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Mexico and Drug Certification in 1999: Consequences of Decertification

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(name redacted)
Specialist in Latin American Affairs
Foreign Affairs, Defense, and Trade Division

ABSTRACT

This report summarizes the drug certification requirements mandated by Congress, and indicates the types of U.S. assistance that could be suspended if Mexico were to be decertified. It also indicates the types of assistance that could be exempted from suspension, or be provided by the President anyway, using special authorities. It also indicates how the negative votes of U.S. representatives would affect multilateral development bank lending to Mexico. This report will not be updated regularly, but will be updated if conditions warrant. Related CRS reports include *Narcotics Certification of Drug Producing and Trafficking Nations: Questions and Answers*, CRS Report 98-159, by (name redacted), updated March 1, 1999; *Mexico-U.S. Relations: Issues for Congress*, CRS Issue Brief 97028, by (name redacted), updated March 1, 1999; and *Mexican Drug Certification Issues: U.S. Congressional Action, 1986-1999*, by (name redacted), updated March 4, 1999.

Mexico and Drug Certification in 1999: Consequences of Decertification

SUMMARY

President Clinton certified, on February 26, 1999, that Mexico was fully cooperative in counter-narcotics efforts with the United States, setting in motion a 30-calendar-day period in which the Congress may review the President's decision. In recent years, congressional resolutions were advanced but not enacted to disapprove the President's certifications after President Clinton certified Mexico as a fully cooperative country. This report summarizes the drug certification procedures and indicates the types of U.S. assistance that would be suspended or exempted if Mexico were to be decertified.

Under Sections 489-490 of the Foreign Assistance Act of 1961, as amended, the President is required to certify that a country has fully cooperated with U.S. counter-narcotics efforts to avoid sanctions, including the suspension of certain U.S. assistance, and the requirement that U.S. representatives vote against loans for the country in multilateral development banks. The sanctions would also apply if the Congress, within 30 calendar days, passes a congressional resolution disapproving any presidential certification. However, any such congressional resolution would have to be presented to the President and would be subject to veto. Moreover, as indicated below, some types of assistance are exempted from suspension, and the President has special authorities to waive sanctions.

With regard to bilateral assistance, the Clinton Administration is planning to provide $29.85 million in standard foreign assistance and Department of Defense counter-drug assistance to Mexico in FY1999, including $15.9 million in anti-drug assistance, and $13.95 million in economic assistance programs. Because of exclusions for narcotics control assistance and certain economic assistance programs (some of which require notification to Congress), from $13.50 million to $28.85 million of this assistance could be excluded from suspension if Mexico were decertified. Mexico may also receive other types of U.S. military and export assistance in FY1999, including Export-Import Bank financing, which is dependent upon sales and agreements. Export-Import Bank financing of up to $2 billion per year is the major category of all types of assistance which would be suspended in the event of decertification. Since such assistance was developed to finance and guarantee the sale of U.S. products, these suspensions would be harmful to U.S. exporters and sellers as well as to Mexican buyers.

With regard to multilateral development bank lending, decertification would require the United States to vote against pending World Bank and Inter-American Development Bank loans for Mexico, amounting together to over $5 billion, but such votes might not affect lending levels significantly because the United States share of the vote is not sufficient to block approval of loans.

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Mexico and Drug Certification in 1999: Consequences of Decertification[1]

For many years Congress has monitored presidential certifications of the extent to which Mexico has cooperated with the United States on counter-narcotics efforts under requirements that could result in aid and trade sanctions. After providing a brief summary of the drug certification process, this report discusses the possible consequences of decertification of Mexico on U.S. bilateral aid to Mexico and on multilateral development bank lending to Mexico.

