

BOOK REVIEWS

MICHAEL J. TREBILCOCK AND JOEL TRACHTMAN,
ADVANCED INTRODUCTION TO INTERNATIONAL TRADE LAW
(AUDIOBOOK, 2ND EDN, EDWARD ELGAR 2020)

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Due to the COVID-19 pandemic and several other crises, 2020 was widely considered an *annus horribilis*. It was no different for globalization and international free trade, the pillars of the 'Washington Consensus'.¹ However, the current crisis of the legal and institutional framework of international trade reaches back to a previous 'terrible year' not that long ago – 2016. Donald Trump's election led the United States to pull out from multilateral initiatives like the Transatlantic Trade and Investment Partnership.² We have since witnessed the return of bilateralism, a trade war with China³ and the blocking of appointments to the World Trade Organization's (WTO) Appellate Body (AB).⁴

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¹ John Williamson, 'A Short History of the Washington Consensus' (2009) 15 *Law and Business Review of the Americas* 7, 7–10.

² Leif Johan Eliasson and Patricia Garcia-Duran, 'Norm Contestation in Modern Trade Agreements: Was the Transatlantic Trade and Investment Partnership a "One-Off"?' in Elisabeth Johansson-Nogués, Martijn C Vlaskamp and Esther Barbé (eds), *European Union Contested* (Springer International 2020) 153.

³ Qinyi Xu and Chuanjing Guan, 'Escalated Policy Space Conflict: Tracing Institutional Contestations Between China and the United States' (2021) 6 *Chinese Political Science Review* 143.

⁴ Joost Pauwelyn, 'WTO Dispute Settlement Post 2019: What to Expect?' (2019) 22 *Journal of International Economic Law* 297, 297–300; Ernst-Ulrich Petersmann, 'Rule-of-Law in International Trade and Investments? Between Multilevel Arbitration, Adjudication and "Judicial Overreach"' (2020) EUI Working Paper LAW 2020/10, 5–7 <https://cadmus.eui.eu/bitstream/handle/1814/67990/LAW_2020_10.pdf?sequence=1&isAllowed=y> accessed 3 June 2021.

How to grasp the complexity of international trade law in this situation fraught with economic, social and political difficulties? For students, non-specialized scholars, trade entrepreneurs and government officials, the second edition of Michael J. Trebilcock and Joel P. Trachtman's *Advanced Introduction to International Trade Law* comes to the rescue.⁵ Both authors are renowned scholars in the field. Their strong backgrounds in 'law and economics' and 'law and development' approaches are evidenced by the frequent references throughout the book to economic contexts, political economy and empirical research. Unusually, the volume has been made available as an audiobook and, in keeping with the interest of the European Journal of Legal Studies in novel forms of scholarly publications,⁶ it is this version that I shall review.

To analyze Trebilcock and Trachtman's work, this review will first discuss the content of their book – an indeed introductory description of the key aspects of international trade law, including the economic rationales for international trade and the law that governs it, the international institutional framework and the main areas of regulation within it. Then, it will address the limits of its relevance considering the contemporary crisis of international trade and its institutional framework briefly alluded to above. While the WTO has arguably weathered the worst of this crisis, the world of international trade and the associated legal regime no longer look just like they were described in the volume. Finally, this review will analyze the way in which the volume's publication as an audiobook may affect its reception and scholarly use.

I. CONTENT

The book is divided into 17 chapters that can be grouped into several broader categories. The authors begin with the contextual and institutional setting, introducing the listener to the theory of free trade, the function of trade agreements and political divisions over international trade in Chapter 1 and

⁵ Michael J. Trebilcock and Joel Trachtman, *Advanced Introduction to International Trade Law* (audiobook, 2nd edn, Edward Elgar 2020).

⁶ Olga Ceran and Anna Krisztian, 'Editorial: The "New Normal" in Academia: What COVID-19 Reveals About (Legal) Publishing and Online Scholarly Communication' (2020) 12(2) European Journal of Legal Studies 1.

the structure of the WTO and its dispute settlement mechanism in Chapter 2. As Chapter 2 is most characteristic of the whole book, it is the focus of this review. After the contextual introduction, the book analyzes the key terms and issues of international trade law, including tariffs, standards of treatment, anti-dumping and subsidies (Chapters 3-8) before delving deeper into the particularities of trade in specific sectors like agriculture, services and investment (Chapters 9-12). The last part addresses the policy challenges of international trade law, including its relationships to health and safety, the environment, labor, human rights and economic development (Chapters 13-17). Apart from a new chapter summing up the future challenges for international trade law, the structure of the book is almost identical to the previous edition.⁷

