

## THROWING ONE ARM AROUND THE WORLD:

### WHY THE FAILURE OF THE WORLD TRADE ORGANIZATION TO INCLUDE ANTI-BRIBERY AND CORRUPTION TARGETS WITHIN ITS AID FOR TRADE PROGRAM UNDERMINES THIS PROGRAM AND HOW TO BRIDGE THESE ISSUES

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#### INTRODUCTION

In the years before he gained prominence as an activist, the singer Bono and the group U2 released a song in which it admonished: “just like all the rest, been tryin’ to throw your arms around the world.”<sup>1</sup> Fourteen years after the release of this song, the World Trade Organization (“WTO”) began its “Aid for Trade” initiative, which aims to coordinate and monitor the many forms of aid given by donor states and organizations to partner states in order to bolster a variety of trade and trade-related sectors of the partner states’ economic structure. In a sense, the Aid for Trade initiative seeks to be a break from other aid programs that are administered in an uncoordinated fashion by a variety of state, regional and international actors. The Aid for Trade initiative has solicited information from donor states, donor organizations and partner states, released information from these states and organization, as well as reports on the overall state of aid for trade, and hosted several regional meetings on the topic since its 2005 inception.

And yet, among the many aid and trade issues that have been the subject of inquiry by the

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<sup>1</sup> U2, *Tryin’ to Throw Your Arms Around the World*, on ACHTUNG BABY (Island Records 1991).

Aid for Trade initiative, there is a glaring and, in the author's view, fatal gap: failure to address anti-bribery and corruption measures. The goal of this article is to discuss the relationship between the Aid for Trade initiative and anti-bribery/corruption measures in order to demonstrate that, without explicitly addressing anti-bribery and corruption, the WTO Aid for Trade initiative is "just like all the rest," and indeed only attempts to throw one arm around the world of issues associated with aiding developing countries' trading and economic systems.

Part II of this article provides background on the WTO's Aid for Trade initiative. It then discusses the results of a co-reporting study of cooperative states, conducted in conjunction with the Organization for Economic Co-Operation and Development ("OECD"). Further, this part discusses the incorporation of the Aid for Trade initiative into the aid and development strategies used by donor and partner states. It also discusses the handling of the Aid for Trade initiative in WTO Trade Policy Reviews issues since the creation of the Aid for Trade initiative and the manner in which the Aid for Trade initiative has been incorporated into international donation strategies.

Part III discusses the established relationship between bribery and corruption within the aid and development assistance cycle and the inhibition of meaningful trade growth and development in partner states as a result of unaddressed bribery and corruption. It then reviews the extant international and regional conventions regarding the prevention of bribery and corruption in order to demonstrate that these conventions do not explicitly connect bribery and corruption issues with trade-related aid and development assistance. This discussion leads to Part IV, which takes the lessons of and gaps discussed in Parts II and III and proposes linking the WTO's Aid for Trade initiative

with the fight against bribery and corruption. This proposal is made in order to ensure that the Aid for Trade initiative views trade-related aid and development assistance as a holistic set of forces within donor and partner states, not as a compartmentalized concept which disregards issues that necessarily touch on the possibility of achieving meaningful and lasting advances in the trade structures of partner states and their governments.

Finally, Part V concludes that it is only when such a holistic view is taken that the Aid for Trade initiative can be said to be throwing both arms around the world of development and trade, and that it is not just like all the rest.

## I. THE AID FOR TRADE INITIATIVE

### A. *Aid for Trade Creation and Early Development*

The concept of developed states providing aid – in the form of economic assistance, technical assistance, and disaster relief to name only a few – is not new in the international sphere. Nor is the concept of developed states, and even some developing states, providing trade and trade-development assistance to less advanced states new or novel. Recently, aid has been increasingly provided at the regional and international level as well as the bilateral level, although there has been no cessation or decrease of importance of bilateral level aid schemes.<sup>2</sup> The motivations for aid and development

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<sup>2</sup> See AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* [http://www.oecd.org/document/61/0,3343,en\\_2649\\_34665\\_39121213\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/61/0,3343,en_2649_34665_39121213_1_1_1_1,00.html) (last visited Aug. 4, 2008).

schemes at all levels run the gamut from the truly altruistic<sup>3</sup> to the need to use aid and the positive results associated with it as part of a larger plan to increase peace and stability throughout the world.<sup>4</sup> Funding for international aid and development is certainly not lacking at present, and the Millennium Development Goals promulgated by members of the United Nations (“UN”) aim to guarantee that the amount of funding provided to international aid and development programs will rise at an exponential level over the course of the immediate future.<sup>5</sup>

Additionally, development – and its associated economic consequences and requirements – has been at the forefront of the Doha rounds of WTO negotiation since their inception in 2001.<sup>6</sup> As of the time of writing, the Doha round ended without an agreement, and its future viability is uncertain at best.<sup>7</sup> The WTO became involved with the issue of the provision of aid that was specifically geared toward enhancing the trading capacities of developing states in 2005, when members of the WTO identified gaps in the international aid and development system.<sup>8</sup> Accordingly, these members created the Aid for Trade initiative, a novel entity in the sphere of international aid and development assistance that aims to oversee the larger universe of international trade-related aid and

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<sup>3</sup> See, e.g., UNITED STATES DEPARTMENT OF STATE AND USAID, STRATEGIC PLAN FISCAL YEARS 2007 – 2012, STRATEGIC GOAL 5: PROVIDING HUMANITARIAN ASSISTANCE, at 30-33, *available at* [http://www.usaid.gov/policy/coordination/stratplan\\_fy07-12.pdf](http://www.usaid.gov/policy/coordination/stratplan_fy07-12.pdf) (last visited Aug. 4, 2008) (explaining the aid policy of the United States in situations such as natural disasters).

<sup>4</sup> See generally OFFICE OF THE PRESIDENT OF THE UNITED STATES OF AMERICA, THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 2006, THE WHITE HOUSE, *available at* <http://www.whitehouse.gov/nsc/nss/2006/> (last visited Aug. 4, 2008).

<sup>5</sup> See UNITED NATIONS, UN MILLENNIUM GOALS, *available at* <http://www.un.org/millenniumgoals/> (last visited Aug. 4, 2008).

<sup>6</sup> See THE WORLD TRADE ORGANIZATION, DOHA DEVELOPMENT AGENDA, *available at* [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm) (last visited Aug. 4, 2008).

<sup>7</sup> See David Lyon, *Trade Talks' Failure Ends Doha Dreams*, BBC NEWS, Jul. 29, 2008, *available at* <http://news.bbc.co.uk/2/hi/business/7532168.stm> (last visited Aug. 4, 2008).

<sup>8</sup> See THE WORLD TRADE ORGANIZATION, *Hong Kong Ministerial Declaration 2005*, DOHA WORK PROGRAMME, at para. 57, *available at* [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm#aid\\_for\\_trade](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm#aid_for_trade) (last visited Aug. 4, 2008).

development assistance with which WTO members are involved at the donor or partner level.<sup>9</sup> In so doing, the WTO stressed that it was not seeking to become involved in the actual provision of international aid<sup>10</sup>; rather, it was seeking to provide insight into the current international trade-related aid and development assistance system and highlight areas that need greater attention or remedies.<sup>11</sup> As a part of these efforts, the Aid for Trade initiative also sought out the involvement of international, regional and national entities that are involved in trade-related aid and development assistance in order to obtain a clearer picture of the state of international aid and development.<sup>12</sup> These partners included the Organization for Economic Cooperation and Development (“OECD”), the United Nations Industrial Development Organization (“UNIDO”), the Integrated Framework system (“IF”), and the World Bank.<sup>13</sup> The insights of various regional actors, especially those whose members are largely developing states, was sought out as well.<sup>14</sup>

In its internal operations, the WTO Committee on Trade and Development has begun to assess Aid for Trade issues that have direct bearing on legal and policy issues that are of importance to the WTO. For example, the agenda for 2007 addressed issues such as standards, sanitary and phyto-sanitary regulations, banking issues, and the impact of WTO accession attempts on the economies of developing states.<sup>15</sup> The input of other economic-based international actors – such as the OECD and the World Bank – has been

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<sup>9</sup> *See id.*

<sup>10</sup> *See* THE WORLD TRADE ORGANIZATION, *Aid for Trade Background*, AID FOR TRADE AND THE WTO WORK PROGRAMME, available at [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/background\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/background_e.htm) (last visited Aug. 4, 2008).

