PRIVATE ACTOR RIGHTS DERIVED FROM THE WTO TFA

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Abstract: The lack of a legal protection for private actors\(^1\) at the domestic level surely brings disadvantages for them as they are not likely to have any legal foundation to enforce their rights when domestic law violates WTO law. State actions or trade measures in national or international trade directly affect private actors in terms of the sustainability of their economic activity at the domestic level. In addition, the purpose of the WTO of establishing global free markets is a threat to the practices of protectionist countries and clashes with the idea of a territorial border of a state. The paper examines the uniqueness of the WTO TFA in the implementation of its provisions and it argues that the WTO TFA envisages provisioned rights for private actors. However, the invocation of these rights in the WTO TFA for the interest of private actors is only possible by the power of domestic court of a state.

Keywords: Private Actor Rights, World Trade Organisation (WTO), Trade Facilitation Agreement (TFA)

Introduction

In the beginning, it is worth mentioning that the main work of WTO is to offer a mechanism to governments to reduce both their own trade barriers – tariff and non-tariff barriers – and those of foreign markets through its rules and dispute settlement system.\(^2\) Open market access and free trade are encouraged, an idea underpinned by the doctrine of economic

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\(^2\) The range of private economic actors under the WTO TFA is defined to include both individuals, such as importers, exporters, warehouse owners, customs brokers and merchants, and business entities either in the private sector or public sector, such as port companies, warehousing companies, trucking companies, trade associations, freight forwarding companies and labour unions.

comparative advantage as proposed under GATT 1947. The principle of non-discrimination in the form of MFN and National Treatment were introduced as part of equally beneficial treatment. Imported goods from a WTO Member country should receive no less favourable treatment than of goods from any other WTO Member (MFN principle). Once circulated past the border, after paying import duties and other import measures, and entered domestic market, imported goods should receive no less favourable treatment than domestically produced goods (National Treatment principle).

Reciprocity and economic arrangements approach were central during the negotiations in the Uruguay Round before the establishment of the Marrakesh Agreement. The preamble of the GATT/WTO confirms the approach as ‘reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade’. But, the preamble also calls an assistance for the ‘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’. In this connection, Singapore and Doha Ministerial Declaration reiterate this assistance as it stipulates that:

...We acknowledge the fact that developing country Members have undertaken significant new commitments, both substantive and procedural, and we recognise the range and complexity of the efforts that they are making to comply with them. In order to assist them in these efforts, including those with respect to notification and legislative requirements, we will improve the availability of technical assistance under the agreed guidelines.

...The majority of WTO Members are developing countries. We seek to place their needs and interest at the heart of the Work Programme......In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes have important roles to play.

We are committed to addressing the marginalisation of least-developed countries in international trade and to improving their effective participation in the multilateral trading system...... to help least-developed countries secure beneficial and meaningful integration into the multilateral trading system and the global economy. To achieve this, the role of WTO are to maintain sustainable growth and development for common goods where trade can flow freely among members particularly in developing countries and LDCs and all WTO members have renewed their commitments, which include progressive liberalisation and elimination of tariffs and non-tariff barriers to trade in goods and services, rejection of all forms of protectionism and integration of developing countries and least-developed countries and economies in transition into the multilateral system. With regard to protectionism and the interest of developing countries and LDCs in

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6 Doha Ministerial Declaration, WT/MIN(01)/DEC/W/1, 14 November 2001, para. 2.

7 Ibid. para. 3.


9 Ibid.
multilateral trading system, they reiterated their commitment to reject it in the text of the Doha Ministerial Declaration in 2001.\(^{10}\)

Providing security and predictability has become another central object and purpose of the multilateral trading system to improve the welfare of international economic relations for both states and private economic actors.\(^{11}\) For this purpose, the DSU is one of the most important instruments to protect the security and predictability of the system by establishing a fair, equitable and more open rule-based system.\(^{12}\) In the US-Section 301 Trade Act case,\(^{13}\) the Panel admitted that:

> 7.76 ... the multilateral trading system is, per force, composed not only of States but also, indeed mostly, of individual economic operators. The lack of security and predictability affects mostly these private operators.
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> 7.77 Trade is conducted most often and increasingly by private actors. It is through improved conditions for these private operators that Members benefit from WTO disciplines.

