

**The Service Sectors, Trade Policy,
and the Challenges of Development
in the Arab Region**

Part II

The Service Sectors, Trade Policy, and the Challenges of Development in the Arab Region

Part II

Editing: Kinda Mohamadieh and Dr. Ahmed Ghoneim

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Book (I) includes the following papers:

- “Challenges of Services Liberalization in the Multilateral and Regional Contexts: The Case of the Arab Countries”
- “Domestic Regulations and their Importance for Trade in Service: The Case of Arab Countries”

Book (II) includes the following papers:

- “Challenges of Negotiating Trade in Services with Major Trading Partners: The Case of Egypt in Negotiations with the EU”
 - “Arab Countries Acceding to the WTO; Challenges under the GATS and the Developmental Dimensions”
 - “Yemen’s Accession to the WTO; Challenges of the Services Sector”
-

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December 9 2011**

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(I) Has Trade Policy Contributed to Development Prospects in the Arab Region?

Trade has been one of the active parts of the Arab countries' economic policies. Trade liberalization has been considered one of the main 'policy reforms' undertaken by Arab countries during the last two decades, whereby they increasingly undertook commitments under bilateral, regional, and multilateral trade agreements.

However, the interface between trade liberalization policies and development objectives, including building national productive capacities and creation of employment opportunities, remain very weak, if not non-evident. Indeed, trade liberalization decisions were often detached from development objectives and led to stress on productive sectors and labor markets. The indicators of success in this policy area have been the level of market openness and not necessarily the contribution to development objectives.

Accordingly, one of the main challenges Arab countries face in any prospective development process is how to design trade policy to be supportive and conducive to development policy space. As such, trade liberalization need to be sequenced to align with achieved levels of development and targeted development objectives.

(II) The Challenges of Designing Trade Policy in the Services Sector

Within the trade policy of several Arab countries, the services sector came to play an increasingly important role. Many Arab countries are negotiating liberalization of the services sectors under the World Trade Organization's 'General Agreement on Trade in Services' (GATS), as well as other regional and bilateral negotiation tracks.

The services sector plays an increasingly important role in the economies of Arab countries, in terms of contribution to the gross domestic product, employment generation, and development of other productive sectors. The sector is characterized by rapid changes in its scope, with continuous emergence of new services and services' markets resulting from technological developments as well as demand changes happening in other sectors. Furthermore, many services sectors are closely associated with the economic and social rights of various communities, including basic services such as access to quality education, water, health services, transportation and others. Accordingly, the interface between governments' obligations under international human rights law, and specifically the International Covenant on Economic, Social, and Cultural rights, and the commitments they undertake under a trade agreement is evident and challenging.

Few of the Debatable Points on Liberalization of Trade in Services

There are two debatable points of view on the current global status of liberalization of trade in services. Some argue that relatively little has been offered under the GATS framework, given that limited liberalization has been undertaken beyond the prevailing government practice and status quo. Others point to the limited stage of development of the services sectors in developing countries, the limited understanding of many of these sectors and their potential, compounded by the lack of legal clarity of many of the rules in trade in services agreements and their implications on development. Accordingly, those concerned with these dimensions point that even the current commitments undertaken in the services sector could hold a significant impact on the policy space for developing the services sectors. They indicate that locking in the status quo under GATS or other regional or bilateral trade agreements makes it almost impossible to reverse –with no costs- these conditions in case of market failures or changes of governmental policies towards more social considerations.

Another major debatable point in regards to liberalizing trade in services, as liberalization in other areas, is whether the process of liberalization should precede national level reforms, or if reforms should be undertaken before any liberalization offers or commitments are agreed. The former point of view is often held by those who perceive joining international agreements as a way to face the national political economy complexities and the lobbying efforts of groups with vested interests in certain sectors. However, others perceive that trade liberalization agreements, especially trade in services,

have developed into broad reaching agreements that tackle several regulatory areas and policy tools that are core to development processes. Thus, committing to liberalization under international treaties should be the result of a wise development policy based on which sectors with export interest are identified, associated with the needed regulatory reforms to be undertaken. Such an approach should focus on preserving the ‘right to regulate’ including the use of needed policy and regulatory tools that align with developing the services sectors and their economic and development objectives.

Considerations for Decision Makers in the Arab Region

Authorities and other stakeholders in Arab countries negotiating liberalization of trade in services often face these debates. It is also important to recognize that developing countries, including Arab countries, often face the political pressure to agree to liberalization commitments in services sectors, without a proper identification of possible implications on development processes, neither implications on policy space and prospects for developing the sectors. Such pressures are clear in the process of accession to the WTO, as well as in the process of negotiating bilaterally with economic blocks, such as the European Union or the United States, among others. Arab countries often seek to be the first to secure preferential agreements with such blocks, despite the terms, driven by the fear of preferences’ erosion. Such political pressures often take over the proper account of economic and development benefits from the process of liberalization.

Furthermore, the multiplicity of negotiations’ that Arab countries are involved in, is raising challenges starting from administrative and capacity pressures on negotiators to those related to coherence between the legal obligations. Indeed, it is imperative to stress the coherence needed between these engagements, in addition to the needed sequencing of commitments in a manner that aligns with the development objectives. Indeed, undertaking liberalization of services on several paths (bilateral, multilateral, and regional), if not coordinated, could lead to loss of possible development outcomes, regulatory confusion, increasing administrative costs, investment uncertainty, and several other associated problems.

Accordingly, it is important to attend to the design of preferential trade agreements that Arab countries get involved in as well as their commitments under the GATS agreement in a manner conducive to

their development objectives. Indeed, given the highly important role that the services sectors play at the development, economic, social, cultural, and rights fronts, building these sectors ought to be based on a dynamic development strategy that addresses all these dimensions. Such strategy requires a clear assessment and development plan on a sector-by-sector basis, and study of the sectors' potential. This would include identification of the needed regulatory capacities and benchmarks that can secure trade and non-trade objectives, including development, social, and cultural objectives. It also necessitates accommodating the evolving nature of the regulatory process, which changes over time with the changes in the services markets.

Within this context, information around the services sectors, their potential growth and technological development, the nature of the change they could witness and the needed regulatory reforms in connection with such change, plays a central role. Often studies of such nature are not available to developing countries before they embark on negotiations. The negotiations position often becomes a reaction to what is proposed from the negotiating partner and not a designed position based on the needs and prospects identified for the sector. The ability to build regional and national information collection and analysis systems around the services sectors ,which would inform the development and growth strategy of these sector, ought to be given special attention by Arab and other developing countries.

(III) Challenges and Prospects for a Regional Cooperation Project in the Services Sectors

Several challenges face the process of proceeding with a regional cooperation project in the services sectors. Limited capacities of the involved institutions, lack of information on the sectors and their prospects, disparities between WTO and non-WTO Arab countries in terms of trade openness and capacities to deal with the agreements are some among the variety of challenges facing this project. However, one of the major obstacles to progress on this front remains the fact that Arab countries often give priority to sealing agreements with third partners, which could create impediments to progress on development-oriented regional agreements.

Progressing with a regional project with development prospective necessitates shifting the approach to regional cooperation and building a new set of incentives/interests that will bring the participating

parties together. Thus, it is necessary to overcome the focus on the mainstream model of liberalization and competitiveness between the countries. More important is to build common interests through promoting complementary productive cycles at the regional level, thus moving towards establishing regional services sectors that contribute to employment generation and achieving collective competitiveness at the global level. Beyond merely negotiating trade liberalization, countries need to think of directing investment policies to support the intra-regional project, address labor market relations, as well as regulatory procedures. Trade will stay one component of this web of integrated and well-coordinated policies at the regional level.

Moreover, there is need to design and establish the proper and capable regional institutions that could lead such kind of regional development project, including information institutions to help define prospects and strategies, and judicial institutions that protect the common project and looks over the implementation of the agreed laws. Furthermore, preserving the policy space for such regional South-South development project to emerge necessitate addressing its interface with obligations under bilateral and multilateral trade and investment agreements. If not well planned and coordinated, the latter often limits the policy space available to achieve added- value regional projects. Thus, there is need for sequencing trade engagements and designing trade policy to support and not hinder the regional project. Furthermore, the position of Arab countries at the multilateral level, such as under the umbrella of the WTO, need to be coordinated if a regional trade project is to progress.

In addition, one of the major aspects of a successful regional project would be addressing the regional labor movement and market; including rethinking rights and protection of labor moving across the region, facilitating this movement, and establishing coordination mechanisms between labor and markets in the region. Movement of service providers (mode 4 of services supply) has often been a contentious area of the negotiations, including among Arab countries negotiating a regional trade in services agreement. That is despite the fact that the region already witnesses an active labor movement. Yet, movement of people and their rights, including labor rights and social protection, were core to building regional blocks such as the European Union.

(IV) The Importance of a Long-Term Future Looking Development Strategy

Designing trade policies within an overall development strategy that includes consideration of the needed institutional and regulatory frameworks is the primary challenge facing developing countries. As long as trade liberalization is undertaken without a clear development purpose, then the possibilities of negative impacts on national policy space for development remains high. What developing countries need is to set a development strategy towards which trade policies contributes, and which serves as the framework to identify the purposes of any liberalization commitment, the interests it is serving, and the sectors that would be included.

Indeed, the analysis undertaken in the booklet between your hands stresses that liberalization of trade in services requires several prerequisites to ensure that it yields positive developmental, welfare, and economic results. Understanding the sectors and their potential development tracks, their interlinks with other productive sectors and technological prospects, as well as prerequisites of regulatory and institutional nature are crucial in this area. Besides, undertaking trade liberalization commitments should be designed in a framework that protects the sovereign ‘right to regulate’. For example, regulatory flexibility is crucial for guaranteeing universal, equal and affordable access to quality public services. National policies that recognize these regulatory needs play the central role in defining the impact of trade agreements’ disciplines on services sectors. They are crucial for ensuring development prospects, beyond setting competitiveness of the markets as the sole objective.

Accordingly, a central challenge that governments need to attend to in designing or negotiating commitments under a trade agreement is identifying whether ‘the right to regulate’ would remain a sovereign right solely judged and identified by sovereign national governments based on what they perceive as legitimate and priority policy objectives, or if this right will be qualified by boundaries drawn by trade law and equated to trade rights defined by the agreements. Ensuring the former context necessitates accommodating to multiple considerations and differentiated approaches in designing trade policies an agreement. One of these considerations is the fundamental nature of human rights, which is core to a variety of services sectors such as education, health, and others. Adequate consideration of this aspect requires the promotion and protection of human rights as objectives of trade liberalization not as exceptions.

**Challenges of Negotiating Trade in Services with Major
Trading Partners:
The Case of Egypt's Negotiations with the EU**

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(Finalized in 2011)

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I- The economic importance of the services sector in Egypt

According to the latest data, the services sector is one of the most fundamental components of the global economy. The share of the services sector to global GDP² was almost 61% in 2008, and its share of global FDI³ inflows constituted about 50.4% of the world capital inflows reaching billion 126 USD in 2009. Moreover, 40% of total employment in developing countries is within the services sector. Furthermore, trade in services represented about 20% of global trade in goods and services, while global services exports⁴ represented a considerable 21.7% of the total global exports of goods and services in 2009.

The Egyptian economy is no exception to the global case. The Egyptian services sectors has always been an important contributor to growth of the Egyptian economy in terms of its share of GDP, trade, investment, employment, as well as its strong relationship with other non-services sectors in form of both backward and forward relations. The following section is designed to give a brief introduction to the services sector in Egypt, mainly covering three points. First, it includes an investigation of the economic importance of the services sector in Egypt. Second, it will discuss the services sectors' comparative advantage during the period 2007-2009. Finally, it will examine the evolution of trade liberalization that took place in the services negotiations across different levels of negotiations; multilateral, regional and bilateral.

The importance of services in the Egyptian economy can be clearly seen by its share of GDP that reached 45% in 2009/10. Such a significant percentage reflects the relative importance of services in GDP, which was hence accompanied by an increase of services' contribution to the balance of

2 World Bank Indicators 2010.

3 UNCTAD, World Investment Report 2010.

4 Ibid.

payments. Trade balance of services, in 2009/2010, achieved a surplus of 10.3 billion USD versus a deficit of 25.1 billion USD for merchandise trade. In 2014, trade surplus of services stood at 6.6 million USD versus a deficit of 5.1 million USD for merchandise trade⁵.

Exports of services also played an important role, accounting for 50% of Egypt's total exports in 2009/10. It is important to note that such contribution of services in trade is often underestimated due to the inability to cover the calculation of different modes of services supply, which is a worldwide phenomenon. In addition, the share of services in investments reached 58% in total Egyptian investments during 2009/10. Further, services' role in terms of enhancing employment increased tremendously, thus accounting for 63% of total employment in 2009/2010⁶. The distribution sector (retail and wholesales) constituted on average 15% of the total employees in services sectors during the period 2004/05-2007/08, followed by the building and construction sectors⁷.

Finally, the importance of the services sector is clearly shown in its strong and increased relations with other non-services productive sectors within the national economy. For instance, it contributes 76% of the output of the Copying and Publishing industry and 50% of the Clothing and Leather shoes industries⁸.

Moreover, the importance of services sector does not only stem from its contribution to the GDP, but also from its role in building human capacities and skills. Health and education services are key inputs into - and determinants of - the stock and growth of the human capital (Hoekman & Mattoo, 2008). Therefore, the development of the services sector reflects positively on the national economy as a whole, and vice versa. As shown in various international experiences, 1% to 2% of GDP gains often result from goods' trade reform, while real income could increase by 5% to 10% when the reform takes place in services sector. More importantly, without reforms in the services sectors, gains from other reforms will be much more limited (Hoekman & Mattoo, 2008).

