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# Panel Discussion: The Operational Realities of Resolving or Not Resolving Standards Disputes under NAFTA


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# PANEL: THE OPERATIONAL REALITIES OF RESOLVING OR NOT RESOLVING STANDARDS DISPUTES UNDER NAFTA\*

MODERATOR: PROF. RALPH FOLSOM\*\*

Panelists: Lic. José Augustín Portal, Jimmie V. Reyna, Esq., Geri Word

**REYNA:** I have seen that standards related measures can impede trade. During the NAFTA negotiations, both Mexico and the United States were somewhat learning as the negotiations went along. At that time, the United States government did not have experience in negotiating such things because our standards-related regime was so much different and in many terms it was absent. It is not like what Mexico was beginning to undertake in 1992 by issuing *Normas Oficiales Mexicanas*<sup>1</sup> (NOMs), they just began to flood out.

When I look at the government, and not being associated with any government I can say this, that the ambiguities in chapter nine of the NAFTA give Mexico and have given Mexico an edge in this game that is now being played. Because when you get down to it, we have all the definitions and we have the terms. However the rubber meets the road when you begin to talk about conformity assessment. Conformity assessment procedures are the procedures that are used in order to determine whether a product has complied with a standard. All goods and services sold in Mexico must comply with applicable Mexican standards. You know whether or not the goods or services comply by applying the conformity assessment procedures. However, many barriers to trade exist in the employment of the conformity assessment procedures. Right now, there is significant friction in the trade community regarding the manner in which Mexico is applying conformity assessment procedures. For example, Mexico allows only Mexican importers and producers and distributors to possess or obtain the legitimate right to a standard. Although it is changing somewhat, right now U.S. producers cannot go to Mexico and obtain their own standard. The procedures indicate that in the case of a foreign producer, every importer must obtain a standard, the right to use the label.

For example, let us discuss the production of glassware. A Mexican glassware producer can go get his product tested for compliance in order to get his own standard. The compliance test costs approximately \$900. He gets the test results, turns it back in, gets the standard and boom, his products start going through. Compare this with a U.S. producer of this glass who has nine customers in Mexico. The Mexican producer can have nine customers, one standard. The U.S. producer has nine customers and must go through this same process nine times. For each importer, the U.S. producer has to go and get a new test on the same product. This product has been tested, it has been found to comply with the Mexican standard but the U.S. Producers must do this each time they change or use a different importer. Understandably, from the U.S. producers' point of view, this multiple certification requirement impedes trade.

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\* The views expressed here are the panelists' own, and should not be taken to represent those of their employers or other organizations with whom they may be affiliated.

\*\* A summary of the background of each of the participants in this panel follows on the last page of the panel discussion.

1. *Normas Oficiales Mexicanas* is the official document certifying that a particular good complies with an applicable standard. Hereinafter "NOM."

In February 2000, new procedures came out which address this multiple certification requirement. However, now some of the Mexican private laboratories are indicating that the new procedures apply only to the Mexican government. The private Mexican labs are refusing to respect the Mexican procedures. I would like to ask Mr. Portal whether this was contemplated in the negotiations when Mexico was seeking to establish a private industry of national laboratories to do certification and testing? Did that come into play at all?

**PORTAL:** Given that I am not aware of the most recent developments, my response is as follows. To create an infrastructure of laboratories you need to give them money or business. A rule in this area of certification and evaluation of conformity is that there has got to be permanent follow-up monitoring to see that the products are always complying. It is not only the test of a particular product. For example, in the case of Underwriters Laboratories (UL), if a Mexican exporter wants to get the UL stamp on his products for the U.S. market, the Mexican exporter must sign an agreement with UL. The Mexican exporter must then ship the equipment for testing and UL will visit his factory several times a year. So if you look at it from the opposite side of the example, from the Mexican perspective, there is the same requirement and it is the same for everyone all over the world. Everyone must submit the test results but also allow for monitoring of the production process because the products might change along the production process. So the issue is whether the Mexican government is authorized and obligated to visit facilities that are abroad. The decision at that time was that the Mexican government could only apply laws to people within Mexican territory and those people are the importers. If the U.S. producer wants to use 100 importers who put the subsidiary in Mexico, it is their choice. Mexico cannot go overseas as a government to perform governmental authority functions outside of Mexico. Mexico can only monitor the people that it can sanction. The government cannot operate under contracts like the UL. A breach of a contract with the UL would result in the retrieval of the use of the UL trademark. In the case of mandatory standards in Mexican law, the only sanction can be a fine or an order to withdraw the product from the market. The Mexican government can only legally govern within Mexico and over people that are subject to Mexican law. That is why the certification process is the way it is. It is a legal reason more than anything. Of course, that lack of flexibility in the application of the laws caused the testing labs to have to do nine tests in the case of the glassware example.

The United States later complained that chapter nine of NAFTA should not apply to private bodies since the private bodies are not mandated by this chapter to perform exactly the same procedures. Of course, the U.S. government puts pressure on the Mexican government because there is more of a commitment here to enlist the private bodies' compliance with the disciplines of Article 902. Specifically that each party shall seek through appropriate measures to ensure observance of Articles 904 through 908 by state or provincial governments and by non-governmental standardizing bodies in the territory. So that would be an avenue. At the end, however, if you take it to a panel, I do not think they would find a violation of the NAFTA text.

**REYNA:** Is it a violation of Mexican law?

**PORTAL:** I have not looked at the procedures published in February 2000. I would need to take a look at the procedures. However, Mexican law does not go

into detail of national treatment because Mexican law is only applicable within Mexico. This is really an issue of national treatment.

**FOLSOM:** Mr. Reyna, could you just outline the February 2000 procedures to which you are referring?

**REYNA:** I am referring to the new policy and procedures for conformity assessment that came out in February 2000. One of the primary objectives of the new policy and procedures was to start addressing the trade restrictive aspects of how Mexico was applying its standards. As a result, U.S. producers may now apply for and get their own NOMs. Then a U.S. producer has the right to assign it to the different importers. Now the U.S. glass producer that has nine customers in Mexico can get a test result, just like the Mexican producer. Then by a simplified process, the U.S. producer can give the right to use that NOM to each one of its importers for a small fee. This process would have basically put everyone back on a level playing field. However, the private entities are indicating that they do not recognize the NOM outright. The private entities will recognize the NOM, but they are still going to charge the U.S. producer for a test, as if they had tested the product. You have the Mexican private labs that appear to be running a little a muck here. I do think that they fall under the terms of Chapter 9 of the NAFTA, and also the WTO agreement on technical barriers to trade because we are talking about standards and technical regulations. The key word here is a measure. These agreements apply to governmental measures. A governmental measure...

