



Making the DSU Work for Egyptian Business: The Good, The Bad and the Ugly

Dr. Arthur E. APPLETON
appleton@appletonluff.com

APPLETON LUFF
INTERNATIONAL LAWYERS



Making the DSU Work for Egyptian Business: The Good, The Bad and the Ugly

Dr. Arthur E. APPLETON
appleton@appletonluff.com

APPLETON LUFF
INTERNATIONAL LAWYERS

The Good: Opportunities Exist If Egyptian Business Better Understands the WTO

The Egyptian business community can profit from the WTO Agreements if they understand the basics

A. Business often focus just on tariff issues and are unaware of the full scope of the Agreement

B. Other trade issues fall within the WTO, for example:

- 1) Regulatory discrimination (TBT & SPS problems)**
- 2) Tax discrimination**
- 3) Customs Issues**
- 4) Illegal subsidies, including in agriculture**
- 5) Dumping and Safeguards**
- 6) Services Issues**
- 7) Intellectual property**

The Good

Egypt can use the WTO as a sword and a shield – to open foreign markets and to protect markets

- 1) Businesses and the legal community need to receive basic WTO training so they know when they have a trade law issue**
- 2) Chambers of Commerce, trade associations, universities, IGOs, training organisations and law firms can play an important role organising training sessions**

The Good

Egypt's business community can benefit from the DSU's legal structure:

1) The DSU offers legal predictability

2) The DSU offers time limits

- **Still not fast enough to save a time-sensitive shipment (e.g., fashion, latest high tech. fad or agriculture)**

3) The DSU offers a rule-based system where all Members are equal

- **But some Members are more equal than others...**

The Good

Although the WTO system is largely State-to-State, Egypt's businesses can profit if there are good avenues of communication between the business community and Government

- 1) Businesses, Chambers and Trade Associations should work with Government to identify bilateral, regional and multilateral trade issues**
- 2) The process should be institutionalised: regular meetings, regular updates, and possibly legal machinery to compel the Government to address foreign trade barriers and illegal practices**

The Bad:

Risks Exist if Business is Not Prepared

- A. TNCs and Governments in ADCs follow trade law issues closely – they are ready to protect their trade interests**
- B. Foreign lawyers are paid to monitor trade issues on behalf of businesses and often offer very good services (tough competitive environment)**
- C. In the EU and the US legal mechanisms exist whereby businesses can pressure government to become active in trade matters**

The Bad

- D. The technical assistance provided by ADC Members and certain international organisations may not address sensitive subjects (e.g., A-D)**
- E. Resources may limit developing country involvement in DSU proceedings**
- F. Businesses in developing countries are often not major players in WTO negotiations or other activities**

The Bad

G. Egyptian business can not “bank on” the DSU

- 1) The DSU does not offer financial compensation to the winning party**
- 2) Business interests are usually behind the scenes, but even if Egypt prevailed in a dispute, pursuant to WTO rules, Egyptian business would receive no financial compensation**

The Ugly: WTO Pitfalls

A. Since the DSU process is largely State-to-State, business only has “access” to the WTO if a Member (any Member) Government allows them access.

- 1) Diplomatic concerns often prevent businesses from having their problems heard in Geneva**
- 2) The trick is to get your dispute presented (most problems are solved bilaterally or in consultations that follow)**

B. Don't expect the WTO to solve all of Egypt's international trade problems

- 1) Only a few cases are brought per year (DSU process is underutilised)**
- 2) Developing countries have enforcement problems**

The Ugly

- C. Private lawyers are expensive and even though the process is State-to-State, business often pays the legal bill in developing countries**
- 1) Costs can be reduced by negotiating with counsel (many law firms want to enter the field and sell their services at lower rates)**
 - 2) Governments often get what they pay for: if you push too hard on costs, services may decline (law is a business)**
 - 3) The Advisory Centre on WTO Law offers good and less expensive services for developing country Governments**

The Ugly

D. From a business perspective, the WTO DSU process is time-consuming and demands many corporate resources (The process is fast by international standards but slow by business standards)

- 1) In-house counsel, financial officers etc. must work with counsel to assemble evidence, prepare consultations, draft legal submissions**
- 2) Inter-agency cooperation is necessary at the government level since different ministries are often involved**
- 3) Cooperation between Cairo and the Geneva Mission is also necessary**

The Ugly

E. The WTO DSU is a way to get foreign governments to abide by the WTO Agreement – but only if they want to abide

1) Many governments can afford to ignore DSB decisions

2) We know who will win most WTO cases from the day they are filed – the Complainant (85% of the time – again the trick is getting the Government to file a good case)

F. TNCs can ask any Member in which they operate to bring pressure against another Member – Egyptian business interests can be challenged from almost anywhere

The Ugly

- G. The process is not very transparent (but better than before)**
 - 1) Most meetings are closed to the public**
 - a) Businessmen and attorneys can appear in DSU proceedings if accredited to a delegation**
 - 2) Arabic is not an official language**
 - 3) Many documents are “restricted”**
 - 4) DSB Reports are difficult for laymen to read**

Conclusion: A Fist-Full of £E for Business?

Probably not!

A. The DSU will not solve all international trade problems faced by Egyptian business, but it can help.

- 1) DSU has a public relations purpose as well. Attracts the attention of other Members and the population to a trade problem.**
- 2) Allows Members to increase their bargaining position during negotiations (*Cotton and Sugar*)**

Conclusion: A Fist-Full of £E for Business?

B. Egypt has always had a very strong and respected delegation in Geneva. It can be a good partner for Egyptian business if:

- 1) Business is prepared to work within the diplomatic constraints of the WTO, and if**
- 2) Government is willing to support Egyptian business at the international level (may vary by issue)**

Conclusion: A Fist-Full of £E for Business?

C. Many opportunities exist for Egyptian business as a result of the WTO, but business must prepare itself to take advantage of them.

- 1) Management and attorneys need to be trained**
- 2) Links between business and Government need to be strengthened**
- 3) The public needs to learn more about the WTO**

Conclusion:
A Fist-Full of £E for Business?

D. Benefits from Egyptian business will come from other attributes of the WTO

- 1) Trade liberalisation (competition and lower input costs)**
- 2) Protection of developing industries behind tariff and non-tariff barriers**
- 3) Transparency, more level playing field, rule-based system**