GHANA’S TRADE IN ECOWAS; RE-ALIGNING A HISTORY OF INCOHERENT TRADE POLICIES TO POST COVID-SCENARIOS.

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Pre-independence trade dynamics

Save for three different years, Ghana’s economy has grown by at least four percent annually since 2000, pulling along with it a very vibrant informal sector (World Bank, 2020). This reflects in the retail trade landscape where about ninety-six percent of all retail activity has been in the informal sector (Deloitte, 2016). These retail centres are characterised by small shops in wooden enclosures or a few built up shops located in commercial enclaves or along major streets and roads across the country (Anku & Ahorbo, 2017).

Formal retail trade has almost been an exclusive preserve of foreign ownership, starting from companies tracing their roots to colonial era trade entities like the United Africa Company (UAC), A.G. Leventis and others, who dealt mostly with imported goods meant for retail. The government of Ghana purchased A.G. Leventis in 1962 to pave way for the country’s first foray into formal retailing by creating the Ghana National Trade Corporation (GNTC) (Murillo, 2014). There was however competition from several Lebanese and Indian businesses (Murillo, 2011) for the major chunk of formal retail.

Most of the informal retail trading involved a mix of local goods or purchase of imported goods from wholesalers who were mostly Lebanese or Indian, with a few indigenous players in the mix (Gann, Duignan, & Turner, 1975). This type of trading evolved around the nerve centres of Makola Market, built in central Accra to replace the Salaga Market in 1924, and the Kumasi Central Market, which even in the early 1980s had at least 20,000 traders plying their trade (Robertson, 1983). These were the principal retail points from which there was a dissipation of intensity around informal trade along major urban routes down to neighborhood shops and corner shops which were mostly owned by locals in a community, or depending on the type of goods, migrant members in the community, some of whom could even be foreigners from other West African countries, chief among them being Nigerians, Malians and Nigeriens.

In the 1960s retail activity was largely influenced by the Import Substitution Industrialization policies at the time through the sale and distribution of more locally manufactured products and hence the rise of local retailers. Most of the manufacturing was done by state corporations, accompanied by protectionist policies to reduce imported products. This empowered a network of many local retailers in the form of market women, which evolved into a more localised retail infrastructure for locally manufactured goods.
Post First Republic Developments in Trade

The collapse of the Nkrumah government in 1966 did not change the trade policy of ensuing governments. The early part of the 1970s was characterized by a high number of state corporations operating in different value chains of the economy including retail, albeit with less funding (Ackah, Adjasi, & Turkson, 2014). Corruption increased and cronyism ensued resulting in the near collapse of the more disciplined and focused retail chain relying on market forces. The result was the characterisation of market actors – market women mostly, as ‘the face of the evil of business’ leading to the revolution in 1979 (Harrel-Bond, 1980). The victimization of market women and traders for charges such as hoarding and consequently embarking on state-sponsored “housecleaning” diminished trading activities, leading to the bankruptcy of state corporations, as the economy collapsed. Hyperinflation, government controlled pricing, weakened economic expectations, and slow growth of the economy further worsened trading activities, slowing it drastically (Ackah, Adjasi, & Turkson, 2014).


Simultaneous developments in West Africa, sought to further expand trading activities. For instance, the ECOWAS protocols on free movement of persons, right of residence and establishment in 1979 mandated all member states to stop demanding visas and residence permits, and allow West Africans to undertake commercial activities within their territories (ECOWAS Commission, 2020).

An examination of the investment code of Ghana and the provisions of the ECOWAS Trade Liberalisation Regime (ETLS), to identify areas of complementarity and how Ghana’s strategy could benefit from the developments at the time is instructive.