**PORTAL:** ...legislation?

**REYNA:** It can be legislation, it can be administrative decisions, judicial opinions, and omissions to act. In my view, by the Mexican government allowing this to continue, it is in effect, sanctioning what the labs are doing. This is one area in which there has been a little bit of the trade tension.

Ms. Word; what are some of the other products that you have worked with in which the application of a Mexican standard impeded trade?

**WORD:** I think we are mixing up a couple of different issues when we are talking about the certification procedures and the obligation under Article 908.2, which is the unilateral recognition of conformity assessment bodies. As far as the certification procedures go, Mexico did revise the certification procedures in February 2000 and this appeared to be the light at the end of the tunnel. The Department of Commerce ("DOC") had been contacted by U.S. exporters many times because of the redundant testing fees. The cost in performing the test is enormous for one product if each importer must obtain a test result. A Mexican producer only has to pay to test that product one time and he is able to share that NOM certificate with as many importers or distributors as he would like. The DOC did raise this issue trilaterally; it has been on the agenda for years. Many of these problems are on the agenda; there is a lot of discussion, a lot of give and take. When Mexico published the revised procedures in February 2000, they were going to allow the foreign manufacturers to actually share that NOM certificate. The DOC then started hearing from companies in April or May 2000, that there were problems with the implementation. The U.S. manufacturer would have to sign a contract with a private sector entity. The U.S. manufacturers gave the private sector entities the test results. Then the U.S. manufacturers wanted to get their NOM certificate and pass it along. However, they were being told they would have to have the private sector entity come to the United States to inspect the facilities at the cost of the U.S.

producer. The contract with the private sector entity was itself very burdensome because of the different laws in Mexico. U.S. manufacturers were having to hire lawyers to produce these contracts. The DOC receives many different complaints about implementation. As a matter of fact, I sent out an e-mail last week to the Directorate General of Standards ("DGN") asking for clarification on their interpretation of the new procedures because of what is happening with these private sector bodies.

The beginning point to go into the unilateral recognition is the test laboratory. Next the certification body takes those test results and issues the NOM certificate if the test was performed in a manner compliant with Mexican regulations. The DOC sees this as a unilateral obligation.

**REYNA:** Article 908.2 of the NAFTA states that each party shall accredit, approve, license or otherwise recognize conformity assessment bodies in the territory of another party. That means, for example, that if Mexico is applying a standard then it will recognize the test results performed in the United States with respect to that particular standard. In Annex 908.2 of NAFTA, Mexico was given a four-year reservation. The four years ended in 1998 and as of right now, there is still not any of that recognition.

**WORD:** Article 908.2 is an obligation for conformity assessment bodies. Mr. Portal had referred to it only applying to government and UL. Well, UL is a test laboratory, but I am speaking directly about accreditation.

**PORTAL:** Yes, yes, I know the difference. This is of course a unilateral commitment. Any body within the two countries can come to the other's government and ask for accreditation. My understanding is that the U.S. government has no accreditation authority. Now the Mexican government has conveyed accreditation authority to private organizations. So we are even.

**WORD:** It is a matter of interpretation.

**REYNA:** For example, when Mexico developed its technical standard for appliances, such as blenders, small appliances, etc., and were you to put the Mexican standards and the UL standards side by side, they are practically identical. In fact, some industry people in the United States say that they are exactly the same in that UL consulted with the corresponding private sector entity and some of the Mexican bodies and helped Mexico establish a standard. If you have a UL standard for your blender, it conforms to a Mexican standard already. In the U.S. industry, the concern is why Mexico cannot recognize the UL standard? Since they are the same, the legitimate objectives of the law will be met, so why not recognize a UL standard in Mexico? That has not happened and I doubt seriously that that will happen.

The United States has its own problems with certification bodies. The UL is fighting tooth and nail to prevent the establishment of a U.S. industry to do further tests. The UL has a very strong lobby and they want to be the only ones in the United States issuing these types of certifications.

**PORTAL:** The exporters that come to the U.S. government to complain about these problems are typically border traders. All of the major industries, the manufacturers, are in Mexico. Their Mexican subsidiaries and partners are part of this process. It really only surprises the guys on the border who want to ship a bunch of refrigerators they got at a good price somewhere and then they cannot. Really the economies and industries are very well integrated. I do not think these days that a single important industry has nothing to do with the United States. There

are interesting cases; for example, we have had clashes with European companies, the standards and the U.S. industry.

There was also a magnificent case involving refrigerators and Korean companies. The Mexican and U.S. refrigerators did comply and they created a standard for energy efficiency that would kick out the Koreans. So it really is not a structure problem.

The principles in Chapter Nine are a lot more relaxed than other disciplines in NAFTA that have very clear results and direct applications. Chapter Nine still has many open issues as a result of the nature of the activity.

**REYNA:** What Mr. Portal is saying is that if you are a big guy and you are in Mexico, you do not have a problem because you are a Mexican producer and the advantage is given to the Mexican producer. It is true that the exporters and producers who do not have a presence in Mexico get hit with this. This is the trade distortion that we are talking about. You either comply with the standard or you invest in Mexico. That is a trade distortion. It is causing a U.S. company to make investment decisions it would not make but for the trade restrictive element that is contained in the certification procedures. This is a classic trade restriction.

Mexico has tried to respond to that and it did through this notification process, which I think is fantastic. It has worked remarkably well in Mexico. Publishing in the *Diario Oficial*,<sup>2</sup> having a comment period and being able to have private sector input, I think has been remarkable, both for the Mexican legal structure and for the trade community. There has been response by the Mexican government, but now it is the Mexican labs that are holding back so that trade restrictive aspect still continues. Mexico does have a remedy and that is to stop the goods at the border. It has done that before with alcohol.

