Global Administrative Law Perspective of The Wto Aid For Trade Initiative

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Abstract

The emerging Global Administrative Law (GAL) study has brought into the legal frontlines the need to hold global governance bodies more accountable for their rulings and activities, and how these institutions are adapting their actions to better respond to new global challenges as their legitimacy depends on their effectiveness in coping with them. The legitimacy challenge has become a pressing issue, forcing international organizations to open up their decision-making processes and to set up review mechanisms to oversee their actions. The recent WTO Aid for Trade (AFT) Initiative belongs to this new category of global action/forums that want to respond to legitimacy and accountability challenges. This innovative movement has provided the WTO Director General with the responsibility to launch and institutionalize an initiative to allow poorer countries to derive more benefit from the Multilateral Trading System. It has brought together a wide range of stakeholders including international aid-donor states, beneficiary states, international financial and development institutions, regional banks and regional institutions, private sector, NGOs etc. to discuss and shape the best way to achieve this aim. This article tries to assess the AFT Initiative against the principles advocated by GAL, in particular those related to participation, transparency, accountability and review.

Keywords: Aid for Trade; Developing Countries; Global Administrative Law; WTO Director general; Task force; Accountability; Transparency; Coherence; Monitoring; Review; WTO

1. **Introduction**

Trade is a fundamental part of international governance and, in that context, the General Agreement on Tariffs and Trade (GATT), and even more so now the World Trade Organization (WTO), are interesting forums where new forms of decision-making and informal actions by states can be assessed against the parameters of Global Administrative Law (GAL).

GATT 1947 was not a treaty, nor a formal international organization. It was a temporary agreement, which entered into force on 1 January 1948 and was intended to be integrated into the treaty creating the International Trade Organization (ITO), constituted by what was then called the Havana Charter, since it had been agreed upon during the International Conference

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on Trade and Employment held in Havana, Cuba, in 1947. The treaty which was to create the ITO never entered into force mostly due to the refusal by the US Congress to ratify it. The temporary GATT 1947, essentially focusing on tariffs and non-discrimination, and deprived of the institutional provisions that the ITO would have brought it, would remain in force and growing, mostly informally, for almost half a century.

Soon after the implementation of GATT, trade between contracting parties increased; therefore GATT had to be operational despite its institutional weaknesses and legal uncertainties. This may explain why pragmatism and flexibility are characteristic elements of the GATT system. The CONTRACTING PARTIES[3] were thus led to adopt several types of instruments, without a clear status: decisions specifying, adding to or even amending the wording of the Agreement, guidelines, statements ("rulings" and "statements") of the Chairman, adopted by mere consensus of the CONTRACTING PARTIES. These acts and decisions were subsequently endorsed by Members' consistent practices.

Again today, in the WTO corridors, reference is often made to "the practice" for this or that purpose; this expression seems to cover various forms of practices. These practices do not always correspond to genuine "practices" within the meaning of international law[4]. The contracting parties, individually or jointly, also developed several "ways of doing" which evolved throughout the years. These "ways of doing" (to avoid the expression "practice") however exerts an influence on the behavior of Members today and the WTO's organization of its work and, in this regard, these "ways of doing" define the essentially progressive nature of this young international organization. In fact, GATT's achievement lies in that, with these multiple practices, customs and "ways of doing", it succeeded in prolonging, strengthening and expanding an incomplete provisional agreement for almost 50 years until it gave birth to the WTO. Still today the WTO contains very few institutional provisions and does not provide WTO bodies with any general authority to adopt or issue secondary legislation. As a consequence, various types of *sui generis* decisions and practices have been developed to respond to the pragmatic functioning of the GATT/WTO system. All these new and hybrid forms of actions by states are of interest for a review under the GAL principles.

The relatively recent WTO initiative of Aid for Trade (AFT) is undoubtedly a new form of action and mechanism that corresponds to the focus of the GAL study because of its innovative and even avant-guardiste manner of organizing and stimulating changes in the behaviour of all the relevant actors involved in the interconnecting process between aid and trade. Indeed, the Initiative, formally launched in 2005 and aimed at helping developing countries derive more benefit from the multilateral trading system (MTS), was not born out of traditional negotiation between states resulting in defined treaty terms and prescriptions contained in a treaty or other legal instrument. In December 2005, the WTO Director-General

[3]Article XXV of GATT provides that when the "collectivity" of contracting parties acts, it shall be described as the CONTRACTING PARTIES.

