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## **Drug Certification/Designation Procedures for Illicit Narcotics Producing and Transit Countries**

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# Drug Certification/Designation Procedures for Illicit Narcotics Producing and Transit Countries

## Summary

This report summarizes the congressionally-mandated presidential designation procedures on major illicit narcotics producing and transit countries in Section 706 of the Foreign Relations Authorization Act for FY2003 (H.R. 1646/P.L. 107-228) enacted in September 2002. To put the new procedures in perspective, the report also provides information on the past procedures, the congressional modifications, and recent presidential designations under the revised procedures. This report will not be updated.

From the mid-1980s to 2001, Congress required the President to certify in early March that specified drug producing and drug transit countries were “cooperating fully” with the United States in counter-narcotics efforts in order to avoid a series of sanctions, including suspension of U.S. foreign assistance, and opposition to loans in the multilateral development banks. The sanctions would also apply if the Congress, within 30 calendar days, passed a joint resolution of disapproval to overturn the presidential certification. Spokesmen from many countries complained about the unilateral and non-cooperative nature of the drug certification requirements, and a movement to modify the process developed in Congress in 2000-2002.

In 2001 (on a temporary, one-year basis) and in 2002 (on a permanent but initially transitional basis), a law with new procedures was enacted. This law requires the President to make a report in mid-September of each year that identifies the major drug producing or transit countries. At the same time, the President is required to designate and to withhold assistance from any of the named countries that has “failed demonstrably,” during the previous 12 months, to adhere to international counter-narcotics agreements. Under the legislation, the President may waive the withholding of assistance if he determines this to be in the national interest.

Acting under this legislation, President Bush made designations on a transitional basis for FY2002 and FY2003 and then made determinations on the designated date for FY2004, FY2005, and FY2006.

- On February 23, 2002, the President designated Afghanistan, Burma and Haiti as having “failed demonstrably” but granted national interest waivers to Haiti and Afghanistan under the new government.
- On January 31, 2003, the President designated Burma, Guatemala, and Haiti, but granted national interest waivers to Guatemala and Haiti.
- On September 15, 2003, the President designated Burma and Haiti, but granted a national interest waiver to Haiti.
- On September 15, 2004, the President designated Burma as having “failed demonstrably” in counter-narcotics efforts.
- On September 15, 2005, the President designated Burma and Venezuela but granted a national interest waiver to Venezuela to permit a continuation of U.S. assistance.

## Contents

Drug Certification Requirements for FY1987-FY2001 .....	1
Congress Sets Certification Requirements .....	1
Presidential Certifications .....	2
Drug Designation Requirements for FY2002 .....	3
Congressional Reform Efforts Lead to One Year Waiver and New Requirements in Foreign Operations Appropriations .....	3
President Bush’s Designations under the Appropriations Act .....	6
Drug Designation Requirements for FY2003 and Thereafter .....	6
Congress Establishes Permanent New Requirements in Foreign Relations Authorization, with Transitional Provisions for FY2003 ...	6
President Bush’s Designations for FY2003 under the Transition Rule .....	7
President Bush’s Designations for FY2004 .....	8
President Bush’s Designations for FY2005 .....	9
President Bush’s Designations for FY2006 .....	10

## List of Tables

Table 1. Comparison of Features of Sections 489-490 of FAAct (Old Provisions) and Section 706 of Foreign Relations Authorization (New Provisions) ...	12
Table 2. Majors List, FY1987-FY2003, Countries Determined To Be Major Illicit Narcotics Producing and/or Transit Countries .....	13
Table 3. Countries on Majors List, FY1987-FY2001, That Failed to “Cooperate Fully,” and Were Decertified or Given National Interest Certification ...	15
Table 4. Countries on Majors List, FY2002-FY2006, That “Failed Demonstrably” and Were Subject to Sanctions or Given Waivers in National Interest ...	16
Table 5. Majors List, FY2004-FY2006, Countries Determined on September 15 <sup>th</sup> before Fiscal Year to be Major Illicit Narcotics Producing and/or Transit Countries .....	17

# Drug Certification/Designation Procedures for Illicit Narcotics Producing and Transit Countries

This report provides a summary of the congressionally-mandated presidential designation procedures that require the President, with some waiver authority, to identify in mid-September of each year the major drug producing or transit countries, and to designate and to withhold assistance from any of the countries that has “failed demonstrably” to adhere to international counter-narcotics agreements. The report also summarizes the presidential determinations and designations made under these procedures, including the designations under transitional procedures in 2001 and 2002 and the regular designations in 2003, 2004 and 2005. This report will not be updated.