<sup>11</sup> *Id.*

<sup>12</sup> THE WORLD TRADE ORGANIZATION, *Aid for Trade Factsheet*, AID FOR TRADE, available at [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/a4t\\_factsheet\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_factsheet_e.htm) (last visited Aug. 4, 2008).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See* THE WORLD TRADE ORGANIZATION, *The WTO work program on Aid for Trade*, AID FOR TRADE, available at [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/developments\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/developments_e.htm) (last visited Aug. 4, 2008).

solicited for many of these issues, however the Committee for Trade and Development is tasked with evaluating the overall WTO policy for these issues within the established framework of WTO laws and policies.<sup>16</sup>

Other than delegating the bulk of the Aid for Trade agenda to the Committee on Trade and Development, the WTO also created a Task Force on Aid for Trade in 2006.<sup>17</sup> The Task Force was given the responsibility of establishing the overall set of goals for the Aid for Trade initiative, the WTO's relationship as an advocate for Aid for Trade and developing states' economic growth, and the relationships between donor states and organizations, partner states, and the international trade-related aid and development assistance system as a whole.<sup>18</sup> Ultimately, the Task Force recommended that the Aid for Trade initiative be used to bring greater coherency to the international trade-related aid and development assistance arena under the umbrella of the WTO generally and the Aid for Trade initiative in particular.<sup>19</sup> The justification for this recommendation centered on the role of the WTO within the overall world economic and trading system, which was regarded as putting the WTO in a unique position for the purposes of evaluation and recommendation.<sup>20</sup> As a result of the Task Force's recommendations, a series of follow-up reports were requested throughout the intended life of the Aid for Trade initiative in order to track the effectiveness of its implementation at all levels of the international aid process that relate to trade and trade-related development.<sup>21</sup>

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<sup>16</sup> See THE WORLD TRADE ORGANIZATION, AID FOR TRADE, *available at* [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/aid4trade\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm) (last visited Aug. 4, 2008).

<sup>17</sup> See THE WORLD TRADE ORGANIZATION, TASK FORCE, AID FOR TRADE, *available at* [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/implementing\\_par57\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/implementing_par57_e.htm) (last visited Aug. 4, 2008).

<sup>18</sup> See *id.*

<sup>19</sup> See *id.*

<sup>20</sup> See *id.*

<sup>21</sup> See *id.*

*B. Aid for Trade Evaluations*

*i. OECD/WTO COUNTRY PROFILES*

The strongest fact-finding partnership to emerge from the Aid for Trade initiative thus far has been that between the WTO and OECD in regards to international trade-related aid and development assessment.<sup>22</sup> In 2007, the WTO and the OECD issued questionnaires to donor states, partner states, and involved international and regional organizations.<sup>23</sup> The goal of the questionnaire series was to elicit responses regarding the particular constituency's understanding of, implementation of, and plans for the Aid for Trade initiative's agenda.<sup>24</sup>

Much to the chagrin of the WTO and OECD, the primary responses to this questionnaire came from donor states, while partner states did not respond in significant numbers.<sup>25</sup> A number of regional and international organizations involved in trade-related aid and development assistance activities responded to the questionnaires as well.<sup>26</sup> In order to respond to the questionnaire, the respondent was generally required to evaluate the five policy areas targeted by the Aid for Trade initiative: trade policy and regulation, economic infrastructure, building productive capacity, general budget support and "other trade-related needs,"<sup>27</sup> as well as evaluating more general information in accordance with

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<sup>22</sup> See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, OECD WORK ON AID FOR TRADE, DEVELOPMENT CO-OPERATION DIRECTORATE, *available at* [http://www.oecd.org/document/52/0,3343,en\\_2649\\_34665\\_39145396\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/52/0,3343,en_2649_34665_39145396_1_1_1_1,00.html) (last visited Aug. 3, 2008).

<sup>23</sup> See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, *available at* [http://www.oecd.org/document/61/0,3343,en\\_2649\\_34665\\_39121213\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/61/0,3343,en_2649_34665_39121213_1_1_1_1,00.html) (last visited Aug. 3, 2008).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, DONOR QUESTIONNAIRES: AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION

the Paris Declaration.<sup>28</sup> Of particular note to this article is that none of these five policy areas or the Paris Declaration questions specifically seeks to address the issues of bribery or corruption, whether as a hindrance to economic and trade growth or as an area to be targeted for elimination.<sup>29</sup> Although the term “good governance” is alluded to in one country report, there is no definition of this term or what it encompasses by the WTO or the OECD.<sup>30</sup> Further, the OECD Creditor Reporting System (“CRS”) reports for the respondent states indicates that, even within the trade policy and regulation category, anti-bribery and corruption efforts and/or policy goals are not included in analysis.<sup>31</sup> This is of particular note given the OECD’s extensive involvement in anti-bribery and corruption efforts, as discussed below.

Some donor state responses discussed their overall aid and development assistance strategies, including those outside of the scope of Aid for Trade, and some refer to anti-corruption as being a goal of their general strategies.<sup>32</sup> However, a specific link between Aid for Trade support and combating bribery and corruption in partner

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DIRECTORATE, *available at* <http://www.oecd.org/dataoecd/15/26/39120395.pdf> (last visited Aug. 3, 2008); *see also* ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, PARTNER COUNTRY QUESTIONNAIRES, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, *available at* <http://www.oecd.org/dataoecd/16/17/39124158.pdf> (last visited Aug. 3, 2008).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *See* ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, NORWAY, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, *available at* <http://www.oecd.org/dataoecd/8/50/39643133.pdf> (last visited Aug. 3, 2008).

<sup>31</sup> *See* ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, CREDITOR REPORTING SYSTEM (CRS) PROFILE, AID FOR TRADE: DONOR AND PARTNER COUNTRY PROFILES, DEVELOPMENT CO-OPERATION DIRECTORATE, *available at* [http://www.oecd.org/document/17/0,3343,en\\_2649\\_34665\\_39843665\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/17/0,3343,en_2649_34665_39843665_1_1_1_1,00.html) (last visited Aug. 3, 2008).

<sup>32</sup> *See generally* ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, *available at* [http://www.oecd.org/document/61/0,3343,en\\_2649\\_34665\\_39121213\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/61/0,3343,en_2649_34665_39121213_1_1_1_1,00.html) (last visited Aug. 3, 2008) (*see* Australia, Belgium, Brazil, Chile, Czech Republic, France, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States).

states is not made in these reports.<sup>33</sup> Many of the donor responses are from European donor states and necessarily tie their aid and development assistance plans to the EU directives on Aid for Trade,<sup>34</sup> which do not specifically address the issue of bribery or corruption within the context of Aid for Trade per se.<sup>35</sup> And, while several partner states stress that part of their Aid for Trade strategies include legal reform overall, these states do not have a particular focus on combating bribery or corruption within their trade-based regimes.<sup>36</sup> Rather, it seems that legal reforms in the context of Aid for Trade center on

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<sup>33</sup> *See id.*

<sup>34</sup> *See* AUSTRIA, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/16/39638985.pdf> (last visited Aug. 3, 2008); FRANCE, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/23/39639048.pdf> (last visited Aug. 3, 2008); ITALY, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/2/39639084.pdf> (last visited Aug. 3, 2008); LITHUANIA, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/46/44/39639102.pdf> (last visited Aug. 3, 2008); THE NETHERLANDS, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/48/39639138.pdf> (last visited Aug. 3, 2008); PORTUGAL, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/53/39639183.pdf> (last visited Aug. 3, 2008); THE UNITED KINGDOM, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/46/35/39639246.pdf> (last visited Aug. 3, 2008).

<sup>35</sup> *See* TOWARDS AN EU AID FOR TRADE STRATEGY, EUROPA, *available at* <http://europa.eu/scadplus/leg/en/lvb/r13002.htm> (last visited Aug. 3, 2008).

<sup>36</sup> *See* CAMBODIA, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/18/39639003.pdf> (last visited Aug. 3, 2008); COLOMBIA, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/39/64/39643143.pdf> (last visited Aug. 3, 2008); MALAWI, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/46/6/39639120.pdf> (last visited Aug. 3, 2008); PANAMA, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/50/39639156.pdf> (last visited Aug. 3, 2008).

adopting and enforcing WTO law, such as TRIPs and standards.<sup>37</sup> The regional and international organization respondents also tended to share this view of the meaning of legal reforms in the Aid for Trade context.<sup>38</sup> In fact, organizations that have established anti-bribery and corruption policies and units – such as the Asian Development Bank (“ADB”)<sup>39</sup> and the World Bank<sup>40</sup> – responded to the Aid for Trade questionnaire but did not raise anti-bribery and corruption as issues of substantive importance in this context.<sup>41</sup>

Due to the paucity of partner state responses, the OECD and WTO plan to work on a more extensive education and outreach plan before issuing any further rounds of questionnaires.<sup>42</sup> However, there is no indication that a revised future questionnaire would include references to anti-bribery and corruption efforts within the Aid for Trade framework.<sup>43</sup>

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<sup>37</sup> *See id.*

<sup>38</sup> *See, e.g.*, AGENCY FOR INTERNATIONAL TRADE INFORMATION AND COOPERATION, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/46/14/39639273.pdf> (last visited Aug. 3, 2008); ASIA PACIFIC ECONOMIC COOPERATION, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/6/47/39648210.pdf> (last visited Aug. 3, 2008); UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/52/2/39660894.pdf> (last visited Aug. 3, 2008); WORLD BANK, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/46/23/39639354.pdf> (last visited Aug. 3, 2008).

