PASSING JUDGEMENT:

THE U.S. DRUG

CERTIFICATION PROCESS

What is Certification?

Congress imposed certification on the Executive Branch in 1986, at the height of the crack cocaine epidemic that swept American cities and made drug abuse the public's top concern. U.S. lawmakers intended to compel drug control cooperation from other countries and to exercise closer oversight of the Executive's anti-drug initiatives.

Originally passed as part of the Anti-Drug Abuse Act of 1986, the certification legislation requires the Administration to identify annually those countries that are "significant direct or indirect sources" of illicit drugs "significantly affecting the United States." Inclusion on this list, which currently comprises 30 countries (see Chart 1), automatically triggers certain sanctions (withholding of U.S. foreign assistance and negative U.S. votes on multilateral development bank loans) unless the President decides to "certify" the country.

If countries are deemed to have "fully" cooperated with the United States, they are certified. If not, they are denied certification, and U.S. foreign aid is suspended—except for humanitarian and drug-related aid. If the Administration deems that a cut-off of U.S. aid and the potential loss of multilateral aid would jeopardize vital U.S. interests, the President may grant a "national interest" waiver for countries that would otherwise be decertified. Congress has the authority to overturn Presidential decisions by passing a joint resolution within 30 days, but to date Congress has never done so.

The legislation sets forth numerous criteria for determining whether a country has fully cooperated with the United States. These include government actions to reduce illicit drug production and trafficking; to eliminate drug-related money laundering, bribery, and public corruption; to process drug-related extradition requests from the United States; and to cooperate with U.S. law enforcement agencies.

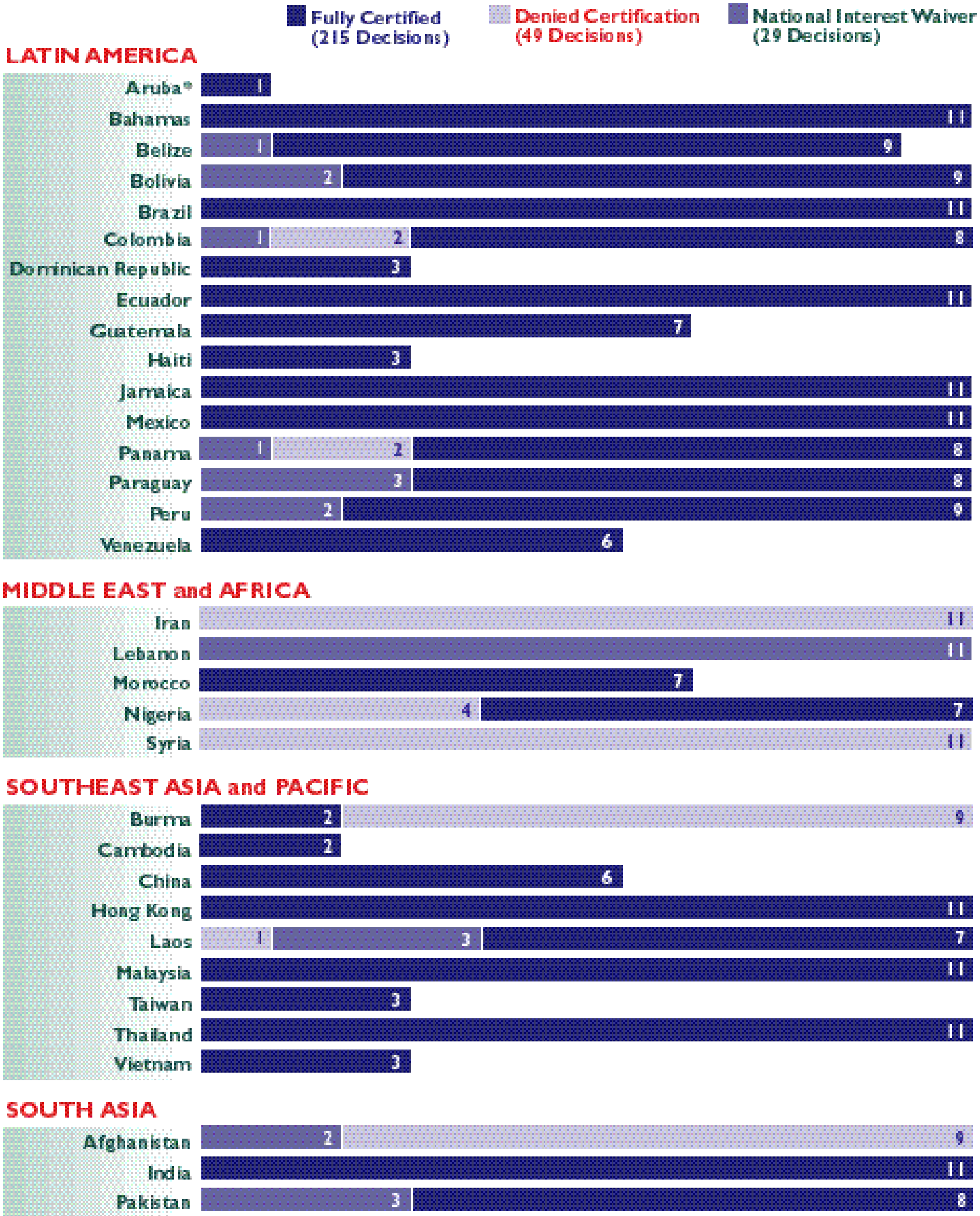
The President's annual determinations are published in the *Federal Register*, along with detailed justifications for each decision. Congress also requires that the State Department (which makes the initial certification recommendations to the President) provide detailed descriptions of the drug-control situation in each country in the *International Narcotics Control Strategy Report*, released annually by March 1.

