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EGYPT'S COMPETITIVE LIBERALIZATION IN SERVICES: BILATERAL, REGIONAL, AND MULTILATERAL

MOHAMED R. HASSANIEN AND AMOS N. JONES

The Middle East enjoys a historic legacy as the center of global trade, with the countries in the region once controlling the commerce in the Mediterranean Sea.¹ However, the modern Middle East-North Africa region is lagging behind many other developing countries in integrating into the world economy in terms of nontraditional exports, attracting foreign investment, and a share of intra-industry trade.² In fact, the Middle East's share of international trade is among the lowest of any area in the world.³

Egypt suffers from such traditional economic hurdles as high unemployment coupled with slow economic growth, high population coupled with slow growth rates, and increasing competition from emerging economies like Latin America, Asia, and Eastern Europe.⁴ Nevertheless, Egypt, like many modern developing nations, has taken up the challenge of leveraging international trade as an engine of economic growth and development.⁵ Since 1990, Egypt has embarked on a comprehensive program of economic reform, and trade-policy reform has been one of the most crucial components of their overall goal of creating an outward-oriented, open market economy.⁶ The Ministry of Trade has engaged the United States Agency for International Development (USAID) to cooperate in creating this trade-reform

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program.⁷ One of the primary goals in the agenda, the liberalization of services, is just one of the challenges the Egyptian government must consider while working toward opening up the national market regionally, bilaterally and multilaterally.

This article contextualizes the liberalization process of Egypt within the contemporary international economic order. Part I establishes the importance of the General Agreement on Trade in Services (GATS) in developing countries, applying as a case study Egypt's current efforts in the services sector. Part II illustrates the different measures that constitute the domestic regulations and the market access requirements that are mandated at both the horizontal and sectoral level. Part III analyzes Egypt's position in the

current GATS negotiations and forecasts the future of the legal and regulatory framework affecting the services sector in Egypt.

I. THE IMPORTANCE OF GATS TO EGYPT

In general, liberalization of the service sector means not only the reduction or elimination of barriers that affect the services per se, but also those barriers that affect service sector firms. Such barriers include restrictions on entry, legally established monopolies or oligopolistic market infrastructure, discriminatory taxation, and limits on foreign investment. Liberalization in the GATS context, which implies greater competition in the market and non-discrimination against foreign services and service suppliers, leads to a more economically rational market structure. Markets in protected economies are narrow and lack of global competition, either actual or potential, fosters oligopoly and inefficiency. Protectionism creates market power for domestic firms, while trade openness exposes those same firms to greater competition, thereby reducing monopoly rents, driving down margins, and reducing prices for consumers. In a competitive environment, firms are forced to innovate, to introduce new products, and to improve quality constantly; otherwise,

they will be forced to exit the market.⁸ The consumer will thus become the ultimate beneficiary from the whole set of liberalization.

Services are a diverse group of economic activities distinct from manufacturing, mining and agriculture. The term encompasses a broad range of industries that provide the basic economic infrastructure (communications, transport, distribution, energy related services, construction, water supply and disposal), financial infrastructure (banking, insurance, financial markets), support or business (advertising, marketing, computer services, professional services), or needed social infrastructure (education, health and social services).⁹ Liberalization of services creates more competitive markets by exposing this market to other firms and depriving domestic firms of such a powerful tool.¹⁰

Alternatively, protection measures adopted by countries only impose a tax on domestic consumers, which has the detrimental effects of reducing the supply of certain services and subjecting domestic demand to more expensive, domestically produced services. The higher costs of domestic producers results in an increased supply and higher prices. Hence, income is redistributed from consumers to domestic producers, and these effects may be exacerbated by imperfect competition and monopoly.¹¹ Protection is detrimental to the economy as a whole because it results in a tax on production in general, a lack of storage capacity, poor stock management, insufficient and costly financing, inadequate legal services,¹² and outdated software products and processes (which are key determinants of firm's competitiveness and can destroy otherwise favorable prospects for meeting domestic or

export demand).¹³ The price and quality of these services are crucial in determining the cost of all other products in the economy, and are a determinant factor of a country's chance of exploiting its comparative advantages in services exporting.¹⁴ Concisely stated, the cost of protection is simply an inefficient allocation of resources.

Notwithstanding the considerably varied experiences across countries and sectors, the introduction of competition has generally led to improvements in services performance, infrastructure investment and service coverage and quality. Such improvements depend on the effectiveness of the regulations and the extent to which the market is liberalized.¹⁵

Protection imposes not only direct sectoral costs, but also wider costs in terms of lost opportunities and growth.

A reduction in protection for domestic services and service suppliers against foreign competition will—if appropriately implemented—further the economic interests of the country. The current predominant view among economists is that an open trade regime is an important part of growth and development policy.¹⁶ Protection imposes not only direct sectoral costs, but also wider costs in terms of lost opportunities and growth.¹⁷ The adequacy of services in general will be a determinant factor of one country's success—and another's failure—in diversifying production, expanding trade, coping with population growth, reducing poverty, and improving environmental conditions.¹⁸

Liberalization of services is generally expected to be more beneficial than liberalization of the merchandise trade, but is more difficult to accomplish for numerous reasons. Most importantly, the service industry involves both novel and complex issues that must be tackled. Service negotiations tend to require intensive domestic consultation and coordination, and any kind of reform characterized by the abolition of market access barriers and discriminations will need to be complemented by a review of the existing domestic rules governing the admission and operation of suppliers. Distinguishing between legitimate use and protectionist abuse has proven to be a challenging task.¹⁹

A. WHY SERVICES MATTER TO EGYPT

The importance of the service sector is revealed by the breadth of the effects that successful liberalization would have on Egypt as a whole. These effects would include the strengthening of the domestic infrastructure in Egypt, the enhancement of the competitiveness of manufactured, agriculture and mining products, the facilitation of the transfer of technology and knowledge which Egypt desperately needs, the creation of labor-intensive and knowledge-based jobs, the attraction of more investment, and the stimulation of competition.²⁰

The service sector indicates that 62 to 72% of Egypt's total exports generated a \$6.655 million trade balance surplus of services when compared to the merchandise trade, which experienced a deficit of \$5.149 million in 2004.²¹ Services account for around 58% of Egypt's gross domestic product (GDP),

and the sector is divided into production services (33%), social services (18%), and construction and electricity.²² In the present era of services, while the trade in goods has been subject to eight rounds, services are now in fashion. There are four modes of service supply, each of which entail certain significance and collectively cover almost all of the services that can be rendered in any market.²³ The second mode, for example, raises the issue of tourism, which is quite important to Egypt. The third mode would bring the presence of foreign banks to the Egyptian market, which would stimulate competition that would, in turn, force Egyptian banks to either raise their standards in servicing clients or be forced out of the market.²⁴

Liberalization of services poses a real challenge to the Egyptian government because barriers affecting services are often engrained in laws, regulations, and government measures. Restrictive measures include legal or regulatory restrictions, qualifications, requirements, conditions, quotas, limitations, capital requirements or percentages forms whether imposed by law or practice on any party in the sectors. Although there are serious gaps in the existing data, many countries have made commitments that establish the status quo making conditions vary among individual countries and regions.²⁵ Now is the ideal time for the Egyptian government to remove the restrictions that constrain the ability to enter the market and deliver efficient and competitive services. Liberalization does not mean deregulation, nor does it necessarily require privatization. It is usually initiated through trade liberalization negotiations or unilateral reform.²⁶ At the very least, Egypt

has to considerably streamline its laws and regulations on services to rectify the existing inflation in legislation.

Economic gains of liberalization are substantial; the estimated liberalization of services in developing countries could provide as much as \$6 trillion in additional income to the developing world by 2015.²⁷ The impact of liberalization on economic development is attributed to two phenomena. First, liberalization and reform of services

Liberalization does not mean deregulation, nor does it necessarily require privatization.

create more efficient domestic markets, employment, productivity, investment, and technology transfer. Second, access to important foreign markets is improved because the market's new transparency and predictability would encourage competitive service providers, ones who are actually competitive in their market, to consider both regional and global new market expansion.²⁸

Building a capacity in services involves: (a) developing a better understanding of the service sector in Egypt; (b) facilitating dialogue among all the stakeholders in the market, (b) responding to, participating in, and implementing multilateral, regional and bilateral trade agreements; and (c) increasing competition, which leads to improved efficiency and lower costs (ultimately benefiting Egyptian consumers).²⁹

The Egyptian Government is encouraging participation from the private sector in reforming the economy. Private participation would help the government gather more

information about trade opportunities, provide technical information to negotiators, help identify challenges to the exporting service providers, and identify barriers within the Egyptian market which inhibit the ability to export and gain knowledge of other markets and standards.³⁰

B. SERVICES LIBERALIZATION IN EGYPT AT THE BILATERAL, REGIONAL AND MULTILATERAL SETTINGS

Egypt has approached openness to the foreign markets on all the geographic fronts through bilateral and preferential as well as multilateral partnership.³¹ Having realized the importance of not counting primarily on the multilateral settings, Egypt began opening its markets on a preferential basis through regional and bilateral free trade agreements (FTAs). Since 1991, Egypt has implemented several structural reforms, including multilateral trade liberalization, privatization of banks, deregulation of utilities, as well as several institutional reforms by modernizing customs administration, tax administration and conflict resolution mechanisms.³² These efforts are concluded with Egypt joining both the Common Market for Eastern and Southern Africa (COMESA) and the Great Arab Free Trade Agreement (GAFTA), as well as currently negotiating the European Union agreement.³³

We will discuss in three sub-sections the liberalization of services in the lens of the multilateral, regional, and bilateral settings.

