

The WTO Rules That We Deserve?

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Comments on the Paper:

The WTO and Developing Countries: New Issues or New Approaches

By Professor Morrissey¹

In recent years, the World Trade Organization (WTO) has come under sustained attack from many academics and other observers. Many of the arguments employed in this attack are found in Professor Morrissey's paper and the purpose of this comment is to critically examine them. Professor Morrissey's principal argument is that the likelihood of successfully completing multilateral trade negotiations is being compromised by the number and diversity of matters included within the Single Undertaking (SU). Professor Morrissey advances three "guidelines" through which "core" negotiating topics can be distinguished from "complementary" issues. In his view, only the core topics should be included within the Single Undertaking in a trade round negotiated at the World Trade Organization. The other topics could, he notes, be addressed outside the SU and, in some cases, even outside the WTO.

It should be immediately acknowledged that the subject matter contained in Professor Morrissey's paper is significant, both to scholars and to trade policy practitioners. Indeed, trade diplomats agreed at the WTO's General Council in August 2004 to remove at least three topics from SU for the duration of the Doha Round. In this commentary, I shall first discuss the principal substantive argument made by Professor Morrissey and then reflect on a number of aspects of the argumentation made in his paper.

1. Comments on the principal substantive argument.

In his introduction Professor Morrissey argues that:

"...issues that are of lesser importance or that are more contentious, either because the link to trade is ambiguous or because of knowledge of the impacts of the measures is limited, should be excluded from the SU [single undertaking]." (page 3).

In section 3 of his paper, Professor Morrissey offers the following suggestion for evaluating the significance of topics that might be included in the Single Undertaking:

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¹ Professor Morrissey's paper was titled "The WTO and Developing Countries: New Issues or New Approaches." It was prepared after a conference at the World Trade Institute in Bern, Switzerland, on 4-5 June 2004. I thank Stefan Amarasinha, Bernard Hoekman, Krista Lucenti, and Patrick Low for their comments on an earlier draft. I alone bear the responsibility for any remaining errors.

“In recognition of the merit of basing decisions on evidence, we consider three guidelines for assessing the importance of issues within the WTO. First, how confident can we be that the measures will ultimately benefit consumers? In other words, is there evidence that the measures will promote fair competition and efficiency? Second, do the measures give due recognition to the notion of different modes of production as a criterion for differentiating the treatment of similar products? This is related to the fact that governments may wish to favour certain modes of production to support national development strategies. Third, does the measure accurately reflect the structure of global competition in the relevant market? If the global market is such that significant market power is vested in a relatively small number of companies, removing trade barriers may not increase welfare.” (pages 8 and 9)

I would like to make a number of observations about these proposed guidelines. The first observation is that these guidelines are, in fact, questions and the reader is not told how the answers to these questions can be translated into a decision about which topics to include in the SU. This is not a trivial matter. For example, suppose satisfactory answers for a topic, or rather proposals for WTO measures on a given topic, can be found for two out of three of the classes of questions posed above - should that topic be included in the Single Undertaking? My observation here is that, irrespective of the substantive content of the questions posed (about which I shall say more below), it is unclear how precisely to operationalise Professor Morrissey’s guidelines.

If I have read this paper correctly, we are given hints as to how to operationalise these guidelines. For example, in Section 3 of the paper we are urged twice to exercise “caution” when a proposed measure fails to meet a certain criteria. However, caution is not a substitute for a well-specified argument that describes under what circumstances a topic or measure should be included in the Single Undertaking. Moreover, if this use of the word “caution” is actually code for outright opposition to a proposed set of measures being included in the SU, then readers deserve to be told so, as well as the rationale for this opposition.²

My second observation concerning Professor Morrissey’s guidelines is that, surely, the answer to the third set of questions (concerning the structure of competition) could be found in a comprehensive response to the first question (on the nature and extent of the net benefits from a proposed measure)? If this observation is correct, surely the third class of questions can be subsumed under the first set and no violence is done to Professor Morrissey’s schema? It strikes me that only the most peculiar economic analysis would not take into account the nature and extent of competition in the relevant market or markets.

My third observation concerns the two questions discussed in the first guideline. Although many economists might be sympathetic with some (maybe all) of the criteria that Professor Morrissey advances for evaluating the net effects of a proposed measure (namely, benefits to consumers, and promoting “fair competition” and efficiency), I am not sure that these criteria would readily be accepted by others in the trade policy and development communities. Indeed, it is elastic terms such as “development,” social inclusion, and poverty reduction that some see as central to the objectives of the Doha Round and no doubt, therefore, would want to see incorporated into the criteria associated with the first set of questions. More generally, without denying the importance of improving the wellbeing of persons living in countries outside

² In addition, as one reviewer of this commentary pointed out, caution is not necessarily an argument against all action. Crossing roads may be dangerous but we do it all the time, exercising caution along the way.

of the industrialised nations, it must be unsettling that this multilateral trade round will continue to be evaluated on such elastic criteria.