<sup>39</sup> *See* ANTICORRUPTION AND INTEGRITY, ASIAN DEVELOPMENT BANK, *available at* <http://www.adb.org/integrity/> (last visited Aug. 3, 2008).

<sup>40</sup> *See* ANTICORRUPTION, THE WORLD BANK, *available at* <http://web.worldbank.org/anticorruption> (last visited Aug. 3, 2008).

<sup>41</sup> *See* ASIAN DEVELOPMENT BANK, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/45/15/39639282.pdf> (last visited Aug. 3, 2008); WORLD BANK, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* <http://www.oecd.org/dataoecd/46/23/39639354.pdf> (last visited Aug. 3, 2008).

<sup>42</sup> *See* AID FOR TRADE AT A GLANCE 2007, 1ST GLOBAL REVIEW, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT AND THE WORLD TRADE ORGANIZATION 61-63, *available at* <http://www.oecd.org/dataoecd/25/2/39638283.pdf> (last visited Aug. 3, 2008).

<sup>43</sup> *See id.*

*ii. WTO TRADE POLICY REPORTS*

The WTO issues trade policy reviews on its member states as part of its overall mandate.<sup>44</sup> These trade policy reviews are made on the basis of trade volume, thus the larger and more developed states within the WTO's membership are the subject of more frequent trade policy reviews than are smaller, less developed states.<sup>45</sup> The full trade policy review includes not only data and information gathered by the WTO but also a policy review by the state being reviewed.<sup>46</sup> At the suggestion of the Aid for Trade Task Force, Aid for Trade policy has been added as a category in trade policy reviews issued from 2006 to the present where it is applicable.<sup>47</sup>

The trade policy reviews issued from 2006 onward evaluate WTO member states that are both donor states and partner states in the trade-related aid and development assistance process.<sup>48</sup> Interestingly, most references to the Aid for Trade initiative by donor states and partner states make quick mention of the initiative and their general support of it.<sup>49</sup> Partner states tend to express a hope that the Aid for Trade initiative will

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<sup>44</sup> See THE WORLD TRADE ORGANIZATION, TRADE POLICY REVIEWS, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tpr\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tpr_e.htm) (last visited Aug. 3, 2008).

<sup>45</sup> *See id.*

<sup>46</sup> See THE WORLD TRADE ORGANIZATION, OVERSEEING NATIONAL TRADE POLICIES: THE TPRM; TRADE POLICY REVIEWS, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp\\_int\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp_int_e.htm) (last visited Aug. 3, 2008).

<sup>47</sup> See THE WORLD TRADE ORGANIZATION, TASK FORCE, AID FOR TRADE, *available at* [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/implementing\\_par57\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/implementing_par57_e.htm) (last visited Aug. 3, 2008).

<sup>48</sup> See generally THE WORLD TRADE ORGANIZATION, TRADE POLICY REVIEWS: THE REVIEWS, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp\\_rep\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp_rep_e.htm) (last visited Aug. 3, 2008).

<sup>49</sup> See GOVERNMENT REPORT, EUROPEAN COMMUNITIES 2007, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp278\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp278_e.htm) (last visited Aug. 4, 2008); GOVERNMENT REPORT, JAPAN 2007, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp276\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp276_e.htm) (last visited Aug. 4, 2008); SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, SINGAPORE 2008, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at*

assist them in their trade development plans, particularly in areas which some states view as having been undercut to some extent by its membership in the WTO and trends in international trade laws and markets generally.<sup>50</sup> However, no partner state trade policy

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[http://www.wto.org/english/tratop\\_e/tpr\\_e/tp302\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp302_e.htm) (last visited Aug. 4, 2008); GOVERNMENT REPORT, UNITED STATES 2008, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp300\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp300_e.htm) (last visited Aug. 4, 2008); SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, UNITED STATES 2008, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp300\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp300_e.htm) (last visited Aug. 4, 2008); SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, AUSTRALIA 2007, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp279\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp279_e.htm) (last visited Aug. 4, 2008); SECRETARIAT REPORT: TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES, CANADA 2007, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp2280\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp2280_e.htm) (last visited Aug. 4, 2008); GOVERNMENT REPORT, CANADA 2007, TRADE POLICY REVIEWS, THE WORLD TRADE ORGANIZATION, *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/tp2280\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/tp2280_e.htm) (last visited Aug. 4, 2008).

<sup>50</sup> See WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, KINGDOM OF BAHRAIN, *Trade Policy Review*, WT/TPR/G/185 (June 13, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g185\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g185_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, CAMEROON, *Trade Policy Review*, WT/TPR/G/187 (Aug. 27, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g187\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g187_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, CENT. AFR. REP., *Trade Policy Review*, WT/TPR/G/183 (May 7, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g183\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g183_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, CHINA, *Trade Policy Review*, WT/TPR/G/199 (May 7, 2008), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g199\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g199_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, COLUM., *Trade Policy Review*, WT/TPR/G/172 (Oct. 18, 2006), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g172\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g172_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, OECS-WTO MEMBERS, *Trade Policy Review*, WT/TPR/G/190 (Oct. 1, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g190\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g190_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, DOMINICA, *Trade Policy Review*, WT/TPR/G/190/DMA (Oct. 1, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g190dma\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g190dma_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, GREN., *Trade Policy Review*, WT/TPR/G/190/GRD (Oct. 1, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g190grd\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g190grd_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, ST. KITTS AND NEVIS, *Trade Policy Review*, WT/TPR/G/190/KNA (Oct. 1, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g190kna\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g190kna_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, ST. LUCIA, *Trade Policy Review*, WT/TPR/G/190/LCA (Oct. 1, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g190lca\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g190lca_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, ST. VINCENT, *Trade Policy Review*, WT/TPR/G/190/VCT (Oct. 1, 2007) *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g190vct\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g190vct_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, MAURITIUS, *Trade Policy Review*, WT/TPR/G/198 (Mar. 19, 2008), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g198\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g198_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, NICAR., *Trade Policy Review*, WT/TPR/G/167 (June 19, 2006), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g167\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g167_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, PAK., *Trade Policy Review*, WT/TPR/G/193 (Dec. 10, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g193\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g193_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, PERU, *Trade Policy Review*, WT/TPR/G/189 (Sept. 12, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/g189\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g189_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT, OECS-WTO MEMBERS, *Trade Policy Review*, WT/TPR/S/190 (Oct. 7, 2007), *available at* [http://www.wto.org/english/tratop\\_e/tpr\\_e/s190\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s190_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, INDON., *Trade Policy Review*, WT/TPR/S/184 (May 23,

review which referenced the Aid for Trade initiative referred to the inclusion of issues related to bribery and corruption – or even good governance in general – in the state’s plans for Aid for Trade benefits.<sup>51</sup>

Many of the same trends carry over to trade policy reviews for donor states. References to Aid for Trade in donor state trade policy reviews tend to express support for the initiative and mention it as part of the donor state’s overall policies towards providing aid for the development of trading capacities and the economic situation of developing states.<sup>52</sup> The only donor state to explicitly state that it would use the Aid for Trade initiative to support anti-corruption measures is Singapore.<sup>53</sup> The trade and investment policy chapter of the 2008 trade policy review for the United States makes reference to using the Aid for Trade initiative to support good governance in partner

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2007), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s184-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s184-02_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, OMAN, *Trade Policy Review*, WT/TPR/S/201 (May 21, 2008), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s201-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s201-02_e.doc).

<sup>51</sup> See *id.*

<sup>52</sup> See WTO, Trade POLICY REVIEW BODY, GOVERNMENT REPORT, EUROPEAN COMMUNITIES, *Trade Policy Review*, WT/TPR/G/177 (Jan. 22, 2007), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/g177\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g177_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, JAPAN, *Trade Policy Review*, WT/TPR/G/175 (Dec. 19, 2006), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/g175\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g175_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, UNITED STATES, *Trade Policy Review*, WT/TPR/G/200 (May 5, 2008), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/g200\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g200_e.doc); WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, CANADA, *Trade Policy Review*, WT/TPR/G/179 (Feb. 14, 2007), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/g179\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g179_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, SINGAPORE, *Trade Policy Review*, WT/TPR/S/202 (June 9, 2008) available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s202-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s202-02_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, UNITED STATES, *Trade Policy Review*, WT/TPR/S/200 (May 5, 2008), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s200-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s200-02_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, AUSTRALIA, *Trade Policy Review*, WT/TPR/S/178 (Jan. 29, 2007), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s178-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s178-02_e.doc); WTO, TRADE POLICY REVIEW BODY, SECRETARIAT REPORT: TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES, CANADA, *Trade Policy Review*, WT/TPR/S/179 (Feb. 14, 2007) available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/s179-02\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s179-02_e.doc).

