

**BEFORE THE OFFICE OF THE
UNITED STATES TRADE REPRESENTATIVE**

**PETITION FOR RELIEF UNDER SECTION 301
OF THE TRADE ACT OF 1974, AS AMENDED**

**THE PEOPLE'S REPUBLIC OF CHINA'S
ACTS, POLICIES, AND PRACTICES
SUPPORTING ILLICIT FENTANYL TRADE**

ON BEHALF OF

**FACING FENTANYL, INC.
And Affected Families**

A 501(c)(3) Nonprofit

Honorable Nazak Nikakhtar
Nova J. Daly
Tatiana Sainati
Rebecca J. Fiebig
Krystal B. Swendsboe
Natalia Szlarb
Christina Lucas
Wiley Rein LLP
2050 M Street NW
202.719.7000
*Counsel to Petitioner
Facing Fentanyl, Inc.*
<https://facingfentanylnow.org/>

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I. INTRODUCTION

This Petition is submitted pursuant to section 302(a) of the Trade Act of 1974, as amended (“the Act”), and it requests that action be taken under Sections 301(a) and (b) of the Act (“Section 301”) to address the unjustified and unreasonable acts, policies, and practices of the government of the People’s Republic of China (“PRC” or “China”) and PRC entities concerning the production and shipment of illicit fentanyl and fentanyl precursors (hereinafter collectively referred to as “fentanyl”) that burden or restrict U.S. commerce.¹ This Petition contains information required by regulation to the extent it is reasonably available to Petitioner.² Petitioner is Facing Fentanyl, a coalition of affected families and advocacy organizations including: Andrea Thomas, Voices for Awareness; Jaime Puerta, V.O.I.D.: Victims Of Illicit Drugs; and James Rauh, Families Against Fentanyl.

A. Overview

The PRC—its government and companies—is engaged in a devastating and unrelenting attack on the United States through the export of illicit fentanyl, a lethal poison. There is ample literature—objective and unrefuted studies—that demonstrate the extent to which the PRC’s

¹ Petitioner is confident that Office of the United States Trade Representative (“USTR”) has the authority to investigate the PRC’s acts, policies, and practices under § 2411 (a) and/or (b). Petitioner would be glad to engage with USTR to discuss the optimal legal path forward under the Act to compel the PRC to end its harmful conduct, whether it is under (a) or (b).

² See 15 C.F.R. § 2006.1(a). Specifically, this Petition (1) identifies the petitioner and the economic interest of the petitioner directly affected by the acts, policies, and practices discussed in this Petition (Pts. I.B and VII, *infra*); (2) describes the rights of the United States being violated as well as the acts, policies, and practices that are actionable under Section 301 (Pts. I.B, II, III, V, and VI *infra*); (3) describes the foreign policies, acts, and practices that are actionable—even if these are not set forth as laws or regulations (Pts. I.B and VI, *infra*); (4) identifies the foreign country with whom the United States has an agreement under which petitioner is asserting rights claimed to be denied or whose acts, policies and practices are subject of the petition—namely, China (*passim*); (5) describes the products and services which are subject to the act, policy or practice of the foreign government—namely, fentanyl—which has an impact on numerous products and services in U.S. commerce (Pt. VII, *passim*); (6) explains the manner in which the act, policy or practice is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce (Pts. VI and VII); (7) provides information concerning the degree to which U.S. commerce is burdened and restricted by any act, policy, or practice actionable under section 301, the volume of trade in the goods or services involved, and a description of the methodology used to calculate this burden (Pt. VII); and (8) indicates whether the petitioner has filed or is filing other forms of relief under the Trade Act or any other provision of law (Pt. I.B).

exports of fentanyl have devastated and continue to devastate American communities, citizens, and commerce. As reported, over 97 percent of the illicit fentanyl present in the United States originated from the PRC.³ Illicit fentanyl is often specifically engineered by PRC entities to kill and kill rapidly, and it is dramatically different than medicinal fentanyl used by hospitals and medical professionals for pain treatment.⁴ In addition, illicit PRC fentanyl is specifically engineered to be odorless and tasteless so it is impossible to detect without testing—which enables its mass distribution and use.⁵ Many victims and individuals consume illicit fentanyl without knowledge (*i.e.*, without realizing that it is included in a product), while others intentionally use fentanyl *because* of its powerful potency.⁶ Illicit fentanyl is present in approximately 75 percent of all drug poisoning deaths annually,⁷ and some states have identified even higher rates of death due to illicit fentanyl. For example, in 2022 approximately 90 percent of drug poisoning deaths in New Hampshire and Washington state involved illicit fentanyl.⁸

As set forth in this Petition, the PRC must be held accountable for the mass killings and the economic destruction that its fentanyl-promoting acts, policies, and practices are wreaking on

³ Select Comm. on the Strategic Competition between the United States and the Chinese Communist Party, *The CCP's Role in the Fentanyl Crisis*, 118th Cong., 1st Sess. (2024) (“House Select Committee Report”) at 5, attached as **Exhibit 1**; Ray Donovan, former Chief of Operations, Drug Enf’t Admin., *Ray Donovan Congressional Testimony*, attached as **Exhibit 2**; Last Call (@LastCallCNBC), X (Apr. 16, 2024), available at <https://x.com/LastCallCNBC/status/1780384620153819460>; Off. of Rep. Yadira Caraveo, *Congresswoman Caraveo Pushes for Aggressive Action Against Chinese-Derived Fentanyl* (Aug. 4, 2023), attached as **Exhibit 3**.

⁴ Nev. Cnty. Pub. Health, *Fentanyl and Opioid Overdose Prevention*, attached as **Exhibit 4**.

⁵ NYC Health, *What is Fentanyl*, attached as **Exhibit 5**; Starts with One, *What You Need to Know About Fentanyl*, attached as **Exhibit 6**.

⁶ NYU Sch. of Global Pub. Health, *More than 80% of People Who Inject Drugs Test Positive for Fentanyl — But Only 18% Intend to Take It* (May 31, 2023), attached as **Exhibit 7**.

⁷ Ctr. for Disease Control and Prevention, *SUDORS Dashboard: Fatal Drug Overdose Data, Overall* (final data updated Feb. 26, 2024), attached as **Exhibit 8**; Nat’l Inst. On Drug Abuse, *Drug Overdose Deaths: Facts and Figures*, attached as **Exhibit 9**.

⁸ Ctr. for Disease Control and Prevention, *SUDORS Dashboard: Fatal Drug Overdose Data, New Hampshire* (final data updated Feb. 26, 2024), attached as **Exhibit 10**; Teresa Winstead, et al., *Unmet Needs, Complex Motivations, and Ideal Care for People Using Fentanyl in Washington State: A Qualitative Study*, Addictions, Drug & Alcohol Inst., Univ. Wash. (June 2023), attached as **Exhibit 11**.

the United States broadly, including in communities and families. The PRC government’s efforts to date—including the recent undertaking to finally control certain fentanyl chemicals *that the PRC was already obligated to control*—have been described by industry experts as “little more than a public-relations stunt,”⁹ and are insufficient to stop the PRC’s offending practices. Administration officials have acknowledged that “the PRC can do a lot more,”¹⁰ and it is imperative that the USTR exercise its authority under the Act to ensure that the PRC takes all actions in its power to end the production and export of illicit fentanyl.

However, to date, the PRC government’s—the Chinese Communist Party (“CCP”)—acts, policies, and practices both permit and actively encourage the production and export of illicit fentanyl to the United States. These acts, policies, and practices fall into three broad categories: (1) subsidizing international trade in fentanyl by providing tax incentives and other financial support to companies that export fentanyl and its precursors, (2) impeding American efforts to stop international trade in fentanyl by investigating and prosecuting fentanyl manufacturers and exporters, and (3) failing to require PRC companies, including many state-owned enterprises (“SOEs”), through adequate laws and enforcement actions, to halt the manufacture, sale, and export of fentanyl to the United States. The PRC’s recent agreement to add three fentanyl precursors to its list of controlled substances, all of which were already controlled by international narcotics treaties that govern the global drug trade (and to which the PRC and United States are parties), does not end any of the foregoing acts, policies, and practices.¹¹ In fact, many of the

⁹ Brian Mann, *Critics Wary as China Promises Tighter Fentanyl Controls*, NPR (Aug. 30, 2024), attached as **Exhibit 12**, (quoting John Coyne and Liam Auliciems, *No, China Isn’t Really Suppressing Its Production Of Fentanyl Precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**).

¹⁰ Brian Mann, *Critics Wary as China Promises Tighter Fentanyl Controls*, NPR (Aug. 30, 2024), attached as **Exhibit 12**.

¹¹ John Coyne & Liam Auliciems, *No, China Isn’t Really Suppressing Its Production Of Fentanyl Precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

fentanyl products and precursors that the PRC currently subsidizes through financial incentives have been on the PRC's list of scheduled substances for years.¹²

The PRC's acts, policies, and practices are all, without question, *per se* unjustifiable, and they are also unreasonable. These acts, policies, and practices have been debilitating to the U.S. workforce and U.S. commerce. In the face of the loss of hundreds of thousands of American workers, the resulting adverse impacts on U.S. commerce are self-evident. As detailed in the economic analysis delineated in this Petition and in myriad public sources, the PRC's exports of this poison have rendered American companies less competitive, less innovative, and less secure.¹³ And, by engaging in these harmful, lethal acts, policies, and practices, the PRC is, and has been for years, violating America's international legal rights. These rights include, as discussed in detail below, the United States' sovereign and indisputable right to not have its citizens killed by a foreign country's exports of poison. The PRC is also deliberately violating America's international legal rights by violating fundamental international legal norms and non-derogable commitments under the anti-narcotic treaties that govern the international drug trade.¹⁴

As evidenced by the deaths of hundreds of thousands of Americans, through its support for the exports of illicit fentanyl to the United States, the PRC is acting unjustifiably and unreasonably under the Act.¹⁵ Attorney General Merrick Garland described the PRC-fueled fentanyl crisis in October 2023 as follows:

¹² See *infra* Section VI.A.i.

¹³ See *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, Dec. 20, 1988, 1582 U.N.T.S. 95, pmbl., attached as **Exhibit 14** ("Anti-Trafficking Treaty") ("[T]he illicit production of, demand for, and traffic in narcotic drugs . . . adversely affect[s] the economic, cultural and political foundations of society," and threatens "legitimate economies" as well as the "stability, security and sovereignty of States.>").

¹⁴ See *infra* Section VI.B.

¹⁵ Dep't Health and Human Serv., Ctrs. for Disease Control and Prevention, *U.S. Overdose Deaths Decrease in 2023, First Time Since 2018*, attached as **Exhibit 15**.

Fentanyl is the deadliest drug threat the United States has ever faced. It is nearly 50 times more potent than heroin and is a nearly invisible poison. Just two milligrams of fentanyl—the amount that could fit at the tip of a pencil—is a potentially lethal dose. . . We know who is responsible for poisoning the American people with fentanyl. We know who is responsible for shattering families and communities across the United States with drug poisonings and overdoses. . . And we know that this global fentanyl supply chain, which ends with the deaths of Americans, often starts with chemical companies in China.¹⁶

In 2022, Attorney General Garland and Drug Enforcement Administration (“DEA”) Administrator Anne Milgram committed that the United States would do its utmost to address the PRC-fueled fentanyl crisis, vowing:

The Justice Department will never give up in our effort to protect American lives . . . We will continue to work tirelessly to get deadly drugs -- including fentanyl -- out of our communities. And through today’s Family Summit, we will help prevent future tragedies. Your stories and your participation are indispensable to the success of this effort. We are humbled to do this work alongside you, and we stand with you in honor of your loved ones.¹⁷

This Petition requests that the U.S. Government fully honor this commitment—to expend maximum effort to protect American citizens against the PRC’s sustained actions of exporting deadly poison that is killing them. Taking action includes the USTR leveraging the Act to impose economic costs on the PRC government to compel it to end its harmful practices, rather than enacting ineffective stop-gap measures designed to disguise the breadth of the PRC’s policies. Taking such action will also enable the American people to potentially recover the economic costs that U.S. companies, families, communities, and local, state, and federal governments are bearing to combat the spread of illicit fentanyl, to continue and expand fentanyl prevention programs, and to treat those injured that require medical treatment as a result of the ingestion of this poison.

¹⁶ Dep’t Justice, *Attorney General Merrick B. Garland Delivers Remarks Announcing Eight Indictments Against China-Based Chemical Manufacturing Companies and Employees* (Oct. 3, 2023), attached as **Exhibit 16**.

¹⁷ Drug Enf’t Admin., *DEA Joins with Families Across the Country to Increase Awareness about the Dangers of Fentanyl* (Nov. 18, 2022), attached as **Exhibit 17**.

B. Petitioner

This Petition is filed on behalf of Facing Fentanyl, a nonpartisan organization dedicated to ending the fentanyl crisis confronting the United States by providing objective facts and data to empower policymakers, communities, and individuals. Facing Fentanyl includes and collaborates with the U.S. Government, law enforcement, community leaders, and families affected by fentanyl. Many members of Facing Fentanyl have lost children, siblings, parents, and other loved ones to fentanyl poisoning—and all are committed to ending the flow of illicit fentanyl from the PRC into the United States. The members of Facing Fentanyl have been deeply impacted—economically and otherwise—by the acts, policies, and practices of the PRC. It is impossible to capture the full value of the lives lost to fentanyl—or to quantify in purely monetary terms the burden suffered by Facing Fentanyl’s members as a result of the PRC’s fentanyl-promoting policies. Nevertheless, multiple studies conducted by objective and well-regarded institutions—including Congress, the National Institute of Health (“NIH”), and the Center for Disease Control (“CDC”)—provide some insight into fentanyl’s economic effects. As detailed below, the numbers are truly staggering. The overall economic impact in 2020 was over one trillion dollars, with more than 69,000 individuals dying from fentanyl poisoning. And that number has only grown, given that, in 2023, almost 75,000 individuals died from fentanyl poisoning. Victims’ families share this burden with American companies—the former in the form of lost familial income, for example. The latter in the form of a reduced work force, reduced productivity, and diminished ability to compete on a global scale. In addition to the direct costs associated with the loss of life, victims, including members of Facing Fentanyl and companies alike, suffer from the increased tax burden

and social costs of the fentanyl epidemic—such as increased healthcare costs, increased social welfare and foster care costs, and increased criminal justice expenses.

Facing Fentanyl is an interested person within the meaning of Section 301 of the Act. Facing Fentanyl is an interested person within the meaning of the Act. The Act’s definition of “interested persons” is sweeping and explicitly nonexclusive.¹⁸ USTR’s implementing regulations likewise define interested persons broadly to encompass “any party who has a significant interest affected by the act, policy, or practice.”¹⁹ Petitioner—an organization representing individuals who have lost loved ones due to fentanyl poisoning and organizations and entities dedicated to combatting the flow of illicit fentanyl into the United States—fall squarely within the statutory and regulatory language. Eradicating illicit fentanyl is their life’s work. Petitioner has not filed for any other forms of relief under the Act or other relevant provision of law.

C. Public Hearing

Petitioner does not currently request that USTR hold a public hearing regarding this Petition. Petitioner, however, reserves the right to request a hearing, consistent with 19 U.S.C. § 2412(a)(4), at a later time.

D. Organization of the Petition

This Petition is organized as follows: Section II explains why the Act’s authority is *the* essential mechanism to fix this problem. Section III shows how the PRC is responsible for the fentanyl crisis in the United States. Section IV details the legal basis for USTR’s authority to take action under Section 301 to address the PRC’s fentanyl trafficking. Section V provides a historical

¹⁸ 19 U.S.C. § 2411(d)(9). Pursuant to bedrock canons of statutory interpretation, the verb “to include” introduces examples, but does not establish an exhaustive list. Here, Congress explicitly indicated that the verb “to include” is not limited to the illustrative examples of interested persons, reinforcing the broad reach of the statutory text.

