

COMPETENCE

Elimination of Bureaucratic Barriers

September 2021

What is a bureaucratic barrier?

Legislative Decree 1256 - Legislative Decree approving the Law on Prevention and Elimination of Bureaucratic Barriers

"Article 3°.- Definitions
(...)

Bureaucratic Barrier: demand, requirement, limitation, prohibition and/or collection imposed by any entity, aimed at conditioning, restricting or hindering the access and/or permanence of economic agents in the market and/or that may affect administered in the processing of procedures subject to the rules and/or principles that guarantee administrative simplification. The mere quality of demand, requirement, limitation, prohibition and/or collection does not necessarily imply its illegal nature and/or its lack of reasonableness. "

What ISN'T a bureaucratic barrier?

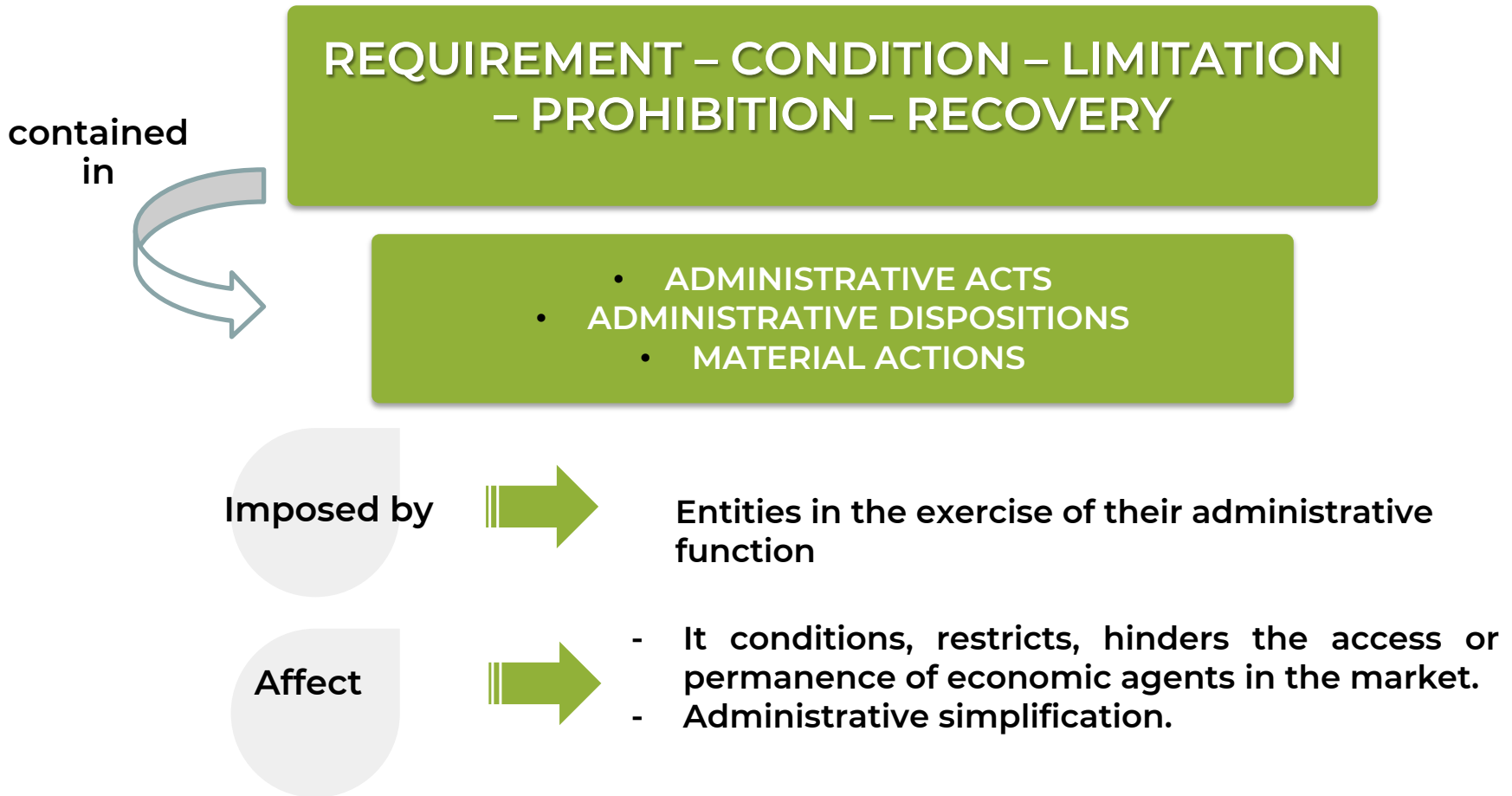
These are not bureaucratic barriers when:

