of these barriers are used to protect vitally important national, cultural, social and political interests, and they are mostly not the subject of trade negotiations.

Indirect discriminatory barriers appear in the form of restrictions to the movement of foreign factors for services production (natural persons, information flows, capital investments). As a rule, such barriers are not directly connected with services production and sales, and are of general nature.

Direct non-discriminatory barriers are a much wider used instrument of trade policy. These include complicated systems of organization for certain types of services production and trade, such as, for example, public monopoly over TV broadcasting and rail facilities. Another type of barriers is setting such fixed tariffs on TV broadcasting when a great many of potential service producers turn out to be non-competitive. Those measures equally restrict providing of services to national and foreign producers.

Non-direct non-discriminatory barriers encompass numerous groups of internal regulatory measures. They consist in the fact that although current technical norms, standards, administrative rules and instructions effective in different countries are not directed at restraining international trade in services, at the same time they force foreign producers to make additional spending connected with certification of their services and bringing them into accordance with national standards and requirements.

On the basis of classification of non-tariff barriers to international trade in services, B. Hoekman and C. Primo Braga distinguish the following types of barriers to provision of services [6]:

- quantitative restrictions;
- price instruments;

- standards, licensing, and rules of public purchases;
- discriminatory access to distributor and infrastructural networks.

Quantitative Restrictions

Quantitative restrictions in different forms are often used to protect the domestic market from excess import. At that, such descriptions of services as intangibility and perishability are the reason that the quotas more often refer to service providers against services as such. The regulation measures on trans-border trade in services are very much like non-tariff measures on foreign trade in commodities, since the operations in certain sectors (e.g. transportation) could be inspected by customs authorities at border crossing. Other similar or «invisible» services could be regulated only in places of their production or where they are used.

The regulation of services import objectified in goods encounters certain challenges in assessment of the cost of services. Thus, in the majority of countries the customs duty is imposed only on the material into which the service is objectified against the value of, let's say, the made film or recorded music.

The obvious examples of quantitative barriers are bilateral agreements which regulate international airfreight services, and agreements on providing maritime freight transport services, which are regulated by the Shipping Code enacted under the auspices of the UNCTAD. The bilateral agreements on provision of international airfreight transport services include the following issues: list of certified airlines permitted to perform flights in certain flight lines; types of airliners which ensure keeping to the time-table in certain period; number of flights of the third countries' companies in a certain line. In general, the given agreements are based on the basis of reciprocity. The Shipping Code adheres to similar principal. It provides national companies equal rights respective the freight terms, the volume of traffic on the basis of bilateral trade, also it regulates the admission to those services of the companies from the third countries, etc.

In many countries exist direct prohibitions concerning foreign service providers. It can be exemplified by entrusting exclusive rights to national agents for all types of transportation and telecommunication services throughout the country. Some countries provide for entrusting juridical, insurance, educational, and consulting services exclusively to either their own citizens or residents.

Those restrictions are mostly used to protect the domestic market of transport services and the sectors connected with transfer of information. It can be exemplified by reservation of freights by national service providers, bilateral agreements in the area of airfreight, foreign films and TV program quotas, requirements of certain share of national product within the program and advertisement services, etc.

For example, US national ship owners reserve shipping for 100% of military and 50% of civil public freight services. In France almost 70% of oil and 40% of coal are reserved to be shipped by national commercial fleet. The shipments of oil, cotton, and tobacco are reserved for national fleet in Spain. Similar practice is used in the developing countries, in particular in Argentina, Brazil, Peru, and Uruguay – about 50%. Even in African countries having no sea fleet of their own, half of export-import cargos are obligatory shipped by freighted ships.

The widely spread means of cargo reservations for national companies are the following:

- enacting of respective normative documents on monopoly or preference right to transit national loads with national shipping facilities;
- concluding intergovernmental agreements on distribution of shipping facilities between the contractual parties; issuing certificates to certain companies on their right to carry on business, prolongation of the terms of those documents, terminate or suspend them. In order to issue the licenses to air carriers usually three criteria are taken into consideration, i.e. meeting technical, economic, and legislative requirements. The proposals of foreign investors are scrupulously scrutinized on their intention to allot capital to the company's fund to prevent unauthorized strengthening of their influence on production and financial contacts of the company.

Sometimes the ban for foreign agents to provide services is the instrument for the pursuing of country's foreign policy in the form of economic sanctions.

