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## **MEXICO TRADE CAPACITY BUILDING PROJECT**

**ENHANCEMENT OF THE BUSINESS AND LEGAL ENVIRONMENT AND TRADE CAPACITY  
THROUGH LEGAL REFORM AND IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE BY  
COMMERCIAL COURTS IN MEXICO**

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**ANNUAL REPORT  
1 OCTOBER 2010 to 30 SEPTEMBER 2011**

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## EXECUTIVE SUMMARY

During the last fiscal year (1 October 2010 – 30 September 2011) the National Law Center for Inter-American Free Trade (NLCIFT) has effectively carried out a number of key activities under its Global Development Alliance Partnership (GDA) with the United States Agency for International Development (USAID) for the *Enhancement of the Business and Legal Environment and Trade Capacity Through Legal Reform and Improvements in the Administration of Justice by Commercial Courts in Mexico* (the Project). In order to develop and implement the Project's objectives and task areas, the NLCIFT works in close collaboration with local partners as well as with United States and other international experts.

There are four main task areas under which the NLCIFT has been focusing its efforts, all of which promote a better business and legal environment in Mexico:

- (i) Oral trial advocacy training on civil and commercial matters for state- and federal-level judges.
- (ii) Secured transactions outreach and reform to the judiciary and the legal community.
- (iii) Training for federal-level judges on competition law and policy.
- (iv) Continued legal training for the State courts on various commercial law topics.

Continuous work has been performed in all four task areas and activities including training programs, round table discussions, outreach sessions and continued legal training have been imparted to and with the participation of Federal and State courts as well as with the participation of public and private sector representatives in Mexico. Some highlights of such activities include:

- A round table discussion (or colloquium) held on June 2, 2011 and hosted by the Federal Judicial Institute (IJF) in Mexico City. The round table, moderated by Ambassador Charles S. Shapiro, focused on the current Mexican legal framework on personal property security interests and the identification of areas for future improvement. The discussions had a significant impact on all public and private sector representatives present, and have led to renewed efforts on legal reform and the creation of outreach/training programs on secured transactions in Mexico.
- Delivery of hands-on training programs on the new oral trial process for civil and commercial matters. The training methodology used by NLCIFT is highly practical, with approximately 80% of the program focused on simulations, small group breakout and practice sessions as well as mock trials based on a hypothetical case



specifically developed for this training. Training is essential to the effective implementation of these reforms which, in great part, depend on the judge's practical understanding and compliance with the process. It is expected that these summary oral trial processes will reduce courts' case loads and will expedite the decision-making process, thus enhancing transparency and predictability in the enforcement of claims. The success of these training programs has been such that NLCIFT is currently discussing training programs with Villa Hermosa, Tabasco and other Mexican states.



## **I. TASK AREAS: ACTIVITIES DURING FY 2011**

During the last fiscal year, the NLCIFT continued to work on all four task areas under the Project and effectively conducted various activities including training programs, round table discussions, outreach sessions and continued legal training to and with the participation of Federal and State courts as well as with the participation of public and private sector representatives in Mexico.

This section highlights all activities per task area in the following order:

- (i) Oral trial advocacy training on civil and commercial matters for state- and federal-level judges.
- (ii) Training for federal-level judges on competition law and policy.
- (iii) Continued legal training to the State courts on various commercial law topics.
- (iv) Secured transactions outreach and reform to the judiciary and the legal community.

### **A. ORAL TRIAL ADVOCACY TRAINING FOR STATE- AND FEDERAL-LEVEL JUDGES**

As Mexico prepares for the entry into force of reforms to the Federal Commercial Code and the Federal District's Code of Civil Procedure that introduce an adversarial (oral) trial for the resolution of commercial and civil disputes, the NLCIFT has provided continued support to the Judiciary in the Federal District as well as to Federal-level courts. Both sets of reforms mirror each other, with only minor – almost negligible – variations in the reforms to the Commercial Code. The summary oral trial processes introduced by these reforms aims at reducing the courts' case loads and at expediting the decision-making process. A monetary threshold in the amount of a dispute that can be brought to court under this process is approximately U.S.\$17,000; however, according to Chief Justice Edgar Elías Azar from the Superior Court of Justice of the Federal District, this amount will be revised annually in an incremental basis. It is reasonable to expect that if these reforms are effectively implemented and further complimented with adequate rules of evidence – among others – they will enhance transparency and predictability. Training is essential to the effective implementation of these reforms which, in great part, depend on the judge's practical understanding and compliance with the process.