¹⁹ 15 C.F.R. § 2006.0(b).

overview of the PRC's acts, policies, and practices regarding fentanyl. Section VI explains how those acts, policies, and practices are unjustifiable and unreasonable. Section VI.A shows how the PRC pushes illicit fentanyl into the U.S. market. Section VI.B establishes how these actions violate American rights. Section VI.C discusses the PRC's persistent pattern of unjustifiable and unreasonable conduct and its repeated failure to abide by its commitments to the United States. Section VII sets forth how the PRC's fentanyl exports burden and restrict U.S. commerce. Section VIII discusses some appropriate and potential countermeasures.

II. JUSTIFICATION FOR USING THE ACT TO ADDRESS THE PRC'S ACTS, POLICIES, AND PRACTICES

Petitioner requests that USTR utilize its authority under the Act to protect U.S. citizens and U.S. commerce by initiating an investigation and potentially imposing countermeasures to address the PRC's longstanding and continuing practices of enabling and promoting the production and export of illicit fentanyl into the United States. As discussed throughout this Petition, the use of the Act is imperative to ensuring an end to the PRC's acts, policies, and practices; and USTR is statutorily authorized to take action and end the human disaster and economic toll the PRC-fueled fentanyl crisis is having on American families, communities, and economic interests. The PRC's unjustifiable and unreasonable acts, policies, and practices not only burden and weaken U.S. commerce, they destroy lives and impose staggering costs on U.S. commerce and the public at large.²⁰ The PRC's unjustifiable and unreasonable acts, policies, and practices not only burden and weaken U.S. commerce, but they also destroy lives and impose staggering costs on U.S. commerce and the public at large.²¹ Time is of the essence for the USTR to act: every day, approximately 200 individuals die from illicit fentanyl use. Petitioner asks that USTR work

²⁰ See 19 U.S.C. § 2411(a), (b).

²¹ See 19 U.S.C. § 2411(a), (b).

expeditiously to conduct this investigation and impose countermeasures in order to compel the PRC to end its harmful acts, policies, and practices or, at a minimum, enable the U.S. Government to recover the economic costs resulting from the PRC's actions, consistent with 19 U.S.C. § 2411.

Illicit fentanyl is a synthetic opioid that is up to fifty times stronger than heroin and one hundred times stronger than morphine. It is cheaper to manufacture than other illicit drugs (like heroin and cocaine): one kilogram costs \$1,000 to produce,²² can be worth \$80,000,²³ and can kill *half a million people*, more than the number of Americans killed in World War II.²⁴ Nearly all illicit fentanyl is produced in or exported from the PRC by small and large drug and chemical manufacturers—and the PRC continues to economically bolster these companies, thereby enabling these exports. Because illicit fentanyl is made from artificial substances, the potential manufacturing methods are limitless. There are at least *100 variants* that have been created within the PRC with different combinations of precursors that render them potent and lethal.

The magnitude of the problem means that diplomatic efforts targeting *specific precursors* are destined to fail in addressing the fentanyl crisis or ending the PRC government's fentanyl-promoting policies. PRC government-backed companies can create and subsidize new variants constantly, leading to a never-ending game of whack-a-mole. This is a game the United States will invariably lose; the United States will continue to endlessly pressure the PRC to limit specific products. The PRC will delay years and extract unreasonable concessions before agreeing to limit those products. PRC manufacturers will then develop new products that are not subject to the limitations, and the PRC government will look the other way and, in other instances, directly

²² Portland Police Bureau, *PPB Releases New Podcast on Dangers of Fentanyl (Photo)* (May 18, 2022), attached at **Exhibit 18**.

²³ Zongyuan Zoe Liu, *What Is China's Role in Combating the Illegal Fentanyl Trade?*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**.

²⁴ Drug Enf't Admin., *Facts About Fentanyl*, attached as **Exhibit 20**.

support their production and exports. And the United States must begin its pressure campaign again. Nothing short of significant countermeasures will incentivize the PRC government to enact meaningful regulations to stop the manufacture and export of illicit fentanyl, honor its longstanding commitments under international law to prohibit the traffic in illicit fentanyl, enforce those prohibitions, and end its use of this lethal substance that is killing American civilians and harming U.S. commerce.

The PRC's most recent "promises" are a case in point. In July 2024, President Biden announced a cooperative deal with the PRC government to curb *some of* the PRC's exports of illicit fentanyl.²⁵ The deal included the formation of a "U.S.-PRC Counternarcotics Working Group" to improve law enforcement and intelligence sharing; a promise by the PRC government to caution its chemical companies against engaging in the illicit fentanyl trade; the PRC's imposition of export license requirements on three illicit fentanyl precursors and some pill press equipment beginning September 1, 2024; the PRC's increased oversight (not export prohibitions) on seven fentanyl chemicals; and the arrest of one individual pursuant to the U.S. Department of Justice's ("DOJ's") "Operation Fortune Runner" indictment.²⁶

While these announced PRC are helpful, they are woefully insufficient given the breadth of PRC actions. Specifically:

- The PRC is not regulating, and has not proposed to regulate, the exports of a wide range of other precursors, chemicals, and compounds that are used in the manufacture of illicit fentanyl.
- Judging from its decade-long support for the illicit fentanyl industry to date, the PRC government is very likely to continue to authorize exports of the illicit

²⁵ White House, *FACT SHEET: Biden-Harris Administration Announces New Actions to Counter the Scourge of Fentanyl and Other Synthetic Drugs* (July 31, 2024), attached as **Exhibit 21**.

²⁶ White House, *Statement from Homeland Security Advisor Dr. Liz Sherwood Randall on New Actions to Combat Global Illicit Drug Manufacturing and Trafficking* (June 18, 2024), attached as **Exhibit 22**.

precursor materials and pill equipment by granting export licenses to its companies.

- The PRC is currently not prosecuting, and has no plans to prosecute, its own government officials that are complicit in the fentanyl trade.²⁷
- The PRC has taken effectively no enforcement action against the hundreds of other PRC companies that are exporting these substances.²⁸
- The PRC government has actual knowledge of the many PRC banks, businesses, and other institutions involved in fentanyl-related money laundering schemes (e.g., through tax rebate reporting), but it is not imposing any restrictions on the institutions to curtail the flow of profits to its companies.

Petitioner understands that no government-imposed prohibition is perfect; circumvention is always a reality. But the PRC government's promises are *facially incomplete and inadequate*. The PRC government's yet-to-be-implemented promises are too weak to effect meaningful change; and the disingenuous nature of the PRC government's promises emphasize that it is unwilling to end its years-long policies that have encouraged the production and export of illicit fentanyl. The PRC's reluctance to impose meaningful restrictions on illicit fentanyl exports must be measured against the more than 400,000 American lives lost as a result of the PRC's acts, policies, and practices.

And—as history instructs—the PRC is unlikely to comply with the feeble promises it has so recently made. In 2019, China finally agreed to place fentanyl under state control. Less than a year later, China's cooperation substantially declined.²⁹ By 2021 and 2022, the PRC officially announced the suspension of all counternarcotics and law enforcement cooperation with the United

²⁷ Brian Mann, *Critics Wary as China Promises Tighter Fentanyl Controls*, NPR (Aug. 30, 2024), attached as **Exhibit 12**.

²⁸ *Id.*

²⁹ Vanda Felbab-Brown, *China's Role in the Fentanyl Crisis*, Brookings Inst. (Mar. 31, 2023), attached as **Exhibit 23**.

States³⁰—primarily in response to American support for Taiwan (in part through House Speaker Nancy Pelosi’s visit to the country) and to accusations of the PRC’s human rights abuses.³¹ Less than a year later, China’s cooperation substantially declined.³² By 2021 and 2022, the PRC officially announced the suspension of all counternarcotics and law enforcement cooperation with the United States³³—primarily in response to American’s long-standing support for Taiwan policy (and in part due to House Speaker Nancy Pelosi’s visit to the country) and to accusations of the PRC’s human rights abuses.³⁴ In November 2023, Beijing finally agreed to resume bilateral counternarcotics talks—but the PRC nevertheless continued to pump massive amounts of illicit fentanyl to the United States through the subsidization of producers and exporters, and other acts, policies, and practices all evidencing its lack of sincerity in addressing the fentanyl crisis. Against this backdrop, it is abundantly clear that the PRC’s July 2024 promises to the U.S. Government on fentanyl are disingenuous and little more than a public-relations stunt. These empty promises are egregious and insulting to Americans who lost family members, friends, colleagues, and community members to the PRC’s fentanyl war against the United States.

To be clear, diplomacy alone cannot resolve this crisis and conflict with the PRC. The PRC government is not ideologically aligned with the United States on this issue and has for decades systematically ignored international laws, international norms, commitments to its trading partners, and the rights of its own citizens and innocent populations across the rest of the world.

³⁰ *Id.*

³¹ Brian Mann, *Critics Wary as China Promises Tighter Fentanyl Controls*, NPR (Aug. 30, 2024), attached as **Exhibit 12**.

³² Vanda Felbab-Brown, *China’s Role in the Fentanyl Crisis*, Brookings Inst. (Mar. 31, 2023), attached as **Exhibit 23**.

³³ *Id.*

³⁴ Brian Mann, *Critics Wary as China Promises Tighter Fentanyl Controls*, NPR (Aug. 30, 2024), attached as **Exhibit 12**.

Trust has its limits with the PRC government and the ruling CCP. Economic leverage by the U.S. Government to compel meaningful action is a critically needed strategy. According to a Biden Administration official who acknowledged that the PRC’s July 2024 promises to the United States were insufficient: “we obviously think the PRC can do a lot more No single step is going to solve this problem, it’s a huge problem.”³⁵

Consequently, on September 12, 2024, Senator Charles Schumer (D-NY) sent a letter to the U.S. Department of State requesting broader action to address the PRC-driven illicit fentanyl crisis.³⁶ Senator Schumer commended the U.S. Government’s efforts in striking the July 2024 diplomatic deal with the PRC but recognized the limits of the deal and thus asked the U.S. Government to do more. Noting that the deal was a key “step forward,” Senator Schumer urged the U.S. Government to take “additional law enforcement actions to exert sustained pressure that cracks down on Chinese companies, online marketplaces, and individuals who are involved in [the] illicit precursor chemical and fentanyl trade. . . .”³⁷ He then importantly stressed that the PRC government “can act swiftly to enforce its own [ban on fentanyl] if there is a real commitment to addressing this crisis.”³⁸

Senator Schumer’s statements highlight the well-known reality that the PRC government has substantial control over entities subject to its jurisdiction. The CCP is a highly repressive

³⁵ *Id.*

³⁶ Letter from Sen. Charles Schumer, S. Majority Leader, to Sec’y of State Antony Blinken, Atty. Gen. Merrick Garland, and Off. of Nat’l Drug Control Policy Dir. Dr. Rahul Gupta (Sept. 12, 2024); Press Release, S. Majority Leader Chuck Schumer, *Schumer: New Agreement With China On Fentanyl Could Be Major Step Forward To Curb Opioid Crisis In New York, But Now We Need To Hold China Accountable And Make Sure There Is Compliance and Senator Details New Deal With China To Crack Down On Illicit Fentanyl And Vows To Watch Like A Hawk For Progress* (Nov. 16, 2023), combined and attached as **Exhibit 24**.

³⁷ *Id.*

³⁸ *Id.*

authoritarian regime³⁹ that exercises a tight grip over PRC society and the economy,⁴⁰ and through the CCP’s range of national security and national intelligence laws, the Military-Civil Fusion strategy,⁴¹ and the corporate social credit score,⁴² all enterprises are subject to extensive and often intrusive oversight and interference by the CCP.⁴³ This effectively means that the CCP may, at any time, mandate that PRC companies immediately halt their exports of illicit substances, and it is able to enforce this mandate through strict compliance checks and punishment for violators. Astonishingly, the PRC government has not done this to date—opting instead to continue targeting American civilians with a lethal substance. Senator Schumer is correct in noting that the PRC’s empty promises will not materially limit the production and exports of illicit fentanyl to the United States. This is why Senator Schumer rightly calls for “additional law enforcement actions to exert sustained pressure . . .” on the PRC.⁴⁴

Vice President Harris similarly acknowledged the shortcomings of the current July deal with the PRC and vowed to take stronger actions to “disrupt the flow of fentanyl coming into the United States” as a “top priority.”⁴⁵ During the recent vice presidential debate, Senator Vance (R-OH) and Governor Waltz (D-MN) both expressed grave concern about the waves of illicit fentanyl

³⁹ Freedom House, *Freedom in the World 2023: China*, attached as **Exhibit 25**.

⁴⁰ Rana Mitter & Elsbeth Johnson, *What the West Gets Wrong About China*, Harvard Bus. Review, attached as **Exhibit 26**.

⁴¹ Dep’t State, *Military-Civil Fusion and the People’s Republic of China*, attached as **Exhibit 27**.

⁴² Stanford Univ. Ctr. on China’s Econ. and Institutions, *China’s Corporate Social Credit System and Its Implications* (Jan. 15, 2023), attached as **Exhibit 28**.

⁴³ Freedom House, *Freedom in the World 2023: China*, attached as **Exhibit 25**.

⁴⁴ Letter from Sen. Charles Schumer, S. Majority Leader, to Sec’y of State Antony Blinken, Atty. Gen. Merrick Garland, and Off. of Nat’l Drug Control Policy Dir. Dr. Rahul Gupta (Sept. 12, 2024) at 1, attached as **Exhibit 24**.

⁴⁵ Neil Vigdor, *After Harris Calls for a Crackdown on Fentanyl, Trump Twists Her Position*, New York Times (Sept. 29, 2024), attached as **Exhibit 29**.

that are continuing to enter the United States, notwithstanding the PRC’s July 2024 deal with the United States.⁴⁶

Numerous additional legislative efforts likewise recognize that the July 2024 deal does not and—without an effective enforcement mechanism—cannot go far enough to end the PRC’s practices. However, these legislative efforts also fall short of ending the fentanyl crisis, for example, Senator Rubio’s (R-FL) proposed legislation to sanction entities involved in the fentanyl trade,⁴⁷ the House Foreign Affairs Committee’s DISPOSE Act,⁴⁸ and the recently passed END FENTANYL Act⁴⁹ to increase enforcement actions at the U.S. border. Even President Biden’s National Security Advisor, Jake Sullivan, acknowledged that, notwithstanding the July 2024 deal, the PRC government needs to take more action to prevent the development of chemicals that can be made into fentanyl.⁵⁰ Another Biden Administration official similarly stated that “convincing [the PRC] . . . to boost regulations are *part of a wider* fentanyl campaign.”⁵¹ It is indisputable that the PRC needs to do more, and the U.S. Government must compel that. The PRC needs to substantially alter its acts, policies, and practices that violate the United States’ international rights and the PRC government’s own international obligations: its support for illicit fentanyl trade and refusal to prohibit it. Implementing the measures the Act authorizes is the most effective way to achieve this outcome.

⁴⁶ Stefan Becket, *Read the full VP debate transcript from the Walz-Vance showdown*, CBS News (Oct. 2, 2024), attached as **Exhibit 30**.

⁴⁷ *Fentanyl Reduction Engrained by Economic Deterrence (FREED) Act of 2024*, S. 5202, 118th Cong. (2024).

⁴⁸ *Destruction Initiative for Stored Precursor Chemicals Overseas and Safe Enforcement (DISPOSE) Act*, H.R. 9172, 118th Cong. (2024).

