

# Report for Congress

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## **Mexican Drug Certification Issues: U.S. Congressional Action, 1986-2002**

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# Mexican Drug Certification Issues: U.S. Congressional Action, 1986-2002

## Summary

Beginning in 1986, Congress required the President to certify annually, subject to congressional review, that drug producing or drug transit countries had cooperated fully with the United States in drug control efforts to avoid a series of aid and trade sanctions. Mexico has been fully certified each year, but Congress closely monitored these certification decisions and submitted resolutions of disapproval in some years.

In 1987 and 1988, Congress took some initial steps on resolutions to disapprove the certification of Mexico, and, in 1989 and 1996, it passed some drug-related restrictions on Mexico. In 1997, congressional efforts to overturn the President's certification of Mexico advanced the furthest when both houses passed separate resolutions of disapproval, and President Clinton provided additional reports on Mexican and U.S. efforts in specified areas in compliance with the Senate-passed version. In 1998, resolutions of disapproval were introduced in both houses, but S.J.Res. 42 was defeated by a vote of 45 to 54 in the Senate, and no floor action was taken in the House. In 1999, resolutions of disapproval were introduced in the House, but no action was taken, and no resolutions of disapproval were introduced in the Senate.

In 2000, despite some congressional criticism, no resolutions of disapproval were introduced in either house to overturn the presidential certification of Mexico. Following the mid-year election of opposition candidate Vicente Fox as President of Mexico, measures were introduced but not passed to exempt Mexico from the drug certification requirements in FY2001.

In 2001, no resolutions of disapproval were introduced in either house, and the Senate Foreign Relations Committee reported out two measures (S. 219 and S. 1401) that would have modified the certification requirements for three years. By the end of the year, the only measure that passed was the Foreign Operations Appropriations for FY2002 (H.R. 2506/P.L. 107-115) that waived the drug certification requirements for FY2002 only, but required the President, with some waiver authority, to designate and withhold assistance from the worst offending countries that had failed demonstrably to adhere to international counter-narcotics agreements.

In 2002, both houses passed the Foreign Relations Authorization for FY2003 (H.R. 1646/P.L. 107-228) that permanently modified the drug certification requirements. Section 706 requires the President, with some waiver authority, to designate and withhold assistance from the worst offending countries that have "failed demonstrably" to make substantial counter-narcotics efforts. At the same time, it permits the President to use his discretion to withhold assistance and apply previous sanctions against countries that are failing to cooperate fully with the United States in counter-narcotics efforts whenever he determines that such actions would be helpful.

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# Mexican Drug Certification Issues: U.S. Congressional Action, 1986-2002

## Introduction

This report summarizes U.S. congressional action relating to Mexican drug control and drug certification issues from 1986 to 2002, with emphasis on recent actions. It explains the development and the procedures of the drug certification requirements in the mid-1980s and the steps taken in the initial years following enactment of the bill. It provides detailed information about congressional action in the more recent years, from 1996 to 2002, including the temporary modification of the requirements in 2001 and the permanent modification of the procedures in 2002.

## Congressional Action in the 1980s: Drug Certification Requirements and Initial Action on Resolutions of Disapproval

Congress has had a longstanding interest in Mexico's counter-narcotics efforts, stimulated by the killing and torture of U.S. Drug Enforcement Administration (DEA) agents, and focusing more recently on the presidential drug certifications. In the mid-1980s, Congress – through the Anti-Drug Abuse Acts of 1986 (P.L. 99-570) and 1988 (P.L. 100-690) – created what has been modified and extended to become Sections 489- 490 of the Foreign Assistance Act of 1961 (P.L. 87-195). This and related sections require the President to certify, subject to congressional review, that drug-producing or drug-transit countries have cooperated fully with the United States in drug control efforts in the previous year in order to avoid a series of aid and trade sanctions. Under the legislation, Congress is given 30 days to pass a resolution to disapprove the President's certification, and set in motion the various sanctions.<sup>1</sup> The original action took place in the context of the kidnaping, torture, and murder of DEA Special Agent Enrique Camarena and his Mexican pilot in Guadalajara, Mexico, in March 1985, and the torture of DEA Agent Victor Cortez in Guadalajara in August 1986.

Mexico was fully certified by President Reagan under the initial certifications, but Congress carefully monitored the presidential determinations. In 1987, the

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<sup>1</sup>For more details on the certification process and possible sanctions, see CRS Report RL30080, *Mexico and Drug Certification in 1999: Consequences of Decertification*, by (name redacted). For general information on current U.S.-Mexican relations, including legislation on trade, immigration, and drug trafficking issues, see CRS Issue Brief IB10070, *Mexico-U.S. Relations: Issues for the 107<sup>th</sup> Congress*, by (name redacted).