Restrictions to cross-border transfer of data in no case are limited by the episodes of economic sanctions, and in many countries are used in the context of import substitution policy within the frames of industrialization of economy [10]. It became very urgent in the conditions of Internet expansion, in particular expansion of on-line teleconferences, establishment of e-libraries, newsboards with participants from different countries of non-homogeneous regulatory mechanisms. The problems of information confidentiality and protection of intellectual property in cyberspace should be mirrored in information policy of a country. At that, it is worth accentuating that the core of that policy is not the evolution towards non-direct trade barriers, which generate substantial transaction costs, and restrict access to the market of services providers.

Price Instruments

These measures include visa fees, inward and outward taxes, and discrimination port duties. All those actions are similar to those of specific tariffs. The level of those barriers is low in the majority of countries, since quantitative restrictions and immigration policy are main barriers to market access. The price instruments could be an essential barrier to trade in goods that include services (e. g. cinema, TV programs, computer software), as well as trade in goods, which are used in the process of services production (computers, TV facilities, advertisement).

Control over prices is also present in the practice of services market regulation. It is done via creation of public bodies which monitor prices in certain types of services. Sometimes that control is carried out through provision of certain services by state-owned enterprises, or national monopolies. Control over prices is often used alongside with quantitative restrictions, guaranteeing that the prices will be equal to market ones, when providers of certain services dominate the market.

Many kinds of services are subject to price control, in particular, airfreight, financial and telecommunication services. At that, governmental bodies set minimal or maximal prices, also they set the formula for price computation or require application of common approaches to pricing.

Sometimes services sector is supported by the government through explicit and implicit subsidies, specifically the one of construction, telecommunication, and transport. According to OECD, from 2/5 to 3/5 of budget subsidies are granted to diminish the ratio of such economic industries as steel, sheep-building, mining, and to support other branches. Railway transport is the most subsidized by the government, i.e. the subsidies rate fluctuates between 15% and 180% of gross added value of sector’s products.

Standards, Licensing, and Rules of Public Purchases

For the regulation of domestic market of services such instruments of trade policy as *licensing and certification* are used. It is aimed mainly at restrictions to foreign providers of professional and business services, specifically juridical, auditor and medical ones. The licensing requirements are established by the government of the country or professional associations in certain types of services.

Ecological standards are mainly applied to the sectors of transport and tourism. Transport services are regulated by means of the providers’ obligatory adherence to the norms of environmental protection and standards of efficient use of energy. As far as tourist companies are concerned, in addition to adhering to ecologic principles, they should meet the established requirements to the location of tourist businesses, number of visitors to the allowed territories throughout the country, etc.

As it was noted above, the regulation of trade in services is called to restrain the market access for foreign providers, and consequently, support high prices in services. Licensing of professional services often refers to both national and foreign providers. The barriers for them could be unrecognized services abroad (e. g. university diplomas), unrecognized certificates or profession qualification rates of foreign services providers. With respect to the latter, the discriminatory standards are applied, which are more rigid as against the demands to national providers of similar services. In general, absence of unified and commonly recognized standards and rules could be viewed as protection of national sector of services, though, eventually, it provides a negative effect on the welfare of consumers.

The policy in the area of *public purchases* is also aimed at protection of national producer against foreign competition. Discrimination of foreign providers takes place at making contracts on building, contracting consulting in management, accounting, and advertisement. Since governments are significant buyers on some services markets, the discriminatory policy in public purchases produces great effects on functioning of those markets. For example, in Great Britain about 30% of total orders on services of managerial consultants account for public authorities. Similar situation is in many world countries where governments are main customers on the market of construction services.

The essence of the public purchases policy is different in different countries. Thus, the known motto of the US government «Buy American-made products» provides for 6% of price preferences to local suppliers of goods and services, and 12% of preferences – to small business located in the regions with high unemployment rate. In addition, to guarantee economic and political security, the USA bans provision of certain services by foreign providers. Other countries do not apply such a specific criterion for setting prices for public purchasing services as price margin. Instead, they use less transparent methods for the benefit of local companies. For example, many countries apply «lex non scripta», according to which auditor and advertising services are the prerogative of local companies.

Discriminatory Access to Distributor and Infrastructural Networks

The provision of certain kinds of services requires that providers have access to the communication system of another country. In this case, the restrictions to foreign users of telecommunications, mail and carrier, and marketing channels are in the form of increased lease rates on those systems, specific requirements towards standards and technical norms, which are often ungrounded, etc. The public and private owners of distributor and infrastructural communications could discriminate against foreign agents by application of restrictions to certain kinds of equipment, either forcing them to build extra elements of infrastructure. The regulatory intervention here is needed for the monopolist to guarantee transmission of required information throughout the net and keeping proper interconnection among all its stations.