Egypt enjoyed a revealed comparative advantage in transport⁹ (mainly due to the Suez Canal),

5 Central Bank of Egypt, January Monthly Bulletin 2011.

6 Ministry of Economic Development; Online Statistical Database.

7 Egyptian Ministry of Economic Development.

8 Egypt Input-Output table 2003-2004.

9 $RCA_{ij} = (x_{ij}/X_{it}) / (x_{wj}/X_{wt})$, where x_{ij} and x_{wj} are the values of country i 's exports of item j and world exports of item j and where X_{it} and X_{wt} refer to the country's total exports and world total exports. A value of less than unity

computer & information, tourism (proxies by travel), personal, cultural and recreational services and government services during the period 2007- 2009 (IMF balance of payments manual BPM 5,1993).

Table No.1: The revealed Comparative advantage

Services Sector	2007	2008	2009
Transport	1.6	1.4	1.8
Computer and information	1.8	1.2	1.5
Travel	1.2	1.3	1.3
Personal, cultural and recreational services	1.6	0.9	1.2
Government services ¹	1.6	1.8	1.1
Communications	0.9	1.5	0.9
Construction	1.4	0.8	0.8
Financial services	0.3	0.3	0.8
Insurance	0.1	0.2	0.1
Royalties and license fees	1.3	--	--
Other business services	2.1	--	--

Source: Calculated based on UNCATD (2009) database.

II- The evolution of the trade liberalization in services negotiations across all different levels of negotiations, multilateral, regional and bilateral

Egypt's experience with the liberalization of trade in services is diverse and has followed various paths. Since the mid 1990's, the Egyptian government has been engaged in negotiating trade liberalization in services as a part of the policy shift towards market-driven economy. Negotiations for trade liberalization in services had been held on the multilateral level, under the umbrella of the World Trade Organization (WTO). At the regional level, negotiations have been conducted with many of Egypt's main trading parties, including within the framework of Pan Arab Free Trade Area (PAFTA), Common Market for Eastern and Southern Africa (COMESA) and Euro-Mediterranean Agreements. Recently, Egypt started services negotiations on the bilateral level with European Union, due to the

implies that the country has a revealed comparative disadvantage in the product.

stagnation of Euro-Mediterranean negotiation on the regional track.

Multilateral Level Negotiations

Under the framework of the WTO, services negotiations were conducted during the Uruguay Round, in which the General Agreement on Trade in Services (GATS) entered into force in January 1995. All WTO Members were signatories to the GATS.

Egypt, as a WTO member, submitted its original schedule of commitments under GATS at the end of the Uruguay round in 1995. These commitments were undertaken in 4 sectors out of a total of 12 sectors under the GATS framework. Egypt undertook another unilateral commitment in the field of telecommunications in 2002¹⁰. The 4 sectors included construction and related engineering services, tourism and travel related services, financial services- in which Egypt submitted additional commitments in 1997- and international maritime services. The 4 sectors comprised 44 sub-sectors out of a total of 160 sub-sectors identified under the GATS. Examples in the construction sector included: bridges, elevated highways, tunnels and subways ,waterways, harbours, dams and other water works, long- distance pipelines, communication and power lines (cables), construction for mining and manufacturing. Examples of the tourism sector included: hotels and other commercial accommodations, restaurants, bars and canteens. Examples in the financial sector included: insurance and insurance related, banking, capital markets. Commitments in the Maritime sector included: passenger transportation, freight transportation, and port dredging.

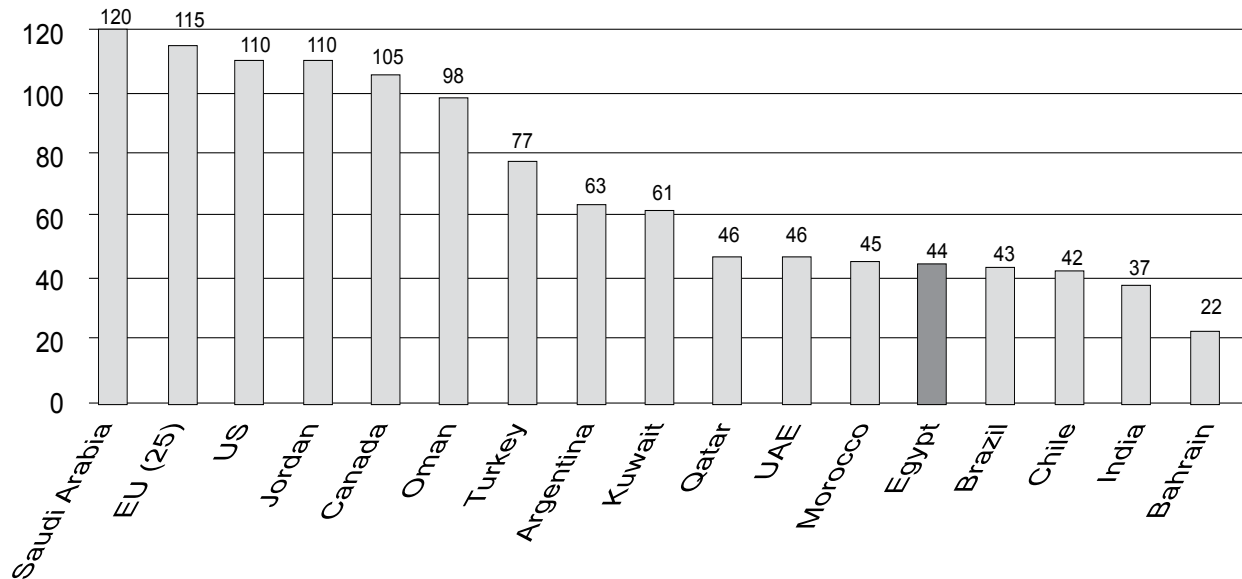
The extent of liberalization under GATS varied substantially among the different sub-sectors ranging from full liberalization with no restrictions in the case of capital market services to extremely modest liberalization in the case of maritime services.

Overall, Egypt's commitments to liberalize trade in services have been limited compared to the current levels of openness in the domestic markets and compared to the commitments by majority

¹⁰ In the case of telecommunications and banking sectors, an efficient regulatory infrastructure was established following Telecommunications Law 10 of 2003 and Banking Law 88 of 2003. Such unilateral reforms, which included a strong liberal dimension did not contradict with GATS commitments, they rather emphasized them in a more coherent manner, which has been the case of the banking sector for example. Moreover, in some sectors, the Egyptian government modified its GATS schedule to reflect its unilateral liberalization steps and domestic reform, which has been the case, for example, of the joint venture banks that were limited to 49% foreign capital and has been modified afterwards by eliminating this condition.

of other Arab countries members of the WTO. Egypt's number of commitments is less than that of other Arab countries, such as Jordan, Saudi Arabia, Morocco and Qatar (as shown in Figure No.1). Moreover, in some of the liberalized sectors, Egypt's commitments were just a reflection of the current status, which has been the case of the banking sector, construction and tourism, while in other cases the commitments were less than the level of practiced openness. For instance, Egypt's schedule of commitments does not include any commitment in the education, business, and health sectors, while foreign providers have been permitted and engaged in delivering some of these services in the Egyptian market. This reluctance to commit liberalizing these sectors can partially be explained by the lack of the quantitative analysis for the measurement of economic and social impacts of such commitments. The shortage of this kind of analysis is the main challenge facing the negotiations for trade in services liberalization at all levels.

**Figure No.1: GATS Commitments
Egypt compared with other WTO members**



Source: WTO

The relation between liberalization of Egyptian services sectors and their progress is not clear.

However liberalization of trade in some specific services sectors, such as telecommunication, tourism, and insurance sectors, were accompanied with development of the sectors. Official data shows that during the period 2003/04- 2007/ 08, the average growth rate of the gross domestic output in telecommunication sector was 20%, which is the highest growth rates in comparison to all other productive sectors during the same period. This high growth rate in telecommunication sector was a reflection of the improvement of the competitive advantage of the Egyptian telecommunication service. As shown in Table No.2, all listed liberalized sectors registered progress in terms of the gross domestic product, total investment, and number of employees. This progress was achieved before the global financial crises, which negatively affected the development in all Egyptian economic sectors.

Table No.2: The economic importance of some Egyptian liberalized sectors during 2000/01-2007/08

Sector	GDP (LE Billion)		Total Investment (LE Billion)		No. of employees (Thousands)	
	2000/01	2007/08	2000/01	2007/08	2000/01	2007/08
Telecommunication	5	27	3	13	108	160
Tourism	5	32	2	5	217	380
Insurance	9	31	23	131	55	77

Source: Ministry of Economic Development; various years

The second wave of liberalization in services after the Uruguay Round included different attempts. It is worth noting that Article XIX GATS commits WTO Members to enter into successive rounds of negotiations aimed at progressively liberalizing trade in services. These negotiations were planned to start after 5 years of the GATS' entry into force. Accordingly, under the Doha Round of negotiations, and July 2004 package that injected a new momentum into services' negotiations after the failure of the Cancun ministerial meeting, WTO members submitted 69 initial offers and a total of 30 countries submitted their revised offers in 2006.

Egypt submitted its conditional initial offer in December 2004, which included clarifications on Mode 4 commitments (movement of natural persons) and commitments in new sub-sectors such as construction services and technical refinements. The offer included as well elimination of economic needs test¹¹ in some sub-sectors under insurance and related sectors, and elimination of expired limitations in telecommunication services as well as insurance and related services.

As part of its revised offer in June 2005, Egypt submitted conditional revised offers in new sectors such as computer services, courier services and air transport services. Egypt also increased the level of liberalization by adding some new sub-sectors in construction services and insurance services. Although Egypt was one of the few WTO members that submitted both the initial and revised offers, none of these offers has been agreed upon or has been implemented, similar to the case of all other WTO members' offers.

The Hong Kong Declaration (2005) reaffirmed key principles and objectives of the services negotiations and called on members to intensify the negotiations in accordance with the objectives, approaches and timelines set out in Annex C of the Declaration, in an attempt to expand sectoral and modal coverage of commitments and to improve their quality, with particular attention to export interests of developing countries. The Ministerial Declaration also stated that least developing countries (LDCs) are not expected to undertake new commitments in this Round. The Annex also urged members to intensify their efforts to conclude the rule-making negotiations, develop disciplines on domestic regulations, and devise methods for the full and effective implementation of the Modalities for the Special Treatment of LDC Members. With respect to negotiating approaches, Annex C envisaged that the request-offer negotiations also be pursued on a plurilateral basis to expedite the services negotiations and provided guidelines for the conduct of these negotiations.

Under plurilateral negotiations, a group of members with a common interest make a joint request to individual members to improve specific commitments in a particular sector or mode of supply. Subsequently, they meet collectively with those countries, leaving each member to respond individually to the collective request.

11 It is a test that tries to establish whether there is an “economic need” for a particular supply of service in a specific mode of supply. Typically, economic needs tests are applied as conditions of a license or prior approval from the competent authority or regulatory body. All the WTO members used economic needs tests to regulate trade in some specific service sectors, although there is no general definition for economic needs test.

Since 2006, Egypt has been engaged in four rounds of the plurilateral negotiations, and received fourteen requests to fully liberalize certain sectors from different developed countries, including from Australia, Canada, the European Union, and United State as well as India as a developing country. Requests covered the telecommunication, computer, postal and courier, distribution, environment, energy, and construction sectors. Moreover, Egypt was one of the co-sponsors of the plurilateral request prepared by a number of developing including India in order to fully liberalize Mode 4 (temporary movement of natural persons). It is worth noting that such an approach to negotiations could facilitate lobbying in the negotiations' process and increase the pressures on members to improve market access conditions, which could be in favor of developed countries.

While continuing with bilateral encounters on a parallel track, the Chair of the Trade Negotiations Committee (TNC) convened a “signaling conference” for interested ministers, at the request of WTO members. This was part of the “July 2008” package. The signaling conference was held among thirty of the WTO’s members including Egypt. The conference provided members with the opportunity to exchange indications on their own new and improved commitments as well as the contributions expected from others. Participating ministers indicated how their governments’ current services offers might be improved in response to the requests they had received. The signals were not intended to represent the final outcome of the services negotiations but enabled members to assess the progress made in the request-offer negotiations while preparing new schedules for submission.

Despite all these trails to expedite negotiations of services liberalization on the multilateral level and move towards the conclusion of the services negotiations, no actual progress has been achieved after the Uruguay round. However, the GATS and related negotiations successfully introduced both the rules and the principles for services liberalization, which have been followed in all similar negotiations at bilateral and regional levels.

Regional Level Negotiations

Egypt has entered into three regional agreements to liberalize trade in services, namely within the framework of the Pan Arab Free Trade Agreement (PAFTA), the Euro-Mediterranean negotiations, and the negotiations among the COMESA countries.

In the year 2000, the framework agreement on liberalizing trade in services among Arab countries

was proposed by the Government of Lebanon. In 2003, Egypt with a number of PAFTA members, agreed to enter into a regional agreement on liberalizing trade in services on the basis of a GATS-plus approach. The first round of negotiations at the regional level started in 2004, but no concrete agreements have been reached. Since then, four meetings of negotiations were held involving PAFTA member states, in which they exchanged requests.

The requests submitted by Egypt to Arab countries focused on liberalizing professional, construction, financial, telecommunication, audio-visual, computer, tourism and transport services, as well as the request to allow for the movement of temporary workers between Egypt and the Arab countries and to abolish the requirement of bail and the Agency. On the other hand, Arab countries' requests to Egypt focused on liberalizing health, education, and financial services, in addition to adopting further liberalized measures for movement of natural persons and identifying categories of employment to be allowed to have access to the Egyptian market. Moreover, they requested that Egypt would provide additional commitments in all service sectors, which have not yet been approved.

It is worth noting that Egypt, Jordan, Lebanon and the United Arab Emirates, Kuwait, Qatar, Oman, and Bahrain have all submitted revised offers in several services sectors, including insurance, financial services, construction, legal services, consulting engineering and architectural services. Egypt and Jordan have further submitted sectoral initiatives intended for discussion to liberalize education, communications, and computer services sectors.

Under the framework of the Barcelona Process (1995), the regional Euro-Mediterranean Negotiations on liberalization of trade in services and right of establishment began in July 2006. It followed two ministerial declarations (Istanbul 2004 and Marrakech 2006). The aim has been to promote further liberalization of trade in services on the basis of a GATS-plus approach and positive-list approach¹², towards establishing a regional agreement that provides preferential treatment to signatory members.