ECOWAS and Ghana’s Trade Policy

The ETLS has a mandate to ensure the creation of the ECOWAS Common Investment Market, promote a healthy investment climate and deepen financial market integration (UNECA). The ETLS is mandated to remove tariffs (custom duties levied on imports and exports) and non-tariff barriers among member states. The liberalization scheme started with a smaller scope of agricultural, artisanal handicrafts and unprocessed products in 1979. This scope was expanded to include industrial products in 1990 with a bid to expand intra-regional trade and transportation and open up the markets further.
Further, there have been several programmes undertaken specifically to open up transport routes in the region to facilitate trade activity, such as the Abidjan-Lagos Trade and Facilitation programme and the ECOWAS Common External Tariff. Currently, the ETLS focuses on goods emanating from the region by applying the “rules of origin” principle as defined in the ECOWAS protocol, referenced A/P1/1/03 of 31st January 2003. Originating products should meet either of the following criteria:

1. **Wholly produced goods**: goods whose raw materials completely originate from the ECOWAS region.
2. **Goods which are not wholly produced** but their production requires the exclusive use of imported raw materials which are to be classified under a different tariff sub-heading from that of the product
3. **Goods which are not wholly produced but their production** requires the use of imported materials which have received a value-added of at least 30% of the ex-factory price of the finished goods

Currently, the GIPC law (ACT 865) is unambiguous; it considers anyone not Ghanaian, or not holding Ghanaian nationality as a foreigner. This possibly is a natural extension to previous laws emanating from the investment code and other associated legislation that culminated in the GIPC law of 2003 and its further revision in 2013.

The definitions in the GIPC Law (Act 865), especially in Sections 27 and 28 state clearly the areas that are reserved for Ghanaian citizens only to partake in terms of trade, and spell out explicitly conditions that will allow a foreigner to participate in retail trade activity. Section 27(1) of Act 865 generally lays out activities that foreign investors are not permitted to invest or participate in. Other laws have provisions on activities reserved for Ghanaians. These activities 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. Other activities not permitted for non-citizens include:

1. **the operation of taxi or car hire service in an enterprise that has a fleet of less than twenty-five vehicles**
2. **the operation of a beauty salon or a barber shop**
3. **the printing of recharge scratch cards for the use of subscribers of telecommunication services**
4. **the production of exercise books and other basic stationery**
5. **the retail of finished pharmaceutical products**
6. **the production, and retail of sachet water**

Section 27(2) of Act 865 additionally provides that the Trade Minister in consultation with the Board may by Legislative Instrument amend the list of enterprises reserved for citizens and enterprises wholly owned by citizens (GIPC, 2020).

The GIPC Act further stipulates in Section 28(2) of Act 865 the conditions under which a person who is not a citizen can engage in trading activities: 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.
Section 28(3) of Act 865 further provides that “trading” includes the purchasing and selling of imported goods and services. Another condition imposed on foreign enterprises that intend to engage in trading by Section 28(4) is that such an enterprise must employ at least twenty (20) skilled Ghanaians.

According to Section 28(5) of Act 865, the minimum foreign capital required to invest or directly engage in trading, does not apply to the foreign spouse of a citizen of Ghana to the extent that the foreign spouse is or has been married to a citizen of Ghana for a minimum period of five years continuously or holds an indefinite resident permit prior to registration of an enterprise; the marriage has been duly verified as having been validly conducted; the foreign spouse is ordinarily resident in Ghana.

There is absolutely nothing in the law that stops 200 foreigners from forming a cooperative with 20 Ghanaians, pooling up the minimum capital, and registering the cooperative as a business with the members identified as employees, and then operating from the backs of minivans as is the practice in many countries. (IMANI, 2012)

Even worse, since the law precisely defines a “trading enterprise” to mean a business “involving ONLY the purchasing and selling of goods”, any value-added services render the meaning of the act unclear. For example, a meat trading enterprise that also offers dressing, cold storage, and cartage may or may not fall within this category. It is similarly unclear if a distributor that receives consignments of products from a wholesaler and distributes same for commissions (i.e. does not “buy” but only sell) shall be operating within the letter of the law.

Nor is it clear to anyone why it is alright for big foreign traders to invest in Ghana but not small foreign traders. If the goal is, as many have interpreted it, to “protect” small Ghanaian traders from marauding foreigners, what is the logic behind allowing big trading entities to set up marts and malls here then? Aren't small-scale Ghanaian traders more threatened by giant retailers and commodity distributors? As someone has observed, one giant supermarket in a convenient location in Accra could easily wipe out 10,000 traders, something 1000 petty-trading foreigners may not be able to achieve.