⁴⁹ *End Fentanyl Act*, S. 206, 118th Cong. (2023).

⁵⁰ Trevor Hunnicutt, *Top US, China officials to meet on military, Taiwan, fentanyl*, Reuters (Aug. 27, 2024), attached as **Exhibit 31**.

⁵¹ Brian Mann, *Critics Wary as China Promises Tighter Fentanyl Controls*, NPR (Aug. 30, 2024), attached as **Exhibit 12**.

Other proposed solutions to the fentanyl crisis to date, while well-intentioned, are largely ineffective. Some propose improving enforcement at America’s borders or sanctioning Mexican cartels. The United States should take these steps—but the U.S. Government cannot lose sight of the fact that the PRC is the *source* of the illicit fentanyl entering the United States. Thus, any meaningful solution to the fentanyl crisis must target the PRC government’s fentanyl-promoting acts, policies, and practices. Senator Susan Collins (R-ME) underscored this very point during a 2023 appropriations hearing, stating that “the fentanyl crisis ‘begins and ends in China’ . . . [and] [a]ddressing the fentanyl crisis must be at the top of this Administration’s agenda with China.”⁵²

U.S. Government actions that target the PRC suffer limitations. DOJ enforcement efforts, no matter how enhanced, are inherently limited because the DOJ lacks the authority to apprehend individuals in the PRC and bring them to justice in the United States. Sanctions are an ineffective tool against PRC entities, as entities can re-incorporate with ease to avoid them. And U.S. Customs and Border Protection (“CBP”) and U.S. Department of Homeland Security import inspections, no matter how expanded, will remain far too constrained to detect the vast majority of illicit fentanyl *smuggled* into the United States. Finally, *de minimis* exceptions, even if reduced to lower value thresholds or eliminated for PRC shipments, are insufficient to catch most imports of illicit fentanyl given how cheap fentanyl sales are and given that packages containing illicit fentanyl are systematically mislabeled and identified as ordinary commercial goods.⁵³ In short, all of these efforts suffer a fatal defect: they fail to take aim at the core of the problem—*i.e.*, the PRC

⁵² S. Appropriations Comm., *Senator Collins: The Fentanyl Crisis ‘Begins and Ends in China’* (May 16, 2023), attached as **Exhibit 32**.

⁵³ Daisy Chung, Laura Gottesdiener, Drazen Jorgic, & Kristina Cooke, *The Fentanyl Funnel: How Narcos Sneak Deadly Chemicals through the U.S.*, Reuters (Oct. 1, 2024), available at <https://www.reuters.com/investigates/special-report/usa-fentanyl-supply-chain-shipment/#:~:text=The%20fentanyl%20funnel%3A%20How%20narcos%20sneak%20deadly%20chemicals%20through%20the%20U.S.&text=A%20secretive%20route%20that%20drug,starts%20with%20one%20little%20box>.

government's acts, policies, and practices that promote and fail to prosecute the production and export of illicit fentanyl to the United States.

The United States has endured years of deceit by and failed diplomacy with the PRC government. The PRC has never adhered to any of its international agreements to curb its abusive practices, as exemplified by the 2015 U.S.-China agreement to end the PRC's intellectual property ("IP") theft;⁵⁴ the PRC's 2019 commitment to place all fentanyl-related substances under national control;⁵⁵ and the PRC's short-lived promise not to ". . . pursue militarization' of the Spratly Islands,"⁵⁶ followed by "reckless and provocative militarization of those disputed outposts."⁵⁷ These are just a few of countless other examples. Given that the PRC government's principal foreign policy strategy is to create export dependence on its economy, it is axiomatic that only direct economic pressure can induce the PRC to change behavior. Accordingly, the U.S. Government should take steps to impose substantial economic pressure on the PRC until the PRC government fully bans the illicit fentanyl trade and meaningfully enforces that ban, or at a minimum, until the U.S. Government can enable itself to better protect American citizens through, for example, revenue generated as a result of U.S. countermeasures that are used to further combat the fentanyl crisis.

Congress entrusted USTR with Section 301 authority to investigate and protect U.S. commerce from unjustifiable and unreasonable foreign practices.⁵⁸ And given the history of

⁵⁴ Everett Rosenfeld, *US-China agree to not conduct cybertheft of intellectual property*, CNBC (Sept. 25, 2015), attached as **Exhibit 33**.

⁵⁵ United Nations Off. on Drugs and Crime, *April 2019 – China: Announcement on Place All Fentanyl-Related Substances under National Control* (Apr. 2019), attached as **Exhibit 34**.

⁵⁶ Morgan Ortagus, *China's Empty Promises in the South China Sea*, Dep't State (Sept. 27, 2020), attached as **Exhibit 35**.

⁵⁷ *Id.*

⁵⁸ 19 U.S.C. § 2411.

diplomacy and half measures that the PRC government regularly walks back whenever expedient or advantageous, the use of the Act is necessary. USTR should probe the PRC's unjustifiable and unreasonable practices regarding illicit fentanyl and subsequently impose meaningful countermeasures to induce the PRC government to institute and enforce comprehensive laws and policies that significantly end exports of illicit fentanyl to the United States. At a minimum, the countermeasures can enable the U.S. Government to recover the economic losses it has sustained as a result of the PRC's acts, policies, and practices.

Following initiation of the Petition, the Act (19 U.S.C. § 2411) instructs USTR to engage in consultations with the PRC government. USTR should do so and therein demand that the PRC government expand its laws such that, at a minimum, they impose *actual export bans*, (rather than export license requirements that the government regularly approves) on *all fentanyl manufacturing chemicals, materials, and equipment* (instead of the current limited bans that restrict a few precursors and certain pill equipment, for example), and the laws should be *rigorously enforced* by the PRC government through robust investigations and prosecutions. If the PRC government does not commit to expanding its laws, beyond the commitments made in the July 2024 deal, to meaningfully stem the tide of fentanyl exports, USTR should impose the countermeasures proposed in Section VIII.

The PRC government, the CCP, as head of the world's most extensive police and surveillance state, has the power right now to direct and compel PRC companies to halt production and exports of illicit fentanyl. Yet, the PRC government has declined to exercise that power, and its feeble July 2024 promises will result in more Americans losing their lives beyond the more than 400,000 individuals who have already perished. In light of this grim reality, the issue comes down to whether the U.S. Government can really trust the PRC now, after so many failed promises.

And—when the PRC government has been knowingly engaging in acts, policies, and practices that have killed over 400,000 Americans and caused trillions of dollars in damage to U.S. commerce—it compels USTR to pursue consultations authorized by the Act (19 U.S.C. § 2413) and potentially impose countermeasures in order to protect U.S. citizens if the consultations fail. The Act’s economic countermeasures (19 U.S.C. 2411(a)(c)) contain tools to compel the PRC government go beyond its July 2024 deal and do more to end its illicit fentanyl trade practices.

In just one year (2021), illicit fentanyl killed *ten times more* Americans (80,411 individuals) than the post-9/11 U.S. military actions in Iraq and Afghanistan combined.⁵⁹ Last year, illicit fentanyl poisonings killed more Americans than total U.S. military casualties in the wars in Vietnam, Iraq, and Afghanistan combined.⁶⁰ The PRC’s production and exports of illicit fentanyl constitute the leading cause of death among Americans between the ages of 18 and 45,⁶¹ and they are a rising cause of fatalities among teens between ten and nineteen years old.⁶² Over the last year, synthetic opioids, primarily illicit fentanyl from the PRC, were identified in 91 percent of opioid poisoning deaths and approximately 75 percent of all drug poisoning deaths.⁶³ The devastation wreaked by fentanyl from the PRC cannot be overstated. Additionally, the congressional Joint Economic Committee (“JEC”) estimated that the synthetic opioid epidemic—again driven predominately by fentanyl from the PRC—cost nearly \$1.5 trillion in 2020 alone and impacted U.S. gross domestic product (“GDP”) by approximately 7 percent (over \$1 trillion is

⁵⁹ Claire Klobucista & Mariel Ferragamo, *Fentanyl and the U.S. Opioid Epidemic*, Council on Foreign Relations (Dec. 22, 2023), attached as **Exhibit 36**.

⁶⁰ Will Croxton, “*They die too quickly: Reversing a fentanyl overdose with naloxone*,” CBS News (Sept. 22, 2024), available at <https://www.cbsnews.com/news/reversing-a-fentanyl-overdose-with-naloxone-60-minutes/>.

⁶¹ Drug Enf’t Admin., *DEA Administrator on Record Fentanyl Overdose Deaths*, attached as **Exhibit 38**.

⁶² Ty Schepis, *Dozens of US adolescents are dying from drug overdoses every month – an expert on substance use unpacks the grim numbers with 3 charts*, Tex. State Univ. (Nov. 28, 2023), attached as **Exhibit 39**.

⁶³ Jasmine Zapata, *Public Health Advisory: Fentanyl Increasingly Present in Overdose Deaths in Wisconsin*, Wis. Dep’t of Servs. (Sept. 13, 2024), attached as **Exhibit 40**.

attributed to fentanyl, which is approximately 5 percent of U.S. GDP). And this number, which includes the value of the lives lost, the cost of treating addiction, health care costs, and criminal justice spending, all amounting to hundreds of billions of dollars, will continue to grow.

The PRC's acts, policies, and practices that enable the mass exportation of illicit deadly fentanyl into the United States are precisely the sort of conduct that USTR can remedy under the Act. The PRC's actions are unlawful, economically harmful, and frankly, inhumane. The consultations, investigation, and proposed countermeasures under the Act will be the most important and consequential element of America's effort to combat the PRC's illicit fentanyl trade.

The importance of USTR's investigation derives from the Act's authorization to pursue economic pressure. The PRC government "sees its counternarcotics enforcement, and more broadly its international law enforcement cooperation, as strategic tools."⁶⁴ The PRC's actions to combat drug trafficking have thus far been "highly selective, self-serving, limited, and subordinate to its geopolitical interests."⁶⁵ The PRC government has proven to only take drug trafficking obligations seriously when it is politically expedient for them to do so. As a result, USTR has previously rejected the notion that "negotiations alone could be successful in obtaining the elimination of the harmful practices without accompanying economic pressure," and has acknowledged "that previous actions were not sufficient to encourage China to change its acts, policies, and practices" and "that more substantial trade actions were needed to encourage negotiations" with the PRC.⁶⁶ The USTR's conclusion there remains true for this matter. There

⁶⁴ Vanda Felbab-Brown, *China's Role in the Fentanyl Crisis*, Brookings Inst. (Mar. 31, 2023), attached as **Exhibit 23**.

⁶⁵ *Id.*

⁶⁶ *In re Section 301 Cases*, 628 F. Supp. 3d 1235, 1249 (Ct. Int'l Trade 2023) (quoting Further Explanation of the Final List 3 and Final List 4 Modifications in the Section 301 Action: China's Acts, Policies, and Practices Related to Tech. Transfer, Intell. Prop., and Innovation, Pursuant to Ct. Remand Order).

is no question that the PRC has professed concern regarding past USTR trade measures. Given the PRC government's reliance on trade with the United States, increased economic pressure would compel the PRC government to take sufficient actions on this matter.⁶⁷

USTR must exercise its legal authority to investigate and enter into consultations with the PRC government, and subsequently institute, as appropriate, countermeasures necessary to eliminate the PRC government's acts, policies, and practices that promote the illicit fentanyl trade. USTR should initiate this investigation, so that the threat of countermeasures exists for the duration of USTR's investigation. The U.S. Government should use this period of time to ascertain whether the PRC government will implement the necessary laws and enforcement mechanisms to substantially prohibit illicit fentanyl exports, including but not limited to promises made under the July 2024 deal. The implementation of measures under the Act are critical to compel the PRC government to change its acts, policies, and practices and prohibit the exports of illicit fentanyl *in law and in fact*. If, by the end of USTR's statutorily mandated investigation, the PRC does not end its acts, policies, and practices, then countermeasures must be instituted. Initiation of this Petition is legally and factually warranted. American lives depend on this. The American workforce and U.S. commerce depend on this. The American public depends on this.

⁶⁷ *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 85 Fed. Reg. 3,741 (Dep't Commerce Jan. 22, 2020) (reporting that "[i]n light of the scheduled entry into force of the phase one agreement, and at the direction of the President, the U.S. Trade Representative has determined that the action announced on August 20, 2019, as modified by the August 30 notice, no longer is appropriate," and reducing the level of additional duties on certain Chinese products), attached as **Exhibit 42**.

III. THE PRC DRIVES THE AMERICAN FENTANYL CRISIS

The PRC’s direct responsibility for the U.S. fentanyl crisis is uncontroverted, uncontested, and acknowledged across the U.S. Government.⁶⁸

- **Senator Roger Wicker (R-MS)** stated that “[t]ens of thousands of Americans are dying each year from fentanyl that has been . . . *manufactured using materials from Communist China*.”⁶⁹
- **Senator Charles Schumer (D-NY)** expressed the need to “crack down on the flow of illicit fentanyl to the U.S. and elsewhere in the world. Fentanyl has wreaked havoc in New York and across America, and despite our ongoing efforts, *companies in China continue to fuel this crisis*.”⁷⁰
- **Senator Sherrod Brown (D-OH)** acknowledged that the illicit fentanyl supply chain starts in the PRC and is bringing “increasingly dangerous forms of this drug” to “our communities.”⁷¹
- **Senator Joni Ernst (R-IA)** stated “I think that the Chinese are intentionally poisoning America. And of course, the Chinese don’t want to assist us.”⁷²

⁶⁸ See House Select Committee Report at 5-6, nn.9-12 (listing sources), attached as **Exhibit 1**; *Countering Illicit Fentanyl Trafficking*, Hearing Before the S. Comm. on Foreign Relations, 118th Cong. (2023) (testimony of Dr. Rahul Gupta), attached as **Exhibit 43** (“Criminal elements, mostly in the People’s Republic of China, ship precursor chemicals to Mexico, where they are used to produce illicit fentanyl”); *Tackling Fentanyl: The China Connection*, Hearing Before the Subcomm. on Africa, Glob. Health, Glob. Human Rights, and Int’l Orgs. of the H. Com. on Foreign Affs., 115th Cong. (2018) (testimony of Mr. Paul E. Knierim), attached as **Exhibit 44**; Comm’n on Combating Synthetic Opioid Trafficking, *Final Report* (Feb. 8, 2022), attached as **Exhibit 45** (“PRC appear to be, directly or indirectly, the primary sources of chemical precursors used to synthesize fentanyl and other novel synthetic opioids.” (citation omitted)).

⁶⁹ *Banking Committee Introduces Bipartisan Bill to Address Fentanyl Crisis*, S. Comm. on Banking, Hous. & Urb. Aff., 118th Cong. (2023), attached as **Exhibit 46**.

⁷⁰ Letter from Sen. Charles Schumer, S. Majority Leader, to Sec’y of State Anthony Blinken, Atty. Gen. Merrick Garland, and Off. of Nat’l Drug Control Policy Dir. Dr. Rahul Gupta (Sept. 12, 2024), attached as **Exhibit 24**.

⁷¹ *Banking Committee Introduces Bipartisan Bill to Address Fentanyl Crisis*, S. Comm. on Banking, Hous. & Urb. Aff., 118th Cong. (2023), attached as **Exhibit 46**.

⁷² Caitlin Yilek, *Joni Ernst says China is “intentionally poisoning” Americans amid fentanyl crisis*, CBS News (Feb. 10, 2023), attached as **Exhibit 47**.

