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## Navigating the Free Trade—Fair Trade Fault-Lines by Michael Trebilcock

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Book Review



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## Navigating the Free Trade—Fair Trade Fault-Lines by Michael Trebilcock

### Abstract

The COVID-19 pandemic came with several revelations about our pre-pandemic lives. One of these revelations was the importance of international trade law in the lives of average individuals. Headlines about food supplies, shortages of essential medical supplies, and countries' plans to acquire and produce vaccines dominated the media following March 2020. It was a time that spurred the public's interest in international trade law and how it functions. Indeed, media headlines showcased the growing concern about international trade during the pandemic. This is the context in which Michael Trebilcock's *Navigating the Free Trade—Fair Trade Fault-Lines* situates itself. At a time when everyday Canadians and others around the world were experiencing and reading about the effects of COVID-19, *Free Trade—Fair Trade* provides curious readers with a pithy, wide-ranging introduction to international trade law and its many challenges. Ultimately, Trebilcock convinces his readers that international trade law—and its impact on job availability and the price and availability of goods—can make a difference in people's everyday lives.

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## Book Review

***Navigating the Free Trade—Fair Trade Fault-Lines* by Michael Trebilcock<sup>1</sup>**NICHOLAS SLAGTER<sup>2</sup>

THE COVID-19 PANDEMIC CAME with several revelations about our pre-pandemic lives. One of these revelations was the importance of international trade law in the lives of average individuals. Headlines about food supplies, shortages of essential medical supplies, and countries' plans to acquire and produce vaccines dominated the media following March 2020.<sup>3</sup> It was a time that spurred the public's interest in international trade law and how it functions. Indeed, media headlines showcased the growing concern about international trade during the

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1. (Edward Elgar, 2021) [*Free Trade—Fair Trade*].
  2. JD Candidate (2023), Osgoode Hall Law School.
  3. See e.g. Liam Casey, "Ontario Health Officials Sound Alarm Over Impending Shortage of Masks, Protective Gear," *Global News* (23 March 2020), online: <[globalnews.ca/news/6716834/toronto-hospital-mask-drive-impending-shortage](https://globalnews.ca/news/6716834/toronto-hospital-mask-drive-impending-shortage)> [<https://perma.cc/RB77-4KMF>]; "Canada the Biggest Hoarder of COVID-19 Vaccine Pre-orders in First World, NGOs Say", *National Post* (9 December 2020), online: <<https://nationalpost.com/news/world/canada-the-biggest-hoarder-of-covid-19-vaccine-pre-orders-in-first-world-ngos-say>> [<https://perma.cc/9RTD-MJ29>]; Catherine Tunney, "Pandemic Could Affect Food Supplies, Power Grids, Telecommunications, Says Government Document," CBC (15 April 2020), online: <[www.cbc.ca/news/politics/labour-shortages-emergency-food-power-1.5531583](http://www.cbc.ca/news/politics/labour-shortages-emergency-food-power-1.5531583)> [<https://perma.cc/8XMC-BZHE>].

pandemic.<sup>4</sup> This is the context in which Michael Trebilcock's *Navigating the Free Trade—Fair Trade Fault-Lines* situates itself. At a time when everyday Canadians and others around the world were experiencing and reading about the effects of COVID-19, *Free Trade—Fair Trade* provides curious readers with a pithy, wide-ranging introduction to international trade law and its many challenges. Ultimately, Trebilcock convinces his readers that international trade law—and its impact on job availability and the price and availability of goods—can make a difference in people's everyday lives.