Summary of the Certification Requirements

With some modifications in procedure, since the mid-1980s, Congress has required the President to designate the major illicit drug producing and drug-transit countries by November 1st of each year. Congress has further required the President to withhold 50% of certain U.S. assistance for the designated countries for that fiscal year until he certifies by March 1st of each year that the countries have cooperated fully with the United States in drug control efforts. In the event the President is unable to certify that the country is fully cooperative or to determine that the country should be given a certification in the national interest, non-exempted assistance to the decertified country is suspended, and U.S. representatives are required to vote against loans for the country in the multilateral development banks. These sanctions remain in force until the country is certified.[2]

The sanctions would also apply if Congress, within 30 calendar days, passes a congressional resolution disapproving any presidential certification and decertifies a

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[1]This report draws from and updates *Narcotics Certification and Mexico: Questions and Answers,* CRS Report 97-320, March 6, 1997, by (name redacted), Jonathan Sanford, and (n a me redacted). An earlier version of this report was prepared for the Senate Foreign Relations Committee, and it is being released with the permission of the Committee.

[2]Congress required reports on drug producing and transit countries in 1981, and gave the President the authority to suspend assistance to non-cooperative countries in 1984. With the passage of the Drug Abuse Act of 1986, the Congress required the President to withhold 50% of assistance to drug producing and transit countries until he could certify that they were cooperating fully with U.S. counter-narcotics efforts, and it provided for congressional review of presidential certifications. This legislation has been modified over the years and is now found in Sections 489-490 of the Foreign Assistance Act of 1961, as amended. Acting through the Drug Abuse Act of 1986, the Congress also added trade sanctions in Title VIII (the Narcotics Control Trade Act) of the Trade Act of 1974, as amended. This Act gives the President the discretion to apply certain trade sanctions to decertified countries, including denial of preferential trade benefits, increases in tariff duties, curtailment of air transportation, and withdrawal of U.S. personnel and resources from customs pre-clearance arrangements. Some other sanctions were added subsequently.

country. However, any such congressional resolution would be subject to presidential veto, and some types of assistance are exempted from suspension. Moreover, the President has specified authority to waive certain sanctions, and Section 614 of the Foreign Assistance Act of 1961, as amended, gives the President broad authority to continue to provide any assistance under the Act if he determines and notifies Congress that to do so is important to the security interests of the United States.[3]

Consequences of Decertification of Mexico on U.S. Bilateral Assistance

A. What Assistance Does the United States Provide to Mexico? Section 481(e)(4) of the Foreign Assistance Act of 1961, as amended, specifies that the following types of assistance would be affected by a decertification: (a) any non-exempted assistance under the Foreign Assistance Act; (b) sales, or financing on any terms under the Arms Export Control Act; (c) provision of non-food agricultural commodities under the Agricultural Trade Development and Assistance Act of 1954; and (d) financing under the Export-Import Bank Act of 1945. Mexico is scheduled to receive a variety of these types of assistance from the United States in fiscal year 1999, as indicated below in Tables 1 and 2, although much of the assistance may be excluded from suspension, as explained in the next section.

Table 1. U.S. Foreign Assistance to Mexico in FY1999
(Millions of U.S. dollars)

Total Foreign Assistance Programmed for Mexico:	$29.850
Economic Assistance--Total	$13.950
Development Assistance (DA)	$11.450
Economic Support Funds (ESF)	$ 1.500
International Narcotics Assistance (INC)	$ 1.000
Public Law 480 Food Assistance (Titles I,II,III)	$ -0-
Peace Corps	$ -0-
International Narcotics Control (INC) Assistance	$ 7.000
Military Assistance--Total	$ 1.000
Foreign Military Financing	$ -0-
International Military Education Training (IMET)	$ 1.000
Department of Defense Counter-Drug Assistance	$ 7.900

[3]See *Narcotics Certification of Drug Producing and Trafficking Nations: Questions and Answers*, CRS Report 98-159F, March 1, 1999, 1998, by (name redacted); and*Consequences of Inadequate Counternarcotics Performance*, Memorandum by Jo Brooks of the Department of State Bureau of Legal Affairs, February 23, 1995.