- **Senators Bill Cassidy (R-LA) and Maggie Hassan (D-NH)** stated, in a joint op-ed, “[t]he CCP is also responsible for the overwhelming majority of the world’s fentanyl precursor production, which has fueled the fentanyl crisis in the U.S. . . . We must do everything we can to cut these deadly drugs off right at the source.”⁷³
- **House Select Committee on the on Strategic Competition between the United States and the Chinese Communist Party (“House Select Committee”) Chairman John Moolenaar (R-MI) and Ranking Member Raja Krishnamoorthi (D-IL)** released a report finding that “[t]he PRC, under the leadership of the Chinese Communist Party (CCP), is the ultimate geographic source of the fentanyl crisis. Companies in China produce nearly all of illicit fentanyl precursors, the key ingredients that drive the global illicit fentanyl trade.”⁷⁴
- **DEA’s National Drug Threat Assessment 2024** recognized that “China-based suppliers are still the main source for the precursor chemicals used . . . to produce illicit fentanyl.”⁷⁵

The United States first identified the PRC as the primary source of illicit fentanyl imports nearly a decade ago.⁷⁶ By 2019, 97 percent of fentanyl in the U.S. market came directly from the PRC.⁷⁷ After lengthy negotiations and as a result of significant pressure, U.S. authorities managed to persuade the PRC to place finished fentanyl and fentanyl analogs under national control.⁷⁸ But the PRC’s commitment to stemming the flow of fentanyl from its borders was superficial at best. Incentivized, emboldened, and enabled by the PRC government’s policies, PRC companies turned to exporting fentanyl precursors to be manufactured into final product and sold in the American

⁷³ Bill Cassidy & Maggie Hassan, *As a Democrat and a Republican, we are united in warning China’s Xi on fentanyl, fair trade*, Fox News (Oct. 27, 2023), attached as **Exhibit 48**.

⁷⁴ H. Select Comm. on Strategic Competition between the United States and the Chinese Communist Party, *Investigation Findings: The CCP’s Role in the Fentanyl Crisis* (Apr. 16, 2024), attached as **Exhibit 49**.

⁷⁵ Drug Enf’t Admin., *National Drug Threat Assessment 2024* (May 9, 2024), attached as **Exhibit 50**.

⁷⁶ Cong. Rsch. Serv., *China Primer: Illicit Fentanyl and China’s Role* (Feb. 20, 2024), attached as **Exhibit 51**.

⁷⁷ Select Committee Report at 5, attached as **Exhibit 1**.

⁷⁸ Maurice Tamman, Laura Gottesdiener, & Stephen Eisenhammer, *We Bought Everything Needed to Make \$3 Million Worth of Fentanyl. All It Took Was \$3,600 and a Web Browser*, Reuters (July 25, 2024), available at <https://www.reuters.com/investigates/special-report/drugs-fentanyl-supplychain/>.

market.⁷⁹ This history is poised to repeat itself following the recent July 2024 deal executed between the United States and the PRC unless additional measures are taken to ensure that the PRC faithfully carries out its obligations and prohibits illicit fentanyl exports to the United States.

The PRC government, the CCP, is a notorious police state that actively monitors, suppresses, and punishes online communications and content that the state deems subversive.⁸⁰ PRC chemical suppliers are nevertheless totally transparent about their product offerings, openly marketing their goods as ingredients to manufacture fentanyl. PRC-based sellers do not even pretend to believe that their purchasers intend to use these ingredients for any legitimate purpose. To the contrary, these sellers explicitly advertise their products as a means to create illicit fentanyl—going so far as to provide diagrams and instructions on how to transform the precursors into the finished, deadly narcotic.⁸¹ Despite operating in one of the world’s most punitive regimes, and despite the regime’s promise to crack down on illicit fentanyl, these actors make no effort to hide their activities. Their activities demonstrate that—despite the PRC’s superficial cooperation with the U.S. Government to crack down on the influx of fentanyl into the United States—PRC sellers remain emboldened to peddle their deadly products.⁸² Blatant advertisements and statements demonstrate that the PRC government has no interest in stopping the sale of fentanyl

⁷⁹ Daisy Chung, Laura Gottesdiener, Drazen Jorgic, & Kristina Cooke, *The Fentanyl Funnel: How Narcos Sneak Deadly Chemicals through the U.S.*, Reuters (Oct. 1, 2024), available at <https://www.reuters.com/investigates/special-report/usa-fentanyl-supply-chain-shipment/#:~:text=The%20fentanyl%20funnel%3A%20How%20narcos%20sneak%20deadly%20chemicals%20through%20the%20U.S.&text=A%20secretive%20route%20that%20drug,starts%20with%20one%20little%20box>.

⁸⁰ See, e.g., Isabel Kua, *China’s Police State Goes Global at Surveillance Conference*, Barron’s (Sept. 11, 2024), attached as **Exhibit 53**; Qian Lang, *New Rules Let China’s State Security Police Check People’s Devices*, Radio Free Asia (May 8, 2024), attached as **Exhibit 54**.

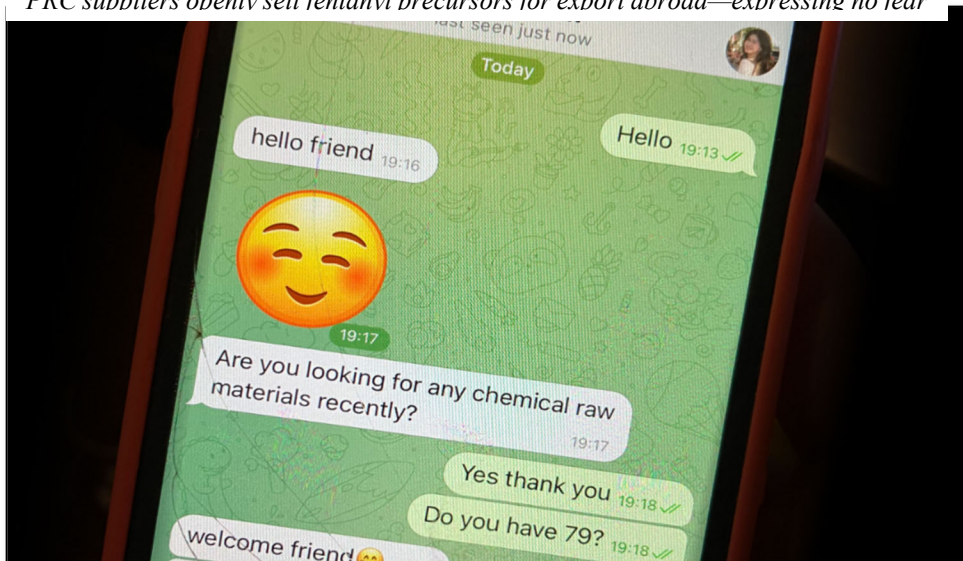
⁸¹ Maurice Tamman, Laura Gottesdiener, & Stephen Eisenhammer, *We Bought Everything Needed to Make \$3 Million Worth of Fentanyl. All It Took Was \$3,600 and a Web Browser*, Reuters (July 25, 2024), available at <https://www.reuters.com/investigates/special-report/drugs-fentanyl-supplychain/>.

⁸² *Id.*

precursors destined to sow destruction in the U.S. market.⁸³ Rather, PRC sellers evince confidence that the CCP condones their activities.

A Reuters investigation confirmed the confidence with which these sellers operate. Even while negotiations were ongoing between the United States and the PRC regarding the imposition of tougher policies, Reuters had no difficulty finding a list of all the PRC-based companies that manufacture and export precursors intended for the U.S. market.⁸⁴ Moreover, Reuters reporters easily obtained enough controlled fentanyl precursors—like piperidone—from PRC-based sellers to produce 750,000 lethal tablets of fentanyl. And, even though the PRC government can and

PRC suppliers openly sell fentanyl precursors for export abroad—expressing no fear



should know what these companies are producing and exporting, company representatives represent to their buyers that their products will easily find their way through international trade routes to the United States.⁸⁵

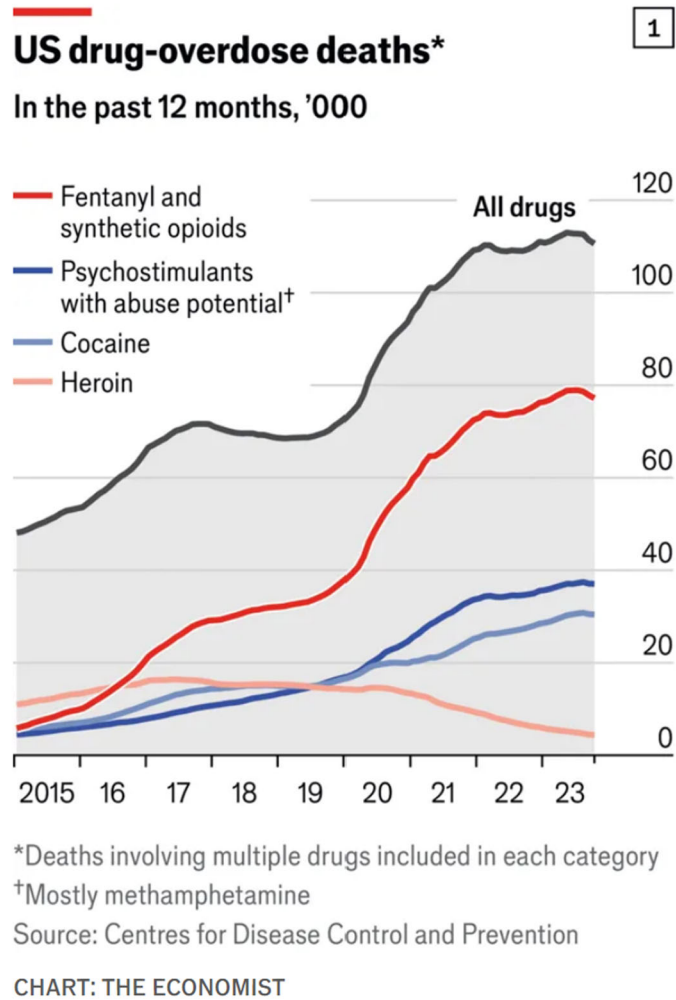
The influx of fentanyl from the PRC into the United States has exacted, and continues to

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

exact, a heavy toll on the U.S. population causing ongoing drug poisoning deaths in the magnitude of hundreds of thousands. It is now the leading cause of death for Americans aged 18-45 years and has precipitated a historic drop in American life expectancy.⁸⁶



Illicit fentanyl exported from the PRC is designed to inflict suffering. Fentanyl itself is 100 times stronger than morphine,⁸⁷ 50 times more potent than heroin,⁸⁸ cheaper to produce than

⁸⁶ H. Select Comm. on Strategic Competition between the United States and the Chinese Communist Party, *Select Committee Unveils Findings into CCP's Role in American Fentanyl Epidemic—Report & Hearing* (Apr. 16, 2024), attached as **Exhibit 55**.

⁸⁷ Drug Enf't Admin., *Facts About Fentanyl*, attached as **Exhibit 20**.

⁸⁸ Maia Szalavitz, *How Fentanyl Drove a Tsunami of Death in America*, *New York Times* (Sept. 27, 2024), attached as **Exhibit 56**.

either,⁸⁹ and often undetectable.⁹⁰ Just two milligrams can kill an individual.⁹¹ One kilogram can kill 500,000 people.⁹² And the fentanyl hitting the U.S. market today, manufactured using precursors from the PRC, “is even deadlier than before.”⁹³ In 2022, the state of California alone seized enough illicit fentanyl to kill the entire population of North America twice over.⁹⁴ In 2023, the DEA seized more than 386 million deadly doses.⁹⁵ And in 2024, to date, the DEA has seized more than 292 million lethal doses of fentanyl.⁹⁶

⁸⁹ *Id.*

⁹⁰ Lynn Arditi, *Stimulant users caught up in fatal ‘fourth wave’ of opioid epidemic*, NPR (July 9, 2024), attached as **Exhibit 57**.

⁹¹ Drug Enf’t Admin., *Facts About Fentanyl*, attached as **Exhibit 20**.

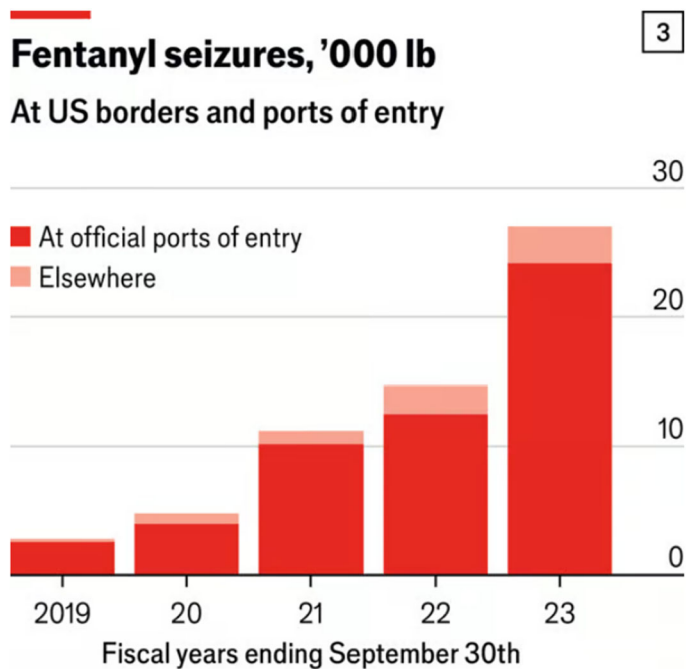
⁹² *Id.*

⁹³ Drug Enf’t Admin., *Year in Review: DEA Innovates to Fight Fentanyl* (Jan. 18, 2024), attached as **Exhibit 58**.

⁹⁴ Governor Gavin Newsom, *California Seized Enough Fentanyl to Potentially Kill the Entire Population of North America, Twice*, attached as **Exhibit 59**.

⁹⁵ Drug Enf’t Admin., *Year in Review: DEA Innovates to Fight Fentanyl* (Jan. 18, 2024), attached as **Exhibit 58**.

⁹⁶ The DEA maintains a running total of fentanyl seized in the United States and updates that total on the following webpages daily. See Drug Enf’t Admin., *One Pill Can Kill*, attached as **Exhibit 60**; Drug Enf’t Admin., *Facts About Fentanyl*, attached as **Exhibit 20**; see also U.S. Attorney’s Off., Western Dist. of Wash., *HSI, DEA, and local partners, seize more than 16 kilograms of fentanyl powder and 60,000 fentanyl pills in fast-moving investigation* (May 10, 2024), attached as **Exhibit 61**; Kyle Dunphey, *DEA forecasts a record-breaking year for fentanyl seizures in Utah*, Utah News Dispatch (July 4, 2024), attached as **Exhibit 62**.



Source: US Customs and Border Protection

CHART: THE ECONOMIST

The PRC government understands and exploits the fact that “[a]nyone with a mailbox, an internet connection and digital currency to pay the tab can source these chemicals” from the PRC.⁹⁷ Again, the United States cannot combat these practices with diplomacy alone. Washington has pushed the PRC government to impose substantive laws and enforcement measures to restrict the exports of illicit fentanyl, yet the PRC government has done nothing of substance in response. Thus, the deadly tide of fentanyl continues to flow.

⁹⁷ Maurice Tamman, Laura Gottesdiener, & Stephen Eisenhammer, *We Bought Everything Needed to Make \$3 Million Worth of Fentanyl. All It Took Was \$3,600 and a Web Browser*, Reuters (July 25, 2024), available at <https://www.reuters.com/investigates/special-report/drugs-fentanyl-supplychain/>.

