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China Primer: Illicit Fentanyl and China's Role

Addressing illicit fentanyl in the context of the ongoing opioid crisis in the United States is a domestic and foreign policy issue for Congress. In addressing the international dimension of the problem, policymakers have endeavored to stop foreign-sourced fentanyl, fentanyl-related substances (i.e., analogues), and chemical inputs (i.e., precursors) from entering the United States. Early in the U.S. opioid epidemic, the People's Republic of China (PRC, or China) was the primary source of illicit fentanyl. Direct flows of fentanyl from China are now largely stemmed. U.S. counternarcotics policy with regard to China has shifted to preventing Chinese-sourced fentanyl precursors from entering the U.S.-bound fentanyl supply chain via third countries, and targeting illicit fentanyl-related financial flows linked to the PRC. U.S.-PRC cooperation on drug control issues has been severely strained since 2020.

Background

Fentanyl is a potent synthetic opioid that has been used medically as a painkiller and an anesthetic since it was first synthesized in 1959. Due to fentanyl's potential for abuse and addiction, the United Nations (U.N.) placed it under international control in 1964. Domestically, fentanyl is regulated by the Drug Enforcement Administration (DEA), pursuant to the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended (21 U.S.C. §§801 et seq.). Controlling the production and trafficking of fentanyl and its analogues has emerged as a major international drug policy concern for the United States. The U.S. Centers for Disease Control and Prevention estimates that synthetic opioids (primarily fentanyl-related substances) may have resulted in almost 73,000 overdose deaths between July 2021 and June 2022. Moreover, traffickers appear to be marketing a growing number of fentanyl analogues for nonmedical, often unregulated use.

As of November 2021, the International Narcotics Control Board—an independent expert body that monitors government compliance with international drug control treaties—reported the existence of more than 150 fentanyl-related substances with no currently known legitimate uses. The U.N. Office on Drugs and Crime estimates that laboratories could potentially synthesize thousands of other fentanyl analogues. As of December 2022, more than 30 fentanyl-related substances, including precursors, are scheduled for international control pursuant to the U.N. Single Convention on Narcotic Drugs of 1961, as amended, and the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

In 2017, U.N. member states agreed to list two fentanyl precursor chemicals on Table I of the 1988 Convention, subjecting them for the first time to international controls: N-Phenethyl-4-piperidone (NPP) and 4-Anilino-N-

phenethylpiperidine (ANPP). (In February 2018, consistent with the U.N. decision, the PRC implemented corresponding domestic controls.) In March 2022, U.N. member states decided to add three more fentanyl precursors under international control: N-Phenyl-4-piperidinamine (4-AP), *tert*-Butyl 4-(phenylamino)piperidine-1-carboxylate (boc-4-AP), and norfentanyl.

Sources and Trafficking Pathways

In the years immediately prior to 2019, China was the primary source of U.S.-bound illicit fentanyl, fentanyl-related substances, and production equipment. PRC traffickers supplied fentanyl and fentanyl-related substances directly to the United States via international mail and express consignment operations. Trafficking patterns changed after the PRC imposed class-wide controls over all fentanyl-related substances, effective May 2019. Today, Mexican transnational criminal organizations (TCOs) are largely responsible for the production of U.S.-consumed illicit fentanyl, using PRC-sourced primary materials, including precursor chemicals that are not internationally controlled (and are correspondingly legal to produce in and export out of China). According to DEA assessments cited by the U.S.-China Economic and Security Review Commission in 2021, PRC traffickers and money launderers appear to have increased cooperation with Mexican cartels.

Fentanyls destined for nonmedical consumption may be produced in clandestine laboratories. Pharmaceutical preparations of fentanyl may also be diverted through theft and fraudulent prescriptions. Legitimate chemical and pharmaceutical companies also produce fentanyl analogues and precursors that are not domestically or internationally regulated. In February 2022, the final report of the U.S. Commission on Combating Synthetic Opioid Trafficking, established pursuant to Section 7221 of the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92), concluded that the PRC's chemical and pharmaceutical sectors have "outpaced the government's efforts to regulate them, creating opportunities for unscrupulous vendors to export chemicals needed in their illegal manufacture."

Addressing China's Role

U.S. foreign policy efforts to stem the flow of illicit fentanyl-related substances into the United States have focused on bilateral engagement and multilateral cooperation with entities including the U.N. and other stakeholders on such goals as scheduling more fentanyl analogues and precursors for drug control. Such efforts fit within broader goals of targeting the foreign supply of U.S.-destined illicit drugs, which has long been a pillar of U.S. counternarcotics strategy and features centrally in the

Biden-Harris Administration's April 2022 *National Drug Control Strategy* (the *Strategy*).