The countries subject to certification vary widely in size, type of government, status of relations with the United States and importance as U.S. trading partners. For example, China, Brazil and India are on the same list as Haiti, Vietnam and Guatemala. In 1996, Mexico's total trade with the United States was nearly double that of all the other 15 listed Latin American nations combined.

Recent History

Under Presidents Reagan and Bush, the certification process was predictable and went largely unnoticed. Most countries on the State Department's list of significant source and transit countries were certified (see Charts 1 and 2). Decertification was reserved for countries like Iran and Syria, with which the United States had limited or no relations, as well as Burma and Afghanistan, which together produce nearly 90 percent of the world's illicit opium. Lebanon was consistently granted a "national interest" waiver. In 1988 and 1989, Panama was added to the decertification list, just before the United States intervened militarily to remove then-President

Chart 1 Source and Transit Countries and Certification Decisions, 1987-1997



*Aruba is part of the Kingdom of the Netherlands.

Note: Except for Lebanon, Morocco and Syria, all countries listed above are subject to certification in 1998.

Source: *Federal Register*

Manuel Noriega on the grounds of his involvement in drug trafficking.

Under President Clinton, certification has become more rigorous. In 1994, Nigeria, a key trafficking country, was decertified for the first time, while Bolivia and Peru, the world's largest coca producers, joined a growing list of countries given a "national interest" waiver. In 1995, Colombia, a major source of both cocaine and heroin; Paraguay, a cocaine transit country; and Pakistan, a prime producer of heroin, were added to the waiver list. The principal justification offered for these waivers was the importance of improving cooperation in stemming the flow of illicit drugs into the United States.

By 1996, when the Administration decertified Colombia, the certification process had become a major source of tension between the United States and its Latin American neighbors. Media coverage leading up to the certification decisions greatly increased. In March 1997, the controversy intensified when the Administration decided to certify Mexico, despite revelations of extensive drug-related government corruption, but again decided to deny certification to Colombia. More than 100 articles and editorials were published in leading newspapers and periodicals across the country; television and radio networks carried lengthy reports.