**WORD:** Yes, in 1998 Mexico published changes to its alcoholic beverage standard. I was in Mexico City at the time at one of the NAFTA working group meetings and it was published one day to be implemented the next. We were at lunch and one of the gentlemen at the table from Mexico said, "Oh, we have news for you." I said, "I think I know. You published the alcoholic beverage standard." He said, "Yeah, how did you know?" An exporter had called me, looking for me in Mexico because on that day he actually had a shipment of beer stopped at the border. Basically what happened at that point was that many of the U.S. Mexican beer producers, or these companies, had their lists or their names dropped from importer lists. They went to customs and they were told their name was dropped and they cannot import any more. The Mexican Federal Consumer Protection Agency ("PROFECO") placed yellow health warning tape across the U.S. beer. Of course, consumers thought there was a health issue, that there was something wrong with the beer. It really only involved labeling problems. This took place right before Easter weekend when the whole government was shut down basically for the week. There were trailers of imported beer at the border. There was yellow tape in Mexico across U.S. beer. That was a big weekend for many U.S. beer companies because of spring break. These companies lost out on millions of dollars in sales that week because of a labeling issue. The DOC was able to resolve the issue satisfactorily but there were long term implications because of the health warning tape that was placed

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2. The *Diario Oficial de la Federacion* is the Mexican federal government's official journal.

across that beer initially. PROFECO had worked out a deal with the Mexican producers to give them time to comply with the Mexican standard. So the Mexican beer, while it might not have been in compliance sitting right next to the U.S. beer, was not effected because they had worked out a deal with the consumer protection agency. Through channels the DOC was able to do the same thing but it took probably a good three weeks to a month to fully resolve it.

I would like to give you an example of another labeling issue. As Mexico has stated, they tend to use International Organization for Standardization ("ISO") standards because they are looking for the middle ground. In 1997, Mexico changed its consumer goods labeling recognition. They used the metric standards for weights and measures, and U.S. producers had to comply. A product could be dually labeled so as to include the U.S. measuring system, but it had to include the metric system. The metric system calls for commas rather than decimal points in its units of measure. Truckloads or products were stopped at the border because they used a decimal point instead of a comma. Literally, there were people at the border unpacking trailers of merchandise, sitting there with pens and adding a tail to the decimal point to get the product in. This is how labeling standards can be used as huge trade impediments. Those are just a couple of instances. Many of the issues that the DOC deals with in the committee are long term issues. Mr. Portal probably started working on those issues years ago, when he was DGN, and we are still dealing with some of them such as the certification procedures.

Mexico has assured the DOC repeatedly, in our trilateral meetings, that EMMA, the private sector body that has been designed or established by Mexico to oversee the accreditation process, would comply with the unilateral recognition requirement. A couple of U.S. laboratories actually tried to take advantage of this but the amount of work that had to go into it was disheartening. It was completely burdensome and the laboratories just withdrew the application. So although it cannot be said that Mexico is not complying with Article 908.2, there are some legitimate concerns.

Additionally, regarding the certification bodies, the United States had laboratories that were interested in being recognized as certification bodies to issue the NOM certificates. Mexico declined, stating there had to be a need for additional certification bodies because Mexico had already accredited certain certification bodies. Mexico stated there was no need for another certification body. If there were a need, Mexico would publish it in the *Dario Oficial*. There is the spirit of the NAFTA, and then there is the actual law.

**REYNA:** And then there is practice.

**WORD:** Yes, the practice itself. We have seen changes in the mindset of *Secretaria de Comercio y Fomento Industrial* ("SECOFI").<sup>3</sup> SECOFI is more open and transparent than are some of the other agencies. The health ministry for example, is still very close-minded. I think customs is still from the old school and very hesitant to publish for comment and be more open and transparent. However, it is SECOFI's obligation to make sure that these other entities are complying.

One example involves food inspections. The Food and Drug Administration ("FDA") goes to Mexico and visits labs in Mexico for good manufacturing

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3. *Secretaria de Comercio y Fomento Industrial*. The Secretariat of Commerce and Industrial Promotion [SECOFI hereafter]. SECOFI is Mexico's organization which manages standardization activities.

practices. They have actually taken Mexican government officials along, trying to teach them what needs to be done for FDA practices. The United States Department of Agriculture ("USDA") travels across the border and inspects meat facilities in Mexico. There is an obligation, and the government is complying with it. The DOC has been told repeatedly that SECOFI would make sure that EMMA complies.

**PORTAL:** Let us not forget other equations in this experiment such as the WTO requirements, and the European Free Trade Agreement ("EFTA"). A conclusion that I have in my mind, which might not be consistent with what the United States is hearing from SECOFI, is that the EFTA calls for NAFTA parity and the best treatment of the General Agreement on Tariffs and Trade ("GATT"), NAFTA or any other international agreement. From the Mexican standpoint, we have the implementation of all of these laws, and we are also having to consider other international agreements. This may be an explanation for potentially not being in a position to grant the same benefits that are being granted to the United States. I do not know if you want to give some horror stories on what happens to Mexican exports. For example, the tuna case is a disastrous case for the U.S. government. There are many cases, and there is a lot of learning day to day about how to do business. There are more practical things than these like, "I have a bounced check, what do I do?" Fortunately, there are lawyers to help but this is an area that we certainly continue to put a lot of strain in the negotiations. The good thing is that the channels of communication are here. This is a reciprocal thing because the United States has solved problems for Mexican exports and the other way around.

NAFTA is not an automatic miracle maker. This area is technically sophisticated and must be looked at carefully on a case by case basis because the stories that you hear are simply awesome.

**REYNA:** When you take a look at the disputes that have been brought before the WTO, roughly 65% of them involve technical barriers to trade ("TBT"). So the issues we are talking about now are happening all around the world, not just between the United States and Mexico. This is the new game of trade regulation. As tariffs go down, the use of non-tariff barriers for trade restrictive purposes go up. There are clear cut exceptions, in that every country has the right to protect its borders, its consumers, its safety and its environment. These rights are in the WTO and all these other agreements. It becomes extremely complex and difficult to address these issues effectively. It is a fascinating area.

**WORD:** Any standard or any technical regulation is a TBT. The problems lie with unnecessary TBT or obstacles to trade - and there is a difference. It is not to say that TBT are bad. They are there for a reason and hopefully for a legitimate objective. The problems stem from TBT that are unnecessary or applied in an indiscriminatory manner.