C. MULTILATERAL SETTINGS

As a contracting party to GATT since 1970 and World Trade Organization (WTO) member in June 1995, Egypt has proven to be an active participant in the multilateral trading system. Egypt has extended Most Favored Nation (MFN) treatment to all WTO members. In the services sector, Egypt supports more trade liberalization particularly through the movement of natural persons (mode 4).³⁴ All members of WTO are signatories to the GATS, which came to force in 2000. Egypt was one of the early countries to include its original schedule of commitments at the end of the Uruguay round of negotiations in 1995 under the

The main method of negotiation in GATS is the request-offer approach.

GATS.³⁵ The main method of negotiation in GATS is the request-offer approach.³⁶ The request is presented in a simple letter from one participating party, stating its requests from the other. Requests normally refer to one of the following: (i) the addition of new sectors; (ii) the removal of existing limitations or the introduction of bindings in modes which have so far been unbound; (iii) the undertaking of additional commitments under Article XVIII; and finally, (iv) the termination of MFN Exemptions.³⁷ Unlike a request, which is usually presented in the form of a letter, an offer is normally presented in the form of a draft schedule of commitments. Therefore, offers require considerable technical preparation and normally address

the same four types of requests previously mentioned.³⁸

The negotiation process is very functional; requests are bilaterally addressed, offers are multilaterally circulated. The participating party responds to all requests received from other countries. Negotiations and consultations regarding this offer shall be open to any other participant. This process would trigger either advanced levels of bilateral negotiations that result in a further succession of offers and requests, or a multilateral discussion through reference papers.³⁹ Since March 31, 2003, members have submitted sixty-nine initial offers while thirty revised offers have been submitted since May 19, 2005.⁴⁰

Egypt submitted its conditional initial offer in December 2004, which included:

1. Clarifications on mode 4 commitments (natural person movements);
2. Commitments in new sub-sectors (construction services);
3. Technical refinements with elimination in economic needs test in some sub-sectors (insurance and related sectors);
4. Elimination of expired limitations (Telecom services, insurance and related services).⁴¹

Egypt submitted its revised conditional offer in June 2005, which included:

- a. Introducing new sectors like computer services, courier services, and air transport services;
- b. Increased levels of liberalization, which creates new sub-sectors like construction services and insurance services.⁴²

1. BRIEFLY ABOUT THE STATE OF PLAY FOR EGYPT

Plurilateral requests to Egypt included full commitments of the following sectors: telecom, computer, postal and courier, distribution, environment, energy, construction, financial, air transport, maritime transport, legal, logistics, cross-border supply (modes 1 and 2), and commercial presence (mode 3).⁴³ The main co-sponsors of the plurilateral requests to Egypt are developed countries: Australia, Canada, European Communities, Japan, United States, New Zealand, Switzerland and Norway and India.⁴⁴ Egypt is also one of the co-sponsors of the plurilateral request prepared by a number of developing countries (including India, Argentina, Brazil, Chile, Colombia, Dominican Republic, Guatemala, Mexico, Morocco, Pakistan, Peru, Thailand and Uruguay) in order to liberalize mode 4 (temporary movement of natural persons). The main recipients of the request are the EU, New Zealand, Canada, Japan, United States, Switzerland, Australia and Norway.⁴⁵

2. REGIONAL SETTINGS

Regionalism is in fashion, but while regionalism is gaining global momentum, the Arab economic integration remains merely a project.⁴⁶ While the regional integration requires passage through six phases, Arabs are not even successful in accomplishing the first phase, which is the preferential arrangement. Paradoxically, Arab countries are integrating in small groups like Maghreb Union and Gulf Cooperation Council (GCC); this trend would fragment the Arabic economic integration rather than strengthen it.⁴⁷ As

the host of the Arab League and historically referred to leader of the Arab nation, Egypt has a huge burden to live up to the expectations of the 200 million Arabs in the area. So far, Egypt has been the driving force behind the establishment of the Pan free trade agreement in 1998.⁴⁸ Launched by the member states of the Arab League in January 1998, the Great Arab Free Trade Agreement (GAFTA) is the most recent example of the renewed attempts for increasing the regional integration between the Arab countries.⁴⁹

GAFTA is a new Arab League initiative that aims to revive previously unsuccessful attempts at regional integration; it is the backbone of the Arab economic integration, and the principal entity for enforcing this agreement is the Economic and Social Council of the Arab league (ESC).⁵⁰ The ESC decided at its 69th meeting in Cairo in February to accelerate the establishment of GAFTA while tentatively setting 2005 instead of 2007 as the deadline for its launch.

The Arab Free Trade Zone Agreement aims to unify the customs system among the member countries. This is a first step leading to a confederated system where all member countries will have the same basic system in their dealings with any non-member country.

Some prerequisites for enhancing the Arab integration include the Arab countries maintaining transparent and open economies, macro economic stability, and liberalized trade. In addition, they must maintain a unified system of laws, procedures, and economic stability. Although the initiative taken by many Arab states toward the legal reform, privatization, and liberalization of the economy is a response to the global trade requirement, it can also gear the

Arab countries towards more regional integration.⁵¹

Such a system hopefully will help pave the way to the foundation of an Arab joint market. The Arab League ratified the executive program of the Arab Free Trade Zone on February 19, 1997. The League is also responsible for following up the implementation of this program through its Social Economic Council. This organization is part of the Seven Ministers Committee and is responsible for solving any problem obstructing the implementation of the first phase.⁵²

A number of committees have been established to make the Arab Free Trade Agreement a success, rather than a forgotten footnote in history like some other Arab agreements. The Follow Up and Implementation Committee—which is part of the Trade Negotiations Committee—is responsible for lifting all the non-customs barriers imposed on the Arab commodities and making lists of the commodities and products which the member countries will be prohibited from importing. Other committees include Origin Rules, Directors of Customs, and Customs Information.

In 1997, eighteen of the twenty-two member states of the Arab League (all except Algeria, Mauritania, Djibouti and Comoros) signed the Executive Programme for Arab Free Trade.⁵³ The agreement provides for a reduction in tariffs of 10% per year over ten years. According to the plan, tariffs will be eliminated by 2008 (its enforcement was accelerated to 2005). Although the agreement includes a long list of exemptions (especially for agricultural produce), it represents the greatest commitment so far in the Arab world to facilitate trade reform.

GAFTA has recently extended to cover services as well. In December 2003, members agreed that the GATS schedule of commitments of the WTO member countries constitute the basis for the negotiations and represent the minimum level of commitments; potential commitments presented by non-WTO members as a part of the accession process will be followed.⁵⁴

The Arab Free Trade Zone Agreement aims to unify the customs system among the member countries.

Unofficial commitments were orally exchanged at the first round for bilateral and multilateral negotiations in October 2004. Lebanon, for example, looks forward to fully liberalizing a number of sectors like tourism, and can inspire some initiatives to schedule commitments to liberalize the movement of natural persons. The last meeting was in May 2006 where they ultimately agreed to the following:

- Specific requests are to be exchanged between the countries that participated in the meeting and countries that look forward to participating in future meetings by June 30, 2006;
- Revised offers are to be presented by September 30, 2006;
- Liberalization is to take place through a sectoral initiative.⁵⁵

The regional integration agenda is not limited to GAFTA. Egypt signed the Agadir Agreement on Feb 25, 2004 with Morocco, Jordan, and Tunisia, taking a major step toward developing the EU-Mediterranean Free Trade Zone by 2010. Another preferential trade agreement is the EU-Egypt Agreement, an FTA

which will be fully realized within 15 years; the parties have agreed to consider extending the agreement to the services sector for more liberalization.⁵⁶

D. BILATERAL SETTINGS

Upon meeting with Prime Minister Ahmed Nazif, the United States Ambassador stated, "We are still concerned about the Free Trade Agreement (FTA) with Egypt, it is possible in the future to renegotiate the agreement once again."⁵⁷ The national security concern as suggested in one of the articles, coupled with the recent shift of the U.S. trade policy towards more FTAs, would encourage the U.S. to renegotiate its agreement with Egypt.⁵⁸ However, since the breakdown of Cancun negotiations in 2002, the U.S. has announced its commitment towards negotiating free trade agreements with individual countries.⁵⁹ Recent events like the movement of the Egyptian Government more than any time else towards more liberalization of the economy, would make negotiations for free trade agreements more efficient.