Besides an exhaustive presentation of the basics of international trade law, the authors dedicate some attention to normative, economic and political rationales for measures like anti-dumping duties, which is very enlightening and helpful. The chapters focusing on the key terms and issues of the field, as well as the dedicated chapter on agriculture, deserve particular praise in this regard. There, the authors prove their understanding of both law and economics. The theoretical explanation of free trade in Chapter 1 is a great introduction to the field. The authors display genuine interdisciplinary insight, highly valued and popular in the WTO scholarship,⁸ when describing and critiquing the legal mechanisms of international trade. This is visible, for example, in their analysis of the safeguards regime (i.e. rules on suspending or opting out from some concessions or obligations in certain situations) or agricultural exceptionalism (the particular form of protectionism observed in the agricultural sector). However, compared to economic considerations, the historical and political context of the institutional framework as a whole seems to be merely sketched. Overall, the book fails to reflect deeply on historical or political justifications and implications of the institutions of international trade law.

⁷ Government procurement has been moved from Chapter 7 to Chapter 5, while Chapter 2 has been slightly extended to cover the general functioning of the WTO institutions as opposed to just dispute settlement.

⁸ Jürgen Kurtz, 'Recent Books on International Law' (2012) 106 *American Journal of International Law* 686, 688.

A good example of this limited contextualization is Chapter 2, which describes the institutional framework of the WTO and its dispute settlement mechanism. This chapter illustrates both the best and the worst aspects of the volume. On the positive side, Section 2.3 on dispute resolution is a real high-quality analysis, providing rich historical context and critical evaluation of both the institution and its reform proposals. Case law data on the utilization of the dispute settlement mechanism is furnished to show the quantitative significance of the phenomenon. The most compelling part is the account of the legal interpretation of the WTO rules (section 2.3.5), in which the authors engage with numerous cases to illustrate the variety of approaches taken by the WTO's dispute settlement bodies, especially the Appellate Body. A similar approach is adopted in other parts of the book, always with great results. Overall, the selection, use and understanding of case law is one of the main strengths of the book. The authors provide many examples of recent case law to shed light on contentious interpretative issues of international trade law, which helps engage the listener.

However, as is often the case in legal scholarship,⁹ the case law is presented rather uncritically, in a purely legal dimension. Here, the lack of insight into the political or social concerns hidden not only in the legal framework of international trade but also in its legal reasoning is the most visible. On one hand, this may be explained by the introductory nature of the book, which is intended to be 'a short, straightforward account of the basic structure and principles of international trade law'.¹⁰ On the other hand, the authors have both here in section 2.3 and elsewhere proven their skills in supplementing their legal analyses with extra-legal context in a concise yet elucidating way. Disappointingly, the authors seem to miss the broader political context of some institutions while providing abundant context for others.

Part of the problem may stem from the process of updating an existing work for a subsequent edition. It is not difficult to surmise that, in the previous edition, Chapter 2 concerned only the dispute settlement of the WTO, which remains its strongest part. The newly added sections on the institutional structure and treaty-making and decision-making processes of the WTO seem important due to their fundamental role for its functioning.

⁹ Ibid 691.

¹⁰ Trebilcock and Trachtman (n 5) preface, 1:10.

Yet, little attention is dedicated to them and they are only briefly described without proper context. For instance, only 5 minutes of Chapter 2 of the audiobook (out of 31) and a single general footnote are dedicated to the WTO institutional reform. Although the key regulations are explained, there is no reflection on the reasons for and effects of, for example, the informal consensus requirement for the transformation of the GATT into the WTO or the changing of WTO rules.¹¹ These concerns are important to the institutional framework, particularly now, in this moment of profound crisis.

On a similar note, the literature referred to in the volume is not vast and, in some chapters, has hardly been updated since the previous edition. For example, in Chapter 3, virtually all references are to WTO cases discussed mainly in section 3.4.2, which is only a sub-section of this very important and otherwise well written chapter. The newly added Chapter 17 provides references to literature only with regard to three of the eleven future challenges it identifies for the international trade system – economic migration, digital trade and security exceptions. In general, it seems that the substance of Chapters 13 to 17, although appropriate for inclusion, could have been structured better to describe more profoundly the challenges that international trade law faces, particularly its relationship with other fields of international law.¹² An engaged listener would expect more robust references in an advanced introduction.