During the last year the NLCIFT has delivered training to trial level judges in the Federal District on oral trials specifically in civil matters. Through numerous planning and preparatory sessions both in and out of Mexico, NLCIFT staff worked to design skill-based training programs tailored to the content and scope of the reforms. The training programs



developed by the NLCIFT follow a learn-from-practice methodology with 80% of the time devoted to practical sessions – *i.e.*, simulations, demonstrations, small group breakout and practice sessions – and 20% devoted to the discussion of modern civil and common law theories and doctrine.

These training programs have been designed with the input of the *Instituto de Estudios Judiciales* (IEJ) and the special commission established by the *Tribunal Superior de Justicia del D.F.* to oversee the implementation of the reforms. The NLCIFT team included staff members with experience on both the traditional written process as well as on the adversarial process, and also included multiple bilingual United States judges. The combined experience of the NLCIFT team in the area of judicial training, civil and common law trial systems and alternative dispute resolution mechanisms provided an enriching learning environment for the judges.

The first of these training programs was delivered in Mexico City from January 25 - 27, 2011. The NLCIFT provided all participants with reference materials and PowerPoint presentations related to various aspects of oral trials and prepared a detailed hypothetical case for participants to work through during the session. The training was delivered to the initial group of 12 Mexican judges that have been appointed as oral trial judges for the Federal District. The sessions were designed to be consistent with a learn-from-practice methodology, including open dialogue between the 12 Mexican judges and the NLCIFT team, practice simulations on each aspect of the trial process (direct and cross-examination of witnesses, expert witness testimony, presentation of material evidence, etc.), as well as two mock trials conducted by the Mexican judges. The various topics covered by the training program include: basic principles and rules regulating oral trials; the role of the judge as the director of the process; supervision of the parties and the role of lawyers; procedural matters including motions, defenses and other petitions; admissions of evidence during a hearing; witness interrogation, cross-examination, and the use of interpreters; filing and storing of records of hearings; evidence (material, expert witnesses, etc.); and the decision-making process.

The NLCIFT's second training session for the same 12 Mexican judges was held on February 24-25, 2011, and focused on pre-trial settlement conferences (conciliation). The session included both substantive presentations, practical examples and two mock conciliations.

Since the initial two training programs with the *Instituto de Estudios Judiciales*, the NLCIFT has also begun working with the Judicial Training Institute of the Federal District (IJF) to develop a training program for Federal-level judges. In the next year, the NLCIFT expects to conduct training sessions with the IJF including: (i) a general lecture-style program on Oral Trials on Commercial Matters; (ii) a roundtable discussion with Federal-level Judges at the IJF where a report on the reforms will be discussed in detailed along with international experts; and (iii) skill-based training sessions.



Finally, the NLCIFT is currently discussing possible training programs on oral trials on commercial matters for the Judiciary in other Mexican states.

## **B. SECURED TRANSACTIONS OUTREACH AND REFORM TO THE JUDICIARY AND THE LEGAL COMMUNITY**

As a result of the considerable support by the NLCIFT and the significant work of local partners (particularly Mexico's Ministry of Economy), today Mexico has a much more functional system in the area of Secured Transactions.

In October 2010, NLCIFT Project Manager Cristina Castaneda participated in a project sponsored by USAID (in collaboration with Booz Allen Hamilton) that included an assessment of the business environment in Mexico with a particular focus on the topic of Access to Credit. Ms. Castaneda met with numerous public and private sector entities both in Mexico City and in Oaxaca. Although this assessment was conducted outside of the Project and funds from the Project were not used, the information obtained during the assessment has been extremely valuable to the NLCIFT as roadmap work on the current secured lending environment in Mexico.

In November 2010, the United States Commercial Finance Association (CFA) approached the NLCIFT to ask for assistance in coordinating a colloquium on the promotion of secured lending in Mexico with particular focus on the enforcement system. The interest by the various private and public sector entities in Mexico to hold this type of colloquium was apparent since the planning stages in November-December 2010.