Until December 2009, six rounds of regional negotiations have been conducted in Brussels to discuss the general provisions while the negotiations of the detailed commitments were to be discussed bilaterally. However, until 2010, the European Union and the Mediterranean countries have not achieved tangible progress on the regional-level negotiations and there was no approved final document of general provisions.

¹² Positive approach, which means services sectors are not liberalized except if listed in the schedule of commitments.

Moreover, negotiations on the liberalization of trade in services are currently taking place within the framework of COMESA countries. The COMESA secretariat has drafted a regional agreement proposal to liberalize trade in services between the Member States. Currently, COMESA countries - including Egypt- are discussing the general provisions of the draft agreement, but there has not been yet any reference to liberalize specific service sectors.

Bilateral Level Negotiations¹³

Since 2008, the Egyptian government started its bilateral negotiations for trade liberalization in services with the EU, following the Egyptian–European Association Agreement Article XXX and based on Egypt’s Neighborhood policy action plan that had been adopted since 2007.

Bilateral negotiations were launched with the aim of making a breakthrough in the Euro-Mediterranean regional negotiations. Two rounds of negotiations have taken place and two video conferences were held until the end of 2009 to discuss the state of play of the negotiations and the steps to move forward and accelerate the negotiations that have been stagnated on the regional level. There are still unresolved issues between the two parties that will be tackled in the next section of this paper.

A third round was expected to take place by the end of 2009, however the European Commission services team needed to reassess the bilateral negotiations and consider the proposals presented by Egypt. Since then (up until the time of finalizing the paper), the Egyptian side has not received any request from the European side to set a new date for the third round of bilateral negotiations.

13 The Egyptian previous government declared its tendency towards negotiating trade liberalization in services with both the Gulf Cooperation Council and Singapore, which have not been completed. In 2005, the Egyptian government started these negotiations with the United States as part of the preparations for Egyptian-American Free Trade Area, which has been frozen since December of the same year.

III- Services and investment in the CARIFORUM-EU Economic Partnership Agreement (EPA) and the protocol of the liberalization of trade in services and establishment between the EU and Egypt; a comparative analysis

In Marrakech (2006), the Euro-Mediterranean trade ministers agreed on negotiating liberalization of trade in services based on the Istanbul Protocol of the year 2004 to guide the negotiation. In its negotiations with Egypt and other Mediterranean countries, the EU adopts the same approach applied in its new generation FTAs, which are comprehensive in nature and extend market-opening ambition to the international commerce in services, investment and government procurement.

The objective of this section is to investigate the main features of title two of the CARIFORUM-EU EPA, on investment, trade in services and e-commerce, which follows a template designed to serve the EU's Global Europe Strategy and reflect asymmetry in favor of the EU in terms of negotiating power. Therefore, the EU refused to consider any other alternative text in its negotiations with the Mediterranean states, including Egypt.

However, the Egyptian- EU negotiations that started in 2008 have passed through different rounds, leading to different versions of the services protocol. Egypt proposed various amendments to some provisions, some of which have been integrated within the last version, while others are waiting for the EU's reply.

Given this context, the section will tackle the last Egyptian-EU proposed agreement in comparison to the CARIFORUM-EU agreement, and discuss the following main elements: (1) the objective, (2) the scope and the coverage of the agreement, (3) the liberalization approach and modality, (4) the structure and the schedule of commitments, (5) the four core provisions, (6) mode four, and (7) others provisions.

1- The objective:

Almost there is the same objective in both agreements, which is reaffirming the partners' commitments under the WTO agreement and facilitating the regional integration of the CARIFORUM states and Egypt's economy into the European and the world economy.

In this regards, the CARIFORUM–EU agreement notes “progressive, reciprocal and asymmetrical

liberalization of investment in services and non-services sectors and trade in services, and cooperation on e-commerce”. On the other hand, the Egyptian-EU proposed agreement emphasizes on further integration of cross border supply of services, establishment, and temporary movement of natural persons for business purposes.

The CARIFORUM-EU EPA ignores in its implementation the interpretation of the mandatory development flexibilities in Article V GATS. The resulting increase in commitments by CARIFORUM states over their GATS 1994 schedules and GATS 2000 offers is grossly disproportionate in comparison to new commitments made by the EU in the EPA (Jane Kelsey, 2010). However, the Egyptian side stresses that the forthcoming negotiations and the agreed agreement should take into account the developing gap between the Mediterranean parties and the European Union. Hence, the Egyptian government insists on its right to be granted asymmetric liberalization of trade in services, special and differential (S&D) treatment and technical assistance, in full conformity with WTO rules and in particular GATS Article V.

2- The scope and the coverage of the agreement

In both agreements, the CARIFORUM- EU EPA and the Egyptian text under negotiations, the scope of liberalization include trade in services and investment, in addition to the right of establishment as well as cooperation on e-commerce in the latter. The coverage excludes (1) activities carried out in the exercise of government authority, (2) subsidies on services granted by the two partners, and (3) measures affecting natural persons seeking access to the employment market of the two partners, including measures regarding citizenship, residence or employment on a permanent basis. However it is not yet clear whether subsidies’ exclusion extends to other forms of financial support, such as preferential lending, access to public land, and in-kind support. In addition, procurement of services by governmental agencies, which has been excluded from the CARIFORUM-EU EPA, is included in the Egyptian-EU proposed agreement in the form of an annex for specific commitments in the area of government procurements. Accordingly, negotiations may extend to cover the laws, regulations, or requirements governing government procurement. Nevertheless, in its negotiating position in this regard, Egypt requests to limit negotiations to the scope of Article XIII GATS, which only covers transparency. Egypt asks for keeping specific commitments under the government procurement annex on a voluntary basis, while the EC retain its position to go beyond transparency in government procurement.

Regarding subsidies, and because of the debate of the inclusion of subsidies and the development gap between Egypt and the EU, Egypt suggested having a working group from both parties in order to exchange information concerning subsidies related to trade in services and establishment that they provide to their domestic service suppliers and investors. The parties shall on the basis of such exercise endeavor to avoid implementation of subsidies with trade-distortive effects. In addition, the parties would recognize the role of subsidies in relation to the development programs of Egypt.

One of the main legal risks of CARIFORUM-EU EPA is the stress on policy space, especially that all levels of government are bound. The GATS agreement requires national governments to take reasonable steps to ensure compliance by their provincial and local governments and delegated authorities. The EPA removes that limited flexibility. The obligations of Title II of the CARIFORUM-EU EPA apply equally to all levels of government – national, provincial, municipal and delegated authorities.

As with the GATS, the EPA asserts that governments retain the right to regulate. This reassurance is deceptive, as the purpose of the general rules under Title II and schedules of sectoral commitments is to restrict the ways in which governments are permitted to regulate services, investments, and labor mobility, as will be showed latter. Moreover, the EPA goes further than the GATS by recognizing the right to regulate for ‘legitimate objectives’ without precisely defining what that means. This raises the potential for disputes if the EU considers that a CARIFORUM state exercises its powers to regulate in pursuit of ‘illegitimate objectives’. This explains the Egyptian insistence on reserving a broader right to regulate for national interest.

3- The liberalization approach and modality

Both the CARIFORUM-EU EPA and the Egyptian- EU proposed agreement included a positive approach and negative approach to negotiations at the same time. Accordingly, each partner has the right to choose the sectors to list for binding commitments. The EU chose to exclude three specific sectors from both commercial presence and cross border coverage, including: audio-visual services, national maritime, and national and international air transport services with the exception of aircraft repair maintenance, computer reservation system services, the selling and marketing of air transport service, and other ancillary services that facilitate the operation of air carrier, such as ground handling

services. In addition, the EU excluded mining, manufacturing of nuclear material, production of or trade of arms and war materials from the commercial presence coverage. Coupling the two approaches from the EU side theoretically gives the same right to the other partner, to exclude some sectors from the negotiations.

The progressive liberalization approach in the EPA agreement commits the Parties to enter into future consecutive negotiation rounds on investment and trade in services, with a view to enhance the commitments made under this Title of the agreement. However, the EU clarifies progressive liberalization in Egyptian negotiation by defining it as a phasing out timeframe to fully liberalize trade in different services sectors. The expected timeframe for progressive liberalization of services and non-services is expected to be determined within each party's schedule of commitment.

4- The agreement's structure

Egypt suggests maintaining the GATS classification of modes of supply in the negotiations. However, the EU introduced a new structure different from the one used under GATS, and which includes three modes of supply of trade in services instead of the four modes utilized under GATS. The three modes include: Commercial Presence or Right of Establishment that includes both services and non-services sectors, Cross Border Supply of Services coupling both Mode One and Mode Two used under GATS as a unified category, and the Temporary Presence Of Natural Persons For Business Purposes. This structure may cause confusion, because of the blurred boundaries between Mode One and Mode Two.

One of the main challenges facing the EPA structure is the inconsistent scheduling and the complex interpretation of these schedules. As each state's commitments are expressed through an extremely complex matrix of schedules, it is recommended that the two parties use the same structure during Egypt-EU negotiations. Yet, the parties are not required to follow a specific format. The EU has formulated four schedules that match its template. These cover 1) commercial presence, 2) cross-border supply, 3) movement of key personnel and 4) movement of contractual services suppliers and independent professionals. The CARIFORUM states used only two schedules that are configured in a totally different way from the EU, including 1) a collation and extension of the GATS schedules of each state in all four modes of supplying a service and 2) a schedule for non-services investments. The former follows a positive list, while the latter effectively takes a negative list approach to five

economic activities, constraining the CARIFORUM states' regulatory capacities of commercial presence and any associated regulatory disciplines for all the activities that fall under the International Standard Industrial Classification (ISIC), unless the schedule indicates otherwise.

In addition, both the EPA and the Egyptian-EU proposed protocol deals with each of the three modes of providing services in a separate chapter. Each chapter has its own coverage, definitions and core provisions. This duplication adds to the complexity and uncertainty of the agreement. Instead, for simplicity, the agreement may include one article that defines the coverage of the agreement, another one for the definitions, in addition to the core provision articles that should apply to all modes of supply.

5- The four core provisions

Both the chapter on commercial presence and cross border supply of services include the same core provisions on national treatment, market access, covering the same GATS' permitted measures and limitations and most favored nation treatment (MFN) provisions. However, all of these provisions are not mentioned when the agreement deals with temporary presence of natural persons for business, which reveals the asymmetries of commitments and of labor mobility as one of the main feature of this agreement (South Center, 2010).

In regard to the MFN clause in both the EPA and Egypt-EU proposed protocol, it can be characterized as an asymmetrical provision with unpredictable and unlimited multiplier effects. The MFN provision states that whenever the EU offers better treatment to services providers of another country, this treatment will automatically extend to CARIFORUM services or Egypt. On the other hand, CARIFORUM countries or Egypt have to do so only where they conclude trade agreements with major trading economies. Major trading economies stand for any developed country under the EPA. However, in the Egypt-EU proposed agreement, it is considered to stand for industrialized countries or any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement, or any group of countries acting individually, collectively, or through an economic integration agreement and accounting collectively for a share of world merchandise exports above one and a half percent in the year before the entry into force of the economic integration agreement. The exemptions to the MFN rule are envisaged in

situations where a party concludes a regional economic integration agreement creating an internal market or requiring parties to significantly approximate their legislation with a view to removing non-discriminatory obstacles to commercial presence and to trade in services. According to this provision, both CARIFORUM states and Egypt will automatically receive any better treatment only on commercial presence and cross border supply of services that the EU gives to any other country or region through an EPA or FTA. The MFN provision will entitle both CARIFORUM states and Egypt to new concessions that countries with more negotiation power can secure from the EU. However, new entitlements do not automatically equate to concrete commercial opportunities. Conversely, awareness of this MFN obligation might constrain the EU in its future negotiations with the third countries. At the same time, a CARIFORUM state or Egypt must give the EU any better treatment on commercial presence and cross border supply that it gives to other countries. That means that the EU can receive those additional benefits without making any reciprocal concessions to CARIFORUM states or Egypt, which again might constrain these countries in their future negotiations. This explanation of the MFN provision could minimize the Egyptian binding commitments to both PAFTA and COMESA negotiations. In this context, replacing industrialized countries by developed ones, as under EPA, which is determined on the basis of the definition and classification used in the United Nations, could ensure more flexibility in negotiating trade in services liberalization with Arab countries and COMESA- that are under negotiation- or with any other developing countries.

It is worth mentioning that the MFN obligation does not apply to labor mobility, which means that CAIRFORUM states and Egypt are not entitled to any more extensive concessions that the EU gives to other countries, such as India, on the key categories of contractual services suppliers and independent professionals.

Nevertheless, while the agreement offers MFN treatment with respect to any measure affecting cross-border supply of services and establishment, the agreement gives the Mediterranean partner countries the right of concluding an economic integration agreement in the context of the Euro-Mediterranean Partnership that does apply this treatment. By derogation from the MFN treatment, economic integration agreements concluded among Mediterranean partner countries may extend to services, service suppliers, establishments and investors of the Parties thereto treatment more favorable than that accorded to like services, service suppliers, establishments and investors of the EU and its Member States. This exception aims to contribute to fulfilling one of the main objectives of the agreement as previously discussed.

6- Mode four

The open-ended scope of mode 4 in the GATS is restricted in the EPA to six specific categories of personnel, as following: key personnel, graduate trainees, business service sellers, contractual services suppliers, independent professionals and short-term visitors for business purposes¹⁴. The EPA offers a privilege to executive personnel that are linked to foreign investments and intra-corporate transfers, while excluding lower skilled labor delinked from foreign companies and impose tight constraints on contractual services suppliers and independent professionals (Jane Kelsey, 2010)

In the proposal of the Egyptian- EU agreement, categories are restricted to the first five categories excluding the ‘short-term visitors for business purposes’, without any clarification for this exclusion from the European side. The CARIFORUM- EU EPA determines the period allowed for each category¹⁵. Yet, the extent to which additional commitments on contractual services suppliers and independent professionals are undertaken by both Egypt and the EU, as well as the conditions regarding qualification and work experience requirements, duration of stay and sectoral coverage, shall be determined in the course of future bilateral negotiations.