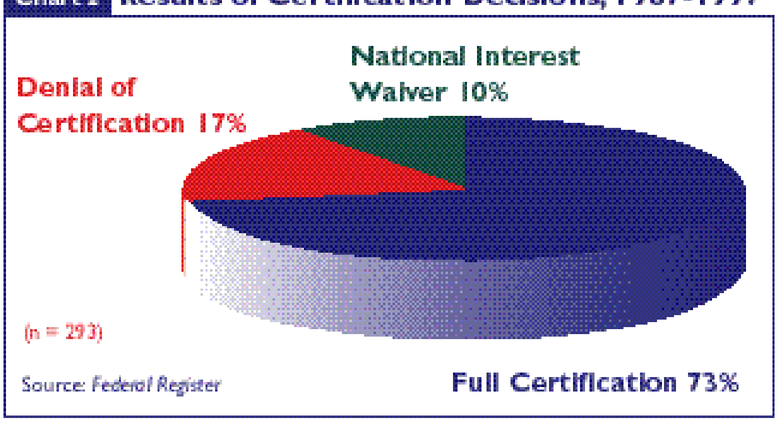
In July 1997, a bipartisan coalition, led by Senators John McCain (R-Arizona) and Christopher Dodd (D-Connecticut), advanced legislation to suspend the certification process for two years. The Administration supported the proposal but it failed by a vote of 60 to 38. Some legislators criticized certification as being ineffectual, urging the inclusion of trade sanctions, while others contended that the diplomatic consequences of certification undermine the very cooperation the certification process was intended to promote.

Various proposals that would multilateralize the process, through the Organization of American States (OAS) or other organizations, and evaluate the United States by the same standards used for other countries, are currently circulating. Debate over whether to revise the certification process—and if so, how—will undoubtedly continue in the next Congress.

What are the Consequences of Decertification?

If the President does not certify a country or if Congress reverses a Presidential decision to certify, the consequences are potentially severe: the suspension of U.S. foreign assistance (except for drug-related and humanitarian aid); U.S. opposition to World Bank and other multilateral development bank (MDB) loans; and the stigma of being

Chart 2 Results of Certification Decisions, 1987-1997



Source: *Federal Register*

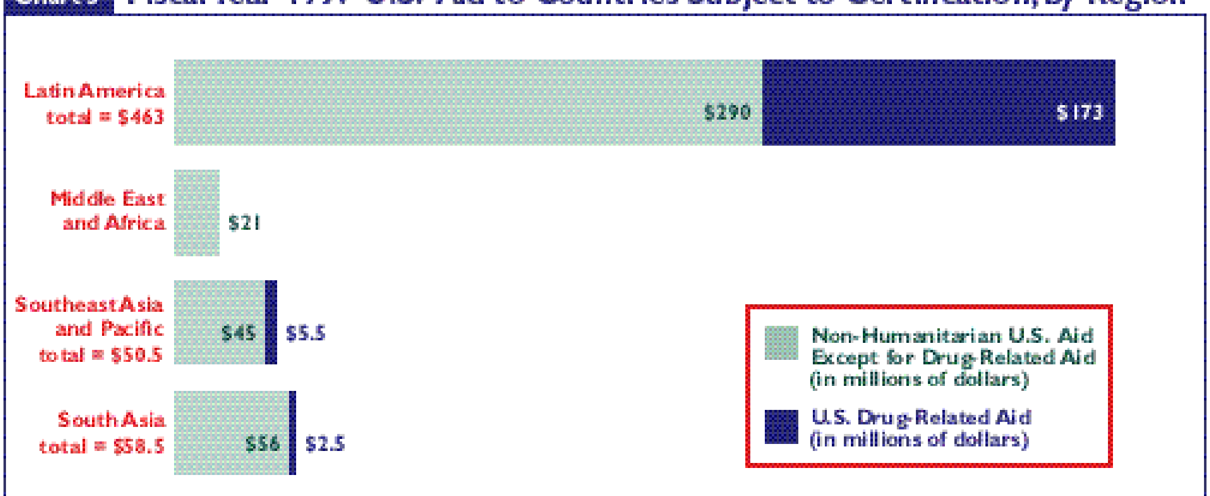
branded a drug-trafficking nation. The stigma attached to decertification may carry negative economic repercussions beyond the aid-related sanctions included in the law. For example, *The Wall Street Journal* reported in August 1997 that Colombia's decertification had contributed to an "atmosphere of uncertainty, causing investors to put off new projects." Finally—penalties aside—the embarrassment factor is significant: many countries object to the idea of being judged by the United States, even if they are not actually decertified.