[4] *Japan – Alcoholic Beverages II*, the Appellate Body recognises the existence of "practices" in the WTO Law. It defines practices in accordance with the provisions of Article 31.3(b) of the Vienna Convention as being "(...) a "concordant, common and consistent" sequence of acts or pronouncements which is sufficient to establish a discernible pattern implying the agreement of the parties [to a treaty] regarding its interpretation". This sequence of acts which reflects the "consent of the parties" or Members, corresponds to what could be called a firm practice. A firm practice followed by members shall be relevant, in particular, for the interpretation of the provisions of the treaty in accordance with Article 31.2(b) of the Vienna Convention to which Article 3.2 of the Understanding refers.

Pascal Lamy (WTO DG) was given an exceptional mandate by the Sixth Ministerial Conference of the Organization, to conduct a new process, by involving all the stakeholders of such a project (governments, intergovernmental organizations, including multilateral and regional financial institutions, private sector, etc.). The WTO DG set up a Task Force in that regard, whose recommendations were endorsed by the WTO Members in October 2006, when the AFT Initiative was officially born[5]. The evolution and expansion of AFT was supported by a multi-stake Advisory group and several series of informal and formal consultations by the WTO DG. Various transparency, notifications, reporting and review mechanisms were established in the operationalization of AFT. Although not legally binding, the Initiative aims to impose some responsibilities on all the stakeholders, based on transparency, coherence and mutual accountability and responsibility.

This paper aims to analyze this WTO AFT Initiative through GAL principles. It starts by recalling the background and the rationale of AFT. Then it describes the GAL dimensions - transparency, accountability, review, monitoring – of the AFT Initiative and assesses the effectiveness of these core principles of GAL in the AFT Initiative and ends with some concluding remarks.

2. **The AFT Initiative**

2.1. *AFT background and rationale*[6]

Linking development aid in the context of trade is not really new, although AFT became a central issue and acquired a life of its own at the WTO Sixth Ministerial Conference, held in Hong Kong, China, in December 2005. As shown hereafter, it is probably with regard to compliance with the GAL principles that lie the main differences between the old aid programmes and the new institutionalised WTO AFT Initiative.

According to some writers, the legacy of AFT can be traced back at least to the 1980s, when support for the integration of developing countries into the global economy through liberalization of trade-related policies was a major aspect of the lending programmes and activities of the World Bank and the International Monetary Fund (IMF)[7]. The mantra at the time was "trade not aid". In the 1990s, there was a shift in the focus of these institutions towards reducing poverty directly and working more closely with governments to implement national poverty reduction strategies. As a result, a larger share of development assistance was directed towards health, education, and public expenditure management, with fewer resources going to infrastructure, agriculture and trade[8].

The debate on AFT came into the frontlines after the Uruguay Round with the WTO. One of the WTO's aims is to help developing countries, and in particular the least-developed ones (LDCs), expand their production and exports of goods and services. If the first paragraph of the WTO preamble refers to the overall goal of the WTO to expand growth in a sustainable

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[5]AFT was launched to complement the Doha Development Agenda (DDA) but is separated from it, and is not dependant on its outcome. At the Fourth Ministerial Conference in Doha, Qatar, in November 2001, WTO member governments agreed to launch a new round of trade negotiations with development of poorer nations at the hart. They also agreed to work on other issues, in particular the implementation of the present agreements. The entire Round is called the DDA.

[6] For further information on AFT, *see* the WTO website http://www.wto.org/

[7] *See* B. Hoekman, "Aid for Trade: Helping Developing Countries Benefit from Trade Opportunities", in D. Njinkeu and H. Cameron (eds.), *Aid for Trade and Development* (Cambridge University Press, Cambridge, 2008), p. 34.

[8] *Ibid.*

manner, the second paragraph recalls that "there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".

While this aim is being achieved by some developing countries, others, including a large number of LDCs, are failing to increase their share of global trade and to make trade a tool for economic growth and poverty reduction[9].

The Doha Round of multilateral trade negotiations, launched in 2001, was designed to address part of this problem by seeking to reduce the trade-restricting and distorting practices that these countries face in their main developed-country markets and in South-South trade. Yet, market access improvements or disciplines ensuring a more level playing field may not be sufficient to lift everyone onto the path of sustained trade growth. Despite market access improvements, many poor countries have not increased their share of global trade.

It has become clear that WTO advocacy for market opening needed to be accompanied by increased aid to address the supply side problems that many developing countries and LDCs confront, that is, insufficient human, institutional and infrastructural capacity to allow them to participate more effectively in global trade and to expand the quantity and quality of goods and services they supply to world markets at competitive prices.

The AFT project is closely linked to (and built on) three previous and existing programmes, also intended to help developing countries benefit more from the MTS. These are the Joint Integrated Technical Assistance Programme (JITAP)[10], the Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries, also known as the 'Integrated

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[9] *See* UNCTAD, *The Least Developed Countries Report 2008: Growth, Poverty and the Terms of Development Partnership* (United Nations, New York and Geneva, 2008), pp. 9-22.