Senate Foreign Relations Committee reported out a resolution to disapprove the presidential certification, and in 1988 the full Senate voted 63-27 to disapprove the President's certification. However, without complete action by both houses, these measures were never adopted.

In late 1989, Congress passed the International Narcotics Control Act of 1989 (P.L. 101-231) with critical references to Mexico. Earlier in the year, the Senate Foreign Relations Committee voted against reporting an introduced resolution of disapproval (S.J.Res. 82) to the Senate floor, and no action was taken in the House to reverse the President's certification.

## **Congressional Action in 1996: Restrictions on Foreign Assistance**

In the early 1990s, with improving bilateral trade and border relations with Mexico, symbolized by the entry into force in 1994 of the North American Free Trade Agreement (NAFTA), few if any resolutions to disapprove presidential certifications were introduced and no congressional action was taken until 1996.

In action in early 1996, the Foreign Operations Appropriations Act for FY1996 (P.L. 104-99 and P.L. 104-107), dropped a House-passed restriction on aid to Mexico unless Mexico controlled illegal drug trafficking, but the report urged U.S. efforts to encourage greater Mexican action in these areas. Later, Senators Feinstein and D'Amato and Representatives Miller and Shaw criticized Mexican drug control efforts and introduced measures calling for disapproval of the President's certification (S.J.Res. 50/H.J.Res. 162) and for action against the country unless drug trafficking was controlled (S.Res. 218/H.Res. 362/H.R. 2947), but action was not completed on these measures.

In June and July 1996, the House and the Senate passed the Foreign Operations Appropriations Act for FY1997 (H.R. 3540), with restrictions on Mexico. The House version contained the Souder amendment which would have prohibited funding under the act unless Mexico was reducing the flow of drugs and controlling money-laundering. The Senate version contained the Domenici amendment which would have prohibited military education and training funds for Mexico unless the President certified that Mexico had extradited or prosecuted major drug lords wanted in the United States. The final version in Section 587 of the foreign operations appropriation — incorporated into the Omnibus Consolidated Appropriations for FY1997 (P.L. 104-208) — provided that not less than \$2.5 million shall be withheld from Mexico until the President has reported that Mexico is taking actions to reduce the flow of illegal drugs to the United States and is taking action to prosecute those involved in drug trafficking and money-laundering.

## **Congressional Action in 1997: Weakened Resolution of Disapproval Despite Non- Enactment Elicits Additional Presidential Report**

Following the mid-February 1997 arrest on corruption charges of the head of Mexico's drug fighting agency, some Members of Congress urged President Clinton to send Mexico a message for more forceful action by making a national interests certification. As a result, when the President fully certified Mexico in late February 1997, congressional resolutions of disapproval were introduced by Representative Shaw (H.J.Res. 58) and Senator Coverdell (S.J.Res. 19, S.J.Res. 20, and S.J.Res. 21), while Senators Hutchison and Grassley also developed sense of Congress resolutions (S.Con.Res. 9 and S.Con.Res. 10) in the Senate.<sup>2</sup>

The House International Relations Committee voted 27-5 on March 6, 1997, to report out H.J.Res. 58, with the Gilman amendment permitting the President to waive sanctions for one year by submitting a national interests certification, and requiring consultation with Congress on drug trafficking issues. In floor debate on March 13, 1997, the House, by a vote of 251-175, passed H.J.Res. 58, with the Hastert amendment, as modified, that would have deferred disapproval of the presidential certification of Mexico if, within 90 days of enactment, the President reported that he had obtained assurances of progress with Mexico in specified areas of drug control cooperation. These included support for DEA agents, extradition, overflight and refueling rights, and maritime agreements. Indicating some discomfort with the certification process, the resolution also would have established a High Level Commission of International Narcotics Control to review the annual certification process and produce an interim report within six months.

Responding in part to Mexican and Administration criticism, the Senate, on March 20, 1997, voted 94-5, to pass the Coverdell-Feinstein amendment to H.J.Res. 58, in the nature of a substitute, which, instead of disapproving the President's certification, required a report by September 1, 1997, on Mexican efforts to strengthen drug control in 10 areas and U.S. efforts in three areas. The Mexican areas for reporting included effective action against drug cartels; and cooperation on law enforcement, extradition, eradication and money laundering activities. The U.S. areas for reporting included implementation of effective domestic anti-drug educational campaigns and international interdiction and law enforcement programs, and deployment of additional INS agents at the border. Congress did not complete action on this measure within the specified time, but President Clinton indicated in May 1997 that he would abide by the Senate version of H.J.Res. 58 and the Administration reported, as promised, in September 1997.<sup>3</sup>

In further expressions of sentiment, each of the houses subsequently considered and failed to pass legislation to modify or suspend the existing drug certification

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<sup>2</sup>For some arguments about the effects of past congressional actions, see CRS Report 97-361, *Mexico's Anti-Drug Efforts: Effects of Past U.S. Pressures and Sanctions*, March 13, 1997, by (name redacted).