While the certification law does not entail trade sanctions, it does not rule out the application of trade sanctions based on other laws if the President so decides. The Trade Act of 1974 (as amended in 1986) gives the President discretionary authority to impose specified trade sanctions on countries that do not cooperate on narcotics control, but this power has never been invoked. However, in the case of Colombia, the Clinton Administration in October 1995 invoked emergency economic powers to block the assets (domestically and in U.S. banks overseas) of specific Colombian drug traffickers, their front companies and agents, and to prohibit U.S. citizens and companies from dealing with them.

Suspension of U.S. Aid

U.S. international drug control legislation specifically allows the Administration to continue providing drug-related assistance (economic, military and police aid) to countries that have been decertified. Humanitarian aid—such as disaster relief, food and medicine, and refugee assistance—is also exempt from suspension. The impact of decertification varies depending on how much U.S. aid to a given country is defined as drug-related (see Chart 3 for a regional summary). For example, the Administration considers virtually all U.S. aid to Colombia to be drug-related, leaving little at risk of suspension. Colombia received $56 million in U.S. aid in 1996

Chart 3 Fiscal Year 1997 U.S. Aid to Countries Subject to Certification, by Region



Sources: *U.S. Agency for International Development and U.S. State Department* and another $82 million in 1997, despite having been decertified both years.

U.S. Vote Against Multilateral Development Bank Loans

Decertification requires the United States to vote against any multilateral development bank (MDB) loans to the designated country. However, the impact of a U.S. "no" vote varies depending on the lending institution. The significance of the U.S. vote depends on the U.S. share of voting power (largely a function of capital contributions) and on

Chart 4 U.S. Voting Power and the Voting Rules in the Multilateral Development Banks

MDB	U.S. Voting Power as % of Total	Voting Rules
WORLD BANK		
INTER-AMERICAN DEVELOPMENT BANK		
AFRICAN DEVELOPMENT BANK		
ASIAN DEVELOPMENT BANK		

*** concessional lending and/or grant-making facility**

Notes: Concessional lending offers credit on more generous terms than those available in the market.

Under "simple majority" voting rules, loans with the support of more than 50 percent of all voting shares win approval. Under "super majority" rules, the threshold for approval is higher. For example, loan approval in the Inter-American Development Bank's Fund for Special Operations requires support by more than 75 percent of all voting shares.

The European Bank for Reconstruction and Development (EBRD) is also covered by the certification legislation, but none of the countries eligible for EBRD funds have ever been subject to certification.