Trebilcock is a prolific legal scholar who has published extensively on topics such as law and economics and international law. He has over 35 years of experience teaching international trade law at the University of Toronto.<sup>5</sup> Teaching and engaging with law students over this period has afforded Trebilcock the insight to identify the questions and concerns that continually “perplex and provoke” students.<sup>6</sup> Trebilcock's objective with this short and accessible book is to provide the “time-constrained reader” a window into the complex world of international trade regulation.<sup>7</sup>

*Free Trade—Fair Trade* makes clear that international trade law is complex. Trebilcock's brief discussion about the debate over preferential trade agreements exemplifies this complexity.<sup>8</sup> The current international trading system is not simply a set of guidelines to which member states must all adhere. This system is layered with a host of agreements, proliferating over the years, between states that agree to treat each other under a different set of rules. Jagdish Bhagwati famously coined the phrase “spaghetti bowl” to refer to this complex system.<sup>9</sup>

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4. See e.g. John Ibbitson, “Canadian Gothic: A Bleak World has Left our Foreign Policy Out of Step With the Times,” *The Globe and Mail* (17 July 2020), online: <[www.theglobeandmail.com/opinion/article-canadian-gothic-a-bleak-world-has-left-our-foreign-policy-out-of-step](http://www.theglobeandmail.com/opinion/article-canadian-gothic-a-bleak-world-has-left-our-foreign-policy-out-of-step)> [https://perma.cc/G466-XFDK]; David Cochrane & Kathleen Harris, “Canada Building its Own PPE Network in China,” *CBC* (16 April 2020), online: <[www.cbc.ca/news/politics/canada-building-own-ppe-supply-chain-in-china-1.5530259](http://www.cbc.ca/news/politics/canada-building-own-ppe-supply-chain-in-china-1.5530259)> [https://perma.cc/B7GV-ZHKA]; Solarina Ho, Avis Favaro & Elizabeth St. Philip, “COVID-19 Exposes Drug Supply Gaps As ‘Made in Canada’ Solution Proposed,” *CTV News* (10 May 2020), online: <[www.ctvnews.ca/health/coronavirus/covid-19-exposes-drug-supply-gaps-as-made-in-canada-solution-proposed-1.4933041](http://www.ctvnews.ca/health/coronavirus/covid-19-exposes-drug-supply-gaps-as-made-in-canada-solution-proposed-1.4933041)> [https://perma.cc/DWG2-E39F].
  5. Trebilcock, *supra* note 1 at vii; University of Toronto, “Michael Trebilcock,” online: <[www.law.utoronto.ca/faculty-staff/full-time-faculty/michael-trebilcock](http://www.law.utoronto.ca/faculty-staff/full-time-faculty/michael-trebilcock)> [https://perma.cc/X46B-2HCR].
  6. *Free Trade—Fair Trade*, *supra* note 1 at vii.
  7. *Ibid.*
  8. *Ibid.* at 18-26.
  9. *Termites in the Trading System: How Preferential Trade Agreements Undermine Free Trade* (Oxford University Press, 2008) at 63.

As Bhagwati illustrates, this complexity leads to significant costs for companies as they attempt to navigate the system.<sup>10</sup> If sophisticated companies labour under this complexity, surely it is difficult for non-experts to decipher. *Free Trade—Fair Trade* is a helpful remedy for such non-experts. The book is clearly and concisely written, opting for brevity and breadth rather than in-depth analysis. As such, readers looking for a brief introduction to international trade law will find this book useful and engaging, though it may not be for those already equipped with a sophisticated knowledge of the field.

*Free Trade—Fair Trade* consists of eight chapters and can be thematically divided into three parts. The first four chapters contextualize contemporary international trade law by providing a historical overview of international transactions between nations, highlighting the evolution of trade theory to the present, and identifying key agreements and terms. Chapter V forms the second part of the book as it categorizes and briefly summarizes sixteen key issues in contemporary international trade law. Chapters VI to VIII make up the final section of the book and are focused on currently unfolding and future concerns, such as how the COVID-19 crisis and the Chinese-US trade tensions relate to some of the ongoing international trade law issues discussed in Chapter V.

Throughout the book, Trebilcock directs readers to selected sources that offer more thorough analyses. Chief among these sources is his own book, *Advanced Introduction to International Trade Law*, co-authored with Joel Trachtman.<sup>11</sup> *Free Trade—Fair Trade* tracks substantially the organization and the issues addressed in *Advanced Introduction*, which is similarly geared toward providing readers “with a limited investment of time and intellectual effort” with a “basic understanding of the field.”<sup>12</sup> Two distinguishing features set *Free Trade—Fair Trade* apart from *Advanced Introduction*: first, *Free Trade—Fair Trade* provides an even more accessible introduction to international trade law for novice readers; second, the book enables readers to consider how currently unfolding issues such as the COVID-19 crisis and China-US tensions relate to international trade law and its challenges.