<sup>3</sup>See *Office of National Drug Control Policy, Report to Congress*, September 1997.

requirements. In the House, on May 9, 1997, the House International Relations Committee reported out H.R. 1486, the Foreign Policy Reform Act, with Section 403, proposed by Representative Hamilton, which would have eliminated the presidential certification, congressional review, and sanctions against countries under the certification process. Instead, it would have required the President to continue to report yearly and to consult regularly with Congress on drug control issues, and would have given the President the authority to withhold bilateral assistance and to oppose multilateral bank financing for countries that are not fully cooperative if he found those measures to be helpful. In early June 1997, H.R. 1486 was divided into three bills, and the foreign aid and drug certification provisions were placed in H.R. 1759, which was not scheduled for debate in 1997. In the Senate, on July 16, 1997, the Senate defeated (60-38) Amendment 901, proposed by Senators Dodd and McCain, to the Foreign Operations Appropriations Bill (S. 955), which would have suspended the drug certification requirements for two years, and called upon relevant country leaders to develop a multilateral framework for improving international cooperation in counter-narcotics efforts.

### **Congressional Action in 1998: Resolution of Disapproval Defeated in Senate; U.S. Counter-Narcotics Efforts Strengthened**

President Clinton certified, on February 26, 1998, that Mexico was fully cooperative in drug control efforts, citing increased drug seizures, creation of a new anti-drug force with fully screened officers, progress in the return of fugitives, tough sentencing of major traffickers, and actions against organized crime and money laundering. The certification and related material also cited U.S.-Mexico cooperation through the High Level Contact Group (HLCG) on Narcotics Control that led to the U.S.-Mexico Alliance Against Drugs in May 1997, and to the issuance of the U.S.-Mexico Binational Drug Strategy in February 1998.<sup>4</sup>

While Administration witnesses defended the certification decision in congressional hearings, several Members of Congress criticized the decision. Among other things, the critics argue that inadequate efforts have been made to arrest major drug traffickers, to extradite Mexican citizens to the United States on drug-related charges, and to permit DEA agents to carry firearms for their protection. While recognizing that Mexico had made progress in some areas, the critics argue that Mexico could not be said to be fully cooperative in drug control efforts, the standard set by the certification procedure.

In early March 1998, resolutions of disapproval were introduced in both houses of Congress.<sup>5</sup> In the Senate, Senator Coverdell, with Senators Feinstein, Helms, and

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<sup>4</sup>See the presidential certification of February 26, 1998, the *Statement of Explanation on Mexico*, and the State Department's *International Narcotics Control Strategy Report*, March 1998, pp. 148-159.

<sup>5</sup>For a discussion of pros and cons, see CRS Report 98-272, *Drug Certification of Mexico in 1998: Arguments For and Against Congressional Resolutions of Disapproval*.

Hutchison as cosponsors, introduced S.J.Res. 42 (which, if approved, would disapprove the President's certification and require withdrawal of assistance) and S.J.Res. 43 (which, if approved, would disapprove the President's certification but would permit him to avoid the withholding of assistance if he subsequently found that vital U.S. national interests required non-application of sanctions). The resolutions were referred to the Senate Committee on Foreign Relations. In the House, Representative Shaw, with Representative Mica as cosponsor, introduced H.J.Res. 114 (which, if approved, would disapprove the President's certification, but would permit him to waive the withholding of assistance if he subsequently determined that vital U.S. national interests require the provision of the assistance). The resolution was referred to the House International Relations Committee and the House Banking and Financial Services Committee, where hearings were held but no further action was taken.

The Senate considered the Senate measures on March 26, 1998. When Majority Leader Lott requested unanimous consent to consider S.J.Res. 43 (the resolution with a national interest waiver and therefore more than the simple resolution of disapproval required under the certification legislation), objection was raised by Senator Daschle. When S.J.Res. 42 was considered, proponents argued that Mexico had failed to meet the standards and had made inadequate progress, while opponents argued that approval of the resolution would harm relations with Mexico and terminate recent cooperative efforts with Mexico. S.J.Res. 42 was defeated by a vote of 45 to 54.