**REYNA:** In NAFTA, Article 904.4 deals with unnecessary obstacles. Every country has the right to stop imports at the border, stop trade completely on the basis of these legitimate objectives, such as consumer protection, health, every right under the WTO, NAFTA, etc. Countries can stop the trade. However, they cannot have unnecessary obstacles as stated in Article 904.4. Subparagraph b, which reads, "The measure does not operate to exclude goods of another Party that meet the legitimate objective." In the WTO you cannot employ a standard that impedes trade if there is a lesser restrictive alternative. That is what the Agreement on Technical Barriers to Trade in the WTO says. This is why it is difficult to address these issues. One



of the things that I did on behalf of U.S. producers, in my discussions with the DGN in Mexico, was more than just complain. When the new standard comes out the phones ring off the hook in Mexico. They are getting a lot of complaints. Mexico has the right to have a standard. What I did in my approach with the DGN was to just focus on the restrictive element of the standard, not the standard itself. Then I proposed less restrictive alternatives and suggested doing the same thing and achieving all of the same legitimate objectives by doing it this other way.

**FOLSOM:** At this point we will take some questions and comments from the audience.

**ROGERS:** John Rogers from Carlsmith Ball, Mexico City. One of the long running disputes between the United States and Mexico has been land transportation and trucking. I wonder if the U.S. government's position could be elaborated for us and could you explain the qualifications of the Teamsters' Union as an accreditation body?

**WORD:** The Teamsters' Union as an accreditation body? That is a new one and I know that is certainly not one that the government has considered. Regarding cross-border trucking, because of safety concerns, the United States postponed implementation of NAFTA provisions that would allow the international truck service between the United States and Mexican border states. As you probably know or have heard more recently, the Mexican truckers are now protesting because Mexico has actually allowed competition in Mexico and a U.S. company has basically penetrated that particular industry and market. This has gone to the Chapter 20 Dispute Panel. If the final panel report determines the action to delay implementation of the NAFTA cross-border trucking provisions was inconsistent with the agreement or causes nullification or impairment of that benefit, the United States would have 30 days to either allow international cargo service or reach some other mutually satisfactory agreement with Mexico. This could include a timetable for implementation. If the parties cannot agree on an acceptable arrangement, Mexico could retaliate by suspending benefits of equivalent effect. That is the status of the Mexican trucking. As far as accreditation of the Teamsters? No.

**REYNA:** Mr. Rogers, that issue may be addressed by the new U.S. administration. Given the positions President George W. Bush has taken on U.S.-Mexico trade, we could see a reversal in that policy.

**PORTAL:** This is an important effect of NAFTA. Because of NAFTA, the parties are still talking. It does not matter if they find a suitable solution or not. Countries do not always comply with the letter of the law, but there are mechanisms to solve this reality. That is a tremendous difference in the historic relationship of Mexico and the United States.

**FOLSOM:** Second question, please.

**JAUREGUI:** Miguel Jauregui, with Jauregui, Navarette and Rojas Law Firm, Mexico City. I would like the panel's reactions to two issues that I think are basically non-standards that impede free trade. The first issue deals with labeling, such as the tuna products, which we have not really touched on. It is very damaging to free trade because now a labeling standard is created by the court system. What is the effect and how many court proceedings or court final judgments will adhere to principles that detract from free trade? That is the first issue. The second issue is due to the creativity of the U.S. Congress to have extra-territorial law making, like

the Helms-Burton law. How is that trend going to effect free trade going forward in as much as it has already detracted from free trade vis-à-vis Cuba?

**WORD:** I cannot answer the Helms-Burton question. There are people in the United States who totally agree with the Helms-Burton Act and there are people that do not. That is at a level much above my level and something that will be undertaken in Congress. There might be a totally different mindset with a different Congress and our new president. We will have to wait and see where that goes. As far as tuna-dolphin is concerned, you may know that the determination of the Secretary of Commerce made on April 11th was again, undertaken in private court proceedings. We have appealed some of those decisions that were taken. Let us say the tuna embargo against Mexico is lifted temporarily, and Mexico is free to sell its tuna for the first time in almost a decade. Most of its tuna cannot be labeled "dolphin safe" due to the continued legal actions. We know that Mexican industry is growing increasingly more upset as the days go on. It is my understanding that they are threatening to go to the Mexican Senate to ask for withdrawal from the International Dolphin Conservation Program. Meetings took place in late September for formal consultations and Mexico is now considering whether they are going to file another WTO case. But I know that the DOC is working very closely with SECOFI in trying to resolve the issue and to try and do something in the interim, but they are tied up in the courts and we will have to wait to see what happens.

**REYNA:** Mr. Jauregui, you raise a very good conceptual point. How can the United States keep a straight face about trade and trade liberalization and yet undertake action that on its face is trade restrictive? We have to remember that for all the talk that goes on about free trade, there are strings attached to everything. One of the strings that the United States has attached is that it is going to manage its vision, as a leader in the world, to drive open economies, to address human rights issues by addressing trade.

It is not just the United States. Under the Free Trade Agreement of the Americas, the negotiations going on right now involve all of the countries in the hemisphere, except for Cuba. There are 35 countries in the Western Hemisphere, and they all agreed that there are only going to be 34 countries at the table. It is not that no one wants to do trade with Cuba. It is the view that the way to meet the objectives of the summit of the Americas, that gave birth to the Free Trade Agreement of the Americas negotiations, is by engaging some countries in free trade negotiations and by excluding some other countries. This tactic is an attempt to address poverty, education, hunger, and human rights. All the countries bought into this tactic and it continues. It is the same thing with trade embargoes. Helms-Burton is just another example, of U.S. policy that contradicts this notion of free trade but really, there are strings attached all the time. And the European Union is involved in this all the time. There are no clean hands in U.S.-Mexico issues. For example, the European Union has just recently, decided that eggs are going to have to be marked with origin. An egg! The rationale given is that E.U. consumers demand and deserve the right to know how their eggs are produced. That is the official word. In addition, the European Union recently submitted to the WTO, as one of its negotiating objectives, that animal rights should be negotiated in the WTO. This thing can really go too far. I mean my dog is happy that animal rights are going to be negotiated in the WTO. In fact he has already lowered trade restrictions on me.

He says either better food or no newspaper buddy! But that is an example that if you leave things unfettered, then we will be negotiating animal rights and can you imagine that? How are animals treated in Mexico? If they do not meet a certain standard then should the United States seek some sort of restriction?

**FOLSOM:** Thank you. We have another question on the floor.

**DOBROWITSKY:** My name is Margaret Dobrowitsky. I am from Delphi Automotive Systems and I have a question about cooperative development agreements. The U.S. government, through various agencies and departments, such as the Department of Energy and the Department of Defense, enters into agreements with private companies under which they develop new technologies. Some of these agreements, in particular I am thinking of Cooperative Research and Development Agreements, contain U.S. competitiveness clauses. Under these clauses, the American company promises that any product containing the new technology that was developed under the agreement will be manufactured substantially in the United States. I am wondering if NAFTA has had any impact on expanding the definition on the locale that would be acceptable for manufacturing activities?