## Drug Certification Requirements for FY1987-FY2001

### Congress Sets Certification Requirements

In the mid-1980s, Congress became increasingly concerned that the Executive was giving inadequate attention and effort to blocking and controlling foreign drug trafficking. As a result, beginning with the Drug Abuse Act of 1986, Congress required the President to certify that certain countries were cooperating fully with the United States in counter-narcotics efforts in order to avoid the suspension of U.S. foreign assistance. Sections 489-490 of the Foreign Assistance Act of 1961, as amended, required the President to designate the major illicit drug producing and drug transit countries by November 1 of each year. These sections further required the President to withhold 50% of U.S. assistance for the designated countries for that fiscal year until he certified by March 1 of each year that the countries had cooperated fully with the United States in drug control efforts, or had taken adequate steps on their own to achieve the goals and objectives of the 1988 United Nations Drug Convention.<sup>1</sup>

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<sup>1</sup> For more detail, see U.S. Department of State, Bureau for International Narcotics and Law Enforcement Affairs, *Fact Sheet: Majors List and the Certification Process*, March 1, 2001; and CRS Report 98-159, *Narcotics Certification of Drug Producing and Trafficking Nations: Questions and Answers*, by Raphael F. Perl. There were some slight modifications in the procedures in the 1986-2001 period. Earlier, Congress required reports on drug producing and transit countries in 1981, and it gave the President the authority to suspend assistance to non-cooperative countries in 1984.

In the event the President was unable to certify that a country was fully cooperative, or to determine that a less-than-fully-cooperative country should be given a certification in the national interest, certain sanctions applied to the countries denied certification. Among the sanctions applied to decertified countries were the following: (1) most foreign assistance and financing of military sales for the decertified country were to be suspended, with the exception of counter-narcotics and humanitarian aid; (2) U.S. representatives were required to vote against loans for the country in the multilateral development banks; and (3) certain trade sanctions, including increased tariffs and denial of preferential trade benefits, could be applied at the President's discretion. The imposed sanctions were to remain in force until the country was subsequently certified.

The sanctions would also apply if Congress, within 30 calendar days, passed a joint resolution of disapproval to overturn the presidential certification, thereby decertifying a country. However, any such congressional resolution would be subject to a presidential veto, and would require a two-thirds vote of both houses to override. Moreover, Section 614 of the Foreign Assistance Act of 1961, as amended, gives the President the authority to provide assistance to a country, notwithstanding other provisions in the act, if he determines and notifies Congress, that to do so is important to the security interests of the United States.

## Presidential Certifications

Acting under the congressionally imposed requirements, U.S. Presidents regularly certified the vast majority of illicit drug producing and transit countries, especially countries that were friendly to the United States and that were trading and diplomatic partners. In a smaller portion of cases, where there were serious doubts about the counter-narcotics efforts of trade and diplomatic partners, these countries were given "national interest" waivers that freed them from sanctions on the grounds that continued aid would facilitate better relations and encourage greater counter-narcotics efforts.<sup>2</sup> In general, the remaining countries that were denied certification (or decertified) were pariah states, or states with which the United States had little or no contact.

Presidents Ronald Reagan and George H.W. Bush decertified Iran, Syria, Burma and Afghanistan, and gave "national interest" waivers to Lebanon. President Bush decertified Panama in 1988 and 1989, just before and after the United States intervened militarily to remove military ruler General Manuel Noriega from power in part because of his involvement in drug trafficking activities. President William Clinton, decertified Nigeria in 1994, while Bolivia and Peru were given waivers; Colombia, Paraguay, and Pakistan were given waivers in 1995; and Colombia was decertified in 1996 and 1997 on grounds that Colombia's President had received campaign contributions from drug traffickers. This determination caused considerable consternation in Bogota, and some disagreement in Congress. In 1997-1999, there was criticism in Congress when the Administration removed Iran, Syria,

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<sup>2</sup> See *Passing Judgement: The U.S. Drug Certification Process*, Annenberg School for Communication, University of Southern California, 1998, pp. 1-2.