Egypt could not be left out of an ultimate US-Middle East agreement due to its leverage in the Middle East as the most populous country, its potential for economic growth, and its commitment towards more economic liberalization.⁶⁰ This idea was reinforced by Ahmed Galal, a distinguished economist, when he mentioned the demonstrative effect of having a U.S.-Egypt FTA, where by virtue of Egypt's size, location, and cultural and political leadership in the region, successful reform could have a positive demonstrative effect throughout the Middle East.⁶¹

While many would say that a FTA with Egypt would primarily serve the political interests of the U.S., the economic benefits to Egypt cannot be overlooked. A FTA with the U.S. would be more important now than any other time because it would be a building block towards the liberalization of the economy⁶² in general and in services in particular. Egypt could take the most advantage of the open market abroad: it is a country which has a diversified economy, is well endowed with relatively cheap and skilled labor, enjoys historical sites and other

A FTA with the U.S. would be more important now than any other time.

tourism attractions, has modern natural resources (oil and natural gas) and water available from the Nile.⁶³ Egypt also offers a relatively large market, not only due to its large population but also the proximity of Egypt to Europe, that could potentially serve as an export base for Foreign Direct Investment in industries with substantial economies of scale.⁶⁴

While many countries in Asia, Latin America and Eastern Europe have dramatically re-oriented their economies towards more liberalization, Egypt and many countries in the same region have been debating whether to adopt the economic reforms.⁶⁵ In January 1996, Egypt began the economic reform and accelerated the privatization, liberalization and reduction of the administrative bureaucracy when the government confirmed that it is a matter of life or death. Egypt has implemented several structural reforms, including multilateral trade liberalization, deregulation of utilities,

modernization of the custom administration and privatization of banks. However, for some time there has been a lag evidencing little progress since the crisis of the Egyptian pound; it seems that Egypt has regressed back to less liberal trade policies.⁶⁶

Prime Minister Ahmed Nazif has announced that the new cabinet has a specific mandate to accelerate economic, social, and political reforms. Presently the government is trying to employ procedures for furthering the liberalization of the economy by reforming customs and corporate taxes. This has been demonstrated by the government's willingness to address one of the most irritating areas of economic liberalization: services. Services liberalization has been the focus of the Egyptian government nowadays; this will bring drastic changes in most of the Egyptian laws and regulations that govern the services sector. I believe that signing the FTA with the U.S. would not only enable American investors to reap the fruits of this recent movement but would also enhance Egypt by furthering its economic reform.

The U.S. has signed FTAs with four Arab countries: Oman, Bahrain, Morocco, and Jordan. The political importance of the Middle East to the U.S. is clear from U.S. involvement in the war in Iraq, the Israeli-Palestinian conflict, and encouraging more reform in the Middle East. Political, rather than economic, considerations have driven U.S. free trade plans in the Middle East, while the other party is usually a small country looking for gains more economic in nature. Among the candidates for a free trade partnership with the U.S., Egypt tops the list because of its political importance in the region. If the criterion is economy-enhancing

reform, Egypt would undoubtedly qualify. If the choice is made on the best country to take full advantage of the agreement, Egypt is again well positioned, particularly if the agreement is accompanied by additional trade liberalization.⁶⁷

The U.S. is looking for a trade partner in the Middle East that others will emulate, and the influence of Egypt extends beyond its borders. It boasts the largest population in the Middle East and is cultural hub for the Arab countries; more than 2 million Egyptians work in neighboring countries in various professions contributing effectively to the development of those countries. Accordingly, support given to the reform movement in Egypt through various measures, including a well designed FTA with the U.S., could lead to a positive demonstrative effect throughout the region.⁶⁸ A FTA is discriminatory against countries not in the same pact, but this may only be true for the short term. The fact is that a FTA between Egypt and the U.S. would be a catalyst for other countries to join similar agreements, and Egypt's influential power in the Middle East would be a step forward in the eventual success of the entire MEFTA (Middle East/U.S. Free Trade Area). This FTA would encourage other large countries like Saudi Arabia to enter agreements with U.S. (the Morocco, Bahrain, Oman and Jordan economies are too small to be significant).

With all the recent movements in Egypt and the gradual economic and political reform, the idea of having Egypt as a trade partner is no longer a novel concept to Americans. (Below, I will detail the

trade policy of the U.S. in general before moving into the pros and cons of a FTA with Egypt).

In the following section, we will demonstrate some of the concerns of the U.S. that cause breakdowns in the negotiations with Egypt over the FTA. One concern evident in the model of U.S. FTAs is environmental degradation and the labor in foreign countries; a whole range of provisions require the other trading partner to upgrade its environmental and labor laws.⁶⁹ Former USTR Robert Zoellick highlighted that these arguments are self-defeating,⁷⁰ but on the contrary the FTA is the tool used by

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the U.S. to strengthen openness, economic reform, and promote working conditions. To erode any concern about the provisions being self-defeating, an environmental protection built into the agreement would adequately address the concerns of the environmental groups.

The low profile of the Egyptian economy and its slow pace of economic reform since 1998 has created the impression that Egypt is presently unable to meet the standards that the U.S. demands in a strong trading partner.⁷¹ The concern can be addressed through two arguments.

First, the Egyptian government is now undertaking a drastic reform, particularly in the liberalization of heavily protected services sector, seeking the creation of more opportunities to attract foreign investment. Additionally, such slow economic pace is not unique to Egypt as opposed to other trading

partners like Oman, Bahrain and Morocco. A bilateral FTA would contribute effectively into bringing the two countries together and would eliminate WTO disagreements such as the non support of Egypt by the U.S. when they first declined to join the genetically modified organism case as co-complainant and eventually joined the European Union.

The second concern is the Egyptian government's poor record in human rights. However, the fact that the U.S. is sought as a FTA partner because of its economic power may give the U.S. government leverage to improve human rights in Egypt by pressing on this issue while the FTA negotiations are taking place. Fostering economic reform and encouraging further democratization in the country would effectively diminish the violations of the human rights. Moreover, concern over human rights violations is not unique to any single Middle East country; other countries in the region share the same concerns, and they were able to sign the FTA with the U.S.⁷² The question remains whether human rights violations were diminished after entering the FTA in these countries, and it is an issue worth discussing.

In summation, Egypt is an obvious, commercially significant, highly strategic candidate because it enjoys a political and cultural influence in many parts of the Arab world. Egypt would be the anchor for a Middle East FTA building on the existing FTAs with Jordan, Israel, Bahrain, Morocco and Oman.⁷³

II. THE LEGAL AND REGULATORY MEASURES AFFECTING THE SERVICES SECTOR IN EGYPT

The USAID has recently submitted a report to the Egyptian Ministry of Trade and Industry concerning the legal and regulatory measures affecting selected services in Egypt. The report is part of the USAID assistance to the trade reform project. USAID has been working on this report with both a team from the Ministry and a team of lawyers from one of the leading law firms. Although it is not easy to summarize a voluminous work—which was done in three months—into a few pages, but it is important to note the framework that controls the services sector in Egypt.

The first subsection lays down the horizontal measures which include the limitations applicable across all the sectors listed in the schedule. Horizontal measures reflect general, economy-wide policy constraints such as prohibitions on the foreign ownership of land, limits on the foreign equity participation, or the restrictive work permit requirements for foreign service professionals.⁷⁴ The second subsection is devoted to some specific sectors like tourism and professional services, and considering the example of legal services as one of the controversial sectors in Egypt.