IV. LEGAL STANDARD

A. The Act Is Intended to Combat the PRC Government’s Acts, Policies, and Practices with Respect to Fentanyl Exports

There can be no question that Congress intends that the President, as delegated to USTR, use the authority under the Act to investigate and impose countermeasures when U.S. commerce is threatened by unjust or unreasonable trade that burdens or restricts U.S. commerce. The matter before the President and USTR under this Petition concerns trade. The trade and export of an illicit drug and its chemical precursors that are negatively impacting the commerce of the United States of America. The Act authorizes the Office of the President of the United States of America, acting under its authority and through its Executive Branch agencies, to engage in countermeasures “against foreign countries which impose unjustifiable or unreasonable restrictions against U.S. Commerce.”⁹⁸ That authority, delegated in part to USTR, embodies the unquestionable right of the President to protect American commercial interests “whenever a foreign nation treats the commerce of the United States unfairly.”⁹⁹

Congress, since first providing the President with authority under this Act, has expanded this authority to protect against unjustified and unreasonable acts, policies, and practices by foreign countries, in the multiple forms that they take.¹⁰⁰ Indeed, the Act has been amended multiple times since its initial passage in order to broaden its reach and incentivize increased use. In 1984, the Act was amended to expand the President’s powers¹⁰¹ and to encourage broader use of the statute’s

⁹⁸ S. Report No. 1298, 93d Cong., 2nd Sess., 1974 U.S.C.C.A.N. 7186, 7208.

⁹⁹ *Id.* at 7186, 7302-03.

¹⁰⁰ *Id.*

¹⁰¹ PL 98–573 (HR 3398), PL 98–573, October 30, 1984, 98 Stat 2948.

provisions.¹⁰² In 1988, the Act was amended again to specify that unjustifiable actions, when found, require a *mandatory response*, transfer implementation authority to USTR, and identify specific unreasonable practices deserving of countermeasures.¹⁰³ In 1994, the Act was amended again, this time to confirm jurisdiction to reach foreign countries that *tolerate and support* practices that hurt the United States, not merely those that directly attack American commercial interests.¹⁰⁴

The Act empowers the President, through USTR, to investigate a foreign nation’s acts, policies, and practices to determine if they are “actionable” and if they are, to do what is required to see them eliminated.¹⁰⁵ On its face, the Act includes, but goes beyond what is considered by some to be “traditional” trade. Actionable matters are *any* “acts, policies, and practices of a foreign country,” including failure to effectively enforce commitments to which a state is a party, that are either unjustifiable, unreasonable, or discriminatory and burden or restrict U.S. commerce.¹⁰⁶

When these criteria are met, the President, acting through the USTR, and in conjunction with their Executive agencies, is authorized to institute a broad range of countermeasures to eliminate the offending conduct. The countermeasures available include suspension, withdrawal, or prevention of benefits of trade agreement concessions; imposition of duties or import restrictions; withdrawal or limitation of duty-free treatment; entry into binding agreements to

¹⁰² See H.R. REP. 98-383, 9, 1984 U.S.C.C.A.N. 5039, 5046 (“The committee believes that these changes will clarify, strengthen, and otherwise improve Section 301, thereby allowing more vigorous use of the statute against a wide variety of foreign restrictions and making it a more effective device to obtain fair and equitable market access for exports of U.S. goods and services.”); Joseph H. Price, *The Trade and Tariff Act of 1984: An Analytical Overview*, 19 INT’L L. 321, 327 (1985), attached as **Exhibit 63**; Jerry Cohen & Matthew McCullough, *International Trade Practice* § 32:3 (2024 ed.), attached as **Exhibit 64**.

¹⁰³ Jerry Cohen & Matthew McCullough, *International Trade Practice* § 32:3 (2024 ed.), attached as **Exhibit 64**.

¹⁰⁴ *Id.*

¹⁰⁵ 19 U.S.C. §§ 2411(a)(1)(A) & (b)(2).

¹⁰⁶ *Id.* §§ 2411(a)(1)(B)(2) & (b)(1).

eliminate offending practices and burdens on U.S. commerce and provide compensatory trade benefits; and restriction or denial of service sector access authorizations.¹⁰⁷

To maximize the Act’s efficacy, any affected person can invoke USTR’s investigatory review. Congress specifically “provided a complaint procedure whereby interested parties could petition the Special Representative for Trade Negotiations to conduct a review, with public hearings of such alleged practices and policies.”¹⁰⁸ Thus, the Act authorizes “any interested person” to file a petition with USTR requesting the initiation of an investigation.¹⁰⁹ Petitioner—an organization representing family members of victims who died as a result of the PRC’s unjustifiable and unreasonable practices that promote the export of illicit fentanyl to the United States, and who have suffered direct and significant economic harm (in addition to the broader impact on U.S. commerce)—are precisely the sort of interested persons Congress contemplated.

B. The PRC’s Unjustifiable Acts, Policies, or Practices

Under the Act, if the United States’ rights are being violated in a manner that burdens or restricts U.S. commerce, USTR is *required* to “take action” authorized by statute or otherwise “within the power of the President with respect to trade in any goods or services” to “obtain the elimination of [an unjustifiable] act, policy, or practice,” unless a limited statutory exception applies (none of which are applicable here).¹¹⁰ Unjustifiable acts, policies, and practices are those that “violat[e] . . . , or [are] inconsistent with, the international legal rights of the United States.”¹¹¹ The Act provides a list of practices that are *per se* unjustifiable, including denial of most-favored

¹⁰⁷ *Id.* § 2411(c).

¹⁰⁸ S. Report No. 1298, 93d Cong., 2nd Sess., 1974 U.S.C.C.A.N. at 7208.

¹⁰⁹ 19 U.S.C. § 2412(a).

¹¹⁰ *Id.* § 2411(a)(1).

¹¹¹ *Id.* § 2411(d)(4)(A).

nation treatment, denial of the right of establishment, and protection of intellectual property rights.¹¹² Moreover, the list is expressly non-exhaustive and extends to any practice that violates or otherwise contravenes an international right of the United States—*i.e.*, those rights that the United States possesses under international law. The statute confirms “that an ‘unjustifiable’ claim can be based on alleged violations of U.S. rights under sources other than trade agreements.”¹¹³ And USTR has thus initiated investigations in response to petitions alleging violations of U.S. rights established in sources including but not limited to friendship, commerce, and navigation treaties, international declarations, resolutions, Organization for Economic Co-operation and Development decrees, and other internationally accepted standards.¹¹⁴ The export of lethal poison designed to kill, with its resulting impact on U.S. Commerce, is *per se* unjustified and violates the United States’ rights.

C. The PRC’s Unreasonable or Discriminatory Acts, Policies, or Practices

The Act also specifies that acts, policies, and practices are unreasonable if they are “unfair and inequitable.”¹¹⁵ To be clear, this does not mean that an act, policy, or practice must be a violation of, or even inconsistent with, the international legal rights of the United States to be actionable.¹¹⁶ Rather, and consistent with the ordinary meaning of the statutory terms, an act,

¹¹² *Id.* § 2411(d)(4)(B).

¹¹³ *See* Jerry Cohen & Matthew McCullough, *International Trade Practice* § 33:1 (2024 ed.) (“The broad precepts delineated in the latter portion of the statutory definition suggest that an ‘unjustifiable’ claim can be based on alleged violations of U.S. rights under sources other than trade agreements.”), attached as **Exhibit 64**.

¹¹⁴ *See id.* (collecting petitions at n.24).

¹¹⁵ 19 U.S.C. § 2411(d)(3)(A).

¹¹⁶ *Id.*

policy, or practice is actionable if it is “marked by injustice, partiality, or deception,”¹¹⁷ or otherwise “unfair.”¹¹⁸

The Act specifies certain acts, policies, or practices that are unreasonable, including those that “constitute[] a persistent pattern of conduct by the [foreign government] under which that government fails to effectively enforce commitments under agreements to which the foreign country and the United States are parties, including with respect to . . . anticorruption.”¹¹⁹

But the Act is not limited only to these enumerated examples.¹²⁰ And USTR has repeatedly concluded that acts, policies, and practices *beyond* those explicitly set forth in the statute are unreasonable and, therefore, actionable. For example, USTR found actionable Vietnam’s practices related to currency manipulation, Vietnam’s import and use of illegally harvested timber, and multiple countries’ imposition of a digital services tax.¹²¹ In other words, USTR’s past practice confirms that the term “unreasonable” is intentionally broad enough to reach all manner of conduct that burdens U.S. commerce.¹²² But again, the matter before USTR in this Petition involves export trade of a deadly substance.

D. Burden or Restriction on U.S. Commerce

The only other requirement necessary to trigger USTR’s statutory authority is that the foreign act, policy, or practice burdens or restricts U.S. commerce. In other words, the statute extends USTR’s powers to impose countermeasures against any unfair acts, policies, or practices

¹¹⁷ Merriam-Webster.com Dictionary, “unfair,” (accessed Oct. 10, 2024), attached as **Exhibit 65**.

¹¹⁸ Merriam-Webster.com Dictionary, “inequitable,” (accessed Oct. 10, 2024), attached as **Exhibit 66**.

¹¹⁹ 19 U.S.C. § 1241(d)(3)(A).

¹²⁰ *Id.* § 2411(d)(3)(B).

¹²¹ *The Year in Trade 2022: Operation of the Trade Agreements Program 74th Rep.*, USITC Inv. No. 163-002 (Dec. 1, 2023), attached as **Exhibit 67**.

¹²² *See, e.g.*, S. Report No. 1298, 93d Cong., 2nd Sess., 1974 U.S.C.C.A.N. at 7302-03.

that are “harmful to U.S. commerce.”¹²³ The statute defines commerce broadly to extend beyond only goods and includes but is “*not limited to*” services “associated with international trade.”¹²⁴ The legislative history confirms that “commerce” should be interpreted broadly. The bill was amended in committee to make it explicit that USTR can impose countermeasures “against countries which discriminate against or impose unjustifiable or unreasonable restrictions on, for example, *the U.S. insurance industry, the air transport industry, the banking industry, or the merchant shipping industry*. There may well be other ‘service’ industries which are discriminated against or subject to unjustifiable or unreasonable practices and the Committee feels that these *would also be covered by the Committee amendment*.”¹²⁵

The traditional judicial interpretation of “commerce”—and USTR’s application of that term—supports the broad reach of the statute. For more than a century, “commerce” has been understood to “extend[] to every species of commercial interc[our]se between the United States and foreign nations, and among the several States.”¹²⁶ The Supreme Court has long defined “commerce” expansively to cover “movements of persons and things, whether for profit or not, across state lines; communications; transmissions of intelligence, whether for commercial purposes or otherwise; and commercial negotiations that involve transportation of persons or things, or flows of services or power, across state lines.”¹²⁷ USTR’s own interpretation of the Act has likewise adopted a broad definition of commerce—one that extends to any acts, policies, or practices that, for example, give a foreign state “an unfair competitive advantage in international

¹²³ *In re Section 301 Cases*, 570 F. Supp. 3d 1306, 1316 (Ct. Int’l Trade 2022).

¹²⁴ 19 U.S.C. § 2411(d)(1) (emphasis added).

¹²⁵ S. Report No. 1298, 93d Cong., 2nd Sess., 1974 U.S.C.C.A.N. 7186, 7303 (emphasis added).

¹²⁶ *Gibbons v. Ogden*, 22 U.S. 1, 3 (1824).

¹²⁷ Constitution Annotated, *Artl.S8.C3.2, Meaning of Commerce*, attached as **Exhibit 68**.

trade,” distort import/export competitiveness,¹²⁸ “force[] U.S. companies to undertake costly measures to comply” with domestic policies, or subject U.S. companies to increased tax burdens—particularly when those costs and burdens also affect U.S. small businesses and consumers.¹²⁹

Specifically with respect to the PRC, USTR has identified a wide array of actions that burden or restrict U.S. commerce, including:

- Conduct that distorts markets in which U.S. citizens participate, undermines the ability of U.S. firms to sustain innovation or investment, or compromises the global competitiveness of American companies.¹³⁰
- Actions that damage company performance and competitiveness and result in lost sales, lost revenue, disruption of supply chains, lost business opportunities, and failure to achieve return on investment.¹³¹
- Policies that result in a significant impact on U.S. employment.¹³²

Of course, the manufacture, sale, and export of a lethal poison—which is killing Americans and impairing U.S. commerce—unquestionably satisfies this standard.

¹²⁸ U.S. Trade Rep., *Report on Vietnam’s Acts, Policies, and Practices Related to Currency Valuation* (Jan. 15, 2021) at 1 and 27-28, attached as **Exhibit 69**.

¹²⁹ U.S. Trade Rep., *Report on Austria’s Digital Service Tax* (Jan. 13, 2021) at 4, attached as **Exhibit 70**; U.S. Trade Rep., *Section 301 Investigation: Report on France’s Digital Services Tax* (Dec. 2, 2019) at 53-54, 58-59, and 65-66, attached as **Exhibit 71**; U.S. Trade Rep., *Section 301 Investigation: Report on India’s Digital Services Tax* (Jan. 6, 2021) at 22-27, attached as **Exhibit 72**.

¹³⁰ U.S. Trade Rep., *Findings of the Investigation into China’s Acts, Policies, And Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974* (Mar. 22, 2018) at 45 and 150-52, attached as **Exhibit 73**.

¹³¹ *Id.* at 173-75.

¹³² *Id.* at 176; *see also* U.S. Trade Rep., *Report on Vietnam’s Acts, Policies, and Practices Related to Currency Valuation* (Jan. 15, 2021) at 27 (identifying harm due to suppression of value of labor, “which reduces the purchasing power and consumption of workers”), attached as **Exhibit 69**.

V. THE PRC'S HISTORY OF SUPPORTING AND CONDONING ILLICIT FENTANYL TRADE HAS LED TO THE U.S. FENTANYL CRISIS

The United States is currently battling “the most lethal drug epidemic ever in human history.”¹³³ This epidemic is the subject of this Petition and is the result of the PRC government’s direct and indirect support for its domestic fentanyl industry. It is also the result of the PRC government’s simultaneous failure to prevent the production and export of illicit fentanyl through laws and enforcement measures.

The PRC government is now, and has been, supporting the production and export of illicit fentanyl to the United States. Over the past two decades, the PRC has become a major global exporter of synthetic illicit drugs and precursor chemicals, and PRC companies have become the major global suppliers of fentanyl as well as an array of other deadly, illicit substances, including methamphetamines, ketamine, tramadol, nitazenes, and xylazines.¹³⁴ The PRC government is, moreover, complicit in this crisis. As discussed in detail in Section VI.A. below, the PRC government bureaucracy both aids the production and export of fentanyl-related substances and also takes steps to conceal the business operations involved in fentanyl trade, offers financial incentives to fentanyl producers and exporters, and ignores money laundering schemes by PRC companies to profit from illicit activities.¹³⁵ Drug policy experts have been aware of the PRC government’s support for the production and export of illicit fentanyl for years.¹³⁶

¹³³ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 2, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹³⁴ John Coyne & Liam Auliciems, *No, China isn’t really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹³⁵ House Select Committee Report at 3 and 32-35, attached as **Exhibit 1**.

¹³⁶ Brian Mann & Emily Feng, *Report: China continues to subsidize deadly fentanyl exports*, NPR (Apr. 16, 2024), attached as **Exhibit 75**.