In other efforts to deal with the flow of drugs from Mexico, several measures were incorporated into the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998 (P.L. 105-277). Foreign Operations Appropriations, including counter-narcotics funding for Mexico, were incorporated as Section 101(d) of Division A, of the omnibus measure, following passage by both houses of separate measures (S. 2334, H.R. 4569) in September 1998. Supplemental FY1998 funding for counter-drug activities and interdiction, including \$90 million for Southwest border enhancement, was incorporated as Title V of Division B of the omnibus measure. The Western Hemisphere Drug Elimination Act, which authorized funds to strengthen interdiction and surveillance on the U.S.-Mexico border, was incorporated as Title VIII of Division C, of the omnibus measure, following passage by the House of H.R. 4300 on September 16, 1998. The conference report (H.Rept. 105-825) on the omnibus measure was approved by the House and the Senate on October 20 and 21, respectively. It was signed into law (P.L. 105-277) on October 21, 1998.



## **Congressional Action in 1999: Resolutions of Disapproval Introduced in the House But Not Passed; Narcotics Kingpin Designation Act Passed**

President Clinton certified, on February 26, 1999, that Mexico was fully cooperative in drug control efforts, citing the broad array of cooperation between the countries, the arrest and conviction of some major traffickers, and the continuing eradication and interdiction programs. He mentioned the work of the bilateral High Level Contact Group (HLCG) on Narcotics Control that led to the Alliance Against Drugs in May 1997, the Binational Drug Strategy in February 1998, and the agreement on performance measures of effectiveness, announced during President Clinton's trip to Mexico in mid-February 1999, to gauge the effectiveness of the joint anti-drug strategy.<sup>6</sup>

On March 2, 1999, Representative Bachus and 12 cosponsors introduced H.J.Res. 35 in the House that would disapprove the President's certification of Mexico but permit the President to waive the withholding of assistance to Mexico and the voting against multilateral development bank loans for Mexico by determining that the vital national interests of the United States so require. The resolution was referred to the House International Relations Committee. On March 24, 1999, Representatives Mica and Gilman introduced H.J.Res. 43 that would disapprove the President's certification of Mexico, permit the President to waive any sanctions, and extend the congressional period of 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.<sup>7</sup> The resolution was referred to the House International Relations Committee and to the House Banking and Financial Services Committee. Mr. Gilman, Chairman of the House International Relations Committee, announced that the Committee would carefully examine how to proceed next. No committee or floor action was taken on either resolution.

On July 1, 1999, Representatives Mica, Traficant, Gilman, and others introduced H.J.Res. 61, calling upon the Mexican government to undertake greater and more effective counterdrug measures, including a maritime agreement with the United States, and to return any unwanted Huey helicopters to the United States for distribution to other drug fighting countries. The measure was referred to the House International Relations Committee, but no further action was taken.

On the Senate side, while no resolution of disapproval was ever introduced, on March 1, 1999, Senators Coverdell, Feinstein, and Grassley and four other Senators

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<sup>6</sup>See the presidential certification of February 26, 1999, the *Statement of Explanation on Mexico*, and the State Department's *International Narcotics Control Strategy Report*, March 1999, pp. 166-178. See also CRS Report RL30098, *Mexico's Counter-Narcotics Efforts Under Zedillo, December 1994 to March 1999*, March 18, 1999, by (name redacted).

<sup>7</sup>For a discussion of pros and cons, see CRS Report RS20127, *Drug Certification of Mexico in 1999: Arguments For and Against Congressional Resolutions of Disapproval*, by (name redacted).

sent a letter to President Clinton urging that specific benchmarks be used for judging Mexico's performance in future certification decisions. These included extradition of major drug traffickers, arrest and prosecution of drug lords, enforcement of money-laundering laws, eradication and seizure efforts, cooperation between law enforcement agencies, and the conclusion and implementation of a U.S.-Mexico maritime agreement. On March 8, 1999, Senators Coverdell and Feinstein introduced S. 565 and S. 1171 to strengthen President Clinton's authority under the International Emergency Economic Powers Act (IEEPA) to freeze assets in the United States of drug traffickers and to prevent traffickers from doing business with the U.S. companies. On March 11, Senators Boxer, Dodd, and Gramm introduced S. 596 to provide that the annual drug certification procedures would not apply to countries like Mexico that have bilateral counter-narcotics agreements with the United States. On March 18, 1999, Senator Gramm and eight cosponsors introduced S. 658, the Drug Free Borders Act of 1999, to authorize funding for advanced sensing equipment for detecting illegal drugs at the border.

Legislation strengthening the President's IEEPA authority to freeze assets in the United States of drug traffickers and to prevent drug traffickers from doing business with U.S. companies was eventually enacted by the end of the year. A variation of the measures introduced by Senators Coverdell and Feinstein was approved by the Senate on July 20, 1999, as an amendment to the Intelligence Authorization Act for FY2000 (H.R. 1555). In related action, the House passed H.R. 3164, the Foreign Narcotics Kingpin Designation Act, by a vote of 385-26 under suspension of rules on November 2, 1999. The conference report on H.R. 1555 (H.Rept. 106-457) was filed on November 5, 1999, with Title VIII essentially containing the text of H.R. 3164, with the addition of a Judicial Review Commission to examine judicial review and due process issues raised in the previous debate. The House passed the conference report on H.R. 1555 by voice vote on November 9, 1999, and the Senate passed it on November 19, 1999. The President signed the measure into law (P.L. 106-120) on December 3, 1999.

