

CRS Report for Congress

Received through the CRS Web

Drug Certification of Mexico in 1999: Arguments For and Against Congressional Resolutions of Disapproval

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Summary

This report presents arguments for and against congressional resolutions to disapprove President Clinton's February 26, 1999 certification of Mexico as a fully cooperative country in efforts to control illicit narcotics.¹ These resolutions (H.J.Res. 35--Bachus, and H.J.Res. 43--Mica and Gilman) would disapprove the President's certification, but would permit him to avoid withholding of assistance to Mexico if he determined that vital national interests required such assistance. While the drug certification legislation requires that Congress act within 30 calendar days after the President's certification, H.J.Res. 43 contains a rule of construction providing that congressional approval would be deemed to have been enacted within the 30-day period.

Supporters of the resolutions might argue that Mexico's performance does not justify certification, that Mexico has failed to take adequate action against corruption and drug traffickers, and that passage would send a message of seriousness that would encourage greater Mexican efforts. Opponents might argue that the action would be seen as a unilateral and punitive approach, that disapproval of Mexico might have negative effects within the United States and might fail to encourage greater Mexican cooperation in counter-narcotics efforts, and that disapproval may negatively affect other areas of bilateral cooperation.

¹ This report draws from *Drug Certification of Mexico in 1998: Arguments For and Against Congressional Resolutions of Disapproval*, CRS Report 98-272, March 20, 1998, by (name redacted). For tracking legislative action, see *Mexican Drug Certification Issues: U.S. Congressional Action, 1986-1999*, CRS Report 98-174 F; and *Mexico-U.S. Relations: Issues for Congress*, CRS Issue Brief 97028, by (name redacted). For details on the certification process, sanctions, and waivers, see *Mexico and Drug Certification in 1999: Consequences of Decertification*, CRS Report RL30080, March 4, 1999, by (name redacted). For details on Mexican counter-narcotics efforts in Zedillo's presidency, see *Mexico's Counter-Narcotics Efforts Under Zedillo, December 1994 to March 1999*, CRS Report RL30098, March 18, 1999, by (name redacted).

Introduction

Responding to the requirements of Sections 489-490 of the Foreign Assistance Act of 1961 (P.L. 87-195), as amended, President Clinton certified, on February 26, 1999, that Mexico had fully cooperated with the United States in drug control efforts in 1998. Several Members of Congress criticized the President's decision in hearings by the Senate Caucus on International Narcotics Control; the House Committee on Government Reform/Subcommittee on Criminal Justice, Drug Policy and Human Resources; and the House International Relations Committee/Western Hemisphere Subcommittee. In accordance with congressional review procedures in the legislation, Representative Spencer Bachus introduced a resolution (H.J.Res. 35), on March 2, 1999, that would disapprove the President's action, but give him the authority to waive the withholding of foreign assistance and support for multilateral development bank loans for the country. Representatives John Mica and Benjamin Gilman introduced a similar resolution (H.J.Res. 43) on March 24, 1999, with an additional provision that would extend the period for congressional consideration by providing a rule of construction that any action would be considered to have been enacted within the 30 day period following presidential certification.

Arguments for Passage of a Resolution of Disapproval

1. Mexico's Performance Does Not Demonstrate Fully Supportive Efforts to Control Drug Trafficking. Despite President Clinton's certification of Mexican cooperation, the State Department's March 1999 International Narcotics Control Strategy Report (INCSR) and recent congressional testimony of Thomas A. Constantine, Administrator of the Drug Enforcement Administration (DEA), state that Mexico continues to be a major transit point for about 60% of the cocaine entering the United States from South America. They also report that Mexico is the source of 14-29% of the heroin being used in the United States, and a major source of marijuana, and methamphetamine. They state that Mexican trafficking organizations have a major role in the distribution of cocaine, heroin, and methamphetamine in the United States, and are heavily involved in money- laundering activities.

According to the 1999 INCSR report, Mexican seizures of cocaine were down 35% in 1998, while seizures of opium were down 54%, compared to 1997, although seizures of heroin, marijuana and methamphetamine were up for last year. Total drug arrests in 1998 were less than in 1997, and Mexico had limited success against the major traffickers. During much of the year, Mexican officials threatened to indict and seek the extradition of U.S. Customs and Treasury agents who were involved in the anti-money-laundering undercover endeavor called Operation Casablanca, on grounds that they were not adequately informed. While Mexican authorities determined that there were no grounds for charges against the U.S. agents, Mexican courts refused to extradite five bankers wanted in connection with the operation. During the year, Mexican officials obtained only one conviction under the new anti-money-laundering laws in Mexico. Despite an increase in opium poppy eradication, the INCSR report shows that there was an increase in the total area of poppy cultivated in Mexico in 1998, and that there was a decline in the amount of marijuana eradicated.

2. Mexico Has Failed to Take Adequate Action Against Corruption and Major Drug Traffickers. Over the years, many allege that Mexico has failed to adequately prosecute high-level officials charged with corruption and drug trafficking crimes, although some major figures have been arrested. While the Amezcua-Contreras brothers (leaders of the Colima cartel) were arrested in 1998, the charges against them were dropped in Mexico, and they are being held solely on U.S. arrest warrants, with extradition to the United States uncertain, even with approval from the Mexican Foreign Ministry. Despite numerous requests, Mexico has extradited very few Mexican-born traffickers to the United States on drug-related charges.