- ✓ They are found **in-laws** or other norms with the rank of law.
- ✓ They are in **contracts** signed by an entity, **auction processes** or **bases** of some type of contest to contract with the State.
- ✓ They are **omissions**, **inactions** or any inactivity of the public administration.
- ✓ They are fees or **considerations** for **services** provided by the State or by private or public companies, **outside the exercise of the administrative function**.

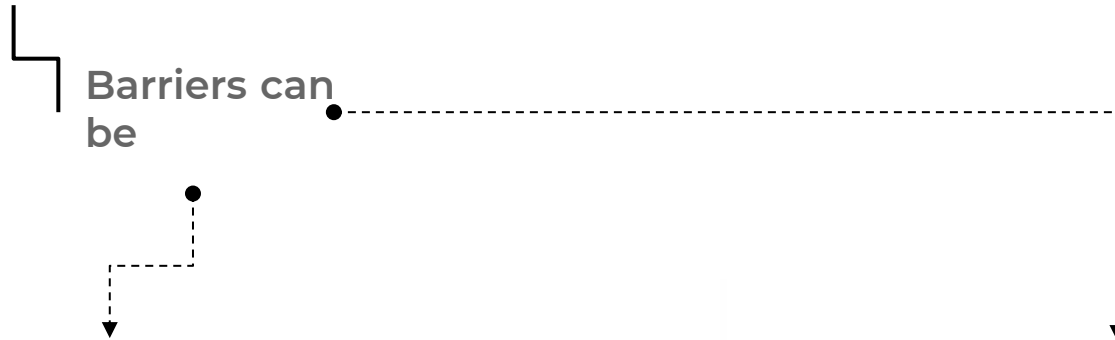
These are not bureaucratic barriers when:

- ✓ They are the collection of **duties and taxes** and, in general, any **unrelated taxes**, as well as the criteria for their determination.
- ✓ They are **phytosanitary and zoo-sanitary measures**.
- ✓ They are contentious-tax controversies.
- ✓ They are the collection of taxes from natural **people without economic activity**.
- ✓ The declaration of nullity of an administrative act on grounds of due process.
- ✓ The imposition of **sanctions** (The CEB does not play an oversight role).

ELEMENTS



TYPES



Illegal

They are illegal when:

- Competences are exceeded.
- It contravenes the current legal framework.
- The procedures and formalities for its imposition are not respected.

Lacking reasonableness

They lack reasonableness when:

- They are not justified in a public scope.
- In relation to the identified public scope, they are disproportionate.
- It is not the least burdensome option.

FORMS OF NON-APPLICATION OF THE BARRIER

	CLAIM OF PARTY		EX OFICCIO
BARRIER	ILLEGAL	LACK OF REASONABLENESS	ILLEGAL
PROVISION	General effects and non-application to the specific case	Non-application to the specific case	General effects
ACT	Non-application to the specific case	Non-application to the specific case	

COMPETENT AUTHORITIES

1.
The
Commission

2.
CEB Technical
Secretariat

3. SEL Indecopi

4. SEL
Technical
Secretariat

PROCEDURE

STARTUP TYPES

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graph TD; A([STARTUP TYPES]) --> B[Claim of Party]; A --> C[Ex officio];
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Claim of Party

By submitting a **complaint** addressed to the Technical Secretary of the Commission.

Ex officio

By decision of the **Technical Secretariat** of the Commission. The decision to initiate this type of procedure can also originate with the presentation of **informative complaints** made by business associations, professional associations, the Ombudsman's Office, among other institutions, natural and/or legal persons.