The blind enforcement of this incoherent regime has also led us to the bizarre situation where even as we preach regional integration we are blocking other ECOWAS nationals from participating in our economy because they cannot afford $1,000,000 at get-go, knowing very well that business success is rarely about start-up capital and almost always about entrepreneurial energy, management and dedication.

It is important for policymakers to realise that Ghana is now in the shrinking minority of countries that insists on arbitrary minimum capital requirements for entrepreneurs and investors from outside seeking to participate in the economy.

The above provisions do not depart significantly from the trade policies of the 1960s. Perhaps, what is markedly worse, is that, present day protectionist posturing of the GIPC Act 865 was promulgated even after active efforts by ETLS to seek to integrate more free trade activity in the region.
In the interest of liberalizing regional trade the government of Ghana through the GIPC must review some of the restrictive provisions in the law. This will ensure compliance with the continental free trade agenda.

**Trade regime architecture in Ghana and West Africa that will support free trade**

Without a clear mapping of stakeholders and their points of interference, it will be very difficult for there to be any kind of practical meaningful convergence of trade activity in the region, and this will be counter to the efforts at protecting retail trading activity or investment activity in general, thus allowing players in the retail and by extension other areas like the industrial sector to reap full benefits of enhanced trade activity.

Any attempt to advocate for a harmonization of trade laws to support free movement of people and goods and to guarantee value generation, must consider the soft and hard institutional arrangements of trade, regulatory players, private businesses and align their interests, along a common objective. Some of these regulatory actors include;

1. Customs laws and Authorities
2. Immigration laws and Authorities
3. Taxation or Revenue laws
4. Trade provenance and certification provisions/inspectors
5. Industry regulators (e.g. pharmaceutical regulators, standards authorities)
6. Investment promotion and approval bodies associated with the ETLS
7. Certification authorities

In the area of private actors, the following trade associations and unions are instrumental;

1. Traders associations
2. Transport co-operatives
3. Consumer associations
4. Industry associations
5. Trade co-operatives
6. Market women and men (leadership)

The third category includes institutions that finance trade related activities across in the country and across the sub-region. These include;

1. Banks and traditional finance institutions
2. Finance Houses
3. Savings and Loans institutions
4. Small scale savings and loans institutions
5. Microfinance credit schemes
6. Trade facilitation bodies

A new and emergent trade and retail service that has been overlooked but will be very significant in a future, especially with the aftermath of a covid-19 era is e-commerce and technology players.
The list of such stakeholders includes the following:

1. E-commerce sites
2. Trade facilitation and sourcing web portals
3. Online payment gateways
4. International payment gateways and clearing systems
5. Mobile money payment operations and Telco service providers

**Current trade dynamics and institutional re-alignment**

A very interesting matrix of players, technology and evolution of trade adaptations using what is now commonly available technology seek to completely redefine the type of landscape for which trade activity will play out in the region, and for which the ETLS is, or seems to be a better blueprint for trade and retail activity which will require a retooling of trade legislation and facilitation if Ghana intends to win and reap benefits.

To analyze this clearly, we need to look at the interconnectivity between the constituents as outlined above

![Figure 1: Institutional Architecture Supporting Trade](source: Author’s Construct)

Consumers make a decision to purchase a product based usually on the product branding, place of manufacture, suitability and fit for purpose, and affordability of the product, or effective demand.

It has been very difficult to establish the originating points of goods and services due to porous borders and illicit trade in smuggled goods due to differing customs regimes. A more uniform trade and tariff regime will mitigate some of these challenges. Incentives for smuggling will reduce leading to less interference in legitimate retail trade activities.
Traders need finance to facilitate their trading activity. This is even more critical in a region where access to capital is difficult for most businesses. The barriers are mostly due to statutory requirements like taxation and import duty classifications that make local importation of certain products less competitive. The relative advantage of bypassing the system then creates the right incentive for external illegitimate activities requiring assistance from extra-territorial players leading to smuggled products. A typical example is Ghana's textile industry, with high incidence of smuggled products on the markets.

