



The writer is the Managing Director of Zormelo & Associates, a Management and Development Consultancy Firm in Ghana and also the Chairman of the Upstream Oil and Gas Service Providers Association of Ghana.

Dr. Douglas ZOEMELO

Should Nigerians be barred from certain businesses in Ghana?

Regional economic integration is predicated on the important principles of competition and the reallocation of resources. Efficiency results from less inefficient producers being pushed out of an area of economic activity into other areas where their resources might be better invested. Many however, see regional integration as complementary economic activities among member states.

Recently there has been disagreement between Ghanaian traders and their Nigerian counterparts who have set up business in this country. Market traders, spare parts dealers, petty-traders and hawkers have in some instances locked up the shops of Nigerians for trading in goods that are supposed to be reserved for Ghanaians to trade in.

What could be the reason for this stance by the Ghanaian traders who cite the laws of Ghana as the basis for their actions? Could it be that the Nigerian traders are outcompeting their Ghanaian hosts? Is the market too small to accommodate both Ghanaian and Nigerian traders, and by extension other ECOWAS citizens from other member states?

There really must be a reason for the Ghanaian traders to be citing the law to back-up their demands to stop Nigerians from trading. In my opinion, the law by itself may be a necessary condition for stopping trading by Nigerian traders but will not be a sufficient condition for the competitiveness of Ghanaian traders.

For the situation to be solved sustainably, the underlying causes of the need for the Ghanaian traders to resort to the law must be solved otherwise any solution will only be papering over the cracks.

Regional integration among developing countries is fossilised in archaic theories which assume dirigisme (i.e. state control of economic affairs) which would have been fine if we were still in the 1970s, when ECOWAS was formed. At that time, the pooling of resources, collective self-reliance and such other language defined the thinking behind regionalism. West Africa has moved on since then to fully embrace private sector led development. Economic integration is therefore no longer to be driven by governments allocating resources. Instead, the private sector through competition is the one allocating resources.

The development of the region through integration requires an expanded market beyond those that the individual member states currently have, except for Nigeria. For Ghana to expand its market beyond the borders of this country to especially Nigeria, there must be a clear understanding that it must be possible for there to be the right of ECOWAS citizens to move freely, reside and also establish businesses in each other's country.

Protocol on Free Movement of Persons,

Residence and Establishment

The Protocol Relating to Free Movement of Persons, Residence and Establishment was enacted in May 1979. Its implementation was to be completed over a 15-year period which means the protocol ought to have been fully in place by 1994. Why then is it that 26 years after it ought to have been in place, we are still wrangling over who should be trading where and in what?

The situation in Ghana is a test of whether ECOWAS member states really

And Article 3 States:

For the purpose of implementation of this Protocol, companies which are formed in accordance with the laws and regulations of a Member State with their headquarters, central seat of administration or principal establishment within the Community shall be considered in the same category as individual nationals of Member States. Where, however, only the statutory headquarters of the company are established in a Member State,

Nigerian Ownership	100%	60%	40%
	<ul style="list-style-type: none"> Laundries, Estate management, Retailing, Advertising Bakeries. Public relations Assembling of radios, televisions Bottling of alcohol drinks 	<ul style="list-style-type: none"> Sale and distribution of technical goods and Motor vehicles, Banking, Insurance, Construction, Manufacturing of rubber, paints, plastics and most industries Beer breweries Clearing and forwarding 	<ul style="list-style-type: none"> highly technical industry, drug manufacturing, turbine manufacturing Distilling and blending of spirits such as <ul style="list-style-type: none"> Ethyl alcohol Whiskey Brandy etc. Fertilizer production Manufacturing of basic industrial chemicals Manufacturing of tobacco

believe in regional integration being an essential component of the quest for development.

Phase III of the Protocol Relating to Free Movement of Persons, Residence and Establishment was passed in 1990.

