

Reform of the World Trade Organization

Remarks of

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My friendship with and admiration for Chiedu Osakwe is perhaps the most recent that you will hear about in this series of lectures dedicated to Chiedu. We met only a short time after I came to Geneva as a new WTO Deputy Director-General in September 2017. In a sense, Chiedu promptly adopted me. I much enjoyed our conversations and feel very fortunate to have known him.

Two years later, he was gone. I learned the shocking news of his death from Maika Oshikawa, a close friend of his family. The announcement to the world at large arrived via a tweet from the Nigerian government three years ago today. The tweet said simply:

“Amb Chiedu Osakwe, Nigeria’s Chief Trade Negotiator & Director General of Nigerian Office for Trade Negotiation... has passed on. May his soul rest in peace. Africa has lost an illustrious son, a role model per excellen[ce].”

The first press story gave some brief background:

Mr Osakwe was Nigeria’s Chief Trade Negotiator and Director General of the Nigerian Office for Trade Negotiations. He chaired the Negotiating Forum of the African Union (AU) from June 2017 to March 2018, during which time the negotiations were concluded on the Agreement Establishing the African Continental Free Trade Area (AfCFTA).

Previously, he was on the staff of the World Trade Organization Secretariat (1998–2017) during which he was a director of a few WTO divisions. Prior to the WTO Secretariat, he was a Nigerian Foreign Service Officer (1979 to 1998).

Last year, at the first Chiedu Osakwe Memorial Lecture, the Secretary-General of the African Continental Free Trade Area (AfCFTA) Secretariat informed us of how important Chiedu was to the formation of the AfCFTA. Today I will address Chiedu in the context of a

very current topic for the 164 WTO Members and 24 observers: “WTO Reform”, as this subject is both an important part of Chiedu’s legacy and a key subject for the WTO at present.

Chiedu was always looking to make the future for Nigeria and the world better. He foresaw a Nigeria that would take its rightful place in that improved and updated trading system, a Nigeria with a population in 2050 double the size it was when he wrote. He saw his country, and the nations of its continent, and developing nations more generally, as full participants in the multilateral trading system. He cared deeply about improving the WTO, to which he had dedicated a substantial part of his professional life. Today, this is his story.

Chiedu on WTO Reform Through Accessions

The world at large thinks of the WTO as a place for the negotiation of trade agreements and where Member countries come to settle trade disputes. The public may be aware that there is a professional Secretariat issuing reports on current developments in world trade. They may know there are a host of committees of WTO Members administering the multilateral trading system that covers 98% of world trade. They have probably read about some of the world’s largest economies joining the WTO during the last quarter-century, events that garnered headlines, such as when China and Russia came into the Organization. They will know that world leaders for several years running have called for reform of the WTO.

What the general public is less likely to know is that much of the reform of the WTO over its 27-year life has taken place in the process of countries joining the Organization after it was founded in 1995. There are 128 original Members of the WTO, formerly GATT Contracting Parties, who signed up to the Uruguay Round Agreements and came in as a group on January 1, 1995. Since then, 36 countries have joined. They now account for about one-sixth of world trade. Twenty-four candidates are in the accessions process at present.

It was this critical area of accessions to the WTO that occupied much of Chiedu’s considerable energy during the last half of his time with the WTO, from 2009 to 2016. It was a key area in which the trading system made continuous progress during the entire span of the WTO’s existence. It has been a mainspring of WTO reform, never dramatic, rarely noted in the headlines, but it was an important agent of change.

Reform through accessions often involves commitments that are only undertaken by the acceding Member and that are not applicable to all Members. The original Members coming over from the GATT did not have to negotiate their entry to the WTO. Entry on day one of the WTO for these countries was relatively easy. All would recognize that once the WTO was established, acceding was and is not an easy process. Each accession is a negotiation and reflects the current trade issues of the day and the need for the country to bring its economy up to the standard that the other Members require of it – a standard that increases over time. From the acceding country’s point of view, the most palpable aspect consists of the requirements insisted upon for its domestic reforms. For the WTO as an institution, what is even more important are the reforms that each accession points to as an updated standard for international conduct, nothing short of a leveling up of the system.

Individual accessions build upon and often go beyond the pre-existing WTO rules. To illustrate, both China and Russia, given the prevalence of state-owned enterprises within their economies, agreed that these companies would buy and sell based on commercial considerations. The importance of an economy functioning in accordance with market principles is a fundamental, but previously only implicit, precept of the WTO. It is now an explicit binding commitment but solely for the new entrants who agreed to be so bound. Another illustration: China, while stating that it was joining the WTO as a developing country, agreed to a tighter limit on its freedom to subsidize its agricultural production under the *de minimis* exception in the Agreement on Agriculture than that which is applicable to developing countries generally.