**REYNA:** No, it has not. The reason is that it is the government that owns the patents to that research. As we demilitarize in the United States, the U.S. government enters into these partnerships with the private sector for economic development and to help disseminate this technology. Really it is a private contract that you are talking about. Much like if I have a company in the United States with a certain technology. I have the commercial right to restrict who I am going to license to use that technology and these agreements recognize that licensing.

**DOBROWITSKY:** Well the technology that could be involved would be technology that was invented by the private company. The private company would hold the patents. The U.S. government would be given a license under those patents and the obligation to perhaps publish the materials would be imposed upon the U.S. government. In those cases still the technology would be required to be produced in the United States.

**PORTAL:** What about a subsidy for technological development? Probably the Mexican government would have loved to see a discipline prohibiting subsidies because as a poor government it cannot subsidize as much as the United States. In many other sectors there are distortions that give the United States an international trade competitive advantage because of these subsidies, this is a technological one.

**FOLSOM:** Next question please.

**NEWSOM:** Yes, Janet Newsom with the International Dairy Foods Association. I would like to ask for the panelists' comments on the decision-makers in the respective governments as they relate to standards-related issues. It seems to me that a number of us in this room may recognize that there are tremendous trade implications to many of the standards decisions that are made. Yet in most governments, the regulatory agencies that are most directly involved in standards setting are very domestically focused and not skilled in many international responsibilities. It seems to me that this is a real potential for a great deal of conflict and problems in terms of the consistency of decisions. This particularly effects the foods area, the industry for which I work. For example, I was impressed by the fact that in the Codex committee on food labeling meeting this past spring, the government of Mexico recognized that one of the major topics at that meeting, labeling of biotechnology foods, had tremendous trade implications. Mexico

actually had a SECOFI official as the lead delegate for their government. That is highly unusual, however, and most of the decisions, both in terms of national decisions as well as the delegations to international bodies, are typically from a more domestically-oriented regulatory authority. So my question is really to comment on whether that may be changing within the U.S. government and the Mexican government? Whether there is any cautious effort to try and integrate some people with international trade skills and experts into the decision making with respect to the standards setting decisions, whether it be regulatory or policy?

**WORD:** In the United States, as far as the international agreements go, most of the delegations are lead by the United States Trade Representative ("USTR"). Additionally, there is an inner-agency process so we have DOC, FDA, USDA, EPA, and state - all of the different agencies sitting at the table. So for example, for the NAFTA standards meetings or for the WTO meetings it is often USTR at the table, but there will be a delegation along.

**NEWSOM:** If I could just interrupt, that is really with respect to trade agreements and the trade organizations. That is not the case with respect to the standards setting organizations.

**WORD:** And that is where each of the regulatory agencies has the expertise in those fields and they do set the regulations. There has not been a whole lot of involvement of other agencies getting involved with that particular process and the domestic area, and that is what you are referring to. If FDA comes up with a regulation, we would have to make sure that it was in compliance with the trade obligation. There is also a comment period where industry or other agencies, governments or what have you, can bring up issues or make comments to say otherwise.

**NEWSOM:** I agree, that is the status quo, but I guess part of my question is whether or not there should be any change in that and whether or not that makes sense in an increasingly global economy with increasing trade flows.

**WORD:** I do not think this has been discussed before. This is the first time that I personally have heard of it. It is certainly something that we can consider. I do not think that there is any movement in government right now to handle that particular situation. Yes, you are right, things are becoming increasingly more global but again the expertise of the regulations lies in that particular agency. The DOC, for example, does not really have the expertise to comment on regulations being developed for meat and the USDA. The DOC would make sure that those involved were not in violation of any trade agreements, but I am not sure what value we would add in doing something like that.

**PORTAL:** In the case of Mexico, it is a wild guess because we have a new administration. My personal guess is that the new administration would be against it. I would expect in the trade area that the new administration will carefully hear the position of industry. They do not want any more free trade agreements because there are so many that they do not feel that they are capable to utilize them fully. They want to deepen their relationship both with the United States and the European Union. So the trade activity and negotiations are a very sophisticated but minimum part of the overall picture and will not be a priority. SECOFI may be changed into a development ministry to try and support more medium and smaller sized companies. In fact, there were discussions of whether the trade negotiations should be moved to the Ministry of Foreign Affairs, which did not make a lot of sense. It

appears that it will not happen that way. Attention to free trade will probably not be the priority for resources for the present administration.

**REYNA:** I think there is a trend that is going to force the U.S. government to officially address these international standard setting bodies and the issues in which they are involved. One of the things that we have probably made clear, is the different structures between the standards regime in Mexico and the standards regime in the United States. One is generally voluntary and the other is generally mandatory. So you have U.S. industry that is at many of these meetings, but NIST is getting involved more and more. I think as time goes on and these issues bubble up even more, it is going to force the U.S. government to become officially involved, and to be present at those meetings.

**WORD:** But you are talking about government entities. She is talking about USDA, FDA, those setting standards bodies.

**NEWSOM:** And I am also talking about the international standards setting bodies. For example, the WTO, through the Agreement on the Application of Sanitary and Phytosanitary Measures or the Technical Barriers to Trade Agreement, is recognized as being the reference in resolving trade disputes. So the decisions that come out of these intergovernmental, international standard setting bodies are critical because they are then going to be the bar in resolving trade disputes in the WTO, regardless of whether there is a voluntary or a mandatory national system.

**WORD:** I know that for instance you had mentioned the Codex food labeling and the biotech issue. The DOC is getting very, very involved in the biotech labeling issue because it has so many different implications. We have been getting many different phone calls from the private sector raising concerns regarding what is going on with biotechnology. There is legislation being drafted every day on biotech labeling. Mexico has some legislation being considered in Congress that would require the identification and labeling of each genetically modified organism. I think that in those types of areas you will see more involvement from the trade officials.

**FOLSOM:** We have another question.

**BERNSTROM:** Good morning, Bill Bernstrom from Cal Safety. Much has been discussed this morning about testing and certification of products. Would any of you comment on the ability of the parties in Article 904 to adopt standards regarding human and social safety, environmental standards and what levels of monitoring of those standards are in effect?

