

22 USC 2291j-1: International drug control certification procedures

Text contains those laws in effect on March 29, 2017

From Title 22-FOREIGN RELATIONS AND INTERCOURSE

CHAPTER 32-FOREIGN ASSISTANCE

SUBCHAPTER I-INTERNATIONAL DEVELOPMENT

Part VIII-International Narcotics Control

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§2291j–1. International drug control certification procedures

During any fiscal year, funds that would otherwise be withheld from obligation or expenditure under section 2291j of this title may be obligated or expended beginning October 1 of such fiscal year provided that:

(1) Report

Not later than September 15 of the previous fiscal year the President has submitted to the appropriate congressional committees a report identifying each country determined by the President to be a major drug transit country or major illicit drug producing country as defined in section 2291(e) of this title.

(2) Designation and justification

In each report under paragraph (1), the President shall also-

(A) designate each country, if any, identified in such report that has failed demonstrably, during the previous 12 months, to make substantial efforts-

- (i) to adhere to its obligations under international counternarcotics agreements; and
- (ii) to take the counternarcotics measures set forth in section 2291h(a)(1) of this title; and

(B) include a justification for each country so designated.

(3) Limitation on assistance for designated countries

In the case of a country identified in a report under paragraph (1) that is also designated under paragraph (2) in the report, United States assistance may be provided to such country in the subsequent fiscal year only if the President determines and reports to the appropriate congressional committees that-

(A) provision of such assistance to the country in such fiscal year is vital to the national interests of the United States; or

(B) subsequent to the designation being made under paragraph (2)(A), the country has made substantial efforts-

- (i) to adhere to its obligations under international counternarcotics agreements; and
- (ii) to take the counternarcotics measures set forth in section 2291h(a)(1) of this title.

(4) International counternarcotics agreement defined

In this section, the term "international counternarcotics agreement" means-

(A) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; or

(B) any bilateral or multilateral agreement in force between the United States and another country or countries that addresses issues relating to the control of illicit drugs, such as-

- (i) the production, distribution, and interdiction of illicit drugs;
- (ii) demand reduction;
- (iii) the activities of criminal organizations;
- (iv) international legal cooperation among courts, prosecutors, and law enforcement agencies (including the exchange of information and evidence);
- (v) the extradition of nationals and individuals involved in drug-related criminal activity;
- (vi) the temporary transfer for prosecution of nationals and individuals involved in drug-related criminal activity;
- (vii) border security;
- (viii) money laundering;
- (ix) illicit firearms trafficking;
- (x) corruption;
- (xi) control of precursor chemicals;
- (xii) asset forfeiture; and

(xiii) related training and technical assistance,

and includes, where appropriate, timetables and objective and measurable standards to assess the progress made by participating countries with respect to such issues.

(5) Application

(A) Section 2291j(a) through (h) of this title shall not apply during any fiscal year with respect to any country identified in the report required by paragraph (1) of this section.

(B) Notwithstanding paragraphs (1) through (5)(A) of this section, the President may apply the procedures set forth in section 2291j(a) through (h) of this title during any fiscal year with respect to any country determined to be a major drug transit country or major illicit drug producing country as defined in section 2291(e) of this title.

(C) Nothing in this section shall affect the requirements of section 2291j of this title with respect to countries identified pursuant to section 1 clause (i) or (ii) of 2291h(a)(8)(A) of this title.

(6) Statutory construction

Nothing in this section supersedes or modifies the requirement in section 2291h(a) of this title (with respect to the International Narcotics Control Strategy Report) for the transmittal of a report not later than March 1, each fiscal year under that section.

(7) Transition rule

For funds obligated or expended under this section in fiscal year 2003, the date for submission of the report required by paragraph (1) of this section shall be at least 15 days before funds are obligated or expended.

(8) Effective date

This section shall take effect September 30, 2002, and shall remain in effect thereafter unless Congress enacts subsequent legislation repealing such section.

(Pub. L. 107–228, div. A, title VI, §706, Sept. 30, 2002, 116 Stat. 1424 ; Pub. L. 109–177, title VII, §722(c), Mar. 9, 2006, 120 Stat. 269 .)

CODIFICATION

Section was enacted as part of the Department of State Authorization Act, Fiscal Year 2003, and also as part of the Foreign Relations Authorization Act, Fiscal Year 2003, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

AMENDMENTS

2006-Par. (5)(C). Pub. L. 109–177 added subpar. (C).