[10] JITAP is a joint initiative of WTO, United Nations Conference on Trade and Development (UNCTAD) and the International Trade Centre (ITC), launched in 1998. It only targets African countries and follows a call on the international community from African trade Ministers, meeting in Tunis in October 1994, to help strengthen their capacity to integrate the new MTS and take advantage of new trade opportunities arising from the globalization of world markets. The main objective of JITAP is to build national capacity to understand the evolving MTS and its implications for external trade. JITAP has however not been fully operational for all sorts of reasons ranging from lack of funding and criticism that its training approach, based largely on workshops and seminars, provides very limited capacity for handling the practical aspects involved in implementation of trade policy.

Framework' (IF), recently transformed into an 'Enhanced Integrated Framework (EIF)[11], and the Standards and Trade Development Facility (STDF)[12].
The AFT Initiative intends to increase the synergies of these programmes in institutionalizing the necessary collaborations by all relevant stake holders actors, the participation of new actors traditionally not included in such networks, in reinforcing mutual transparency, coherence and accountability and thus national, regional and global responsibility for the ultimate benefits of increasing the trade supply capacity of developing countries.

2.2. *The Hong Kong Ministerial Conference and the launch of the AFT Initiative*

The need to provide additional Official Development Assistance (ODA) to help correct the deficit in trade capacity in developing countries – and in particular in LDCs – was recognized in July 2005 by the G-8 leaders at the Gleneagles Summit, and by their finance and development Ministers at the annual meetings of the IMF and the World Bank. The WTO Sixth Ministerial Conference, held in Hong Kong, China, in December 2005, endorsed this Initiative and placed it at the heart of the WTO: trade Ministers invited the WTO DG to create a Task Force that "shall provide recommendations on how to operationalize Aid for Trade"[13]. Ministers went on by stating that "Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade"; and that "Aid for Trade cannot be a substitute for the development benefits that will result from a successful conclusion to the DDA, particularly on market access"[14].

The Task Force was set up in February 2006 by the WTO DG and submitted its report at the end of July 2006. This report was formally adopted by the General Council of the WTO on 12 October 2006.[15]

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[11] The IF was inaugurated in October 1997 to facilitate coordination of trade-related technical assistance and promote an integrated approach to assist LDCs enhance their trade opportunities. It is a joint initiative, supported by six multilateral institutions (IMF, ITC, UNCTAD, United Nations Development Programme (UNDP), World Bank and WTO), and aims at coordinating the trade-related technical assistance provided by them to LDCs. Although the IF initially made little progress, it was revamped in 2000 as a mechanism to mainstream trade into national economic plans and poverty reduction strategies. An IF Trust Fund was established to finance Diagnostic Trade Integration Studies (DTIS), which involve a comprehensive assessment of countries' barriers to trade. These are followed up by action plans for delivery of trade-related technical assistance, with a view to mainstreaming trade into countries' Poverty Reduction Strategy Papers (PRSP). As a result of various implementation gaps – including lack of donor uptake on DTIS – it was decided at the September 2005 IMF and World Bank Development Committee meeting that the IF should be enhanced and provided with additional resources. An Enhanced Integrated Framework (EIF) was then adopted in 2006. LDCs channel their demand for AFT through the EIF process (involving DTIS). The supply of resources is coordinated through local EIF institutions, such as the EIF Focal Point, the National Implementation Unit and the Donor Facilitator.
[12] The Uruguay Round, and particularly market access programmes such as the United States African Growth and Opportunity Act (AGOA) and the European Union's Everything but Arms (EBA) initiatives, have provided opportunities for poorer countries to expand their export of food products. However, lack of capacity to certify food products as meeting international standards has sometimes prevented such opportunities from being exploited. In that context five multilateral agencies – the United Nations Food and Agriculture Organization (FAO), the World Organization for Animal Health (OIE), World Bank, World Health Organization (WHO), and WTO – established in August 2002 the STDF, to assist developing countries augment their public and private capacities to meet sanitary and phytosanitary international standards, in particular for agricultural products destined to international market. The WTO accepted to serve as the executing institution for the programme.
[13] Hong Kong Ministerial Declaration (WT/MIN(05)/DEC), para. 57.
[14] *Ibid.*
[15] *See* minutes of the General Council WT/GC/M/104, 5 December 2006

A comprehensive AFT package needed to respond to two related concerns: one is the assistance that some WTO Members – LDCs in particular – need in order to implement the results of current multilateral trade negotiations, and to cope with certain adjustment costs; the second set of concerns, broader in scope, is to build a strong supply-side capacity that helps developing countries to effectively benefit from the MTS. This covers a wide range of areas, including setting up testing facilities that will help ensure products meet sanitary and phytosanitary standards in export markets, and much more large-scale projects such as improving transport infrastructure and trade logistics.