and Lebanon from the list of major drug producing and transit countries, and when North Korea was not included in the Majors List.<sup>3</sup>

In action relating to Mexico, which was often the center of attention despite being fully certified each year, congressional resolutions to disapprove Mexico's certification were introduced in 1987, 1988, 1997, 1998, and 1999.<sup>4</sup> Resolutions of disapproval failed to reach floor action in most years, but both houses passed separate versions of weakened resolutions of disapproval in 1997, and a Senate resolution of disapproval reached the floor but was defeated in 1998. Responding to domestic and international criticisms, measures to modify the drug certification requirements were introduced but not enacted in 1997.<sup>5</sup>

On March 1, 2001, in the last presidential certifications under the old provisions, President George W. Bush certified 20 of the 24 designated drug producing or transit countries as fully cooperative in counter-narcotics efforts, and he granted national interest certifications to Cambodia and Haiti. Only two countries — Afghanistan and Burma — were decertified and subject to the sanctions. President Bush's determinations were very similar to the determinations of President Clinton in the previous year, except that Nigeria and Paraguay were elevated from national interest waiver status to fully cooperative status. 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 2001 certification of Mexico or any other country.

## **Drug Designation Requirements for FY2002**

### **Congressional Reform Efforts Lead to One Year Waiver and New Requirements in Foreign Operations Appropriations**

After more than a year of efforts to modify the drug certification requirements, in December 2001 and January 2002, Congress passed and the President signed the Foreign Operations Appropriations Act for FY2002 (P.L. 107-115) that contained a temporary, one-year suspension of the drug certification procedures, along with new requirements.

Following the July 2000 election of opposition candidate Vicente Fox as President of Mexico, bills were introduced but not enacted to exempt Mexico from the drug certification requirement in FY2001. However, the Senate did pass S.Res. 366 in October 2000, expressing the sense of the Senate that a one-year waiver was

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<sup>3</sup> See CRS Report 98-159, cited above.

<sup>4</sup> For details on the certification process and an illustration of the possible consequences of decertification of Mexico, see CRS Report RL30080, *Mexico and Drug Certification in 1999: Consequences of Decertification*, by K. Larry Storrs.

<sup>5</sup> For more detail, see CRS Report 98-174, *Mexican Drug Certification Issues: U.S. Congressional Action, 1986-2001*, by K. Larry Storrs.

warranted for Mexico so that the new presidents in Mexico and the United States could develop more effective and cooperative counter-narcotics programs.

In late January 2001, Senator Dodd introduced S. 219 to suspend the existing drug certification process for all countries for two years and encourage a high-level conference to develop an effective multilateral strategy. In mid-February 2001, Senator Kay Bailey Hutchison introduced S. 353 to exempt Mexico from the drug certification requirement in FY2001 but require enhanced bilateral counter-narcotics cooperation. About the same time, Senator Grassley and Senator DeWine introduced S. 376 to 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.

In mid-February 2001, on the eve of President Bush's visit with President Fox in Mexico, the Senate passed S.Con.Res. 13 expressing the sense of the Congress that the President should work with the President of Mexico to advance bilateral cooperation. The measure urged the President to 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." During the joint press conference following the meeting in Mexico, President Bush indicated that there was a movement in Congress to review the drug certification requirements, and he expressed confidence in President Fox's efforts to combat 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 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 counter-narcotics agreements; and Representative Reyes introduced H.R. 841 to suspend the certification procedures for two years and encourage development of an effective multilateral strategy.

On March 1, 2001, the same day that President Bush certified that Mexico was cooperating fully with the United States in counter-narcotics areas, the Senate Foreign Relations Committee held a hearing in which several of the proposed modifications to the drug certification requirements were discussed. Then Assistant Secretary of State for International Law Enforcement Affairs Rand Beers testified that the certification process had been "an effective, if blunt, policy instrument," but he recognized a growing sense in Congress that there may be more effective approaches. He added: "Any regime that might modify or replace certification should have an enforcement mechanism to ensure continued international counter-narcotics cooperation. If there were efforts to suspend the certification procedure, we believe the President must retain in the interim the power to decertify or sanction individual countries using the standards of the current process. We do not believe that there should be exemptions for individual countries or regions at this time.