The accessions process pulls the WTO system up to a higher level of obligation than existed upon the founding of the Organization. Assessing this process cumulatively in 2015, Chiedu wrote that 33 Article XII Members (the number of countries that had acceded as of that time) accepted a total of 1,361 specific commitments. At the end of a chapter that he wrote entitled “Contributions and Lessons from WTO Accessions: The Present and Future of the Rules-Based Multilateral Trading System” in an important book on accessions that he edited, Chiedu includes annexes running 56 pages listing the “specific obligations of acceding countries and influence on rules and WTO jurisprudence.”¹

The WTO was being lifted to an ever greater scope and depth. Accessions increased the range of tariffs contractually bound that new Members would apply to imports, with bindings covering all imported products, compared with 75% for original Members, with rates that averaged 13.8% compared with the average level of final bound rates of original Members of 45.5%. Agricultural subsidies for acceding countries were more curtailed. Chiedu concluded that “taken together, the pattern of commitments [in accessions negotiations] has served to safeguard, reinforce and advance the rules-based multilateral trading system”. The commitments “reconfirmed existing rules, clarified or made them more precise, and in specific instances enhanced the rules through WTO-plus commitments”. The specific obligations undertaken corrected for “gaps and loopholes, ambiguities”. Accession was a legitimate way for the system to advance via accretion, provided for by each accession negotiation. The process “served to renew the organization”.

During the time that Chiedu served as Director of the Accessions Division, from 2009 to 2016, he oversaw the conclusion of a number of accession negotiations, varying widely in size and needs. These included Montenegro, Samoa, the Russian Federation and Vanuatu in 2012; Lao PDR and Tajikistan in 2013; Yemen in 2014; Seychelles and Kazakhstan in 2015; and Liberia and Afghanistan in 2016.

While over time there have been many discussions of reform in the committees of the WTO, in most cases these talks did not result in change. Accessions delivered reform. Chiedu characterized the contribution of accessions to WTO reform in a grand tome that he co-edited,

¹ Chiedu Osakwe. “Contributions and Lessons from WTO Accessions: The Present and Future of the Rules-Based Multilateral Trading System,” in *WTO Accessions and Trade Multilateralism, Case Studies and Lessons from the WTO at Twenty*. (Cambridge University Press, 2015), 256-308.

which was published in 2015 with the title “WTO Accessions and Trade Multilateralism”.² This is what he said:

Overall the legal, economic, and trade policy impact from the deposited accession protocols and the process of accession negotiations... have not only reinforced existing rules and raised the systemic bar, with associated catalytic effect for domestic reforms, but have also staked out the parameters for the future of the rules based trading system, including a future WTO work program.

The accessions process was lighting the path forward for the WTO. I would add that it cannot only be the acceding countries whose obligations are in tune with the global trading system’s needs. The WTO will be imbalanced, with rights and obligations far from what they should be, unless there is a continuous process of truing up to a higher standard of trade rules applicable to all, consistent with their capabilities. This is more easily achieved perhaps when new substantive agreements are reached on subjects not before addressed. But it is necessary that existing agreements be reviewed as well to assure that balance within the Organization is maintained.

What Chiedu wrote in 2015 is still very current today. He wrote about what critics of the WTO were saying at the time: “While the success of the... Ministerial Conference was acknowledged, [this was the Ninth Ministerial Conference held in Bali in 2013], it was argued that the conference had only provided breathing space and respite to reflect on the future of the WTO for the exploration of options for the renovation of the multilateral trading system over the longer term.” This sounds familiar to us because it is exactly like what critics are now saying about the Twelfth Ministerial held in Geneva just three months ago. Chiedu’s reaction to these critics was that they misunderstood the world trading system. He said, referring to all trade negotiations in various formats, in accessions as well as in regional trade agreements, “the canvas is broader.... [T]he painting, however, requires completion.”

Chiedu painted on a broader canvass. That is one reason why his observations are very relevant to us now. Today we are faced with the same uncertain future that we always face in a time of crisis. It was a crisis for the WTO that Chiedu fully recognized. I share his faith that the system can respond positively, and progress can be made. I believe that ultimately there will be a positive outcome, although in the near and perhaps medium-term, the path forward will be steep and very challenging.