Given that mode four is very beneficial from the Egyptian prospective, it seems very important to expand the coverage of mode 4, to include natural persons working in local companies besides those working in foreign ones, and to include new categories, such as Independent Contractors, Recruited Workers and Other persons who are not otherwise classified under any of the foregoing categories, have a bona fide contract or contractual offer to supply services or to render work in respect of an economic activity requiring their presence on a temporary basis in the territory of the other Party.

Despite the aging challenge facing the majority of European states, Mode 4 is considered a sensitive issue to the EU. Accordingly, the EU considers those who fall under these new categories that have been proposed by the Egyptian side as seeking access the employment market, which are excluded from the agreement’s scope.

Each Party shall undertake specific additional commitments to ensure that the manner in which

14 With a view to carrying out some activities: research and design, marketing research, training seminars, trade fairs, sales, purchasing, and tourism personal, the stay will be for a period up to 90 days in any twelve month period.

15 This period range from up to three years for key personal and graduate trainees, for intra –corporate transfers, ninety days in any twelve month period for business visitors, and one year for graduate trainee.

measures to regulate the entry or temporary stay of natural persons in its territory do not nullify or impair benefits accruing to the other Party under the Agreement. In addition to facilitating the entry and temporary stay of natural persons, Egyptian negotiators insist on identifying a focal point in each Member State of the Community as a consultative mechanism between the two partners. This consultative mechanism shall work towards the implementation of regulatory measures that, inter alia, provide for streamlined procedures. This would include standardizing, to the extent possible, the procedural requirements for the granting of a visa or permit relating to the temporary movement of natural persons, including the standardization of timeframes in the processing of applications, ensuring transparency. Moreover, it would include undertaking information on all existing measures relating to visa and entry permit applications for the purpose of supplying a service or otherwise working on a temporary basis, and expedited verification of professional qualifications and equivalent competence of natural persons who have obtained a contract to supply services or render work in relation to an economic activity.

7- Others provisions

The stated objectives of both the EPA and Egyptian-EU agreement include various provisions of which is the progressive integration of services markets and cooperation provision. It is worth mentioning that the phrasing of these provisions reflects the EU methodology and preferences. Yet, the mentioned agreements ignore some other important provisions such as ‘Temporary Modification of Schedules’ and the ‘Accession of New EU Member States’. The inclusion of some provisions while excluding others that are of importance to negotiating parties is a reflection of the asymmetry of the agreement in favor of the EU.

The Review Article¹⁶, as established in the proposed protocol, reflects the asymmetry in commitments, since it applies only to commercial presence, with a view to the progressive liberalization of investments. According to this article, the Parties shall review the investment legal framework, the investment environment, and the flow of investments between them and its consistency with their commitments under international agreements. However, this provision ignores reviewing the provisions of the Protocol as a whole and the parties’ commitments, with a view to further deepening and broadening the scope of the agreement to reach its objectives.

¹⁶ The Review Article gives the right to both parties to review their commitments in the light of its implications.

The Review Article should be used as a tool to broaden and deepen the bilateral relations. In this regard the Article should allow parties to (1) evaluate the effectiveness of the agreement and the Parties' specific commitments in achieving the overall goals of the agreement, (2) assess progress achieved between the Parties, including between members States of the Community and Egypt, in ensuring that regulatory measures are undertaken to facilitate trade and to agree upon mutual recognition agreements as a means to facilitate the temporary movement of natural persons supplying services, (3) examine whether the conditions in either Party justify a modification of the time-frame for phasing in of specific commitments reflected in its Schedules, and (4) review the progress made in regulatory cooperation and make appropriate recommendations regarding the Parties' further cooperation in the sectors of mutual interest and benefit to the Parties.

The provision related to 'Progressive Integration of Services Markets', in line with the objectives of the Euro-Mediterranean Partnership and of the Neighborhood Policy of the European Union, establishes that the Parties shall identify priority service sectors that are covered by this Protocol and cooperate to ensure that the legislation of Egypt is progressively aligned, harmonized, or made fully compatible with that of the Community. Nevertheless, it was agreed to use the term "Approximation" instead of "Integration" in the title, and Egypt prefers to delete the reference to full compatibility. The recommended terminology is still under negotiations.

The provision related to 'Co-operation in Service Sectors', looks very soft in the Egyptian proposal and the CARIFORUM agreement. Both the CARIFORUM-EU EPA and the proposed agreement between Egypt and the EU reflect asymmetry between obligations to liberalize in certain sectors and the promises to cooperate in others. There is a stark contrast between the strong liberalization obligations and regulatory disciplines in sectors of commercial interest to the EU¹⁷ and the soft promises of cooperation in the sectors of interest to CARIFORUM states and Egypt.

In accordance with the objectives of the European Neighborhood Policy and with the Title on 'Economic Cooperation' of the Association Agreement between Egypt and the European Union and its Member States, the Parties are supposed to support and intensify co-operation aimed at promoting

17 Computer services, courier services, telecommunication services, financial services, international maritime transport services tourism and e-commerce in EPA, and computer services, postal and courier services, telecommunication services, financial services, international maritime transport services and E-Commerce in the Egyptian - EC Protocol.

the development, diversification, productivity and competitiveness of Egyptian service sectors, in line with the principles of sustainable development. In line with this, the Parties are expected to identify the sectors on which co-operation will concentrate and to focus on the means available for this purpose.

As noted before, there are some provisions of the agreement that lag behind the GATS rules. For example, the right to ‘Temporarily Modify the Schedules’ in the event of restructuring or experiencing serious difficulties by the partners in any committed sector, particularly where those difficulties entail severe social problems. The article should identify the permitted measures that can be used after consultation between the partners and the time frame for the abolition of the new limitations introduced pursuant to such Article.

Moreover, in regards to the Accession of New EU Member States, the EU is expected to provide Egypt with any relevant information during the negotiations the two, and the latter shall in turn convey their concerns to the community so that it can take them fully into account. Such consultation shall take into account the mutual interests of the parties and ensure that the specific commitments of the newly acceding Member State are consistent with the objectives of this Agreement, and in alignment with the Association Agreement Article 21. The rights and obligations established between the parties of the agreement shall not be enforceable as between the newly acceding Member State and Egypt until the parties have agreed to conclude such consultations. The parties shall review the effects of the accession of new EU Member States on this Agreement. As is the case with CARIFORM- EU EPA Article 247(3), the Association Council may decide on any transitional or amending measures that might be necessary.

Finally, to guarantee that the Egyptian-EU agreement is compatible with the GATS disciplines, the agreement should be linked to further achievements and developments of the on-going negotiations under the GATS. This includes potential progress under GATS in regards to domestic regulations and balance of payment difficulties, e-commerce, and subsidies. The final agreement is expected to include the GATS Articles that have not been covered in the agreement, including the articles tackling ‘Monopolies and Exclusive Service Suppliers’, ‘Business Practices’, ‘Emergency Safeguard Measures’, and ‘Consultation and Modifications of Schedules’.

IV- Prospects of Negotiations on Movement of Natural Persons

As noted above, Egypt has committed itself to liberalizing and integrating its services markets more closely with European Union Member States, in addition to the other regional and multilateral tracks.

From the Egyptian perspective, an important part of the negotiations deals with the cross-border mobility of persons for the purpose of supplying services; what is referred to as ‘Mode 4’ under GATS. This section will investigate Egypt’s prospects for deeper integration with the EU through the movement of natural persons and the lessons to be learned from European experiences with other countries.

The temporary movement of persons for work is one of the key aspects in negotiations of trade in services. Significant number of government officials point that that Egypt could be a natural source for labor supply to Europe due to its geographic proximity, demographic patterns, and labor market characteristics.

Rapid demographic transformation¹⁸ in the EU Member States will create significant pressures on both the European Member States’ labor markets and social welfare programs (World Bank, 2009). While Egypt, on the other hand, has an excess supply of both skilled and semi-skilled workers that would easily satisfy the demands created by the EU labor-market shortages in the medium term. Therefore, liberalizing trade in services particularly through temporary schemes that allow Egyptian workers to work on short-term projects in the EU could potentially enable the latter to meet its prospective labor shortages, while at the same time relieving the excess labor supply pressures that exist in Egypt.

Accordingly, from the Egyptian official point of view, negotiations of trade in services under the ENP represents a unique opportunity for the Egyptian Government to attain provisions for temporary labor movement arrangements, as a way to mitigate the unemployment problem it faces. However, the European perspective resists such perspective given the struggle of a large number of EU Member States with high unemployment rates in particularly after the global financial crisis since 2008, and due to other social and security considerations.

18 Current demographic trends suggest that the EU will face labor shortages. According to the UN forecasts the population in Europe is expected to decline by around 75 million by 2050. The size of the age group between 15 and 59 will decline by 0.7 percent annually during this period while the 60+ age group will increase by 0.9 percent per year. The dependency ratio will increase from 46.5 to 74.2 and the elderly will form 65 percent of the dependents up from 50 percent currently.

Given the contentious nature of the subject, any agreement in this regard is expected to address the primary concern of EU policy makers in regards to ensuring that temporary movement of workers is indeed temporary. Although ensuring the temporary nature of labor movements can be challenging, there are a range of measures that are available to policy makers in host and source countries that would significantly increase the likelihood of migrants' return. So the Egyptian government should work on such measures to facilitate the movement of people, through planned, safe, and lawful channels.

Reviewing the chapter on 'Mode 4' under several European agreements on trade in services shows that the EU is very cautious in granting access to their labor markets. Despite the apparent labor demand, it is unlikely that the EU will make any meaningful concessions on Mode 4. The EU has concluded several agreements containing provisions on movement of persons, including workers, with neighboring countries over the past decades. Of these, only accession treaties (mainly with Eastern European countries) include firm commitments by the EU to allow movement of workers to the EU, albeit with some safeguards.

Even then, several member countries (such as Germany) put restrictions on the movement of workers from new members (such as Poland) in the accession treaties. The EU's agreements with developing countries, mainly under the ENP, do not provide any mechanisms for any substantial movement of workers between these countries and the EU. The EU has concluded Association Agreements with seven countries in the Mediterranean region, including Algeria, Egypt, Israel, Jordan, Lebanon, Morocco and Tunisia. All of these agreements, and the resulting Action Plans, cover movement of persons in a general context. None offer prospects for economically significant temporary workers' movement.

Agreements on Mode 4 rarely exceed the provisions in GATS. EU agreements that contain provisions on labor movement can be grouped into two broad categories: agreements that offer full, or prospects of full, mobility of labor (e.g. the European Community Treaty and the EU agreements with EFTA), and agreements that use the GATS model. Of the agreements that use the GATS-model, some simply reaffirm GATS commitments without any additional commitments, while others include additional elements to GATS (known as GATS-plus) and cover more sectors than what the EU has committed to under GATS.

Currently the EU has three GATS-plus free trade agreements; the EU-Mexico Free Trade Agreement, the EU-Chile Free Trade Agreement, and the EU-CARIFORUM Economic Partnership Agreement. The EU also concluded several GATS-like pacts under the Euro-Med Association Agreements in the late 1990s and early 2000s. It is also currently negotiating broad free trade agreements that cover services with Egypt, Israel, Morocco and Tunisia.

The EU's agreements that use the GATS model cover temporary labor movement only with relation to services. These pacts do not impinge on the rights of individual EU Member States to regulate entry and temporary stay of workers provided that their measures do not nullify or impair specific commitments undertaken by the EU in bilateral or multilateral agreements. Although the latter condition provides some assurance that national regulations would not be used to undermine agreements on labor mobility, in practice EU Member States maintain full discretion to grant or refuse visas for workers.

Among the EU GATS-like agreements, the Euro-Mediterranean Association Agreements reaffirm existing GATS commitments and provide for future dialogue on services liberalization including on Mode 4 and on labor movement in general (not just in connection with services). But the EU-Mexico, EU-Chile and the most recent EU agreement with the CARIFORUM states go beyond GATS and have more substantive and detailed provisions on labor mobility.

The EU-CARIFORUM EPA could be a model for Egypt. The EU-CARIFORUM EPA agreement illustrates a new approach by the EU to labor mobility and bilateral services liberalization in general. It is very likely that the Agreement will guide future EU negotiations on labor mobility with other developing countries and define the negotiating space for developing countries seeking arrangements on labor movement with the Union.

In general, the EU-CARIFORUM EPA provides for the broadest coverage yet of movement of natural persons as compared to any other agreement between the EU and developing countries. It opens a larger number of services sub-sectors to contractual service suppliers and specifies treatment of independent professionals. It also goes beyond the GATS in facilitating movement of intra-corporate transferees and graduate trainees in non-service sectors.

Yet, the overall degree of liberalization of labor movement offered by the agreement appears limited once one considers the various conditions applied and the reservations inscribed by EU Members in

the Agreement. Moreover, lack of measures that support labor mobility such as mutual recognition of academic and professional qualifications undermines the overall labor mobility offered by the agreement.

Such supportive measures look very important for Egyptian - European negotiations, since Egypt's labor force might formally meet the requirements for jobs in European markets but might practically not qualify for it. Deeper analysis in the development literature has highlighted deficiencies with regard to the quality of education in Egypt. Therefore, investments in improving the quality of education and vocational training in Egypt could stimulate Egyptian trade in services via Mode 4, taking into consideration the demographic trends in European Member States that reflect an overtime shift in occupational needs within the EU. While currently the preferred education level appears to be intermediate, there will be a higher demand for workers with higher educational levels and vocational training (World Bank, 2009).

As previously mentioned, another important factor that might affect the Egyptian trade in services is the mutual recognition of educational and professional degrees and qualifications. This is an area in which Egypt could benefit through cooperation with the EU on standards and harmonization.