In airfreight, the discrimination related to complementary services provision could significantly diminish competitive capacity of airline companies on the market. The booking of local tourist agencies' services being not logged in the computerized system brings about ineffective competition; inadequate services provided to the passengers on land cause flight delays. Access restriction to marketing and advertising nets is similar to that of telecommunication systems, since foreign providers lose capacity to compete with local services providers.

It is worth noting that in the case of trading in brand goods (e. g. cars) the distributor agreements play roles of non-direct barriers to market access. Accordingly, penetration of new producers to the market needs significant investments into development of dealer networks, which is reflected in the cost of final products.

Restrictions to the trade in services are of *sectoral character*, and are often based on the descriptions of a certain service. Consequently, in each part of Table 1 we can make extra differentiation, depending on the sector of services.

To exemplify sectoral classification of the barriers, we shall demonstrate the attempt presented in the research of G. McGuire and M. Schuele [9]. Table 2 shows groups of trade barriers, which are often used for trade in banking services according to the modes 3 and 4 (i.e. commercial presence and mobility of economic entities). The authors divide all the barriers into two groups: Impediments to Commercial Presence, and Other Impediments. They note that the classification of the barriers to trade in services via commercial presence includes the following barriers: licensing limits, establishment of affiliated companies through direct investments, limiting of foreign partner's ratio in share capital or aggregate capital of the branch, restrictions to migration of foreign specialists. The group Other Impediments includes restrictions to capital mobilization and getting loans, restrictions to combine banking and insurance businesses, limiting a number of banking branches, list of the Boards of Directors, and temporary staff rotation [8]. Each type of those impediments shows whether they pertain to foreign or national firms, which defines their discriminatory or non-discriminatory character.

Table 2.

Classification of Barriers to Trade in Banking Services

Trade Restrictions	Assessment	Weight	Value for national index	Weight
Impediments to Commercial Presence				
Licensing of Banking Activity	yes	0.200	yes	0.190
Banking licenses are issued exceptionally under set requirements				
Foreign Direct Investments	yes	0.200	yes	0.190
Establishment of maximal ratio of foreign investors' participation in stock capital of national banks				
Joint Activity	yes	0.100	no	-
Entrance of foreign banks exclusively through establishment of joint ventures with national banks				
Mobility of Economic Entities	yes	0.020	no	-
Set terms for taking posts for certain categories of specialists				
Other Impediments				
Capital Mobilization by Banks	yes	0.100	yes	0.143
Restrictions to making deposits at the account of public and charity funds on the market of receiving country				
Bank Credit Policy	yes	0.100	yes	0.143
Restrictions to kinds or volumes and areas of crediting				
Other Commercial Activities of Banks – Insurance and Stock Services	yes	0.200	yes	0.095
Restrictions to activities on insurance and stock markets				
Expansion of Bank Branches	yes	0.050	yes	0.048
Determination of number of branches				
Bank Directors on the Board	yes	0.020	no	-
Limits to ratio of foreigners for Bank Directors on the Board				
Temporary mobility of economic entities	yes	0.010	no	-
Term limits on foreign specialists' stay in the country				

Source: Developed by author based on McGuire and Schuele (2000), p. 204-205, 208.

Each type of services trade barrier is subdivided depending on the purpose of that barrier. These problems are analyzed in detail in the research of A. Hardin and L. Holmes in the context of effects of those barriers on services trade via FDI flows [5]. The authors define these barriers as «measurement of state policy influencing the decision making on place and format of investments». Proceeding from the ways of classification of the barriers to FDI flows these scientists assert that «the respective classification system could vary depending upon the goal of the task… The barriers to the FDI flows may infringe the terms and structure of international trade. Also they may distort the capital distribution among different countries, between foreign and national investments, among different industries, and between the portfolio and direct investments… The system of classification…. has to highlight the key characteristics of the barriers, which determine the volumes and effects of the latter. The access to market and national regime are significant categories from the view of resource distribution…The policy of national regime usually pertains to the instruments which produce effects on the company's activities after its establishment. Consequently, the way of the barriers classification… depends upon their effects produced on the establishment of the company, on its status of ownership and control, either on its activities».

The main types of barriers to trade in services via FDI flows are defined in the study of UNCTAD (1966) and divided into three groups. The first of the three refers to impediments to market access, while the two others – to provision of national treatment regime (Table 3) [11].