With respect to the PRC, the 2022 *Strategy* prioritizes increased collaboration “on shared drug priorities” and continued engagement “to reduce diversion of uncontrolled precursor chemicals.” The *Strategy* further identifies increasing real-time law enforcement information sharing about precursor trafficking incidents from China or India to North America as a measurable objective of its supply reduction goals. The *Strategy* states that, by 2025, the U.S. government seeks to increase incident reporting by 125% (i.e., to 14 reports), from a 2020 baseline of six reports.

In testimony before the Senate in July 2022, Kemp Chester, a Senior Advisor in the White House Office of National Drug Control Policy (ONDCP), stated that the U.S. government has requested that the PRC (1) work with the U.S. government on a list of unregulated chemicals used to create precursor chemicals “that bear increased scrutiny”; (2) properly label chemical and equipment shipments in accordance with World Trade Organization rules; and (3) implement “know-your-customer” (e.g., customer identification and verification) procedures for chemical shipments. The official characterized all three requests as “things we should expect of any responsible country.”

In his written testimony, Chester stated that the U.S. government also seeks to work with the PRC to “cooperatively address the numerous money laundering and illicit finance facilitators with ties to Chinese criminal organizations that enable drug trafficking.” The U.S. Department of the Treasury's Office of Foreign Assets Control has so far sanctioned more than 20 mainland China or Hong Kong-based persons in relation to fentanyl trafficking. Such sanctions block assets within U.S. jurisdiction, prohibit U.S. persons from financial transactions with sanctioned foreign narcotics traffickers, and ban such traffickers from entry into the United States.

Early Successes

U.S.-PRC cooperation on fentanyl has yielded successes:

- Responding, in part, to a U.S. request, in May 2019, the PRC added all fentanyl-related substances not already scheduled to its “Supplementary List of Controlled Narcotic Drugs and Psychotropic Substances with Non-Medical Use.” In his July 2022 testimony, ONDCP's Chester stated that as a result, “the direct shipment of fentanyl and fentanyl-related substances from China to the United States went down to almost zero.”
- In 2019 and 2021, joint U.S.-China investigations resulted in PRC courts in Hebei and Shanghai sentencing defendants for trafficking fentanyl to the United States and Canada. The investigation that led to the 2019 sentencing reportedly originated with a 2017 tip from the U.S. Department of Homeland Security.
- In his July 2022 testimony, the ONDCP's Chester credited the PRC for the “consistently high” number of seizures of precursor and “pre-precursor” chemicals in the Western Hemisphere. He cited both “cooperation with Chinese officials” and information sent to the PRC

about seizures “so that they could take action and hold the individuals responsible.”

- The PRC approved the U.S. Drug Enforcement Administration's (DEA's) request to open additional offices in the country. DEA maintains offices in Beijing, Shanghai, Guangzhou, and Hong Kong.

Ongoing Challenges

Rising tensions in the U.S.-China relationship have challenged efforts to sustain progress on illicit fentanyl. The PRC appeared to back away from additional bilateral cooperation on counternarcotics issues after the U.S. Department of Commerce added an institute under the PRC's Ministry of Public Security (MPS) to its Entity List in May 2020, subjecting the institute to export controls. The Department of Commerce charged that the institute was “implicated in human rights violations and abuses” in the PRC's Xinjiang Uyghur Autonomous Region. The PRC contends that U.S. export controls imposed on the institute also affect the work of the MPS-led National Narcotics Laboratory of China, which operates regional centers in Beijing and the PRC's Zhejiang, Guangdong, Sichuan, and Shaanxi Provinces. In a September 2021 statement, China's Embassy in the United States alleged that the U.S. Entity List action “seriously affected China's examination and identification of fentanyl substances” and “greatly affected China's goodwill to help the U.S. in fighting drugs.” On August 5, 2022, in response to House Speaker Nancy Pelosi's visit to Taiwan, the PRC's Ministry of Foreign Affairs announced the PRC's formal suspension of U.S.-China cooperation in five areas, including counternarcotics.

In a September 2022 interview with *Newsweek*, PRC Ambassador to the United States Qin Gang appeared to rule out a “know-your-customer” protocol for PRC chemical shipments, stating that such a protocol “far exceeds U.N. obligations.” Other U.S. objectives also remain unmet. To date, the PRC has not reported taking action to control additional fentanyl precursors, including 4-AP, boc-4-AP, and norfentanyl. Some PRC nationals indicted in the United States on fentanyl trafficking charges remain at large. With respect to financial crime, the U.S. State Department's 2022 *International Narcotics Control Strategy Report* (INCSR) states that the PRC “does not cooperate sufficiently on financial investigations and does not provide adequate responses to requests for information.”

Issues for the 118th Congress

Some Members have indicated that they intend to create a new House Select Committee on China in the 118th Congress, with an agenda that may include examination of China's role in the U.S. fentanyl epidemic. Congress may consider how broader China policy, including sanctions, affect narcotics control outcomes. The 118th Congress may also seek to review implementation of the President's *National Drug Control Strategy* and whether additional foreign policy tools may be needed to address emerging trends in synthetic opioid production and trafficking.

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