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**Richard A. Arenberg**

Foreword by Alan S. Frumin

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Future carve-outs may be appropriate, however, for regions where there is a mutually acceptable and credible multilateral evaluative mechanism in place.”<sup>6</sup>

On April 3, 2001, the Senate Foreign Relations Committee reported out S. 219 with an amendment in the nature of a substitute, with elements from the various proposals, that would suspend the existing drug certification procedures for three years, require the President to designate only the worst offenders subject to sanctions, and encourage a high-level conference to develop effective multilateral drug reduction and prevention strategies. On August 1, 2001, the Senate Foreign Relations Committee approved S. 1401, the Foreign Relations Authorizations Act for FY2002-FY2003, with the provisions of the 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. The Committee reported out S. 1401 (S.Rept. 107-60) on September 4, 2001, and the measure was placed on the Senate Legislative Calendar, but not acted upon in 2001.

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 the U.S. 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.”

In December 2001 and January 2002, Congress passed and the President signed the Foreign Operations Appropriations Act for FY2002 (H.R. 2506/P.L. 107-115) that contained a temporary, one-year waiver of the drug certification procedures on a global basis for all major drug transit and drug producing countries. In place of the old requirements, the legislation required the President to designate and withhold assistance from the worst offending countries, namely the countries among the major

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<sup>6</sup> This was a reference to the Multilateral Evaluation Mechanism (MEM) developed by the Inter-American Drug Abuse Control Commission (CICAD) of the Organization of American States (OAS). Following up on the Hemispheric Anti-Drug Strategy of 1996 and the Plan of Action of Summit of the Americas II (1998) in Santiago, Chile, the CICAD agreed upon the Multilateral Evaluation Mechanism (MEM) in 1999, and a CICAD working group developed a questionnaire with 61 indicators to which governments responded for the first time in 2000. A Governmental Experts Group, made up of one representative from each country, assessed achievements in 1999-2000 for all countries except their own country. The resulting overview Hemispheric Report and the individual National Reports make assessments and recommendations for future action. Critics argue that the reports are preliminary, bland, and without any sanctions. Proponents argue that the reports make important recommendations, that the MEM process will advance beyond the early efforts, and that countries care about their performance under the agreed upon criteria. For more detail on the CICAD and the MEM process, see the CICAD’s internet site at [<http://www.cicad.oas.org/MEM/ENG/About.asp>].

illicit drug producing and trafficking countries that have “failed demonstrably,” during the previous 12 months, to make substantial efforts to adhere to obligations under international counter-narcotics agreements. It provided, however, that notwithstanding poor counter-narcotics performance, the President could waive the sanctions and continue to provide assistance to the designated countries if he determined and reported to Congress that the assistance to the countries was vital to the national interests of the United States.

## **President Bush’s Designations under the Appropriations Act**

Acting under the provisions of the Foreign Operations Appropriations Act for FY2002, President Bush designated the countries with the worst counter-narcotics records on February 23, 2002, having previously identified the major illicit drug producing and drug transit countries in November 2001. He designated three countries — Afghanistan, Burma, and Haiti — as having failed demonstrably within the last 12 months to make substantial counter-narcotics efforts, but he granted national interest waivers to Haiti and Afghanistan under the new regime.<sup>7</sup> Shortly thereafter, on March 1, 2002, the State Department issued the annual International Narcotics Control Strategy Report, in accordance with a requirement that was not changed, with descriptions of the counter-narcotics activities of illicit drug producing and trafficking countries.<sup>8</sup>

## **Drug Designation Requirements for FY2003 and Thereafter**

### **Congress Establishes Permanent New Requirements in Foreign Relations Authorization, with Transitional Provisions for FY2003**

Continuing the reform efforts of the previous years, in September 2002, Congress passed and the President signed the Foreign Relations Authorization for FY2003 (H.R. 1646/P.L. 107-228), with permanent new requirements in Section 706 of the act dealing with International Drug Control Certification Procedures.

Drawing from S. 1401, mentioned above, the new procedures require the President to make a report, not later than September 15 of each year (15 days before the start of the fiscal 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

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<sup>7</sup> See State Department Fact Sheet, *Overview of Annual Presidential Determinations on Major Illicit Drug Producing and Drug-Transit Countries*, February 25, 2002, available on line at [<http://www.state.gov/p/inl/ris/fs/8480.htm>] for information on the procedures and the presidential action.

<sup>8</sup> See the International Narcotics Control Strategy Report covering 2001, available online at [<http://www.state.gov/p/inl/rls/nrcrpt/2001/>].

