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MEMORANDUM INTERIEUR

INTEROFFICE MEMORANDUM

To: Ms. Virginia Cram-Martos
Director, Trade Development and Timber Division
UNECE

From: Markus Schmidt
Senior Legal Adviser

A handwritten signature in black ink, appearing to read 'Schmidt', written over a horizontal line.

Date: 16 February 2010

Ref.: MS/fc

Subject: ***Proposed change of title of UNECE Standards to UN Standards***

1. The Trade Development and Timber Division of UNECE has asked for an opinion on the proposed change of title of "UNECE Standards" to "UN Standards". You indicate that the *Working Party on Agricultural Quality Standards* (hereafter WP) had proposed this change in title, that the *CODEX Committee of Fresh Fruits and Vegetables* (affiliated with FAO) had, during the 2009 meeting of the WP, requested to examine the implications of the proposed change in title, and that the proposal was subsequently suspended, pending examination of the request made by the CODEX Committee.

2. I note that a comparable issue arose in 1998, when a similar request by a UNECE Working Party was referred to the Office of Legal Affairs (OLA) for advice. OLA, recalling that any proposed change in title of UNECE Standards would have to be approved by ECOSOC, concluded that the change in title could "easily be challenged on legal grounds, for the following reasons:

.....

(b) Member countries having agreed on standards at a global level, in the framework, for example, of FAO, which are not necessarily identical with UNECE Standards may oppose the renaming of UNECE Standards;

(c) Even if standards are the same or compatible, member countries may still oppose the renaming of UNECE Standards for reasons of maintaining the respective competence of each organization within the existing statutory limits;

(d) Even if standards are compatible, member countries of other regional commissions are likely to question any move by one Regional Commission which would imply an expansion of its competence and authority to the detriment of other regional commissions."

3. As Senior Legal Adviser to UNOG, it is my considered opinion that the legal advice offered by OLA in 1998 would be very similar if not identical if sought and provided at the present time. In particular, point (b) of OLA's opinion reproduced above could be invoked in the present situation. It was the CODEX Committee on Fresh Fruit and Vegetables, an expert body which is affiliated with FAO, which formulated a request to examine the implications of the WP's proposed change in title of UNECE Standards to UN Standards. This implies that the CODEX Committee and by extension, FAO and its Legal Counsel, had some doubts about the practicality of the WP's proposal. In that particular constellation, it is difficult to see how OLA could come to a different conclusion than in 1998, i.e. that a change in name of UNECE Standards to UN Standards would unlikely be approved by ECOSOC.

4. As to the editorial layout of the Report of the WP, Administrative Instruction ST/AI/189/Add.6/Rev.5 (22 August 2008), Section 3.1, provides UNECE with some flexibility. This means that while the title "UNECE Standards" should remain, the print reference to the "United Nations Economic Commission of Europe" at the top of the page could be removed.

c.c: Ms. S. Bartolo
Mr. S. Malanitchev ✓
Mr. H. Hansell

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