## **Congressional Action in 2000: No Resolutions of Disapproval Introduced; Efforts Made to Waive the FY2001 Drug Certification Requirements for Mexico**

President Clinton certified, on March 1, 2000, that Mexico was cooperating fully with the United States in efforts to control drug trafficking. He cited the broad array of cooperation between the countries, the unprecedented agreement on performance measures of effectiveness to gauge the success of the binational anti-drug strategy, enhanced maritime cooperation, significant increases in seizures and eradication of illicit drugs, and the extradition of two Mexican national drug fugitives to the United States.<sup>8</sup>

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<sup>8</sup> See the presidential certification of March 1, 2000, the *Statement of Explanation on Mexico*, and the State Department's *International Narcotics Control Strategy Report*, March 2000, pp. V-27-37.

In anticipation of the Administration's certification of Mexico, the Chairmen of the House International Relations Committee and the Senate Foreign Relations Committee wrote to Secretary of State Albright to urge non-certification of Mexico, citing, in particular, Mexico's failure to prosecute and extradite to the United States any major drug traffickers. Citing similar evidence, some Representatives were critical of Mexico's counter-narcotics performance in a hearing on February 29, 2000, by the Subcommittee on Criminal Justice, Drug Policy and Human Resources of the House Committee on Governmental Reform. Some Senators also criticized the President's certification of Mexico in a hearing on March 21, 2000, by the Senate Caucus on International Narcotics Control. However, by the end of the 30-day congressional review period, no resolution of disapproval had been introduced in either house of Congress to overturn the President's certification.

Following the election of Vicente Fox of the conservative Alliance for Change as President of Mexico in the July 2, 2000 election, ending 71 years of presidential control by the dominant party, bills were introduced to exempt Mexico from the drug certification requirement in FY2001 in order to avoid an early confrontation with the new government. S. 3021 was introduced by Senator Hutchison on September 7 and was placed on the Senate calendar on September 8, 2000; H.R. 5155 was introduced by Representative Kolbe on September 12, 2000, and referred to the House International Relations Committee. No additional action was taken on these measures. On October 11, 2000, the Senate agreed to S.Res. 366, introduced by Senator Hutchison, that welcomed the constitutional transition in Mexico and expressed the sense of the Senate that a one-year waiver of the drug certification requirement is warranted in order for incoming new governments in both countries to develop more effective and cooperative counter-narcotics programs.

## **Congressional Action in 2001: Efforts to Modify Drug Certification Requirements End with One-Year Waiver and Modified Procedure**

In the period leading up to the deadline of March 1, 2001, when President Bush would be required to certify that Mexico and other drug producing or drug transit countries had cooperated fully with the United States in drug control efforts, there were a number of congressional efforts to modify or suspend the longstanding drug certification requirements.

In early January 2001, Senator Gramm was quoted as saying, following a congressional delegation trip to Mexico and meetings with Mexican President Fox, that members of the delegation would work to eliminate the drug certification requirement and that he believed President Bush wanted to eliminate the requirement as well.

In late January 2001, Senators Dodd, McCain, Hollings, and Hagel introduced S. 219, to suspend the existing drug certification process for all countries for the two fiscal years following enactment, unless the President determined that the certification of one or more countries would advance U.S. drug control goals. The measure specifies that the certification requirements would be suspended for fiscal

years 2001 and 2002 if enacted on or before February 28, 2001. Finding that the annual certification process does not foster effective bilateral or multilateral cooperation with the United States, the bill urges the President to take advantage of the period of suspension to convene a conference of drug producing, transit, and consuming countries to develop an effective multilateral strategy, and to transmit to Congress the necessary legislation to implement a new strategy.

In mid-February 2001, Senator Kay Bailey Hutchison with 6 cosponsors introduced S. 353 that would exempt Mexico from the drug certification requirement in FY2001, but would require development of a comprehensive plan of proposals, by June 30, 2001, for enhanced counter-narcotics cooperation between Mexico and the United States. About the same time, Senator Grassley and Senator DeWine introduced S. 376 that would modify the certification process for FY2002-FY2004 to require the President to identify only those countries that are failing to cooperate fully with the United States in drug control efforts.