(defined in the legislation) and to take other counter-narcotics measures.<sup>9</sup> 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. Notwithstanding the general suspension of the previous drug certification and sanctions procedures, subsection 706(5)(B) of the act provides that the President may apply those procedures at his discretion.

Given the lateness of passage, a transition rule in the legislation provided that for FY2003, the required report had to be submitted at least 15 days before foreign assistance funds could be obligated or expended.

### **President Bush's Designations for FY2003 under the Transition Rule**

Acting under the transition rule in Section 706 of the Foreign Relations Authorization Act (P.L. 107-228), President Bush identified 23 countries as major drug producing or transit countries<sup>10</sup> on January 31, 2003, four months into the fiscal year, rather than the established date of September 15, before the start of the fiscal year. As he identified the countries, he designated three countries — Burma, Guatemala, and Haiti — as having “failed demonstrably” within the last 12 months to make substantial counter-narcotics efforts, but he granted national interest waivers to Guatemala and Haiti on grounds that continued U.S. assistance to those countries serves U.S. national interests. At the same time, the President expressed concern about the amount of illegal synthetic drugs (particularly ecstasy) entering the United States from Europe (particularly the Netherlands), and the amount of pseudoephedrine and high potency marijuana entering the United States from Canada.<sup>11</sup>

By making the identifications and the designations at the time and the way that he did, the President made clear, and it was so stated in a fact sheet on the FY2003 narcotics certification process, that he was not exercising his option to utilize the procedures and standards of the old certification system.

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<sup>9</sup> According to statements in the floor debate, September 15 was picked as a time just before the start of the new fiscal year when the Congress could exercise oversight and take some action if it was dissatisfied with the identifications and designations.

<sup>10</sup> The countries identified as major illicit drug producing or transit countries were: Afghanistan, Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam. In general, nations are identified as major drug producing countries when a thousand hectares of illicit opium poppy or illicit coca, or five thousand hectares of illicit cannabis are harvested or cultivated during a year. Nations are identified as major drug transit countries when they are a significant direct source of illicit drugs affecting the United States, or such drugs are transported through the nation's territory.

<sup>11</sup> See the text of the presidential determination, the factsheet on the procedures, and the briefing and explanation on the FY2003 narcotics certifications available online at the State Department's website at [<http://www.state.gov/p/inl/narc/c8342.htm>].

Several months later, on March 1, 2003, the State Department issued the annual International Narcotics Control Strategy Report, in accordance with a requirement that was not changed by the legislation, with descriptions of the counter-narcotics activities of illicit drug producing and trafficking countries.<sup>12</sup>

## **President Bush's Designations for FY2004**

Acting under Section 706 of the Foreign Relations Authorization Act for FY2003 (P.L. 107-228), President Bush identified 23 countries as major drug producing or transit countries<sup>13</sup> on the established date of September 15, 2003 — 15 days before the start of the new fiscal year as intended by Congress. The countries named on the “majors list” were the same countries identified in the previous determination.

In keeping with the new procedures, among the countries on the majors list, the President designated two countries — Burma and Haiti — as having “failed demonstrably” within the last 12 months to make substantial counter-narcotics efforts. However, Haiti was exempted from sanctions by a presidential determination that continued U.S. assistance to Haiti advances U.S. national interests.

In the text of the presidential determination, the President expressed concern about the flow of illegal synthetic drugs (particularly ecstasy) to the United States from the Netherlands, the amounts of precursor chemicals for producing methamphetamine as well as the amounts of high potency marijuana entering the United States from Canada, and the involvement of North Korea in heroin and methamphetamine traffic in East Asian countries. He indicated that the government of Guatemala had more adequately met international counter-narcotics obligations in the eight months since the last determination when it was listed as having failed demonstrably, but he explicitly stated that further progress was expected in the coming year.<sup>14</sup>

More than five months later, on March 1, 2004, the State Department issued the annual International Narcotics Control Strategy Report, in accordance with a requirement that was not changed by the legislation, with descriptions of the counter-narcotics activities of illicit drug producing and trafficking countries.<sup>15</sup>

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<sup>12</sup> See the International Narcotics Control Strategy Report covering 2002 at [<http://www.state.gov/p/inl/rls/nrcrpt/2002/>].

