16 TRIPs. Hence the principle of international trade mark exhaustion applies to trade mark rights protected in these countries.[184]

II. Relevant principles of international law

Kenya and Uganda implement the principle of international exhaustion, whereas Tanzania observes the doctrine of national trade mark exhaustion.[185] The stipulation of the principle of national exhaustion in the Tanzanian trade mark law does not support the regime of the free movement of branded goods in the EAC Common Market.[186] Does it mean that the rule in the Tanzanian law contravenes the provisions of TRIPs Agreement or of GATT?

1. TRIPs Agreement

a) Legislative freedom under Article 8 TRIPS

Article 8(1) of TRIPS allows contracting parties to formulate or amend their laws and regulations in order to "promote the public interests in sectors of vital importance to their socio-economic and technological development" provided that the laws or regulations are consistent with the provisions of the TRIPs agreement. By virtue of its Article 6, TRIPs leaves the regulation of the principle of trade mark exhaustion to the Member States.[187] Tanzania has therefore taken advantage of this freedom to put in place a national exhaustion principle. This law thus complies with the TRIPs agreement notwithstanding the adverse effects it has on the movement of branded goods in the EAC Common Market.

b) The chapeau

The restrictions that trade mark proprietors in Tanzania are able to impose on the free movement of trade-marked goods in the EAC common market may be adjudged as being contrary to the overall spirit of the TRIPS Agreement whose

184 *Cf*. COTTIER, T., "Trade and Intellectual Property Protection: Collected Essays" 160 (Cameron May Ltd, London 2005).
185 See section C (I)(4) of this chapter.
186 *Cf*. section C (I)(2)(b) of this chapter.
187 Article 6 of TRIPS is further analysed in section C (II)(1)(d) of this chapter.

preamble's chapeau demonstrates the contracting parties' desire to reduce "distortions and impediments to international trade". The chapeau closes with an ostensibly strong message to legislative authorities of the contracting parties: measures and procedures to enforce trade mark rights should not "themselves become barriers to legitimate trade". Since intellectual property rights are not considered as barriers to legitimate trade within the ambit of the last part of the preamble's chapeau, but the measures and procedures to enforce them,[188] it is hardly possible to find a contravention of the chapeau by the national legislature which enacts a law empowering trade mark proprietors to exclude trade-marked goods from the local market pursuant to the principle of national exhaustion.

c) The national trade mark exhaustion meets TRIPS' minimum standards

The spirit underlying the TRIPS agreement is to enshrine minimum provisions, with which the Member States have to comply.[189] In view of the discussion on the provisions of Article 16(1) TRIPS,[190] the principle of international trade mark exhaustion constitutes minimum standards within the ambit of the trade mark regime endorsed in the agreement.[191] The fact that the principle of national trade mark exhaustion stipulated in the Tanzanian Trade and Service Marks Act may be invoked to frustrate free movement of trade-marked goods does not mean that this legislation abrogates the TRIPS obligations. While for instance, the absence of express stipulation of the principle of exhaustion in the Kenyan and Ugandan laws must be interpreted to mean that the legislative authorities in Kenya and in Uganda have decided to comply with the minimum provisions of Article 16 TRIPs,[192] incorporation of a national trade mark exhaustion in a trade mark instrument should be regarded to be within a legislative freedom extended to the Member States by virtue of Article 1(1) TRIPS.[193]

188 *Cf.* CORREA, C. M., "Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement" 3 (Oxford University Press, Oxford 2007).

189 *Cf.* SOUTH CENTRE, "The TRIPs Agreement – A Guide for the South: The Uruguay Round Agreement on Trade-Related Intellectual Property Rights" xi (South Centre, Geneva, 2000).

190 *Cf.* Section C (I)(4)(b) of this chapter.

191 The key trade mark provisions of the TRIPS agreement are contained in Articles 15 to 21.

192 *Cf.* COTTIER, T., "Trade and Intellectual Property Protection: Collected Essays" 160 (Cameron May Ltd, London 2005).