The Task Force addressed the issue when it stated that "[t]he scope of Aid for Trade should be defined in a way that is both broad enough to reflect the diverse trade needs identified by countries, and clear enough to establish a border between Aid for Trade and other development assistance of which it is a part"[16]. This includes assistance in trade policy-making and regulations, trade development, trade-related infrastructure and adjustment[17].

These are the rationale and history of the AFT Initiative. As we will see, the recommendations of the Task Force, overall, were followed. AFT is an innovative, dynamic process, where multilateral and regional organizations, and governments, both donors and recipients, interact to ensure effective deliverance of aid, to develop an accountable-friendly way of working together efficiently. It is envisaged that at a later stage direct participation of the private sector and civil society will further expand the operationalisation of AFT domestic programmes. Their role in the monitoring and evaluation process of AFT Initiative will also expand.[18]

In sum, the role of the WTO in this project is one of advocacy that aid should be focused on trade efficient areas best serving the people of developing countries. To transform and improve the efficiency of the old fragmented aid-trade programmes toward more effective AFT global action, the WTO proceeded in a very innovative way: first it mobilized relevant actors and invited them for informal working sessions at various levels of engagement, facilitated their interactions and dialogue in bringing them closer to each other, and thus favoured the development of trust (necessary but until then lacking) trust between multilateral and regional organizations, between donors and recipients, between IGOs themselves etc. It also encouraged similar parallel actions in national and regional forums. The WTO did not do so in negotiating traditional exchange of obligations between Member states but rather in institutionalising more actions by informal networking which through various exchanges, transparency, reporting, monitoring mechanisms evolved to become rooted in mutual responsibilities and accountability commitments. [19]

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[16] *Recommendations of the Task Force on Aid for Trade*, WT/AFT/1, para. D.

[17] *Ibid.*

[18] To complement the history of AFT Initiative, it is important to signal a last and recent measure: the Global Trade Liquidity Programme (GTLP). The global financial crisis has resulted in a global credit crunch with developing countries being more affected. Across trade finance was becoming a new challenge for these countries. The GTLP, launched in April 2009, is aimed at responding to this new crisis challenge. It is a coordinated global initiative that brings together governments, development finance institutions, and private sector banks to support trade in developing markets and address the shortage of trade finance resulting from the global financial crisis. It began operations in May 2009, channelling much-needed funds to back trade in developing countries. With targeted initial commitments of USD5 billion from public sector sources, the programme should be able to support up to USD50 billion of trade. It raises funds from international finance and development institutions, governments, and banks, and it works through global and regional banks to extend trade finance to importers and exporters in developing countries.

[19] AFT Initiative is probably an application of the Geneva Consensus philosophy. According to the "Geneva Consensus" trade opening and reducing trade barriers are essential to promoting growth and development, to

As further explained below, one of the important dimensions of the new WTO AFT lies in the institutionalization of transparency, review, monitoring and accountability throughout those AFT development Initiatives, as advocated by GAL.

3. **AFT Initiative in light of GAL principles**

The following section examines the operation of the GAL principles – participation, transparency and review – with regard to the WTO AFT Initiative.

3.1. *Participation of the stakeholders in the setting up process of AFT Initiative*

In domestic settings, the rights of individuals targeted or affected to have their views and any relevant information considered before a decision is taken is one of the classical elements of administrative law. The GAL project promotes the respect of such principles in global forums.[20] In the context of the WTO AFT, such principles have evolved to now constitute the very heart of this initiative.

The completion of the AFT Initiative was a long process that respected the goal of inclusive participation. Efforts were made to involve all relevant stakeholders of such an initiative: beneficiary countries, donors, including the international financial institutions and regional development banks and institutions and the private sector and civil society. These efforts were visible in the composition of the AFT Task Force and its working process. In addition, the WTO DG carried out a wide range of consultations to secure a more robust and effective AFT.

3.1.1. The composition of the AFT Task Force

The Task Force was constituted in such a way as to represent all WTO Members' interests. Thirteen Member states, including some formal and informal groups of states were represented: Barbados, Brazil, Canada, China, Colombia, the European Union, Japan, India, Thailand, the United States, and the coordinators of the African, Caribbean, Pacific (ACP) states Group, the African Group and the LDCs Group. The Task Force was chaired by Sweden's Ambassador to the WTO in her personal capacity. International organizations, including UNCTAD, UNDP, the United Nations Industrial Development Organization (UNIDO), the IMF, the World Bank, the ITC, and regional institutions such as the Asian

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improving standards of living and to tackling poverty reduction. But although the opening of markets produces benefits to many, it also creates adjustment costs which cannot be ignored. These adjustments must be an integral part of the opening-up agenda. This is the "Geneva consensus": a belief that trade opening works for development but only if we address the imbalances it creates between winners and losers, imbalances that are all the more dangerous the more fragile the economies, societies or countries. In the WTO's most vulnerable Member countries – particularly the least-developed countries – adjustment costs, along with capacity constraints related to supply responses to globalization, cannot be left to be taken care of through the national budget or by the private sector alone. The WTO AFT is part of the effective international response to complement these countries' efforts in opening trade and to ensure that market opening translates into tangible benefits for people in developing countries. See Lamy: It's time for a new "Geneva consensus" on making trade work for development http://www.wto.org/english/news_e/sppl_e/sppl45_e.htm.