**Discussion**

The challenge of the WTO is, however, since there is an imbalance of trade and economic productivity among WTO members, the idea of opening market access and free trade with non-discrimination principle conflicts with protectionism mostly in developing countries and LDCs. A protectionist country enters into trade agreements is only primarily to support their domestic producers and exporters to access new export opportunities while setting up trade barriers to foreign products into its own domestic market. Thus, objections to opening domestic market access and free trade in a protectionist country are: the reciprocity principle, whether trading partners have opened their domestic markets as well, the reliance on tariffs, the protection of infant industries domestically, revenue raising and national security considerations.

Consequently, the WTO and its legal system is perceived as a threat to national sovereignty of a protectionist country. Domestic trade law of some states are still based on mercantilist principles such as the assumption that ‘exports are good and imports are bad’. Unfortunately, GATT law also describes export opportunities as a ‘benefit accruing under the agreement’\(^{14}\) and the reciprocal trade liberalisation as a ‘concession’\(^{15}\). In this light, commentator argues that domestic foreign trade laws mostly offer ‘rights to protection’ but hardly ever grant private actors ‘rights to liberal trade’.\(^{16}\) It can be said that the purpose of the WTO of establishing global free markets is a threat to the practices of protectionist countries and clashes with the idea of a territorial border of a state. In other words, any international cooperative mechanism will clash with national sovereignty and with special interests whose particular economic wellbeing will be affected by international decisions.\(^{17}\)

\(^{10}\) Doha Ministerial Declaration, WT/MIN(01)/DEC/W/1, 14 November 2001, para. 1: ‘We therefore strongly reaffirm the principles and objectives set out in the Marrakesh Agreement Establishing the World Trade Organisation, and pledge to reject the use of protectionism.’

\(^{11}\) Article 3.2 of the DSU. See also Panel Report, United States-Section 301-310 of the Trade Act of 1974, WT/DS152/R, 22 December 1999, para. 7.75

\(^{12}\) Singapore Ministerial Declaration, WT/MIN(96)/DEC/W, 13 December 1996, para. 6. See more in Report of the Appellate Body, European Communities-Regime for the Importation, Sale and Distribution of Bananas, WT/DS27/AB/R, 9 September 1997, para. 132. The system of this rule-based system is underlined by the fact that initiating legal proceedings under the WTO DSU does not require a legal interest as a prerequisite for requesting a panel.


\(^{14}\) Article XXIII of GATT 1994

\(^{15}\) Article XXVIII of GATT 1994


To counter this, there is the WTO’s argument based in part on trade theory doctrine that opening up domestic markets basically benefits national economies of developing countries and LDCs. Elimination of import barriers and non-barriers will foster faster growth in these by means of spreading job opportunities and capital flow of foreign investment in developing countries and LDCs. It is true that reciprocity has been an issue in the Doha Round Negotiations, but the effort to propose more involvement and take account of the needs and interest of developing countries and LCDs has brought complicated debate.\textsuperscript{18} If it is not possible to agree on reciprocity, then the challenge is to find other methods and promote other techniques that are more likely to fulfil the WTO’s role and objectives.\textsuperscript{19} Until finally, the WTO TFA was concluded to fulfil WTO Members’ commitment under the Doha Ministerial Declaration and take fully into account of the special needs and interest of developing countries and LDCs.

From the perspective of private actors, protectionist laws and trade difficulties will disadvantage them in practice as they are the most affected if a government violates the WTO principles. By analysing the case of the WTO Agreements in EU law, it can be learned that the invocation of provisioned rights in the WTO agreements for the interest of private actors is only possible by the power of domestic court of a state when domestic law conflicts with WTO law. The court will consider the content of the agreement and some provisions of the agreement which might be specifically designed for the interest of private actors. Two conditions should be fulfilled: the purpose and nature or spirit of the agreement; and clear, sufficient, and precise provision. In the case of WTO Agreements in EU law, the decisions to reject the invocation of the Agreements by private actors were reasoned mainly due to reciprocity of the WTO Agreements provisions itself.\textsuperscript{20} Reciprocity means that all WTO Members in conducting trade in goods should behave in the same way or give each other similar advantages.