<sup>53</sup> See WTO, TRADE POLICY REVIEW BODY, GOVERNMENT REPORT, SINGAPORE, *Trade Policy Review*, WT/TPR/G/202 (Jun. 9, 2008), available at [http://www.wto.org/english/tratop\\_e/tpr\\_e/g202\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/g202_e.doc).

states without further amplification on what “good governance” specifically entails.<sup>54</sup>

However, Aid for Trade references found in other donor state trade policy reviews do not contain provisions for addressing bribery and corruption on any level.<sup>55</sup>

Overall, the trade policy reviews for donor and partner states issued since 2006 do not make reference to bribery and corruption as issues within international or domestic trade generally.<sup>56</sup> For the reasons discussed below, this failure to expressly acknowledge the impact of bribery and corruption on the accomplishment of trade-related development undermines the overall idea of the Aid for Trade initiative in that it ignores a fundamental issue that must be addressed for meaningful trade reform and progress to be made.

*iii. INCORPORATION INTO DONOR STATE AND INTERNATIONAL ORGANIZATION STRATEGIES*

The idea of providing aid of some form to developing states in order to assist in the growth, stabilization and development of their economies and trading capabilities predates the Aid for Trade initiative. This is true whether one is discussing the activities of a donor state or a donor international organization. In a sense, the Aid for Trade initiative is duplicative when discussing the aid strategies of donor states and international organizations because, while it seeks to offer a more centralized aid system, the Aid for Trade initiative has not caused a significant shift in donor aid strategies. Nor, as the WTO has made clear, is the Aid for Trade initiative intended to become so enmeshed with the actual granting of aid by donor entities that it effects a significant shift in donor aid

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<sup>54</sup> See SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, UNITED STATES, *supra* note 52.

<sup>55</sup> See GOVERNMENT REPORT, EUROPEAN COMMUNITIES, JAPAN, AND CANADA, *supra* note 52; SECRETARIAT REPORT: TRADE AND INVESTMENT REGIMES, AUSTRALIA, *supra* note 52; SECRETARIAT REPORT: TRADE POLICY REGIME: FRAMEWORK AND OBJECTIVES, CANADA, *supra* note 52.

<sup>56</sup> See *id.*

strategies.<sup>57</sup> However, it is important to briefly examine the way in which donor entities tie – or fail to tie – trade-related aid and development assistance to issues involving bribery and corruption.

In terms of donor states, the majority of states identify aiding in trade development as a primary part of their overall aid and development strategies.<sup>58</sup> Recently, a number of donor states have announced that they will shift the geographical focus of their aid strategies to work primarily in Africa due to data which indicates that the African content is still the least developed economically despite historical inflows of aid.<sup>59</sup> Importantly for this article, the vast majority of large donor states divorce their

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<sup>57</sup> See WTO, Aid for Trade, AID FOR TRADE FACTSHEET, available at [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/a4t\\_factsheet\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_factsheet_e.htm) (last visited Aug. 3, 2008).

<sup>58</sup> See, e.g., MINISTRY OF FOREIGN AFFAIRS OF DENMARK, *Trade Growth and Development: Strategy for Danish Support for the Promotion of Trade, Growth and Development in the World's Poorest Countries* (2005), available at [http://www.netpublikationer.dk/um/5700/pdf/537174\\_web.pdf](http://www.netpublikationer.dk/um/5700/pdf/537174_web.pdf); SWEDISH INTERNATIONAL DEVELOPMENT ASSISTANCE, *Sida's Policy for Trade-Related Development Cooperation* (2005), available at [http://www.sida.se/shared/jsp/download.jsp?f=SIDA4891en\\_Trade+web.pdf&a=3586](http://www.sida.se/shared/jsp/download.jsp?f=SIDA4891en_Trade+web.pdf&a=3586); U.S. ACADEMY OF INTERNATIONAL DEVELOPMENT, *Participation, Empowerment, Partnership: Seeking Sustainable Results Through U.S. Trade Capacity Building* (2005), available at [http://pdf.dec.org/pdf\\_docs/Pdacg800.pdf](http://pdf.dec.org/pdf_docs/Pdacg800.pdf); MINISTRY OF FOREIGN AFFAIRS OF FINLAND, *Finland's Trade Policy Programme*, available at <http://formin.finland.fi/public/default.aspx?nodeid=15262&contentlan=2&culture=en-US> (last visited Aug. 4, 2008); AUSAID, AUSTL. GOV'T, *Australian Aid: Promoting Growth and Stability – White Paper on the Australian Government's Overseas Aid Programme* (2006), available at [http://www.usaid.gov.au/publications/pubout.cfm?Id=6184\\_6346\\_7334\\_4045\\_8043](http://www.usaid.gov.au/publications/pubout.cfm?Id=6184_6346_7334_4045_8043); JAPAN'S OFFICIAL DEVELOPMENT ASSISTANCE CHARTER, MINISTRY OF FOREIGN AFFAIRS OF JAPAN (2003), available at <http://www.mofa.go.jp/policy/oda/reform/revision0308.pdf>; USAID, U.S. DEPT. OF STATE, STRATEGIC PLAN 2007 – 2012 (2007), available at [http://www.usaid.gov/policy/coordination/stratplan\\_fy07-12.pdf](http://www.usaid.gov/policy/coordination/stratplan_fy07-12.pdf); GOV'T OF IRELAND, *White Paper on Irish Aid* (2006), available at <http://www.irishaid.gov.ie/whitepaper/assets/White%20Paper%20English.pdf>.

<sup>59</sup> See MINISTRY OF FOREIGN AFFAIRS OF DENMARK, *Trade Growth and Development: Strategy for Danish Support for the Promotion of Trade, Growth and Development in the World's Poorest Countries* (2005), available at [http://www.netpublikationer.dk/um/5700/pdf/537174\\_web.pdf](http://www.netpublikationer.dk/um/5700/pdf/537174_web.pdf); AID FOR TRADE AT A GLANCE 2007: COUNTRY AND AGENCY CHAPTERS, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, FRANCE, 97-103 (2007), available at <http://www.oecd.org/dataoecd/45/23/39639048.pdf>; AID FOR TRADE AT A GLANCE 2007: COUNTRY AND AGENCY CHAPTERS, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, GERMANY, 105-10 (2007), available at <http://www.oecd.org/dataoecd/45/24/39639057.pdf>; AID FOR TRADE AT A GLANCE 2007: COUNTRY AND AGENCY CHAPTERS, AID FOR TRADE: 2007 OECD/WTO QUESTIONNAIRES AND RESPONSES, NETHERLANDS, 149-53 (2007), available at <http://www.oecd.org/dataoecd/45/48/39639138.pdf>; AID FOR TRADE AT A GLANCE 2007: COUNTRY AND AGENCY CHAPTERS, AID FOR TRADE: 2007 OECD/WTO

trade-related aid and development assistance programs from their good governance/anti-bribery and corruption programs.<sup>60</sup> This divorce is and has been maintained despite evidence that the two work – or fail – in tandem. The number and diversity of trade-related aid and development assistance programs administered by different donor states is certainly one of the motivating factors behind the WTO's Aid for Trade initiative.<sup>61</sup>

Donor international organizations do not present such a uniform picture of strategies or priorities. Some, such as the OECD, provide support to trade-related aid and also address issues related to bribery and corruption, but maintain these as separate and distinct entities.<sup>62</sup> Others, such as UNIDO and the IF, specifically handle trade-related aid and development assistance without entering into the sphere of bribery and corruption as a policy area.<sup>63</sup> In the case of the World Bank, the link between effective trade-related aid and development assistance and fighting bribery and corruption has been overtly made and supported through the World Bank's projects.<sup>64</sup> Other regional banks monitor the projects they administer – most of which fall under the rubric of the Aid for Trade

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QUESTIONNAIRES AND RESPONSES, PORTUGAL, 195-98 (2007), *available at* <http://www.oecd.org/dataoecd/45/53/39639183.pdf>.

<sup>60</sup> *See supra* notes 58-59.

<sup>61</sup> *See* WTO, AID FOR TRADE, AID FOR TRADE FACTSHEET, [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/a4t\\_factsheet\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/a4t_factsheet_e.htm) (last visited Aug. 4, 2008).

<sup>62</sup> *See* ORG. FOR ECONOMIC COOPERATION AND DEV., DEV. CO-OPERATION DIRECTORATE, OECD WORK ON AID FOR TRADE, *available at*

[http://www.oecd.org/document/52/0,3343,en\\_2649\\_34665\\_39145396\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/52/0,3343,en_2649_34665_39145396_1_1_1_1,00.html) (last visited Aug.