Chiedu Osakwe’s Intellectual Leadership

In 2017, Chiedu co-edited a book for the WTO with Alexei Kireyev, a senior economist at the IMF. The volume is entitled “Trade Multilateralism in the Twenty-First Century, Building the Upper Floors of the Trading System Through WTO Accessions.”³ Its broad purpose was to make the case for “using trade multilateralism as a tool to restart global economic growth, and

² Uri Dadush and Chiedu Osakwe eds. 2015. *WTO Accessions and Trade Multilateralism, Case Studies and Lessons from the WTO at Twenty*. Cambridge University Press.

³ Alexei Kireyev and Chiedu Osakwe eds. 2017. *Trade Multilateralism in the Twenty-First Century, Building the Upper Floors of the Trading System Through WTO Accessions*. Cambridge University Press.

job creation, while managing uncertainty and risks”. It told us that the “new realities of the 21st century compel an upgrade of the multilateral trading system by the building of its upper floors on the foundation of the existing trade rules and accumulated acquis and experience.” The book’s objective was to draw “on accession experiences to distill the impact of exceptions on the constantly evolving architecture of the multilateral trading system”.

The book challenges over two dozen very knowledgeable persons who had spent much of their lives in trade policy to consider how the trading system was evolving to better serve current needs. It is a good example of how Chiedu’s creativity could stimulate thinking about how the boundaries of the multilateral trading system were being expanded by negotiations undertaken after the WTO was founded, within the WTO, within the accessions process and in regional trade agreements.

A few examples illustrate this point:

A chapter on competition policy details how 28 out of 36 acceding countries provided notifications on their domestic competition laws and their enforcement. These notifications became an important basis for accession negotiations, with all but one (Vanuatu) of the acceding countries joining the WTO in the ten-year period preceding the publication of the book. This is particularly noteworthy because, while implicitly it is necessary for each Member to have an effective competition policy to meaningfully fulfil its WTO obligations, that is, providing a functioning market in which trade can take place, this is not explicitly required of original WTO Members. Rules regarding competition are not a separate subject that has been successfully negotiated in the WTO outside of the accessions process.

The chapter on agriculture demonstrates how the accession process has created deeper obligations to reduce tariffs and other trade barriers and distortions further than original Members had committed to do, to curb domestic support (subsidies) to a greater extent and to explicitly limit export subsidies. This last element in individual accessions negotiations provided a path to the Nairobi declaration eliminating export subsidies globally for agricultural products. Much of the reform of the WTO rules insofar as agriculture is concerned has taken place through the accession process. Otherwise, the WTO’s agricultural disciplines have not generally advanced since 1995.

The book’s chapter on the Agreement on Trade-Related Intellectual Property (TRIPS) details how regional agreements have built on that multilateral foundation to expand and make more detailed commitments with respect to the protection of intellectual property.

The 2017 book is an examination of what was happening in WTO reform through various negotiations, both within the WTO and in bilateral and regional fora. This was soon to be supplemented by specific reform proposals Chiedu was to make in policy papers he wrote in his last years.

Chiedu Osakwe's WTO Reform Proposals

At the June 2022 Ministerial Conference, the Ministers committed “to work towards necessary reform of the WTO”, envisioning “reforms to improve all its functions” with “decisions, as appropriate, to be submitted to the next Ministerial Conference.” However, they provided no substantive guidance for the content of the reform they called for in their Ministerial outcome document. Chiedu did not shrink from making his own recommendations four years before MC12. In October 2018, Chiedu wrote an article for an important think tank at that time, the International Center for Trade and Sustainable Development. The piece was entitled “WTO Fundamentals Are Sound, But the Architecture Requires Reform and Modernization for the 21st Century Global Economy”.

The first sentence of Chiedu's 2018 article contains a stark warning: “Members have to face the reality that the organization requires non-cosmetic, serious root-and-branch reform for a WTO adapted to 21st century economic and political realities”. (Emphasis supplied). There is no indication that the Members are doing so. Chiedu was specific. He wrote that the WTO's “technical functioning is now wholly inadequate to meet the major challenges to the strategic relevance of the WTO in the 21st century. In critical areas, the organisation has neither responded, nor adapted, nor delivered. Dimensions of its structures and functions are fragile, creaking, and failing in parts.”

During my term as Deputy Director-General, I had never read this piece of his until I was preparing for these remarks for this Memorial Lecture. It is often the case with being in office that there is very little time for reflection on broad policy matters as the questions of the day absorb all available energy. That is my excuse, although I recognize that Chiedu wrote this when he was in office as Chief Negotiator for Nigeria. He had the energy and scope to write it then, in the last full year of his life.