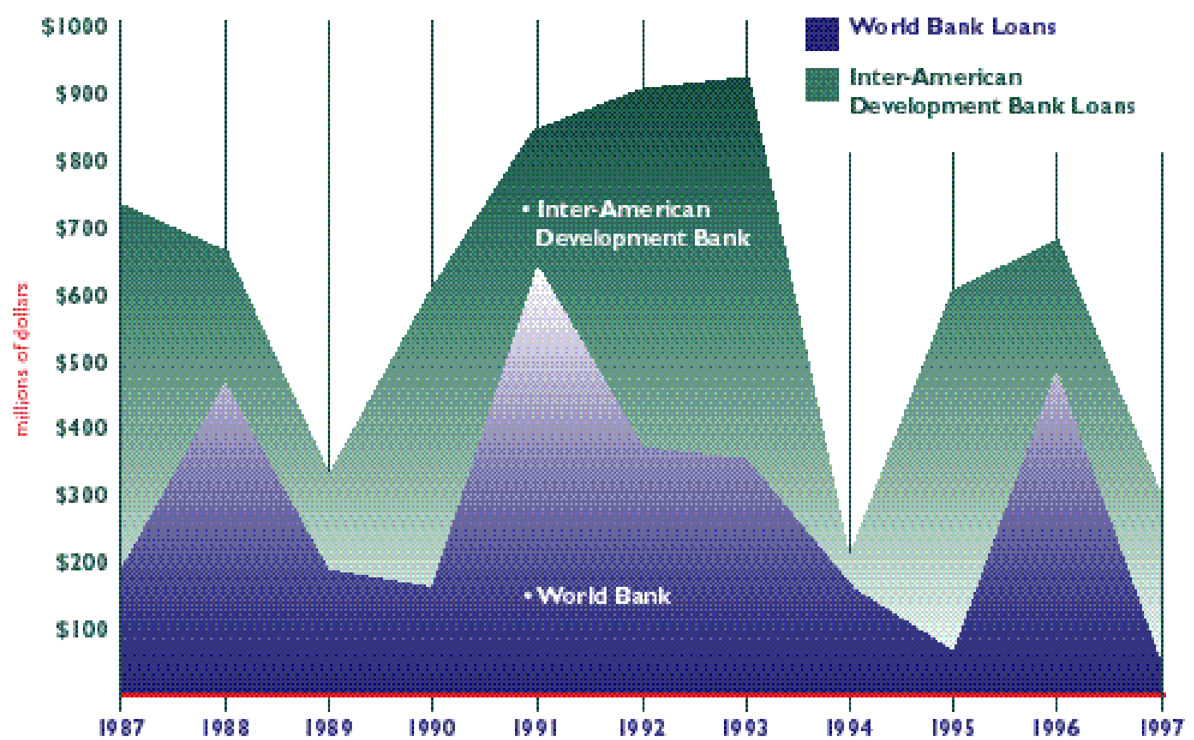
Source: U.S. Treasury Department

the voting rules of the particular multilateral bank (see Chart 4).

Only in the Inter-American Development Bank's (IDB) concessional Fund for Special Operations (FSO) and grant-making Multilateral Investment Fund (MIF) do U.S. voting power and the voting rules combine to make a U.S. "no" vote tantamount to a veto. Of the countries currently subject to certification, only Bolivia and Haiti would be directly affected by a U.S. "no" vote were they to be decertified, because both countries are eligible only for FSO loans through the IDB. In contrast, Colombia receives Ordinary Capital loans from the IDB, which are not subject to a U.S. veto. Despite being decertified in 1996 and 1997, Colombia received 18 World Bank and IDB loans totaling $960 million. In 1996, the country was awarded more in MDB loans ($676 million) than in five of the previous nine years, a period when Colombia was always fully certified (see Chart 5).

U.S. "no" votes can also derail IDB regional technical assistance grants provided through the Fund for Special Operations and the Multilateral Investment Fund. Since Colombia has been decertified, the certainty of a U.S. veto has meant that regional grants designed to include Colombia cannot win approval.

Chart 5 Multilateral Development Bank Loans to Colombia, 1987-1997



Sources: World Bank and Inter-American Development Bank, *Annual Reports*

However, Latin American governments have made clear that they will not sign off on regional grants that exclude Colombia. With each side wielding veto power, these regional grants remain in limbo—unable to win approval, but guaranteed to fail if benefits for Colombia are removed.

Apart from the paralysis of regional grants in the IDB, the mandatory U.S. vote against MDB loans to decertified countries has so far proven largely irrelevant. For certain countries, such as Burma since 1989 and Nigeria since 1994, international hostility to the regimes has meant that few MDB loans are even contemplated. MDB loans are typically arranged on a consensual basis; if significant opposition becomes apparent, the proposal is not put forward at all. Loan managers ensure that only loans with enough support for approval ever come to a vote; as a result, loans to internationally isolated countries are rarely proposed.

In the case of decertified countries that are not isolated by the international community—for example, Colombia in 1996 and 1997 ($960 million) and Laos in 1989 ($112.5 million)—loans have been approved, despite the mandatory U.S. "no" vote.

U.S. Aid and Multilateral Development Bank Loans Compared

The impact of decertification on U.S. aid is immediate and direct: non-exempt aid is automatically suspended. In contrast, while decertification requires that the United States vote against MDB loans, a U.S. "no" vote generally cannot block loans from being approved.

Multilateral development bank loans far exceed U.S. aid to the 30 countries currently subject to the certification process. For all listed countries, average MDB aid per capita has been nearly five times the level of U.S. aid per capita. Countries in Southeast Asia and the Pacific region have received 16 times as much MDB aid as U.S. bilateral aid. Moreover, the approval of an MDB loan may bring additional benefits to the recipient country, providing a stamp of legitimacy that encourages further investment, both public and private.