4, 2008); ORG. FOR ECONOMIC COOPERATION AND DEV., FIGHTING CORRUPTION, *available at*

[http://www.oecd.org/topic/0,3373,en\\_2649\\_37447\\_1\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/topic/0,3373,en_2649_37447_1_1_1_1_37447,00.html) (last visited Aug. 4, 2008);

ORG. FOR ECONOMIC COOPERATION AND DEV., TOPICS,

[http://www.oecd.org/maintopic/0,3348,en\\_2649\\_201185\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/maintopic/0,3348,en_2649_201185_1_1_1_1_1,00.html) (last visited Aug. 4, 2008)

(OECD classifies development under the "Economy" issue area of its work, while it classifies corruption under the "Governance" issue area of its work).

<sup>63</sup> *See* U.N. INDUS. DEV. ORG., About UNIDO, <http://www.unido.org/index.php?id=o3355> (last visited Aug. 4, 2008); INTEGRATED FRAMEWORK FOR TRADE-RELATED TECHNICAL ASSISTANCE TO LEAST

DEVELOPED COUNTRIES, *About the Integrated Framework*, *available at*

<http://www.integratedframework.org/about.htm> (last visited Aug. 4, 2008).

<sup>64</sup> *See* WORLD BANK, Governance & Anti-Corruption, *available at* <http://go.worldbank.org/KUDGZ5E6P0> (last visited Aug. 4, 2008).

initiative – for bribery and corruption issues but do not extend the link beyond their own projects.<sup>65</sup>

Thus, it is clear that, while there is a sense of fluidity in the definition of “aid for trade” per se, there is no consensus on how to address the intersection of the Aid for Trade initiative’s articulated legal and policy goals and the issue of fighting bribery and corruption.

## II. INTERNATIONAL ANTI-BRIBERY AND CORRUPTION MEASURES

### *A. The Connection Between Development and Corruption*

As a legal and societal principle, bribery and corruption are not beneficial to the general population when these acts are committed by those holding any type of governmental post. Bribery and corruption undermines the fabric of the social contract in even the most advanced of the developed states. In these states, bribery and corruption tend to breed a sense of skepticism amongst citizens and fosters a variety of illegal acts.<sup>66</sup> However, even when bribery and corruption scandals affect developed states, they very rarely threaten to undermine the economic or international trading position of the state.

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<sup>65</sup> See ASIAN DEV. BANK, *Anticorruption and Integrity*, available at <http://www.adb.org/Integrity/> (last visited Aug. 4, 2008); AFR. DEV. BANK GROUP, *Anti-Corruption Strategy*, available at <http://www.afdb.org/en/about-us/structure/auditor-generals-office/anti-corruption-and-fraud-investigation/anti-corruption-strategy/> (last visited Aug. 4, 2008); INTER-AMERICAN DEV. BANK, *Integrity*, available at <http://www.iadb.org/integrity/> (last visited Aug. 4, 2008).

<sup>66</sup> Susan Schmidt and James V. Grimaldi, *Abramoff Pleads Guilty to 3 Counts*, THE WASHINGTON POST, Jan. 4, 2006, at A01, available at <http://www.washingtonpost.com/wpdyn/content/article/2006/01/03/AR2006010300474.html>. For example, the result of the recent scandal involving the activities of federal lobbyist Jack Abramoff and various members of the United States Congress has been to largely reinforce a sense of skepticism regarding politicians generally among the American public.

The same cannot be said of the effect of bribery and corruption on the domestic and international standing of developing states.

Many developing states are in the process of recovering from brutal conflicts that devastated their economic capabilities as well as the lives of their citizens.<sup>67</sup> Other developing states are under or emerging from repressive and corrupt regimes that inhibited the economic growth of the state to suit the purposes of its governmental leaders.<sup>68</sup> Still other developing states are plagued by organized crime syndicates.<sup>69</sup> Regardless of the applicable scenario, developing states by and large are marked by shaky legal, political and economic structures. Where these do exist, there is often little ability to enforce the intended parameters of these structures.

Thus, when the possibility of introducing large amounts of aid money to a developing state emerges, it is vital to examine the anti-bribery and corruption mechanisms available because such an influx of capital can lead to bribery and corruption issues. As described by the OECD, the issue of bribery and corruption in trade-related aid is a serious one that becomes more important as the amount of such aid grows.<sup>70</sup> Given that the Millennium Development Goals call for a drastic increase in the amount of aid

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<sup>67</sup> See Introduction, *Sierra Leone*, CIA WORLD FACTBOOK (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sl.html> (last visited Aug. 4, 2008); see also Introduction, *Cambodia*, CIA WORLD FACTBOOK (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> (last visited Aug. 4, 2008). (Giving examples of such states include Sierra Leone and Cambodia).

<sup>68</sup> A highly visible example of this phenomenon is Zimbabwe. See Introduction, *Zimbabwe*, CIA WORLD FACTBOOK (2008), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/zi.html> (last visited Aug. 4, 2008).

<sup>69</sup> See generally *An Assessment of Transnational Crime in Central Asia*, UNITED NATIONS OFFICE ON DRUGS AND CRIME (2007), available at <http://www.unodc.org/unodc/en/organized-crime/assessments.html> (last visited Aug. 4, 2008) (detailing issues with organized crime in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan).

<sup>70</sup> OECD DAC POLICY PAPER 16 (2007), available at <http://www.um.dk/NR/rdonlyres/C1666C6D-4F29-487D-AAB4-21EE40C122B0/0/DACAOPPen.pdf>.

made available by the international community,<sup>71</sup> it seems nearly over-simplistic to observe that bribery and corruption in relation to these funds must be monitored and addressed in order for the Millennium Development Goals to have any practical meaning. This is particularly important in light of the other Millennium Development Goals, which focus on creating an empowered citizenry and alleviating many of the traditional causes of poverty and under-development, including inherently corrupt regimes.<sup>72</sup>

One recent example of bribery and corruption undercutting the goals of trade-related aid and development assistance can be found in the 2006 OECD study of Cameroon.<sup>73</sup> While this study does not itself reference the WTO or the Aid for Trade initiative, it does examine the logistics of development in Cameroon and reveals that Cameroon is plagued by a variety of aspects of corruption.<sup>74</sup> Taken together, the incidents of corruption in Cameroon are identified by the OECD as inhibiting further economic growth and trade development.<sup>75</sup> In this study, the OECD advocates for a more concerted international response to the issue of development and corruption.<sup>76</sup> This call is mirrored in the OECD DAC Policy Paper 2007, which calls for incorporating Aid for Trade with corruption issues.<sup>77</sup> Although the OECD has not recommended a method for this incorporation, it is the author's position that the WTO is uniquely situated to serve this

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<sup>71</sup> See *Millennium Development Goals*, UNITED NATIONS DEVELOPMENT PROGRAMME, available at <http://www.undp.org/mdg/> (last visited Aug. 4, 2008).

<sup>72</sup> See *Millennium Development Goals*, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, available at [http://www.oecd.org/department/0,3355,en\\_2649\\_34585\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,3355,en_2649_34585_1_1_1_1_1,00.html) (last visited Aug. 4, 2008).

<sup>73</sup> *Final Report, Multi-Donor Governance and Anti-Corruption Mission to Cameroon, Draft Executive Summary*, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, available at [http://www.oecd.org/document/34/0,3343,en\\_2649\\_34565\\_19392866\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/34/0,3343,en_2649_34565_19392866_1_1_1_1,00.html) (last visited Aug. 4, 2008).

<sup>74</sup> See generally *id.*

<sup>75</sup> See generally *id.*

<sup>76</sup> See generally *id.*

<sup>77</sup> OECD DAC POLICY PAPER 2 (2007), available at <http://www.um.dk/NR/rdonlyres/C1666C6D-4F29-487D-AAB4-21EE40C122B0/0/DACAOPPen.pdf>.

function because of its financial and trade expertise and the number of its members that are currently considered developing states.

*B. International Efforts to Combat Bribery and Corruption Generally*

*i. REGIONAL AGREEMENTS*

In 1996, the Organization of American States (“OAS”) adopted the Inter-American Convention Against Corruption.<sup>78</sup> The Inter-American Convention Against Corruption pledges signatory states to enact domestic legislation recognizing bribery and corruption in relationship to governmental actors as criminal in the event that the signatory state has not already done so.<sup>79</sup> The Convention also sets the standard for denunciation of bribery and corruption by governmental actors by the OAS community, providing for universal condemnation of these acts and for extradition or guarantees of prosecution in the event that a state refuses to extradite an individual charged with prohibited acts.<sup>80</sup> The Convention explicitly establishes the link between organized crime, the drug trade, and bribery and corruption of governmental actors.<sup>81</sup> In the aftermath of enacting the Inter-American Convention Against Corruption, the OAS created an oversight network that continues to function as a review and meeting body for the signatories of the Inter-American Convention Against Corruption.<sup>82</sup> Indeed, this network

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<sup>78</sup> *Inter-American Convention Against Corruption*, MULTILATERAL TREATIES, DEPARTMENT OF LAW, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/Treaties/b-58.html> (last visited Aug. 4, 2008).

