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*NARCOTICS CERTIFICATION OF DRUG PRODUCING
AND TRAFFICKING NATIONS: QUESTIONS AND
ANSWERS*

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Narcotics Certification of Drug Producing and Trafficking Nations: Questions and Answers

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Summary

An important element of U.S. international narcotics control strategy involves the threat of, or application of, sanctions against major illicit drug producing or trafficking nations. These range from suspension of U.S. foreign assistance and preferential trade benefits to curtailment of air transportation. Sections 489 and 490 of the Foreign Assistance Act of 1961, as amended, require the President to submit to Congress by March 1 each year a list of major illicit drug producing and transiting countries that he has certified as fully cooperative and therefore fully eligible to receive U.S. foreign aid, without discretionary imposition of any concomitant economic and trade sanctions. This sets in motion a 30-calendar-day review process in which Congress can disapprove the President's certification and stop U.S. foreign aid and other benefits from going to specific countries. This report provides answers to frequently asked questions about the certification process and the requirements for Congress to disapprove a drug certification by the President.

What Is the Drug Certification Process?

Sections 498 and 490 of the Foreign Assistance Act of 1961, as amended, require the President to submit to Congress by March 1 each year a list of major illicit drug producing and transiting countries that he has certified as fully cooperative and therefore eligible to continue to receive U.S. foreign aid without discretionary imposition of any concomitant economic and trade sanctions. This sets in motion a 30-calendar-day review process in which Congress can disapprove the President's certification and stop U.S. foreign aid and other benefits from going to specific countries.

Certification may be granted when a major illicit drug producing or transiting country has "cooperated fully" with U.S. narcotics reduction goals, or has taken "adequate steps on its own" to achieve full compliance with the goals and objectives established by the 1988 U.N. anti-drug trafficking convention. A country not qualifying on this basis may escape imposition of sanctions if the President certifies that U.S. "vital national interests" justify waiver of sanctions on that country.

What Sanctions Are Mandatory?

If decertified, the following mandatory sanctions would apply to a nation:

- Suspension of all remaining U.S. assistance for the current fiscal year (except for anti-narcotics and humanitarian assistance) [N.B. withholding of 50% of assistance for the current fiscal year is required.]; Total suspension of U.S. assistance for subsequent fiscal years (unless the country is recertified in the interim) ;
- Requirement that the United States vote against loans to the country in the multilateral development banks.

What Sanctions Are Discretionary?

In the event of decertification, discretionary sanctions available to the President under section 802 of the Trade Act of 1974 include:

- Denial of preferential tariff treatment to a country's exports under the Generalized System of Preferences (GSP), the Caribbean Basin Economic Recovery Act, Andean Trade Preference Act, and any other law providing preferential tariff treatment; Duty increases of up to 50% on the value of a country's export items which are currently duty free;
- Duty increases of up to 50% on the value of a country's export items which are currently subject to duty; Curtailment of air transportation and traffic between the United States and the non-certified country;
- Withdrawal of U.S. participation in any preferential pre-clearance customs arrangements with the non-certified country.

What Qualifies a Country for the “Majors” List?

Section 490(h) of the Foreign Assistance Act of 1961 requires the President to submit to Congress, by November 1 of each year, a list of countries he has determined to be either: (1) **major illicit drug producing countries** or, (2) **major drug transit countries**. Definitions provided by law allow an Administration substantial flexibility in determining which nations qualify for drug transit status. In contrast, standards for a drug-producing country offer little flexibility.

Major illicit drug producing countries are defined by law in Section 481 of the 1961 Act as cultivating or harvesting at least 1,000 hectares of opium poppy; 1,000 hectares of illicit coca; or 5,000 hectares of marijuana. In the case of marijuana, such production must significantly affect the United States.

Major illicit drug transit countries are defined by a Section 481 standard which permits subjectivity. Such a country, because of its transit activities, must be a significant direct source of illicit drugs to the United States.

Information on major illicit drug producing and transit countries, as well as information on *major precursor chemical source countries* and *major drug money*

laundering countries is then included in the State Department's March 1, Annual International Narcotics Control Strategy Report (INCSR).

What Does the 2000 Certification Report Include?