Part of Trebilcock’s enterprise in providing an accessible introduction to international trade law is identifying and defining key terms and agreements without inundating readers with a barrage of other terms and agreements that make up the complex international trade law system. The General Agreement on Tariffs and Trade (GATT)—which would eventually evolve into the World Trade

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10. *Ibid* at 69-71.

11. (Edward Elgar, 2020) [*Advanced Introduction*].

12. *Ibid* at ix.

Organization (WTO) in 1995 comprising over 160 member states (and the Uruguay Round, one of the nine rounds of negotiations)—feature prominently throughout the book.<sup>13</sup> The principles reflected in these agreements help establish the governing ideals of non-discrimination among trading nations by which Trebilcock organizes *Free Trade—Fair Trade*.

Trebilcock also defines “free trade” and “fair trade” given that these terms can elicit different understandings among the intended readers of this book. As Trebilcock explains, “free trade” refers to mutually beneficial cross-border transacting. It is voluntary and informed, meaning markets are sufficiently competitive, and information about alternative goods or services is accessible for both buyers and sellers.<sup>14</sup> “Fair trade” specifically concerns the “distributional impacts of cross-border transactions.”<sup>15</sup> Questions about fair trade might ask to what extent cross-border transactions disproportionately impact nations or their citizens. The tensions that arise between these two concepts often revolve around broader questions of whether freer trade can lead to fairer distributions in transactions, or whether restrictive national policies on international trade can provide fairer outcomes.<sup>16</sup>

A core feature of this book is Trebilcock’s neutral position as he introduces his readers to contemporary challenges in international trade law that call into question this tension between free and fair trade. A key introduction to this discussion is Trebilcock’s handling of the Most Favoured Nation principle (“MFN”) and debates about preferential trade agreements (“PTAs”). The MFN is covered under Article 1 of the GATT, which requires any benefit that is extended to a product to apply to all other like products regardless of the origination or destination of such products.<sup>17</sup> The rationale underlying such a position is the belief that all trading nations should abide by the same underlying rules. Such a standard limits the “factionalism” that arose in the first half of the twentieth century, which contributed in large part to the outbreak of WWII.<sup>18</sup> This standard also accords with theories of comparative advantage: “[T]rade flows would be dictated by relative underlying efficiencies, rather than *sui generis* rules that structured each bilateral trading relationship.”<sup>19</sup>

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13. See e.g., *Free Trade—Fair Trade*, *supra* note 1 at 18-19.

14. *Free Trade—Fair Trade*, *supra* note 1 at 3.

15. *Ibid* at 3-4.

16. *Ibid* at 4.

17. *General Agreement on Tariffs and Trade*, 30 October 1947, 58 UNTS 187 (entered into force 1 January 1948), Article 1 [GATT 1947].

18. *Free Trade—Fair Trade*, *supra* note 1 at 20.

19. *Ibid*.

PTAs directly call the MFN into question because they are designed to exclude non-members from the benefit of the members of the agreement. Trebilcock draws attention to the debates that abound as to whether the exception is justified. A report from the WTO in 2011 argued that, while PTAs may divert trade in some instances for non-members, they tend to promote trade growth between members of these agreements.<sup>20</sup> Bhagwati, on the other hand, argues that this creates far too much complexity and is costly.<sup>21</sup> Further, others find that PTAs will always fall short of the free trade that is promoted under the WTO multilateral system and may lend themselves to uneven bargaining power between large and small nations that enter PTAs.<sup>22</sup>

Trebilcock's neutral overview of these debates offers readers an important foundation for the contemporary challenges of international trade law elucidated in Chapter V. Trebilcock touches on issues such as foreign direct investment, national security, and environmental standards, and implicitly asks readers to consider whether such challenges warrant exceptions to principles like the MFN without asserting his own conclusions.<sup>23</sup>