Retail activity is the last mile activity for goods traded and therefore the point where the considerations of a purchaser align with the consideration of the seller for a transaction to take place. Traditionally, this interaction has been a physical transaction with the presence of the buyer and seller at the same location and requiring a face to face transaction. As a matter of fact, this form of retailing and exchange is the most predominant feature of retail trade in West Africa, with formal sector in Ghana only accounting for about four percent of all retail trade (Deloitte, 2016).

This arrangement is threatened by the high levels of localized innovation driven by connectivity, which is disrupting the value chain for retail trade. Increased connectivity means that more buyers and sellers are handling retail activities without the need for brick and mortar spaces like before, and therefore what used to be a barrier to entry into the retail market has suddenly become almost non-existent as online media and advertising can make a virtual shop a nerve center of activity. Tonaton.com and Jumia.com.gh in Ghana for instance represent such a new retail space of multiple users connecting through technology and sidestepping a lot of the legal barriers that traditional retailers have. They are also ranked the 49th and 30th most visited website in Ghana respectively, with Jumia reporting over 500,000 daily visitors and 40 percent of independent vendors making GHC 2,500 (~US$430) a month in profits (Jumia.com, 2020).

Most foreign traders are beginning to use these alternatives to circumvent or bypass the traditional retail market which is fraught with so many restrictions. With that in mind, and with the evolution of trade in Ghana at the backdrop of the ETLS, the Ghanaian retail trade legislation should be directed at an all-inclusive approach if Ghana or Ghanaians are going to gain from a regional value in trade.

Comparative access to and cost of finance across the regional market puts Ghanaian retailers in a disadvantaged position as Nigerian counterparts have interest payments on loans at about 13.5 percent (Central Bank of Nigeria data) as against Ghana's just recent 14.5 percent as per Bank of Ghana data for April 2020. Comparing with retailers with access to finance from Asia (mostly of Asian retailers), the disadvantage of the Ghanaian retailer is further heightened. The Chinese market for instance is known for its better access to finance, low labour cost and large-scale manufacturing, of consumable products which get sold in other emerging markets like Ghana.

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3 According to Alexa – an Amazon company with specialization in web and SEO analytics.
Effect of current institutional mis-alignment

Ghanaian retailers have noted these constraints, some of which have led to violent confrontations\(^5\)\(^6\) as most consumers seem to gravitate to these foreign merchants to buy products, as evidenced recently in Kumasi by the spare parts dealers in the enclaves of Suame Magazine and more recently at Abossey-Okai spare parts market in Accra. While this is a very unpleasant situation for local retailers, it presents consumers with the chance to purchase products more flexibly from the point of view of price and choice.

In using the law through high barriers of entry in capital and other constraints, the Ghanaian authorities, appear to focus on protection of market rather than the ultimate interest of any market – affordability of products by consumers and choice, undermining the allocative efficiencies of the markets. For an economy that is import dependent, multinational retailers have established local partners and subsidiaries that give them superior advantage such that the presence of the capital restriction is counterproductive. At the barest minimum a review of the law is needed to guarantee a smooth playing field that deals effectively with sub-standard products, smuggled goods and illicit trade activities which undermine the entire market infrastructure to the detriment of both supply and demand side participants. Crucially the social costs of relaxing the regulations can effectively be mitigated through the taxes that all actors will be subjected to.

We must insist that free trade along the ETLS guidelines and approval processes should be part of the GIPC law which will allow the Ghanaian retail industry to grow and thrive using the synergies of local industrial capabilities to build capacity and service the growing ECOWAS market. The influence of traders and retailers would then extend beyond the scope of the Ghanaian market, leveraging technology to open up new opportunities.

The restrictive nature of the GIPC law is at best, discriminating against foreign businesses and limiting opportunities for employment in general. The presence of competition will mean that more foreigners who can invest at lower price levels will create more business avenues for locals to find channels of employment. The law could be streamlined to encourage these smaller foreign investors who will have a big footprint is the small business sector, with positive externalities for business innovation.

Emerging dynamics in business value chains

The COVID-19 pandemic has come at a time when a mix of the above factors presents a very clear outlook of what needs to be achieved in Ghana's trade positioning in the sub region. Prior to the pandemic, the closure of Nigerian borders\(^5\) to cargo and goods from other West African countries, presented a new business case to suppliers and retailers across the sub-
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region. The incidence of trade appears to be shifting towards other smaller markets like Burkina Faso and Niger.