<sup>13</sup> The countries identified as major illicit drug producing or transit countries were Afghanistan, Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Thailand, Venezuela, and Vietnam.

<sup>14</sup> See the text of the presidential determination and the briefing on the FY2004 narcotics certification determinations available online at the State Department's website at [<http://www.state.gov/p/inl/narc/>].

<sup>15</sup> See the International Narcotics Control Strategy Report covering 2003, available online at [<http://www.state.gov/p/inl/rls/nrcrpt/2003/>].

## President Bush's Designations for FY2005

Acting under Section 706 of the Foreign Relations Authorization Act for FY2003 (P.L. 107-228), on September 15, 2004, about two weeks before the start of the new fiscal year, as intended by Congress, President Bush made the annual presidential determinations regarding major illicit drug producing and drug transit countries, and he authorized the Secretary of State to submit the determinations to Congress.

The President identified 22 countries as major drug producing or transit countries.<sup>16</sup> The countries named on the “majors list” were the same countries identified in the previous determination, except that Thailand was removed from the list because the country’s opium poppy cultivation is well below the levels specified in the legislation, no heroin processing labs have been discovered for several years, and the country is no longer a significant source or country of transit of illicit narcotic products affecting the United States.

The President designated only one country, Burma, among the countries on the majors list, as having “failed demonstrably” within the last 12 months to make substantial counter-narcotics efforts. Since the President did not exercise his option to make a national interest waiver with regard to Burma, the specified sanctions would be fully in effect against Burma. For the last four years Burma has been the only country subject to sanctions for counter-narcotics deficiencies.

While Haiti had been included with Burma in the President’s designations in 2003 as a country that had failed demonstrably to meet counter-narcotics obligations, the President explained that Haiti was not included in the 2004 determinations because “the new interim Government of Haiti, headed by Prime Minister Latortue, has taken substantive — if limited — counter-narcotics actions in the few months it has been in office.” Even so, the President explained that the U.S. government was deeply concerned about the ability of law enforcement agencies of Haiti “to reorganize and restructure sufficiently to carry out sustained counter-narcotics efforts.”

In addition, in the text of the presidential determination, the President expressed concern about the efforts of a number of other countries. He expressed concern about the flow of illegal synthetic drugs to the United States from the Netherlands, the amounts of high potency marijuana entering the United States from Canada, the increase in opium crop production in Afghanistan, the pervasive political corruption in Nigeria, and the involvement of North Korea in heroin and methamphetamine traffic in East Asian countries. He called upon each of the named countries to cooperate more effectively with the United States in counter-narcotics efforts. At the same time, he expressed appreciation for the efforts of China, Hong Kong, Taiwan,

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<sup>16</sup> The countries identified as major illicit drug producing or transit countries were: Afghanistan, Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Venezuela, and Vietnam.

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and others in the region to stop the diversion of pseudoephedrine and ephedrine used to manufacture methamphetamine, and called for additional collaborative efforts.<sup>17</sup>

More than five months later, on March 4, 2005, the State Department issued the annual International Narcotics Control Strategy Report, in accordance with a continuing requirement, with descriptions of the counter-narcotics activities of illicit drug producing and trafficking countries.<sup>18</sup>

## **President Bush's Designations for FY2006**

Acting under Section 706 of the Foreign Relations Authorization Act for FY2003 (P.L. 107-228), on September 15, 2005, several weeks before the start of the fiscal year, President Bush made the annual presidential determinations regarding major illicit drug producing and drug transit countries, and he authorized the Secretary of State to submit the determinations to Congress.<sup>19</sup>

The President identified 20 countries as major drug producing or transit countries. The countries named<sup>20</sup> on the "majors list" were the same countries identified in the previous determination, except that China and Vietnam were removed from the list. According to the Presidential Determination, China was removed because there is insufficient evidence to suggest that China is a major source or transit country for illicit narcotics that significantly affect the United States. Vietnam was removed because there are no indications of a significant Vietnam-based drug threat to the United States, and Vietnamese claims that opium poppy cultivation has been virtually eliminated could not be refuted.

The President designated two of the countries, Burma and Venezuela, as having "failed demonstrably" within the last 12 months to adhere to international counter-narcotics obligations, but he waived the sanctions against Venezuela by determining that U.S. programs to aid Venezuela's democratic institutions were vital to the national interests of the United States.