Among the recent cases of alleged corruption and drug trafficking mentioned in public sources are (1) Mario Villanueva, the Governor of the state of Quintana Roo, who has been reported to be protecting the transit of drugs through the Yucatan region for the Juarez cartel,² although he denies the charges; (2) Defense Minister General Enrique Cervantes, who was reported to be in league with the Tijuana cartel,³ although the Mexican government has denounced this charge and the United States government has expressed confidence in him; (3) Miguel Caro-Quintero, the alleged head of the Caro-Quintero cartel, who is reported to operate openly, without danger of prosecution, in the town of Caborca in Sonora state;⁴ (4) arrests of elite members of the anti-drug Special Prosecutor for Crimes Against Health (FEADS) office in February and October 1998 for ties to drug cartels;⁵ and (5) the alleged capture and release of drug lord Humberto Garcia Abrego by the Mexican Attorney General's Organized Crime Unit in October 1998, although the Attorney General's office has strongly denied the allegation.⁶

3. Passage of a Resolution of Disapproval Would Send a Message and Encourage the Mexican Government to Take More Forceful Actions. The threat that Mexico would not be fully certified seems to have encouraged Mexican cooperation in drug control efforts, analysts note. In 1996, as the decision on certification approached, Mexico arrested and expelled drug lord Juan Garcia Abrego to the United States, and it agreed to create the bilateral High Level Contact Group (HLCG) on Narcotics Control. In 1997, as the certification decision approached, Mexico promised greater cooperation in extraditing drug lords, shutting down money-laundering operations, and attacking corruption in government. In 1998, as certification approached, the countries released the United States-Mexico Binational Drug Strategy, although the strategy had been underway for some time. In 1999, as certification approached, the countries agreed on performance

² See John Ward Anderson and Douglar Farah, Mexico Strains Drug Ally Status, *Washington Post*, February 10, 1999, p. A1; Molly Moore and John Ward Anderson, Drug Probe Aimed at Mexican Official, *Washington Post*, February 20, 1999, p. A13.

³ See Tim Golden, Top Mexican Off-Limits to U.S. Drug Agents, *New York Times*, March 16, 1999, p. A1.

⁴ DEA Administrator Thomas A. Constantine's prepared remarks before the Senate Caucus on International Narcotics Control, February 24, 1999, pp. 11-12.

⁵ *Ibid.*, p 16.

⁶ John Ward Anderson and Molly Moore, Mexico Freed Drug Suspect, Official Says, *Washington Post*, February 13, 1999, p. A21; and letter to editor from Gloria Vazquez-Rangel, General Director for Crime Prevention and Community Service at Mexico's Attorney General's Office, *Washington Post*, February 20, 1999, p. A18.

measures of effectiveness to gauge progress with the joint anti-drug strategy; Mexico committed \$400-500 million to a new, high technology-oriented, anti-drug interdiction program; and Mexico ended the investigation against U.S. agents in Operation Casablanca. Given the seeming effectiveness of the threat of less than full certification, it could be argued that congressional disapproval, even if subsequently waived by the President, could stimulate additional cooperation and a greater determination to attack corruption.

Arguments Against Passage of a Resolution of Disapproval

1. Passage Would Be Seen as a Unilateral, Punitive and Confrontational Approach, Rather than a Bilateral, Cooperative Approach to Relations with Mexico.

Passage of a resolution of disapproval could be seen as placing blame solely upon Mexico for the flow of drugs to the United States. Mexico and other producer and transit countries point out that the drug traffic is fueled by the tremendous profits associated with the continuing demand from the United States. If the United States could reduce the demand for drugs and eliminate the corruption associated with the distribution of drugs in the United States, the flow from producer and transit countries would diminish, they argue.

Passage of a resolution of disapproval could also be seen as belittling Mexican efforts to control drug trafficking, often with considerable loss of life by Mexican law enforcement and military personnel. Since President Zedillo's inauguration in December 1994, there has been a campaign to reform the judicial system and to create new anti-drug agencies with specially screened agents. Legislation was enacted to criminalize money laundering, to establish controls on chemical diversion, and to permit use of modern investigative techniques (electronic surveillance, witness protection) against organized crime. In 1998, Mexicans convicted and imprisoned several key traffickers and associates, including former "Drug Czar" General Jesus Gutierrez Rebollo, and it extradited to the United States for the first time a Mexican citizen who was wanted on murder and drug trafficking charges. According to recent plans, Mexico will be devoting a higher percentage of its governmental budget to anti-drug activities than the United States.

In terms of U.S.-Mexico cooperation, in the last three years Mexico signed a Financial Information Exchange Agreement and an Asset Sharing Agreement, it significantly increased military-to-military cooperation, accepted U.S. counter-narcotics assistance, and extradited Mexican citizens to the United States for the first time. Most importantly, it held a broad range of bilateral consultations under the rubric of the High Level Contact Group (HLCG) on Narcotics Control leading to a joint strategy for controlling drug trafficking and agreed upon performance measures of effectiveness, as well as methods to coordinate law enforcement efforts. Passage of a resolution of disapproval of Mexico would be likely to put some of these joint efforts in jeopardy, and damage the good will and cooperative arrangements established in mid-February 1999 when President Clinton visited Mexico.