**REYNA:** Are you talking about human rights or are you talking about consumers?

**BERNSTROM:** I am curious about what exactly Article 904 gives the parties? Is it the ability to establish what standards they can, and if so what are those standards?

**REYNA:** Generally, the parties can adopt any type of measure that effects trade as long as it is going to meet a legitimate objective. Article 915 of the NAFTA defines a legitimate objective. Basically, it is the protection of safety, the health of animals and humans, things of that nature. If the U.S. government was to decide, for example, that it is now going to set a standard like it does with OSHA on certain machines to have certain safety equipment, they can do that.

**BERNSTROM:** No, I know they are not impeded, that is what I am asking. Have they done it? Either of the parties?

**WORD:** We set standards every day.

**BERNSTROM:** And how are they monitored?

**PORTAL:** On the bilateral and trilateral relationship there is a mechanism that calls for advance notification and allowing for comments of the other parties. In the case of Mexico, the proposed regulation is published in the form of a NOM. A comment period is set and published. There is an office that notifies the three parties, the Canadians, the WTO and the USTR about the context. So everyone is aware of the contents of that proposed regulation and what they are aiming to protect. Then the other governments have the opportunity to comment to assure that by creating that standard they are not violating these disciplines. That is a way of monitoring internationally.

**REYNA:** Mr. Bernstrom, you are talking about what governments do to insure that the standards are in place and that they are being abided by. When standards are published under the process that Mr. Portal was just talking about, there is an international section, called verification. It is designed to see if companies are living up to that standard. It provides ways for random testing and perhaps selective testing. The ISO has a whole series of standards called the ISO 9000. It is actually a verification process. So, it is not the case that standards are enacted and then just left out there. Normally there is a mechanism attached to the standard through which it can be determined whether the parties are complying with the standard.

**WORD:** I took a different spin on your question and maybe I will just expand so that it will just be additional information for you. Standards are adopted every day. There is no way that you can have a government official go through them all. For instance, the standards in Spanish are published in Spanish. There is no way to have one government official go through on a daily basis and try to figure out whether this is compliant with the trade agreements or whether it is not. As we have mentioned, however, there is a notification process that takes place. The countries in the NAFTA notify the respective inquiry points. Our inquiry point in the United States is the National Institute of Standards and Technology (NIST) at the DOC. The DOC is fortunate to have a standards attaché in Mexico City who goes through the *Dario Oficial* every day and pulls out all of the proposed standards. The attaché puts these proposed standards into a market research report and translates very small amounts so we know the contents of the standard. The attaché sends the report to me and to NIST who then sends out the report to interested parties or organizations that are involved in that particular area. I send it to our main contact at the Industry Sector Advisory Committee at the DOC. It is then disseminated to industry so that industry knows what is going on.

Industry really must take a more proactive role in the standards setting process. Players in a particular industry know the product and the industry. When standards are being developed, the industry players should know who is developing the standard in the other country and weigh in with their opinion about the developing standard. Industry should influence the process at the very beginning. When the standard is published in draft, the parties in the industry should make sure they get their comments in. It is the government's obligation to consider those comments before finalizing the regulation. If you are interested you can call NIST at (301) 975-4040.

**BERNSTROM:** Thank you. A quick question, someone mentioned earlier this morning about the dumping of Chinese goods in Mexico. Does anybody have any

idea of the volume of goods that are coming from Asia or China that are trans-shipped into the United States?

**WORD:** Trans-shipped through the United States to Mexico?

**BERNSTROM:** Made in China, sent to Mexico, labeled as made in Mexico, and then sent to the United States?

**REYNA:** I do not have any exact figures but I can tell you that Mexico enacted anti-dumping investigations on roughly one-third of the Mexican tariff schedule and it captured almost all Chinese goods coming in. That basically stopped many of the imports. But China has maquiladores in Mexico as well.

**WORD:** Remember though, just because it is being trans-shipped through the United States, that does not mean it gets NAFTA treatment, dutiable treatment. It is still a Chinese good.

**BERNSTROM:** No, I am saying they are trying to make it look like a Mexican good. I mean, I know that is not an infrequent situation. I just wondered if anybody knew the volume.

**WORD:** I do not have that figure.

**BERNSTROM:** All right, thank you.

**FOLSOM:** Next question.

**GORDON:** I am Michael Gordon, professor at the University of Florida College of Law, and I want to ask some questions, particularly about cultural standards. Before I do, in response to Miguel Jaúregui's comments about the Helms-Burton law, I have always considered that our NAFTA partners, Canada and especially Mexico, are third party beneficiaries of that law. The amount of trade with Cuba that either is initiated in Mexico or Canada, but more so the great amount of trade between Cuba and the United States, almost exclusively goes through Mexico and to some degree through Canada. I was sitting on the floor last January of the Hotel National in Havana, pulling out the wine bottles in the wine rack and writing down where they came from. The maître d' obviously was curious as to what I was doing. I said, "I am interested in where you get all of your wines because so many of these wines are U.S. wines." He said, "We get whatever we need for the hotel, we just order it through Mexico." So there are Mexicans benefiting. The reason for the Helms-Burton is obviously political. The Cuban American National Foundation is an extraordinarily powerful organization and they are certainly willing to sell another Helms-Burton.

But let me go to the cultural standards. The European Union seems to have considerable experience addressing cultural standards. For example, Sunday working hours certainly has a cultural component, as does Germany trying to protect the name Beer. A whole series of cases that have come before the European Union are related to culture, either directly or as an ancillary element. Often I think it is the direct issue that is raised but it may simply still be a trade barrier to protect industries. Mr. Reyna mentioned that some 65% of the cases before the WTO are standards-related. Are any of these cases which really are cultural standards cases? For example, the American rap music videos. If those videos cannot be played in Mexico because of some technical issue, the electricity is different, the cycles are different, that can be worked out. It is much more difficult when Mexico complains about the profanity in the video or about something else, the beat for example. How do we address that? Article 904 does not seem to attempt to address it. I think Article 904 is sufficiently elastic language for a country to raise cultural issues. The

only place we really talked much about culture in NAFTA is in Chapter 11 with a carryover from the Canadian agreement dealing mostly with publishing and media. But it seems to me that culture is going to become more and more important both because it is culture that one is wanting to protect, and because we have run out of other methods of protection. We see that in the investment side where we have diminished the ability to force joint ventures upon companies to have local content requirements to match exports with imports. So now nations are turning to culture. Not as much in Mexico, perhaps not very much at all in Mexico, but certainly in Indonesia, Malaysia, India. These countries have all been talking recently about the intention to protect their industries, particularly automobile industries, using culture as a basis. So I would like to hear your comments.