<sup>79</sup> *Id.* at arts. III, V, VI, VII, IX, XI.

<sup>80</sup> *See id.* at preamble; *id.* at Arts. II, VIII, XIII.

<sup>81</sup> *Id.* at preamble.

<sup>82</sup> INTER-AMERICAN NETWORK FOR COOPERATION AGAINST CORRUPTION, ORGANIZATION OF AMERICAN STATES, available at <http://www.oas.org/juridico/english/fightcur.html> (last visited Aug. 4, 2008).

has liaised with the OECD, the Inter-American Development Bank and the UN in order to further the anti-bribery and corruption provisions and goals of the Inter-American Convention Against Corruption.<sup>83</sup>

The European Union addressed the issue of governmental corruption in 1997 by enacting the Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of the Member States of the European Union (“EU Convention”).<sup>84</sup> The focus of the EU Convention is to prevent and punish acts of corruption by governmental actors because of the potentially negative financial results to the European Union and its member states.<sup>85</sup> The EU Convention explicitly covers acts of passive and active corruption involving governmental actors.<sup>86</sup> Because of the relationship between the European Union and its member states, the terms of the EU Convention have far more legal weight in the member states than do the terms and recommendations of other regional instruments addressing bribery and corruption.<sup>87</sup> The EU Convention also establishes a liability requirement for the corporate officers involved in acts of bribery involving governmental actors when their corporations are found to have been involved in such acts.<sup>88</sup> Further, the EU Convention addresses issues of extradition,<sup>89</sup> cooperation between member states,<sup>90</sup> and the jurisdiction of the European

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<sup>83</sup> *Id.*

<sup>84</sup> CONVENTION DRAWN UP ON THE BASIS OF ARTICLE K.3(2)(C) OF THE TREATY ON EUROPEAN UNION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION, [Hereinafter “EU Convention”], 1997 O.J. (C 195) 1, 37 I.L.M. 15 (1998), EURLEX available at [http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:41997A0625\(01\):EN:HTML](http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:41997A0625(01):EN:HTML) (last visited Feb. 17, 2009).

<sup>85</sup> *Id.* at arts. 2-3, 5.

<sup>86</sup> *Id.* at arts. 2, 3.

<sup>87</sup> *See id.* at art. 4 (discussing the legal assimilation requirements for member states under the terms of the Convention).

<sup>88</sup> *Id.* at art. 6.

<sup>89</sup> *Id.* at art. 8.

<sup>90</sup> *Id.* at art. 9.

Court of Justice to hear disputes arising between member states in regard to the provisions of the EU Convention.<sup>91</sup>

In 1999, the Council of Europe enacted agreements addressing both criminal and civil liability for corruption.<sup>92</sup> The Criminal Law Convention on Corruption's stated goal was for all members of the Council of Europe to work together and with other international actors to combat corruption at the domestic and international level.<sup>93</sup> Additionally, a stated justification for the Criminal Law Convention on Corruption is the connection between weak "economic development" and corruption.<sup>94</sup> The Criminal Law Convention on Corruption contains numerous provisions that provide model domestic laws to be enacted in order to criminalize a variety of forms of corruption.<sup>95</sup> It also requires international collaboration amongst signatories to enforce the tenor and provisions of the Criminal Law Convention, including cooperation in punishment.<sup>96</sup> The Civil Law Convention on Corruption was enacted with the same relevant justifications in regards to development and economic stability.<sup>97</sup> The Civil Law Convention on Corruption encourages the creation of civil law remedies for those harmed by acts of corruption in official capacity.<sup>98</sup> It also promotes foreign recognition and enforcement of judgments made in accordance with its provisions.<sup>99</sup> Together, the Criminal Law

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<sup>91</sup> *Id.* at art. 12.

<sup>92</sup> CRIMINAL LAW CONVENTION ON CORRUPTION, COUNCIL OF EUROPE, January 27, 1999, 38 I.L.M. 505, Europ. T.S. No. 173, [Hereinafter "CoE CRIMINAL CONVENTION"], available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm> (last visited Feb. 24, 2009); CIVIL LAW CONVENTION ON CORRUPTION, COUNCIL OF EUROPE, Nov. 4, 1999, Europ. T.S. No. 174, [Hereinafter "CoE CIVIL CONVENTION"] available at <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm> (last visited Feb. 24, 2009).

<sup>93</sup> CoE CRIMINAL CONVENTION, *supra* note 92, Preamble.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at ch. II.

<sup>96</sup> *Id.* at ch. IV.

<sup>97</sup> CoE CIVIL CONVENTION, *supra* note 92, Preamble.

<sup>98</sup> *Id.* at ch. I.

<sup>99</sup> *Id.* at ch. 2.

Convention on Corruption and Civil Law Convention on Corruption form the core of an enforcement mechanism within the Council of Europe that has been and is responsible for coordinating international anti-corruption efforts.<sup>100</sup>

The Southern African Development Community (“SADC”) adopted its Protocol Against Corruption in 2001 (“SADC Protocol”).<sup>101</sup> The SADC Protocol acknowledges that corruption damages the economic situation within its member states and further acknowledges that member states as a whole are damaged by governmental corruption.<sup>102</sup> The SADC Protocol contains extensive criminal law proposals in regards to acts of corruption by public officials and actors and urges its subscribing members to adopt these measures on the domestic level.<sup>103</sup> It sets out a variety of measures that can be used to prevent and detect public corruption,<sup>104</sup> and also criminalizes the bribery or other corruption of a foreign public official by a person over whom a signatory state has jurisdiction.<sup>105</sup> Issues of confiscating the proceeds of bribery and corruption, extradition of those charged with offenses under the SADC Protocol, and legal cooperation and assistance generally between signatory states are also addressed in the SADC Protocol.<sup>106</sup> The SADC Protocol created an oversight committee for the implementation and monitoring of its provisions.<sup>107</sup>

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<sup>100</sup> See CRIMINAL LAW CONVENTION ON CORRUPTION, COUNCIL OF EUROPE, *available at* <http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm> (last visited Aug. 4, 2008); *see also* CIVIL LAW CONVENTION ON CORRUPTION, COUNCIL OF EUROPE, *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/174.htm> (last visited Aug. 4, 2008).

<sup>101</sup> PROTOCOLS AGAINST CORRUPTION, SOUTHERN AFRICAN DEVELOPMENT COMMUNITY, *available at* <http://www.sadc.int/english/documents/legal/protocols/corruption.php> (last visited Aug. 4, 2008).

<sup>102</sup> *Id.* at preamble.

<sup>103</sup> *Id.* at art. 3.

<sup>104</sup> *Id.* at art. 4.

<sup>105</sup> *Id.* at art. 6.

<sup>106</sup> *Id.* at arts. 8, 9, 10.

<sup>107</sup> PROTOCOLS AGAINST CORRUPTION, SOUTHERN AFRICAN DEVELOPMENT COMMUNITY, *supra* note 101, at art. 11.

Also in 2001, the Economic Community of West African States – better known as ECOWAS – adopted the Protocol on the Fight against Corruption (“ECOWAS Protocol”).<sup>108</sup> To date, the ECOWAS Protocol has not entered into legal effect.<sup>109</sup> However, it is important to take note of the ECOWAS Protocol because it too makes acts of bribery and corruption criminal<sup>110</sup> – to the extent that its signatories choose to enact enforcing domestic legislation<sup>111</sup> - and requires that signatory states adopt measures to prevent governmental actors and citizens from involvement with bribery and corruption.<sup>112</sup>

Further, in 2003, the African Union adopted the African Union Convention on Preventing and Combating Corruption (“AU Convention”).<sup>113</sup> Of the regional anti-corruption conventions, the AU Convention is the least ratified to date.<sup>114</sup> However, it too connects corruption and economic damage, as well as acknowledging the human rights harms caused by official corruption.<sup>115</sup> The AU Convention provides for the creation of domestic criminal and civil penalties for official acts of corruption<sup>116</sup> and requires international cooperation in such matters as the extradition of those charged with official acts of corruption.<sup>117</sup> The AU Convention also provides that its signatories shall lend

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<sup>108</sup> ECOWAS: PROTOCOL ON THE FIGHT AGAINST CORRUPTION, CONVENTIONS, TRANSPARENCY INTERNATIONAL, *available at* [http://www.transparency.org/global\\_priorities/international\\_conventions/conventions\\_instruments/ecowas\\_protocol](http://www.transparency.org/global_priorities/international_conventions/conventions_instruments/ecowas_protocol) (last visited Aug. 4, 2008).

<sup>109</sup> *See id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *See* CONVENTIONS REGARDING CORRUPTION, INTERPOL, *available at* <http://www.interpol.int/Public/Corruption/Conventions/default.asp> (last visited Aug. 4, 2008).