Burma has been decertified every year since 1988, and for the last five years, it has been the only country subject to sanctions for counter-narcotics deficiencies. According to the Presidential Determination and the Statement of Justification,

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<sup>17</sup> See the text of the presidential determination and other information on the FY2005 narcotics certification determinations on the State Department's websites at [<http://usinfo.state.gov/gi/Archive/2004/Sep/17-404122.htm>] and [<http://www.state.gov/p/inl/rls/rm/36249.htm>].

<sup>18</sup> See the International Narcotics Control Strategy Report issued in March 2005, but covering 2004 at [<http://www.state.gov/p/inl/rls/nrcrpt/2005/>].

<sup>19</sup> See the text of the presidential determination and other information on the FY2006 narcotics certification determinations on the State Department's websites at [<http://www.state.gov/p/inl/c15808.htm>].

<sup>20</sup> The countries identified as major illicit drug producing or transit countries were Afghanistan, Bahamas, Bolivia, Brazil, Burma, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, and Venezuela.

Burma, despite continued reduction in poppy cultivation, remains the second largest producer in the world of illicit opium and is among the largest producers and traffickers in the world of amphetamine-type stimulants, with traffickers of methamphetamine operating with apparent impunity.

Venezuela was designated as having failed demonstrably to meet international counter-narcotics obligations for the first time. Venezuela is a major transit country, with increasing quantities of cocaine and heroin moving through the country to the United States and Europe. According to the Administration's Statement of Justification, Venezuela has not adequately addressed this increasing traffic, it has failed to eradicate coca and opium poppy fields found near the border with Colombia, and it has dramatically reduced counter-narcotics cooperation with the United States, including ending cooperation with the Drug Enforcement Administration (DEA).

Apart from the designated countries, the Presidential Determination expressed concern about the apparent increase of opium poppy cultivation in Afghanistan, the continuing flow of Ecstasy from Canada and the Netherlands, the weaknesses in the law enforcement and criminal justice systems in Haiti, the corruption and criminal activity in Nigeria, and the continued involvement of the North Korean government in criminal and drug trafficking activities.

**Table 1. Comparison of Features of Sections 489-490 of FAACT (Old Provisions) and Section 706 of Foreign Relations Authorization (New Provisions)**

<b>Features</b>	<b>Sections 489-490 of FAACT of 1961</b>	<b>Section 706 of Foreign Relations Authorization</b>
Legal status of the legislation	Sections 489-490 are permanent law	Section 706 is permanent law with new requirements; old provisions available to President as an option
Naming of major illicit drug producing and drug transit countries	Known as Majors List, required by November 1, four months before certification	Required by Sept. 15, same time as designation of worst offenders.
International Narcotics Control Strategy Report (INCSR) describing country performance and U.S. programs	Required by March 1	Still required by March 1
<i>Certification/Designation Procedures:</i>		
a. Responsibility for certification or designation	President	President
b. Congressional review/reversal	Congressional review and disapproval of certification	No congressional review of determination, but oversight available
c. Date of certification or designation	By March 1	By Sept. 15, at same time as designation of Majors List
d. Country coverage of certification or designation	All "major" countries must be certified as fully cooperative to avoid sanctions	President to designate worst offenders only.
e. Period for evaluation	Previous Jan.-Dec. calendar year	During the previous 12 months
f. Standards for certification or designation	Country has fully cooperated with U.S., taken steps to comply with U.N. Convention objectives, and engaged in other cooperative measures	Designation of worst offenders which have failed demonstrably to meet defined international counter-narcotics obligations
g. Effect of non-certification, or designation as worst offender	Withholding of U.S. assistance and sales financing, voting against country loans in MDBs, and possible trade sanctions	Withholding of U.S. assistance
h. Presidential waiver	President may waive sanctions if in vital national interest of United States	President may waive sanctions if in vital national interest of United States
International counter-narcotics cooperation	Defined as compliance with U.N. drug convention, and bilateral and multilateral agreements	Defined as compliance with U.N. drug convention, and bilateral and multilateral agreements, with key features specified.

Table 1 compiled by K. Larry Storrs, Congressional Research Service.