[20] *See* B. Kingsbury *et al*, "The Emergence of Global Administrative Law", 68:15 *Law and Contemporary Problems* (Summer/Autumn 2005), p. 38.

Development Bank (ADB), the African Development Bank (AfDB), the Inter-American Development Bank (IADB), and the Organization for Economic Cooperation and Development (OECD), were invited to act in an advisory role to the Task Force on a regular basis. The private sector was not included in the composition of the Task Force but as we will see, the private sector's participation is to expand both with regard to the national implementation of AFT but also in the national, regional and multilateral monitoring reviews.

The gathering of such a variety of actors, from states to IGOs, regional banks and representation from the private sector launch are sowing the seeds of new forms in the collaboration process at the global level. The main goal in selecting such a diverse participation is to ensure better connections between the needs of developing countries and the responses of development aid toward greater efficiency and effectiveness. Such a multi-stake participation was organised to favour and facilitate accountability of each participant who collectively accept responsibility to expand aid for building increased trade capacity. Meetings and working sessions and other pragmatic actions between all relevant actors tightened necessary professional links so as to operationalize the various AFT initiatives.

3.1.2. The working process of the AFT Task Force

The working process of the Task Force consisted of a six-month analysis and deliberation on the proposals submitted by the participants, including all WTO Members. For instance, the African Group[21] made proposals addressing the scope of the AFT Initiative and the need for additional resources. On scope, the African Group highlighted three points: capacity building to address supply-side constraints (infrastructure), support to deal with trade reform costs (adjustment and implementation), and trade policy development and participation in rules-making support[22]. Moreover, the Group stressed that the funds provided under the Initiative should be “additional, sustainable and adequate” and not subject to any conditionality[23].

The proposals of the WTO African Group are innovative: contrary to previous aid programmes, the recipients-beneficiaries have been actively involved in setting up the specific aid programmes under the AFT Initiative which reinforce their ownership. This implies further responsibility on their part in assuming the consequences of their proposals, therefore enhancing mutual accountability between donors and beneficiaries of those AFT initiatives.

The work of the Task Force was conducted in such a way as to allow each stakeholder, in particular donor and recipient countries, to have their say. The objective was to reinforce ownership and accountability from the recipient countries, and accountability and increased AFT delivery from the donors side, including state and financial institutions. Throughout that period extensive consultations took place not only with those directly interested but also with the full WTO membership to ensure institutional transparency.

3.1.3. The consultations carried out by the WTO Director-General

[21] The African group is a WTO specific informal group of African States that are members of the WTO. It also includes those African states that are in the process of acceding to the WTO.
[22] *See* AFT Task Force, *Communication from Benin on behalf of the African Group*, doc. WT/AFT/W/21, para. 5
[23] *Ibid.*, para. 20.

In parallel with the work of the Task Force, the WTO DG initiated a broad series of consultations throughout 2006 on "appropriate mechanisms to secure additional financial resources for AFT", as asked by Ministers in their Hong Kong Ministerial Declaration (paragraph 57).

The DG's consultations focused in particular on how the WTO could best cooperate with intergovernmental financial and development institutions and with the main bilateral donors to support the expansion of their assistance programmes for trade-related projects, particularly supply-side capacity building and infrastructure. The recognition by the WTO that it needs to collaborate with agencies working on issues outside its traditional scope of actions in order to ensure the effectiveness of the market opening it advocates, was in itself revolutionary. Maintaining the necessary coherence between the actions of all those participants was going to be a huge challenge of the AFT Initiative. The response offered by the WTO was the one suggested by GAL. Only with further institutionalized transparency, review and accountability mechanisms could this AFT Initiative survive the legitimacy challenges.

In his first report to the General Council in December 2006, the DG affirmed that, based on his consultations, the main bilateral donors and multilateral agencies remained committed to following through with their pledges to increase and strengthen AFT, and that a number of other donors – both developed and developing countries – are willing to participate in the AFT Initiative. As AFT is part of the ODA, many feared that it was only going to steal from other programmes. The WTO DG was thus able to reassure those who rely of international aid and reinforce the much-needed trust between national, regional and global actors on development. His suggestion for establishing a monitoring and evaluation mechanism was also considered as a guarantee against abuses.