193 Article 1(1) of TRIPS provides, in part, that "Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law

d) The debate on Article 6 TRIPS

The principle of national exhaustion may further be justified in light of the provisions of Article 6 TRIPS. The Article has wittingly excluded the possibility of the doctrine of exhaustion being invoked in relation to a cause of action the settlement of which is pursued within the framework of TRIPS,[194] save where the issue of exhaustion is raised in relation to the principle of national treatment and the most favoured nation respectively contained in Articles 3 and 4 TRIPS.[195] Commentators have offered a purposive construction of Article 6 TRIPS to the effect that the gist of the Article was to provide the contracting states with unhampered freedom to determine a form of trade mark exhaustion to be incorporated in the national trademark legislation.[196] However, once a contracting party had opted for any form of exhaustion, is then obliged to offer the same standards to all persons without any discrimination. In this sense, reliance on the principle of exhaustion to frustrate the free movement of goods could not be justified under TRIPS if it contravened the national treatment[197] and the most favoured nation[198] principles contained in the Agreement. However, as these principles are applied in TRIPS based on the nationality of persons and not the origin of goods[199] it is very difficult to envisage a scenario in which a parallel importer may avoid hurdles to the Tanzania's market access caused by the principle of national exhaustion.

On the other hand, it has been observed that the hiatus, in relation to a specific principle of trade mark exhaustion, left in Article 6 of TRIPS, especially the

more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement."

194 Articles 63 and 64 of TRIPS deal with conflicts avoidance and settlement of disputes related to TRIPS.

195 BRONCKERS, M.C.E.J., "The Exhaustion of Patent Rights under WTO Law", 32(5) JWT 137, 152 (1998).

196 *Cf.* C. M. CORREA, "Trade Related Aspects of Intellectual Property Rights: A Commentary on the TRIPS Agreement" 78 (Oxford University Press, Oxford 2007).

197 Pursuant to the TRIPS' national treatment principle "Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regards to protection of intellectual property..." (*cf.* Article 3(1) of TRIPS).

198 The most favoured nation principle as incorporated in Article 4 of TRIPS has the effect that: "With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members".

199 *Cf.* HEATH, C., "The Most-Favoured Nation Treatment and Intellectual Property Rights", in: HEATH, C. and SANDERS, K. (eds.), "Intellectual Property and Free Trade Agreements" 139 (Hart Publishing, Oxford and Portland 2007).

unambiguous exclusion of the application of the principle insofar as settlement of disputes in the context of TRIPS is concerned, does not exclude issues concerning trade mark exhaustion from being addressed in the context of GATT provisions.[200] While it has been reiterated that TRIPS and GATT may be applied cumulatively,[201] provisions of the former are regarded as a permissive regime of intellectual property rights subject to the prescriptive regime contained in the provisions of the latter.[202] Thus, "the basic GATT principles are made applicable to the TRIPS Agreement and any conflict between the Members' obligations under TRIPS with any other covered Agreement will be governed by the GATT rules".[203]

2. The GATT 1994

The general objective of GATT is to establish a multilateral trading regime among the contracting parties in order to realise trade liberalisation.[204] In this connection, GATT lays down some standards that the contracting parties are obliged to observe.[205] Insofar as the free movement of goods is concerned, the most pertinent standards include the national treatment, the most favoured nation principle and prohibition of quantitative restrictions on trade. Since it negatively affects the free movement of goods in the EAC common market, the principle of national exhaustion of trade mark rights observed in Tanzania can hardly be justified unless it complies with the GATT standards. The analysis in this regard follows below.

200 *Cf.* CARVALHO, N.P. de, "The TRIPS Regime of Trademarks and Designs" 144 (Kluwer Law International, The Hague 2006).

201 *Cf.* HEATH, C., "The Most-Favoured Nation Treatment and Intellectual Property Rights", in: HEATH, C., and K. SANDERS (eds.), "Intellectual Property and Free Trade Agreements" 142 (Hart Publishing, Oxford and Portland 2007).

202 VERMA, S.K., "Exhaustion of Intellectual Property Rights and Free Trade – Article 6 of the TRIPS Agreement" 29(5) IIC 534, 553 (1998).

203 VERMA, S.K., "Exhaustion of Intellectual Property Rights and Free Trade – Article 6 of the TRIPS Agreement" 29(5) IIC 534, 553 (1998).

204 DHANJEE, R. & CHAZOURNES, L. B. de "Trade Related Aspects of Intellectual Property Rights (TRIPS): Objectives, Approaches and Basic Principles of the GATT and of Intellectual Property Conventions", 24(5) JWT 6 (1990).

205 All individual EAC Partner States are contracting parties to the Agreement establishing the WTO in which the GATT forms part (*cf.* KIEFF, F. S. & NACK, R., "international, United States and European Intellectual Property: Selected Source Material 2007-2008" 31-34 (Aspen Publishers, New York 2006).

a) The national treatment

Article III GATT expounds the principle of national treatment. Part III.4 of the Article stipulates that:

> The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. The provisions of this paragraph shall not prevent the application of differential internal transportation charges which are based exclusively on the economic operation of the means of transport and not on the nationality of the product.