In practice, vulnerability to decertification depends on the implementation of sanctions. How much U.S. aid is at stake, considering that all drug-related aid is exempt from suspension triggered by decertification? Given that a U.S. "no" vote on MDB loans rarely constitutes a veto, how much MDB assistance for a given country is actually at risk?

A country's reliance on U.S. and international aid reflects its vulnerability to the threat of decertification. Chart 6 presents a "vulnerability index," showing average annual U.S. and MDB aid in proportion to a country's Gross Domestic Product (GDP). For countries already isolated from the international community, like Burma, the material consequences of decertification are virtually zero. The same is true for countries economically robust enough to avoid reliance on international aid, like Taiwan. However, for some countries—especially Bolivia, Haiti, Laos and Cambodia—annual U.S. and MDB aid amounts to a significant proportion of GDP, making them especially vulnerable to the threat of decertification. (To put these figures in perspective, the entire U.S. motor vehicle industry accounts for 3.5 percent of U.S. GDP and the computer industry represents 1.5 percent of U.S. GDP.)

Chart 6 Vulnerability Index: Countries' Reliance on U.S. and Multilateral Aid

LATIN AMERICA

MIDDLE EAST and AFRICA

SOUTHEAST ASIA and PACIFIC

SOUTH ASIA

Notes: List includes all countries ever subject to the certification process except for Aruba, a part of the Kingdom of the Netherlands.

Average annual aid figures are based on U.S. and MDB aid received for each year a given country has been subject to certification.

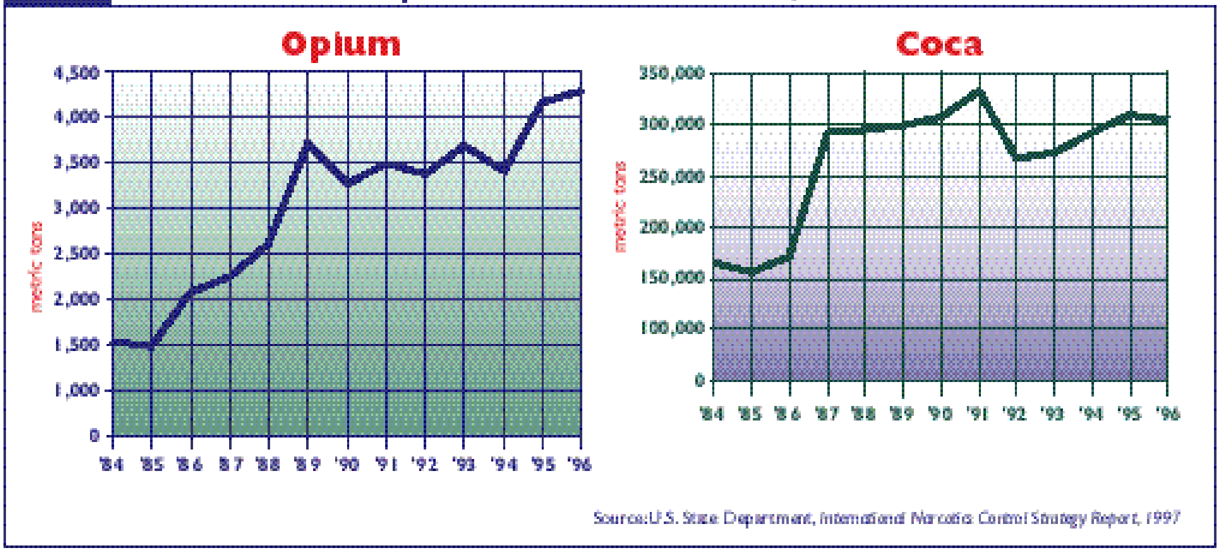
Vulnerability figures are based on each country's 1995 Gross Domestic Product (GDP), unless otherwise noted.

a = based on 1995 Gross National Product (GNP)
b = based on 1995 estimated GNP
c = based on 1994 GNP

In practice, most countries would be less vulnerable than indicated by the figures above, because (1) U.S. drug control aid is exempt from suspension and (2) the U.S. "no" vote on MDB loans rarely constitutes a veto.