Article 2 states:

The right of establishment ... shall include access to non-salaried activities and the exercise of such activities as well as the creation and management of enterprises and companies which comply with the definition contained in Article 3 below subject to the same conditions stipulated by the laws and regulations of the country of establishment for its own nationals

activities of such a company should have effective and sustained links with the economy of the Member State.

From the above, member states of ECOWAS are to accord to legally established ECOWAS enterprises the same conditions that their citizens enjoy.

The conflict between Ghanaian traders and their Nigerian counterparts

There is supposed to be non-discrimination between local traders and traders from other countries. This is where the problem is. The Nigerian traders are using the ECOWAS Protocol to support their right to trade in Ghana whereas the Ghanaians are saying certain areas of economic activity are reserved for Ghanaians and the Nigerians should not carry on trading in those areas.

Ghana's Investment Law on reserved areas of economic activity

Even though this is what the protocol says, Ghanaian traders are citing the Ghana Investment Promotion Centre Act, 2013, Section 27(1) which reserves certain activities for Ghanaian enterprises as the basis for their actions against the Nigerians. A Ghanaian enterprise in this instance being one that has 100% Ghanaian ownership. Anybody who does not qualify should not invest or participate in the reserved areas. The areas include:

- the sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place;
- the operation of taxi or car hire service in an enterprise that has a fleet of less than twenty-five vehicles;
- the operation of a beauty salon or a barber shop;
- the printing of recharge scratch cards

criteria.

1. A non-citizen:

- in the case of a joint enterprise with a partner who is a citizen, invests a foreign capital of not less than two hundred thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity participation and the partner who is a citizen does not have less than ten percent equity participation in the joint enterprise; or
 - where the enterprise is wholly owned by that person, invests a foreign capital of not less than five hundred thousand United States Dollars in cash or capital goods relevant to the investment or a combination of both by way of equity capital in the enterprise.
2. A person who is not a citizen may engage in a trading enterprise if that person invests in the enterprise, not less than one million United States Dollars in cash or goods and services relevant to the investments.

Trading is defined to include "the purchasing and selling of imported goods and services. Such a trading enterprise is expected to employ at least twenty skilled Ghanaians.

Where a foreigner is married to a Ghanaian, he or she is exempted from the minimum capital requirement of One Million United States Dollars as long as they have been married for a minimum of five years continuously or holds an indefinite resident permit before registering the enterprise.

Where it is by marriage, it must be a valid one and the foreign spouse is ordinarily resident in the country. Also a Ghanaian citizen who loses his or her citizenship because they have become citizens of another country will not be required to comply with the minimum capital requirements.

Nigeria's Investment Law on Reserved Economic Activity

From the above it seems that Ghana is not adhering to the Supplementary Protocol on Establishment. That would seem to be the case until one looks at Nigeria's own laws.

Apart from the change in the underpinnings of the economic theory of regional integration, there have been various changes in how ECOWAS Protocol now work which we must take into account while discussing this issue of illegality or otherwise of the Nigerian trader's presence in Ghana.

At the 44th Ordinary Session of the Authority of Heads of State and Government held from July 10th to 11th 2014 in Accra, a Supplementary Act A/SA.2/07/14 amending Paragraphs 8 of Article 1 and 2 of Article 3 and Paragraph 1 and 2 of Article 5 of A/P/1/5/79 Free Movement of Persons, Rights of Residence and Establishment Relating to Travel Documents

Three significant things must be

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for the use of subscribers of telecommunication services;

- the production of exercise books and other basic stationery;
- the retail of finished pharmaceutical products;
- the production, supply and retail of sachet water; and
- all aspects of pool betting business and lotteries, except football pool.

The Act stipulates that the Minister in consultation with the GIPC Board may by legislative instrument revise the list of activities that are reserved for only Ghanaians. Foreign citizens are however at liberty to trade in Ghana in goods other than those reserved for Ghanaians if they meet certain defined