A violation of the above Article "presupposes, among other things, that the imported trade-marked products are "like" domestic products and accorded "less favourable" treatment".[206] By empowering a trade mark proprietor to prohibit the marketing of goods (bearing a national trade mark registered and protected in Tanzania) initially marketed in EAC Partner States other than Tanzania while at the same time allowing him to market other batches of similar goods on the Tanzanian market, the national trade mark exhaustion may be regarded as a contravention of the GATT's national treatment principle. The behaviour which the national treatment principle in GATT proscribes is the discrimination between imported and national goods. To the extent that the trade mark proprietor seeks to exclude from the local market imported goods in favour of the local goods, the behaviour amounts to discrimination and thus may be regarded to contravene the provisions of Article III GATT.[207]

b) The most favoured nation principle

The most favoured nation principle is reflected in Article I (1) of the GATT 1947 as follows:

> With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation,

206 EHRING, L., "De facto Discrimination in WTO law: National and Most-Favoured-Nation Treatment – or Equal Treatment?", Jean Monnet Working Paper 12/01 of 2001, available at <http://centers.law.nyu.edu/jeanmonnet/papers/> (Status: 30 July 2012). See also TREBILCOCK, M. J. & HOWSE, R., "Regulation of International Trade" 100 (Routledge, London and New York 2005).

207 *Cf.* VERMA, S.K., "Exhaustion of Intellectual Property Rights and Free Trade – Article 6 of the TRIPS Agreement" 29(5) IIC 534, 553 (1998).

> and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

In essence, GATT's most favoured nation principle aims to eliminate discrimination between foreign goods brought to a local market in the third country. The principle guarantees that "like products originating in, or destined for, different countries" will enjoy equivalent conditions of competition.[208] In practice, it is very difficult to spot a situation in which a trade mark proprietor may invoke the principle of national exhaustion in a way opposed to the most favoured nation principle.[209] A scenario under which application of the principle is possible may be illustrated in the following manner: Suppose that a word trade mark, say PUNCHO, is registered in Tanzania and in Kenya for confectionery products and owned by different proprietors. Assume further that another word trade mark, say, COCOMEAL, is owned by a single proprietor and registered in Uganda also for confectionery products.

In the circumstances, the owner of the PUNCHO trade mark in Tanzania may invoke the principle of national exhaustion of trade mark rights to prohibit the proprietor of PUNCHO trade mark registered in Kenya from importing into Tanzania confections bearing the mark (i.e. PUNCHO). However, although the PUNCHO mark is registered for confectionery products, the proprietor of this mark in Tanzania has no right to prohibit importation into Tanzania of similar products with a different trade mark (say COCOMEAL) other than PUNCHO.

In this way, the principle of national exhaustion allows the trade mark proprietor to discriminate between like, foreign goods (i.e. products from Uganda bearing COCOMEAL trade mark and goods from Kenya with PUNCHO trade mark) and hence a contravention of the most favoured nation principle. Pursuant to the most favoured nation principle, any advantage, favour, privilege or immunity granted to goods (bearing COCOMEAL trade mark) imported into Tanzania from Uganda must immediately and unconditionally be extended to

208 *Cf*. BOSSCHE, P. van den, "The Law and Policy of the World Trade Organization: Text, Cases and Materials" (2nd ed.) 324 (Cambridge University Press, Cambridge 2008).

209 "... cases where the MFN principle could be invoked are mostly those that do not relate to intellectual property rights" (*cf*. HEATH, C., "The Most-Favoured Nation Treatment and Intellectual Property Rights", in: HEATH, C. and SANDERS, K. (eds.), "Intellectual Property and Free Trade Agreements" 142 (Hart Publishing, Oxford and Portland 2007).

like foreign products (bearing the trade mark PUNCHO) imported to Tanzania from Kenya.