PRESIDENTIAL DETERMINATION ON MAJOR DRUG TRANSIT OR MAJOR ILLICIT DRUG PRODUCING COUNTRIES FOR FISCAL YEAR 2017

Determination of President of the United States, No. 2016–10, Sept. 12, 2016, 81 F.R. 64749, provided: Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug transit and/or major illicit drug producing countries: Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela.

A country's presence on the foregoing Major Drug Transit and Major Illicit Drug Producing Countries List is not a reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug transit or drug producing country set forth in section 481(e)(2) and (5) of the Foreign Assistance Act of 1961, as amended (FAA), the reason major drug transit or illicit drug producing countries are placed on the list is the combination of geographic, commercial, and economic factors that allow drugs to transit or be produced, even if a government has carried out the most assiduous narcotics control law enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Bolivia, Burma, and Venezuela as countries that have failed demonstrably during the previous 12 months to adhere to their obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Included in this report are justifications for the determinations on Bolivia, Burma, and Venezuela, as required by section 706(2)(B) [not set out in the Code]. Explanations for these decisions are published with this determination.

I have also determined, in accordance with provisions of section 706(3)(A) of the FRAA, that support for programs to aid Burma and Venezuela is vital to the national interests of the United States.

In addition to emphasizing the importance of international cooperation, this determination highlights a number of recent developments concerning various aspects associated with the worldwide drug problem.

GROWING CONSENSUS ON INTERNATIONAL NARCOTICS

There is a growing international consensus that counternarcotics programs must be designed and implemented with the aim of improving the health and safety of individuals while preventing and reducing violence and other harmful consequences to communities.

In concert with international partners, the United States is expanding its domestic and international funding for drug treatment and recovery support programs based on empirical scientific evidence that shows that substance use disorders are medical conditions and must be treated as such. To achieve greater balance, U.S. drug policy also includes stepped-up promotion of effective alternative development programs for farmers and others who agree to stop illegal drug cultivation and associated activities. Such efforts also focus on advancing the rule of law through improving and strengthening civil and law enforcement institutions. United States polices support overall citizen security, including deepening worldwide adherence to fundamental human rights guaranteed by international law.

This consensus was demonstrated at the United Nations General Assembly Special Session on the World Drug Problem (UNGASS) held on April 19–21, 2016, in New York. The meeting served as the first high-level, global gathering on counternarcotics in a generation, and its resulting outcome document forged international consensus behind a balanced and pragmatic approach to drug control. A central theme of UNGASS was to further develop and implement strategies based on the UN Commission on Narcotic Drugs (CND) 2009 Political Declaration and Action Plan aimed at reducing drug production, trafficking, and use from the standpoint of effective public health practices. UNGASS participants, including the United States, also highlighted the importance of substantive advancement of the UN's 2030 Agenda for Sustainable Development, which for the first time in history incorporates rule of law objectives into global development policy.

UNGASS further underscored the broad consensus among United Nations member states with regard to many major drug control themes. At the special session, member states demonstrated their common cause to reinforce efforts to counter drug cultivation, production, distribution, and use through pragmatic approaches that balance both law enforcement and public health perspectives. As stated by the UN International Narcotics Control Board (INCB), we have a "common obligation to employ effective drug abuse prevention, treatment, and rehabilitation of our citizens." Participants also reaffirmed their ongoing commitment to the 1961, 1971, and 1988 UN conventions on drugs as the essential backdrop for worldwide drug control efforts. These conventions leave sufficient room for individual states to pursue drug policies that are in accord with their own laws and national realities.

The foreign policy approaches to drug control of the United States are explained in detail in the U.S. National Drug Control Strategy, and our policies and programs are designed to help reach the goals established at UNGASS and work effectively with partners around the world. They include, for example, on going bilateral cooperation and collaborative work through numerous regional and sub-regional multilateral organizations such as the Organization of American States; the European Union; regional affiliates of the global Financial Action Task Force; the Economic Community of West African States; the Association of Southeast Asian Nations; and many others. The United States also joins other nations in supporting the important, positive contributions of many nongovernmental organizations in the academic and private sectors that work on improving counternarcotics policies and programs.