After various administrative meetings and calls, the colloquium was organized into a one-day Round Table discussion hosted by the Federal Judicial Institute (IJF) in Mexico City on June 2, 2011. The timing of this event was ideal, since the Registry of Security Interests (*Registro Único de Garantías Mobiliarias* – RUG) made an announcement of the successful operations of the RUG just days after the Round Table (June 7, 2011). The RUG implemented an electronic registration system with a single electronic database for the entire country, at no cost to the user. Since it began its operations in October 2010 until the date of the announcement, there had been over 20,000 registrations, a high percentage of which were for agricultural products and for machinery and equipment.

The Round Table discussions were moderated by Ambassador, Charles S. Shapiro, and focused on the current Mexican legal framework on personal property security interests and the identification of areas for future improvement. In particular, the discussion revolved around two areas: 1) the recently-launched Mexican RUG; and 2) the existing law on secured transactions and the need for its final and effective revision including judicial and



extrajudicial enforcement mechanisms for all personal property security interests. Attendees of the Round Table included: judges and magistrates from the Federal and Mexico City Judiciary; representatives from Mexico's bankers association; public notaries; commercial notaries; lawyers, Mexico's Treasury, and its Commerce and Foreign Relations Secretariats. Representatives from the CFA included members from their executive board of directors, staff, counsel and its members from Bank of America, Citibank, Cole Taylor Business Capital, GE Capital, JPMorgan Chase and Wells Fargo. Also present at the meeting were Economic Officers from the United States Embassy as well as USAID officers. The NLCIFT's team for the Mexico Secured Transaction project was led by NLCIFT President and Executive Director Dr. Boris Kozolchyk and includes project managers Cristina Castaneda and Marek Dubovec, as well as then consultant, now Deputy Director Barrett Avigdor, and researcher Elizabeth Pocock. The IJF collaborated diligently in the logistics for the event at their offices. There were numerous logistics and technical staff assisting to ensure that the event ran effortlessly.

Following the Round Table, the NLCIFT has been actively engaged with local partners, and since then a drafting commission was created to draft the reforms to the Mexican law on secured transactions. The drafting commission is led by Mexico's Ministry of Economy, particularly by Jan Boker Regens, General Director of National Commercial Regulation and Isis N. Isunza, Director of the Under Secretariat of Competitiveness and Business Regulation. In June and July 2011, NLCIFT assisted the drafting commission by providing answers and supporting documents pertaining to initial questions on concepts and principles of secured transactions. Further, the NLCIFT continued discussions on future training programs for the judiciary on secured transactions law and practice.

On September 13-14, 2011, the NLCIFT, with the support of USAID, invited members of this drafting commission to participate in a study tour in Tucson, Arizona, sponsored by the United States Department of State for delegations from Chile, Colombia and Panama to support and assist them on their secured transactions reform efforts. The Mexican members that attended the meetings in Tucson were Lic. Jan Boker, and Lic. Isis N. Isunza, both from the Ministry of Economy.

The two-day program took place at the NLCIFT headquarters and was led by NLCIFT staff and consultants. Topics included: an overview of legal principles of secured transactions reform in the Americas as a tool for economic development; a discussion of the Model Inter-American Law on Secured Transactions and Model Registry Regulations of the Organization of American States; an overview of the NLCIFT 12 Principles of Secured Transactions; a study of the Honduran and Mexican laws on secured transactions; and a review of the practical means of implementing secured transactions law, including the design and implementation of a registry system. The program also included meetings with representatives from U.S. banks and local businesspersons from a variety of sectors, as well as a visit to the University of Arizona Law School to discuss the importance of legal



education and policy issues as well as innovation and entrepreneurship projects and their relevance to law reform and capacity building.

The Mexican members of the drafting commission stayed in Tucson until September 17<sup>th</sup> to engage in detailed analysis and discussion of the Mexican law on secured transactions and the specific areas of reform. During their stay, they also participated in an International Secured Transactions Panel hosted by the International Law Society and the Business Law Society (student clubs) at the University of Arizona James E. Rogers College of Law. The Panel was moderated by Dr. Boris Kozolchyk and was designed to provide attendees with information on Mexico's and Chile's secured lending laws. The event was attended by over sixty guests including law students, graduate students, professors and staff. Mexican panelists spoke to attendees about the progress of the RUG and the importance of secured lending for the Mexican economy.

The NLCIFT will continue to assist the Mexican drafting commission as they work to complete reforms to their secured transactions law and will coordinate and hold training activities in this upcoming year. In the next fiscal year, the NLCIFT will: provide ongoing advice on specific issues and provisions of the law, registry of security interests' operations, and the interconnection with other registries; co-draft official commentaries to the Mexican law on secured transactions; and co-draft bilingual guides and manuals for borrowers and lenders. The NLCIFT will also deliver training to the judiciary in collaboration with the RUG, CFA and the IJF, on secured transactions and the practical use of the registry of security interests.