Finally, as shown from the experiences of other countries, bilateral labor agreements (BLAs)- and not agreements on liberalizing trade in services- could be more successful in providing better access for the Egyptian workers to EU Member States. Egypt might therefore explore BLAs as an alternative to facilitate temporary labor movements. However, increasing the efficiency of services sectors should be the purpose of liberalizing trade in services instead of just increasing the number of Egyptian workers in EU markets.

While BLA's usually cover provisions on permanent migration, there are several aspects within such agreements that are very relevant for 'Mode 4' type of labor movement. They can, for instance, include agreements that concern seasonal workers, contract or project linked workers, and guest worker agreements as well as trainee agreements.

Egypt has concluded BLA's with two major European destination countries, Italy and Greece. These arrangements are limited in scope and it is unclear whether they have helped to increase and regulate migration to these two countries. As a first step, Egypt could deepen the agreements concluded with

Eastern European countries as well as with Tunisia in line with the agreements with Italy and Greece, which include arrangements for seasonal employment. Possibilities should then be explored with other partners. Increasingly Eastern European countries (e.g. Poland) face labor shortages and could be prospective partners for Egypt.

Still, BLA's have their limitations. They are often more politically than economically motivated. Moreover, BLAs are too general in nature and often remain un-implemented. The most successful BLAs are those that concretely address the demand for specific professionals in the destination country. Yet, negotiating BLAs can be a lengthy, time-consuming, and costly process.

Overall, the timing of 'Mode 4' discussions with the EU is currently not in favor of Egypt. Against the background of the global recession and the increase in unemployment rates in Europe, the already existing negative perception on the impact of migration on labor markets is heightened among the European population. Hence, reaching a consensus among all EU member states on more liberal arrangements on access to labor markets, even in restricted 'Mode 4' context, is politically difficult.

V- Concluding remarks and policy recommendations

Services sectors play a vital role in Egypt's economy in terms of GDP, trade, and employment. In addition, the Egyptian Government is engaged in negotiating the liberalization of trade in services on different tracks. All regional and bilateral initiatives should interact with the multilateral and unilateral waves of liberalization. Liberalizing trade in services must focus on developing and upgrading the efficiency of the services sectors. Indeed, efficient services provide direct benefits to downstream users and to a large extent shape overall economic performance (Ghoniem, 2009). It contributes to developing the accessibility, the availability, as well as the quality of different services in the domestic market. Finally, liberalizing trade in services could promote trade with Egypt's main trading partners.

However, Egypt is confronted with the challenges of crafting negotiation strategies for different services sectors. In this regard, the following are some suggestions for the Egyptian government to facilitate negotiating liberalizing trade in services and crafting the liberalization offer in a way that satisfies the Egyptian Government's objectives;

First: Establishing a services coalition, where the involvement of relevant stakeholders- including

producers of the services itself, downstream users and consumers- is crucial. This coalition would help design the Egyptian request to facilitate the entry of the Egyptian services providers to foreign markets and would define the restrictions that Egypt would like to repeal.

Second: Establishing a formal ministerial committee that includes senior level representatives from relevant ministries to facilitate the negotiations and to craft the official strategy, while ensuring the consistency among all bilateral, regional and multilateral negotiations.

Third: Facilitating continuous bilateral dialogue between the proposed coalition and the ministerial committee, in order to adopt a clear methodology for liberalizing trade in services and to create a unified and coherent national liberalization strategy. One of the main concerns that need to be taken into consideration while tailoring this strategy is the different interests or preferences among the Egyptian side and the partners across various regional agreements.

Fourth: Tailoring the Egyptian liberalization offer could consider the following priorities:

- **Sectors with status-quo liberalization**; in which there are foreign suppliers of the service operating in the Egyptian market. Offering these sectors with the possibility of maintaining current limitations, if there are any national treatment or market access limitations according to the GATS definition. In this case, introducing international commitments in actual liberalized sectors is not expected to add new burdens on the Egyptian economy.
- **Sectors experiencing shortage and deficiency in domestic supply**, such as packaging, transportation, marketing, advertising services, accounting and auditing services, legal services and vocational training. These sectors are required for the Egyptian economy in order to raise production efficiency and competitiveness.
- **Technology intensive- sectors**, such as research and development services, analysis and technical testing, maintenance of machinery and equipment services, health services, as well as environmental services and energy. Liberalizing trade in these services under specific conditions could contribute to transferring technology and increasing the domestic capacity.
- **In addition to sectors that provide intermediate inputs** to the rest of the economy, including backbone sectors, such as financial and telecommunication sectors. (Ghoniem, 2009).

It is worth emphasizing that the liberalization attempts should be preceded or coupled with regulatory reform to ensure the positive outcome of liberalization. Unless regulatory reform is undertaken domestically, liberalization can threaten the efficient economic and social goals targeted essentially from the liberalization process. Furthermore, liberalization can be made gradually in stage with the enhancement of competition and lack of discrimination against foreign suppliers (Ghoniem, 2009).

Furthermore, The EU-CARIFORUM EPA, as discussed above, could provide several lessons learned for Egypt. It is very likely that the Agreement will guide future EU negotiations on labor mobility with other developing countries. Yet, the overall degree of liberalization of labor movement offered by the agreement appears limited once one considers the various reservations inscribed by EU members in the Agreement and the lack of measures that support labor mobility such as mutual recognition of academic and professional qualifications, on which the Egyptian government should emphasize in its negotiations.

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Arab Countries Acceding to the WTO; Challenges under the GATS and Developmental Dimensions

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(Finalized in 2011)

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Most of the countries that were not original members of World Trade Organization (WTO, 1995) have considered applying for accession to the organization or are considering that in the future. Most of these countries are developing or least developing countries whose foreign exchange earnings depend on few exports of primary commodities and/or very limited service sectors. This group of countries has no immediate benefits from joining WTO, but may be considering their long-term interests. Some may consider that WTO membership will improve their credentials to attract national and foreign investment aiming to improve their production and exports.

Basics of the Accession Process:

The Marrakesh Agreement establishing the WTO recognizes that any state or customs territory that have full autonomy in the conduct of its trade policies may become (upon request) a member of WTO.

The first step in the process of becoming a Member of the WTO is for the applicant government to send a communication to the Director-General of the WTO. This must state that the applicant wishes to accede under Article XII. The General Council considers the request and establishes a Working Party mandated to examine the application and to report back with recommendations, which may include a draft Protocol of Accession. Membership of the Working Party is open to all interested WTO members. In the great majority of cases, Working Parties are set up rapidly.

Once the Working Party is established, the applicant government becomes observer to the General Council with rights and obligations, including the obligation to pay a financial contribution. All matters relevant to an accession are considered within the Working Party. The General Council is not usually called upon to consider such matters until it receives the final Report of the Working Party, which also concludes the Working Party mandate. Members must agree on the terms of

accession case by case, including the level of tariffs bindings in the case of goods and schedules of commitments in the case of services.

The acceding countries have to accept all trade agreements under the WTO as a ‘Single Undertaking’ package, including the General Agreement on Trade in Services (GATS). Negotiations on services are undertaken after members of the Working Party have examined the services regime based on the information submitted in the document “Basic factual information WT/ACC/1” and “Information on Policy Measures affecting Trade in Services WT/ACC/5”, and in the written replies raised by Working Party members around the acceding country’s trade policy.

Many acceding countries, especially least developing countries (LDCs), have found it difficult to supply all information requested in above-mentioned documents, mainly because most countries have no clear policy on trade in services. Some of the Accession Working Parties may request the provision of an initial offer on services at the first stages of the negotiations, which is also a difficult task in the beginning of the negotiations.

Initial offers on services follow the same standard format as all schedules of commitments to the GATS. Whenever the offer is ready, bilateral negotiations proceed. Bilateral meetings are often scheduled around meetings of the accession Working Parties. Members ask the applicants to improve the scope and quality of their offer in the sectors of interest to them. The initial offers are inevitably revised in the course of the negotiations.

The GATS agreement contains two main parts;

- General rules that apply to all members, which contain some flexibilities for developing countries and LDCs, as per the text of the agreement and related decisions and arrangements.
- Specific commitments that are specific to each member country. They include sectors and sub-sectors that countries commit to open to foreign providers, and related conditions of market access and national treatment. These are established in the annexed Schedules.

The accession negotiations focus on the specific commitments of countries under GATS, and the implementation of the rules, including the special and differential treatment (SDT). The trade partners would like to see as much as possible open sectors and sub-sectors for their market access with no

conditions or at least relaxed conditions. Countries seeking accession seek to defend their offers reflecting their national policy and interests. In such negotiations the big economic powers could often exercise their political pressure.

Nepal and Cambodia were the first two LDCs that acceded to the WTO (2004) post 1995. During writing this paper, a third LDC- Vanuatu- was in the final stage of its accession (May 2011). The challenges facing LDCs in joining WTO are not only confined to their commitments (general and specific ones), but also include the very limited capacity of these countries to benefit from the opportunities of market access, in both goods and services.

WTO Members recognize these challenges. The WTO General Council has tackled these challenges and has issued the Decision of 10 December 2002 entitled “*The Guidelines for Accession of Least Developed Countries*”. Moreover, the WTO agreements, including GATS, have some provisions for flexibilities and SDT for developing countries and LDCs. The Eight WTO Ministerial Conference (Geneva 15 – 17 December 2011) approved two decisions related to LDCs’ accession. The decisions include one on the preferential treatment for services and services suppliers of LDCs (WT/L/847), and a decision (WT/L/846) that instructed the Sub-Committee on LDCs to complete the work on transparency in the accession negotiations, the request for additional transition periods, and enhanced technical assistance for LDCs with the aim of making recommendations to the General Council no later than July 2012².

More than 30 countries (developing and LDCs) are in process of joining the WTO. This paper aims to put in hands of officials and negotiators from developing countries and LDCs an overview of the tolls involved in the negotiations of trade in services. The paper analyzes the outcome of specific commitments undertaken by LDCs under GATS, assesses the implementation of flexibilities and SDT in the case of this group of countries, and highlights lessons learned from their experience.

2 During July 2012, the WTO General Council was scheduled to consider the proposition to adopt additional least developed countries (LDC) accession guidelines (an ‘Addendum’). The final decision on the Addendum was still pending at the time of publishing this Article. More information can be found on the WTO website www.wto.org.

I. The GATS Preamble, Articles IV and XIX, and other Articles with Special and Differential Treatment for Developing Countries

The GATS Preamble contains six points including (i) the background to consider GATS necessary for the growth and development of the world economy (ii) the general objectives and purposes of the Agreement (iii) objectives of progressive liberalization (iv) the right of Members to regulate and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives (v) the increasing participation of developing countries in trade in services and (vi) the special needs of developing countries and LDCs and the development objectives of GATS.

Most the legal experts consider that the legal significance of preambles under international law is limited. They do not establish any legal obligations, but serve as context for the purposes of treaty interpretation.

Article IV GATS on Increasing Participation of Developing Countries in Trade in Services provides a number of designed mechanisms to increase participation of developing countries in the international trade in services. It gives practical implementation to the preamble of the agreement in relation to facilitating the development of their services' exports through strengthening competitiveness and efficiency of the national services sectors. Article IV GATS establishes provisions for (i) negotiating commitments with developed countries to facilitate their access to the service markets of the developed countries (ii) setting up contact points to provide services suppliers from developing countries with the information needed on service markets and (iii) giving special priority to the least-developed countries granting them the right to limit their commitments, in view of their particular needs and their weak economic situation.

While setting their commitments, developing countries could condition their commitments in market access and national treatment as per any of the objectives stated in Article IV, aiming to strengthen their domestic services capacity, efficiency, and competitiveness.

Yet, analysis of Article IV clarifies that the deferential treatment for developing countries and LDCs is in the hands of trade partners, specially the developed countries, as they have to decide on the outcome of the negotiations on specific commitments. In practice, this will depend on the willingness of the powerful members of the WTO to take into account the interests of LDCs.

Other provisions of the GATS, such as Article XIX GATS, recognize the cautious approach of LDCs when entering into liberalization commitments, and Article XXV grants “the right of LDCs for technical assistance through WTO-GATS Secretariat”. GATS annex on telecommunications address “the need for flexibility in the application of rules and disciplines for Developing Countries”.

Article XIX on Negotiation of Specific Commitments (Progressive Liberalization) clarifies aspects of the future negotiations on trade in service under the GATS indicating successive rounds of negotiation with view to promoting the interests of all participants and securing an overall balance of rights and obligations. The Article indicates that the process of liberalization respects national policy objectives. It also establishes for appropriate flexibility for individual LDCs, including opening fewer sectors in line with their development situation and attaching to such access conditions aimed at achieving objectives referred to in Article IV. The Article establishes the need of forf guidelines and procedures for every round of negotiations, such as the guidelines approved by the GATS Council in the year 2000. The Article establishes for assessments based on the objectives outlined in Article IV (1) GATS as well as the special treatment for LDCs under the provisions of Article IV (3) GATS.

Articles XVI GATS on market access and XVII GATS on national treatment establish the discipline of these conditions. The two articles allow Members to register in their schedules of commitments conditions in order to maximize the benefits of committing liberalization in services sector and in order to implement national economic goals.

According to Article XVI GATS on market access, the following measures on market access, among others, may be included;

- Conditions of transfer of technology by Foreign Service providers
- Limitation of foreign employee by adding this condition as percentage for limitation
- Joint- venture requirements, may be added as a percentage of foreign/local capital
- Training of national staff

As per Article XVII GATS on national treatment, countries negotiating GATS could inscribe conditions or qualifications that allow certain support to national providers through suitable measures

as per national policies. To be able to implement such measures, countries need to include them in their schedules of commitments; otherwise no conditions could be implemented.

Thus, the future negotiations under GATS are expected to proceed with a progressive outlook towards higher levels of liberalization. This implies a dynamic process by mandating the progressive improvement of the conditions that govern market access and national treatment, as well as addition of new sectors and sub-sectors to achieve the objectives as depicted in the Preamble of the agreement. This is supposed to be undertaken while taking into account the respect of member's national policy objectives, level of development, and ensuring appropriate flexibility for LDCs. The wording of the text allows developing countries to offer fewer specific commitments than developed countries.