**PORTAL:** Either we forgot to put that item in the negotiations or we are petulant because we have a stronger culture. I really believe that culture has not been an issue for international trade negotiations for Mexico. There are definitely cultural results out of these trade negotiations because products and services are available now in more spheres of the social pyramid than before. But this is a two-way street. The United States is also being influenced by our culture. In the end it is really an issue that will change without a doubt because of the telecommunication phenomena. The internet is in English, like it or not. So if you do not speak English, it is tough to get into the economy. Those kinds of circumstances are a fact of life. Cultures will change but I have rarely heard of cultural issues as a worry for Mexico in international trade. When I have heard such concerns, it is completely exaggerated and from the kind of people that say we should be speaking Aztec and have no trading or modernization. It is not tied to a trading issue.

**REYNA:** There are big issues involving culture. One area that has arisen from the NAFTA and carried over into the WTO is geographical recognition, or recognition to geographical trade marks. For example, France has reserved and fought for the right to use the term champagne. Mexico has reserved their right for the term tequila. If you produce tequila in Bolivia or in Ohio, you cannot call it tequila. These are directly related to culture but there are other disputes as well. What we are seeing more and more are disputes involving content of movies and magazines and things of that nature. Not too long ago we resolved our dispute with Canada on the issue involving Sports Illustrated. Sports Illustrated was being sent electronically to Canada. In Canada they were doing the printing and inserting Canadian advertisements so it looked like a Canadian magazine. The dispute was over the content. France and the European Union have brought up issues involving movies and music and I think we are going to see a lot more of that as time goes on.

**WORD:** I am not aware of any disputes through the formal dispute mechanism in the WTO that directly relate to culture. While Mr. Reyna mentioned 65% of the disputes might undertake some sort of standards component, there has only been one dispute filed under the WTO Technical Barriers to Trade Agreement, and that was a recent Canadian case involving asbestos. The distinct products in the asbestos case are guarded under the section on distinct products in Chapter Three of the NAFTA – the chapter on trade in goods. Mexico's interest with the tequila standard is to maintain its right to make sure that Mexican tequila remains a distinct product. There is an ongoing issue regarding the banning of bulk exports of tequila. Right now the United States is able to import bulk exports of tequila from Mexico.



However, the private sector has actually drafted and distributed to industry their own preferred version of a regulation that would ban the bulk exports of tequila.

**FOLSOM:** I know we have one more question from the floor but if I could just have one minute. Trying to limit your question, Professor Gordon, to just the NAFTA experience and looking north of the border. This is an issue that is dear to many in Canada and of course I am referring particularly to the English speaking community in Canada, not Quebec. I think the lesson to be learned from the attempts in Canada to enforce the Broadcasting Act and the regulations that essentially establish quotas on Canadian content in the context of broadcasting is that the internet is going to overrun any attempt the Canadians ever make. Here we have Canada in the awkward position of having dearly negotiated for and paid heavily for the cultural exclusion that exists in the NAFTA agreement. Yet the internet, when it becomes a full media experience, which is not far away, is essentially going to render moot the controls over Canadian broadcasting in the name of cultural protection. I understand that it is technically feasible to actually regulate internet content through what are known as proxy servers and that that is done in the Middle East and in China right now in the name of cultural protection and content protection. But Canada has not elected to do that and I do not think they will. I think Canada paid a very high price to get that exclusion in the NAFTA and technology is going to render it an expensive price indeed because Canada is not going to be able to enforce the agreement. In that respect I commend Mexico for not being concerned about it because technology would have overridden any benefit they would have gotten out of negotiating in that sector.

**TRONCOSA:** Javier Troncosa from Los Cabos. This question is directed at Mr. Portal or Mr. Reyna. I want to share with you an experience that I am having and I also want to see if you can share an experience. Right now there is a company that wants to import, for the first time, textiles and shoes. In Mexico textiles and shoes require a specific importation registry. There is a rumor that the registry is going to be held for a few months and that is making those companies have to wait or hire somebody else that already had that importation license to cross the textiles to Mexico. If a company approaches the Custom Authorities and lets them know exactly what the company is doing, and if Customs see that it is a solid company, they will grant the registration. However, that will take time, probably, a month or two. Have you had the same experience regarding licenses, not technical standards nor permits, with respect to a product that is being imported from Mexico to the United States and the importation process is being delayed in this way?

**PORTAL:** If I understand correctly, this is not a license or registration requirement. Those would be prohibited under NAFTA. The customs authority has implemented a requirement for importers to get the specific registration number aside of their tax identification number. There are certain sectors that went to the Customs Authority to express a problem with contraband. The industry has been worried about the efficiency of the Customs Authority and they have created a mechanism whereby industry works together with the Customs Authority to try and avoid corruption and try to avoid contraband. There is a monitoring mechanism as to who is importing certain products. That is the reason for the requirement. It is a program aimed at statistically tying the information on who is importing with what the industry sees in the market. It is an effort to try and stop the problem of contraband. The process might be cumbersome and takes some time.

**TRONCOSA:** A month.

**PORTAL:** A longer period for some because of consultation with the industry to make sure that the individual they are giving the number to is not on the black list. Being blacklisted means that the individual was caught not paying their taxes and that kind of thing.

**TRONCOSA:** Have you experienced the same thing from Mexico to the United States regarding the license?

**REYNA:** Any time you are dealing with textiles and footwear in trade you are dealing with a very technical and complex product. There are all sort of quotas and tariff level quotas and things like that on those products. One of the reasons why Mexico and the United States will require special procedures involving textiles is to keep an eye on those quotas. I am sure that is one of the things happening here. Same thing in the United States. We have very stringent rules of origin that apply to textiles and footwear. This is to make sure that the United States can monitor where the products are coming from in order to make sure that all of its quotas and tariff quota levels it has with those different countries are implemented correctly and administered correctly.

**WORD:** We do have an importer registry. If you find that it is being problematic and you are being told month after month that you have got to wait and there are problems, let me know. We are dealing with the importer registry issue with Mexico right now through our customs working group. Because what we are finding is that while it was set up to handle some of the sensitive products, including textiles, we are finding that more and more products are being added to the list on a daily basis. There is no transparency so that you could have been shipping your product for a year and then you go to the border and you find out that your product is being held up because now you have to comply with the importer registry requirement. We have been hearing a lot of complaints about the delays. They are told it takes two weeks and then they go back and it will take another 30 days and another 30 days. This is something that we are dealing with in the customs working group.