A. HORIZONTAL MEASURES: CONDUCTING BUSINESS IN EGYPT

In 1997, an International Monetary Fund official stated that “remarkable changes are taking place in economic attitudes and policies

in many Middle Eastern countries. These changes reflect a switch to a strategy that, instead of trying to protect economies from the rest of the world, seeks to take advantage of opportunities offered by participating in the global economy.”⁷⁵ Established by Presidential Decree No. 231/2004, the Ministry of Investment is responsible for Investment Policy, management of state-owned assets (including privatization and restructuring of public enterprises and joint ventures), and the non-banking financial services including capital market, insurance, and mortgage finance.⁷⁶ The main thrust for the establishment of this recent ministry is quite clear: enhancing the local and foreign opportunities for investment in Egypt and

[T]he Ministry of Investment is responsible for Investment Policy . . .

creating a favorable regulatory and legal environment for the investment. In addition, the enactment of Law No. 8 of 1997 has incorporated a whole series of investment incentives revolving around tax incentives, customs exceptions, and many new investor protections and guarantees.⁷⁷ Investment laws are important in the developing countries for the following reasons: first, they provide key definitions for investment residents (for example, basis place, basic place of business, place of corporation); second, they provide the investor with guarantees and privileges unavailable elsewhere because they are not given to nationals of this country.

One of the recent developments in the Egyptian strategy for the promotion of investment is the establishment of the General Authority for Investment and

Free Zone (GAFI) which works under the supervision of the Ministry of Investment. It demonstrates the most tangible step undertaken by the Egyptian government to streamline investment procedures, turning from an obstructive regulatory authority to a more effective investment promotion role under the new chairman through adopting the one stop policy.⁷⁸ GAFI is offering a wide range of activities ranging from company registration to site location and licenses acquisition. The “one stop shop” encompasses delegates from different governmental agencies under one roof, specialized and well trained in dealing with investors, and thus investors do not need to visit other departments in the government when seeking signatures to set up projects.⁷⁹

In its most recent trade policy review in 2005, the GAFI role is said to be shifting from investment regulation institution to one of investment promotion and facilitation. GAFI has been operating as one stop office for investors since January 2005.

In this regard, it is worth noting the limitations on market access when any investor considers doing business in Egypt. Legal presence is one of the requirements for conducting a business in Egypt, and is required at the first stage of investment—the pre-establishment phase. This requirement is internationally recognized worldwide. The forms of business in Egypt are limited liability companies, partnerships, joint stock companies and branches or partnerships limited by shares. Equity owned by Egyptian citizens in publicly held companies should not be less than 49%, while the movement of natural persons (the fourth mode) is generally prohibited without registering as a trader in the Commercial Register. In general,

registering as a trader is limited to Egyptian citizens with the following exceptions:

- If the non-citizen is a partner in a partnership, provided there is an Egyptian partner who has the right to manage and owns at least 51% of the equity; or
- If the non-citizen has approval to conduct the activity of export.⁸⁰

Egypt is facing many challenges (for example, competition with other countries in the region is difficult), but the Egyptian government hopes to continue its economic reform. Some steps have been taken in this area, including accession to the international convention for the settlement of investment disputes in 1971 and the enactments of the Telecom regulatory authority law in February and the United Banking law in May 2003 by Parliament to build upon the existing law No. 8 of 1997 for the promotion of investment.⁸¹

The only feature of this limitation is that a foreign company can establish a branch in Egypt, provided it is a party to a private or government contract to perform work in Egypt, and a foreign branch manager obtains a work permit. Limited liability companies should have at least one Egyptian manager. Money Exchange companies established in Egypt should be entirely owned by Egyptians.⁸²

1. DOMESTIC REGULATIONS

There are two main statutes regulating the incorporation of companies under Egyptian Law: Law No. 159 of 1981 and Law No. 8 of 1997. The two differ in that while the first statute represents the traditional way of presenting conditions of incorporation for companies, Law No. 8 of 1997 eliminated

many of the restrictions on foreign equity participation in companies established in Egypt. Companies conducting business in certain fields enumerated under Law 8 are exempt from many limitations as explained below. One hundred percent of foreign participation is allowed for all fields. Law 8 companies are not be subject to Law No. 173 of 1958 regulating work permit requirements for non-citizens, and Law No. 230 of 1996 regulating the work of Egyptians in

There are two main statutes regulating the incorporation of companies under Egyptian Law: law No. 159 of 1981 and Law No. 8 of 1997.

non-Egyptian organizations. Still, Law 8 companies are required to employ Egyptians in the percentages specified under the Work section below. Free zone companies established under Law 8 are exempt from these requirements. In addition to the requirements for establishment of Law 159 companies, Law 8 companies should also obtain approval from the head of GAFI and the concerned Ministry to exercise the respective activity. For example, tourist companies require the approval of Ministry of Tourism in addition to that of GAFI. Free zone companies established under Law 8 of 1997 should pay their capital in U.S. dollars. Any company (individual or entity that wishes to carry business in Egypt) must be registered in the commercial registrar.⁸³

2. WORK PERMITS

Limitations on the national treatment: Social Insurance Benefits — All employed Egyptians and nationals of countries that provide reciprocal treatment to Egyptians will be covered by social insurance benefits. Proof of reciprocity is difficult and is rarely used. In practice, most non-citizens do not therefore benefit from the social insurance benefits system. Contributions from both the employee and the employer are collected by the Social Insurance offices, whereby the beneficiaries can claim benefits in cases of sickness, disability, or retirement. Dependants can claim benefits in case of the insured's death.⁸⁴

Limitations on the market access: Any company established under Law 159 or Law 8 (excluding free zone companies) is not permitted to employ non-citizens in more than 10% of its workforce provided they do not receive more than 20% of the total wages of the organization. In addition, at least 75% of administrative and technical employees should be Egyptian citizens and their wages should amount to at least 70% of the total wages of the organization. The Labor Code No. 12 of 2003 gives authority to the competent minister to determine the maximum limit of foreign employment. Ministerial Decree No. 136 of 2003 affirmed the same percentage and provided that 10% of employees shall be the maximum percentage of foreign employees in any establishment.⁸⁵

A recent change to the law obliges an establishment intending to recruit non-citizens to apply to the concerned agency for a letter requesting the entry of the

non-citizen to Egypt for work purposes before an application for a work permit will be processed, pursuant to Article 2 of Ministerial decree No. 136 of 2003. This presents additional restrictions, because a non-citizen would have to leave Egypt and re-enter before an establishment is allowed to employ him or her.⁸⁶

The establishment wishing to recruit aliens from southeast Asian countries shall submit its request to the concerned administrative department mentioned in Article 1 for study, research, and referral to the head of central department for regulation of recruitment and labor market information for his view.⁸⁷

Non-citizens wishing to work for the private sector, public sector, or local government should obtain a work permit from the Labor Office of the Governorate. This is where the head office of the establishment is located, provided they are authorized to enter the country to work. The organization wishing to employ the non-citizen should show that: (i) the qualifications of the non-citizen are unique, (ii) the exact need of the establishment is for his or her experience, and (iii) the non-citizen will train Egyptians.⁸⁸

B. TRANSFER OF TECHNOLOGY

1. DOMESTIC REGULATIONS

The Commercial Code regulates the conditions of the transfer of technology. Every transfer of technology agreement should be in writing, include some details of the know-how techniques, feasibility analysis, instructions, designs, architectural designs, software programs and any other relevant elements. In addition, there are

some restrictions about the transparency of the transactions, placing some obligations on the transferor of the technology, and giving jurisdiction to the Egyptian courts over the technology transfer contracts even if the parties agreed to refer a dispute to a different venue.⁸⁹

Limitations on the national treatment: if the beneficiary of the technology has to use experts in running the technology, the experts have to be Egyptians (whether they are residents in Egypt or living abroad) whenever feasible.⁹⁰

C. OWNERSHIP OF REAL ESTATE

1. DOMESTIC REGULATIONS

A. REGISTRATION OF REAL ESTATE

Public Notary is the exclusive authority dealing with the registration of real estate. Real estate and notarization offices are responsible for handling registration procedures and must finalize the registration within a maximum of ten days after all required documents are submitted. The said offices are established by the Minister of Justice Decree No. 3338 of 1996.⁹¹

To register real estate owned by non-citizens, the Ministry of Justice established special offices called "Offices for non-Egyptians – possession of real estate and vacant lands" in each governorate. Such offices shall process the registration requests by non-Egyptians on a regular basis and attempt to complete registration within a maximum of ten days.⁹²

The Agriculture Reform Authority (ARA) is responsible for handling the registration of the ownership of agricultural land, pursuant

to Law No. 15 of 1963. Government agencies are required to notify the ARA of any case in which the ownership of agricultural land devolves to a non-citizen by inheritance, will or any other way other than contracting after the law came into force. A non-citizen should notify the ARA of his or her ownership of such land within one month from the date he or she is informed of the ownership.⁹³

B. LIMITATION ON NATIONAL TREATMENT

Law No. 230 of 1996 regulates the possession of real estate by non-citizens, whether they are natural or juridical persons. For the purposes of this law only, a company formed in Egypt, regardless of its legal form, is considered a foreigner if the majority of its capital is owned by non-Egyptians. Law 8 companies are exempted from Law No. 230 of 1996.⁹⁴

