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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, but such direct flows have reportedly ceased. U.S. counternarcotics policy with regard to China has shifted to preventing PRC-sourced fentanyl precursors from entering the U.S.-bound fentanyl supply chain via third countries, and targeting illicit fentanyl-related financial flows linked to China. 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 more than 77,000 overdose deaths between May 2022 and April 2023. Moreover, traffickers appear to be marketing a growing number of fentanyl analogues for nonmedical, often unregulated, use.

In November 2021, the International Narcotics Control Board—an independent expert body that monitors governments' compliance with U.N. 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 May 2023, 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.

U.N. member states first subjected fentanyl precursors to international control in 2017, agreeing to list the precursors N-Phenethyl-4-piperidone (NPP) and 4-Anilino-N-phenethylpiperidine (ANPP) on Table I of the 1988 Convention. (In February 2018, consistent with the U.N.

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

Sources and Trafficking Pathways

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 are largely responsible for the production of U.S.-consumed illicit fentanyl, using primarily PRC-sourced materials, including precursor chemicals that are not internationally controlled (and are correspondingly legal to produce in and export out of China). According to recent U.S. Department of the Treasury assessments, Mexican cartels are increasingly working with PRC money laundering organizations.

Fentanyl 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 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 §7221 of 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

With respect to the PRC, the Joseph R. Biden Jr. Administration's April 2022 *National Drug Control Strategy* prioritizes increased collaboration "on shared drug priorities" and continued engagement "to reduce diversion of uncontrolled precursor chemicals." In testimony before the House in July 2023, Office of National Drug Control Policy (ONDCP) Director Rahul Gupta said that the United States has adopted a multipronged approach to address precursors from China. It includes raising precursor diversion in every meeting with PRC counterparts and working multilaterally to expand U.N. scheduling of synthetic drugs. In July 2023, the United States also launched a Global Coalition to Address Synthetic Drug Threats, including fentanyl.

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In testimony before the Senate in February 2023, Assistant Secretary of State for International Narcotics and Law Enforcement Affairs Todd Robinson noted that the United States has “encouraged the PRC to improve information-sharing on global chemical flows, strengthen enforcement of customs manifesting agreements, and implement know-your-customer standards to restrict the sale of precursor chemicals to only customers with legitimate needs.”

The U.S. Department of the Treasury’s Office of Foreign Assets Control has so far sanctioned more than 40 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.

In June 2023, the Department of Justice arrested two PRC citizens and unsealed three indictments charging PRC-based companies and their employees with fentanyl-related crimes. The PRC alleged that DEA had conducted a sting operation against the two individuals, “blatantly abducted” them in Fiji, and taken them to the United States for trial, thus “seriously undercutting the foundation of [U.S.-PRC] counter-narcotics cooperation.”

On September 15, 2023, President Joe Biden added China to the U.S. list of the world’s major illicit drug-producing and drug-transit countries. This addition stemmed from a December 2022 amendment to the statutory definition of “major illicit drug producing country” to include precursor chemicals used to produce illicit drugs significantly affecting the United States (§5555(b) of P.L. 117-263). In its response, the PRC Ministry of Foreign Affairs stated that the designation is “a malicious smear against China” and urged the United States to “do things in ways that are conducive to cooperation with China, not otherwise.”

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 July 2022 testimony, a senior advisor to ONDCP 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 Province and Shanghai sentencing defendants for trafficking fentanyl to the United States and Canada.
- In his 2022 testimony, the ONDCP advisor credited the PRC for a 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.”
- In 2020, the PRC approved 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 in addressing 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 hinder the work of the MPS-led National Narcotics Laboratory of China, which operates centers in Beijing and in the provinces of Zhejiang, Guangdong, Sichuan, and Shaanxi. On August 5, 2022, in response to then-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 and legal assistance in criminal matters.

In a September 2022 interview with *Newsweek*, then-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. The PRC government said in June 2023 that China was “in the process of scheduling” three additional fentanyl precursors—presumably 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 2023 *International Narcotics Control Strategy Report* notes the PRC’s “lack of full cooperation on financial investigations and requests for financial investigation information.”

Legislation in the 118th Congress

The 118th Congress remains legislatively active on the role of China in producing and trafficking illicit fentanyl-related substances. For example, both House- and Senate-passed versions of a National Defense Authorization Act for Fiscal Year 2024 (NDAA; H.R. 2670 and S. 2226) would contain provisions to address PRC-linked fentanyl-related trafficking. The Senate-passed version would include the FEND Off Fentanyl Act (introduced as H.R. 3333 and S. 1271). The House also passed the Stop Chinese Fentanyl Act of 2023 (H.R. 3203). Other pending bills include the Strengthening Sanctions on Fentanyl Traffickers Act of 2023 (S. 2059) and the Project Precursor Act (H.R. 3205). Both House-committee and Senate-committee versions of a Department of State, Foreign Operations, and Related Programs Appropriations Act for 2024 (H.R. 4665 and S. 2438) would include fentanyl-related provisions. The Senate-committee version would appropriate \$125 million to support “efforts to stop the flow of fentanyl, fentanyl precursors, and other synthetic drugs and their precursor materials from the [PRC] to the United States.”

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