Another substantive point is whether the guidelines offered by Professor Morrissey are complete. In other words, are there important characteristics of state measures that are not covered by these guidelines? For example, measures may differ in the feasibility and ease with which legal obligations can be codified and compliance determined. In the case of measures concerning cooperation between governments, the difficulty in assessing the nature of any specific episode of cooperation must surely have some bearing on the “hardness” of the rules that WTO members are likely to agree to and to the efficacy of including those rules in the Single Undertaking.

My fourth observation is that the wording of Professor Morrissey’s second guideline is imprecise and, therefore, of limited use. What does it mean to ask if a proposed measure (or proposed measures) gives “due recognition” to something? Other than completely ignoring the matter in question, surely any proposed measure can be drafted so as to recognise the importance of this-or-that consideration.

Having stated these guidelines, Professor Morrissey then describes the factors that he feels are associated with each of them. I read the pertinent sub-sections of section 3 carefully and have not found satisfactory responses to the four observations that have been made above. Therefore, I conclude that Professor Morrissey’s guidelines require reformulation before they can be effectively operationalised by policymakers.

2. Other comments on the argumentation in Professor Morrissey’s paper.

In this section I shall make a number of comments for the benefits of readers, in particular non-economists, about the argumentation in Professor Morrissey’s paper. The first comment is that a number of key statements made in this paper, about economic matters, could be easily read as summarising conventional wisdom, when, in fact, they are so controversial that they require substantial elaboration. For example, we are told that:

“The argument for infant industry protection has become somewhat discredited, not because the argument is inherently wrong but because so few countries successfully developed infant industries.” (page 11)

Readers may be interested in knowing that, among mainstream economists, the inefficacy of infant industry protection was convincingly demonstrated by Professor Robert Baldwin in a seminal article in the *Journal of Political Economy* in 1969.³ It is a testament to the compelling nature of the arguments in this article that it is still found on the reading lists at many leading universities. At a minimum, Professor Morrissey should explain why Baldwin’s critique is either flawed, incomplete, or inapplicable.

As far as economic argumentation is concerned, Professor Morrissey also shifts the goal posts a little too conveniently. Careful readers will have noticed that he uses a theoretical argument when he contends that barriers to trade increase prices paid by consumers, or limit choices available to consumers will reduce purchasers’ welfare. However, when it comes to the

³ Baldwin, Robert E. (1969), “The Case Against Infant-Industry Tariff Protection,” *Journal of Political Economy*, 77, 295-305.

Agreement on Trade-Related Investment Measures (TRIMS), he damns it in the following succinct manner:

“...there is no evidence that TRIMS affects prices” (page 10).

In this case, Professor Morrissey does not consider the logical possibility that removing TRIMS could increase the choices available to certain purchasers, a likely outcome if the foreign firms in question start offering new varieties to the domestic market. In short, are the goal posts theory-based? Empirically-determined? Or empirical in nature yet guided by sound theory? Whatever the goal posts are for evaluating measures and negotiating proposals, they should be applied consistently.

My second comment on the nature of Professor Morrissey’s economic argumentation is that he often considers the effects of changing a single trade measure on welfare; typically concluding that a given trade reform will not deliver what has been claimed for it.⁴ One does not need to question the logic of these single-measure arguments, to raise the concern that they are unnecessarily narrowly thought experiments. Given the fundamental question addressed in this paper concerns what packages of policies and other state measures should be included in the Single Undertaking, a comprehensive economic evaluation would have asked if there are combinations of trade reforms and other state measures that are expected to yield net benefits for an economy. If, for example, one is concerned that reducing tariffs on cement imports leaves an economy at the mercy of multinational companies that have a record⁵ of cartelising markets throughout the world, then maybe this tariff reform should be complemented by an international initiative that strengthens national capabilities to prosecute and deter cartels. To summarise, economic analysts would better serve the policymaking community by assessing the net impact of packages of policy reform.

