

Chapter 3: The Free Movement of Trade-marked Goods in the East African Community

A. Introduction

This chapter analyses the principle of free movement of branded goods in relation to the EAC Common Market. In this regard, three documents, namely, the Treaty for the establishment of the East African Community and the Protocols⁹⁹ establishing the East African Community Common Market and the Customs Union are identified as the main legal basis for the free movement of goods in the EAC Common Market. The extent to which these laws support the principle of free movement of branded goods is subjected to a critical scrutiny. Following some general considerations addressing the way in which trade mark proprietors may invoke their nationally registered trade marks to obstruct free movement of goods and whether such practice may be justified by virtue of the functions of trade marks, the principle of trade mark exhaustion, and the principles of international law; the Chapter analyses different forms of trade mark exhaustion, pointing out the specific form(s) of exhaustion employed in the EAC Partner States.

B. The Principle of free movement of goods

I. Legal basis

1. The EAC Treaty (EACT)

Article 76(1) EACT establishes a Common Market among the Partner States with a primary objective of achieving a single market in the EAC.¹⁰⁰ A Common Market is generally ascribed to an area without frontiers in which free movement

99 According to the delineation offered in Article 1 East African Community Treaty (EACT), a protocol is any agreement among the EAC Partner States that supplements, amends or qualifies the EACT.

100 See also Articles 2(2) and 5(2) of the EACT, which anchor the desire of the Partner States to establish an EAC Common Market.