II. CONTEMPORARY RELEVANCE

Though published only in early 2020, the second edition became quickly obsolete in many aspects due to the recent and rapid developments in the subject matter. Ironically, the newly introduced sections, especially on future

¹¹ Richard H Steinberg, 'In the Shadow of Law or Power? Consensus-Based Bargaining and Outcomes in the GATT/WTO' (2002) 56 *International Organization* 339; Joost Pauwelyn, 'Rule-Based Trade 2.0? The Rise of Informal Rules and International Standards and How They May Outcompete WTO Treaties' (2014) 17 *Journal of International Economic Law* 739.

¹² Joost Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (Cambridge University Press 2003). cf the critical review by Trachtman in (2004) 98 *American Journal of International Law* 855.

challenges, seem perhaps the most outdated. The future now seems even more challenging than expected.

As has been noted in the previous section, while numerous legal issues are discussed in detail with up-to-date case law, others seem to be merely touched upon. A further example of this is the matter of security exceptions (treaty clauses allowing for avoiding other treaty rules when a national security interest is at stake).¹³ These clauses are the main way of avoiding treaty obligations and are the first line of defense in any international dispute. As such, this is a contentious issue in international economic law in general,¹⁴ and has proven particularly relevant in international trade law recently in connection with import limitations adopted by the Trump administration.¹⁵ However, it is only addressed briefly in Chapter 17 in an analysis that fails to look into its contemporary salience and the general international law and political considerations bound up with such clauses.

Furthermore, international trade law, despite its arguably strong reliance on multilateralism, is told in this volume only from the one-sided, Western perspective. While the interests, policies and objections of the United States or of the European Union at WTO-level are mentioned, the same cannot be said of other important actors such as China. Most other stakeholders are mentioned merely as dispute parties before the WTO. The need for a more pluralist account of international trade law seems stronger than ever. Recently, we have faced paradigm shifts in the field like bilateral agreements between economic superpowers, including the United States and China. Such changes, noted by the authors, make preferential trade agreements and the involvement of developing countries even more important.

¹³ Chao Wang, 'Invocation of National Security Exceptions under GATT Article XXI: Jurisdiction to Review and Standard of Review' (2019) 18 *Chinese Journal of International Law* 695.

¹⁴ William W Burke-White and Andreas Von Staden, 'Investment Protection in Extraordinary Times: The Interpretation and Application of Non-Precluded Measures Provisions in Bilateral Investment Treaties' (2008) 48 *Virginia Journal of International Law* 105; Roger P Alford, 'The Self-Judging WTO Security Exception' [2011] *Utah Law Review* 697.

¹⁵ Petersmann (n 4) 7.

The WTO governance crisis, already clearly visible in previous years, is also only slightly touched upon in the book (sections 2.3.6 and 17.1). Since December 2019, the Appellate Body cannot hear new cases and thus the whole WTO dispute settlement mechanism has stopped working. The WTO fell into an even deeper governance crisis when Roberto Azevedo resigned from his position of Director General a year before his term would have ended and, due to the decision-making gridlock, the election of an interim leader failed. Only in February 2021 was Ngozi Okonjo-Iweala elected to become the new Director General. Now, the WTO stands before the largest organizational and legal challenge in its history.¹⁶ Many elements of the current crisis of the WTO and international trade pointed out in the introduction to this review are only briefly mentioned or even omitted entirely. While the crisis is of a mainly political character, which may to some extent explain its cursory treatment in the volume, its legal effects and potential legal solutions are inevitably relevant for the contemporary situation of international trade law.¹⁷

Like many things previously perceived as established paradigms, international trade and the law that governs it came to a crossroads in 2020. The COVID-19 pandemic severely crippled international trade in goods and services. In August 2020, the WTO goods trade barometer hit a record low.¹⁸ The comparative advantage theory, the essential foundation for free global trade, taken up early in the volume, has been shaken. The neo-liberal paradigm of the 'Washington Consensus', questioned before, seems to have crumbled.¹⁹ Effects on global trade and politics are expected in both the short

¹⁶ 'The WTO Has a New Chief. Is it Time for New Trade Rules Too?' *The Economist* (20 February 2021) <<https://www.economist.com/finance-and-economics/2021/02/20/the-wto-has-a-new-chief-is-it-time-for-new-trade-rules-too>> accessed 29 February 2021.