A. The PRC Government's Practice of Shirking International Fentanyl Commitments

The PRC government's actions on fentanyl trafficking (*i.e.*, exports) represent a complex web of lies, evasion of international commitments, and cheating. Fentanyl exports to the United States from the PRC have been on the rise, spiking in 2016 and the ensuing years, leading to hundreds of thousands of American deaths. In 2017, after intense pressure from the U.S. Government, the PRC placed two common fentanyl-related chemical precursors under control and issued license requirements for their export.¹³⁷ As expected, the PRC's actions fell short of being effective, as producers shifted manufacture and sales to three different, unregulated chemicals that make fentanyl: 4-AP, 1-boc-4-AP, and norfentanyl.¹³⁸ In 2019, the PRC made a new announcement that finished fentanyl and analogues would be placed on a control list,¹³⁹ imposing regulatory controls on their production, sale, and export through, for example, license requirements.¹⁴⁰ As a result, the supply of finished fentanyl from the PRC decreased substantially, according to the 2020 U.S. National Drug Threat Assessment.¹⁴¹ But PRC suppliers then pivoted to the production of illicit fentanyl *precursors*, with the PRC government's knowledge and aggressive financial and practical support.¹⁴² Two years later, in 2021, the PRC government abruptly terminated engagement with the United States on countering opioid trafficking and relaxed its internal enforcement efforts. The DEA's activities in the PRC quickly came to an end.¹⁴³

The next year, in 2022, the United Nations Commission on Narcotic Drugs—in response to the global fentanyl crisis—placed restrictions on the fentanyl precursors 4-AP, 1-boc-4-AP, and

¹³⁷ Zongyuan Zoe Liu, *What Is China's Role in Combating the Illegal Fentanyl Trade?*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**; Geoff Mulvihill, *China's agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, AP News (Nov. 16, 2023), attached as **Exhibit 76**; Select Committee Report at 12 & n. 149, attached as **Exhibit 1**.

norfentanyl.¹⁴⁴ This move obligated all states party to the international anti-narcotic treaties—including the PRC (a signatory)—to implement domestic controls to prevent the production, manufacture, extraction, preparation, sale, distribution, delivery, or trade in these substances.¹⁴⁵ But the PRC government refused to honor its commitments. The government blamed American support for Taiwan for its failure to abide by international anti-trafficking obligations—and attributed the U.S. fentanyl crisis to a problem with American culture. But the PRC’s anti-trafficking commitments are non-derogable—and require the government to prevent the manufacture, distribution, and use of illicit narcotics in all circumstances.¹⁴⁶ In the mocking and antagonistic words of the PRC government:

In disregard of China’s stern warnings and repeated representations, Nancy Pelosi visited China’s Taiwan region. This has dealt a heavy blow to the political foundation of China-US relations. The Chinese side announced eight countermeasures including *suspending China-US counternarcotics cooperation.* This is a firm and strong response to the US and “Taiwan independence” separatists’ provocation. It is completely justified, appropriate and proportionate.

¹³⁸ Zongyuan Zoe Liu, *What Is China’s Role in Combating the Illegal Fentanyl Trade?*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**; Geoff Mulvihill, *China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, AP News (Nov. 16, 2023), attached as **Exhibit 76**; House Select Committee Report at 6 and n. 15, attached as **Exhibit 1**.

¹³⁹ Geoff Mulvihill, *China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, AP News (Nov. 16, 2023), attached as **Exhibit 76**; Zongyuan Zoe Liu, *What Is China’s Role in Combating the Illegal Fentanyl Trade?*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**.

¹⁴⁰ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 2, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁴¹ Drug Enf’t Admin., *National Drug Threat Assessment 2020* (Mar. 2021), attached as **Exhibit 77**.

¹⁴² House Select Committee Report at 6, attached as **Exhibit 1**; Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁴³ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 5, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁴⁴ John Coyne & Liam Auliciems, *No, China Isn’t Really Suppressing Its Production Of Fentanyl Precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹⁴⁵ See Anti-Trafficking Treaty at arts. 3 and 5, attached as **Exhibit 14**.

¹⁴⁶ See Pt. VI.B, *infra*.

The root cause of the fentanyl abuse crisis in the US lies in the US itself. The international community, China included, has been strengthening control of fentanyl-related substances, while in the US, abuse of synthetic opioids including fentanyl has been deteriorating. There have been more deaths from overdose. The US should seriously reflect on the underlying reason. . .

China has made tremendous efforts to help the US solve its fentanyl issue. There is no immediate hazard or large-scale fentanyl abuse in China. China has always acted in a humanitarian and responsible way in helping the US solve the fentanyl abuse crisis and working with other countries to address new challenges in counternarcotics. . .

The responsibility for undermining China-US counternarcotics cooperation is entirely on the US. . . We also sincerely hope that the US can find an effective solution to the fentanyl abuse in the country at an early date so that the American people can rid themselves of the scourge of narcotics sooner rather than later.¹⁴⁷

In the summer of 2023, the U.S. Government made another effort to tackle the PRC's exports of synthetic drugs by launching a global anti-drug coalition. More than 90 countries joined that initiative, but the PRC abstained.¹⁴⁸ Then, in September 2023, the United States once again publicly called attention to the PRC's role in the production of precursor chemicals used to manufacture illicit fentanyl by adding the PRC to the list of the world's major illicit drug transit or drug producing countries.¹⁴⁹ The move designated the PRC "as a major source country due to [a] change in legislation [as a result of the shift to precursors], and the United States strongly urge[d] the PRC and other chemical source countries to tighten chemical supply chains and prevent

¹⁴⁷ Embassy of the People's Republic of China in the State of Israel, *The Spokesperson of the Chinese Embassy in Israel Responds to Questions of Israel Media and Friends of All Sectors on U.S. House Speaker Nancy Pelosi's Visit to Taiwan (III)* (Aug. 13, 2022) (emphasis added), attached as **Exhibit 78**.

¹⁴⁸ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, "The fentanyl pipeline and China's role in the US opioid crisis," Official Transcript at 7, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁴⁹ Memorandum for Sec'y of State, *Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2024*, Presidential Determination No. 2023-12 (Sept. 15, 2023), attached as **Exhibit 79**.

diversion.”¹⁵⁰ This designation underscored the PRC government’s lack of commitment to obligations with respect to preventing illicit narcotics trade, including fentanyl.

In November 2023, the U.S. Government issued an announcement declaring progress with the PRC on the fight against global drug trafficking. This largely recognized the PRC government’s issuance of notices to its domestic chemical industry advising enterprises to comply with PRC laws and regulations related to the trade in precursor chemicals and pill press equipment¹⁵¹ and the PRC government’s recommenced submission of incidents to the International Narcotics Control Board’s global IONICS database to share real-time information internationally about suspicious shipments and drug trafficking.¹⁵² However, the last time the PRC committed to the United States that it would regulate fentanyl products, it violated its commitment by encouraging domestic producers to shift towards the production of illicit fentanyl precursors.¹⁵³ Also, despite the PRC’s government’s empty promises,¹⁵⁴ fentanyl-related criminal prosecutions equated to just one domestic prosecution, and the PRC government was simultaneously warning domestic illicit fentanyl producers about potential U.S. Government investigations so they could avoid capture.

In December 2023, PRC authorities granted forty licenses to five domestic pharmaceutical ingredient manufacturers to produce fentanyl-related active pharmaceutical ingredients and other

¹⁵⁰ *Id.*

¹⁵¹ White House, *FACT SHEET: Biden-Harris Administration Continues Progress on Fight Against Global Illicit Drug Trafficking* (Nov. 16, 2023), attached as **Exhibit 80**.

¹⁵² *Id.*

¹⁵³ News Release, The Heritage Found., *Heritage Unveils Critical Report Exposing China’s Role in Fueling America’s Fentanyl Crisis* (Sept. 9, 2024), attached as **Exhibit 81**.

¹⁵⁴ White House, *FACT SHEET: Biden-Harris Administration Continues Progress on Fight Against Global Illicit Drug Trafficking* (Nov. 16, 2023), attached as **Exhibit 80**.

fentanyl-related products for medical use.¹⁵⁵ Those five companies were only permitted to sell their products to three pharmaceutical firms: Chongqing Pharmaceutical, Shanghai Pharmaceuticals, and Sinopharm.¹⁵⁶ All of these entities are SOEs, and none of them have approval from the U.S. Food and Drug Administration (“FDA”) to import their products into the United States.¹⁵⁷ Moreover, these companies pose military risks to the United States’ national security. Chongqing Pharmaceutical appears to be closely tied to/affiliated with the China Aerospace Science and Industry Corporation, China’s largest manufacturer of missiles, which is an SOE and included on the U.S. Department of Treasury’s Chinese Military-Industrial Complex Company (“CMIC”) list. Shanghai Pharmaceuticals appears to be closely tied to/affiliated with China Telecommunications Corporation Group, China Mobile Communications Group Company Limited, and China United Network Communication Group Company Limited, all SOEs and CMICs. Sinopharm appears to be closely tied to/affiliated with the Aviation Industry Corporation of China, an SOE, which is the military arm of the CCP’s People’s Liberation Army, and a CMIC. It is likely that all of these companies have supported the export of fentanyl precursors into the United States, given their alignment with the CCP.¹⁵⁸

Furthermore, reports indicate that the PRC government, through various other enterprises that similarly lack FDA authorization to enter substances into the United States, provided government subsidies for the production and export of illicit fentanyl and precursors to the United States, up through the time of the filing of this Petition.¹⁵⁹ According to a report released by the

¹⁵⁵ Zongyuan Zoe Liu, *What is China’s Role in Combating the Illegal Fentanyl Trade*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Jacqueline Deal, *The CCP’s United Front Fentanyl Operation Against the United States* (Oct. 14, 2024), attached as **Exhibit 205**.

¹⁵⁹ House Select Committee Report at 10-17, attached as **Exhibit 1**.

U.S. Commission on Combatting Synthetic Opioids, chemicals used to make illicit fentanyl have been flowing “unabated” from the PRC, and PRC’s chemical firms have been the “primary sources” of substances used to manufacture the fentanyl.¹⁶⁰

The PRC’s practices in support of illicit fentanyl trade continued through July 2024 when the PRC government declared that it would add three precursor compounds to the list of controlled chemicals (4-AP, 1-boc-4-AP, and norfentanyl) and would require a license for export to the United States (as of September 1, 2024). The PRC’s newly announced July 2024 controls may, on their face, appear to signal a new PRC commitment to countering narcotics, but ongoing PRC government behavior (discussed immediately above and in Part VI below) suggests that the PRC will sidestep its obligations and pump more poison into America. The PRC government has been subsidizing the production and exports of fentanyl through grants and longstanding tax rebates for years and continues to do so. To emphasize, the problem is both the fact that the PRC government has been allowing fentanyl and precursor exports to the United States, and also the fact that the government promotes these exports as a matter of policy as laid out in detail in Part VI.A below. Importantly, and as many experts agree, the PRC’s July 2024 deal with the United States will not solve the core problem of the PRC’s continued direct support of these exports through incentive programs and the failure to promulgate and enforce meaningful legal prohibitions against all forms of illicit fentanyl exports.¹⁶¹

¹⁶⁰ Bernd Debusmann Jr., *Can Joe Biden’s plan stop the flow of fentanyl to the US*, BBC (Nov. 21, 2023), attached as **Exhibit 82**.

¹⁶¹ Zongyuan Zoe Liu, *What is China’s Role in Combating the Illegal Fentanyl Trade*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**.

Understanding the market for fentanyl precursors is critical to the analysis here. Precursor sales are small volume and small profit sales.¹⁶² This is where the PRC’s value-added tax (“VAT”) rebates come in. The VAT system reduces and, in some cases, eliminates taxes on exported illicit fentanyl through a refund rate mechanism. Additionally, direct PRC government subsidies incentivize companies to manufacture and export fentanyl. To be clear, the only rationale for the PRC government to subsidize fentanyl exports is to encourage the international use of fentanyl. In fact, it is estimated that the PRC’s drug-specific VAT system and financial award systems have incentivized the export of at least 17 illegal narcotics which are schedule-I controlled substances with no legitimate purpose.¹⁶³ Fourteen of these are fentanyl analogues, which are “chemically similar to existing substances, designed to mimic or alter the effects of the original while varying slightly in structure to evade legal restrictions or to enhance specific properties.”¹⁶⁴ The PRC government’s VAT rebates have also been unusually high: 13 percent for synthetic narcotics, as compared to rebates ranging from three percent to nine percent for a range of other, ordinary, non-lethal commodities.¹⁶⁵ There is no reason for the PRC government to subsidize these exports unless it wants these chemicals exported.

Various news reports, including a National Public Radio April 2024 report and Reuters’ August and October 2024 investigations, found a web of PRC companies that have been openly

¹⁶² Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 3, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁶³ John Coyne & Liam Auliciems, *No, China isn’t really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

marketing fentanyl precursors to buyers in the United States.¹⁶⁶ To date, the PRC government has done little to nothing to crack down on and prosecute these companies, which remain operational. Of course, the absence of PRC action is hugely problematic when juxtaposed against the government's tight control over internet traffic within the country and the range of domestic laws governing censorship. Clearly the PRC government lacks the will to prohibit such exports. Instead, the government has attempted to conceal these transactions,¹⁶⁷ and the government has taken steps to hide the financial incentives it provides to producers and exporters of fentanyl.¹⁶⁸ Furthermore, while PRC drug enterprises are increasingly resorting to the use of cryptocurrencies to obfuscate their dealings, the PRC government refuses to investigate the financial flows of these enterprises through law enforcement probes and regulatory audits. Equally disturbing, the PRC government has been abusing the U.S. Government's intelligence sharing to notify enterprises of American investigations so that PRC companies can better evade U.S. law enforcement actions.¹⁶⁹

B. The PRC Government's Refusal to Regulate Hundreds of Fentanyl Chemicals

The PRC government's announced July 2024 controls over the production of three precursor chemicals used to make fentanyl will not dismantle the PRC's illicit fentanyl trade. As noted, the new controls apply to only a few precursor materials, 4-AP, 1-boc-4-AP, and norfentanyl, while numerous other illicit fentanyl precursors continue to be produced and exported by PRC enterprises with the PRC government's knowledge. The government should have

¹⁶⁶ Brian Mann & Emily Feng, *Report: China continues to subsidize deadly fentanyl exports*, NPR (Apr. 16, 2024), attached as **Exhibit 75**; *China says no illegal fentanyl trafficking between it and Mexico*, Reuters (Apr. 10, 2023), attached as **Exhibit 83**.

¹⁶⁷ News Release, The Heritage Found., *Heritage Unveils Critical Report Exposing China's Role in Fueling America's Fentanyl Crisis* (Sept. 9, 2024), attached as **Exhibit 81**.

¹⁶⁸ House Select Committee Report at 10-18, attached as **Exhibit 1**.

¹⁶⁹ Brian Mann & Emily Feng, *Report: China continues to subsidize deadly fentanyl exports*, NPR (Apr. 16, 2024), attached as **Exhibit 75**.

controlled these precursors in 2022, when the UN Commission on Narcotic Drugs placed them under international control pursuant to anti-narcotic treaties to which the PRC is a party.¹⁷⁰ The fact that it took two years for the PRC government to act demonstrates that the PRC does not take its anti-narcotic commitments seriously. To the contrary, the PRC government wields anti-narcotic cooperation as a geopolitical weapon. There is no reason to believe that will change—as evidenced by the fact that numerous other precursor chemicals are still being produced in and exported from the PRC and by the fact that the United States is now intercepting higher volumes of boc-4-piperidone, 2-phenethyl bromide, and para-fluor fentanyl, all fentanyl precursors.¹⁷¹

Fentanyl, like other synthetic opioids, may be manufactured through a range of chemical processes that require specific precursors.¹⁷² The PRC government knows this, because although the government controlled two main fentanyl precursors, NPP and 4-ANPP,¹⁷³ not all the precursor chemicals for fentanyl synthesis are under control. Instead, the PRC government incentivizes their production and sale.¹⁷⁴ By not expanding controls to encompass all precursor substances that can make illicit fentanyl, the PRC government implicitly allows chemical manufacturers to diversify production and continue exporting a range of other fentanyl products to the United States and elsewhere.¹⁷⁵

¹⁷⁰ John Coyne & Liam Auliciems, *No, China isn't really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹⁷¹ *Id.*

¹⁷² Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 2-3, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁷³ NPP (N-phenethyl-4-piperidone) is a key precursor in the synthesis of fentanyl, serving as an intermediate chemical that can be converted into ANPP (4-anilino-N-phenethyl-4-piperidine), which is then further synthesized into fentanyl.