Chiedu was not without ambition, which is a quality that has driven much, perhaps most, of human progress. He never said so, but I believe he wanted to be Director-General of the WTO, and the stars were beginning to align for a candidate from Africa. So, it was natural for him to write about what the WTO should become, not just because of his background and personal history, but because of what he wanted for the institution's future. He did not allow any thoughts for his future career to dilute his recommendations. He did not then, and I am told not in earlier years, shrink from controversy. In the summary of the 2018 article, he wrote: “*The range of problems facing the WTO spans conflicting economic models, architectural and structural inadequacies, and rules, functions, and procedures that entail radical updates.*” [In italics as in the original].

When I was approached by Maika to give this talk, I readily accepted. She suggested as a topic “WTO reform”, a subject that is as important to me as it was to Chiedu. It is a topic to which I have devoted a lot of time since I left the WTO. Two months ago, I finished a manuscript for a book to be published next year by Cambridge University Press entitled *Revitalizing the WTO*. The book includes four chapters specifically devoted to WTO reform of four key functions – legislative, executive (including the gathering of trade intelligence), and dispute settlement. Drafts of the chapters addressing these four functions are posted on the

website of the Peterson Institute for International Economics.⁴ The book also addresses reform of the WTO's substantive rules, for example, for agriculture, services and the digital economy. Were Chiedu still with us, I would have asked him to write an introduction to my book. As I have my own detailed views on WTO reform, I will try to identify not only Chiedu's thinking in the rest of these remarks, but also interpolate some of my own thoughts.

Let us start where Chiedu started (again from his summary of the ICTSD piece):

- *A reformed WTO will have to be constructed on the foundation of liberal multilateralism, resting on open, non-discriminatory plurilateral pillars, an improved Appellate Body, explicit accommodation of regional trade agreements, and appropriate safety valves for rules-based sovereign action.*
- *A reaffirmed commitment to the rules-based liberal market order with a development dimension must be the foundational starting point.*

Chiedu listed nine specific conclusions, which I set out and comment on as follows:

First. A vibrant WTO cannot accommodate conflicting economic models of market versus state. All WTO members will have to accept the operative assumption of a rules-based order steered by a market economy, the private sector, and competition.

I agree fully. The WTO as constituted is about convergence, not co-existence. If there is to be divergence, for the WTO to continue to be effective, the divergence must be managed under explicit rules and conditions. This is the largest potential fracture line of the multilateral trading system. It should not be as contentious an issue as it is with respect to the nature of a Member's economy. After all, the accessions process recorded firm commitments on the conduct of state-owned enterprises for the economies in which state ownership is most pronounced. Other issues will no doubt arise due to the friction that occurs between a rising power and existing ones. That is largely a different matter.

This "market-economy" issue is too often seen as part of the current geopolitical rivalry, inescapable in a Thucydides Trap, a rising power competing with one that for a time was the sole dominant power in a unipolar world. That would be a mistake. This is not about one side in this contest gaining on the other. It is about how the WTO must function to be what it was intended to be, a liberal trade regime.

Chiedu's second point has become related to the first. He tells us:

Second, industrial and agricultural subsidies that distort markets need to be addressed through a dedicated new series of intensive trade negotiations.

⁴ "Alan Wm. Wolff - Distinguished Visiting Fellow." Peterson Institute for International Economics. <https://www.piie.com/experts/senior-research-staff/alan-wm-wolff>

It is hard to disagree with this prescription. Subsidies and product standards, after tariffs and quantitative restrictions, are the next most serious trade distortions. They differ, however, in terms of the current effectiveness of the WTO's disciplines. Standards issues have a vibrant process for moving WTO Members to agreed compliance with the rules. The WTO's work on standards is often held up as an example of where nations can cooperate with respect to trade, avoiding both litigation and conflict. In contrast, domestic industrial subsidies are largely not subject to the rules of the system, and the curbs on domestic support for agriculture are severely outdated. For there to be harmonious relations, these practices require additional disciplines.

Chiedu's third point concerns the impasse over appointments to the WTO Appellate Body, the primary cause for the initial urge for systemic reform. Chiedu writes:

Third, a credible trading system requires a dispute settlement system that is accepted by all... [Not all Members] accept judicial activism, supranational interventions, or the judicial branch stepping into the breach of legislative hiatus. Again, unless we have serious negotiations, this problem cannot be solved.

Painting on a broader canvas Chiedu told us that the consequences of failure to resolve this problem would be a disaster for the WTO's Members. He said: "Deadlocked systems fail and disappear". WTO Members need to take his assessment seriously. It is nothing short of handwriting on the wall.⁵ In fact, I suggest that those words "DEADLOCKED SYSTEMS FAIL AND DISAPPEAR" be engraved on the wall outside this conference room.