However, as the book progresses, Trebilcock does give readers the benefit of his own opinion. For instance, in its account of the COVID-19 crisis and China-US trade tensions, Trebilcock highlights some of the central international trade challenges of COVID-19. Import and export restrictions and IP protection all featured heavily throughout the COVID response, each with consequences for citizens to consider. Peter Navarro, the leader of the US supply chain response to COVID-19, remarked that even the United States' closest allies could not be relied on for essential medical equipment.<sup>24</sup> Following this statement, the Trump administration, along with 70 other countries, imposed export restrictions in

20. *World Trade Organization, World Trade Report 2011: The WTO and preferential trade agreements: From co-existence to coherence* (WTO, 2011) at 105-106; *Free Trade—Fair Trade*, *supra* note 1 at 21.
21. Bhagwati, *supra* note 9 at 69-71.
22. See *e.g.*, *Free Trade—Fair Trade*, *supra* note 1 at 22; Kyle Bagwell, Chad P Bown & Robert W Staiger, "Is the WTO Passé?" (2016) 54 *J Econ Lit* 1125.
23. The GATT itself allows for exceptions to its core principles, recognizing that nations may have legitimate reasons for restricting certain international trade. Article XX of the GATT, for example, allows nations to impose trade restrictions that are necessary to, among others, "protect public morals" and "human, animal or plant life or health." *GATT 1947*, *supra* note 17, Article XX.
24. Thomas J Bollyky & Chad P Bown, "The Tragedy of Vaccine Nationalism: Only Cooperation can End the Pandemic," *Foreign Affairs* (27 July 2020), online: <[www.foreignaffairs.com/articles/united-states/2020-07-27/vaccine-nationalism-pandemic](http://www.foreignaffairs.com/articles/united-states/2020-07-27/vaccine-nationalism-pandemic)> [https://perma.cc/8EG9-ZGUP].

an effort to protect their own supply of essential medical equipment.<sup>25</sup> On the import side, countries began rethinking the extent to which they rely on imported goods for essential items rather than producing such goods domestically.<sup>26</sup>

Trebilcock makes his opinions clear on these matters. Import and export restrictions on vaccines and other essential medical supplies to enhance self-sufficiency within a single nation actually leaves countries worse off, as it leads to zero sum relations between nations. Trebilcock draws on Chad Bown's research on the import and export of medical equipment between nations, much of which makes clear how citizens of trading nations can be impacted by trade policies.<sup>27</sup> The EU, for example, restricted \$12.1 billion worth of medical exports, but this left the EU susceptible to other retaliatory export restrictions. As of 2019, the EU relied on \$17.6 billion worth of imported goods, on which it imposed export restrictions in the following year.<sup>28</sup> The motivation for a nation to be self-sufficient in times of crisis is understandable, but this does not necessarily mean that self-sufficiency is the optimal approach. Such an approach not only limits access to global markets, but also increases risk in the supply chain by limiting the supply of goods to one source. Singapore is a testament to the efficacy of the opposite approach. Despite producing almost none of its own food, Singapore was ranked one of the best nations in food security through its highly diversified food supply chain.<sup>29</sup>

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25. *Free Trade—Fair Trade*, *supra* note 1 at 96-97. See also *ibid.*

26. See *e.g.*, Sarah Turnbull, "Feds Commit Nearly \$200M to be Able to Mass Produce mRNA Vaccine in Canada," *CTV News* (18 May 2021), online: <[www.ctvnews.ca/health/coronavirus/feds-commit-nearly-200m-to-be-able-to-mass-produce-mrna-vaccine-in-canada-1.5432808](http://www.ctvnews.ca/health/coronavirus/feds-commit-nearly-200m-to-be-able-to-mass-produce-mrna-vaccine-in-canada-1.5432808)> [https://perma.cc/5NJU-GQD7].