Under standard foreign assistance and Department of Defense counter-drug assistance programs the United States is planning to provide a total of $29.85 million to Mexico in the FY1999 operational budget, including $8 million in State Department-controlled international narcotics control assistance and training, $7.9 million in Department of Defense counter-drug assistance, $1 million in International Military Education and Training (IMET), and $13.95 million in economic assistance programs, including $1 million in AID-administered INC funding.[4]

Economic assistance funds support programs in the environment, health, and democracy sectors. Assistance to the environment sector is by far the largest ($9 million, or 65% of economic assistance), and supports programs to conserve and promote sustainable use of forests and marine ecosystems ($3.18 million), to reduce greenhouse gas emissions and pollution ($2.82 million), and to prevent wildfires and restore areas damaged in 1998 ($3 million). Assistance in the health sector ($1.7 million, or 12% of economic assistance) supports programs to curtail the spread of HIV/AIDS ($1.2 million) and to control tuberculosis in poor and migrant populations ($500,000). Assistance in the democracy sector ($3.25 million, or 23% of economic assistance) supports programs to modernize the judiciary and the legislature, and to strengthen local government and citizen participation. Similar amounts have been provided to Mexico in previous years, with many of the programs carrying over several years. Similar funding has been requested for FY2000, and would be suspended under a decertification until Mexico was fully certified under recertification procedures, although much of the funding might also be exempted from suspension.

Assistance of the type indicated in Table 2 is not programmed in advance, but is dependent upon the sales, agreements, or investments that are made during the year. This category includes (1) drawdowns of U.S. military goods and services under Section 506(a) of the Foreign Assistance Act of 1961, as amended; (2) transfers of used and excess defense articles; (3) government-to-government foreign military sales; (4) OPIC loans and guarantees for U.S. investments; and (5) Export-Import Bank financing and guarantees for U.S. exports. By far the largest program in this category is Export-Import Bank financing that ranged in the last two fiscal years from $782 million in FY1997 to $1.58 billion in FY1998. During President Clinton's visit to Mexico on February 14-15, 1999, he announced that the United States would provide up to $4 billion of Export-Import Bank financing in FY1999 and FY2000 to support the sales of U.S. products in Mexico.

[4]Other types of assistance withheld from countries with inadequate counter-narcotics efforts include sugar quotas, special debt relief, and sharing of forfeited assets. Suspension of the first two are not triggered by decertification, Mexico is not eligible for special debt relief, and Mexico is not presently sharing forfeited assets.

Table 2. Other U.S. Military, Export, and Investment Assistance, Most Recent Fiscal Years
(Millions of U.S. dollars)

DoD Section 506(a) Drawdowns:
$ 1.100 in FY1998
Excess Defense Articles:
$ 3.023 (grant) in current value in FY1997;
$ 0.232 (sale) in FY1998
Foreign Military Sales:
$ 27.663 in FY1997
$ 1.081 in FY1998
Export-Import Bank Financing:
$ 782.025 in loans and insurance in FY1997;
$ 1,576.490 in loans and insurance in FY1998
$ 2,000.000 in loans and insurance available for FY1999
Overseas Private Investment Corporation (OPIC) loans/guarantees:
-0- in FY1997 and FY1998; no program in Mexico

B. What Assistance to Mexico Could Be Excluded from Suspension if Mexico Were Decertified? In accordance with provisions in the Foreign Assistance Act and in Foreign Operations Appropriations Acts, some types of foreign assistance, including narcotics control, disaster relief, child survival and disease, and conservation assistance, are excluded from suspension when a country is decertified under the drug certification requirements. Other types of assistance are excludable upon notification to Congress. As indicated below, under these exclusions, from $13.50 million to $28.85 million of standard foreign assistance would be excluded from suspension, and drawdowns of military equipment and foreign military sales would be excluded as well. Export-Import Bank financing would not be excluded and would be cut off.

Exclusion of Narcotics Control, Disaster Relief, Food and Medicine, and Refugee Assistance. Section 481(e)(4) of the Foreign Assistance Act of 1961, as amended, provides that the following types of assistance would not be suspended upon a decertification: (a) narcotics control assistance, (b) narcotics control-related assistance, (c) disaster relief assistance, (d) food or medicine, and (e) assistance for refugees. In the case of Mexico, this means that $8 million of the State Department's International Narcotics Control (INC) Assistance would be excluded from suspension, while the $7.9 million of the Department of Defense's Counter-Drug assistance would be excluded from suspension because it is not authorized by the Foreign Assistance Act of 1961 and is for counter-narcotics purposes.