A non-Egyptian can own:

1. A maximum of two apartments, regardless of area, for the private dwelling of the non-Egyptian and his or her family. This is without prejudice to the non-Egyptian's right to possess an apartment for running a business as authorized by the competent authority; and
2. A maximum of 4000 meters of vacant land.⁹⁵

To exceed such maximum limits, the non-citizen needs to submit a request for an exception to the Prime Minister. Archaeological sites are excluded from the definition of real estate. Possession of real estate and vacant lands shall not be subject to the conditions of Law 230 in relation to an international organization or a foreign government's ownership of real estate for the purpose of accommodating diplomatic or consular missions, their ancillaries, or for habitation by the head and members of the mission on reciprocity basis.⁹⁶

C. (3) & (4) DESERT LANDS (WHETHER BARREN OR CULTIVABLE)

According to Article 11 of Desert Law No. 143 of 1981, the ownership of desert lands is restricted as follows:

For lands irrigated by any method dependent on the pressure of water, the limits of ownership are:

- 200 acres for an Egyptian individual, and 300 for a family including a husband, wife and their children,
- 10,000 acres for collaborative societies with a maximum of 30 acres per member,
- 10,000 acres for personal companies (partnerships and partnerships limited by shares) provided an individual does not own more than 150 acres,
- 50,000 acres for joint stock companies provided the majority of the shares are owned by Egyptian nationals, and provided no shareholder owns more than 5% of the shares of the company.
- The above limits should be halved for desert land that is irrigated by surface irrigation methods.⁹⁷

(4) Non-Egyptians who acquire the ownership of a vacant land shall begin the construction works on it within a period of five years from the registration of the disposal. If this period lapses without beginning the construction works, the prohibition period for non-disposition of the land would be extended by the period construction works are delayed.⁹⁸

Non-Egyptians are not allowed to dispose of real estate before the lapse of five years from the date of the acquisition, except by permission of the Prime Minister. Any disposition in contravention with this rule shall be null and void.⁹⁹

D. SECTOR BY SECTOR MEASURES

This part of the paper will cover the professional services. I do not intend to cover all the sectors, and as such this note will cover the most important sectors that have significant impact on the Egyptian Economy. The structure is fairly straightforward as I intend to cover the domestic regulations, limitations on the market access and national treatment.

E. LEGAL SERVICES

Comparative lawyers have identified around eight major legal systems in the world today; nevertheless, two vast global legal families have managed to stretch well beyond their countries of origin. They are the Roman-Germanic law system and the Common law system, both of which bring together the largest numbers of national laws.¹⁰⁰ Nonetheless, Islamic law is currently the major non-Western legal system.

With the emergence of the new area of law and practice, the new type of lawyer is mainly involved in counseling as opposed to the traditional lawyer/advocate. The expansion of trade has changed the paradigm of local bar/local law/local lawyer, and lawyers are no longer working principally as an advocate; counseling in matters of business transactions, relationships and disputes does not require appearance before the courts.¹⁰¹ The English legal system demonstrates clearly the distinction between representation and advice, as there are two separate bars for Barristers (court representation) and Solicitors (counseling). France has previously divided the legal profession

between *avocats* and *conseillers juridique et fiscal* but no longer does; it has merged into one unified profession of the functions of both court representation and advice on legal and fiscal matters.¹⁰² Egypt has adopted the French model, but this does not mean that there is no distinction between counseling and representation. In practice, the Egyptian law firms tend to have an informal distinction between representation and counseling by setting up different departments for each area. The distinction is blurred on the level of individual practitioners, since the advocate is supposed to do all the work, and thus representation and counseling are handled by the same lawyers. In addition, since Egypt does not have any geographic limitation, qualified lawyers can practice in any place in Egypt.

Globalization has fundamentally transformed the legal services industry from an exclusive national business to a considerably emerging global legal market.¹⁰³ The distinction between the domestic and international legal issues is blurred by the process of the global demands of the clients and the tremendous increase of foreign investment across the globe.

How do we define legal services? A broad definition would include advisory and representation services as well as the administration of justice (judges, public prosecutors and state advocates).¹⁰⁴ The second part of the definition is excluded from the scope of the definition as it relates to "service supplied in the exercise of the governmental authority." The legal services sector is expanding because of both international trade and the emergence of new areas of law to practice such as privatization, cross-border mergers and

acquisitions, intellectual property rights, competition law, and corporate restructuring. The hurdle in estimating the size of the sector stems from the fact that legal services are bundled with other professional or business services. Not surprisingly, the size of the law firm and number of lawyers varies according to the size of the economy, level of the economic development, and structure of the legal profession. Law is practiced mainly by individual professionals or small firms in the majority of countries, while the big law firms exist almost only in some few common law countries.¹⁰⁵ Legal

Barriers to trade in legal services are divided into three broad categories.

services are provided in terms of modes of supply through mode one (cross-border service through the transmission of legal documents or advice via post or via other telecommunications devices) and mode four (through the temporary stay of natural persons as employees or partners of a foreign established law firm and traveling as individual professionals). Both high cost and risk combine to limit affiliate trade (mode 3) to the large law firms and it is therefore directed towards the major financial and business centers.¹⁰⁶

The regulation of lawyers has historically been a domestic policy issue; hence it varies significantly between countries due to difference in culture, history, economics, and the structure of the legal profession. Every country is concerned with the integrity of its laws and judicial system and has enacted regulatory schemes to control who provides legal services and how they are provided.

Most of the time, the regulation that prohibits an unqualified domestic person from providing legal services prevents as well foreign lawyers from entering the domestic market.¹⁰⁷

Barriers to trade in legal services are divided into three broad categories. The first one is comprised of measures designed to protect the public from unqualified foreign lawyers (these measures would include experience and educational requirements). A second category would be designed to hinder the ability of the foreign lawyers to provide the legal service through restrictions like residency requirements, association restrictions and limitation on the use of foreign names. The final group would simply prohibit the legal practice solely on the basis of nationality – local bar membership would be limited to the citizens, with limitations on foreign ownership and visa requirements. Egypt utilizes the third category.¹⁰⁸

1. *PROS AND CONS OF LIBERALIZING THE LEGAL SERVICES*

Possible concerns domestically and internationally:

- a. Lack of competency: national authorities will always argue that the foreign lawyers have not been trained under the same educational standards or certificate procedures; in addition the foreign lawyers are trained in different jurisdiction and not in the law of the foreign country.¹⁰⁹
- b. Lack of cultural values: Foreign legal practitioners do not share the same common values of the local community, including culture, politics, and history.¹¹⁰
- c. Different ethics rules: foreign lawyers would be much more susceptible to malpractice

claims. This concern is not quite as significant if it is kept in mind that most of the ethical rules adopted in different jurisdictions are identical or very similar in the way or the other. For example, the International Bar Association's general rules for the establishment and regulation of foreign lawyers and the Council of the Bars and Law Societies of the European community address the same ethical concerns.¹¹¹

- d. Lack of reciprocity: this is one of the major concerns many countries have expressed in negotiating the liberalization of the legal services sector. National bar associations tend not to allow foreign lawyers to practice if their domestic lawyers are kept away from the foreign lawyer's home legal market.¹¹²
- e. GATS itself serves as a barrier to the liberalization of the legal services because of the MFN principle. When any GATS member lowers the trade barriers in legal services, these concessions would be enjoyed automatically by all other GATS members due to the fact that few members have invoked few exceptions in legal services. Keeping in mind the importance of reciprocity in the negotiations in legal services, any bilateral agreement to facilitate access to the legal services would be almost impossible.¹¹³
- f. Valuation of the concessions in the legal services is very difficult: a series of bilateral "request and offer" negotiation is the mechanism for the liberalization of trade in GATS. Uncertainty about the practical effects of offers and the value of these offers would result in limiting the weight of the legal offers industry. Hence legal services are always at the bottom of the agenda for each country.¹¹⁴

Benefits:

1. Strengthening the domestic law firms: openness would create a more competitive legal market.

For example, the Canadian and German law firms owe their development largely to international competition. On the other side, Japanese law firms stay smaller because they operate in a relatively closed domestic legal market.¹¹⁵

2. Effective international transactions: it has been conceived that multi-jurisdictional legal problems present barriers to having more effective international transactions, but the liberalization of the legal services would expose lawyers to different jurisdictions and allow them to bridge the cultural gap that exists in most of the international transactions.¹¹⁶
3. Benefits to the legal suppliers and consumers are twofold: for the consumer, constraining legal services to domestic lawyers limits the amount of legal services provided, thus increasing the price of these services to consumers. Potential benefits would be enjoyed also by the domestic lawyers who would be competing with foreign lawyers and will therefore have to increase their capabilities, knowledge, and service (it can be assumed that the quality of the service will improve as a result).¹¹⁷

2. ORGANIZATION OF THE LEGAL PROFESSION IN EGYPT

Egypt—part of the Middle East—maintains two separate bodies of law. The statutes derived from Shariaa (Islamic law) govern family law and inheritance¹¹⁸ while the secular laws (the civil and commercial codes) are patterned after the rules and provisions of the French law. The development of trade and commerce has motivated the Middle Eastern countries to have a modern body of commercial

law regarding foreign investment, labor, commercial transactions, corporate taxation, business organizations and intellectual property.