My third comment on Professor Morrissey’s argumentation is that, to the extent that he discusses the “new” (Singapore) issues, he only analyses them through a market access lens.⁶ For example, Professor Morrissey argues:

“With the increasing globalisation of markets and growth in cross-border transactions the question arises if cross-country differences in investment and competition standards are becoming important non-tariff barriers to trade.” (page 6)

Market access considerations are important, but they are not the only rationale for international collective action on these policies in the WTO. Again, Professor Morrissey’s perspective is unnecessarily narrow. Some perfectly respectable economists have argued that WTO rules on investment should focus on the subsidies and tax breaks (or concessions) offered to lure (and retain) footloose multinational corporations. Others have argued, in the case of competition, that both enforcement and non-enforcement of national cartel laws can, and do, create cross-border

⁴ See, for example, the following remark on page 12:

“Again, our proposal is that one asks if a measure accounts for the nature of the global market. If there is evidence that some companies have global market power, then removing government distortions, does not guarantee welfare increases.”

⁵ The choice of the cement industry for this example was no accident. If the empirical record is anything to follow, other than diamonds and petroleum, it would be difficult to find a sector where cartelisation is more prevalent.

⁶ Just how “new” the Singapore Issues are is a related point that I shall not dwell upon too much here. Suffice it to say that provisions relating to investment policy, competition policy, government procurement regimes, and trade facilitation can be found in the several Uruguay Round multilateral trade agreements and in some of those agreements’ predecessors.

spillovers, and that binding commitments at the WTO could do much to strengthen these positive knock-on effects and to reduce these negative knock-on effects.

One of the opportunities presented by the Doha Round, and this builds on my second and third comments, was to negotiate both reductions in traditional border barriers and commitments to implement state measures that ensured the benefits of border reform were not diluted. By taking most of the complementary measures off the negotiating table and focusing on certain market access matters (such as agriculture), which many empirical studies suggest will only substantially benefit a small number of entrenched exporters, we are in danger of producing a mouse of a trade round.⁷ If this sorry state of affairs comes to pass, no doubt there will be plenty of academic experts around to tell us that the WTO has failed developing countries, again. These experts will have conveniently forgotten the role that many of them played in reinforcing the instincts of certain trade negotiators to shrink this round in the first place.

My fourth comment on Professor Morrissey's paper is that it contains factual inaccuracies which can seriously mislead readers. We are told, for example,

"The case for binding multilateral rules on investment and competition policy within the WTO framework has been rather controversial (see Morrissey, 2002). The EU and US have been strong proponents of introducing such an agenda, but developing countries are strong opponents." (page 6)

In fact, while the US was a proponent of new multilateral rules on investment⁸, it never proposed multilateral rules on competition law. The US antitrust bar was, and is, implacably opposed to WTO rules on competition law and the U.S. negotiating position at Cancun reflected that. As for developing country opposition to multilateral rules on competition law, some, but certainly not all, such countries were opposed to having new rules. Some were in favour of negotiations (but not necessarily on the terms proposed by the European Communities and its Member States) and indeed make proposals to that effect. As the submissions to and minutes of the Working Group on the Interaction between Trade and Competition Policy makes clear, the reality is more complicated than Professor Morrissey's portrayal of this matter as a North versus South split.

Moreover, and this is my fifth comment, in places, this paper shows weaknesses in understanding the nature of WTO agreements and associated policy instruments. The account of the relationship between the General Agreement on Trade in Services (GATS) and the Single Undertaking in the Uruguay Round (on pages 5 and 6) is a case in point. As I understand it, and contrary to a statement made in the paper⁹, the General (framework) Agreement, itself, is part of the Single Undertaking. However, GATS differs from many other agreements at the WTO in that

⁷ This is particularly the case, given the modalities for the non-agricultural market access negotiations are stated in the July 2004 Framework Agreement in the most confusing, and potentially contradictory, manner.

⁸ Given Professor Morrissey's support for GATS-type agreements, which is reported in the paragraph below, readers may be interested in the following information. As far as proposals concerning further multilateral rules on investment are concerned, the EC advocated precisely a GATS-based (that is, positive list) approach. In contrast, the U.S. argued for a negative list approach. Unfortunately, Professor Morrissey does not discriminate between these two approaches in his broad-brush opposition to further multilateral rules on investment policy. (On page 7, Professor Morrissey concludes his discussion of investment and competition policy with the following remark:

"Governments will require regulatory and competition policy to address these issues, but it is not evident that these have to be addressed in a multilateral forum.")