Although from its general legal context the principle of national exhaustion of trade mark rights may not be invoked in a way that contravenes the most favoured nation principle,[210] the above illustration depicts some special circumstances in which the principle of national exhaustion may be used to discriminate between like foreign products brought to a local market in the third country. It thus suffices to mention that a measure, including one pursued on the pretext of national exhaustion, may contravene the most favoured nation principle as a matter of law or as a matter of fact or both. To put it simply:

> A measure may be said to discriminate in law (or *de jure*) in a case in which it is clear from reading the text of the law, regulation or policy that it discriminates. If the measure does not appear on the face of the law, regulation or policy to discriminate, it may still be determined to discriminate *de facto* if, on reviewing all facts relating to the application of the measure, it becomes clear that it discriminates in practice or in fact.[211]

The conflict between the most favoured nation principle and intellectual property rights (such as a trade mark) may be resolved under the general exception clause enshrined in Article XX (d) of GATT outlined below.[212]

c) Prohibition of quantitative restrictions under Article XI GATT

Invoking the principle of trade mark exhaustion to prohibit free movement of goods in the EAC common market is contrary to Article XI (1) GATT, which prohibits contracting parties from imposing non-tariff barriers to international trade. The Article stipulates that:

> No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import and export licenses or other measures, shall be instituted

210 Essentially, the principle of national exhaustion allows a trade mark proprietor to discriminate between trade-marked goods sold abroad and those marketed in the national market making it possible for the proprietor to prohibit marketing in the domestic market of the goods he sold abroad (*cf.* section C (II)(2)(a) of this chapter). The most relevant principle of exhaustion insofar as the most favoured national principle is concerned is the principle of regional trade mark exhaustion (*cf.* section C (I)(2)(d) of this chapter). Regional exhaustion allows a trade mark proprietor to discriminate between goods he markets in the national markets of the regional bloc's Member States and those he markets outside the regional bloc and hence a contravention of the most favoured nation principle.

211 *Cf.* Footnote 8, in: BOSSCHE, P. van den, "The Law and Policy of the World Trade Organization: Text, Cases and Materials" (2nd ed.) 324 (Cambridge University Press, Cambridge 2008).

212 Article XX (d) GATT is analysed in section C (II)(2)(d) of this chapter.

> or maintained by any contracting party on the importation of any product in the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any contracting party.

The provisions of Article XI (1) GATT imply therefore that the national exhaustion principle applicable in Tanzania, which does not permit importation into Tanzania of the goods bearing a trade mark protected in Tanzania previously marketed in other EAC Partner States, may be regarded "as a measure having an effect equivalent to a quantitative restriction".[213] However, it must be noted that Article XI (1) GATT is a general clause, which is subject to exceptions under Article XIX GATT. Pursuant to provisions of the latter Article, measures amounting to quantitative restrictions may generally and as of right be resorted to by a contracting party who can demonstrate that the measure is necessary to avoid some serious injury which the imports may cause to an established industry: A measure geared towards protection of the exclusive rights of a trade mark proprietor does not fall in the foregoing exception.[214] Such measure would fall under GATT's general exception clause analysed below.

d) The general exception clause under Article XX GATT

In view of the discussion in the above sections,[215] it goes without saying that the principle of national exhaustion contravenes the national treatment and the most favoured nation rules on one hand, and is non-tariff barrier on the other, if it is invoked to restrict parallel importation. This general rule, must however be analysed in light of the provisions of Article XX(d) GATT, which provides a safety valve through which contracting parties may avoid the WTO obligations,[216] to observe the above principles.[217] Article XX (d) provides that:

> Subject to the requirement that such measures are not applied in a manner which would constitute ... disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

213 *Cf.* YUSUF, A. A. and HASE, A. M. von, "Intellectual Property Protection and International Trade: Exhaustion of Rights Revisited", 16(1) World Competition 115, 129 (1992).

214 *Cf.* VERMA, S.K., "Exhaustion of Intellectual Property Rights and Free Trade – Article 6 of the TRIPS Agreement" 29(5) IIC 534, 554 (1998).

215 *Cf.* sections C (II)(2)(a) – (c) of this chapter.

216 *Cf.* RUSE-KHAN, H. G., "A Comparative Analysis of Policy Space in WTO Law", Max Plank Institute for Intellectual Property, Competition & Tax Law Research Paper Series No. 08-02, p. 15.The paper is available at: < http://ssrn.com/abstract=1309526> (Status: 30 July 2012).

217 i.e. the principles outlined in sections C (II)(2)(a) – (c) of this chapter.