Chiedu was upbeat about a solution being found. I share his optimistic outlook that a solution can be found. I am less optimistic that it will be found very soon. I diverge from the 2018 view that Chiedu expressed in terms of the current state of affairs. I do not think that the answer lies as he initially indicates in the practical solutions that were being discussed among delegations in 2018, the time when he was writing. The problem lies deeper, and Chiedu circles back to it in his fourth point. I have put it as follows: the structure of the WTO as an institution is deficient. He called for root and branch reform.

There is a Dispute Settlement Body made up of all the WTO's Members that has no effective oversight role. Further, when the judicial arm of the WTO overreaches, there is no rule-making response because the WTO's negotiating function does not operate in any relevant way. And lastly, Members have not given the Director-General and the Secretariat a mandate to manage the trading system. Put another way, there are no checks and balances, an essential feature of a system of governance. I devote a chapter in my forthcoming book on WTO to this question. I share Chiedu's view that it is vitally important for the WTO to restore binding dispute settlement.

The WTO dispute settlement system can only be fixed with the introduction of oversight, with checks and balances, through drastically curtailing the remit of the panel and appellate

⁵ mene, mene, tekem, upharsin. / ('mi:ni: 'mi:ni: 'tekəl ju: 'fa:sm) / noun. In the Old Testament, these words appeared on the wall during Belshazzar's Feast (Daniel 5:25), interpreted by Daniel to mean that God had doomed the kingdom of Belshazzar.

processes, and/or through institutional, structural change. The United States, Japan, India, Russia, and most other WTO Members are no longer subject to binding dispute settlement. In a cynical act, they know they can – and many of them do – “appeal into the void” if they do not like a dispute settlement outcome, rendering panel decisions nullities. Binding dispute settlement must be restored. Optimally there will be a second panel stage to correct errors, but the most important thing is that there are final outcomes and that they are binding. To get to this point, there must be a restoration of the shock-absorbers in the system, effective trade remedies, and rules that address subsidies regardless of the form they take or the kind of national economy in which they are imbedded.

Chiedu goes on to diagnose the central problem of the WTO as one of imbalance, where litigation became dominant “to the detriment of driving economic reform for growth”, because the negotiating function became frozen. He tells us that the system’s rules are becoming outdated, and suggests a workable solution in the following three recommendations:

Fourth, ... We need to launch serious negotiations to restore the balance, and we must do so in an open-ended plurilateral manner that cannot be blocked by those who do not want to move ahead... [I]nternational cooperation is necessary in a global economy defined by complex interdependence.

Fifth, ... New rules are required to keep pace with changes in the market and technology. [M]embers would be wise to accept the necessity for negotiations based on open, non-discriminatory plurilateralism, to the extent possible.

Sixth, ... Current practices that allow for hostage-taking and blocking coalitions... are no longer workable in an age of complex interdependence and the need for cooperation for critical and practical problem-solving.

This is the heart of the matter. Chiedu told his readers earlier in this piece, “We cannot forget that the WTO has no power to make decisions on its own – its fate rests entirely in the hands of its members.” Nothing happens without international cooperation. The WTO operates by consensus, which has become interpreted in a twisted way to mean that every Member has a veto on any subject of its choosing. Had any founder of the GATT or the WTO been asked whether all parties needed to move together at the same speed or none could move at all, that conclusion would have been treated with derision. Chiedu does not call for an explicit rejection of consensus, but the implication is that the veto would be gone, and rightly so, for the preservation of the Organization. Chiedu writes:

Consensus is best when it is obtainable. However, when we fail and fall short of this ideal, because of unyielding positions, the practices in the European Union (qualified majorities) and international financial institutions provide pragmatic models for moving forward, in addition to decisions to move ahead in open and non-discriminatory plurilateral configurations.

I saw the Buenos Aires Ministerial Conference in 2017 as a great success, although it was pronounced a failure by most observers. Intransigence on the part of some caused the stream of

international negotiations to flow around the obstruction, and the Joint Statement Initiatives were born. The WTO must be the legitimate home for open plurilateral agreements, which any WTO Member may join if it is ready to assume the obligations of the agreement being negotiated. This is the only positive future for the WTO. My view is that the WTO will not survive for anything like its intended role or efficacy without allowing the like-minded Members to move ahead to set new rules within the Organization.

What is the safeguard for the non-participant? Chiedu tells us:

At the same time, scope must remain for sovereign action, recognising that there is a structural tension between international cooperation and sovereignty, in a global economy with sovereign players managing domestic stakeholders.