Sources: U.S. Agency for International Development and U.S. State Department; World Bank, *World Development Report 1997;* World Bank, African Development Bank, Asian Development Bank, and Inter-American Development Bank, *Annual Reports*

Chart 7 **Worldwide Illicit Opium and Coca Production, 1984-1996**



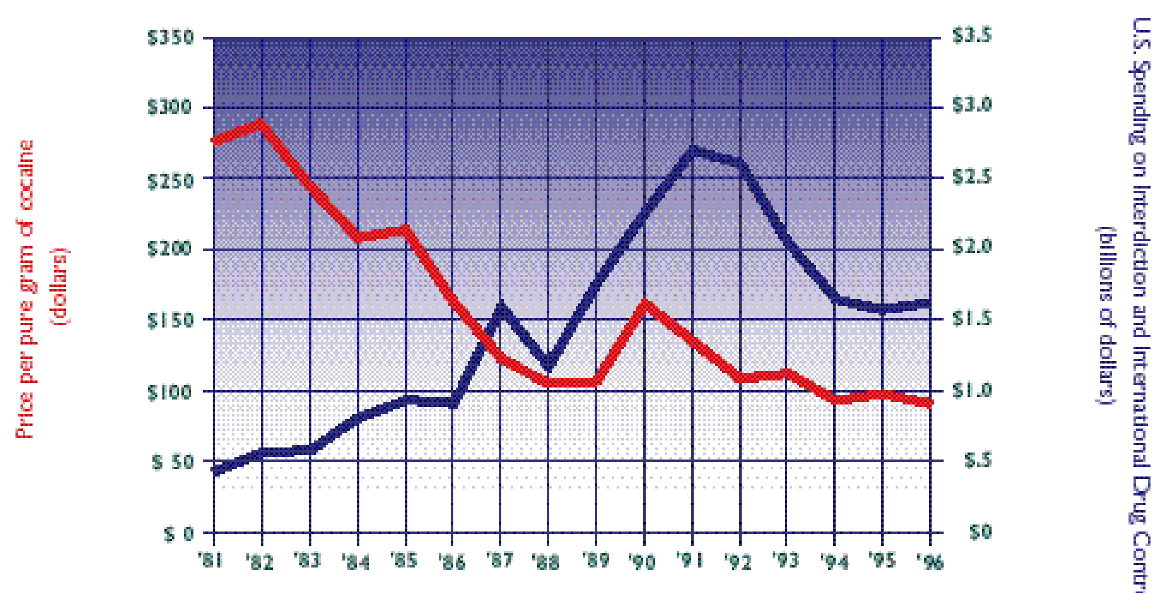
A country's relative vulnerability to the threat of decertification is only one part of the equation as to whether U.S. pressure will affect drug control cooperation. Even more important are (1) the government's capacity to address the problem, and (2) the sheer scale of drug production and trafficking. The degree of U.S. leverage does not determine whether pressure will lead to action. For example, the United States has considerable influence over a country like Haiti, but the Haitian government is so weak, particularly in the area of law enforcement, that it is largely incapable of producing drug control results, regardless of U.S. influence or leverage.

Congress adopted the annual certification requirement in 1986 to improve foreign cooperation with U.S. drug control efforts. The primary measure of success for the United States has been reductions in foreign opium, coca and marijuana production. Reductions would presumably lead to higher drug prices in the United States, which in turn would prevent new drug use and drive addicts into treatment. However, annual worldwide opium production has doubled in the past decade, while coca production has nearly doubled (see Chart 7).

The price and purity of drugs in the U.S. market are also traditional measures of drug control success. Indeed, the primary purpose of U.S. interdiction and international drug control programs—on which the United States has spent more than $25 billion since 1981—has been to make drugs more expensive and less pure by reducing the supply. However, heroin's average U.S. retail price has fallen by more than half while its purity now approaches 50 percent compared to only 16 percent in 1986. During the same period, the price of cocaine has dropped by almost half (see Chart 8).

