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Mexican Drug Certification Issues: U.S. Congressional Action, 1986-1998

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Summary

This report summarizes U.S. congressional action relating to Mexican drug control and drug certification issues from 1986 to the present, with emphasis on recent actions. Beginning in 1986, in the context of the 1985 killing of DEA Agent Enrique Camarena, 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, despite some criticism, but Congress has closely monitored these certification decisions. Congress took some initial steps on resolutions to disapprove Mexico's certification in 1987 and 1988, and passed some drug-related restrictions on Mexico in 1989 and 1996. Congressional efforts to overturn the President's certification of Mexico advanced the furthest in 1997, when both houses passed modified resolutions of disapproval, which would have required additional reports on Mexican and U.S. drug control efforts. President Clinton reported to Congress in September 1997, in compliance with the Senate-passed version, even though it was never enacted into law. Following President Clinton's certification, on February 26, 1998, that Mexico was fully cooperative in drug control efforts, resolutions of disapproval (S.J.Res. 42 and S.J.Res. 43 and H.J.Res. 114) were introduced in both houses in early March 1998. When the Senate considered the Senate measures on March 26, 1998, objection was raised to a request for unanimous consent to consider S.J.Res. 43 (with a national interest waiver), and S.J.Res. 42 (a simple resolution of disapproval) was defeated by a vote of 45 to 54.

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 Section 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.¹ 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 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.²

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.

¹For details on the certification options (certification, national interests certification, decertification) and the possible sanctions, see *Narcotics Certification and Mexico: Questions and Answers*, CRS Report 97-320 F, March 6, 1997, by Raphael F. Perl, Jonathan Sanford, and K. Larry Storrs. For more general information on U.S.-Mexican relations, including legislation on trade, immigration, and drug trafficking issues, see *Mexico-U.S. Relations: Issues for the 105th Congress*, CRS Issue Brief 97028, by K. Larry Storrs.

²For details on Mexican drug control efforts in this period, see *Mexico's Counter-Narcotics Efforts, 1985-1995*, CRS Report 96-239, March 14, 1996, by K. Larry Storrs.

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.³

Congressional Action in 1997: Modified Resolutions of Disapproval Require Additional Reports which President Provides Despite Non-Enactment

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.⁴

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.

³For details on Mexico's anti-drug efforts in the early years of the Zedillo presidency, see Mexico's Counter-Narcotics Efforts Under Zedillo, December 1994 to March 1997, CRS Report 97-354 F, March 14, 1997, by K. Larry Storrs.

⁴For some pros and cons on resolutions of disapproval in 1997, see Drug Certification of Mexico: Arguments For and Against Congressional Resolutions of Disapproval, CRS Report 97-329 F, March 8, 1997, by K. Larry Storrs. For some arguments about the effects of past congressional actions, see Mexico's Anti-Drug Efforts: Effects of Past U.S. Pressures and Sanctions, CRS Report 97-361 F, March 13, 1997, by K. Larry Storrs.

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.Res 58, and the Administration reported, as promised in September 1997.

In further expressions of sentiment, each of the houses subsequently considered and failed to pass legislation to modify or suspend the existing drug certification 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 Appropriation Bill (S. 995), 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

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 1998.⁵

⁵ See the presidential certification of February 26, 1998, along with the Statement of Explanation on Mexico, as well as the State Department's *International Narcotics Control Strategy Report, March 1998*, pp. 148-159. For recent information drawing from these and other reports, see *Mexico's Counter-Narcotics Efforts Under Zedillo*, CRS Report 98-161, by K. Larry Storrs.

While Administration witnesses defended the certification decision in congressional hearings, several Members of Congress criticized the decision, and indicated their intention to introduce resolutions to disapprove the President's certification. 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.⁶ In the Senate, Senator Coverdell, with Senators Feinstein, Helms, and Hutchinson 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.

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.

⁶ For a discussion of pros and cons, see *Drug Certification of Mexico: Arguments For and Against Congressional Resolutions of Disapproval*, CRS Report 97-329, which, while geared to the 1997 debate, is generally applicable to 1998 as well.