27. See *e.g.*, Chad P Bown, "EU Limits on Medical Gear Exports Put Poor Countries and Europeans at Risk," *Peterson Institute for International Economics* (19 March 2020), online: <[www.piie.com/blogs/trade-and-investment-policy-watch/eu-limits-medical-gear-exports-put-poor-countries-and](http://www.piie.com/blogs/trade-and-investment-policy-watch/eu-limits-medical-gear-exports-put-poor-countries-and)> [https://perma.cc/5BKU-3CHS]; Chad P Bown, "China's Exports of Protective Medical Equipment Fell Less than Its Exports of All Other Products," *Peterson Institute for International Economics* (30 March 2020), online: <[www.piie.com/research/piie-charts/chinas-exports-protective-medical-equipment-fell-less-its-exports-all-other](http://www.piie.com/research/piie-charts/chinas-exports-protective-medical-equipment-fell-less-its-exports-all-other)> [https://perma.cc/FKN9-KQUW]; Chad P Bown, "COVID-19: Trump's Curbs on Exports of Medical Gear Put Americans and Others at Risk," *Peterson Institute for International Economics* (9 April 2020), online: <[www.piie.com/blogs/trade-and-investment-policy-watch/covid-19-trumps-curbs-exports-medical-gear-put-americans-and](http://www.piie.com/blogs/trade-and-investment-policy-watch/covid-19-trumps-curbs-exports-medical-gear-put-americans-and)> [https://perma.cc/5TLX-CDVF].

28. *Free Trade—Fair Trade*, *supra* note 1 at 97-98.

29. *Ibid.* at 87. See also "Global Food Security Index 2019: Strengthening Food Systems and the Environment through Innovation and Investment," *The Economist Intelligence Unit*, (2019) at 6, 30.



Trebilcock's readers must ask themselves whether government mandates to bring manufacturing back home is really the best option in the long run. Perhaps a more productive use of government resources would be to work toward establishing a COVID-19 vaccine trade agreement that is designed to distribute vaccines equitably and based on scientific determinations, as proposed by Bollyky and Bown.<sup>30</sup> Such an agreement could be established and enforced under existing systems.<sup>31</sup> Instead, vaccine distribution has largely been determined by capacity for capital investment.<sup>32</sup>

Alongside the COVID-19 crisis, Trebilcock addresses the China-US trade war. Trebilcock highlights the roots of the conflict for his readers, among which are concerns about the US trade deficit with China, China's state-owned enterprises, and China's weak IP protection.<sup>33</sup> These issues were brought to the forefront after the Office of the US Trade Representative published an investigation into China's trade practices, to which the Trump administration responded with aggressive tariffs. According to Trebilcock, this has led to "heavy economic costs for both countries and has so far achieved little in realizing the aims of addressing fundamental conflicts."<sup>34</sup> Like many of the issues that Trebilcock raises throughout the book, these trade restrictions have led only to zero-sum behaviour that leaves nations worse off, including their own citizens and companies. Many of the Chinese imports caught under the scope of US tariffs are common household items. Studies show that the average yearly household cost of these tariffs is \$831.<sup>35</sup> Part of the justification for these tariffs is to protect jobs at home, but evidence suggests that the economic costs of tariffs often outweigh the benefits associated with job retention. For example, washing machine tariffs in 2018 may have created 1,800 jobs, but the economic costs associated with increased consumer prices as a result of the tariffs amounted to nineteen times the economic value of the jobs created.<sup>36</sup>

Again, Trebilcock makes it clear for his readers that the protectionist trade measures that have been implemented between China and the United States have

30. Bollyky & Bown, *supra* note 24.

31. *Ibid.*

32. *Free Trade—Fair Trade*, *supra* note 1 at 101.

33. *Ibid.* at 108-109.

34. *Ibid.*

35. *Ibid.* at 111.