GROWING CHALLENGES OF HEROIN USE, ADULTERANTS, AND OPIUM POPPY CULTIVATION

According to the UN Office on Drugs and Crime (UNODC), the use of heroin and other opium poppy derivatives is the greatest worldwide drug problem today. Heroin is also the greatest drug threat in the United States, according to the 2015 U.S. National Drug Threat Assessment published by the U.S. Drug Enforcement Administration. Especially dangerous is the increasing adulteration of heroin with synthetic opioids, such as fentanyl, leading to an increase in the number of deaths as the result of drug overdoses. In 2014, the Centers for Disease Control reported that approximately 10,500 Americans died from heroin-related overdoses; the true number likely is higher given inconsistent testing across the States.

Opium poppy cultivation is expanding beyond Afghanistan, Burma, and Laos the traditional primary producing countries in the world. While Afghanistan is still the major supplier of opium derivatives to Europe and Canada, nearly all opium derivatives found in the United States are primarily grown in or trafficked through Mexico or by Mexican-based drug trafficking organizations. In Mexico, for example, international officials estimate that the number of hectares of heroin poppy under cultivation increased from 11,000 hectares in 2013 to as much as 28,000 hectares in 2015. Limited poppy cultivation also has been detected in Colombia and Guatemala.

According to UNODC, 201,000 hectares of opium poppy were cultivated in Afghanistan in 2015, a 5 percent decline from 2014. Comparative data shows, however, that while cultivation and yields declined relative to previous years, cultivation is still at historically high levels.

The 2016 U.S. International Narcotics Control Strategy indicates that insurgent groups in Afghanistan generate significant revenue by taxing drugs passing through regions they control. Afghan government drug control efforts are hampered by broad security challenges associated with intensive, long-term conflict and combat. The U.S. Government continues to support a broad range of multilateral and bilateral drug control programs in Afghanistan.

Although many treatment and recovery facilities established in Afghanistan show great promise, the 2015 Afghanistan National Drug Use Survey conducted by the Department of State and the Afghan Ministry of Health Institutional Review Board found an 11 percent drug positive rate in Afghanistan. Use of heroin and other opium poppy products, according to international analysis, is also significant in Iran, Kazakhstan, Kyrgyzstan, and Uzbekistan. The INCB is also concerned about the increasing use of Afghan sourced heroin throughout the Middle East.

Heroin in the United States is being increasingly adulterated with low-cost synthetic opioids, especially fentanyl. Research has shown that fentanyl and its analogues can be 25 to 50 times more potent than heroin. According to U.S. law enforcement, most illicit fentanyl, precursors, and fentanyl analogues that have been identified in the United States originate in China and enter the country via Mexico, Canada, or direct mail. The United States has taken a number of steps to address this issue. The United States is working with Mexico and Canada to develop bilateral and multilateral approaches to combating opioid production and trafficking, particularly heroin and fentanyl. Law enforcement cooperation with Mexico includes programs to strengthen Mexico's capacity to identify, investigate, interdict and dismantle clandestine drug laboratories and disrupt trafficking networks. The United States conducts regular and positive discussions with China to enhance controls on many chemicals used to make fentanyl and other synthetic drugs. In a welcome development in late 2015, China placed controls on 116 substances including a dangerous analogue to fentanyl, acetyl fentanyl. Much work remains to be done in this area, and developing compatible, consistent, enforceable international standards is crucial to successfully controlling this growing drug threat.

COCAINE AND COCA CULTIVATION

Although international and U.S. surveys indicate overall production of coca leaf for cocaine has remained stable from a decade ago, Colombia has seen a 42 percent increase in illegal coca crop cultivation from 2014 to 2015. Colombia remains the major provider of cocaine available in the United States, though data shows that cocaine use is declining in the United States and in Europe. Nevertheless, U.S. rates of overdose involving cocaine were up in 2014.

Increased Colombian coca cultivation can be attributed to a number of factors, including Colombia's decision to end the aerial coca eradication program in October 2015 throughout the country. Even prior to the end of spray eradication, coca growers began to implement "counter" eradication techniques, such as by migrating their plantings to areas where spray was not permitted by law or policy. Illegal coca cultivators also began to cultivate smaller, better concealed fields to avoid detection by law enforcement. Colombia has reformulated its counternarcotics strategy to prioritize robust law enforcement activity against criminal drug trafficking organizations, including enhanced interdiction, over that of crop eradication. In 2015, the country seized 295 metric tons of cocaine along with other illegal drugs.