⁹ The following statement is made on page 6 of this chapter:

"Thus, GATS offers a practical alternative approach to a single undertaking."

it adopts a “positive list” approach to scheduling specific commitments. This is important, as it highlights that the Single Undertaking is compatible with both positive and negative list approaches. Another observation in the paper, that demonstrates a lack of understanding about trade policy instruments, is the following:

“If a WTO investigation found evidence of dumping, any importing country could be entitled to levy a countervailing duty.” (page 15)

My final comment on the argumentation in Professor Morrissey’s paper is that it uncritically accepts many of the slogans and half-truths that are used to argue that the WTO is inherently biased against developing countries. Professor Morrissey argues, for example, that developing countries have been adversely affected by the high costs of implementing the Uruguay Round agreements (see page 6). For someone who goes on to make the case (two pages later) that evidence should play a significant role in determining the contents of the Single Undertaking, it is more than a little surprising to find that only one paper is cited in defense of the argument about implementation costs. There is no defense here that the cited article is representative of a large number of empirical papers, documenting implementation costs¹⁰; in fact, one of the best kept secrets of the Doha Round is that the latter does not exist and that scare stories about implementation costs are built on such flimsy empirical foundations. Indeed, the reader of this paper could be forgiven for getting the impression that the evidentiary standards for asking developing countries to do anything in the WTO is very high; whereas, when it comes to denigrating previously-agreed multilateral trade agreements, those standards are pretty low.

More generally, the one-sided nature of discussions on implementation costs in the WTO is hopefully dawning on more and more people. A little contrarianism might ram the point home: How often have you heard officials from developing countries invoke high implementation costs to support calls for the repeal of (or extended implementation periods for) the Uruguay Round agreements on anti-dumping and countervailing measures? These too are “technical” and “complex” agreements, but it seems implementation costs are not a concern for market-access reducing WTO agreements. Another curio of these discussions is that the trade negotiators and academics (like Professor Morrissey), who are keen on industrial policies, and other forms of government intervention, rarely trouble themselves about implementation costs; whereas, they suddenly become a concern, whenever an industrialised country makes an unwelcome proposal at the WTO. It seems there is one sauce for the goose and one for the gander. These comments do not imply that discussions on implementation costs are content-less, rather that they are currently extremely unbalanced and, therefore, unlikely to lead to sound policymaking.

Another mantra that Professor Morrissey all too easily subscribes to is the strong influence that corporate interests are said to have over the priorities of EC and US trade negotiators. The implication of this state of affairs, as stated on page 14 of this paper, is that developing countries are harmed by multinational corporations through inter-governmental fora

¹⁰ This is to be contrasted with the large number of papers asserting there are large implementation costs. Indeed, a worthwhile project for a bright energetic young scholar would be to establish the proportions of citations in papers asserting large implementation costs exist to other papers making similar assertions and to other papers containing actual evidence of implementation costs. My reading of this literature suggests that it resembles an inverted pyramid with a base of small (possibly one or two) papers containing what purports to be evidence on implementation costs, and then layers and layers of later papers that tend to cite each other more than the papers with any empirical content. To the unsuspecting reader, this may give the impression that there is a substantial literature documenting implementation costs; whereas, in fact, it reflects repeated citations of other authors’ assertions.

as well as through those companies “dominance” of global markets. Again, even though this view contains a kernel of truth, it is incomplete and unbalanced. Do we think for a moment that opposition to preference erosion in the Doha Round by Mauritius had nothing to do with the influence of a small number of families that own sugar plantations in that country? (Mauritius led the African Union group in the run up to the Cancun meeting of WTO Ministers and played a strong role in formulating that group’s collective positions.) Moreover, are we sure that the positions taken by Brazil and India in the protracted discussions over essential medicines had nothing to do with their sizeable generic drug producing sectors? Working in the opposite direction, the European Communities and its Member States proposed multilateral rules on hard core cartels despite opposition from the European chemical industry. As one leading private trade lawyer put it to me “Businesses don’t vote for dawn raids.” It would seem that a balanced account of corporate influence would take into account all of these considerations, and no doubt many more. Different national political institutions mediate commercial interests in different ways. This is not inherently a North versus South issue.

3. Closing remarks

I have taken the trouble to describe, in detail, my objections to Professor Morrissey’s paper, principally because his arguments are so similar to those of many academics, representatives of non-governmental organisations, and officials at various international development institutions. I do not entertain any hopes that the latter will ever agree with the more general observations that I have made, which itself, is a sad reflection on the nature of the discussions about the World Trade Organization. Instead, I hope that the observations presented in this commentary will give open-minded readers some indication as to which flaws to look out for in debates over the future of the WTO. In my view, it is hard to see how the quality of these debates could get any worse and I fear that, should this discussion continue in its unbalanced, partisan, and increasingly North versus South manner, we will end up with the WTO rules that we deserve.