But, unlike any other WTO agreements in Annex 1A, the WTO TFA features self-tailored implementation for its provisions in developing countries and LDCs. They may be allowed to self-designate the implementation of the provisions based on category system provided in the agreement. At this point, SDT provisions are introduced and developed and donor countries will provide assistance and supports capacity building for the implementation in developing countries and LDCs. The system was embodied in the preamble of the WTO TFA as it states that:

...the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building.

...the need for effective cooperation among Members on trade facilitation and customs compliance issues.

A well-functioning international trade system cannot be based on the principle of that exports are good and imports are bad anymore.\textsuperscript{21} Approaches and techniques other than a narrow focus on reciprocity should be available in the WTO if the WTO Members are expected to receive the mutual advantage of all its Members.\textsuperscript{22} Thus, the nature of the WTO TFA is not primarily based on reciprocity approach, but ‘cooperative’ approach or non-reciprocity approach. Developed and donor countries are committed to assist developing countries and LDCs to implement the WTO TFA provisions at their domestic level.


\textsuperscript{19} Ibid.

\textsuperscript{20} Case C-469/93, Amministrazione delle Finanze dello Stato v. Chiquita Italia SpA, 12 December 1995, ECR I-4533.


\textsuperscript{22} Irish, (n 18) 54. See further in Andrew Lang, World Trade Law after Neoliberalism: Reimagining the Global Economic Order (Oxford University Press 2011), at 228-233, 347-349.
To date, 147 out of 164 WTO Members have ratified the WTO TFA in their domestic law. The rate of implementation commitments in developed countries has reached 100%. In other words, they are ready to fully and directly apply the WTO TFA provisions without hesitation and cooperatively assist developing countries and LDCs in the implementation of its provisions. This is understandable since developed countries are already well-equipped with all the infrastructure for the implementation. In addition, the entry of force of the WTO TFA marks the end of a single undertaking approach in the WTO as it only took effect for WTO Members who agreed to ratify and be bound by it. Paragraph 3 of Article X of the WTO Agreement underlines once two-thirds of the WTO Members have accepted the Agreement they are bound by it. It has the similarity just like plurilateral agreements but the difference is the WTO TFA includes assistance and capacity building. The principle is based on MFN basis, but WTO Members have their own decision whether they want take part in the Agreement. The WTO TFA is a breakthrough in terms of its approach against the single undertaking which has been long criticised as removing flexibility from developing countries.

In the same vein, all developing countries and LDCs have also pledged to take all benefits of the agreement into their domestic level as it promises to expedite the movement of documents and goods and cut red tape at national borders which is presumably slow and hampers international trade transactions. The WTO TFA aims at reducing unnecessary trade costs and time at the border which is expected to benefit both governments and private actors. In other words, the government and private actors should cooperate each other and take mutual partnership as the WTO TFA benefits both sides. More importantly, it is necessary to highlight the full commitment of all WTO members when they have agreed to ratify the agreement into their domestic laws and shown their expectation to take all benefits of this agreement. In his address to WTO Members at the meeting of the General Council on 27 February 2017, soon after the WTO TFA entered into force, Director-General Azevêdo stated that:

By ratifying the agreement, Members have shown their commitment to the multilateral trading system. You had followed through on the promises made when this deal was struck in Bali. And by bringing the deal into force, we can now begin the work of turning its benefits into reality.

The above is evidence that the WTO TFA has been on the negotiated agenda for a long period of time and the expected outcome is that the WTO TFA is equipped with ‘cooperative’ principle focusing to the benefit of developing countries and LDCs. The WTO TFA contents is very narrow as it is mostly only concerned with customs measures and covers broad issues under MFN Treatment. The issues relate to customs duties and charges as well as rules and formalities in connection with importation and exportation. In character, the WTO TFA is argued to have precise and unconditional provisions for private actors and acts as a guarantee over their rights just like other WTO covered agreements. Article 21:3(c) of the WTO TFA concerns with assistance and capacity building with regard to the implementation and touches upon private actor activities. It reads that:

(c) ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;