¹⁷⁴ John Coyne & Liam Auliciems, *No, China isn't really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹⁷⁵ *Id.*

The PRC’s insistence on regulating fentanyl and its precursors on an individual compound basis is facilitating the continued flow of lethal toxins to the United States. Because illicit fentanyl, a synthetic drug, is made entirely from artificial substances, the potential precursors and manufacturing methods are limitless.¹⁷⁶ The physical structures of the ingredients can constantly evolve. By tweaking just one small element of the molecular formula, producers can create an unscheduled product. In addition to these designer precursors, PRC manufacturers are increasingly producing so-called “novel substances.”¹⁷⁷ These compounds mimic the effects of illicit fentanyl, but conveniently fall outside of the PRC government’s limited ban on a narrow category of precursors, as the government knows all too well.

The United States has repeatedly asked the PRC to classify the *entire class* of precursors (the core element of the formula rather than the peripheral molecules) to avoid such workarounds, but the PRC consistently refuses to cooperate.¹⁷⁸ Thus, as of the date of the filing of this Petition, the PRC government has declined to control illicit fentanyl precursors in any meaningful way, including in a manner that complies with the PRC’s international commitments and also respects the United States’ international rights. That is why initiating on this Petition and undertaking an investigation pursuant to the Act so important—it gives the U.S. Government leverage to demand meaningful commitments beyond the superficial ones the PRC has made to date.

¹⁷⁶ Zongyuan Zoe Liu, *What is China’s Role in Combating the Illegal Fentanyl Trade*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**.

¹⁷⁷ John Coyne & Liam Auliciems, *No, China isn’t really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹⁷⁸ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 8-9, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

C. The PRC Government’s Refusal to Take Meaningful Action to Dramatically Curb Domestic Production and Exports of Illicit Fentanyl

Petitioner acknowledges that the U.S. Government’s July 2024 deal with the PRC is a marginal step forward in addressing the fentanyl crisis, but reiterates that it is insufficient to curb the flow of illicit fentanyl from the PRC into the United States.¹⁷⁹ Indeed, even in agreeing to the terms of that deal, the PRC government revealed its willingness to use fentanyl controls as a geopolitical weapon by demanding that the United States lift trade sanctions against the PRC Ministry of Public Security’s Institute of Forensic Science (the “Institute”) as a pre-condition.¹⁸⁰ The U.S. Department of Commerce designated the Institute to its Entity List in 2020 for being “complicit in human rights violations and abuses committed in China’s campaign of repression, mass arbitrary detention, forced labor[,] and high-technology surveillance against Uighurs, ethnic Kazakhs, and other members of Muslim minority groups.”¹⁸¹ It is *absurd* that the PRC insisted on a quid-pro-quo arrangement that demands the United States weaken its national security measures against a PRC institution perpetuating atrocities in exchange for the PRC’s half-hearted agreement to take insignificant steps to curb fentanyl exports—particularly since the PRC has been driving, incentivizing, and supporting the exports of illicit fentanyl for years. The United States should be very concerned about the PRC government’s behavior and what that behavior indicates about the PRC’s motives. Without meaningful regulatory and enforcement actions by the PRC government to prohibit illicit fentanyl trade, the PRC will remain a major global supplier of fentanyl products and the leading contributor to the loss of American life and U.S. commerce. The U.S. Government

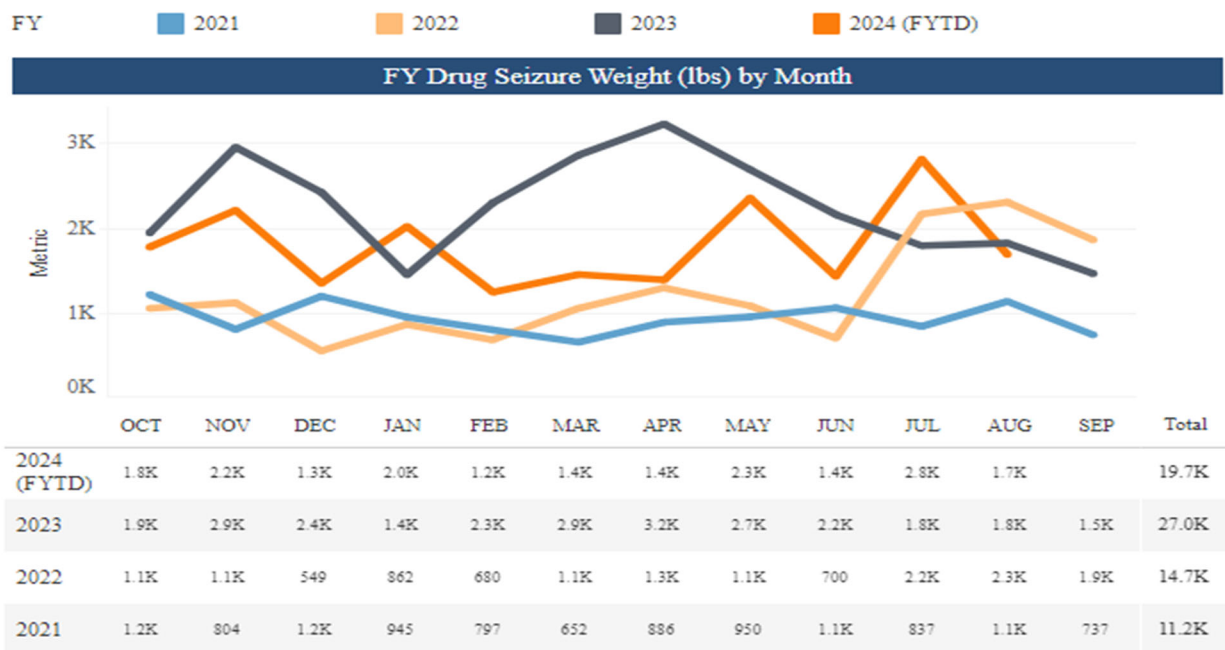
¹⁷⁹ Geoff Mulvihill, *China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, Associated Press (Nov. 16, 2023), attached as **Exhibit 76**.

¹⁸⁰ *Id.*

¹⁸¹ Dep’t Com., *Commerce Department to Add Nine Chinese Entities Related to Human Rights Abuses in the Xinjiang Uighur Autonomous Region to the Entity List* (May 22, 2020), attached as **Exhibit 84**.

must demand more from the PRC government in order to eliminate these harms. The PRC government’s actions thus far have had infinitesimal or zero impact.

Petitioner also cautions the U.S. Government against assuming that the reported recent decrease in fentanyl deaths in any way reflects the PRC government’s attempts to regulate fentanyl. The slight reduction in fentanyl deaths in the United States is not attributable to the PRC. To the contrary, fentanyl imports are continuing virtually unabated, as shown by CBP’s data:¹⁸²



The decline in fentanyl-related deaths, rather, is a direct result of the efforts and expenditures by the U.S. Government and, most recently, the Biden Administration, to provide medical care to Americans, including by making naloxone, which reverses fentanyl poisonings, readily available

¹⁸² Customs and Border Prot., *U.S. Border Patrol and Office of Field Operations Weight and Count of Drug Seizure Events by Fiscal Year* (Sept. 5, 2024), attached as **Exhibit 85**.

nationwide.¹⁸³ The prevalence of drug screening kits is also helping individuals determine whether seemingly innocuous substances are contaminated with fentanyl.¹⁸⁴

If the PRC government truly wanted to take action to prevent the illicit fentanyl trade, it has a variety of meaningful steps at its fingertips. As detailed below, the PRC government must acknowledge and address, *first*, that its own exports are the root of the illicit fentanyl problem. To date, the PRC entirely fails to take accountability for the massive quantities of illicit fentanyl and its precursors that are exported from within its borders. *Second*, and relatedly, the PRC government must take advantage of its own existing legal controls—and engage in cooperation with international law enforcement—to track and prevent the export of illicit fentanyl and its precursors. *Third*, the PRC government must implement and enforce new legal requirements for PRC companies to end the production and export of all illicit fentanyl formulations. And, *fourth*, the PRC government must promulgate, implement, and enforce due diligence requirements for its financial institutions to prevent money laundering and the substantial financial gains associated with illegal drug exports and trafficking of illicit fentanyl.

i. The PRC Government Routinely Ignores Its Fentanyl Export Problem

The PRC government continuously avoids its obligations to combat the traffic in illicit fentanyl by pretending that it does not have a problem with the fentanyl trade,¹⁸⁵ as reflected in numerous official PRC statements. For example, in May 2023, the PRC went so far as to claim:

The pretext the US fabricated this time is that these Chinese entities and individuals are involved in the sale of pill press machines, die molds, and other equipment to the US and Mexico. However, it is widely known that pill press machines and die

¹⁸³ Off. of the Governor of Cal., *California's fentanyl task force seizes over 8.8 million fentanyl pills* (Aug. 29, 2024), attached as **Exhibit 86**.

¹⁸⁴ Geoff Mulvihill, *China's agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, Associated Press (Nov. 16, 2023), attached as **Exhibit 76**.

¹⁸⁵ Bernd Debusmann Jr., *Can Joe Biden's plan stop the flow of fentanyl to the US*, BBC (Nov. 21, 2023), attached as **Exhibit 82**.

molds are common commodities with legitimate uses and are widely used in normal industrial production. According to the common practice across the world, to ensure that the goods imported are not used for illicit purposes is not only the basic responsibility of the enterprises, but also the legal obligation of the governments of importing countries. . .

The US itself is the root cause of its drug problems. With five percent of the world's population, the US consumes 80 percent of the world's opioids. . .

The US sanctions against Chinese companies and citizens will add more obstacles to China-US counter-narcotics cooperation. Such moves hurt others as well as the United States itself. If the US truly wants to solve its drug problem, it should respect facts, reflect on itself, correct its wrongdoing, and stop shifting the blame. China will continue to do what is necessary to safeguard the lawful rights and interests of Chinese companies and individuals.¹⁸⁶

Likewise, in April 2023, Reuters reported the PRC government responded to an urgent request from the president of Mexico asking Chinese President Xi Jinping to control shipments of fentanyl to Mexico as follows:

China has not been notified by Mexico about any seizure of fentanyl from China, ministry spokesperson Mao Ning said at a regular briefing.

"U.S. needs to face up to its own problems and take more substantive measures to strengthen regulation within its borders and reduce demand," Mao said, referring to drug abuse as a problem "made in the U.S." . . .

There is no such thing as illegal trafficking of fentanyl between China and Mexico, China's foreign ministry said on Thursday, responding to a letter from the Mexican president asking Beijing to help limit illicit flows of the deadly drug.¹⁸⁷

This raises an obvious question: how can the PRC government honor a July 2024 deal to address a problem that the PRC insists on asserting does not exist? As described throughout this Petition, it will not do so, which is why initiating this investigation is so important.

ii. The PRC Government's Default Argument That It Cannot Track the Illegal Behavior of PRC Companies Has Been Refuted by Facts

¹⁸⁶ Embassy of the People's Republic of China in the United States of America, *Remarks by Spokesperson of the Chinese Embassy in the U.S. on the U.S. Sanction against Chinese Entities and Individuals for the So-called Involvement in the Production of Illicit Drugs* (May 5, 2023) (emphasis added), attached as **Exhibit 87**.

¹⁸⁷ *China says no illegal fentanyl trafficking between it and Mexico*, Reuters (Apr. 10, 2023) (emphasis added), attached as **Exhibit 83**.

The PRC government’s primary argument with respect to its inability to prosecute illicit fentanyl exports has been that it has no knowledge of which companies are engaging in illegal activities. This argument lacks credibility. In order to receive financial incentives from the government including a VAT refund, a company must report its qualifications for financial support to the PRC government, including the name of the company, a description of the items exported, and the quantities and values associated with the exports.¹⁸⁸ A bipartisan congressional report, described below, found evidence that the PRC government itself provided grants and other types of monetary awards to companies trafficking illicit fentanyl for export online.¹⁸⁹ To provide these grants and awards to companies, the government must know their identities and banking information. Plus, the PRC government’s claimed inability to identify illicit fentanyl manufacturers is further undermined by the fact that over a two-month period, Reuters discovered the identities of dozens of PRC companies involved in illicit fentanyl trade. If Reuters can identify and document the activities of these companies, so can the CCP. The truth is that the PRC government has no interest in discouraging these companies. Indeed, the PRC government does not even focus its enforcement actions on the regions and provinces with the most chemical manufacturers.¹⁹⁰

iii. The PRC Government Has Failed to Promote “Know Your Customer” and Other Due Diligence Obligations on Chemical Companies

Fundamentally, the PRC government should—but has thus far refused to—promulgate laws that make it illegal to produce and export any fentanyl substance that is used in illicit trade.

¹⁸⁸ John Coyne & Liam Auliciems, *No, China isn’t really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

¹⁸⁹ House Select Committee Report at 18-20, attached as **Exhibit 1**.

¹⁹⁰ Zongyuan Zoe Liu, *What is China’s Role in Combating the Illegal Fentanyl Trade*, Council on Foreign Relations (Sept. 12, 2024), attached as **Exhibit 19**.

To meaningfully address this trade, the PRC government must address two broad types of fentanyl-related substances—those that can only be used to manufacture illicit fentanyl, and those that can make other non-controlled substances, including ordinary commercial goods.¹⁹¹ With respect to the first class, the PRC government must be compelled to prohibit production and export outright and without exception. As elaborated further in part VI.B below, there is no justification for the proliferation of these illegal chemicals.

With respect to the second class, the PRC government has argued that it is impossible to control such substances because it cannot determine whether they will be used for legitimate or illegal ends.¹⁹² The government has similarly claimed that its lack of knowledge prevents effective oversight of the chemical firms. But these arguments are a red herring. Countries routinely handle similar legal issues with respect to regulating “dual use” items in appropriate manners.

As an initial matter, compliance with regulations that govern controls on chemicals that make both illicit fentanyl and ordinary goods would rationally require PRC companies to conduct better due diligence on their prospective customers. To the extent that export sales are being ordered by large, established foreign goods manufacturers who engage in legitimate commercial production, then PRC chemical companies could reasonably infer that those companies would not misuse their fentanyl products. Purchase volumes are another metric for assessing whether orders are for legitimate purposes, given that illicit fentanyl is traded in very small volumes. Established PRC chemical producers that engage in legitimate commercial export sales may be permitted by the PRC government to produce and export fentanyl-related products so long as they have

¹⁹¹ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 9, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁹² *Id.* at 9-10.

conducted sufficient due diligence on their customers and can confirm that their customers are bona fide buyers, have appropriate authorization to import such chemicals (like U.S. FDA permissions), and request purchase quantities consistent with what is expected for ordinary commercial transactions. Any low-volume sales requests by non-established entities in the United States, Mexico, or any other country should raise a red flag for the PRC seller. The PRC government can and should adjudicate export licenses using these straightforward parameters. And local PRC government regulators could conduct periodic audits of local chemical producers to ensure that their accounting, sales, packing, and export records document legitimate sales. There are between 40,000 and 100,000 chemical companies throughout the PRC. If the PRC government hired just 200 individuals across the country, the government could conduct 10,000 individual week-long export audits each year, thereby monitoring 10 to 25 percent of all PRC-based chemical manufacturers. In other words, robust enforcement is possible and practicable with relatively minimal effort.

