

only if it were the only reasonable measure with a least degree of inconsistency with GATT provisions available: The reality of the matter is that the principle of international trade mark exhaustion, which is pro-GATT provisions, is available.

bb) Provisos under the chapeau

One of the conditions to which application of the chapeau is subjected requires discriminatory measure complained of to be perpetuated between countries where same conditions prevail. By having the effect of harmonising national intellectual property laws, TRIPS Agreement has made protection standards prevailing in each WTO Contracting Parties to be minimally the same. Thus, any form of trade mark exhaustion enshrined in the contracting party's domestic trade mark law, which discriminates between the contracting parties or which disguisedly imposes restrictions on international trade would hardly fall in the exceptions under Article XX (d) GATT, since this would be a measure applied between WTO contracting parties with the same prevailing legal conditions.

In this regard, by the time when all WTO contracting parties will have transposed the TRIPS Agreement's minimum provisions into domestic law, any form of trade mark exhaustion susceptible of discriminating the contracting parties, or which can disguisedly be invoked to restrict trade between the WTO Members will not likely to be exempted under the provisions of paragraph (d) of Article XX GATT.²²⁹ Insofar as the principle of national trade mark exhaustion applicable in Tanzania may potentially serve as disguise restriction on international trade, it may not be accommodated in the general exceptions under Article XX (d) GATT.

D. Concluding remarks

To address the negative effects of the independent national trade mark systems of the EAC Partner States on the Common Market's principle of free movement of goods, one should move from the premises that the national trade mark regime basically aims to foster the national interests of preserving local industries from competition. However, since the EAC Common Market has been established,²³⁰ individual interests of the EAC Partner States must be subsumed under the EAC interests. Indeed, the EAC Treaty already defines the Community interests

229 STUCKI, M., "Trademarks and Free Trade" 50 (Staempfli Verlag AG, Bern 1997).

230 On the establishment of the EAC Common Market, see section B(I) of this chapter.

which, as matter of principle, should either override or co-exist with the national interests depending on the effects of the latter on the former. Where reliance on the national interests severely affects the EAC interests²³¹ as is the case with the principle of national exhaustion, the Community interests must prevail. Thus, the nexus between the national interests and the Community interests insofar as the common market for branded products is concerned is missing. A trade mark regime necessary for the achievement of this nexus is addressed in Chapter 7 *infra*.

231 Establishment of the EAC Common Market is an example of these interests (*cf.* Article 76, EAC Treaty).