The WTO TFA was a groundbreaking agreement under the auspices of the WTO as the first multilateral trade agreement ever successfully concluded, ratified and inserted into Annex 1A of the WTO Agreement since the establishment of the WTO in 1995. Article XVI:4 of the

25 Protocol Amending the Marrakesh Agreement Establishing the World Trade Organisation, 27 November 2014, para. 3 and para. 4. 'The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
26 Available at <http://www.tfafacility.org/wto-members-welcome-entry-force-trade-facilitation-agreement>
27 Article I:1 of GATT 1994 concerning MFN Treatment.
WTO Agreement acts as its basis as it stipulates that: ‘Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the Annexed Agreements.’

Concerning this article, however, Petersmann argues that neither WTO law nor international law requires countries to fully incorporate WTO law into their domestic laws and make precise and unconditional WTO rules directly applicable by domestic courts and citizens.28 In other words, the ability of private actors to obtain all those rights and their protection do not directly come from WTO law but from the applicable law of each WTO Member that allows the invocation of those rights. However, he further notes that:

But, it must also be seen that broad trade policy discretion in domestic trade laws often operates as an incentive for ‘rent-seeking’ and power politics by import-competing producers interested in influencing the application of discretionary trade rules in a manner generating ‘protection rents’ for the benefit of powerful lobbies. Domestic trade laws should therefore include more specific requirements to apply the rules in conformity with self-imposed WTO obligations.29

Some scholars are advocates of the strengthening of WTO trade rules by allowing adversely affected private actors to invoke those rules before domestic courts of all WTO Members. Enforcing the WTO Agreement through its rules and procedural disciplines will bring economic consequences for private actors in WTO Members as well. From the standpoint of private actors, it is mostly argued that allowing this would offer the best guarantee of protection of their rights and interests, thus making the entire WTO rules more effective.30 Allowing direct effect of the WTO TFA provisions could be effectively used by private actors as a weapon against inherently protectionist tendencies in the form of non-tariff barriers. In addition, Report of the 69th ILA in London in 2000 also recommended that:

The WTO Members should strengthen the legal and judicial remedies of their citizens and residents (natural and legal) if the latter are adversely affected by violations of precise and unconditional WTO guarantees of freedom and non-discrimination, especially where such violation of WTO rules has been ascertained in a legally binding manner by rulings of the WTO Dispute Settlement Body.31

A cooperative-based approach of the WTO TFA is highly likely to receive more benefits for private actors as they may increase their participation and involvement to push their government to lower any non-tariff barriers, delays and unnecessary trade costs at the border, which also in fact benefits their governments’ national economy and trading system. Both WTO Members and private actors are expecting the same benefits from international trade transactions at the border. The following explores the dimensions of private actor rights under the WTO TFA. It is argued that those rights are both substantive and procedural. The WTO TFA has provided precise and unconditional provisions for private actors to guarantee the protection of their rights in domestic level. But, it is reiterated that the invocation of the provisions is a matter of the applicable law of a state.

Substantive Economic Rights

Substantive economic rights are defined as property rights that give a legal guarantee of an opportunity to an economic actor that their treatment shall be no less favourable than that given to other WTO economic actors and national counterparts. MFN and National Treatment apply as the precondition for gaining those positive rights.

29 Ibid. 245.
31 Committee on International Trade Law, at Annex 3 Recommendation 4. See further in Charnovitz, (n 60) 266.
The WTO provides private actors with substantive economic rights in domestic law and two prominent rights are derived from the TRIPS Agreement and GATS.32 The TRIPS Agreement requires governments to treat foreigners no less favourably than their own nationals33 and grant intellectual property rights to the nationals of other WTO Members.34 Moreover, the TRIPS Agreement requires the government to accord exclusive property rights for copyright and related rights,35 trademarks,36 geographical indications,37 industrial designs,38 patents,39 integrated circuits,40 and undisclosed information.41 As for GATS, it requires a WTO Member to treat a service supplier of any other WTO Member no less favourably than like service suppliers of any other country.42 The National Treatment provision in GATS also requires a government to treat foreign service suppliers no less favourably than like national service suppliers in the sectors prescribed under a government's schedule of concessions.43 Thus, like substantive economic rights derived from the TRIPS Agreement and GATS, it is submitted that the WTO TFA does indeed provide private actors an entitlement guaranteed in domestic law. This is clear from the following.