The negotiations on Trade in Services (2000) were included in the Doha Work Program (2001). The Doha round was the first round of services negotiations in which members attempted to operationalize the requirements and conditions of Article XIX.

It is difficult to assess the impact of increasing the participation of developing countries and LDCs in the negotiations. The outcome in practice would depend on their negotiation capacity in drafting and defending their initial offers, and benefiting from the flexibilities of the agreement and its provisions. It also depends on the willingness of the developed countries to consider the particular needs and specific interests of the developing countries and LDC in the negotiations.

The temporary movement of persons (Mode 4) is a crucial subject for the export interest of many developing countries. The assessment of Mode 4 commitments in the last Report of the Chairman of Services Trade Negotiations Committee dated 21 April 2011 (TN/S/36) states that "Mode 4 commitments and offers continued to be insufficient. Much more work needed to be done to bridge the gaps and reach a satisfactory outcome... A positive outcome in Mode 4 was very important to achieve a balance in market access negotiations in services."

II. The modalities for special and differential treatment for LDCs in the negotiations of trade in services

As per the built-in Agenda in Trade in Service negotiations (started in the year 2000), the Guidelines and Procedures for the Market Access Negotiations on Trade in Services (S/L/93) were developed before Doha Ministerial Conference 2001. The Ministerial Conference held in Doha³ reaffirmed the Guidelines, which include several points on increasing participation of LDCs and addressing special and deferential treatment. In September 2003, the General Council of Trade in Services adopted (TN/S/13) “Modalities for the Special Treatment of Least-Developed Country Members in the Negotiations on Trade in Services”.

About the Guidelines and Procedures for the negotiations on Trade in Services (S/L/93):

The guidelines adopted by the Special Session of the Council for Trade in Services on 28 March 2001 includes the following main points related to developing countries and LDCs:

- The negotiations shall be conducted on the basis of progressive liberalisation as a means of promoting the economic growth of all trading partners and the development of developing countries, and recognizing the right of Members to regulate, and to introduce new regulations on the supply of services.
- The negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility for individual developing country Members, and special attention shall be given to sectors and modes of supply of export interest to developing countries.
- The flexibility for individual developing country Members would include opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to Foreign Service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.
- In implementing Article IV consideration shall also be given to the needs of small service suppliers from developing countries. An evaluation is supposed to be implemented before the completion of the negotiations, looking at the results attained in terms of the objectives of Article IV.

³ See Doha Work Programme on Services.

About the Modalities for the Special Treatment of Least Developed Country Members in the Negotiations on Trade in Services (TN/S/13):

The modalities of the special treatment for LDCs aim to bring the wording of Article XIX (3) into operation. The following are the main points in the Modalities:

- Members shall take into account the serious difficulty of LDCs in negotiating specific commitments in view of their special economic situation, and therefore shall exercise restraint in seeking commitments from LDCs.
- There shall be flexibility for LDCs in opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. LDCs shall not be expected to offer full national treatment.
- Members shall, as provided for in Articles IV and XIX GATS, give special priority to providing effective market access in sectors and modes of supply of export interest to LDCs.
- Members shall work to develop appropriate mechanisms with a view to achieving full implementation of Article IV (3) GATS and facilitating effective access of LDCs' services and service suppliers to foreign markets.
- Members shall take measures, in accordance with their individual capacities, aimed at increasing the participation of LDCs in trade in services⁴.
- Targeted and coordinated technical assistance and capacity building programs shall continue to be provided to LDCs in order to strengthen their domestic services capacity, build institutional and human capacity, and enable them to undertake appropriate regulatory reforms.

4 Such measures include (1) strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness; (2) reinforcing export/import promotion programmes; (3) promoting the development of LDCs' infrastructure and services exports through training, technology transfer, enterprise level actions and schemes, intergovernmental cooperation programmes, and where feasible, financial resources; and (4) improving the access of LDCs' services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.

The provisions of the Modalities tackle points for consideration during reading, negotiating, considering, and accepting the LDCs offers, and technical assistance upon request of the individual Countries, which may include capacity building, training, and special studies.

The text of the Modalities did not satisfy most of the negotiators from LDCs, who often consider the modalities less than their expectations. It is worth noting that this document carries no legal commitment towards acceding LDCs, but should be used for defending their positions especially in the bilateral negotiations. Accordingly, the implementation process of these modalities requires two factors:

- (1) LDCs considering the provisions of the agreed document, reflecting them in their initial offers, and building on their defiance position during the bilateral negotiations⁵.
- (2) Good will and understanding of the negotiators from major economic powers regarding implementing the modalities and reflecting them into real flexibilities for LDCs.

5 As the acceding countries provide their initial offers (in goods and services) to the Working Party, trade partners will ask for bilateral negotiations with the acceding country aiming to gain more benefits – in services- by: (1) asking for less conditions of the sectors and subsectors included in the initial offer, (2) adding more sectors not included the initial offers. The acceding country have to defend its position (the initial offer) during these negotiations by confirming the GATS articles, and related approved documents, as well as comparing their initial offer with the commitments of other developing countries and LDCs original members of the WTO.

III- Guidelines for the Negotiations of Trade in Services for Countries in Accession

Following the Doha Ministerial Conference, a WTO Work Programme for LDCs was launched leading to the adoption of Guidelines for Accession of LDCs (WTO General Council, December 2002). The decision was a response to challenges of the economic and social situation of LDCs, including capacity-constrained countries experiencing difficulties in negotiations and their inability to take advantage of special and differential treatment. The aims of the decision was to allow acceding LDCs to take advantage of SDT, streamline the accession process, and improve access to technical assistance and capacity-building.

In this document, Members decided that negotiations for the accession of LDCs to the WTO should be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible.

The Guidelines include two important points related to negotiations on trade in services:

- Exercising restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members.
- For their part, acceding LDCs are expected to offer “reasonable market access concessions and commitments on goods and services commensurate with their individual development, financial and trade needs”, in line with relevant WTO provisions on goods and services.

The implementation of the Guidelines, as other modalities related to LDCs, is not automatic, and it needs to be reflected in the services’ offer and should be defended by the LDCs during the bilateral negotiation they undertake.

IV- Trade in Services Commitments; the Cases of Nepal and Cambodia

General overview of the economies of Cambodia and Nepal		
Basic Indicators	Cambodia	Nepal
Population (1000) 2009	14.805	29.331
GDP million current \$ 2009	9.872	12.531
GDP million current PPP 2009	28.352	33.868
Current a/c balance m \$ 2009	- 866	- 10
Trade per capita (\$ -2007/09)	878	199
Trade to GDP ratio (2007/09)	138.8	48.6
Services Exports m\$ 2009	1.592	548
Services Imports m\$ 2009	939	771
WTO Accession	13 Oct 2004	23 April 2004

SOURCE: *WTO, Accession Department, WTO website*

Nepal and Cambodia were the first two LDCs that acceded to the WTO (2004) post 1995. Analyzing the schedules of commitments under GATS of each of Nepal and Cambodia, and the accession process of both countries, reveal the erosion of the SDT that is the right of developing countries and LDCs under WTO law.

Nepal applied for accession on May 1989, and the duration of its accession negotiations took nearly 15 years. Cambodia applied on December 1994 and concluded its negotiation in less than 10 years. Both countries joined the WTO in 2004.

Despite being LDCs, the high level of GATS commitments undertaken by Cambodia and Nepal compare to those undertaken by developing countries in their accession, as well as to commitments by small-developed countries that are original members of the WTO. Nepal committed liberalization in 19 services sectors, while Mongolia committed in 11 sectors, and both Ecuador and Panama had

committed in 18 sectors. Cambodia committed liberalization in 23 sectors, like other 5 developing countries that had recently acceded- including Latvia, Jordan, Albania, and Chinese Taipei, and while each of Bulgaria and Tonga had committed liberalization in 21 and 22 sectors respectively.

The specific commitments of the first three LDCs that acceded after 1995 (considering Vanuatu) are very high compared to the same commitments of other WTO LDC members such as Tanzania (scheduled commitments only in Tourism), Bangladesh (scheduled commitments in Tourism and Telecommunications), and Bahrain (scheduled commitments in Insurance and re-insurance). This reflects the high influence of political and bilateral pressures facing newly acceding Countries.

In terms of sub-sectors, Nepal included 77 sub-sectors in its schedules of commitments, Cambodia included 94 sub-sectors, while other developing countries like Ecuador, Bulgaria, Magnolia, and Panama had included fewer sub-sectors than the newly acceding LDCs. For example, China committed 93 sub-sectors (see Annexes 1 and 2).

Both Nepal and Cambodia included public services in their commitments, including education, health, and environmental services. Commitments in the education sector for both countries include three sub-sectors (high, adult, and other education). In the case of Cambodia, no conditions were included except as indicated in the horizontal section⁶, whereas Nepal added a condition on foreign equity 51% (except for education funded from state resources) to be raised to 80% after 5 years from date of accession.

In the health sector (Hospital services), Cambodia conditioned that at least one director for technical matters must be Cambodian, while Nepal conditioned maximum foreign equity capital of 51% (including a condition that medical experts can work maximum one year).

On environmental services, Cambodia committed the liberalization of 7 sub-sectors with no conditions except as indicated in horizontal section. Nepal opened 3 sub-sectors under condition of foreign equity at 51%, to be raised to 80% after 5 years from date of accession.

Both countries have high levels of commitments, while their use of measures/ limitations on market

⁶ 'Horizontal commitments' stipulate limitations that apply to all of the sectors included in the schedule; these often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. For more information, see http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm .

access or national treatment is limited or rare, noting that Nepal used it more than Cambodia. The high levels of commitments by Nepal and Cambodia create real challenges for other LDCs negotiating accession to the WTO, since their commitments establish a benchmark to be met by other acceding countries.

V- Concluding Remarks

The implication of special and differential treatment under GATS is different from that under GATT (Part IV), because of the nature of the trade in services between countries.

Article XIX (2) GATS allows developing country Members to offer fewer specific commitments than developed countries. Article IV GATS is inextricably linked to Article XIX GATS, as the latter provision somehow operationalizes the former with respect to GATS negotiations. The outcome of these provisions in practice depends on the negotiation capacities of developing countries and LDCs in drafting and defending the initial offers on the basis of the flexibilities established in the provisions of the agreement and related negotiation documents. Moreover, the outcome depends on the willingness of the developed countries to consider the particular needs and specific interests of the developing countries and LDCs in the negotiations.

Most of developing countries and LDCs in accession currently could not use special and differential treatment provisions. This has been reflected in their Protocols of Accession, whereby they could not take full advantage of transition periods in various areas, including for Trade-related Aspects of Intellectual Property Rights (TRIPS) or customs valuation (refer to Annexes 1 & 2 for specific services commitments for the newly acceded developing and LDC Members).

Despite the 2002 General Council decision on LDCs, there is continued need for clear and objective rules and disciplines for accession negotiations. A set of basic rules and disciplines would help overcome capacity limitations. These rules could - at least - lay down fixed transition periods for adoption in various areas such as the TRIPs, Customs Valuation and Sanitary and Phyto-sanitary Measures (SPS) agreements, suggest guidelines on import tariff reduction commitments, and put in place maximum required service-sector commitments.

Despite the training and capacity-building assistance that is provided, small countries and many LDCs will always struggle to negotiate effectively with big players. Not only do small countries and some LDCs simply lack manpower but fully-trained officials often move jobs. The WTO accession process has been too onerous and power-based for small, capacity-constrained countries. Officials representing LDCs were often forced to make concessions that politicians were not prepared to sustain in the long run and which often extended beyond the commitments of developed and developing WTO members.

Of course some room for manoeuvre is required, while there can be no blueprint for accession. Yet in practice, it is important to stress that the existing procedures allow limited flexibility because of the standard demands of big economic powers that are members of the WTO. Clearer rules and disciplines, and good will from trade partners to implement the existing rules, could improve the overall outcome.