36. See *Ibid.* at 112; Mark J Perry, "Trump's Washing Machine Tariffs Created 1,800 US Jobs, but at a YUGE Cost to Consumers of \$820,000/job," *AEI* (21 April 2019), online: <[www.aei.org/carpe-diem/trumps-washing-machine-tariffs-created-1800-us-jobs-but-at-a-yuge-cost-to-consumers-of-820000-job/](http://www.aei.org/carpe-diem/trumps-washing-machine-tariffs-created-1800-us-jobs-but-at-a-yuge-cost-to-consumers-of-820000-job/)> [<https://perma.cc/VQZ9-JR4L>].

come at significant cost to these nations, their citizens, and other nations around them. Trebilcock gives special attention to the Phase One deal, which is the latest attempt between China and the United States to ease tensions. The central points underlying the deal involve reducing tariffs and boosting China's purchases of US imports by \$200 billion United States dollars ("USD").<sup>37</sup> Trebilcock is quick to note that such a deal is flawed. Tariff reductions are minimal and unlikely to make much of a difference.<sup>38</sup> China is far behind its targets for increased US imports. As of September 2021, Chinese imports amounted to \$198.8 billion USD, sixty-two percent behind their target of \$319.1 billion USD in the same period.<sup>39</sup> China's lagging performance in this respect has implications for international trade. In order to meet these targets, it is likely that China will resort to even more government control over its economy.<sup>40</sup> Further, China will be increasingly less likely to import from nations other than the United States in order to fulfill its obligations.<sup>41</sup>

Fundamentally, a deal like Phase One between the two largest economies of the world misunderstands the values underlying international trade. As Yukon Huang and Jeremy Smith argue, "[t]his deal undermines the interests of the broader global community in favor of the arbitrary whims of great powers. When it all falls apart—and takes out remaining parts of the current trade order with it—even Trump may find that the United States is worse off."<sup>42</sup> As Trebilcock's readers will recall from the preceding pages of his book, the welfare of the United States in its trade relations will have implications for the welfare of its citizens. While trade agreements like the Phase One deal may bolster the political clout of nations on the international stage, ultimately, the costs of deals such as this, which circumvent the MFN, pass down to consumers and companies in the form of fewer goods to choose from and higher prices to pay.

While Chapter V feels disjointed at times as a brief survey of sixteen discrete challenges in international trade law, the book as a whole substantially accomplishes a difficult task: It offers a meaningful introduction to international

37. *Free Trade—Fair Trade*, *supra* note 1 at 115-16.

38. *Ibid* at 120.

39. Chad P Bown, "US-China Phase One Tracker: China's Purchases of US Goods," *Peterson Institute for International Economics* (27 October 2021), online: <[www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods](http://www.piie.com/research/piie-charts/us-china-phase-one-tracker-chinas-purchases-us-goods)> [<https://perma.cc/S2DA-JQQP>].

40. *Free Trade—Fair Trade*, *supra* note 1 at 120-21.

41. *Ibid* at 121.

42. Yukon Huang & Jeremy Smith, "Trump's Phase One Deal with China Misunderstands Global Trade," *Carnegie Endowment for International Peace* (28 January 2020), online: <[carnegieendowment.org/2020/01/28/trump-s-phase-one-deal-with-china-misunderstands-global-trade-pub-80919](https://carnegieendowment.org/2020/01/28/trump-s-phase-one-deal-with-china-misunderstands-global-trade-pub-80919)> [<https://perma.cc/QD8D-T27K>].

trade law by objectively surveying common principles and challenges and relating them to real, contemporary issues that will likely touch Trebilcock's readers personally. Where Trebilcock broaches pertinent questions relating to COVID-19 and the China-US tensions, the reader gets a much stronger sense of Trebilcock's position as it relates to international trade law policy and the importance of the MFN: Freer trade that gives effect to the MFN is likely to provide the fairest outcome. Of course, Trebilcock leaves some questions open to his readers that go beyond the scope of this book. One might ask whether it is "fair" for one nation to prioritize its own nation's interest over another's, especially when life-saving vaccines are a concern. Should we ask our nations to move manufacturing home to "improve" reliable supply chains, especially during a time of increasing global protectionism? These are questions that readers ought to be asking when reading Trebilcock's book. Having done so, however, readers will be well equipped to think and discuss such matters more fruitfully.