The preamble of WTO TFA holds that its aim is to ‘clarify and improve relevant aspects of Article V, VIII, and X of GATT’ with the purpose of expediting the movement, release and clearance of goods, including goods in transit. GATT rules on trade in goods with a view to achieving market access of a state and it covers two main areas: customs measures and internal measures. In this context, the common principles are first the abolition or at least reduction of any barriers to trade such as tariffs and non-tariffs barriers (quotas, licences or any permits), transparency and non-discrimination.

MFN relates to customs measures and all rules and formalities with regard to importation or exportation prescribes that the MFN treatment of one WTO Member should be given equally to other Members. National Treatment, on the other hand, concerns any internal measures imposed domestically on imported products and prescribes that imported products cannot be treated any less favourably than domestic products solely for the reason of protecting domestic production. The protection can be in the form of laws, regulations and other requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. Thus, it is reiterated that substantive rights come from the MFN and National Treatment provisions.

In this respect, Article 3 of the WTO TFA on Advance Rulings implicitly provides substantive economic rights for private actors to obtain advance rulings decision from customs officials and they should be treated equally with regard to their legal representation or registration in a WTO member territory. Article 3:9(c) and Article 3:9(d) of the WTO TFA read that:

(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

(d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of person eligible to apply for advance rulings, with

33 Article 3.1 and Article 4 of the TRIPS Agreement.
34 Article 1.3 of the TRIPS Agreement.
35 Article 11, Article 12, and Article 14 of the TRIPS Agreement.
36 Article 16, Article 18, and Article 21 of the TRIPS Agreement.
37 Article 22 and Article 23 of the TRIPS Agreement.
38 Article 25 and Article 26 of the TRIPS Agreement.
39 Article 28 and Article 33 of the TRIPS Agreement.
40 Article 35 and Article 38 of the TRIPS Agreement.
41 Article 39 of the TRIPS Agreement.
42 Service suppliers can also be a presence of natural persons of a Member as stipulated under Article I:2(d) and Article XXVIII(k) of GATS.
43 Article II:1 of GATS.
44 Article XVII:1 of GATS.
particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

**Procedural Rights**

These are due process rights. They offer a channel through which private actors can gain the benefits of the WTO Agreements through established procedures and administrative requirements at government institutions. The institution provides a mechanism for private actors who seek relief, to submit comments, or to appeal a government official's decision or its rulings. Some provisions of the WTO annexed Agreements explicitly mandate such due process rights and provide the basic obligation of a state to establish domestic remedy mechanism. These provisions appear the least intrusive into state sovereignty of the WTO Members. For example, the establishment of a domestic remedy mechanism for the challenge procedures in the GPA, the prompt review procedures in the GATS, the independent review procedures in the PSI Agreement, or the special domestic remedy mechanism for interim protection by domestic courts and suspension of release of counterfeit goods by customs authorities in the TRIPS Agreement.

With regard to the WTO TFA, Article X:3(b) of GATT is its basis as it explicitly calls for procedural rights at a domestic level. It reads as follows:

> Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers.

This article requires such a tribunal or government mechanism to be independent as the administering institution, and appeals can only be lodged by importers. It is submitted that procedural rights for private actors rest on Article 4 of the WTO TFA. This article principally echoes Article X:3(b) of GATT. Article 4 reads that:

1. Each Member shall provide that any person to whom customs issues an administrative decision has the right, within its territory, to:
   (a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;
   (b) a judicial appeal or review of the decision.
2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.
3. Each Member shall ensure that its procedure for appeal or review are carried out in a non-discriminatory manner.
4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:
   (a) within set periods as specified in its laws and or regulations; or
   (b) without undue delay
   the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.
5. Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such as person to have recourse to procedures for appeal or review where necessary.

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6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

An administrative decision means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. Such a decision covers an administrative action within the meaning of Article X of the GATT 1994 or a failure to take an administrative action or decision as provided for in a Member’s domestic law and legal system. To address such a failure, members may maintain an alternative administrative mechanism or judicial recourse to a customs authority to promptly issue an administrative decision in place of the right to appeal or review as stated in Article 4.6 of the WTO TFA.