ANNEX (1)

Specific Services Commitments of New Acceded WTO Members

Acceded Member Service Sector	Ecuador	Bulgaria	Panama	Latvia	Estonia	Jordan	Oman	China	Chinese Taipei	Armenia	Cambodia (LDC)	Saudi Arabia	Viet Nam
Date of Accession	01/96	12/96	09/97	02/99	11/99	04/00	11/00	12/01	01/02	02/03	10/04	12/05	01/07
Professional: — legal													
— accountancy													
— taxation													
— architectural and engineering													
— medical													
Computer and related R&D													
Other business													
Communication:													
Postal													
Courier													
Telecom: — valued added													
— basic													
Audiovisual466													
Construction													
Distribution													
Educational													
Environmental													
Financial: — insurance													
— banking and other													
Health and Social													
Tourism													
Recreational													
Transport: — Maritime transport													
— Air transport													
— Rail transport													
— Road transport													
TOTAL SECTORS	18	21	18	23	24	23	22	21	23	24	23	24	25

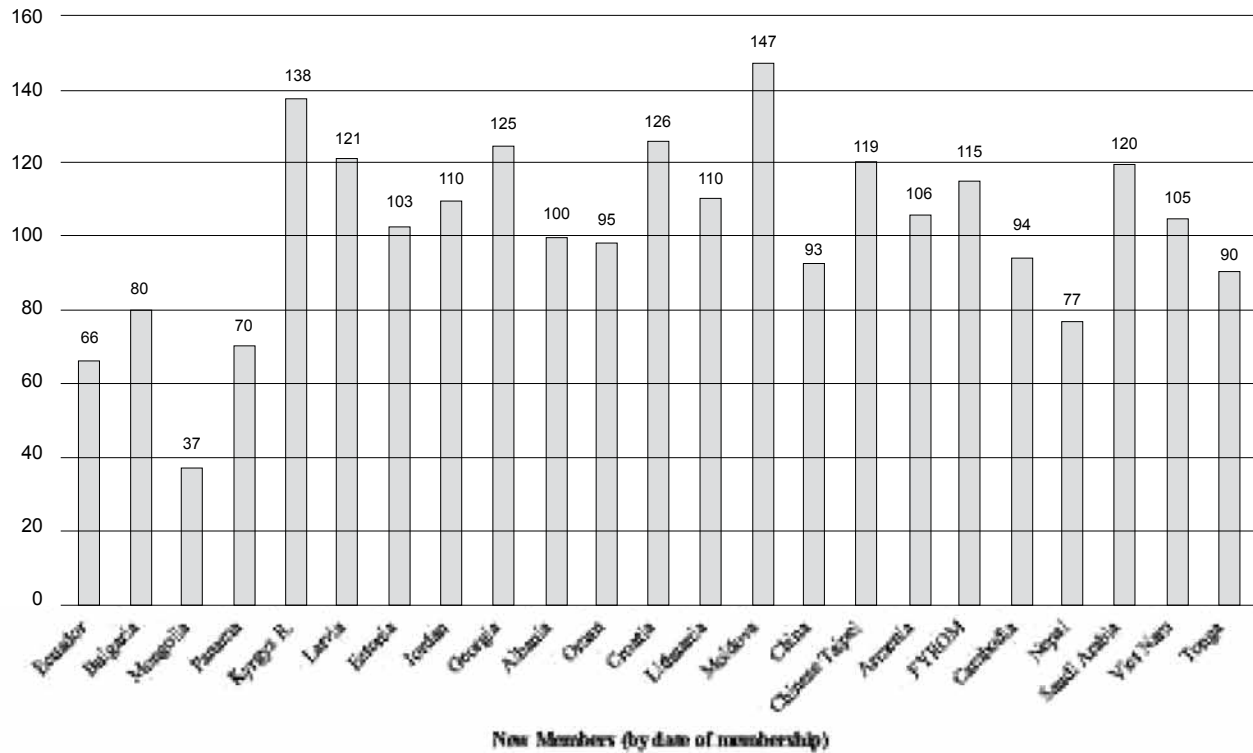
MFN Exemptions: all except Oman.

Source: WTO Accession Handbook http://www.wto.org/english/res_e/reser_e/handbook_acc_e.htm

ANNEX (2)

Number of Services Sub-Sectors Committed

By Developing and Least Developed Countries Newly Acceding to WTO



Note: The number of GATS services sectors with commitments has been estimated by the WTO Secretariat on the basis of available information and in the light of the Services Sectoral Classification List (WTO document MTN.GNS/W/120). Source: WTO.

Yemen's Accession to the WTO; Challenges of the Services Sector

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(Finalized in 2011)

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Introduction

Since the early nineties, Yemen started to adopt an open trade and investment policy aiming at increasing the participation of the private sector in economic activities. This was intensified in response to the increase of challenges facing the government after the reunification of the two parts of the country in 1990. The focus of this plan was more on the goods' trade regime, while the services' trade regime did not get enough attention.

By the mid-nineties, with the assistance of World Bank and International Monetary Fund, Yemen started an economic, financial, and administrative program that aimed at reforming and further liberalizing the national economy. The aim was to transfer the government from the operational role, where the government has to provide most services, to the strategic role. Such a role would encompass that the government oversees the provision of services in order to improve the government efficiency in using its limited resources, while increasing the efficiency of services provided to the public. This new plan did not fully materialize, as most of the reforms remained confined to privatization of the state-owned enterprises and allowing more participation from the private sector in certain areas. It did not follow a specific strategy to enhance the performance of the sectors and ensure that private service suppliers provide quality and reliable services to the public. The absence of this particular dimension led to severe deterioration of the quality of services.

In the year 2000, Yemen started the process of accession to the WTO with the aim of garnering credit and international recognition for its unilateral reforms and liberalization on various trade fronts, which had been undertaken since 1990. Yemen aimed to deepen its integration into the international economy.

Services negotiations focused on most of the services sectors inter alia; financial, telecommunication, distribution, environmental, tourism, transportation, health and social services, and some business services.

Overall, Yemen's participation in regional and international trade through formal agreements has been very limited, especially in trade in services. Accession to the WTO, which started in the year 2000, is considered the first step towards integration in the world trade system. However, with the establishment of the Pan-Arab Free Trade Area (PAFTA), Yemen became a member and started integrating in the regional economy. Nevertheless, this involvement has been limited to trade in goods. It is recently that negotiations around trade in services started among PAFTA members. Yemen's involvement in bilateral trade agreements is also very limited.

Given the current situation of the Yemeni services sector, labor mobility will be the first and most important service sub-sector that Yemen will be interested in under the PAFTA negotiations. However, the current status of the PAFTA negotiations indicates that it will be long until results are reached among the PAFTA countries in the area of trade in services.

I- Overview of Yemen's Services Sector

The services sector in Yemen can be characterized by being weak and mostly underdeveloped. In 2008, the contribution of the services sector to GDP was around 36% while it employed more than 32% of the labor force, which makes it the second largest contribution to employment in the country after agriculture². The main services sub-sectors in Yemen are transportation, communication, storage, wholesale and retail, real estate, construction, and financial services.

Despite its low contribution to GDP, the services sectors remain an important player in the Yemeni economy, as they provides the economy with important final services like tourism, health and education, and important intermediate services like banking, insurance, and business services. While the final services are important employers of national citizens, intermediate services are important providers of crucial services to all sectors, specially the manufacturing and extraction industry.

In addition to its role in employment and the provision of important final and intermediate services, the sector is considered the most entrepreneurial sector of the national economy in terms of the number of registered businesses. This is in addition to the informal services sectors that are estimated to be significant and employ significant number of citizens³.

2 Yemen's Memorandum of Foreign Trade Regime.

3 There are no officially published statistics on the size of the informal sector but officials estimate it as significant.

The services sectors are mainly operated by the private sector, while the government remains the exclusive supplier of certain services such as television, radio, and fixed telephone line services. Despite the tendency to give the private sector the leading role in supplying services during recent years, the government remains an important supplier of education services, health services, transportation services, and environmental services.

The sector is mostly regulated by old legislations that date back to the 1990s, leaving most of the technological and other kinds of developments that have taken place during the past two decades unconsidered. For instance, despite the revolution of telecommunication technologies, the emergence of mobile telecommunications, internet and other telecom services, Yemen's existing telecommunication law dates back to 1991.

II- Sectoral Overview

a. Financial Services:

The financial sector, including banking, insurance, and securities, is one of the most underdeveloped sectors in the country. Its contribution to GDP is around 3%, compared with around 7% on average for other developing countries⁴.

The banking sector in Yemen consists of only 20 banks of which five are branches of foreign banks. Total assets of the banking sector amount to around 8 billion USD. Yet, this small size of the banking sector is not the only challenge. The concentration and nature of ownership (mostly family-owned banks) are the most prevalent challenges that affect the operations of the sector and minimize its role in economic development. This particular characteristic of the banking sector induced a low lending rate of about 26% of total assets and high concentration of that lending⁵. Only four people out of each hundred persons have bank accounts. This weakness in the demand for banking services is due to several reasons, including public mistrust in banks, rejection of interest-bearing operations due to

⁴ Central Bank of Yemen.

⁵ The low lending rate is due to the business environment not being conducive for expansion of lending due to the weak judiciary system and the weak enforcement of law. Thus, banks invest more in government bonds and other non-lending investments. Plus, lending is concentrated on fewer borrowers, usually owners and their relatives.

religious reasons, and the weak promotional efforts by banks to attract the public to their services. In addition to that, the concentration of the supply of the banking services, in particular financing, has significantly impacted the role of the sector in economic development and business financing.

The insurance sector is not so different from the banking sector. The same ownership structure, concentration problem, and weak demand characterize the insurance services. Only 15 insurance companies exist in Yemen, with a total budget of around 31 million USD. However, the sector witnessed massive growth in the past thirty years, as the number of insurance companies jumped from 3 companies in 1980 to 15 companies in 2010. Total premium reached only 72 million USD in 2009 with an annual growth rate of 9%⁶.

Most of the insurance business is concentrated on few insurance types, such as car insurance, insurance against fire and other accidents, with limited presence of health, life, work accidents, and engineering insurance. The small size of the insurance sector along with its inefficiencies cause a significant percentage of the insurance business, especially for foreign companies and oil companies, to go overseas. It is estimated that only 40% of the insurance business stays home, while the rest goes out of the country.

Foreign participation in the banking and insurance sectors can also be fairly described as stagnant. Only one new foreign bank has been licensed in the past 30 years, while during the same period no foreign insurance company was established in the country.

No stock market exists in Yemen as of now. Yet, work towards establishing one is underway since more than six years. This in turn led to the absence of securities' trading, which is often perceived as a serious impediment to financing economic activities. Establishing the stock market is considered a corner stone in increasing investments and financing of trade and productive activities. It could also help increase shareholding in public corporations and therefore contribute to minimizing the ownership concentration in various areas.

b. Telecommunication Services:

The telecommunication sector is considered to be one of the most developed services sectors in Yemen.

⁶ Ministry of Industry and Trade in Yemen. Insurance data.

The sector has witnessed high growth rates and quick adoption of new technological developments. The fix telephony services and international calls are still supplied exclusively by two government corporations. The value-added services are open to be supplied by the private operators of mobile telephony, and are currently supplied by three private operators and one publicly owned operator.

The sector's regulation remains seriously outdated and needs to be modernized to accommodate the new changes and provide clear and stable policies that govern the business with minimum government ad hoc measures. In 2009, the government drafted a new law. Yet, the legislation remains controversial and challenged by two of the mobile private operators due to the intention of the government to impose higher fees and charges on operators. The mobile operators also object the way that the government intends to structure and operate the independent regulator. In their view, there is a need to enhance and strengthen the independence of the regulator, along other issues.

c. Business Services:

Professional services such as legal services, architecture, medical services, and some other business services like advertising services share the same features. They are limited to basic services of significant low quality and involve no foreign participation. Demand for high quality and sophisticated services in these areas is usually met from outside.

Accounting, book-keeping, auditing, management consulting services, research and development services, services incidental to mining, testing and analysis, among other similar services are limitedly supplied in the local market and involve some foreign participation.

d. Health and Education Services:

The government, with some participation of the private sector, especially in the past ten years, has mainly supplied health and education service. The two sectors have been witnessing increasing foreign participation through establishment of foreign suppliers in the country in an attempt to meet the increasing demand for those services. However, the past twenty years have seen deterioration of the education and health indicators due to the inability of the government to properly regulate and control the quality of the supplied services by private sector, whether local or foreign.

e. Construction Services:

Construction services are one of the relatively big sectors in Yemen, with 5% contribution to GDP. However, big projects are often constructed by foreign firms. The sector provides significant job opportunities as it employs more than 12% of the labor force. The availability of labor is one of the comparative advantages of this sector⁷.

III- Challenges in the negotiations of accession to the WTO

Accession to the WTO is a very challenging process that burdens acceding countries with tremendous requirements that often cost huge time and resources. For least developing countries (LDCs), the challenges are greater due to their weak financial, human, and institutional capacities relative to the needs of the negotiations and those of implementing the commitments undertaken in the course of accession on both bilateral and multilateral fronts. This latter weakness prolongs the time needed to conclude accession, given that most commitments made are to be reflected in legislations before the conclusion of accession, even if implementation will go through transitional periods.

Yemen's accession to the WTO has been a very complicated and time and resource consuming process. The country submitted its accession request and was accepted as an observer in the year 2000. In early 2011, the country was still not a member in the WTO though very close to accession. Assuming that accession is to be concluded in 2011, the process would have stretched over 11 full years. The following section will shed some light on the challenges faced in this process.

a. Capacity Challenges:

Yemen started its journey to the WTO membership in the year 2000 after a decision was taken by the cabinet to join the international organization. Neither a study was undertaken to assess the benefits that this accession could bring to the country, nor was there an analysis done to rationalize the decision. Yet the process started with a reasonable level of commitment from the government's side at the political level. Some mechanisms were set in place to compliment the political will and to address technical factors needed to achieve the objective.

⁷ UNCTAD Study on Construction Services Sector in Yemen (2009).

Liberalization of the services sectors in Yemen faced tremendous challenges due to the lack of capacities among governmental institutions, as well as private sector institutions, to analyze the status of the sub-sectors, understand agreements and their implications, define advantages and disadvantages, identify strengths and weaknesses of the sector, and prepare for negotiations with a view to achieving liberalization that meets national interests and needs.

In addition to the absence of concrete strategies and plans, the Yemeni government suffered a severe lack of human technical capacities that would be able to enrich the process with quick research and analysis in support of the decision-making process.

In areas like insurance, some professional and business services, as well as health and education services, one could say that fears from liberalization were not justified due to the huge market gap between demand and supply. Therefore, liberalization would not necessarily drive out current national services suppliers, but would be expected to create new demand, expand and develop the market, and retain the business that goes overseas at the time being. Research shows that services' policy reform focusing on enhancing competition in the services industries could help enhance welfare and boost growth prospects⁸.

Areas like distribution and construction services could be in a different situation. Local suppliers may be negatively affected by liberalization due to their limited competitiveness. The likely outcomes from liberalization could outweigh the losses in case it was able to achieve more efficient services, save natural resources, increase demand, and create more jobs

Many services sectors such as banking, insurance, most professional services, among others, are organized within unions and associations. This made consultations easier, but made resistance to liberalization stronger. However, these interactive processes helped in addressing the lack of clear strategies for the sectors and allowed for reaching some kind of informal vision that guided the negotiation strategy and liberalization plans.

b. Institutional Challenges:

In its efforts to join the WTO, Yemen faced tremendous difficulty on the legislative front. Most

⁸ Services Trade & Development. The Experience of Zambia, Aaditya Mattoo and Lucy Payton.

laws and regulations were very old, not addressing trade, and irrelevant to current technological developments. For instance, the telecommunication law was drafted and passed in 1991 before the revolution of the telecommunication and the Internet. Many other areas were not regulated such as computer services, management consulting, and services incidental to manufacturing, among others. Other areas such as services incidental to mining were regulated by special agreements that differ from one case to the other. However, most if not all laws and regulations were silent about the entry of foreign suppliers, and in some cases the conditions for such entries were discretionary.