¹⁷ Pauwelyn, 'WTO Dispute Settlement Post 2019' (n 4).

¹⁸ Michael Shields, 'WTO Goods Trade Index Hits Record Low, Detects Some Recovery Signs' (Reuters, 19 August 2020) <<https://www.theguardian.com/business/reuters/wto-goods-trade-indicator-hits-record-low-486866/>> accessed 13 September 2020.

¹⁹ Harlan Grant Cohen, 'What Is International Trade Law For?' (2019) 113 *American Journal of International Law* 326.

and long terms, forcing profound changes in global and domestic economies.²⁰

States responded to the crisis by intensifying trade limitations, including export bans, additional licensing and authorization requirements. On the other hand, some restrictions have been lifted precisely because of the pandemic, even between the United States and China.²¹ Discussion around the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), affecting access to affordable vaccines, have been revived.²² Of course, the authors could not foresee the global health crisis, but the fact remains that they overlooked many ongoing challenges that were only exacerbated when the pandemic hit.

III. AUDIOBOOK FORMAT

The audiobook is well read by Mark Topping of BBC Radio and produced by StoryTec. Despite the scholarly form of the text, the feeling is pleasant, as the authors present the matter in a very approachable manner, even for a non-expert. Unfortunately, the audiobook does not provide any form of bibliography or index. Thus, the book's otherwise rich substantive contribution suffers from a lack of connection to an extensive, up-to-date body of literature.

The nature of the audiobook is problematic not only with regards to the bibliography but the footnotes themselves. They are simply copied from the printed book and provided in Word files to be downloaded from the publisher's website. They are not referred to in the audiobook itself. Thus, the listener has trouble relating certain propositions to a proper reference. Similar difficulties appear in navigating the content of the audiobook. It is

²⁰ Lukasz Gruszczynski, 'The COVID-19 Pandemic and International Trade: Temporary Turbulence or Paradigm Shift?' (2020) 11 *European Journal of Risk Regulation* 337, 337–341.

²¹ *Ibid* 339.

²² Ana Santos Rutschman, 'The COVID-19 Vaccine Race: Intellectual Property, Collaboration(s), Nationalism and Misinformation' (2020) 64 *Washington University Journal of Law and Policy* 22; Ernest Aryeetey and others, 'A Step Backwards in the Fight against Global Vaccine Inequities' (2021) 397 *The Lancet* 23.

available only as a set of audio files, each track constituting one whole chapter. Each chapter is divided into subchapters of very uneven length, which, in turn, are often also divided further, sometimes even up to three levels deep. Unfortunately, no detailed table of contents is provided, which makes it difficult for the listener to navigate to material on a particular issue. The use of bookmarks (available, for example, when listening with Google Books or iTunes) thus becomes a bare necessity. It seems that modern technologies could have allowed for a more useful and simpler solution.

This being my first encounter with a scholarly audiobook, I found the whole experience underwhelming. While usually audiobooks are listened to while doing something else, in this case the subject requires not only constant attention but also a possibility to take notes. In addition, the audiobook does not seem to be adjusted in any way to the needs of visually impaired listeners, to whom it could provide great assistance. Besides the price, it is hard to find any advantage the audiobook holds over the printed text. All in all, it is just a well-read version of it.

IV. CONCLUSION

Advanced Introduction to International Trade Law indeed provides great insight into the legal framework of international trade by true experts. It is hardly possible to find a better explanation of such basic concepts like the most favored nation principle or national treatment. Definitively, Chapters 3-9 are the main strength of the book. The use of case law therein is commendable. However, the dominant methodological perspective on rules and cases is quite doctrinal, with some concessions to political economy and 'law and economics' approaches. Due to the rapid developments of 2020, the second edition has to a certain extent quickly become outdated. The additions seem to be superficial while many big-ticket issues, evident even before its publication, are not addressed in sufficient depth. The whole narrative of the volume represents a Western point of view on law, economics and politics. The listener could have expected a more nuanced perspective on the subject accompanied by a vaster and more diverse literature selection. Despite this criticism, it is still one of the best and most approachable pieces introducing the 'spaghetti bowl' of multilateral and bilateral trade bargains between states. The newly introduced audiobook version has its practical downsides

and is definitively not for everyone. Hopefully, technological developments may enable this form of scholarly work to prove much more useful in the future.