From the case of Colombia-Ports of Entry\(^\text{46}\) and Thailand-Cigarettes\(^\text{47}\), certain legal protections must be provided for private actors in their domestic law. These include the right of importers to all available evidence to defend their position regarding the substantial transaction value declared by them. They must be allowed to ask for a written explanation from customs officials if they reject importers’ transaction value (advance rulings rights as a substantive economic rights). The purpose of this permission is to provide an importer with the right to appeal or ask for a review to higher authorities within the customs administration or to a tax court or another independent tribunal. Thus, it is argued that advance rulings and appeals or review are private actor rights derived from the WTO TFA provisions. These provisions are designedly made to guarantee the protection of their rights in domestic level and reduce the risk of customs administration using their abusive power in deciding transaction value and provides a mechanism through which importers and customs officials adopt the same position and view concerning value. It provides uniformity and certainty of rules and helps to minimise arbitrary decisions and dispute which can significantly reduce unnecessary trade costs.

**Conclusions**

The WTO TFA has provided the unique feature of its provisions. It is cooperative-based approach or non-reciprocity and directs the need and interests of developing countries and LCDs. Thus, the nature of the WTO TFA is not primarily based on reciprocity approach as different process of implementation in WTO Members particularly developing countries and LCDs may exist. In this connection, an MFN principle is the basis. Developed and donor countries assist developing countries and LDCs to implement the WTO TFA provisions at their domestic level.

In the case of the WTO TFA provisions for private actors, these consist of precise and unconditional provisions which have been designed to protect private actor rights when unnecessary trade costs affect their business activities. It has been argued that the agreement provides two rights for private actors, namely substantive economic rights and procedural rights. The former relates to MFN and National Treatment as the precondition of gaining positive rights. It is arguable that Article 3 of the WTO TFA on Advance Rulings provides those rights in relating to customs measures. While, Article 4 of the WTO TFA on Procedures for Appeal or Review is the core basis of procedural rights for private actors as it relates to due process of rights as a domestic remedy channel through which private actors can gain the benefits of the agreement.

However, it can be learned that the invocation of provisioned rights in the WTO TFA for the interest of private actors is only possible by the power of domestic court of a state. It should be noted that the rights and obligations of a provision which contains the doctrine of direct effect need to be of a quality which can be understood and applied by courts within their competences. The quality is characterised around the precision of the treaty, which can be


understood from the nature, context and purpose of the treaty and sufficient, precise, and unconditional provisions.

At this stage, it is argued that the nature and purpose of the WTO TFA can be argued as following. First, as the most ground-breaking agreement ever concluded after the establishment of the WTO in 1995, its members have renewed their commitments by pledging to create progressive liberalisation and eliminate tariffs and non-tariff barriers to trade in goods and services, and importantly, reject all forms of protectionism under the Doha Ministerial Declaration. The background of this renewal is arguably supported by the fact that protectionist regime is largely conducted by many WTO member, and the WTO TFA was concluded and ratified to fulfil those WTO objectives. A protectionist regime may apply a great number of unnecessary trade costs in the form of non-tariff barriers where this condition may create burdensome business circumstances for private actors.

Second, as mentioned above, up to now 147 out of 164 WTO Members have ratified the WTO TFA in their domestic law, with the rate of implementation commitments in developed countries running at 100%. This means that developed countries are ready to fully and directly apply the WTO TFA provisions without hesitation and possibly include provisions designed for private actor rights. This is quite unique since rejection of direct effect of the WTO law on a national level come from legal system of developed countries. While in the case of the WTO TFA, they want the WTO TFA provisions to be directly applied and invokable at their domestic level.

Moreover, the ability of a state to expedite the movement of goods and at the same time provide the lowest costs for services across the border is critical for private actors. Government policy of removing any delays and unnecessary trade costs has emerged as becoming necessarily important for them in terms of their involvement in contributing to a national economy. These can be significantly achieved if private actors have their rights protected at a domestic level when government trade policy contradicts trade facilitation purposes and disadvantages private actor and business activities.