**GILLEN:** Steve Gillen from Foster Wheeler Corporation. I have a hypothetical. Assuming that most of the effect of NAFTA is to commerce between countries. Assuming a country does invest in and creates a subsidiary in Mexico, and it takes into account all the tax, employment and other issues. This country puts into effect a license so that the licensee subsidiary can market technology and services in Mexico. The industry that I am talking about is an engineering industry. The interesting countervailing effect was that the client, who is a state-owned petroleum monopoly, called PEMEX said, "I do not want to deal with your subsidiary, I want to deal with your home country." The arguable reason was because, "I cannot justify paying the rates that you want to a Mexican company." Whether or not this reason had any substance to it, we were forced to ultimately take the contract in the name of the licensor. Is this a question that NAFTA can resolve or is it a question to take up internally in Mexico with the subsidiary company, seeing if it can enforce its rights as a Mexican company?

**WORD:** That is definitely the type of issues that we deal with on a daily basis in my office. I have someone in my office that covers your particular industry. You can give them more details to figure out exactly what is going on and we can see if we can address this. PEMEX is going through some major changes right now, and

we have asked President Fox what he intends to do with PEMEX. We are getting some very broad comments so we will find out with this new administration. I think that this is something that can certainly be addressed. This is hypothetical, though, right?

**GILLEN:** Yes.

**MR. PORTAL:** Then this is a hypothetical answer. Perhaps there is an article in the Constitution that forces the government to purchase at the best rates and prices available of both goods and services. Then there are public works and acquisition laws that have created a whole set of bureaucratic rules on how to acquire goods and services. Depending on certain things of which I am really not aware. They can buy directly through internal committees. Other times they have to go through public bidding to acquire. What I understand is that PEMEX has created a U.S. subsidiary called PMI, PEMEX International. I do not know if that is the case. Supposedly these laws do not apply to a foreign-located entity and therefore they have more flexibility to do business directly in the United States without going through the process of bidding and complying with all of the internal requirements to make sure that they are getting the best prices. Perhaps this is why even though PEMEX valued the services of your company, you could not agree on the price of what is competitive to Mexican providers of similar services. Under those circumstances, PEMEX, by law, would need to require services from the lowest bidder and therefore maybe through these mechanisms they wanted your services at the market rate without having to comply with this Mexican law. Maybe that is the case, but this is really more an internal administrative issue than trade.

**GILLEN:** That may be right. The constitutional requirement, obviously, is something to consider that would force them to use a local company. Thank you.

## BIOGRAPHICAL SUMMARIES

Professor Ralph H. Folsom is a Professor of law at the University of San Diego School of Law. He received an A.B. from Princeton University, a J.D. from Yale Law School, and an LL.M. from London University, School of Economics. He has been a Senior Fulbright Resident Scholar in Singapore and a visiting professor at the Universities of Hong Kong and Paris, and Monash University in Australia. His numerous books in print include *INTERNATIONAL BUSINESS TRANSACTIONS*, *EUROPEAN UNION LAW*, *NAFTA LAW AND BUSINESS* and *INTERNATIONAL BUSINESS AGREEMENTS IN THE PRC*.

Lic. José Augustín Portal is a partner in the Mexico City office of Haynes and Boone, S.C. Mr. Portal has extensive experience in foreign investment, international corporate law, international trade, customs and antitrust law. Prior to joining Haynes and Boone, Mr. Portal was the Standards General Director, Ministry of Commerce and Industrial Development (Secretaría de Comercio y Fomento Industrial). He is admitted to practice in Mexico and is the author of "The Restructuring of Mexican Private Debt," in *Doing Business in Mexico*, published by Matthew Bender and Southern Methodist University. During negotiations of the North American Free Trade Agreement, Mr. Portal served as lead Mexican negotiator for Chapter IX of NAFTA, which relates to "Technical Barriers to Trade." Mr. Portal graduated with honors from the Universidad Nacional Autónoma de México in 1983 with the law degree, Licenciado de Derecho. In 1984, Mr. Portal received a master of law degree from the University of Houston.

Jimmie V. Reyna, Esq. is an international trade attorney and partner in the Washington office of Williams Mullen Clark & Dobbins. Mr. Reyna has a wide range of experience in international trade related matters, including: trade policy and trade regulation (antidumping and countervailing duty cases); trade agreements (GATT, GATS, WTO, NAFTA, FTAA); investment and commercial law; technical barriers to trade (standards), and customs. Mr. Reyna is on the US roster of eligible panelists for NAFTA Chapter 19 disputes. In addition, Mr. Reyna is on the WTO (World Trade Organization) indicative list of non-governmental panelist candidates for dispute in both trade in goods and trade in services. Mr. Reyna is a frequent speaker on international trade issues, has written numerous articles on trade issues, and has authored two books (*Passport to North American Trade*, *Rules of Origin and Customs Procedures Under the NAFTA*; *The GATT Uruguay Round: A Negotiating History 1986-1992: SERVICES*). Mr. Reyna's practice primarily involves representation of clients in U.S., Mexico, and Central and South American international trade matters. He received the B.A. from the University of Rochester in 1975 and the J.D. from the University of New Mexico School of Law in 1978. He is admitted to the bars of New Mexico and the District of Columbia.

Geri C. Word is an International Trade Specialist in the Office of NAFTA and Inter-American Affairs at the U.S. Department of Commerce, Washington, D.C. Ms. Word monitors compliance of provisions contained in the North American Free Trade Agreement (NAFTA), including temporary entry of business personnel, standards-related measures, and agriculture. Ms. Word assists U.S. firms which export products to Mexico and Canada. She works closely with U.S. businesses, associations, and foreign government officials to investigate perceived barriers to

trade and to ensure fair market access for U.S. exports. She has spoken at conferences and seminars across the United States about NAFTA-related issues. Ms. Word is the lead delegate of the Department of Commerce for the NAFTA Temporary Entry Working Group, the NAFTA Committee on Standards-Related Measures Working Group, and the Free Trade Area of the Americas (FTAA). Prior to joining the Department of Commerce, Ms. Word worked for the Department of Defense, Office of Political Affairs in the Azores, Portugal. She performed political-military liaison functions between the Portuguese and the Americans and assisted in bilateral negotiations between the United States and Portugal.