Exclusion of Child Survival and Disease Programs. Section 522 of the Foreign Operations Appropriations Act for FY1999 provides that funds appropriated by this Act that are made available for child survival activities or disease programs including activities relating to research on, and the prevention, treatment and control of, acquired immune deficiency syndrome may be made available notwithstanding any provision of law that restricts assistance to foreign countries. In the case of Mexico, this means that the $1.2 million for HIV/AIDS prevention would be excluded from suspension.

Exclusion of Conservation Programs and Possible Exclusion of Energy Programs to Reduce Greenhouse Gas Emissions following Congressional Notification. Section 540(b) of the Foreign Operations Appropriations Act for FY1999 provides, with some exceptions, that funds may be used, notwithstanding any other provision of law, for supporting tropical forestry and biodiversity conservation activities and, subject to congressional notification, for supporting energy programs aimed at reducing greenhouse gas emissions. In the case of Mexico, this means that some, if not all, of the $3.18 million conservation program would be excluded, and that the $2.82 million program for reducing pollution and greenhouse gas emissions would be excluded unless Congress put a hold on the program.

Possible Exclusion of Funds Directed to NGOs following Notification to Congress. Section 543 of the Foreign Operations Appropriations Act for FY1999 provides that any foreign assistance restrictions shall not be construed to restrict assistance supporting programs of Non-Governmental Organizations (NGOs), provided the President decides the assistance is in the national interest and Congress is notified under reprogramming procedures. In the case of Mexico, all of the remaining economic assistance not excluded above ($6.750 million) might be excluded if Congress did not object because all the assistance is channeled through NGOs. However, some parts of the fire prevention/restoration program ($3 million) and the democracy programs ($3.25 million) might be more doubtful because of the fact that assistance provides services to the Ministry of Environment, the Judiciary, and the Congress. Assuming that the assistance that provided services to governmental agencies did not meet fully the NGO test, $2.15 million would be excluded from suspension.

Summary of Non-Excludable Foreign Assistance. Taking into account the exclusions mentioned above, as much as $28.85 million of standard foreign assistance to Mexico might be excluded from suspension, including all economic assistance and all narcotics assistance, leaving only $1 million in IMET assistance to be suspended. Using a more restrictive view of the exclusion of assistance channeled through NGOs, about $4.6 million in economic assistance and the $1 million in IMET assistance would be non-excludable and would be cut off.

Other U.S. Military and Export Assistance. While Section 506 drawdowns of military equipment and Foreign Military Sales would be excluded from suspension because no obligations and expenditures are involved, Export-Import Bank financing and transfers of Excess Defense Articles are not excludable, and would be suspended. Because these programs are not programmed in advance, but depend on the demand for such programs, it is difficult to judge the effect of a suspension if Mexico were decertified. Based on the amount of assistance in recent years, the suspended assistance could amount to a few million dollars in Excess Defense Articles, but could amount to up to $2 billion in Export-Import Bank financing per year. Since Export-Import Bank programs were developed to support the sales of U.S. products, these suspensions would be harmful to U.S. exporters as well as to Mexican buyers.

C. What Assistance Could Be Provided Despite Decertification of Mexico If the President Exercised Special Waiver Authorities? Although the President might be reluctant to exercise special waiver authorities, he has broad statutory authority to waive restrictions and to provide foreign assistance. Section 614 of the Foreign Assistance Act of 1961, as amended, provides that the President may authorize the furnishing of assistance under the Foreign Assistance Act and the Arms Export Control Act without regard to any provision of foreign assistance authorization or appropriation acts when he determines and notifies Congress in writing that to do so is important to the security interests of the United States. Despite the decertification of Colombia in late February 1997, President Clinton exercised the special authorities of Section 614 in August 1997 to provide $30 million in Foreign Military Financing (FMF) and $600,000 in IMET assistance to Colombia. Although the President's authority under Section 614 is very broad, it does not extend to all assistance. Since Export-Import Bank financing is not authorized by the Foreign Assistance Act, the President's special waiver authorities would not apply in that case.