On February 29, 2000, President Clinton submitted to Congress his annual list of major illicit drug producing and transiting countries eligible to receive U.S. foreign aid and other economic and trade benefits. Certified as fully cooperating and deserving of U.S. assistance are Bahamas, Bolivia, Brazil, China, Colombia, Dominican Republic, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Mexico, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam. The President decertified and denied assistance to Afghanistan, and Burma. Countries not fully cooperating but eligible for continued U.S. assistance because such assistance is deemed in the U.S. national interest are Cambodia, Haiti, Nigeria and Paraguay. Changes from the 1999 certification are removal of Aruba and Belize (both previously fully certified) from the list of countries subject to certification

Of the President's determinations, his decision to certify Mexico has often been the most contentious. Mexico has regularly been a focus of congressional attention and an important focus of U.S. foreign narcopolicy. As early as 1988, a resolution to decertify Mexico for lack of narcotics cooperation passed the Senate. On March 13, 1997, the House passed (251-175) H.J.Res. 58 which would have delayed decertification of Mexico by 90 days and blocked it entirely had the President failed to certify that Mexico had moved forward on six narcotics-cooperation related issues. In floor debate on March 20, 1997, the Senate passed (94-5) the Coverdell-Feinstein amendment to H.J.Res. 58. The amendment, instead of disapproving the President's certification, would have required a report by September 1, 1997, on Mexican efforts to strengthen the fight against trafficking in 10 areas and U.S. efforts in three areas. President Clinton agreed to abide by the Senate version. In 1998, resolutions of disapproval were introduced in both houses, but S.J. Res. 42 was defeated in the Senate and no floor action was taken in the House. [See: CRS Report 98-174 and CRS Report RL30080 by K. Larry Storrs which are specifically Mexico focused.]

Congress is also increasingly concerned over Administration determinations as to who is, and who is not, on the "majors" list. An area of contention for many in Congress has been removal of Iran from the drug "majors" list and his removal of Syria and Lebanon from the list. In November 1997, to the dismay of many in Congress, the President notified the Hill of his decision to remove Syria and Lebanon from the list. 24 Members of Congress had signed a letter calling upon President Clinton to retain Syria on the list. In the case of Iran, on February 3, 1998, 21 Members of Congress sent a letter to the President protesting such anticipated action. A follow-up letter sent February 6, was signed by 15 Members. Nevertheless, last year, the Administration removed Iran from the list. Also, earlier in the year, Members of Congress sent a letter to the Secretary of State asking the Administration whether North Korean drug trafficking activity warranted that nation's placement on the "majors" list. The March 1999 INCSR, which for the first time includes a section on North Korea, expresses "profound concern" over reports of North Korean drug trafficking activity and contains a pledge to continue to monitor any such activity in the coming year and to add North Korea to the majors list should evidence require.

In the case of Syria and Lebanon, the Administration argues that the definition of major “drug transit” country does not apply because the impact of drugs transiting these two nations does not substantially affect the United States. Moreover, the law does not make major drug refining nations subject to sanctions— only crop producing (growing) nations, and Syria appears to be growing less opium poppy though apparently refining more heroin.

How Can Congress Disapprove a Presidential Determination of Certification?

Congress has 30-calendar-days from receipt of the President's determination of certification to enact a joint resolution disapproving the President's action. For 1998, the deadline for congressional passage of a joint resolution of disapproval is expected to be March 27, 1999. If the President vetoes such a joint resolution of disapproval, a two-thirds enacting majority in each legislative chamber would be required for it to become law.

If Congress Were to Disapprove A Presidential Certification, Could the President Avoid Imposition of Sanctions by Some Other General Waiver Authority?

Yes. Special waiver authorities are available, but because certain political costs might be involved, it is uncertain whether the President would exercise these waivers.

Section 614(a) of the Foreign Assistance Act of 1961 provides special authority for the President to furnish assistance without regard to any provisions of the Act, if he notifies Congress in writing and determines that to do so is important to the national security interests of the United States. Sales, credits, and guarantees under the Arms Export Control Act also may be provided if to do so is found by the President to be vital to the national security interests of the United States. Section 614 of the Act does not specifically authorize waivers of requirements for U.S. representatives to vote against loans in the multilateral development banks.

Officials at the General Counsel's office at the Treasury Department are of the preliminary opinion that section 614 waivers would not apply to requirements under section 490(a)(2) that U.S. representatives in the multilateral development banks vote against loans to the decertified country. If the President uses section 614 in contentious circumstances, however, such use may result in: (1) Congress removing the authority, or (2) actions by Congress in subsequent appropriations bills to deny, or limit assistance to the country in question.