This is a crucial point. It is the limiting factor for the WTO. It is an Organization that is made up of sovereign states. There will always be a balance to be struck between what each can accept in international obligations and what each must retain the right to do in its country's national interest. But those who are not ready to go further in international rulemaking must not be allowed to stand in the way of those who are ready to do so.

An instrument that Chiedu suggests – voting in certain circumstances – should be considered. I would prefer a system biased in favor of WTO acceptance of plurilateral agreements. Trade-weighted voting could, without too high a threshold, determine if the WTO would agree to administer a plurilateral agreement and provide access to dispute settlement for its enforcement. This could also be provided through a decision made by the Director-General that a given plurilateral met the standards set by the WTO or was otherwise consistent with the purposes of the Organization, with her decision subject to a veto by the Members by a majority trade-weighted vote.

Chiedu's next item is about derogations from non-discrimination. It is a point that I fully believe in as a necessary part of reform. It is also, as far as I know, a subject that no WTO Member has indicated any interest in pursuing under the heading of WTO reform. Here is what Chiedu says:

Seventh, the rules-based multilateral trading system still has an undefined modus vivendi with RTAs, but the review and application of the rules are lacking. This is an area for vital and pressing reform: the Committee for Regional Trading Arrangements must go beyond formal analysis to making recommendations for high quality, job-creating growth. The high-quality but excessively controlled secretariat could also be empowered to conduct specific tasks as a research resource for members which would help ensure compliance with RTA rules.

I agree with the thrust of this recommendation, giving a closer independent review to these preferential trade agreements with greater involvement by the Secretariat. But in my view, it would not be enough to simply have better oversight over whether these trade agreements live

up to existing WTO rules. The criteria for the acceptability of these agreements should be strengthened.

Regional trading arrangements are always preferential, that is, discriminatory against non-participants. They were, I assume, deemed acceptable at all because in theory they could be more trade-creating than trade-distorting, a net positive for the global trading system. This outcome may be more likely, one supposes, where contiguous states eliminate their trade barriers and thus foster regional growth, and through regional growth stimulate growth for the world economy. The first and largest example of these arrangements was the European Common Market, now the European Union, a single market. Although its origins were as much political as economic, it has become a major positive contributor to the global economy. Other important examples are the USMCA (the updated form of the North American Free Trade Agreement (NAFTA)) and the Association of Southeast Asian Nations (ASEAN) bringing together Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam, promoting economic integration among members.⁶

The newest example, one very close to Chiedu's heart, is the African Continental Free Trade Area, the negotiations for which were concluded under his chairmanship in March 2018. Intra-African trade has historically been very low, in part because it consists so heavily of raw materials and primary agricultural products, but also because trade tended to flow between former colonies and the former colonial powers, not always to the full benefit of the less developed country.

Regional trade agreements (RTAs) are not always regional. There have been hundreds of preferential trading arrangements. 796 of these agreements were notified to the GATT and WTO from 1948-2022. Many are no longer in force. Some have been subsumed into more recent agreements. Many of those remaining in force are long-distance bilateral so-called "free trade agreements", where the benefits for the trading system are obscure, if any exist at all. (Some of these have been characterized by Alan Beattie of the Financial Times as "standard, off-the-shelf mercantilism", a judgment that should not be taken as praise.) These agreements can be a proliferating source of discrimination in a world trading system based upon non-discrimination. I would limit the regional trade exception from non-discrimination to trade agreements that also promise sufficient benefits for the trading system and for non-signatories, that they are likely to result in more trade creation than trade diversion, and where they serve as laboratories for the global trading system, such as through addressing new rules for the digital economy.

The WTO has not effectively regulated these agreements. So yes, the relevant WTO Committee should scrutinize these agreements, based on thorough analyses by the Secretariat, which should be enabled to render an opinion for WTO Members as to whether the proposed RTA meets the standard I have just set out: trade-creating and a net benefit for the evolution of

⁶ Alessandro Nicita. "An Assessment of the Regional Comprehensive Economic Partnership (RCEP) Tariff Concession." United Nations Conference on Trade and Development. Research Paper No. 73. December 2021. https://unctad.org/system/files/official-document/ser-rp-2021d16_en.pdf

I have not included in this listing the Regional Comprehensive Economic Partnership (RCEP) agreement. A December 2021 UNCTAD paper concludes that the trade diversion effects are found to be relatively larger than the trade creation effects of this agreement.

the global trading system. Non-conforming agreements should be phased out in favor of conforming agreements or absorption in the multilateral trading system.