### **C. COMPETITION LAW AND POLICY TRAINING FOR FEDERAL-LEVEL JUDGES**

The NLCIFT has worked continuously over the past year to deliver competition law and policy training for Federal-level judges. In collaboration with Abt Associates, contractor to USAID on competition, and the Mexican Federal Competition Commission (COFECO), the NLCIFT hopes to provide the first of these trainings before the end of 2011. The NLCIFT and its partners are working to design a skill-based training that can be offered to the federal judiciary on the technical issues involved in the area of competition policy. It is expected that judges will greatly benefit from these training programs and that, upon completion, the judges will be more comfortable when presented with competition policy issues and economic concepts in the courtroom.

Currently, a draft agenda of the two-session training program has been developed, including specific references to preparation materials that will be provided to trainees in advance of the programs. The first training session will address specifically the issue of cartels and absolute monopolistic practices. The second training session will focus more generally on the abuse of a dominant position in the marketplace. Both sessions will also



begin with a discussion of why competition is important for the Mexican economy and a review of the recent amendments to Mexico's Federal Competition Law.

All trainings will take place over a three-day period following a "skill-based" design. The first day will be used as a general introduction session for all attendees. After the completion of the first day, the group will be divided in two, with one half attending the practical training sessions on day two and the other half attending the same practical training sessions on day three. This schedule has been designed to allow more individuals to attend the trainings while still maintaining the benefit of a small trainer-to-trainee ratio.

#### **D. CONTINUED LEGAL TRAINING TO THE FEDERAL DISTRICT JUDICIARY ON COMMERCIAL LAW TOPICS**

Meeting another request from the *Instituto de Estudios Judiciales*, the NLCIFT has provided ongoing training to the Mexican judiciary in a number of commercial law areas. Such training programs take the form of conferences or lectures with a prolonged Question and Answers session. During FY 2011, the first of these lectures was delivered by the NLCIFT in late-October 2010 in Mexico City on the topic of "The Rights of Creditors and Debtors in Bankruptcy." The lecture was extremely well-attended (with over 90 people in the audience) and covered, among other topics, the differences between reorganization and bankruptcy proceedings, priorities in bankruptcy, and the distribution of assets among creditors.

The second training session took place in mid-May 2011 and was organized as a panel discussion on "The Role of the Judiciary in Mediation and Arbitration." The Panel was attended by approximately 50 people, including members of Mexico's Federal District judiciary as well as in-house counsel and representatives of Mexico's bar associations. The panel discussions focused first on Mediation, then on Arbitration, and were concluded with a one-hour question and answer session.

The NLCIFT plans to continue working with the *Instituto de Estudios Judiciales* to conduct legal training for the Federal District Judiciary on other commercial law topics. Some of the future topics include: oral trial advocacy on civil and commercial matters; alternative dispute resolution mechanisms; cross-border enforcement of judicial decisions; and creditors' and debtors' rights in bankruptcy.



## **II. CHALLENGES AND RESOLUTIONS**

Over the past four years working with Mexico under the Project, the NLCIFT has faced the challenge of Mexico's traditional and time-consuming internal procedures for the approval and scheduling of activities. However, during this past fiscal year NLCIFT has been able to address this challenge by:

- (i) identifying key staff and specific procedures that need to be followed to deliver certain training activities or to hold interdisciplinary meetings or working sessions;
- (ii) scheduling and consistently confirming and following-up with our contacts at the various public and private sector institutions;
- (iii) developing and building stronger productive working relationships with existing local partners;
- (iv) identifying new and additional local partners with needs that can be addressed under the Project and who are enthusiastic about common goals; and
- (v) identifying new and additional United States-based partners that provide added expertise in the four task areas under the Project.

Further, the NLCIFT has developed a strategy for coordinating a numerous yet manageable number of activities during a single quarter to facilitate the interchangeability of activities within a same quarter. The NLCIFT believes that each of the above-mentioned steps taken to address this challenge have already resulted in many success stories throughout this past year. Clearly, these steps need to continue to be strengthened during fiscal year 2012 in order to attain all of the goals planned under next year's work plan.