2. Passage of a Resolution of Disapproval Might Have Negative U.S. Effects and Might Not Work to Encourage Mexican Cooperation on Counter-Narcotics Efforts.

Since the waiver mechanisms in H.J.Res. 35 and H.J.Res. 43 would permit the President to avoid the imposition of sanctions, including the withholding of U.S. foreign assistance and U.S. support for multilateral development bank loans for Mexico, it is unlikely that U.S. aid would be suspended in the event of decertification. The amount of standard

foreign assistance is limited (\$14.9 million in FY1999, excluding counter-narcotics assistance), and much of it is for programs the United States might wish to continue to support. These include programs for health (HIV/AIDS and tuberculosis prevention), environmentally sound use of resources, and strengthening of democratic institutions.

Even if the President exercised the permitted waiver, passage of a resolution of disapproval would be seen by Mexico as a very negative, anti-Mexico action that would damage relations and potentially affect trade and investment between the countries. Mexico is the United States' third most important trading partner overall, and since 1997 has been the second most important country in terms of U.S. exports. Considering exports and imports, the two countries had a trade turnover of over \$174 billion in 1998, so a loss of trade would have negative consequences on both sides of the border.

Given Mexico's past history with the United States and its determination to maintain sovereignty in domestic and foreign affairs, it could not be assumed that Mexico would comply with U.S. wishes if a resolution of disapproval were passed. This history includes: the loss of Texas and the U.S. southwest states in the 19th century; the suspicions over U.S. business domination that emerged in the Mexican Revolution of 1910 and led to the expropriation of U.S. oil companies in the 1930s; Mexican diplomatic opposition to U.S. policies toward Cuba and Central America from the 1960s to the 1980s; and Mexican restrictions on U.S. trade and investment until the 1980s.

Mexico has taken steps to control drug trafficking and to enact political and economic reforms because it finds these measures to be in its own self interest. The positive steps in U.S.-Mexican drug control efforts mentioned above took place during the Salinas and Zedillo years when the countries were cooperating on a range of issues, not when the United States was criticizing Mexico. Some analysts argue that if Mexico feels that the United States is being punitive, it is likely to reduce cooperation with the United States in drug control areas, with results that might be less satisfactory than the current efforts. They add that decertification of Mexico might even weaken President Zedillo politically, and effectively strengthen the drug traffickers or those less interested in routing out drug-related corruption.

3. Passage of a Resolution of Disapproval May Negatively Affect Other Areas of Cooperation. Since Mexico and the United States cooperate on a wide range of issues, if Mexico were to decide to reduce or end cooperation as a result of passage of a resolution of disapproval, this decision could have negative consequences in a number of areas, other than the drug control area.

- In the economic reform and trade area, Mexico has reduced the size of its government through privatization and macroeconomic reforms, and it has opened the economy to trade and investment through NAFTA and other measures. The economic reforms and the NAFTA agreement give the United States access to an important market and provide opportunities for investment and the sale of products to the government.
- In the immigration area, Mexico has cooperated with the United States in a number of ways. Acting through the Binational Commission working group meetings, Mexico has worked to curtail criminal trafficking in migrants and to ensure safe operation of border bridges and crossings. The countries completed a Binational

Study on Migration in November 1997 and agreed to establish cooperative mechanisms against border violence in February 1999.

- With regard to border affairs, the United States and Mexico cooperate on numerous environmental and law enforcement issues. Among the most important are the following: Cooperation in the North American Commission on Environmental Cooperation established in the environmental side agreement to NAFTA, along with cooperation in the two other institutions that focus particularly on the border region — the Border Environmental Cooperation Commission (BECC) which generates environmental projects, and the North American Development Bank (NADBank) which funds the projects. The countries also cooperate on water issues through the International Boundary and Water Commission (IBWC), and on environmental projects through the La Paz, Border XXI, and Border Vision programs. In February 1999, the countries agreed to cooperate on prevention and control of forest fires and tuberculosis.
- Cooperation on labor rights issues through the North American Commission for Labor Cooperation established in the labor side agreement to NAFTA.
- Cooperation on foreign policy issues, such as (1) peaceful transitions in Haiti and Guatemala, (2) resolution of the Peru-Ecuador conflict, (3) implementation of the agendas of the Miami and Santiago Summits of the Americas, (4) efforts to negotiate a Free Trade Area of the Americas (FTAA), and (5) assistance to Central American countries after Hurricane Mitch.

Without the cooperation of Mexico in these and other areas, there is a serious limit to the efforts that the United States can pursue to advance these goals. Those opposing resolutions of disapproval argue that cooperation through dialogue and discussion, rather than sanctions, seems likely to produce greater results in relations with Mexico, and to send a message throughout the hemisphere that the United States is pursuing a cooperative rather than a punitive approach toward countries in the region.

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