This section aims to provide a snapshot of the structure of the legal profession in Egypt. Law in Egypt is based on French civil law tradition, and the legal practice draws upon the principles of the codification. Under the Egyptian constitution, the Parliament shares with the President the legislative jurisdiction. Lawyer's Code No. 17/1983 contains the rights and duties of the lawyers, professional ethics, advocacy trial rules, counseling rules, among others. Regulation of the legal profession in Egypt is governed by Law No. 17/1983, which grants the lawyers bar the authority to regulate the legal profession in all of Egypt.

This section will examine the idea of liberalizing the legal services sector in Egypt. First, in order to understand the particular challenges and opportunities presented by this idea, it is important to have a general sense of the domestic regulations of legal services in Egypt, particularly the limitations on both national treatment and market access. In the second part, we will move on to mention why liberalization of the legal services would work in Egypt.

A. DOMESTIC REGULATION

The Lawyers Code regulates registration, rights, and obligations of lawyers. To practice, an Egyptian lawyer should obtain a license from the Syndicate. Lawyers can practice law individually or in a partnership with other lawyers in a civil law firm. Lawyers can work in legal departments as in house lawyers to public authorities, private

and public companies, press institutions, and banks and associations. In criminal law, trainees are not allowed to stand before the court as attendance is limited to lawyers admitted to the Court of Appeal and Cassation. Lawyers admitted to the Court of Appeal and Cassation can work as consultants and provide legal opinions for clients. They cannot draft articles of association for joint stock companies or mortgage contracts; these can be prepared by other licensed lawyers. The limitation on providing legal opinions is not strictly applied by law firms in Egypt, nor enforced by the Syndicate.¹¹⁹

To practice, an Egyptian lawyer should obtain a license from the Syndicate.

The State Lawsuit Authority (SLA) is the exclusive authority with the right to represent the Egyptian Government abroad. The Foreign Dispute Department is responsible for retaining foreign lawyers and assisting them in preparing legal memorandums and opinions to be submitted before the Panels abroad.¹²⁰

The Lawyers Syndicate board drafted standard articles of association for civil law firms. Such firms are subject to the laws and regulations applicable to civil companies as well as the regulations of the Syndicate.¹²¹

Trial lawyers can become partners in a law firm or establish a law office individually or in participation with others. The articles of association of civil law firms should be registered in a special record at the Lawyers Syndicate. The lawyers who set up a law firm should meet the conditions and requirements mentioned in point 4 below.¹²²

Limitations on the national treatment:

(3) Only Egyptian lawyers can set up law firms in Egypt, according to the Lawyers Code No. 17 of 1983. A non-Egyptian lawyer can participate in establishing a law firm only through an Egyptian partner, this whose name should be used in any correspondence or any dealing with the Syndicate. The partnership agreement between the Egyptian and non-Egyptian lawyers can neither be registered nor recognized by the Syndicate, but will take the status of a private contract.¹²³

(4) The Lawyers Code stipulates that only an Egyptian qualified as a lawyer can register in the Lawyers Syndicate. Non-citizens who provide legal services do so as consultants, and are subject to the Labor Law and not the Lawyers Code—they are not considered lawyers. Article 42 of the Lawyers Code provides that attorneys admitted before the courts in Arab countries can represent clients before Egyptian courts on a reciprocity basis. Such representation will be limited to a specific action provided it is not an administrative or constitutional case. A permit from the Syndicate is required before representation.¹²⁴

Egypt has gone through many (approximately thirty-four) bilateral investment treaties (BITs) to attract more investment. BITs have a particularly strong effect on encouraging Foreign Direct Investment (FDI) in developing countries.¹²⁵ Attracting increased FDI is becoming a highly developed profession that requires appropriate and integrated national, as well as regional, institutions and structures. Furthermore, FDI attraction requires a supportive business and legal environment and a community of qualified and professional people with the skills and knowledge to attract FDI in the highly competitive

international context.¹²⁶ Therefore, increased international legal service is necessary, as legal service is always associated with

Egypt has gone through many (34) bilateral investment treaties (BITs) to attract more investment . . .

business and commercial activities. A myriad of legal activities affect the Egyptian market: corporate governance, securities regulations, business transactions, corporate finance, project financing, international arbitration, and intellectual property.

3. Structure of the Law Firms in Egypt

Due to the size of the economy, most lawyers in Egypt are individual practitioners. Among the law firms, big law firms number three or four, medium law firms between four and six, and small firms between eight and ten. They are all engaged in general practice, international business transactions, major contracts, investment agreements, banking and capital markets transactions, project finance, mergers and acquisitions, intellectual property, software protection, industrial property registration, telecommunications and information technology, aviation, tourism, manufacturing, oil and gas, labor, taxation, maritime, corporate and commercial, insurance and real estate matters, litigation and international arbitration.

Two main departments co-exist in any law firm: consultation, which counsels the multinational corporations and various clients, and litigation, which represents clients before

the court. Fluency in English is a prerequisite for joining the consultation department; conversely the litigation department does not require more than a good command of Arabic language. In practice, the counselor usually gets better payment and seniority than the litigator, because clients are always advised to stay away from the Egyptian courts (since litigation in Egypt is so lengthy and unpredictable and the enforcement mechanism for judgments involves some hurdles, particularly in executing on the property of the government).

Although the economy can sustain the existence of one or more big law firms (according to the international standard), the lack of transparent rules governing the relationship between the associates and partners results in a lack of real partnership structure in most of the law firms in Egypt. As a result, many partners leave the partnership and set up their own law offices. Consequentially, there are few large law firms in Egypt. Although development is occurring, it is quite slow in terms of reforming the rules of partnership in some law firms.

A. WHY LIBERALIZATION OF LEGAL SERVICES MATTERS FOR EGYPT

A heated debate has developed between opponents of liberalizing legal services in Egypt and proponents who consider liberalization to be an impetus for improving the quality of the legal practice in Egypt. It is worth discussing the arguments that support the liberalization of legal services in Egypt and what its proponents argue would result.

1. The development of the domestic legal industry - if the domestic industry were isolated from competition with foreign law firms, the industry would be prevented from building the necessary skills to compete successfully in the market.¹²⁷ The existence of non-Egyptian Of Counsel in Egyptian law firms has presented substantial evidence that their contributions are extremely helpful to the young Egyptian lawyers who are working with them in gaining experience, particularly in transactional work and counseling. Furthermore, use of these seasoned attorneys triggers more movement toward specialization, the lack of which is currently part of the problem in developing Egyptian law firms. There is a trend toward specialization, but liberalizing the sector would be a tremendous step forward along this path.

2. The creation of more job opportunities through a more efficient legal market system - for a long time commentators have assumed that the Egyptian law firms cannot properly market their services. Thus, they remain relatively small in comparison to the Egyptian economy. One of the reasons this perception exists is the lack of marketing on the part of Egyptian law firms; most of the business in the legal market depends heavily on personal contacts, but this cultural dynamic cannot stand by itself as a reason for attracting more clients in the future. Liberalizing the legal market would open the whole sector to foreigners who are interested in this market. They in turn would bring their marketing strategies and skills, skill sets which are largely lacking in Egypt. Through marketing, more work would be created, and in turn more jobs would be developed. However, there is a concern that the liberalization would usher

in a dominant cadre of non-Egyptian lawyers who would take over the market or at least benefit disproportionately from the newly available jobs. This fear lacks foundation; the absence of shared cultural values would stand as a safety valve to keep the Egyptians in the legal market. In Egypt, all laws and regulations are in Arabic, and English is used only to communicate with the clients and as the language of transactional documents. Major law firms in the United Kingdom and the United States would use the strategy, I predict, of sending one or two managing partners to establish a subsidiary, and then this correspondent partner would hire most of the staff as Egyptians.¹²⁸ The threat of Egyptians losing their own market is not substantial.

Liberalizing the legal market would open the whole sector to foreigners who are interested in this market.