If Congress were to disapprove the President's certification of a major illicit drug producing or transit country and override the presidential veto of such action, potential subsequent attempts by the President to change his certification to one based on national interests would apparently need to be implemented under recertification provisions of section 490(f). This section provides that the President may submit a national interests certification at any future time. This recertification becomes operable, however, only if one of the two following conditions is met: (a) the President also certifies there has been a fundamental change in government or change in conditions leading to the decertification;

or (b) in the absence of this additional certification regarding changes in government or conditions, Congress enacts a joint resolution approving the national interests certification.

Has Congress Ever Overridden a Presidential Determination of Certification?

No. However, many say a major strength of the certification process is the impact it has on the Administration in shaping congressionally sensitive presidential determinations before they are sent to Congress.

In the 100th Congress, a resolution disapproving certification of Panama (S.J.Res. 91) passed the Senate on April 3, 1987, but the House failed to consider it within the required statutory time. As early as 1988, a resolution to decertify Mexico for lack of narcotics cooperation passed the Senate. More recently, on March 13, 1997, the House passed (251-175) H.J.Res. 58 which would have deferred decertification of Mexico if the President reported that Mexico had moved forward on six narcotics-cooperation related issues. In a related move, the Senate, on March 20, 1997, passed (94-5) the Coverdale-Feinstein amendment to H.J.Res. 58 which required a report on Mexican and U.S. efforts to strengthen drug control activity. The report was subsequently submitted.

In the Event of Decertification, Could Anti-Drug and Humanitarian Assistance Continue?

Yes. Section 481(e)(4) of the Foreign Assistance Act of 1961 exempts narcotics assistance, narcotics-related aid, disaster relief, food and medicine, as well as refugee assistance from mandatory certification sanctions.

However, under what many see as a technical loophole in the law, narcotics-related foreign military financing (FMF) is not exempted in the event of decertification. To counter this perceived loophole, President Clinton, on August 16, 1997 signed a Section 614 “national interests” waiver to the Foreign Assistance Act permitting Foreign Military Financing and other narcotics assistance to Colombia in the amount of \$30.6 million. [N.B. Assistance in the form of providing drawdown articles and services is generally not considered “assistance” under the definitions of the 1961 Foreign Assistance Act. In the case of Colombia, the President also signed a Section 506 (a)(2) waiver permitting DOD drawdown articles and services to Colombia and other nations in the Western Hemisphere on September 30, 1997.]

What is the Impact of the U.S. Voting Against Multilateral Development Bank Loans to a Decertified Country?

It is unlikely that the World Bank (IBRD) and Multilateral Development Banks (MDBs) would terminate or reduce their levels of assistance to a country *solely* because the United States voted against such loans. The United States is the single largest member country in both categories of banks, but its 17.1% voting share in the World Bank and [to cite one MDB example] its 34.1% share in the Inter-American Development Bank (IDB) would not be sufficient to prevent lending. A majority (51% of the vote cast by a quorum of members) is needed to approve such loans. It is likely that they will continue supporting assistance to a nation, even if the United States opposes it. In the World Bank (IBRD),

other advanced industrial countries -- Japan, Canada, and the countries of the European Union -- control about 40% of the vote. It is unlikely that they will oppose lending to a nation simply because the United States opposes it. Developing countries control about 40% of the vote in the IBRD and are likely to support loans to a decertified nation regardless of the U.S. view.

The U.S. Administration, however, might be able to persuade some countries to oppose lending to a decertified country if it argues in a convincing manner, and especially if "linkage" to other matters is established. U.S. arguments along this line will not be very persuasive, however, if other countries believe the U.S. Administration is opposing multilateral bank assistance to the nation in question because it is required to do so by law, and not because of its own conviction that opposition to such loans is the right thing to do and important to the United States.

It is unlikely that the United States will be able to persuade top management at the World Bank or the MDBs to suspend action on any pending loan applications by a decertified country if most other bank member countries support continued lending. The United States has been chronically late in its contributions to the World Bank and other multilateral banks in recent years. Bank management and other member countries may be less willing than usual to accord the United States special influence over decisions where they hold contrary views.