To reach the United States, cocaine is primarily trafficked by land, air, and sea via Central America, Mexico, and the Caribbean. Over the past decade, roughly 97 percent of U.S. bound cocaine is smuggled out of South America on noncommercial maritime conveyances. Smaller amounts are smuggled via commercial maritime vessels and noncommercial aircraft. Using similar conveyances, cocaine destined for Europe is often routed through Brazil, Bolivia, and Venezuela, as well as via West Africa.

Numerous large shipping containers have been interdicted on Atlantic routes, sometimes with a first stop in Portuguese speaking countries in Africa. Using these routes reduces language barriers before the drugs are smuggled to their final destination. A variety of U.S. assistance programs, especially those designed to enhance national interdiction capabilities and target kingpin traffickers, are carried out in Africa.

United States assistance programs are designed to disrupt the flow of cocaine and other harmful products to the United States by building the capacity of judicial, law enforcement, and treatment institutions in partner countries. For example, in Central America these programs are carried out through the Central America Regional Security Initiative, while those in the Caribbean are conducted through the Caribbean Basin Security Initiative. The Merida Initiative provides the framework for assistance and bilateral cooperation with Mexico. Key activities of these programs include drug interdiction cooperation, especially maritime-based efforts in Central America and the Caribbean; law enforcement capacity building; anticorruption initiatives and support; and enhanced prosecution and judicial reform strengthening efforts.

LOOKING TO THE FUTURE

Future action by the international community to address drug cultivation, production, trafficking, and use should be closely tied to the important priorities described in the 2016 UNGASS outcome document. These include, for example, utilization of sound scientific evidence for prevention and treatment programs, effective law enforcement, and appropriately balanced responses to drug-related crime. Areas of special

concern include the connections between drug use and human rights, especially as they pertain to vulnerable groups such as women and children. The exchange of information among nations and between professionals engaged in reducing drug trafficking and use, and efforts to stay ahead of new and threatening developments, such as synthetic substances, are central to progress by communities, countries, and regions around the world.

The U.S. Government will continue to work with fellow United Nations member states to galvanize the international community toward implementation of the principles that were agreed upon at the 2016 UNGASS. General coordination among concerned United Nations entities is particularly important. This includes collaboration among bodies within the UN structure as a whole, but particularly those that concern themselves to some extent with drug control and related social issues.

You are hereby authorized and directed to submit this report, with its Bolivia, Burma, and Venezuela memoranda of justification, under section 706 of the FRAA, to the Congress, and publish it in the Federal Register.

BARACK OBAMA.

Prior identifications of major drug transit or major illicit drug producing countries were contained in the following:

- Determination of President of the United States, No. 2015–12, Sept. 14, 2015, 80 F.R. 57063.
- Determination of President of the United States, No. 2014–15, Sept. 15, 2014, 79 F.R. 56625.
- Determination of President of the United States, No. 2013–14, Sept. 13, 2013, 78 F.R. 58855.
- Determination of President of the United States, No. 2012–15, Sept. 14, 2012, 77 F.R. 58917.
- Determination of President of the United States, No. 2011–16, Sept. 15, 2011, 76 F.R. 59495.
- Determination of President of the United States, No. 2010–16, Sept. 15, 2010, 75 F.R. 67019, 68413.
- Determination of President of the United States, No. 2009–30, Sept. 15, 2009, 74 F.R. 48369.
- Determination of President of the United States, No. 2008–28, Sept. 15, 2008, 73 F.R. 54927.
- Determination of President of the United States, No. 2007–33, Sept. 14, 2007, 43 Weekly Compilation of Presidential Documents 1216, Sept. 24, 2007.
- Determination of President of the United States, No. 2006–24, Sept. 15, 2006, 71 F.R. 57865.
- Determination of President of the United States, No. 2005–36, Sept. 14, 2005, 70 F.R. 56807.
- Determination of President of the United States, No. 2004–47, Sept. 15, 2004, 69 F.R. 57809.
- Determination of President of the United States, No. 2003–38, Sept. 15, 2003, 68 F.R. 54973.
- Determination of President of the United States, No. 2003–14, Jan. 30, 2003, 68 F.R. 5787.

DEFINITIONS

For definition of "appropriate congressional committees" as used in this section, see section 3 of Pub. L. 107–228, set out as a note under section 2651 of this title.

¹ *So in original. The word "section" probably should appear after "clause (i) or (ii) of".*