EXAMPLES

Case 1

Bureaucratic Barrier: "They request additional studies to those established in the TUPA to grant sanitary authorization"

Entity: DIGESA

Act/Disposition: TUPA

Comment: Requirement is not contemplated in the TUPA

Type: Illegal

EXAMPLES

Case 2

Bureaucratic Barrier: "The economic surveys (EEA, ENE, etc.) of the **INEI**, always **request** balance sheets or financial statements, although this **information** is **available in SUNAT**."

Entity: INEI

Act/Disposition: Occurs in practice

Comment: Non-observance of D.L. 1246 of Administrative Simplification

Type: Illegal

EXAMPLES

Case 3

Bureaucratic Barrier: "DIGESA charges 390 soles per sanitary registration procedure per product when **only the conformity of documents is reviewed**. In addition, they charge an additional amount for laboratory analysis, approximately S/ 350.00 to S/ 400.00."

Entity: DIGESA

Act/Disposition: Occurs in practice

Comment: The amount of the payment for the analysis is questioned.

Type: Lack of reasonableness

EXAMPLES

Case 4

Bureaucratic Barrier: "Obligation to renew registrations of veterinary products, when they have not undergone any change"

Entity: SENASA – National Agricultural Health Service

Act/Disposition: Occurs in practice

Comment: The company incurs a meaningless cost

Type: Lack of reasonableness

EMBLEMATIC CASES

1

SOYUS S.A. VS NATIONAL INSTITUTE FOR THE DEFENSE OF COMPETITION AND THE PROTECTION OF INTELLECTUAL PROPERTY. (Exp: 419-2014/CEB)

The **corrective measure** imposed by Resolution No. 2919-2014/SPC-INDECOPI, which prohibits the boarding of users at unauthorized stops, was declared an illegal bureaucratic barrier.

2

TECHNICAL REVIEWS OF PERU S.A.C. VS MINISTRY OF TRANSPORT AND COMMUNICATIONS (Exp: 110-2015/CEB)

The **impediment to having the authorization** to operate a Vehicle Technical Inspection center in the city of Lima was declared an illegal bureaucratic barrier, **based on the existence of an exclusivity clause** in the concession contract signed between the Metropolitan Municipality of Lima and Lidercon Perú S.A.C.

EMBLEMATIC CASES

3

ANDA VS ONAGI (Exp: 166-2014/CEB)

Various requirements and prohibitions for the conduct of **commercial promotions** contained in Supreme Decree No. 006-2000-IN were declared an illegal or irrational bureaucratic barrier.

4

REPRESENTATIONS H DE C S.A.C. VS DISTRICT MUNICIPALITY OF SAN ISIDRO (EXP: 37-2011/CEB)

The **requirement** of the District Municipality of *San Isidro* to *Representaciones H d C S.A.C.* to have 14 parking lots (one for every 35m²) as a requirement to obtain an operating license **for its commercial premises** was declared an illegal bureaucratic barrier.

CHALLENGES

Key Ideas



Does the State function as Private or in use of its ius imperium?

PUBLIC PROCUREMENT



Is there really a barrier to market access or permanence if one agent refuses to buy from another?



The entity that issues the standard in which the barrier materializes is not always the one that ends up applying it. How to do with the non-application in particular?

CHALLENGES

Key Ideas

ELIMINATE
ENDEMIC
BARRIERS
THROUGH A
SINGLE
COMPLAINT



The same provision that qualifies as a barrier in one entity, others can be found.



There is currently no procedure to denounce these barriers as a whole.



This absence of procedure means that those affected have to file their complaint independently against one of them. It is not efficient.

CHALLENGES

Key Ideas

PROCEDURAL SPEED OF THE SECOND INSTANCE



The Competition Chamber takes excessive delays in deciding appeals.



The non-application of the barrier is meaningless when too much time passes to make it effective.



Problem of public management for compliance with deadlines.

CHALLENGES

Key Ideas

NON-APPLICATION
WITH GENERAL
EFFECTS OF A
BARRIER
WITHOUT
REASONABLENESS
CONTAINED IN A
PROVISION



DL 1256 states that, in proceedings initiated by a party declaring the lack of reasonableness of a barrier contained in a provision of general application, it does not apply to the specific case.



The above is meaningless, since it generates that all those affected have to file their complaint. It is not efficient.



The lack of reasonableness is one and affects everyone, not just the person who files the complaint.

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