Again this form of direct and active participation by the WTO DG, informally supported by Members and by several layered institutions is innovative, especially since in the WTO treaty the functions, rights and obligations of the DG have not been defined and the DG has no explicit power of initiative in the implementation of WTO obligations.

3.2. *Transparency in AFT process and functioning*

Decisional transparency and access to information are important foundations for the effective exercise of participation rights, and rights of review of people affected by government decisions. They also promote accountability directly by exposing administrative decisions and relevant documents to public scrutiny. The GAL project intends to identify and promote such principles in global governance bodies[24] and institutions.

The transparency principle is a fundamental stimulant of the AFT Initiative. Indeed, AFT is guided by the Paris Declaration on Aid Effectiveness, applicable to all parties involved. The key principles of the Paris Declaration are: country ownership, transparency, and mutual accountability between donor and recipient countries[25]. A country's sense of some ownership in such AFT actions should stimulate their effective leadership over their development policies: strategies to mainstream trade into their national programmes and related co-ordination. For the AFT Task Force, "a commitment to country ownership and country-driven

[24] Kingsbury *et al.*, *supra*, note 19, p. 38.
[25] *See Paris Declaration on Aid Effectiveness: Ownership, Harmonization, Alignment, Results and Mutual Accountability*, doc. WT/AFT/1 (Annex 1), para. 14.

approaches – as well as a commitment of governments to fully mainstream trade into their development strategies – is key to the effectiveness of Aid for Trade”[26].

In order to improve transparency and enhance mutual accountability, the AFT Initiative reinforces the bridge between the "demand" and the "response" sides of AFT through the three following levels: country level, regional level and global level. This was to lead to increased "responsibilities" on both the demandeurs and the donors.

At the country level, recipient governments are encouraged to strengthen their in-country structures, with improved links to donor financing, in order to help move from trade-related diagnostics to implementation, and to maximize access to multilateral and bilateral resources. The task of matching demand for AFT projects with a response is addressed in many countries by strengthened national coordination through a "National AFT Committee", which includes donors, and other relevant stakeholders, such as the private sector, under the leadership of relevant Ministries. There are also national AFT reviews that precede the regional and global ones.

Many countries require also regional cross-border infrastructure as well as regional policy cooperation to trade more effectively and AFT encourage actions at the regional level in particular. The ability to identify cross-border and regional needs is being strengthened at the country, regional and global level. Once needs have been identified, donors and agencies will improve their ability to respond. In particular, assistance in formulating and financing accompanying measures helps to make regional integration an effective building block for the MTS. The COMESA-EAC-SADC North-South Corridor project in Southern and Eastern Africa is an example of AFT management at the regional level. It is a joint initiative of the Common Market of Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern Africa Development Community (SADC), aims to improve the physical infrastructure for transport and electricity, as well as the regulatory environment for trade within the region[27].

At the global level, the tasks performed by the WTO in partnership with the OECD, comprise collection of data and statistics, as it is indispensable to know exactly what is being done in the field of AFT, and to examine the relationship between policies related to trade and development performance. Dissemination of AFT evaluation results, development of best practices and guidelines, and facilitation of information sharing, involving all relevant actors, are also carried out, in order to ensure efficient use of AFT funds. In this regard, WTO and OECD periodically publish a report entitled *Aid for Trade at a Glance*. These reports gather data on AFT flows and analysis of other relevant information on AFT.

As far as transparency is concerned, the WTO works in close cooperation with an Advisory Group set up by the WTO DG in 2007 following the recommendations of the AFT Task Force. The main objective of the Advisory Group is to take forward the Task Force recommendations by encouraging coordination among the key players in the AFT Initiative. The members of the Advisory Group are the followings: AfDB, ADB, European Bank for Reconstruction and Development, IMF, IADB, Islamic Development Bank, ITC, OECD, UNCTAD, UNDP, United Nations Economic Commission for Africa (UNECA), UNIDO and the World Bank. So the main interest-groups are represented in this Advisory group and can actively influence its process. Transparency is also relevant in the context of the components of the AFT demands of beneficiaries for whom mechanisms have been set up to assist them in

[26] *Recommendations of the Task Force on Aid for Trade*, doc. WT/AFT/1, para. F.3.
[27] *See* WTO and OECD, *Aid for Trade at a Glance 2009*, p. 91.

identifying and defining their needs, and how to translate them into actual specific demands to donors. This also results in transparency to donors whose decisions to assist one specific aid programme or another remain subject to national, regional and global review. Finally, transparency leads also to further coherence between the various programmes and AFT related actions and increased coherence in the area of trade-related aid is also one of the fundamental benefit of the AFT Initiative.