3. Fairer treatment of Egyptian lawyers in the legal sector - one of the pitfalls in most of the Egyptian law firms is the unfair treatment of the Egyptian lawyers in terms of compensation and/or seniority in the law firm. Seniority and fair compensation in the firm depends heavily on how much leverage the lawyer enjoys as to the managing partner in the law firm. There are no objective criteria to promoting Egyptian lawyers in firms. This reality has motivated many skilled and talented lawyers to withdraw from the market and move to the Gulf countries to secure better compensation. Liberalizing the law firms in Egypt would bring international standards to Egyptian firms, resulting in the establishment of a real partnership structure

as well as more transparent rules regarding the seniority and payment inside the law firm. The idea of profit sharing is not yet recognized in Egypt; although the law firms in Egypt are securing high revenues, most of the profit goes to the few people who maintain control of the law firm.¹²⁹ Such revenues are not shared equitably by the rest of the lawyers who contributed substantially to generating these revenues.

4. Going regional - we have discussed many reasons why the law firms in Egypt remain small, as evidenced by, among other things, the dearth of Egyptian law firms abroad. Their capabilities to enter new markets are insignificant: to be sure, there are only two law firms in Egypt that have subsidiaries in other countries: one in Dubai¹³⁰ and the other in Iraq.¹³¹ Apart from those paltry foreign forays, Egyptian law firms do not have any representation in the other markets even though Egypt enjoys a comparative advantage in the legal sector. Most of the laws and regulations in the Gulf countries are patterned after the Egyptian laws and most of the qualified judges in the region are Egyptians. One can therefore conclude that the legal market in the Gulf countries is quite promising and open to the Egyptians. While one can say that some Egyptians are working there, they are individuals who work for the British, American, or Arab law firms. If the Egyptian law firms were able to build up their capacities and skills, they would definitely be able to enter these markets and create more job opportunities for Egyptians abroad.

It is quite clear that Egyptians would be better served by liberalizing the legal service

sector, which would spur the improvement of the quality of legal practice, the creation of new jobs, the advent of better compensation, a more equitable internal structure, and open markets.

F. ACCOUNTING AND AUDITING

1. DOMESTIC REGULATIONS

A. THE SYNDICATE

Law No. 40 of 1972 sets out the Commercial Professionals Syndicate, which is responsible for regulating financial auditing and accounting review services. The Commercial Professionals Syndicate includes following departments: auditing and accounting, economics, statistics, political science, insurance, business administration. Internal regulations of this Syndicate shall indicate scope of works for each department, rights and obligations of members, registration conditions and limitations.¹³²

B. REGISTRATION REQUIREMENTS

The General Department for Accountants and Auditors is one of the authorities affiliated with the Ministry of Finance. This department is regulating the registration of the accountants and auditors inside their records. A qualified auditor or accountant should not practice until registered in the general department of auditors and accountants in the Ministry of Trade.¹³³

C. LIMITATIONS ON NATIONAL TREATMENT

(3) Only qualified Egyptians can be partners in an auditing firm.

(4) Only qualified Egyptians can register as an accountant or an auditor in the Accountants and/or Auditors register. The following non-citizens are exempted from the nationality requirement:

1. Non-citizens who practiced as auditors or accountants before the enactment of Law No. 14 of 1972 (i.e., before 1972), who also satisfy all other registration requirements.
2. Non-citizens who were registered as members of the Egyptian Association of Auditors and Accountants before the date of the said law.
3. Arabs are allowed to register if reciprocity exists, they satisfy registration conditions and obtain approval of the relevant authority.¹³⁴

D. LIMITATIONS ON MARKET ACCESS

Accounting firms are open to non-citizens employed as consultants. Non-citizens also can participate as partners in such firms, provided their equity does not exceed 49% of the shares of the accounting firm.¹³⁵

G. ENGINEERING SERVICES

Any engineering consultancy firm has to be registered in the Engineers' Syndicate. Any engineer should be registered in the Syndicate, in the specialized department according to his or her degree. The Syndicate has seven departments: Civil Engineering, Architectural Engineering, Mechanical Engineering, Electric Engineering, Chemical Engineering, and Petrol Engineering.¹³⁶

1. LIMITATIONS ON NATIONAL TREATMENT

(3) Foreign consultancy firms can work in Egypt only after obtaining a temporary license. The license is granted to them through the Authority that intends to retain them, or assign the work to them.

(4) Foreign engineers can work as experts only after obtaining a temporary license from the authority that solicited them. Arab engineers can register with the Engineers' Syndicate if reciprocity exists.¹³⁷

2. LIMITATIONS ON MARKET ACCESS

(3) & (4) No individual or juridical person is allowed to undertake any contracting work whose value exceeds fifty thousand Egyptian Pounds except after being registered with the Building Construction Contractors Union (BCCU).

The Law provides that any Egyptian individual or company established in Egypt may register in the BCCU after satisfying certain terms. Due to a mistake that remains uncorrected, the Executive Regulation of said law went beyond the law and provided that a company established in Egypt should be founded and represented by Egyptian natural or juridical persons before it can register at BCCU as an active member. Though in practice the BCCU used to ignore the requirement stated in the Executive Regulations and register a company established in Egypt as an active member even if the founders or representatives are non-Egyptian, the BCCU has now stopped that practice. Companies established in Egypt with foreign participation are now treated as branches of foreign companies and

allowed to register only as a correspondent member of the BCCU. A correspondent member is only allowed to provide contractor services if the project price is a minimum of forty million Egyptian pounds, and has to partner up with an Egyptian individual or a company established in Egypt with Egyptian shareholders and representatives, where the latter owns at least 51 percent of the value of the project.¹³⁸ This is a grievous error in law and a very severe limitation on companies established in Egypt if they happen to have a non-Egyptian shareholder or legal representative. This is in addition to the injustice caused by the BCCU's contradictory former and current application of the Law and its Regulations.¹³⁹

(3) To register as a correspondent member:

- a) A partner has to be Egyptian, while the foreign equity shares shall not be more than 49% of the value of the project.
- b) The project is not less than forty million Egyptian pounds.

However, there are some exceptions; the treatment of Egyptians is extended to the foreign contractors on the basis of reciprocity, or in instances in which the member belongs to countries that have provided Egypt with loans or grants and the conditions of the loans or grants require their nationals to participate as contractors. The BCCU can issue other exemptions for an overriding public interest or out of a technical necessity.¹⁴⁰

H. MEDICAL AND DENTAL SERVICES

1. DOMESTIC REGULATIONS

A. REGISTRATION OF MEDICAL DOCTORS

To register in the Syndicate, qualified Egyptian medical doctors should:

- a) Obtain a medicine degree from Egyptian medical school. Medical doctors who obtained a foreign medicine degree should set for further exams, held before a committee of doctors selected by the Minister of Health.
- b) Pass one year of training under the supervision of one of the registered members in one of the hospitals designated by the student's university.
- c) File an application that includes name, nationality, residency, and a transcript.¹⁴¹

B. LIMITATIONS ON NATIONAL TREATMENT

Only Egyptian-qualified medical doctors registered with the Medical Doctors' Syndicate may own and operate a private, general or specialized clinics or medical centers.¹⁴²

C. LIMITATIONS ON MARKET ACCESS

Law No. 415 of 1954 stipulates that no one can provide medical advice, treat a patient, undertake a medical surgery, prescribe medicine, or take any test samples or in general practice any medical service except qualified Egyptians registered with both the Ministry of Health and the Medical Doctors' Syndicate. Only Egyptian-qualified medical doctors can register with the Medical Doctors' Syndicate, with the following exceptions:

- Foreign medical doctors, on the basis of reciprocity;
- Palestinians, provided their registration is only for one year (though registration is renewable); and
- Non-citizens who joined Egyptian universities before the Law 142 of 1948 was enacted.

Foreign medical doctors with special expertise not available in Egypt can be authorized to practice after obtaining the approval of the Ministry of Health and the Medical Board, provided such authorization does not exceed three months.¹⁴³

Government or private entities that decide they need the service of a foreign medical doctor need to send an official letter to the Doctors' Syndicate indicating the name of the foreign expert and his specialization. The Syndicate would examine the foreign expert's resumé, and a committee from the association of his specialization shall convene to examine the resumé and make sure that his or her experience exceeds the Egyptian equivalent before deciding to grant the permission. This is a temporary permit.¹⁴⁴

These amplifications conclude the professional-services treatment. We now focus on the tourism sector and the challenges that the national authorities would confront as a result of more liberalization in this sector.