On the eve of President Bush's February 16, 2001 visit with President Fox in Mexico, the Senate passed S.Con.Res. 13 expressing the sense of Congress that the President should work with the President of Mexico to advance bilateral cooperation and should seek, among other things, "to review the current illicit drug certification process, and should seek to be open to consideration of other evaluation mechanisms that would promote increased cooperation and effectiveness in combating the illicit drug trade." In a joint press conference with President Fox after the meeting in Mexico, President Bush noted that there was a movement in Congress to review the certification process, and he indicated that he believed that President Fox would do everything in his power to root out the drug lords and to halt drug trafficking.

In late February and early March, additional measures were introduced to modify the existing drug certification procedures. On February 27, 2001, Representative Kolbe and 6 cosponsors introduced H.R. 753 to exempt Mexico from the drug certification requirements in FY2001. On March 1, 2001, Senators Boxer and Gramm introduced S. 435 to provide that the drug certification procedures would not apply to countries with which the United States has bilateral agreements and other plans; and Representative Reyes introduced H.R. 841 to suspend the certification procedures for two years and to express the sense of Congress that the President should convene a conference of drug producing, transit, and consuming countries to develop an effective multilateral strategy and should transmit to Congress the necessary legislation to implement a new strategy.<sup>9</sup>

President Bush certified, on March 1, 2001, that Mexico had cooperated fully with the United States in drug control efforts, citing the arrest of two key members of the Tijuana-based Arellano Felix Organization, the aggressive eradication programs, and continuing cooperation with the United States in a number of areas. While noting the daunting challenges Mexico faces to control corruption, the State Department report stated that President Fox's commitments to fight crime, drug

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<sup>9</sup> For a discussion of proposed measures, see CRS Report RL30892, *Drug Certification Requirements and Proposed Congressional Modifications in 2001*, by (name redacted).

trafficking, and corruption offered “unprecedented opportunities for greater cooperation and mutual assistance with the United States.”<sup>10</sup>

At a March 1 hearing on the certification process conducted by the Senate Foreign Relations Committee, Senators Boxer, Dodd, Grassley, and Hutchison, and Representative Reyes spoke in favor of the modifications to the procedures that they are sponsoring. Representative Gilman argued that the certification process had proven to be very useful and should be retained. Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, Rand Beers, testified that the “certification process has proved to be an effective, if blunt, policy instrument for enhancing counternarcotics cooperation,” but he indicated that the Administration was aware “that there is a growing sense among some in Congress that there may now be more effective approaches to strengthening international counterdrug cooperation.” Although noting that the Administration was still reviewing the various legislative proposals, he indicated that any modification “should have an enforcement mechanism to ensure continued international counternarcotics cooperation” and that the President should retain the power to sanction countries even if the certification procedures were suspended. In addition, he indicated that the Administration does not believe “that there should be exemptions for individual countries or regions at this time.”

By the end of the 30-day period for congressional review of presidential drug certifications, no resolutions of disapproval had been introduced to disapprove President Bush’s certification of Mexico.

On April 3, 2001, the Senate Foreign Relations Committee marked up S. 219 with an amendment in the nature of a substitute, with elements from the various proposals. As approved, S. 219 would modify the existing drug certification procedures for a 3-year trial period. In its place, it would require the President to identify by October 1 of each year major drug-transit or major illicit drug producing countries and to designate each such country that has failed demonstrably, during the previous 12 months, to make substantial efforts to adhere to its obligations under international counter-narcotics agreements (multilateral and bilateral) and other standards. U.S. assistance would be withheld from any designated countries unless the President determined that the provision of assistance was vital to the national interest of the United States or until the country made substantial counter-narcotics efforts.

The approved measure also expresses the sense of Congress that the United States should at the earliest feasible date in 2001 convene a multilateral conference of relevant countries to develop multilateral drug reduction and prevention strategies, and it urges the President to request legislative changes to implement the strategies no later than one year after enactment. It continues the requirement for the yearly International Narcotics Control Strategy Report (INCSR) detailing the performance

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<sup>10</sup> See the presidential certification of March 1, 2001, the *Statement of Explanation on Mexico*, and the State Department’s *International Narcotics Control Strategy Report*, March 2001, pp. V-26-36. See also CRS Report RL30886, *Mexico’s Counter-Narcotics Efforts under Zedillo and Fox, December 1994 to March 2001*, by (name redacted).

of individual countries, and it adds the requirement to report on major drug trafficking organizations. It also amends the Foreign Narcotics Kingpin Designation Act to allow judicial review of executive branch decisions to freeze the assets of suspected drug kingpins.<sup>11</sup> The measure was reported out without written report on April 5, 2001, and was placed on the Senate Legislative Calendar on April 5, 2001.