In addition to working with those directly involved, the WTO DG regularly reported to the Development Committee and the General Council of the WTO. He also gave multiple speeches on the state of play of AFT and thus ensures awareness of the evolution of the AFT Initiative by the entire WTO membership and by the broader international community. In the WTO Members continue to follow the evolution of the AFT Initiative in the Committee on Trade and Development.

3.3. *Monitoring, Evaluation and Review mechanism in AFT Initiative*

From GAL perspective, global administrative bodies must set up review mechanisms through their decision-making system, in particular to allow those targeted or affected by the decisions to ask for review, if so they decide[28].

AFT Initiative allows for innovative review process, at national, regional and global levels. The aim of this process is both to ensure the effective delivery and proper use of AFT, and to allow the stakeholders to raise their concerns about the functioning flaws of the various programmes.

In 2007, AFT moved into its first stage of implementation. The WTO started by establishing a system of monitoring AFT at three levels: a) global monitoring of overall AFT flows, based on work carried out by the OECD; b) monitoring the commitment of individual donors to provide additional AFT; and c) monitoring how the needs of developing countries for additional AFT are being addressed and met by, the international donor community, including the development banks.

Monitoring is ongoing and has been addressed specifically in two periodical events since 2007: AFT Regional Reviews and AFT Global Review.

3.3.1. Regional Reviews of AFT Initiative

The main aim of the AFT Regional Reviews is to examine AFT functioning in three different geographical areas: Africa, Latin America and the Caribbean, and Asia. The reviews are conducted in such a way as to identify priorities, and agree on how the plans and priorities should be implemented. Initially, the purpose of these reviews was to raise awareness of the AFT Initiative. More recently, the Regional Reviews showcased "real-world" examples of AFT strategies in progress and created incentives for other countries and sub-regions to follow.

The first Regional Reviews were carried out in 2007 in all three regions mentioned above. From 13 to 14 September 2007 in Lima, Peru, for Latin America and the Caribbean; from 19

[28] Kingsbury *et al*, *supra*, note 19, p. 39.

to 20 September 2007 in Manila, Philippines, for Asia and from 1 to 2 October 2007 in Dar es Salaam, Tanzania, for Africa.

The second Regional Reviews took place in 2009 for all the same regions: 5 to 8 April 2009 in Lusaka, Zambia; May 7-8, 2009 in Montego Bay, Jamaica; and 28 to 29 May 2009 in Siem Reap, Cambodia.

These Regional Reviews are organized by the WTO, in close collaboration with the key regional partners, including multilateral financial agencies, regional development banks, the regional economic communities (RECs), and the private sector. They constitute the building blocks for the AFT Global Review.

3.3.2. Global Review of AFT Initiative

One of the recommendations of the AFT Task Force was that a Global Periodic Review of the AFT Initiative be convened every two years in the WTO. The purpose of the Global Review is to strengthen the monitoring and evaluation of AFT in order to bring transparency and accountability, and to provide a strong incentive to both donors and recipients in advancing the AFT agenda.

The first AFT Global Review took place in 2007 in Geneva at the WTO Headquarters, from 20 to 21 November, preceded by a workshop at the technical level on AFT monitoring and evaluation, on 19 November. This Global Review had three main objectives. The first objective was to draw together the various monitoring inputs into a coherent picture. Members had the opportunity to examine and discuss the results of the "three tier" of monitoring - the global numbers, and the partner and donor-country self assessments -, summarized in the joint WTO-OECD *Aid for Trade at a Glance 2007*. The Reports and Recommendations of the three Regional Reviews in Lima, Manila, and Dar es Salaam were also discussed. The second objective was to shift the focus from analysing needs and priorities, to implementing responses. Donors, agencies and partner countries were encouraged to identify key objectives of AFT activities and to discuss how they should be met. The third objective was to begin examining how to better monitor and evaluate progress of AFT on the ground, in particular by launching a work agenda aimed at developing qualitative targets for improving trade capacity.

The second AFT Global Review took place this year in Geneva (from 6 to 7 July 2009). It evaluated progress made since the first review held in 2007 and scrutinized how AFT is being operationalized. Progress in securing additional, predictable financing was discussed and views exchanged on how aid flows can be maintained against the backdrop of the global financial crisis. Central to this process was the examination of the conclusions from the three-tiered monitoring framework which has been put in place: tracking of AFT flows through the OECD Creditor Reporting System; monitoring of mainstreaming and implementation through self-assessments based on a joint OECD-WTO questionnaire; and establishing the impact of AFT at a national level through appropriate indicators. The monitoring framework was complemented with case studies across different regions to disseminate good practices with the underlying aim that Members disseminate them among themselves.