Therefore, comprehensive review was required to align laws and regulations with the undertaken commitments for liberalization. However, most changes to laws and regulations in the services areas were to be subject to the conclusion of bilateral deals with all WTO interested members. Currently (at the time of writing the Article), changes seem to be confined to few sectors including telecommunications, financial services, some professional services, and some business services.

In general, services' liberalization commitments undertaken in Yemen's accession to WTO are considered in line with national modernization plans, which aim to enhance the performance of services sectors. For instance, in the Higher Education Development Strategy, tools are foreseen to encourage more private investments in higher education institutions, including providing incentives to regional and international institutions to establish in Yemen. Negotiations of WTO accession either expedited the process or deepened the liberalization.

c. Developmental Challenges:

Besides the capacity and institutional challenges that posed serious obstacles to the accession process causing significant delays, and despite the governmental will to liberalize most services sectors either unilaterally or through the accession process, significant difficulty was faced in some sectors due to the expected negative developmental impacts of liberalizing them.

Fears of driving out Yemeni labor were at the center of the liberalization concerns by various stakeholders in the Yemeni services sector. The national labor force consists mostly of low skilled labor with high concentration in areas like construction, distribution, and transportation. Many services sectors such as tourism, health, education and some professional services suffer from lack of skilled labor. To this end, concerns were high that liberalization of services sectors, especially labor

mobility, would contribute to job loss to foreigners, thus increasing unemployment.

Competition was also a major concern in liberalization of the services sector. Most local service enterprises are too small, underdeveloped, and highly uncompetitive. Thus, liberalization was perceived as a threat that will bring in foreign service suppliers who will drive out local businesses, thus leaving nationals without source of income or pushing them to become employees rather than owners. Consequently, it was also expected that liberalization could lead the country into higher dependency on foreign suppliers.

Areas like banking, insurance, and professional services are necessary to the economy and to businesses. The overall perception was that these sectors must undergo liberalization in order to improve them and that damages accruing to local services suppliers could be addressed by various policies undertaken by the government and the private sector. For instance the government is expected to provide some kind of support to the national banking sector to enable it to improve its competitiveness. The private sector is expected to find ways to enhance competitiveness through merger of banks, increasing banks' capitals, enhancing the corporate governance of banks, and investing more in innovation and modernization. This was part of the strategy to address the challenges associated with liberalization.

Liberalization of areas like health, education, environmental services, and tourism were perceived as necessary due to the serious need for more involvement from foreign suppliers to meet the ever growing demand that could not be met by local suppliers. The latter either lack technical and financial capabilities such as in health and education or lack experience in areas like environmental services. The involvement of foreign suppliers is considered beneficial as it could bring in capital, know-how, and innovation that are necessary for the development of various sectors. Even though liberalization is not a guaranteed way to attract foreign suppliers, it is often considered an important step to this effect.

With these concerns in mind, measures were needed in order to upgrade and improve various national industries to be able to face competition. Yet, that was not feasible due to the lack of needed financial and human resources. Time was also not conducive due to the need to conclude accession as fast as possible, given it was already delayed by various factors.

To mitigate the possible negative impacts of liberalization, Yemen requested some transitional periods

in areas where time was needed to prepare the sectors to face competition. However, the lack of proper concrete plans for how to prepare and upgrade various sectors and lack of financial, institutional, and human resources necessary for such processes indicate that many transitional periods would elapse without much being done in many sectors, except maybe in regard to the legislative changes. This situation is aggravated due to the absence of any commitment from WTO members to provide technical assistance in the services areas, despite the GATS provisions on special and differential treatment for LDCs. At least in Yemen's case, there seemed to be lots of technical assistance available to achieve accession, both by members and by agencies. However, very little commitment is evident in regards to supporting sectoral capacity, institutional building, or private sector development, which is the essence of special and differential provisions.

d. Achieving Efficiency:

The services sector is a major determinant of prosperity; it does not just provide the economy/ society with major services fundamental for life such as education and health, but also serves as the backbone for the whole economy and the productive sectors in particular. Accordingly, inefficiency in the services sector would hinder socio-economic development and undermine the chance of developing any other sector. The inefficiency of the banking sector, insurance sector, and transportation sector is deemed to be the major factor causing costs of doing business in Yemen to be among the highest in the region, and is considered one of the major barriers for investments⁹. Indeed, inefficiency of the services sector, coupled with an inefficient investment environment, has been a major factor for discouraging investments. Lack of investments into the country has led the services sector to be over dominated by few players with very little competition. The sector's status played a major role in reducing the chances of benefiting from sectors with high potential like tourism and led to huge leakage of business to outside Yemen, in areas like education, health, insurance, transportation, some professional services, etc.

In Yemen's case, the importance of the services sector is even greater due to the insignificance of the manufacturing sector, the deterioration of the agriculture sector due to water challenges, and the gloomy outlook of the extractive sector due to depletion of oil reserves.

Despite possible negative consequences to national services suppliers and labor in certain services

⁹ FIAS study diagnosing investor's perception on investment climate in Yemen, 1997.

sectors, liberalization and reform of the services sectors has been considered a way for enhancing the sectors' performance and increasing its role in the economy. For instance, the banking sector could benefit from entry of new banks, which may lead to introduction of new banking products, expanding the coverage to un-served people, pushing local banks to improve in order to maintain existence and increase the financing to private sector. Entry of new banks that are not family-owned would offer new opportunities to the public in obtaining banking services and financing that could lead to more business creation.

The case of insurance is similar. Entry of new insurance firms could lead to expansion of the market to serve underserved people, and to introduction of new insurance products, and increases of competition and know-how. In this particular sector, development of the sector is expected to lead to retaining much of the business that currently leaves the countries due to unavailability of reliable local insurance services. The governmental side assumes that even if this new business will go to foreign suppliers, the country will still benefit from the created jobs, paid taxes, and the know-how brought by foreign firms.

Despite the loss of direct revenues to be incurred by the government if it gave up its role as the exclusive supplier of international calls and fixed telephone services, liberalization of and competition in the telecommunication sector in Yemen is expected to lead to drastic increase of benefits to consumers and businesses in many ways such as lower rates, better coverage of services, and increased competition. Such steps are expected as well to secure more revenues to the government based on charges, fees, and taxes that will make up for the lost direct revenues. Furthermore, the liberalization of the telecommunication sector is expected to play a major role in providing more efficient services to the economy especially Internet services and data transmission services. It could also play a major role in providing jobs to Yemenis in outsourcing services to overseas, such as call centers, customer services, back office operations, among others. Better telecommunication services could also have a positive impact on all economic sectors, such as banking services. It could provide opportunities to people in remote areas to have access to education and business through wired means, especially if the government adopts universal access policy that provides access to areas that are isolated and poorly served.

The financial services sector is one that must undergo massive reform in order to overcome its challenges.

Breaking the dominance of family-ownership of the sector and the concentration of ownership and lending is expected to help increase the coverage of the financial services, serving private sector, and better financing economic and trade activities. This in turn is expected to contribute to improving economic growth. Liberalizing the banking sector is assumed to lead to decreasing financing costs, encouraging more entrepreneurship, and contributing to expansion of businesses. Agriculture and manufacturing sectors in particular may benefit from better banking services especially with regard to long term financing, which is currently totally absent. However, this cannot be an automatic result of liberalizing the sector. Liberalization needs to be coupled by various measures to help realize the benefits of liberalization. An issue at stake is improving the judiciary system and introducing collateral system to help provide guarantees for loans. Enhancing law enforcement for collecting loans back is an important development that should take place in Yemen in order to improve the banks' ability to lend. Insuring competition is also a prerequisite for improving the sector's performance and maximizing its role in economic development.

Liberalization of other services sectors such as transportation, some professional services, construction services, health services, education services is considered a step towards enhancing the supply of services in the country, increasing competition, creating job opportunities, as well as improving the inputs to other industries such as agriculture, manufacturing, and the extraction industry. However, some reservation might be needed here given the fact that liberalization alone is not the solution to every problem. In many cases, what is needed is not liberalization per se, but rather better business environment and better regulation. Indeed, some areas are already liberalized but benefits have not been realized due to improper regulations and absence of competition.

In conclusion, liberalization of the services sector could be a constructive step towards enhancing the sector's performance and its role in economic development. However, it is not the solution to the sector's problem; the sector needs massive reform to be taken starting with proper regulation, organization of the market, ensuring competition, as preparatory steps towards possible liberalization.

e. Reform of Domestic Regulations:

Given that the telecommunication sector was still regulated by an old legislation that does not take into account the new technological changes, the sector was one of the earliest sectors to be reformed. The reform agenda of the sector covered the restructuring of the related Ministry and establishment

of an independent regulator as per the GATS Reference Paper requirement. Reforms included the regulation of the mobile telephony that was still governed by special agreements between the Ministry of Telecommunication and operators, addressing issues related to interconnection and use of facilities and redrafting various policy aspects, including the licensing policies. A new law was drafted and has been in the parliament for more than two years (since 2009) due to controversy over its provisions.

The telecommunication sector was the first to undergo reform even though the commitments of Yemen in telecommunication services (when Yemen becomes a member of the WTO) do not enter into force until 2015.

The banking and insurance sector did not undergo any reforms as of the time of writing this paper. This is primarily due to the financial crises that delayed the reform agenda of the sector, in addition to the fact that Yemen's commitments in banking and insurance services do not enter into force until three years after accession.

No other reform of domestic regulations related to the services sectors has been identified at the time of writing this paper despite the fact that some areas of the services sector still need reform in order to reflect the commitments made in the negotiations and to meet some of the general obligation under the GATS.

IV- The Status of Special and Differential Treatment in the Accession Process

The GATS provides for Special and Differential Treatment (SDT) for developing countries. Moreover, the General Council's Decision (2002) on the Accession of LDCs and the LDC Modalities (2003) have emphasized the importance of extending flexibilities to LDCs in the negotiations to enable them to liberalize their trade regimes gradually and progressively. These decisions emphasized that LDCs in accession should not be asked to make commitments beyond their developmental needs and capacities. However, the accession of Yemen and other LDCs has not seen much consideration of those agreements.

Negotiating liberalization of trade in services under the accession process is usually based on the W120 classification of services, which contains 11 services sectors and around 155 sub-sectors defined in accordance with the UN Central Product Classification (CPC) of services in addition to the GATS

annexes. Given the power a member country has as per Article XII of the Marrakech Agreement¹⁰, any member can request the country in accession to undertake commitments in any services sub-sector of interest to the member or redefine certain services in order to reflect more of their interests¹¹.

In Yemen's case, the focus of the negotiations during accession was on market access and national treatment in almost all sectors with a great emphasis on the main sectors of communication, financial, transportation, distribution, environmental and various business services. Those sectors are usually the target of major WTO members such as US, EU, and Japan. Public services in areas like education, health, postal services and some financial services like pension management services were also target of negotiations and concessions.

In addition to market access and national treatment, negotiations targeted the minimization of transition periods, as well as limitations on use of foreign equity ceilings and economic needs tests. These requests often limited the access of Yemen to SDT stipulated under WTO law as a right for LDCs.

Yemeni officials expect that the final services schedule in Yemen's accession package will greatly match those of the countries that preceded Yemen to the membership of the organization, such as Nepal and Cambodia. In reality, the comparison of countries' commitments in services remains impeded by the limitation of the comparison to the number of committed sub-sectors. This kind of comparison could be misleading as the depth of commitment makes huge difference to just counting the number of committed sectors and sub-sectors. Comparing the depth of the commitments made by Nepal and Cambodia for instance implies great variation of the commitment in terms of number of sub-sectors versus the depth of openness and absence of limitations. Nonetheless, the absence of any

¹⁰ Article XII of the agreement establishing the WTO reads: “

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.
2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.
3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement”.

¹¹ Some WTO member states develop descriptions of services sectors based on the description in the CPC classification, claiming that developing new definitions clarifies the services being addressed. In some cases, newly acceding members are asked to accept and commit to the use of certain new definitions.

other methodology to compare those commitments induces this method to remain the only available way.

Box (1): Highlighting the nature of commitments undertaken in public services sectors and its implications on the provision of these services

Since the year 1995, Yemen's economy and trade regime were further liberalized and the state's role in the provision of goods and services has been minimized. However, the state remained a major supplier of some services like health, education, telecommunication, and transportation. Negotiations of accession to the WTO brought various requests in the area of public services, in which members were interested to obtain market access concessions. Among the requested areas were education, postal services, telecommunication services, transportation services and environmental services.

Undertaking commitments in these sectors is considered by the Yemeni authorities to be a step towards reforming the services, attracting investments, enhancing competition and the provision of final products, enhancing know-how practices that are needed for the development of services sectors. However, fears are there due to the inability of the government to assist the private sector to upgrade and increase competitiveness, and to ensure the right of citizens to equally access quality public services.

V- Concluding Remarks

Like many other countries, Yemen's accession to the WTO has been a very complicated and cumbersome process that burdened the country with tremendous amount of work. Accession to the organization is not the end of the story; it is rather the beginning of a long journey that requires a lot more work to be done. This extends beyond efforts to bring the country's trade regime into compliance with the WTO rules and the country's commitments. It also includes efforts to bring about some positive change conducive to allowing the country to participate in international trade in services and benefit from its membership in the global organization.

The current situation of Yemen's services' trade regime is not so promising. It is weak, inefficient, outdated, and poorly regulated. Thus, Yemen needs to work towards developing its services sectors,

to enhance their efficiency and competitiveness, strengthen their contribution to the country's socio-economic development, and enable them to stand foreign competition that is expected to increase after accession.

Liberalization could be an effective way of enhancing the competition in services sectors and breaking the dominance of few players. However, regulating the market is a very important step and should precede or at least associate liberalization in order to avoid the negative consequences of the latter. Experts in the field emphasize that liberalization before regulation is an invitation for disasters.