## CRS-14

Country	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Laos	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Lebanon	X	X	X	X	X	X	X	X	X	X	X						
Malaysia	X	X	X	X	X	X	X	X	X	X	X	X	X				
Mexico	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Morocco	X	X	X	X	X	X	X										
Nigeria	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Pakistan	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Panama	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Paraguay	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Peru	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Syria	X	X	X	X	X	X	X	X	X	X	X						
Taiwan									X	X	X	X	X	X			
Thailand	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Venezuela					X	X	X	X	X	X	X	X	X	X	X	X	X
Vietnam									X	X	X	X	X	X	X	X	X

**Note:** Prepared by K. Larry Storrs, with technical assistance from Nancy Shaffer and Sarah Mitchell, from *International Narcotics Control Summary* provided by the Department of State. In nearly all cases, determinations were made on November 1 of each year.

**Table 3. Countries on Majors List, FY1987-FY2001, That Failed to “Cooperate Fully,” and Were Decertified or Given National Interest Certification**

Country	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
<b>Afghanistan</b>	Decert.	Decert.	Decert.	Decert.	Decert.	Decert.	NIC	NIC	Decert.						
<b>Iran</b>	Decert.														
<b>Syria</b>	Decert.														
<b>Panama</b>		Decert.	Decert.					NIC							
<b>Laos</b>	NIC	NIC	Decert.					NIC							
<b>Lebanon</b>	NIC														
<b>Burma</b>			Decert.												
<b>Bolivia</b>							NIC	NIC							
<b>Nigeria</b>								Decert.	Decert.	Decert.	Decert.	Decert.	NIC	NIC	
<b>Peru</b>								NIC	NIC						
<b>Colombia</b>									NIC	Decert.	Decert.	NIC			
<b>Pakistan</b>									NIC	NIC	NIC	NIC			
<b>Paraguay</b>									NIC	NIC		NIC	NIC	NIC	
<b>Belize</b>											NIC				
<b>Cambodia</b>												NIC	NIC	NIC	NIC
<b>Haiti</b>													NIC	NIC	NIC

**Legend:**

Decert. = Decertified.

NIC =National interest certification.

**Note:** Prepared by K. Larry Storrs, with technical support by T. Lisbeth, from *International Narcotics Control Summary* provided by the Department of State.

In nearly all cases, certifications were made on March 1 of each year.

**Table 4. Countries on Majors List, FY2002-FY2006,  
That “Failed Demonstrably” and Were Subject to Sanctions  
or Given Waivers in National Interest**

Country	2002	2003	2004	2005	2006
<b>Afghanistan</b>	NIW				
<b>Burma</b>	SS	SS	SS	SS	SS
<b>Haiti</b>	NIW	NIW	NIW		
<b>Guatemala</b>		NIW			
<b>Venezuela</b>					NIW

**Legend:**

SS = Subject to sanctions.

NIW = National interest waiver.

**Note:** Prepared by K. Larry Storrs, with technical assistance from Nancy Shaffer and Sarah Mitchell, from *International Narcotics Control Summary* provided by the Department of State, and the FY2004, FY2005, and FY2006 presidential determinations.

Determinations for FY2002 were made on February 23, 2002; for FY2003 were made on January 31, 2003; for FY2004 were made on September 15, 2003; for FY2005 were made on September 15, 2004; and for FY2006 were made on September 15, 2005.

**Table 5. Majors List, FY2004-FY2006,  
Countries Determined on September 15<sup>th</sup> before Fiscal Year  
to be Major Illicit Narcotics Producing and/or Transit Countries**

<b>Country</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<b>Afghanistan</b>	X	X	X
<b>Bahamas</b>	X	X	X
<b>Bolivia</b>	X	X	X
<b>Brazil</b>	X	X	X
<b>Burma</b>	X	X	X
<b>China</b>	X	X	
<b>Colombia</b>	X	X	X
<b>Dominican Republic</b>	X	X	X
<b>Ecuador</b>	X	X	X
<b>Guatemala</b>	X	X	X
<b>Haiti</b>	X	X	X
<b>India</b>	X	X	X
<b>Jamaica</b>	X	X	X
<b>Laos</b>	X	X	X
<b>Mexico</b>	X	X	X
<b>Nigeria</b>	X	X	X
<b>Pakistan</b>	X	X	X
<b>Panama</b>	X	X	X
<b>Paraguay</b>	X	X	X
<b>Peru</b>	X	X	X
<b>Thailand</b>	X		
<b>Venezuela</b>	X	X	X
<b>Vietnam</b>	X	X	

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