<sup>114</sup> *Id.*

<sup>115</sup> AFRICAN UNION CONVENTION ON PREVENTING AND COMBATING CORRUPTION, PREAMBLE.

<sup>116</sup> *Id.* at arts. 4-8, 11.

<sup>117</sup> *Id.* at art. 15.

assistance to other international organizations in order to further the goal of combating corruption.<sup>118</sup>

ii. INTERNATIONAL AGREEMENTS

In 1997, the OECD adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (“OECD Convention”).<sup>119</sup> One of the principles behind the OECD Convention is that bribery or other corruption of public officials is corrosive to any sort of economic development.<sup>120</sup> As with the regional anti-corruption conventions, the OECD convention requires that signatory states create penalties criminalizing the act of attempting to or committing the act of bribery or other corruption of a foreign official in the context of a business transaction.<sup>121</sup> Additionally, civil penalties, including confiscation and forfeiture, are authorized in respect to the proceeds of bribery or other corruption.<sup>122</sup> Importantly, the OECD Convention requires signatory states to establish appropriate accounting and audition mechanisms in order to better monitor situations in which bribery and corruption could occur.<sup>123</sup> The OECD Convention establishes violations of the statutes created under it as grounds for extradition<sup>124</sup> and requires signatory states to provide mutual legal assistance in the event

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<sup>118</sup> *Id.* at art. 18.

<sup>119</sup> See CONVENTIONS REGARDING CORRUPTION, INTERPOL, *available at* <http://www.interpol.int/Public/Corruption/Conventions/default.asp> (last visited Aug. 4, 2008).

<sup>120</sup> OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS, PREAMBLE, *available at* [http://www.oecd.org/document/21/0,2340,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html#Text\\_of\\_the\\_Convention](http://www.oecd.org/document/21/0,2340,en_2649_34859_2017813_1_1_1_1,00.html#Text_of_the_Convention) (last visited Aug. 4, 2008).

<sup>121</sup> *Id.* at arts. 1-33.

<sup>122</sup> *Id.* at art. 3.

<sup>123</sup> *Id.* at art. 8.

<sup>124</sup> *Id.* at art. 10.

of allegations of violations of these statutes.<sup>125</sup> Since the time the OECD Convention was adopted, the OECD has maintained a reporting mechanism for signatory states and also maintains a working group to support its anti-corruption efforts.<sup>126</sup> The OECD's anti-corruption efforts are very much alive today.<sup>127</sup>

Although it adopted the Convention on Transnational Organized Crime in 2000,<sup>128</sup> the UN did not adopt a convention specifically addressing public corruption generally until 2003, when it adopted the UN Convention Against Corruption ("UNCAC").<sup>129</sup> The UNCAC repeatedly recognizes the detrimental ties between corruption and both development and stability.<sup>130</sup> It requires signatories to enact appropriate anti-corruption legislation in their respective jurisdictions,<sup>131</sup> to enforce that legislation in a meaningful manner,<sup>132</sup> and to cooperate with other states on the international and regional level in order to combat corruption on a larger scale.<sup>133</sup> The scope of the UNCAC extends further than other regional and international organizations in that it contains recommended policies and standards for the hiring and employment of governmental employees and actors.<sup>134</sup> These policies and standards emphasize merit as the way to evaluate any current or potential governmental employee or actor.<sup>135</sup> Additionally, the UNCAC encourages signatory states to take corruption standards and

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<sup>125</sup> *Id.* at art. 9.

<sup>126</sup> *See* OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS PREAMBLE, *supra* note 120.

<sup>127</sup> *See id.* (Describing the reporting and other activities undertaken by the OECD to curb corruption and bribery).

<sup>128</sup> *See* CONVENTIONS REGARDING CORRUPTION, INTERPOL, *supra* note 119.

<sup>129</sup> *See id.*

<sup>130</sup> UNITED NATIONS CONVENTION AGAINST CORRUPTION PREAMBLE.

<sup>131</sup> *Id.* at chs. II, III.

<sup>132</sup> *Id.* at ch. III.

<sup>133</sup> *Id.* at ch. IV.

<sup>134</sup> *Id.* at ch. II arts. 7, 8.

<sup>135</sup> *Id.*

merit into account when creating requirements for those seeking to hold elected office.<sup>136</sup> Other topics addressed by the UNCAC include the promulgation of codes of conduct for governmental employees and actors,<sup>137</sup> monitoring and standard implementation for public procurement projects and public financial oversight,<sup>138</sup> maintaining an independent judicial and legal system,<sup>139</sup> regulation of the state's private sector in order to discourage corruption and bribery,<sup>140</sup> and money-laundering.<sup>141</sup> The UNCAC contains extensive model criminal provisions that create a broader spectrum of crimes connected to bribery and corruption than do any regional or international conventions.<sup>142</sup> Civil penalties for bribery and corruption are also provided for in the UNCAC.<sup>143</sup> Again, the UNCAC places heavy emphasis on international cooperation and coordination in matters relating to governmental bribery and corruption.<sup>144</sup>

Also important to the discussion of international attempts to combat corruption is the 2005 Paris Declaration.<sup>145</sup> The Paris Declaration does not seek to overtly attack bribery or corruption.<sup>146</sup> Rather, the Paris Declaration seeks to alter the state of relationships between donor state and partner states in aid and development projects by

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<sup>136</sup> UNITED NATIONS CONVENTION AGAINST CORRUPTION PREAMBLE, *supra* note 130, at ch. II, art. 7.

<sup>137</sup> *Id.* at art. 8.

<sup>138</sup> *Id.* at art 9.

<sup>139</sup> *Id.* at art 11.

<sup>140</sup> *Id.* at art 12.

<sup>141</sup> *Id.* at art 14.

<sup>142</sup> UNITED NATIONS CONVENTION AGAINST CORRUPTION PREAMBLE, *supra* note 30, at ch. III.

<sup>143</sup> *Id.* at art. 35.

<sup>144</sup> *Id.* at ch. IV.

<sup>145</sup> See THE PARIS DECLARATION, DEVELOPMENT CO-OPERATION DIRECTORATE, ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *available at* [http://www.oecd.org/document/18/0,2340,en\\_2649\\_3236398\\_35401554\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,2340,en_2649_3236398_35401554_1_1_1_1,00.html) (last visited Aug. 4, 2008).

<sup>146</sup> See THE PARIS DECLARATION, *Joint Progress toward Enhanced Aid Effectiveness, Ownership, Harmonisation, Alignment, Results and Mutual Accountability*, *available at* [http://www.oecd.org/document/18/0,2340,en\\_2649\\_3236398\\_35401554\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/18/0,2340,en_2649_3236398_35401554_1_1_1_1,00.html) (last visited Aug. 4, 2008).

tasking all parties with ownership responsibilities over aid use and development projects.<sup>147</sup> This move to increase donor and partner responsibility in the aid and development assistance context intersects with anti-bribery and corruption efforts in that issues related to bribery and corruption are at the heart of the responsibilities placed on all parties in the aid and development process.<sup>148</sup> However, the Paris Declaration does not coordinate anti-bribery and corruption policies or monitoring in a way that directly connects these issues to the overall functioning of trade-based aid and development.<sup>149</sup>

iii. *ACTIONS BY THE INTERNATIONAL COMMUNITY*

The majority of donor states have some form of good governance or anti-bribery and corruption element to their overall aid schemes<sup>150</sup>; however, these donor states tend not to connect the issues of anti-bribery/corruption and trade-related aid and development assistance.<sup>151</sup> Those states that do make the direct connection between anti-bribery/corruption and trade-related aid and development assistance tend to view the reduction or elimination of bribery and corruption within the partner country – or a particular project – as a method of evaluating the partner state’s overall progress, not a component of their trade-related aid and development assistance programs.<sup>152</sup>

Donor states and partner states have established their own mechanisms for combating bribery and corruption on the domestic and international level. These mechanisms tend to involve signing the relevant regional and international anti-bribery

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<sup>147</sup> *See id.*

<sup>148</sup> *See generally id.*

<sup>149</sup> *Id.*

<sup>150</sup> See Part I, The Aid for Trade Initiative, p. 3.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

and corruption instruments and remaining involved in the activities of the entities that monitor and enforce these instruments. Interpol is another forum for coordinated international activities to combat bribery and corruption.<sup>153</sup> Its activities are supported by donor and partner states, and it is heavily involved in the training of law enforcement agencies to detect and stop domestic and international bribery and corruption.<sup>154</sup> However, there is little coordination between Interpol and donor or partner states in the context of trade-related aid and development assistance.<sup>155</sup>

### **III. PROPOSAL TO BRIDGE AID FOR TRADE AND ANTI-BRIBERY/CORRUPTION MEASURES**

As set forth above, one of the most serious and consistent threats to the successful use of trade-based aid and development assistance is corruption and its companion, bribery, in the governmental context. Regardless of type of aid involved – be it general assistance or funding for a particular infrastructural project – when it is accompanied by bribery and/or corruption, the consequences reach far beyond the economic loss or diversion which results. Bribery and corruption in the trade-related aid and development sphere harms the partner state, its citizens, the donor state and the international community as a whole by undermining the legitimacy of such aid and development.<sup>156</sup>

Although the link between trade-related aid and development assistance and bribery/corruption has been established by several international actors, the two issue

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<sup>153</sup> *Corruption*, INTERPOL, available at <http://www.interpol.int/Public/Corruption/default.asp> (last visited Aug. 4, 2008).