Consequences of Decertification of Mexico on Multilateral Development Bank Lending

A. What Amount of Loans Has Mexico Received from Relevant Multilateral Development Banks (MDBs)? Section 490(a)(2) of the Foreign Assistance Act of 1961, as amended, requires the U.S. Executive Director of multilateral development banks (MDBs) to vote against any loans or other utilizations for any decertified country. The term "multilateral development bank" is defined in the same section to mean the International Bank for Reconstruction and Development (IBRD or World Bank), the Inter-American Development Bank (IDB), the Asian Development Bank, the African Development Bank, and the European Bank for Reconstruction and Development. While the International Monetary Fund (IMF) is an international financial institution, it is not an MDB within the meaning of the drug certification legislation. The only institutions that are relevant for Mexico in this case are the World Bank and the Inter-American Development Bank. The amount of lending that Mexico has received from these banks is indicated below in Table 3, based on information from the two institutions.

Mexico has been a major borrower from the World Bank and the IDB, with most of the loans being under the regular loan facilities at the banks' unsubsidized, quasi-market repayment rates (generally ½ percent more than the banks pay to borrow money commercially on world markets). These loans have supported programs to improve health care, reform the social security system, strengthen education, modernize agriculture, promote energy efficiency, provide water and sanitation in rural areas, and develop better roads. Pending and proposed loans are generally to support the same types of activities. Pending World Bank loans would support education programs, air quality improvement, and financial restructuring and support. Proposed IDB loans would support improved distribution of electricity, strengthening of state and municipal governments, protection of social expenditures, and improvement of labor markets.

Table 3. Multilateral Development Bank Lending to Mexico, Most Recent Fiscal Years, and Pending Loans
(Millions of U.S. dollars)

World Bank		
1997	$ 960	
1998	$1,767	
1999	$ 445	Agricultural Productivity Loan approved
Pending Loans	$3,005	
IDB		
1996	$1,315	
1997	$ 294	
1998	$ 313	
Proposed Loans	$2,150	

B. How Would Current MDB Loans to Mexico Be Affected if Mexico Were Decertified? Multilateral Development Bank loans for Mexico that were approved previously would not be affected at all by decertification. The drug certification legislation provides only that the United States representative would oppose future loans to any decertified country. This means that the still pending loans for Mexico would be the most immediately effected by the drug certification requirements.

C. What Would Be the Impact of U.S. Representatives Voting Against Multilateral Development Bank Loans to Mexico if Mexico Were Decertified? In the event that Mexico were decertified under the drug certification requirements, the U.S. Executive Directors of the World Bank and the Inter-American Development Bank would be required to vote against any future loans for Mexico, including the loans mentioned above as pending or proposed. It is unlikely that a negative vote by the United States would determine the outcome of the loans, even though voting rights are determined by contribution and the United States is the single largest contributor to both banks. On the one hand, bank loans are generally approved by majority vote, and the United States' 17.15% share in the World Bank and its 31.10% share in the Inter-American Development Bank would not be sufficient to block approval, with various combinations of countries able to outvote the United States. On the other hand, decisions on MDB loans are generally taken by consensus and U.S. views might carry considerable weight in delaying or modifying loan proposals. Some officials suggest that U.S. opposition to loans would carry greater weight if the opposition was seen as objection to the purposes or terms of the loans, rather than as compliance to a legislative requirement not directly related to the loans. It should be noted that Colombia was decertified under the drug certification requirements in 1996 and 1997, but that Colombia received $139.7 million in loans from the World Bank and at least $214.5 million in loans from the IDB in the two year period when the U.S. representative voted against loans to Colombia. Comparing these loans to other periods when the United States did not vote against loans for Colombia is difficult because lending varies greatly by year.

D. Could the President Waive the Requirement for U.S. Representatives to Vote Against MDB Loans of Decertified Countries Using Special Waiver Authorities? Officials at the General Counsel's office at the Treasury Department expressed the preliminary opinion that Section 614 special waiver authorities relating to the provision of foreign assistance would not apply to the requirement that U.S. representatives vote against proposed loans for decertified countries.