On July 17, 2001, the House Appropriations Committee reported out H.R. 2506, Foreign Operations Appropriations for FY2002 (H.Rept. 107-142), with no legislative changes relating to the drug certification procedures, but with the following report language: “The Committee is concerned that the United States’ annual drug certification process fails to establish an effective and accountable drug policy, while creating tensions with our neighbor, Mexico. The Committee strongly supports change to the present certification process. Priority should be given to installing a sound accountability system where an obligation to deterring drug trafficking is the ultimate goal. The Committee asks the Secretary of State to work with the appropriate committees of Congress to modify the certification process to mirror the concerns made by the Committee.”

On August 1, 2001, the Senate Foreign Relations Committee approved S. 1401, the Foreign Relations Authorizations Act for FY2002-FY2003, with the provisions of previously reported S. 219 incorporated as Sections 741-745 in Title VII, Subtitle D, Reform of Certification Procedures Applicable to Certain Drug Producing or Trafficking Countries.<sup>12</sup> The Committee reported out S. 1401 (S.Rept. 107-60) on September 4, 2001, and the measure was placed on the Senate Legislative Calendar.

During President Fox’s official state visit to the United States on September 5-7, 2001, the Mexican President, in addressing a joint session of Congress, called upon Congress to pass legislation to suspend the drug certification requirements as a gesture of trust and faith in the new government, arguing that “trust requires that one partner not be judged unilaterally by the other.” Following the Bush-Fox talks, the joint communique praised the growing law enforcement cooperation between the countries, expressed support for the OAS’ multilateral evaluation of counter-narcotics efforts, and noted President Bush’s commitment “to work with the U.S. Congress, on a priority basis, to replace the annual counter-narcotics certification regime with new measures designed to enhance international cooperation in this area.”

On October 24, 2001, the Senate passed the Foreign Operations Appropriations for FY2002 (H.R. 2506), with an amendment by Senators Dodd and Hutchison (Senate Amendment 1959) that generally incorporated the provisions of S. 219 as reported, except that the modifications in the drug certification procedures would

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<sup>11</sup> For more detailed comparisons of the existing drug certification procedures and those in Senate bill S. 219 as reported out by the Senate Foreign Relations Committee, see CRS Report RL30949, *Drug Certification Procedures: Side-by-side Comparison of Existing Procedures and S. 219 as Reported*, by (name redacted).

<sup>12</sup> For comparison of existing drug certification procedures to the provisions in S. 219 and S. 1401 as reported, see CRS Report RL30950, *Drug Certification Procedures: A Comparison of Current Law to S. 219 and S. 1401 as Reported*, by (name redacted).

apply only to FY2002 and would apply only to countries in the Western Hemisphere. As passed by the Senate, the bill would require the President to identify by November 30, 2001, the major drug-transit or major illicit drug-producing countries in the Western Hemisphere and to designate each such country that has failed demonstrably, during the previous 12 months, to make substantial efforts to adhere to its obligations under international counter-narcotics agreements (multilateral and bilateral) and other standards. U.S. assistance would be withheld from any designated countries unless the President determined that the provision of assistance was vital to the national interest of the United States or until the country made substantial counter-narcotics efforts.

Consistent with the provisions of previously reported S. 219, the Senate-passed Foreign Operations Appropriations bill expressed the sense of Congress that the United States should at the earliest feasible date convene a multilateral conference of relevant countries to develop multilateral drug reduction and prevention strategies, and it urged the President to request legislative changes to implement the strategies no later than one year after enactment. It would continue the requirement for the yearly International Narcotics Control Strategy Report (INCSR) detailing the performance of individual countries, and it would add the requirement to report on major drug trafficking organizations. It would also amend the Foreign Narcotics Kingpin Designation Act to allow judicial review of executive branch decisions to freeze the assets of suspected drug kingpins.

The conference report on the Foreign Operations Appropriations for FY2002 (H.Rept. 107-345 on H.R. 2506) was filed on December 19, 2001, and contained, in Section 591, major elements of the Senate-passed provisions modifying the annual drug certification procedures. This section provides that the drug certification procedures in Section 490 of the Foreign Assistance Act would not apply during FY2002, essentially providing a one-year waiver of the procedures on a global basis for all major drug-transit and drug producing countries. However, the President is required to make a report within 45 days of enactment identifying the major drug transit and drug producing countries. He is also required to designate each such country that has failed demonstrably, during the previous 12 months, to make substantial efforts to adhere to its obligations under international counter-narcotics agreements (multilateral and bilateral) and other standards. U.S. assistance would be withheld from any of the designated worst offending countries, unless the President determines that the provision of assistance is vital to the national interest of the United States, or until the designated country makes substantial counter-narcotics efforts. In addition, the section clarifies that the President's obligation to make the yearly International Narcotics Control Strategy Report (INCSR) detailing the performance of all drug-transit and drug producing countries by March 1 remains in force.