Chiedu then turned to Africa, not solely or even primarily because he was Nigerian, but because engagement from Africa matters to health of the WTO. He devoted his longest intervention in his ICTSD piece to this subject:

Eighth, any serious reform of the WTO, as a contributor to growth and a healthy global economy, requires a changed approach and engagement with Africa, and by Africa... Changes on the African side, based on better policy choices and command of trade and economic facts, compel changes in engagement, shifting from the excessive focus on “threats” and “risk assessments” to “seizing the opportunities.” ... The AfCFTA is not only about an integrated liberalised single market for trade in goods and services. It is both an economic and a geopolitical turn for Africa. It represents a strategic, economic, and legal order for rules-based engagement with the global economy... WTO members should reform their approach to Africa, and stop designing “assistance” programmes or providing development aid as a substitute for rules-based trade and investment engagement. Furthermore, Africa as a market will be a centre of gravity in the global economy by 2050. The relevance of a reformed and refitted WTO, with a claim to universality, for the 21st century would depend substantially on its engagement with and acceptance of the AfCFTA...

I wholeheartedly endorse Chiedu’s prescription.

What Chiedu was suggesting was radical, that the best way to welcome and integrate Africa into the trading system was to have its nations accept rules rather than being excused from them. This would be overturning a bad bargain regarding development that had been made in the GATT and WTO decades earlier. It consisted of developing countries being let out of obligations in return for non-binding preferential access granted by developed countries. To this was added financial assistance. The result was that the interests of developing countries were left out of major trade negotiations. These are driven by the reciprocal exchange of trade concessions. Industrialized countries mainly lowered barriers to goods of interest to each other, without needing to agree to binding trade concessions of interest to developing countries. With this bargain made decades ago, the central idea of the global trading system, the principles of non-discrimination, and implicitly, convergence had been in essence discarded.

My last trip outside of Geneva before the lockdown of the WTO due to COVID-19, in February 2020, was to attend a regional dialogue on accessions, the topic of which was “Deepening Economic Integration in Africa Through WTO Membership and AfCFTA Implementation”. I spoke at Addis Ababa University on this occasion (a practice that I tried to follow during each trip abroad for the WTO was to give a talk to university students). In my remarks, I said: “The WTO is committed to supporting Africa’s continued economic integration, growth and development, through the participation of African Members in the WTO and through the African Continental Free Trade Agreement (AfCFTA).” I noted that “the meetings here this

week are part of the WTO's broader efforts to build a stronger bridge between the WTO and Africa.”⁷

What Chiedu and I separately were saying is that the AfCFTA, supported by concrete actions by WTO Members to fully integrate Africa into the global trading system, would provide a path to a better future for Africa and at the same time improve the multilateral trading system.

Chiedu underlined his conclusion on development in the last of the prescriptions he listed. He wrote:

Ninth, ... the development dimensions of the rules-based trading system ... do not lie in the absence of disciplines. They can be found in WTO accession rules and the associated commitments by the 36 Article XII members, case by case. WTO membership is a contract with a specific balance of rights and obligations. In Article XII members' obligations, specific contractual commitments to principles and disciplines across the board, in goods, services, and protection of intellectual property rights, are embedded in domestic legislation.

Requests for necessary policy space and associated assistance for development reasons must support eventual adherence to the rules, and should be accompanied by calendar-based action plans, where these are required. An Article XII approach to membership, coupled to a radically improved and strengthened WTO Trade Policy Review, in real time frames, would usefully add to the reform and modernisation of the 21st century WTO.

Chiedu was underlining that the WTO is about convergence, not divisions, that adhering to common rules was a higher order of importance than differentiation for its own sake.

Every effort should be made to make the reform process inclusive. The following is from a statement by Chiedu that he addressed to the WTO's Members just before MC11 in late 2017,⁸

There is a collective multilateral duty to modernise the WTO by establishing structured work programmes and an associated negotiating agenda for “new economy” issues, of which the first step is a work programme. Our decision to negotiate is not a gift to others, but in reality an act of enlightened self-interest. Negotiations are the mechanisms we use to settle differences, resolve conflicts, gather information, build knowledge, develop expertise, create opportunities, resolve imbalances, and seek fairness. In fact, negotiations are rights of membership, pursuant to the functions of the WTO, which are integral to the rule of trade law and governance. The mandate to negotiate is embedded throughout the principles, rules, and practice of the trading system.