The detailed information on FDI restrictions, in particular in the OPEC economies is presented in the mentioned paper by A. Hardin and L. Holms. In particular, they point to the following trends: «Certain forms of selection and registration, including different ratios of challenges applied to foreign investors; restrictions to the foreigners' level or share of ownership, especially in the process of privatization; widely known case-by-case decision, which is often based on the criterion of national interest; widely applied restrictions to ownership and control (e. g. limits to membership in the Board); relative restricted application of requirements to working characteristics of entrance control over the services branches» [5].

We find the system of classifying barriers according to basic modes of service supply feasible. Trade barriers within each mode usually take the form of instruments with either limit the market access or increase the price of services. Limitations in services trade with account for all modes of service supply are demonstrated in Table 4.

Consequently, we can draw a conclusion that trade barriers in services exist in different modes depending on the type of services, level of economic development of the country where the barrier is imposed, and the branch where the barrier is applied.

Table 3.

Restrictions on FDI Flows to Services Sector

Restrictions to Market Access	Banning of FDIs in certain sectors
	Quantitative restrictions (e.g. limited share of foreign property in the sector)
	Restrictions to legal forms of enterprises with foreign investments
	Selection of service providers
	Minimal capital requirements
	Regulation of FDIs' geographical allocation
	Taxes on permit to realize FDIs
Restrictions to Ownership	Forced establishment of JVs with national companies
	Limitations to the number of foreign members in the Board
	Board members appointment by the government
	Approval of certain decisions by the government
	Restrictions to the rights of foreign shareholders
	Obligatory property conveyance to local bodies within the set period of time
Restrictions to Economic Activity	Requirements to obligatory use of local components
	Restrictions to imports of labor force, capital and raw materials
	Activity licensing
	Restrictions to royalty rate
	Restrictions to repatriation of capital and profits

Source: UNCTAD (1996).

For deeper understanding of this problem, it is necessary to systematize the available information at the national and sectoral levels according to four patterns of international transactions in service providing and to define the essence and nature of trade restrictions (whether they are protectionist or not). The next step is to measure various barriers and apply these measures to assess their economic effects. The patterns of national regulation of trade in services that evolved spontaneously in the world differ substantially and carry the signs of lobbying by national entrepreneurs, who are interested in restricting the operation of foreign competitors. Along with that, in many cases we observe sophisticated maneuvering with access of foreign service providers to domestic market for the consumers' benefit.

Table 4.

Barriers to Trade in Services

Modes of service supply	Types of barriers and their targeting		
	Restrictions to market access	Restriction to national treatment regime	Other restrictions
Cross-border trade	Quantitative restrictions to access to services market by means of quotas on foreign services and their providers	Restrictions to pricing mechanism, i.e. taxes, duties, subsidies to domestic providers of services, etc.	Government purchases; unequal access to distribution networks; Intellectual property rights
Consumption abroad	Requirements with regard to mobility documentation, i.e. entry and departure visas, residence visa, medical certificates about vaccination, etc.	Limited currency exports; taxes and duties connected with departure and entry; medical insurance; recognition of academic diplomas; restrictions to hired employment; restrictions to free mobility; restrictions to land ownership	Measures which regulate the consumption demand of foreigners
Commercial presence of foreign service suppliers	Complete or partial ban on foreign capital investments or ban on capital investments in certain sectors; geographic impediments to allocation of foreign enterprises; limitations on the number of foreign firms in the services sector	Limitations on the types of business transactions and access to local financing; rules concerning the transfer of money abroad; norms regulating business activity	Protectionist measures concerning capital investments into the services sector; regulation of services sector or its sections; intellectual property rights
Presence of natural persons – service suppliers in the country of consumer	Entry and departure visas; work permits; licensing and quoting of entry for the purpose of work; criteria of economic necessity	Restrictions to civil and property rights of emigrants; restrictions on entry of family members; restrictions on wage transfers to other countries; taxation of foreigners; restrictions to loan issuance to foreigners	Rules on entry and departure of foreign specialists; cultural barriers; the system of academic recognition

Source: ЮНКТАД. Справочник по торговле услугами. – Женева, 1994.

In general, the broad use of traditional and specific non-tariff measures deters development of international trade in services, complicates measurement of protectionism level in the national regulation systems and detecting of the ungrounded trade barriers. All this has urged, first, individual countries, and later, international community to search for solution of these problems on the multilateral basis. The aspiration of the most advanced exporting countries to use the global services market effectively and the advantages of international labor division in this area have eventually brought to collective agreements. In this sense, the challenging experience of concluding GATS and developing its basic principles is of critical importance for Ukraine in the context of its WTO accession.

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