This will spur a new era of services that will transcend the scope of the current GIPC law and associated laws as existing supply chains realign to new markets through a re-engineering of transport and logistics, virtual trade markets, online ecommerce portals, trade certification, goods certification, inspection regimes and standardization regimes and metrology.

The future of trade post covid-19 will be less tactile as there would more of these virtual movements of goods and associated services. This opens the landscape for different kinds of participation among stakeholders as listed above. This will mean a revamp of the legal regime to set standards and modes of engagement where the appropriate trade desks of influential trade partners like China and other Asian suppliers will be integrated with the local business community and participants.

For local players, the best protection is in easing the cost of doing business locally. Apart from lower and less beneficial terms in accessing finance for trading, the cost of doing business in Ghana is high and this reduces the profitability due to the limited scale of operations. The advantage that could be presented in easing the cost of doing business will facilitate better outcomes.

The world is going to change, and in the COVID-19 dispensation, insights from current commercial activities will refine interactions among traditional trading parties. The shortfalls in supply of items will lead to improved sourcing methods and innovations in trade facilitation. Today’s reality is that the capacity for manufacturing is low and uncompetitive, and therefore at the local level it will be difficult to assume that a fully local end-to-end participation is feasible due to the constraints of foreign influences of trade activity. Effective data synchronization systems will be needed to support credible policy formulation which undergirds the trade regulations in Ghana. Trade regulations must be dynamic and not stifle this level of innovation, which will deliver value for the economy.

Recommendations

1. A policy guiding improved data collection on retail activity will better align trade objectives and data transparency and have a clearer register of foreign players in the retail market with a view to ensure better regulatory and statutory compliance along the areas of business registration and taxation.
2. To conform to ETLS requirements along the lines of free trade and common tariffs, the GIPC should prioritize the creation of a common interoperable platform of nationally approved classes of goods and services that could be tradable under a free movement regime which would then be taxed according to optimal local laws to still meet revenue targets.
3. The market provenance guideline in the ETLS protocol policy should be activated and pursued aggressively. Perhaps, funding for implementation of such systems could be gained either from donor partners or from institutional sources in such a way to create a self-sustaining platform that opens up the corridors for trade along transparent lines. A fully active and compliant system is very important now and adoption should be driven by all member states.
4. Trade certification schemes should be designed along the national approval systems to adopt a more intra-regional set of standards for trade in goods and services. Pilots should be made on low hanging fruits such as manufactured foods and other products that are fast moving consumer goods and very visible categories. This can later be expanded to encompass retail commerce. It will allow for better data towards industrial self-sufficiency in the region. With industrial self-sufficiency and market data, traders, regardless of their nationality, have a far more even chance of competing with each other as the advantages in having exclusive access to categories of important trade lines will reduce.

5. The GIPC should look very earnestly into expanding its scope into digital goods and services. This will not only be growing this sector, but manage and determine policy trajectories early enough. With e-commerce growing significantly, the landscape of commercial mall-based or market-based activity is changing.

6. In the very near future, the cost of developing retailing activity, often dominated by foreign retailers with huge capital will not be able to compete with online virtual markets which have far less capital-intensive requirements and yet have a very high horizontal presence due to digital advertising. Investment in that sector is also increasing and foreign investment in that sector will only grow. A case in point is investment in portals like Tonaton and Jumia among others. A lot of investment into payment services and government interventions in such mean that the future is in how the country will leverage on these technologies to grow.

Conclusion

A post COVID-19 paradigm should be future proof if Ghana and ECOWAS is going to win. Restrictive and protectionist measures will only lead to the kind of demand and supply shortfalls that have led to poor capacity and price increases within the sub region and Ghana since economies of scale across the region are not utilized optimally. The trade regime is opaque and fraught with loopholes that serve only a limited few in the ecosystem.

A broad-based and more transparent ecosystem allows for better price visibility and competition. This will lead to a more open market and better opportunities both in and outside Ghana. This transparency will translate into a more focused legal regime by the GIPC that will attract much more investment other than big ticket investment events that will improve FDI objectives and subsequent trade outcomes for all concerned.

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Bibliography