⁷ “DDG Wolff Affirms WTO Commitment to Support Africa’s Economic Integration.” World Trade Organization. February 11, 2020. https://www.wto.org/english/news_e/news20_e/ddgaw_11feb20_e.htm

⁸ Chiedu Osakwe. 2017. “Strengthening the WTO: On the Strategic and Welfare Necessity of Addressing “New” and “Traditional” Issues.” *Bridges Africa* 6(8).

Chiedu's eloquent expression of this sentiment echoes the voice of an African leader speaking two decades earlier. At the 50th anniversary celebration of the GATT that took place in 1998, Nelson Mandela came to the WTO and said:

The developing countries must accept that we want to be fully part of the WTO, and that includes improving the management of the world trading system to ensure that our economies do develop.

These are complex matters, and in dealing with such matters there are no easy solutions. But where there is a determination to find joint, negotiated, solutions then there is a way.

South Africa is prepared to play its part in helping develop a positive and detailed agenda for the next Ministerial Meeting so the challenge of eradicating and defeating underdevelopment is fully addressed.⁹

For the WTO, the next Ministerial Conference is MC13. This will be ten Ministerial Conferences after the one Nelson Mandela was looking forward to when he spoke in 1998 and the second after the one that Chiedu Osakwe was addressing in 2017. It is time for the Members to act. Deep institutional reform is necessary.

The reforms that Chiedu and I have suggested in our writings are not a complete list,¹⁰ as Chiedu would readily acknowledge were he here tonight.

I believe that it would be useful if the Members seek outside input for WTO reform. There are a number of experts, many alumni of the WTO, as Chiedu was, who can bring fresh insights into the reform process as an expert group. In a recent discussion of political developments in Africa, a participant said: "institutions are nothing more than the corporate capability to get things done." The reform process must start with the question of whether the current WTO institution is constructed in a manner that fulfills the objective of getting things done. WTO reform is more than addressing new and existing issues to be dealt with in substantive rulemaking. It is also making sure that the machinery of governance works.

Conclusions

Chiedu told us that the WTO:

⁹ "Address by President Nelson Mandela at the 50th Anniversary of the General Agreement on Tariffs and Trade (GATT), Geneva - Switzerland." Nelson Mandela.

http://www.mandela.gov.za/mandela_speeches/1998/980519_gatt.htm

¹⁰ For example, the WTO should have a reliable source of revenue adequate to the growing needs of the world trading system. This could have been built into the Trade Facilitation Agreement. It could be based upon fees for services, or a very small portion of customs revenues. Whatever the source, if the WTO is to perform more fully the functions required of it, such as providing trade intelligence and foresight, its revenue must be larger and more secure. (The WTO's sister organization, the World Intellectual Property Organization, has twice the revenues of the WTO and two-thirds more staff, and derives 95% of its revenue from fees for services.)

remains a welfare and prosperity pump for the global economy,” but that “if it is... diminished through lack of care or robust and courageous stewardship... the global economy will surely... suffer damage... Leadership will be required... An unhelpful systemic silence on glaring anomalies will have to be overcome to redeem and strengthen an indispensable global public good.

Chiedu recognized that the WTO had to meet current challenges, that it would have to adapt if it was to survive. He pointed to the need for agreed rules for the global digital economy as well as updated rules for traditional subjects such as agriculture. Were he writing today, we can surmise that he would add dealing effectively with current and future pandemics and addressing climate change.

To achieve these substantive objectives and manage the trading system for the benefit of all, Chiedu’s vision of “root and branch reform for a WTO adapted to the 21st century” needs to be realized. The organic parts of the WTO’s architecture need to be improved. The WTO must be a venue in which Members can conclude important negotiations. Binding dispute settlement that will be acceptable to all must be restored. The WTO of the future must include a stronger executive function, a Director-General supported by an empowered Secretariat, that would help lead, who would chair the General Council, who would assist in managing the negotiating process including through tabling negotiating proposals, who would actively engage in fostering the settlement of disputes, and who would help plot the course for the future, engaging in policy planning, strategic foresight, assure transparency through intelligence gathering.

I share Chiedu’s optimism that the deficiencies in the trading system can be remedied, that the WTO can and will be improved, and that international cooperation is both essential and obtainable. Chiedu foresaw a better world in the future with the multilateral trading system as a means of delivering it. The first steps have been taken. Joint statement initiatives and structured discussions on environmental issues have been underway. Discussions are taking place that could lead to restoring binding dispute settlement. The Members have pledged themselves to WTO reform.

It would help if Permanent Representatives to the WTO could sit in Chiedu’s garden and talk with him about the future. That is not possible. They can, however, emulate his activism, his spirit, and look to the guidance that he left us with.