<sup>154</sup> *See id.*

<sup>155</sup> *Id.*

<sup>156</sup> *See generally* OECD DAC POLICY PAPER 2007, *supra* note 77.

areas remain within different policy realms on many levels. Donor states and even partner states tend not to tie the two issues together in their funding or development strategies.<sup>157</sup> The plethora of regional and international anti-bribery and corruption instruments which have been adopted in recent years cover a broad spectrum of governmental misdeeds and yet do not specifically address the problem of bribery and corruption in regards to trade-related aid and development assistance.<sup>158</sup> The regional and international entities that enforce these instruments and monitor bribery and corruption issues fail to make this specific connection as well.<sup>159</sup> Even the WTO's Aid for Trade initiative, which seeks to monitor global trade-related aid and development from all angles, does not bridge the issues of trade-related aid and development and bribery and corruption.<sup>160</sup>

Given that global funding for trade-related aid and development assistance is expected to only increase in the coming years, it is time that the issues of trade-related aid and development assistance and bribery and corruption are bridged. Building a solid connection between these issue areas will further the policy goals of both issue areas and will serve the ultimate goals set out in the Millennium Development Goals. The WTO's Aid for Trade initiative is an ideal forum for bridging trade-related aid and development assistance and bribery and corruption because of its extensive membership, role in the overall trading system, and ability to work with a variety of regional and international actors in order to monitor the interrelation of these issues. As such, this article advocates that the WTO expand the scope of the Aid for Trade initiative to include bribery and corruption issues as soon as possible. Specifically, this article suggests that the WTO and

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<sup>157</sup> See Part I, The Aid for Trade Initiative, p. 3.

<sup>158</sup> See Part II, International Anti-Bribery and Corruption Measures, p. 17.

<sup>159</sup> *Id.*

<sup>160</sup> See Part I, The Aid for Trade Initiative, p. 3.

relevant bodies associated with the Aid for Trade initiative take the measures set forth below in order to ensure that the Aid for Trade initiative does in fact throw both arms around the world of aid and development.

*A. Expand the WTO Aid for Trade Mandate*

At present, the mandate that established the Aid for Trade initiative is entirely mute on the issue of anti-bribery and corruption measures as part of an effective strategy for monitoring trade-related aid and development assistance.<sup>161</sup> Since the Aid for Trade mandate sets the parameters for the Aid for Trade initiative per se,<sup>162</sup> it would need to be revised in order to explicitly extend the scope of the Aid for Trade initiative to the issues of bribery and corruption in aid and development.

Expanding the Aid for Trade mandate would not be overly difficult. In terms of procedure, it would require that the WTO members agree to make such an expansion at an appropriate meeting. In terms of content, the mandate would simply need to be expanded to include a statement that:

Aid for Trade should aim to assist donor and partner states in identifying and monitoring instances of bribery and corruption which occur in relation to the provision of trade-related aid and development assistance. Aid for Trade should also aim to bring together national, regional and international actors that work in the fields of trade, trade-related development, good governance, and combating bribery and corruption in order to advance the coordination of their agendas to ensure that bribery and corruption are considerations in trade-related aid and development assistance and vice versa.

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<sup>161</sup> See THE WORLD TRADE ORGANIZATION, HONG KONG MINISTERIAL DECLARATION 2005, DOHA WORK PROGRAMME, para. 57, available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_text\\_e.htm#aid\\_for\\_trade](http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm#aid_for_trade) (last visited Aug. 4, 2008).

<sup>162</sup> *Id.*

Further, the jurisdiction of the Task Force would need to be expanded to include examining bribery and corruption in relation to trade-related aid and development assistance. Reference to entities associated with regional and international corruption instruments, as well as Interpol, would have to be added as well. These changes to the Aid for Trade mandate are relatively small but would go a long way toward linking trade-related aid and development assistance with anti-bribery and corruption efforts.

### *B. Restructure Evaluation and Monitoring System and Mechanisms*

Currently, the questionnaires used by the OECD and WTO in their first round of evaluations of the Aid for Trade initiative do not reference anti-bribery or corruption efforts,<sup>163</sup> regardless whether these efforts are for a specific project or as a general plan of action for improving the trade and economic scenario of the partner state.<sup>164</sup> This is due in large part to the fact that, although some states have inferred the “trade policies and regulations” element of the Aid for Trade initiative to include good governance generally, anti-bribery and corruption reporting mechanisms do not exist in any form under the extant Aid for Trade initiative.<sup>165</sup> Thus, in order to emphasize the importance of monitoring anti-bribery and corruption and to gather meaningful information of the Aid for Trade initiative, the OECD/WTO questionnaires would have to be changed to include specific questions related to anti-bribery and corruption efforts. Preferably, this change would be tied to the addition of anti-bribery and corruption efforts as the six areas of

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<sup>163</sup> See Part I, The Aid for Trade Initiative, p. 3.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

progress and evaluation under the Aid for Trade initiative. In the alternative, this change could be made to the trade policy and regulation category.

Additionally, the OECD's CRS country reporting format would need to be amended to include specific reference to anti-bribery and corruption mechanisms and efforts. Again, the preferred method of change would be to create a new evaluation category specifically for anti-bribery and corruption measures. Or, as discussed above, evaluation of anti-bribery and corruption measures could fall under the trade policy and regulations category.

Further, the WTO should require member states to include information on their anti-bribery and corruption measures in relation to trade and Aid for Trade in their trade policy reports. This information should include summaries of applicable laws and governmental regulations, as well as their use in applicable projects and issue areas.

### *C. Involve Additional Regional and International Actors*

One of the ways in which the Aid for Trade initiative has sought to evaluate the effectiveness of trade-related aid and assistance on a global level is to convene panels of experts in areas of specialization which have direct bearing on these issues.<sup>166</sup> The purpose of convening these panels of experts is to enhance the knowledge of the Aid for Trade Task Force and the Committee on Trade and Development, as well as to further the monitoring function of the Aid for Trade initiative.<sup>167</sup>

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<sup>166</sup> See THE WORLD TRADE ORGANIZATION, THE WTO WORK PROGRAMME ON AID FOR TRADE, AID FOR TRADE, available at [http://www.wto.org/english/tratop\\_e/devel\\_e/a4t\\_e/developments\\_e.htm](http://www.wto.org/english/tratop_e/devel_e/a4t_e/developments_e.htm) (last visited Aug. 4, 2008).

<sup>167</sup> See *id.*

In order to facilitate a full and on-going understanding of the current state of the relationship between trade-related aid and development assistance and bribery and corruption – as well as how to combat the problems caused by this relationship – a working group of experts from the regional and international organizations which handle bribery and corruption issues should be created as part of the Aid for Trade initiative. These experts would then work with the other experts, states, regional organizations and international organizations which are affiliated with the Aid for Trade initiative in order to form a bridge between trade-related aid and development assistance and anti-bribery and corruption efforts.

Additionally, these experts would be a source of information to their various constituencies in the event that these constituencies were to attempt to revise their applicable agreements or other instruments in order to harmonize the extant anti-bribery and corruption agreement and instruments with the goal of expressly relating trade-related aid and development assistance and anti-bribery and corruption measures. If, as the author believes is likely, the Aid for Trade initiative's work reveals the need for the creation and use of a standard Memorandum of Understanding between donor states and/or donor organizations and partner states regarding the role of anti-bribery and corruption measures in trade-related aid and development assistance, such alliances would also be critical in implementing such a MOU and assisting in the enforcement of its terms.

### CONCLUSION

The above article has argued that, by creating the Aid for Trade initiative, the WTO and its members are attempting to throw their collective arms around the current schemes for international trade-related aid and development assistance but, in so doing, fails to embrace this issue fully by not including a study of the relationship between these forms of assistance and bribery and corruption. Thus, it is argued, the WTO, through its Aid for Trade initiative, is only throwing one arm around the world of trade-related aid and development assistance evaluation. In order to remedy this situation, and be different than the current ideologies of trade-related aid and development assistance evaluation, this article argues that the Aid for Trade initiative must be amended to bridge the relationship between trade-related aid and development and bribery and corruption. Only once these issues are brought into the fold of the overall Aid for Trade initiative can it be said that the WTO is throwing both arms around trade-related aid and development assistance.