(d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including..., the protection of patents, trade marks and copyrights, and the prevention of deceptive practices;

The exception in Article XX GATT is "permissive but cautious towards IPR regulatory measures considered susceptible of hampering free trade and competition".[218] Application of Article XX (d) GATT is subject to two-tiered provisos,[219] namely, those contained in the preamble to Article XX GATT (henceforth, the chapeau),[220] and those contained in paragraph (d) of Article XX. In line with the analysis of the provisos as offered below, the provisions of the chapeau are logically taken into account after the provisions of paragraph (d) of Article XX GATT have been analysed notwithstanding the fact that the chapeau's literary position precedes that of paragraph (d).[221]

aa) Provisos under Paragraph (d) of Article XX GATT

Provisional justification of a measure which is inconsistent with the provisions of the GATT depends on the country introducing the measure concerned being able to prove two elements, namely, that (1) the measure is one designed to secure compliance with the law or regulation which is not inconsistent with some provisions of the GATT; and that (2) the measure is necessary to secure such compliance.[222]

Incorporating in a trade mark law, and enforcing, the principle of national trade mark exhaustion may be considered as a measure which aims to secure compliance with intellectual property laws. Since intellectual property laws are not generally inconsistent with the provisions of the GATT, the necessity of such

218 CORREA, C. M. & YUSUF, A. A. (eds.), "Intellectual Property and International Trade – The TRIPS Agreement" (2nd ed.) 8 (Kluwer Law International, Alphen aan den Rijn 2008).

219 *Cf.* BOSSCHE, P. van den, "The Law and Policy of the World Trade Organization: Text, Cases and Materials" (2nd ed.) 629 (Cambridge University Press, Cambridge 2008).

220 "The chapeau can be generally described as a safeguard against (protectionist) abuse of the ability to justify WTO inconsistencies under Art. XX GATT and so to defer from WTO obligations." *Cf.* RUSE-KHAN, H. G., "A Comparative Analysis of Policy Space in WTO Law", Max Plank Institute for Intellectual Property, Competition & Tax Law Research Paper Series No. 08-02, p. 17.

221 *Cf.* RUSE-KHAN, H. G., "A Comparative Analysis of Policy Space in WTO Law", Max Plank Institute for Intellectual Property, Competition & Tax Law Research Paper Series No. 08-02, p. 17.

222 *Cf.* Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, T/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5, para. 157.

measure in achieving the desired end results is a decisive factor to a finding on whether the measure should be allowed.

The WTO Appellate Body has offered a circumscription of measures regarded "necessary" within the ambit of Article XX (d) GATT in the following manner:

> [A] contracting party cannot justify a measure inconsistent with another GATT provision as "necessary" in terms of Article XX(d) if an alternative measure which it could reasonably be expected to employ and which is not inconsistent with other GATT provisions is available to it. By the same token, in cases where a measure consistent with other GATT provisions is not reasonably available, the contracting party is bound to use, among the measures reasonably available to it, that which entails the least degree of inconsistency with other GATT provisions.[223]

On the other hand, *Mark Stucki* offers a criterion to be observed when it comes to determining a necessity of a particular form of trade mark exhaustion. He argues that, if a trade mark law which exceeds TRIPS' minimum standards by offering intensified protection of trade marks is invoked to bar the free movement of goods, such particular law "would not be necessary to protect trademarks in the sense of Article XX (d) GATT".[224] Putting it more specifically, he further opines that " one could assume that the minimum standards of the TRIPS-Agreement define the degree of necessity of "tolerated" trade mark protection, and that increased protection (which is... tolerated under TRIPS) would hardly ever pass the 'test of necessity'".[225]

One may thus rightly submit that, by having the effect of restricting free movement of trade-marked goods in the EAC, the Tanzania's principle of national exhaustion may not pass the necessity test: The principle goes beyond the minimum standards enshrined in Article 16 TRIPS, which defines the scope of trade mark protection.[226] Thus, the restriction on the free movement of goods pursuant to principle of national exhaustion "could hardly be considered as necessary to secure the protection of trademark rights".[227] In view of the WTO Appellate Body decision quoted above,[228] the Tanzania's principle of national exhaustion could be allowed to operate in a way infringing GATT provisions,

223 *Cf.* Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, T/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5, para. 165.

224 STUCKI, M., "Trademarks and Free Trade" 51 (Staempfli Verlag AG, Bern 1997).

225 STUCKI, M., "Trademarks and Free Trade" 51 (Staempfli Verlag AG, Bern 1997).

226 *Cf.* the discussion on Article 16(1) of TRIPS offered in section C (I)(4)(b) of this chapter.

227 STUCKI, M., "Trademarks and Free Trade" 51 (Staempfli Verlag AG, Bern 1997).

228 *Cf.* Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, T/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, 5, para. 165.

only if it were the only reasonable measure with a least degree of inconsistence 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.