The certification process—by focusing on one aspect of often complex bilateral relationships—can distort the management of U.S. foreign policy. In Latin America, the certification process has been particularly acrimonious and apparently at odds with President Clinton's position that the nations of the Western Hemisphere should look to the United

Chart 8 U.S. Retail Cocaine Prices and U.S. International Drug Control Spending



Source: Office of National Drug Control Policy, *The National Drug Control Strategy, 1997: Budget Summary*

States as a partner in a broader effort to establish a community of democracies. The capacity of other governments to cooperate with the United States in this area is often limited by the sheer magnitude of drug production and trafficking, as well as by their lack of effective control within their own countries.

Prior to the passage of the 1986 certification requirement, the House of Representatives Committee on Foreign Affairs noted: "U.S. efforts to persuade other countries to increase their antinarcotics efforts are ultimately limited by the difficulty of dealing with sovereign countries, the boundaries of U.S. leverage, the competition of other U.S. national security interests, and by the lack of a persuasive U.S. domestic commitment and effort. Experience has demonstrated that politically attractive solutions such as 'cutting off foreign aid' or vastly increased funding for international narcotics activities will contribute only marginally to combatting this problem." More than a decade of experience with the certification process lends support to the committee's beliefs.

Peter D. Hart International Drug Policy Poll, November1997

Who do you think is more responsible for the problem of illegal drugs in the United States—the producers, sellers, and consumers of drugs in the United States or the producers and sellers of drugs in other countries?

In general, how effective has the United States been in controlling the importation of illegal drugs from other countries into the United States—very effective, fairly effective, just somewhat effective, or not at all effective?

Do you know if the United States has a process to evaluate the effectiveness and cooperation of foreign countries in preventing the production and transportation of illegal drugs into the United States, or do you not know if the U.S. has such a process?

The United States actually does have such a method to evaluate other countries' drug control efforts called the drug certification process. Each year, the President's administration must decide if a foreign country has done enough to prevent the production and transportation of illegal drugs into the United States, and then decide whether to approve that country's efforts in drug control. If a country is not approved, it loses U.S. aid, and the U.S. relationship with that country is harmed. There are three views on what should be done with this certification process.

says certification should be made tougher to include trade sanctions, even though it might hurt an industry or population that has nothing to do with drugs.

says certification should be less restrictive because it hurts U.S. relations with important nations on the basis of drug policy alone.

says certification should be left as it is now, with the President having the option to forego these sanctions if he finds it in the vital interest of the United States.

Which group do you agree with most: Group A—certification should be made tougher, Group B—certification should be less restrictive, or Group C—certification should be left as it is now?

Lastly, do you feel that an international agency or organization comprised of several countries, including the United States, should be formed to judge the effectiveness of drug control efforts by the United States and other countries, or is that not a good idea?

"The annual process of certifying whether countries are complying with anti-drug efforts is a blunt instrument that infuriates Colombians and dampens Washington's influence on other issues. Because of President Ernesto Samper's alleged ties to traffickers, Washington all but declared him persona non grata. This understandable response has nevertheless undercut civilian authority and increased the influence of the hemisphere's most abusive military."

"During President Clinton's recent tour through South America, he talked a lot about the region's efforts at controlling its drug production and traffic. Lately, though, some Latin leaders have begun to say more publicly that maybe the United States ought to be doing more to clean up its own piece of the drug problem. But for now, this Administration's emphasis continues to be on other countries' problems."

"The United States' annual rating of other countries' sincerity and success in fighting the drug war has become a case of good intentions gone awry. The tit-for-tat sanctions of this blunt policy tool oversimplify complex issues and fail to weigh policy nuances or competing national interests."

"Certification ... now has been tested. It's a flop. By provoking local nationalism, this sort of unilateral American intervention has, in Mexico, Colombia and elsewhere, strained the anti-drug cooperation it was meant to strengthen. It has centered the American fight against drugs more on foreign supply than on consumption at home—an emphasis that, for all the successful drug seizures, has seen the international drug flow pick up over the years and force prices on the American street steadily down."

"Not surprisingly, both certified allies and decertified pariah states have taken umbrage at this unilateral finger-pointing by the world's largest consumer of illegal narcotics. What right has the pot to call the kettle black?"

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