The joint WTO-OECD *Aid-for-Trade at a Glance 2009* publication presented at the Global Review conference showed that trade is being prioritized by partner countries in national development strategies, that donors are offering more and better AFT and that new partners are becoming engaged in South-South cooperation. The publication also demonstrated that the increase in allocation of AFT has been achieved without reducing resources to other development priorities such as health, education or environment. In addition, it addressed the regional dimension of AFT and showcased three cross-border infrastructure projects and provided fact sheets that help in assessing the outcomes and impacts of AFT.

The challenge of establishing "best practices" is the next stage of AFT and here again GAL principles will be useful not only in the determination of those "best practices" that involve actions by several types of actors at different levels of our international legal order but also in the related reporting and monitoring activities over those AFT best practices. “AFT should develop as a community of best practice and a first step in this direction would be to inventory what was out there”, said the WTO DG in his closing remarks at the last AFT global review. Confirming prior finding from GAL, the development of "best practices", instead of (non-enforceable) obligations, is more adapted to the realities of AFT.

The second step would therefore be to look at common frameworks. "There is also a need to ensure that not just inputs and outputs are measured but also tangible outcomes”, the WTO DG concluded. The WTO AFT must continue to evolve and can only do so if it now expands its monitoring function and undertakes work on "evaluation" and on the development of criteria to assess the effectiveness and the impact in general of AFT initiatives..

4. **Concluding Remarks**

The last AFT Global Review showed that AFT has definitely gained momentum and that virtually every stakeholder wants to be on-board.. As noted by the WTO DG at the July General Council meeting, the presence of the United Nations Secretary General, heads of international organizations and government ministers was a clear demonstration of the collective resolve to collaborate in order to address the capacity challenges facing developing countries. The WTO AFT is more than an inter-agency process, as the last global review confirmed the leadership role now played by many developing countries in articulating their priorities, with the support of regional economic communities. The WTO DG, in his closing remarks to the Global review highlighted the importance of enhancing the role and contribution of the regional commissions and the private sector in the initiative – thus further broadening the participation of the AFT Initiative.

Coordination, coherence, review and monitoring are at the heart of the effectiveness of AFT and this is what the WTO forum can offer. The WTO is not a development agency, but the WTO plays an important role in facilitating networking with relevant international actors, especially donors and regional development banks, that prove often "closer" to people than multilateral organizations, that is much needed for effective assistance policies. It offers a forum where these interconnections can be discussed, reviewed and monitored. In doing so, the WTO facilitates the accountability reporting of all AFT actors and thus increases the feeling of ownership and responsibility that replace the traditional imposition of rights and obligations.

Yet, many challenges remain. The first one is the evaluation criteria of AFT. Although the broad definition given to the scope of AFT Initiative is a smart way to address the trade-related problems of developing countries, it could ultimately make it difficult to assess its real impact on the ground. Many projects include trade and non-trade motives. A road project intended to open up a region inside a country for many purposes including social, political and cultural reasons, has also probably trade-related benefits. Should the financing of such project be taken into account when gathering the data for AFT assessment? The gathering of the right data is therefore not easy and this could somewhat impair the monitoring process AFT Initiative.

A second challenge, which can affect the beneficiary countries ownership of AFT, is the mainstreaming process of trade-related needs into national development strategies. One needs to make sure that is not done through the usual way as it has been so far, particularly in LDCs, by consultants rather than the national authorities themselves. The ongoing networks initiated by AFT assist developing countries in that regard but it is a very slow and demanding process that the implementation of the GAL mechanism facilitate.

Thirdly, a further implication of civil society and also national parliaments in AFT's monitoring process might increase the accountability of its principal actors that are states (donors and beneficiaries), WTO, and international financial and development institutions. Efforts to continue to broaden AFT participation and expanding national, regional and global transparency, reviews and monitoring mechanisms have so far had a shaping effect towards the realization of the AFT goals.

Lastly, the contentious issues of the "conditionality" and "additionality" remain to be clarified. As asked for by developing countries, particularly the African Group, AFT should not be subject to any conditionality and AFT should be based on "new" money so as not to compete with other existing social development programmes. Nonetheless, WTO is not the AFT donor. Yet in setting up these new mechanisms and innovative networkings AFT is slowly raising transparency and accountability standards throughout the chain of its national, regional and global actors and hopefully this will trigger increased feeling of responsibility from donor states or international financial and development institutions..

The WTO's mandate is limited to trade considerations and it is not a development agency, so in order to comply with the broader goals of the AFT Initiative, the WTO had to set up innovative mechanisms and networks that reinforced close links with and between various agencies and other actors with the relevant expertise and funds. In doing so it also sewed between all stakeholders threads of multiple mechanisms of exchange, transparency, review, and monitoring all of which lead to increased coherence and feelings of mutual responsibility and accountability along the principles advocated by GAL.