Although some Members in each house criticized this provision as a weakening of the drug certification procedures when it was approved by the House on December 19, 2001, and by the Senate on December 20, 2001, a letter from the State Department characterized the provision as a "significant first step toward improving the current narcotics certification process" that "would place a premium on cooperation rather than confrontation with other governments." The measure was signed into law (P.L. 107-115) by President Bush on January 10, 2002.

## **Congressional Action in 2002: Permanent New Requirements Enacted, But Previous Procedures Still Available**

In 2002, Congress continued to move toward adoption of new requirements relating to drug producing and drug transit countries. With passage of the Foreign Relations Authorization Act for FY2003, it approved permanent new procedures, while permitting the President to use the old procedures at his discretion.

Acting under the new temporary procedures in the Foreign Operations Appropriation Act for FY2002, President Bush found, on February 25, 2002, that three countries – Afghanistan, Burma, and Haiti – had demonstrably failed to meet international counter-narcotics obligations, but he determined that it was in the national interest of the United States for Afghanistan (under the new government) and Haiti to continue to receive U.S. assistance.

Although the State Department's early March 2002 International Narcotics Control Strategy Report mentioned that Mexico was a major supplier of heroin, methamphetamine, and marijuana and the transit point for more than one-half of the cocaine sold in the United States, it noted that Mexico's counter-narcotics efforts had been impressive and had resulted in tangible successes against the three major drug cartels in the country.<sup>13</sup> During the Bush-Fox meeting in Monterrey, Mexico in March 2002, the Presidents acknowledged "major successes achieved by Mexico in the fight against narco-trafficking" and agreed on "the importance of redoubling judicial cooperation" between the countries.

In congressional action on the Foreign Operations Appropriations for FY2003, the bill (S. 2779) reported by the Senate Appropriations Committee on July 18, 2002, would have extended through FY2003 the modifications of the U.S. drug certification requirements enacted in the previous year. However, the bill (H.R. 5410) reported by the House Appropriations Committee on September 19, 2002, did not contain a similar provision. As a result, this issue was an item to be resolved in conference at the end of the session.

In congressional action on the Foreign Relations Authorization for FY2003, the conference report on H.R. 1646 (H.Rept. 107-671) was filed on September 23, 2002, with Section 706 dealing with International Drug Control Certification Procedures. The House International Relations Committee had reported out H.R. 1646 on May 4, 2001, without any provisions on drug certification, and the measure was passed by the House on May 16, 2001. The Senate approved H.R. 1646 on May 1, 2002, after incorporating the text of a Senate measure on security assistance (S. 1803) approved in December 2001.

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<sup>13</sup> See the State Department's *International Narcotics Control Strategy Report*, March 2002, pp. V-27-36. See also CRS Report RL31412, *Mexico's Counter-Narcotics Efforts under Fox, December 2000 to April 2002*, by (name redacted).



Drawing from S. 1401, mentioned above, which was reported out by the Senate Foreign Relations Committee on September 4, 2001, the conference report on H.R. 1646 establishes new drug certification and designation procedures in Section 706. This section requires the President to make a report, not later than September 15 of each year, identifying the major drug transit or major illicit drug producing countries. At the same time the President is required to designate any of the named countries that has “failed demonstrably,” during the previous 12 months, to make substantial efforts to adhere to international counter-narcotics agreements (defined in the legislation) and to take other identified counter-narcotics measures. U.S. assistance would be withheld from any designated countries unless the President determines that the provision of assistance to that country is vital to the national interest of the United States, or that the designated country subsequently made substantial counter-narcotics efforts.

Another section clarifies that the requirement for the yearly International Narcotics Control Strategy Report (INCSR) detailing the performance of individual countries by March 1 of each year is retained. Notwithstanding the general suspension of the previous drug certification and sanctions procedures, subsection 706(5)(B) provides that the President may apply those procedures at his discretion. A transition rule provides that for FY2003, the required report must be submitted at least 15 days before foreign assistance funds are obligated or expended. The conference report on H.R. 1646 was approved by the House by voice vote on September 25, 2002, and was approved by the Senate by unanimous consent on September 26, 2002. It was signed into law (P.L. 107-228) on September 30, 2002.

In short, Section 706 requires the President to designate and withhold assistance from the worst offending countries (those that have “failed demonstrably” to make substantial counter-narcotics efforts). It also permits the President to use his discretion to maintain a higher standard and to withhold assistance and apply other sanctions against countries that are failing to cooperate fully with the United States in counter-narcotics efforts whenever he determines that such actions would be helpful. In keeping with this approach, the Joint Explanatory Statement of the Committee of Conference indicates that Managers believe that the President should direct U.S. Executive Directors in multilateral development banks to vote against loans for countries failing to qualify for assistance under either the old or the new procedures.

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