I. TOURISM SECTOR

Accounting for over one third of the value of the total worldwide service trade, tourism is considered to be the largest service industry in the world.¹⁴⁵ Rapid technological changes, along with immigration and entry requirements, are directly influencing this

sector.¹⁴⁶ The tourism sector is a major player even in developing countries. International tourism occurs when travelers cross an international border; nevertheless, the GATS definition of tourism leaves out many service activities such as computer reservations, transportation, hotel construction, and car rentals. Nevertheless, tourism is the leading source of foreign exchange earnings.¹⁴⁷

Tourism is primarily presenting the second mode of supply, the cross-border movement of consumers; the consumer comes to the supplier rather than the opposite, which is common for other services. In Egypt, tourism by far is the most important source of foreign exchange and an important

In Egypt, tourism by far is the most important source of foreign exchange . . .

generator of employment. Since 1999, tourism has been performing well. Despite the drop in the aftermath of Sept 11, 2001, tourism continued to contribute an 11.3% of GDP.¹⁴⁸ Ironically, the government budget for promoting this sector is only \$40-45 million. Moreover, many laws govern this sector. Since most were passed during the 1970s, they need to be updated to meet the new challenges posed by globalization.¹⁴⁹

In a recent seminar on the trade in services held by the American Chamber of Commerce in Cairo, a paper was presented about the challenges with which the Egyptian tourist companies must contend. Egyptian companies suffer from many problems in the tourism sector, among them that the Ministry of Tourism does not apply effective scrutiny to the areas of tourism and the practices of competing companies. In addition, there

is no single authority to deal with when a proprietor undertakes a tourist activity, for this service in particular includes a whole range of related services, triggering multiple authorities that deal with these services. This cycle means more dealings with the government at many points, with all its bureaucratic procedures.¹⁵⁰

Observers should expect several outcomes of liberalization of the tourism sector:

- a. Liberalization of the tourism sector would encourage foreign investors to invest in this sector in Egypt, thus creating job opportunities and bringing in new management skills much needed in Egypt.
- b. The same analogy will be drawn from the last argument about the legal services: the foreigners still will not take over the market, however. On the contrary, they will assist the Egyptians in terms of raising their capabilities and standards.
- c. Most of the tourism companies are small corporations, and with liberalization, mergers and acquisitions would increase efficiency.
- d. Legal instruments affecting the tourism sector would have to be upgraded to reflect and promote acquisitions and mergers while simultaneously maintaining a strong system against antitrust claims.
- e. More attention has to be devoted to the transportation sector because the tourism sector depends upon it. Giving small- and medium-size companies a voice in the Chamber of Tourism would infuse transportation with representative perspectives of this relationship.
- f. The market would demand unifying the regulatory authority such that it is competent to supervise the small- and medium-sized companies and permitting them to explore nontraditional tourist services.

The previous proposals were submitted during the last symposium held at the

American Chamber. In summary, the current legal structure affecting the tourism sector is not capable of responding to the challenges presented by globalization, the increasing demand for foreign investment, and the shift of the Egyptian market.

SECTION III

This part proceeds in two sections. The first section analyzes the position of Egypt in the current GATS negotiations, and the second section discusses the future of the legal and regulatory framework affecting the services sector.

A. EGYPT IN THE CURRENT GATS NEGOTIATIONS

GATS negotiations are relatively tough, as GATS is far broader in coverage than the GATT. Its definition of trade is not confined to cross-border product flows (mode 1) but extends to cross-border movements of service consumers (consumption abroad, mode 2) as well as commercial establishment (commercial presence, mode 3) and the presence of the natural persons to supply services (mode 4). The twofold treatment process in GATS makes it complicated when negotiating further concessions and obligations. It is not only governing the products but also the treatment of the suppliers as well. Due to the broad coverage of the GATS, the flexibility accorded to the governments is more prevalent than in any other WTO agreement.¹⁵¹ Through the bottom-up and the top-down approach rather than the negative list approach (everything is bound unless explicitly excluded), the governments

shape their schedule of concessions along with the attaching limitations to the modes of supply.¹⁵²

The ongoing-process feature dominates GATS, explicitly providing for future trade negotiations to achieve a progressively higher level of liberalization. Article XIX (Negotiation of Specific Commitments) provides that:

- i. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.¹⁵³

Launched on February 25, 2000, GATS negotiations are two-part. The first part is the rules-making phase, in which new rules are negotiated concerning the different issues from subsidies to government procurement, while the second part is the request-and-offer phase in which the members work more on opening up the market access.¹⁵⁴

The negotiations in the GATS framework tend to be difficult. The position of any participating party is largely affected by the great latitude they have in the negotiations; hence, intensive domestic consultation and coordination is required. GATS embraces two different sets of negotiable trade obligations: market access and national treatment. The abolition of both of them

will need a review of the existing domestic rules.

The more information a party has about the legal and regulatory framework, the better that country is able to shape its position and direct its negotiation in the most appropriate way to serve its interests. Nonetheless, there are other factors that effectively slow the progress of the negotiations in GATS, most importantly the novelty and technical complexity of the issues to be tackled.¹⁵⁵ The dyed-in-the-wool skeptics, due to the ignorance of the WTO nature, would further complicate the negotiations because of the general frustration with the market mechanism, private ownership and globalization.¹⁵⁶

The responsibilities for services is spread across many governmental departments, meaning that services negotiation would touch upon some governmental responsibilities and would have to consider the diversity, political, institutional, and economic considerations of the sectors involved—the unlimited trade measures that may legitimately be applied to protect the markets.¹⁵⁷

Article XIX (3) of GATS provides that: “negotiating guidelines shall establish modalities for the treatment of liberalization *undertaken autonomously* by members since previous negotiations,...” This provision is intended to accommodate the general economic situation, domestic regulatory and institutional structures, and development needs. Hence, the flexibility of the agreement has been extensively used to a large extent.¹⁵⁸

Considering Egypt, for an effective participation in the negotiations of the GATS, what is required is sending selected staff for training with the WTO (trade

in services division) for more experience with the international services agreement, getting more knowledge about the economic situation of the sectors, and increasing more private-party participation in the current negotiation. The USAID has been helping the Egyptian Government in terms of assisting the ministry of being aware of the regulatory and legal framework for the services sector.

The negotiations in the GATS framework tend to be difficult.

The position of Egypt in the GATS negotiation should be built on more participation from the private party with the government in determining the economic interest of the sectors. More efforts have to be engaged in terms of codifying the legal framework of the services and focusing more on some sectors in which Egypt could take the lead in the market, such as legal services liberalization. It is important to stress the need for more liberalization from the other countries in the region who share the same legal system. For example, Egypt could raise this issue with the Gulf countries and demand some kind of opening up of their market for the Egyptian labor and commercial presence of the firms as well (through the bilateral offer and request process).

B. THE FUTURE OF THE LEGAL AND REGULATORY FRAMEWORK AFFECTING THE SERVICES SECTOR

It is no surprise that the government cannot undertake the entire task of effecting serious changes in the laws and regulations

by itself. Participation from both the non-governmental organizations and the private sector is needed. We contend that establishing a joint committee representing both the public and private sectors to study the case of GATS would vastly aid in bringing all the necessary ideas and proposals that could shape the future framework of the services sector in Egypt. Moreover, such a committee would contribute effectively to a more precise position for Egypt in the GATS negotiations, which are a priority that the government is taking very seriously. Egypt has much work to do to comply fully with the GATS obligations—and hence reap the fruits of the liberalization—such that it can become the model for other countries in the region.

IV. CONCLUSION

Pursuing liberalization on multilateral, regional, and bilateral fronts is a key strategy in implementing the Egyptian government's contemporary economic program. Although the liberalization of services should be multilaterally addressed, the regional and bilateral programs remain an important complement to the multilateralism.

The liberalization of the services presents manifold challenges: competition from the domestic and foreign producers, regulatory and institutional reform, engagement of the interested parties, and the streamlining of all technical and financial assistance to maximize trade liberalization.

On a related front, Egypt should consider in future GATS negotiations requesting from the Gulf countries a more open legal service sector. The potential gains from such cooperation include creating more job

opportunities. Unfortunately, there remains the recently noticed problem in Egyptian human rights violations. Growing concern about how the government treats its own citizens has caused some analysts to argue that signing an FTA with the U.S. would root in the current regime while most Egyptians do not care for the benefits of the FTA. Nevertheless, the gains of the FTA are paramount, and its implementation would touch the lives of the majority of Egyptians and create more opportunities for all of them.

Competitive liberalization is the most sensible path Egypt is engaging in opening up its market. Stimulating competition among different trading partners would enhance and deliver an efficient and growing market while raising the skill levels in the Egyptian service sector. Egypt has begun pedaling, making some progress. The solution is to accelerate the pedaling process, not to stop it; otherwise, Egypt will fall off.

END NOTES

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