The U.S. Government imposes similar “know your customer” and due diligence requirements on American companies, and enforcement officers including the DOJ, routinely conduct compliance checks similar to the audits proposed here. Given the PRC’s vast enforcement resources, it is unreasonable and unpersuasive for the PRC government to assert that it simply lacks capacity or capability to ensure compliance with any laws that prohibit the export of illicit fentanyl for trafficking purposes. The PRC’s arguments simply reveal the government’s lack of will to address meaningfully illicit fentanyl exports.

iv. The PRC Government Has Had the Ability, but Has Refused, to Monitor Financial Transactions to Prevent Illicit Fentanyl Trade

The PRC government has not indicated any real willingness to prevent illicit fentanyl trade through its investigations of bank transactions, cryptocurrency transactions, and money laundering

operations. Nor has it instituted laws that meaningfully prohibit such types of financial schemes that aid the fentanyl trade.¹⁹³ The PRC government promised to collaborate with the United States on investigating money laundering schemes as part of its July 2024 deal, but it is doubtful that the PRC government will honor this promise given how reluctant it has been to engage with the United States on this issue to date.¹⁹⁴

The financial schemes associated with the illicit fentanyl trade are extensive and elaborate—but ultimately traceable. Over the past five years, the PRC has catapulted itself to the top of the world’s money laundering networks and now provides services to cartels and crime syndicates involved with the illicit fentanyl trade.¹⁹⁵ Yet robust prosecution is still lacking.¹⁹⁶

According to a senior expert at the Brookings Institution, Vanda Felbab-Brown:

[W]e really haven’t seen . . . robust prosecution in China. And what is really the most impactful, most important dimension is for China to start rounding up violators of the regulations and prosecuting them.

And China has not been willing to do it very much. It made some indictments, such as of a Chinese national indicted by the United States for money laundering for the Sinaloa Cartel. This also happened in the summer of 2024. *But we are nowhere close to robust indictments, robust prosecutions in either the money laundering sector or smuggling of precursors to the Mexican cartels.*

And in fact, China is saying do not expect those prosecutions from us, because we cannot prosecute these offenses against substances that are not scheduled.¹⁹⁷

¹⁹³ Geoff Mulvihill, *China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, Associated Press (Nov. 16, 2023), attached as **Exhibit 76**.

¹⁹⁴ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 9, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁹⁵ This is furthermore in violation of its obligations under the Anti-Trafficking Treaty at art. 5, attached as **Exhibit 14**.

¹⁹⁶ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 9-10, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

¹⁹⁷ *Id.* at 13-14.

Far from investigating or prosecuting fentanyl trafficking, the PRC government alerts illicit fentanyl enterprises to U.S. Government narcotics investigations.¹⁹⁸ And although the PRC government issues periodic directives to industry citing existing laws on narcotics and customs control, these alerts are simply reminders to companies to be “cautious about orders from the United States”¹⁹⁹ so as to avoid being caught by U.S. Government officials.

To be clear, the PRC government is in control of the laws governing its companies, the institution of new laws, how broadly the laws are structured, how effective those laws are, and how the government enforces those laws. The PRC government could prohibit the export of illicit fentanyl if it wanted to.²⁰⁰ The fact that the PRC government has been reluctant to substantially prohibit fentanyl production and exports to the United States is telling. USTR should take note of this inaction, which reflects the PRC government’s interest in continuing the illicit fentanyl trade. That is why the United States must use its authority under the Act to press the PRC to end exports of illicit fentanyl. And the United States must be prepared to impose countermeasures if the PRC’s acts do not result in real changes. At present, the U.S. Government has not done enough, which is precisely why this Petition is being filed—to give the U.S. Government leverage to do more.

VI. THE PRC’S ACTS, POLICIES, AND PRACTICES REGARDING FENTANYL TRADE ARE UNJUSTIFIABLE AND UNREASONABLE

As of the date this filing, and despite its recent promises, the PRC government engages in a wide variety of acts, policies, and practices designed to export to and flood the United States with illicit fentanyl. These acts, policies, and practices are well-documented, persistent, and—as

¹⁹⁸ *Id.* at 2.

¹⁹⁹ Geoff Mulvihill, *China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic*, Associated Press (Nov. 16, 2023), attached as **Exhibit 76**.

²⁰⁰ Fred Dews & Vanda Felbab-Brown, *The Killing Drugs Podcast: Synthetic Opioids Around the World*, “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript at 9-10, Brookings Inst. (Oct. 1, 2024), attached as **Exhibit 74**.

set forth in Part V.C.iv above—well within the PRC government’s means to stop. Instead of ending these practices, the PRC continues to provide direct and indirect financial incentives—VAT rebates, grants and subsidies, and state ownership perks—to fentanyl manufacturers. The PRC government also continues to allow its companies to openly market illicit fentanyl for export sales abroad, while refusing to prosecute those involved. There is no legitimate domestic market for these fentanyl products because they are illegal in the PRC. Accordingly, the sole purpose of the PRC’s fentanyl promoting acts, policies, and practices is exports. The PRC’s export-oriented acts, policies, and practices violate the international legal rights of the United States, which are set forth in international agreements (*i.e.*, treaties) that require governments to strictly regulate the trade in narcotics (including fentanyl). Accordingly, these acts, policies, and practices are unjustifiable and unreasonable within the meaning of the Act. *See* 19 U.S.C. § 2411(a), (b).

A. The PRC’s Continuing Acts, Policies, and Practices Promote the Export of Illicit Fentanyl into the United States

In April 2024, the House Select Committee released a comprehensive, bipartisan report after a lengthy investigation into the PRC government’s role in the U.S. fentanyl crisis. The House Select Committee’s analysis “involved delving deep into the public PRC websites, analyzing PRC government documents, acquiring over 37,000 unique data points of PRC companies selling narcotics online through web scraping and data analytics, undercover communications with PRC drug trafficking companies, and consultations with experts in the public and private sector.”²⁰¹

Using its extensive experience, the House Select Committee identified six specific PRC government policies and practices that promote the flow of illicit fentanyl into the United States. To this day, the PRC government continues using direct financial incentives such as provision of

²⁰¹ House Select Committee Report at 2, attached as **Exhibit 1**.

subsidies to exporters of illicit fentanyl, fentanyl analogs, and fentanyl precursors; provision of grants and awards to companies engaged in illicit fentanyl trafficking; and direct stakes in companies tied to illicit fentanyl trafficking to promote fentanyl exports. These are bundled with indirect incentives such as the PRC government's continued, systematic refusal to prosecute manufacturers of fentanyl and precursors, failure to leverage the extensive tools at its disposal to prevent online sales of fentanyl and precursors, and preferential treatment for online marketing communications about fentanyl and precursor exports vis-à-vis products intended for domestic use. These practices are unreasonable and unjustifiable, and they are continuing despite the PRC's repeated promises to take action to address the global fentanyl crisis.²⁰²

i. The PRC Government Is Continuing to Incentivize the Manufacture and Export of Illicit Fentanyl and Fentanyl Precursors through Subsidies in the Form of Tax Rebates

One of the primary ways that the PRC government supports the flood of illicit fentanyl into the United States is by offering VAT tax rebates on exports. The PRC government has done so for years and has failed to stop, despite the House Select Committee's damning identification of these tax incentives and despite its July 2024 promises.

All goods and services in the PRC are subject to a VAT that is levied at each stage of production. The VAT is a cost borne by the producers of a good or service,²⁰³ and it is an important source of revenue for the PRC. Most PRC products and services are subject to a domestic VAT rate of 13 percent.²⁰⁴ To promote export of goods, the PRC government does not levy VAT on

²⁰² *Id.* at 2-3.

²⁰³ Liam Ebrill, et al., *The Allure of the Value-Added Tax*, Int'l Monetary Fund (June 2002), attached as **Exhibit 88**.

²⁰⁴ Dream Zhou, *Understanding VAT in China*, MS Advisory (May 12, 2022), attached as **Exhibit 89**; Deloitte, *Sourcing from China: Export VAT Refund* (2011), attached as **Exhibit 90**.

exports.²⁰⁵ However, “when a company sources products in China, it must pay VAT. Usually, the input VAT could be deducted from the output VAT,” allowing the entity to recoup those costs, “but there is no output VAT for exported goods,” and therefore no opportunity to recover the input VAT.²⁰⁶ The PRC government addresses this with an export VAT rebate system through which it provides full or partial refunds of the otherwise applicable input VAT.²⁰⁷

The purpose of the PRC government’s VAT rebate system for exports is to incentivize production of the goods for export, and it has proven to be an effective tool in the past. Studies have shown that the PRC’s “VAT rebates [] have a large and significant positive impact on the volume of Chinese exports.”²⁰⁸ Each percentage point increase in the VAT rebate translates to a 13 percent increase in exports.²⁰⁹ Indeed, the PRC has an established history of using its VAT rebate system to increase exports in important sectors. In 2023, USTR explained the PRC government’s practice of “reinforc[ing] its domestic objectives by imposing or retracting VATs.”²¹⁰ And as USTR found, such practices cause “tremendous distortion and uncertainty in the global market.”²¹¹

The PRC government uses these tax incentives—and continues to use these tax incentives—to promote the export of illicit fentanyl and its precursors. As explained above, this VAT rebate system is particularly effective in the fentanyl context because precursor sales are

²⁰⁵ Dream Zhou, *Understanding VAT in China*, MS Advisory (May 12, 2022), attached as **Exhibit 89**.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Piyush Chandra & Cheryl Long, *VAT Rebates and Export Performance in China: Firm-Level Evidence*, 102 J. Pub. Econ. 13, 13-22 (2013), attached as **Exhibit 91**.

²⁰⁹ *Id.*

²¹⁰ U.S. Trade Rep., *2023 Report to Congress on China’s WTO Compliance* (Feb. 2024) at 39, attached as **Exhibit 92**.

²¹¹ *Id.*

small volume and small profit sales, so the VAT rebates help with export revenue. Yet this policy is particularly egregious because the PRC government's VAT tax rebates effectively promote the exports of illicit fentanyl.

The PRC government cannot seriously dispute that its VAT tax rebates incentivize exports of illicit fentanyl. In May 2019, after substantial political pressure, the PRC designated all finished fentanyl analogues as controlled substances, thereby making it illegal to sell fentanyl or fentanyl analogues within the PRC.²¹² The PRC has also formally designated several fentanyl precursors as controlled substances, including NPP and ANPP, and acknowledged that the manufacture and export of any fentanyl precursors are unlawful when connected to drug trafficking.²¹³ Yet, VAT rebates are available to them. It is estimated that the PRC government's drug-specific VAT system and financial award system incentivize the export of at least 17 illegal narcotics which are schedule-I controlled substances with no legitimate purpose.²¹⁴ Obviously, this practice is unjustifiable and unreasonable under the Act, in part because it violates the United States' agreement with the PRC under the Anti-Trafficking Treaty, which establishes the framework for States Party to take measures to combat the trade in illicit narcotics, trafficking, money laundering, and the diversion of precursor chemicals, including fentanyl precursors.²¹⁵ Notwithstanding the PRC government's legally binding international commitments and stated official position criminalizing these dangerous substances, 14 fentanyl analogues and more than 20 fentanyl

²¹² Drug Enf't Admin., *Fentanyl Flow to the United States* (Jan. 2020), attached as **Exhibit 93**.

²¹³ *Id.*

²¹⁴ John Coyne & Liam Auliciems, *No, China isn't really suppressing its production of fentanyl precursors*, Australian Strategic Policy Inst. (Aug. 23, 2024), attached as **Exhibit 13**.

²¹⁵ China's obligations are set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances Dec. 20, 1988, 1582 U.N.T.S. 95 China ratified the treaty on Oct. 25, 1989. *See Depositary*, U.N. Treaty Collection, attached as **Exhibit 94**.

precursors, including NPP and ANPP, are presently eligible for the maximum VAT rebate of 13 percent.²¹⁶

Many of the presently applicable rebates, including rebates on fentanyl and its analogues, have been in place since at least 2018.²¹⁷ That these rebates persist even after the PRC's commitments to stop trafficking illicit fentanyl demonstrates a PRC government policy decision that is unjustifiable and unreasonable. Over the last six years, the PRC government has added, deleted, and revised VAT tax rebate rates for fentanyl, reinforcing the intentional nature of their current inclusion on the VAT rebate list.²¹⁸ The PRC government, however, failed to remove VAT rebates for fentanyl analogs.²¹⁹ Even after designating these products as scheduled substances in May 2019, the PRC increased and extended VAT rebates for fentanyl products.²²⁰ In fact, the PRC government currently provides the highest level—13 percent—export rebate for illicit,

²¹⁶ Oct. 13, 2024 screenshot of three fentanyl and fentanyl precursor product codes receiving a VAT refund rate percentage of 13 percent, attached as **Exhibit 95**; Oct. 13, 2024 screenshot of ANPP code receiving a VAT refund percentage of 13 percent (ANPP is a key precursor chemical used in the synthesis of illicit fentanyl and its analogs.), attached as **Exhibit 96**; Oct. 13, 2024 screenshot of NPP code receiving a VAT refund percentage of 13 percent (NPP (N-phenethyl-4-piperidone) is a key precursor in the synthesis of fentanyl, serving as an intermediate chemical that can be converted into ANPP, which is then further synthesized into fentanyl.), attached as **Exhibit 97**; Oct. 13, 2024 screenshot of Other fentanyl and their derivatives (29333400) code receiving a VAT refund percentage of 13 percent, attached as **Exhibit 98**; Oct. 13, 2024 screenshot of Other fentanyl and their derivatives (29349200) code receiving a VAT refund percentage of 13 percent, attached as **Exhibit 99**; Oct. 13, 2024 screenshot of several fentanyl and fentanyl precursors (291333300) code receiving a VAT refund percentage of 13 percent (the precursors listed include alfentanil, anilidine, cyanide, bromazepam, diphenoxin, diphenoxylate, dipipridone, fentanyl, ketomidone, methylphenidate, pentaphene, levocin, pethidine, pethidine intermediate A, phencyclidine, phenperidine, piperphenylmethanol, pipecyanamide, disopyramide, and trimalidine and their salts), attached as **Exhibit 100**.

²¹⁷ See 2018-2019 screenshot of several fentanyl and fentanyl precursors (291333300) code receiving a VAT refund percentage of 10 percent (the precursors listed include alfentanil, anilidine, cyanidinamide, bromine, diphenoxy, diphenoxylate, dipipridone, fentanyl, ketomifen, methylphenidate, spray Levoxine, pethidine, meperidine intermediate A, phencyclidine, bupiridone, piperoxymethanol, piperidide, propylene and trimethylididine and their salts), attached as **Exhibit 101**; 2018-2019 screenshot of several fentanyl and fentanyl precursor product codes receiving a VAT refund rate percentage of 10-13 percent, attached as **Exhibit 102**.

²¹⁸ For example, bromine and propylene were covered chemicals in the 2019 fentanyl precursors (291333300) code, but not in 2024. Similarly, disopyramide was added to the fentanyl precursors (291333300) code and was not present in the 2019 version. See House Select Committee Report at 12, attached as **Exhibit 1**.

²¹⁹ *Id.*

²²⁰ *Id.*

internationally controlled fentanyl products,²²¹ even though most PRC VAT rebates range only from 3-9 percent.²²² These economic policies serve no purpose other than to incentivize the export of substances that have no lawful domestic use and are controlled through international agreements that govern the trade in illicit narcotics. These policies cause harm in the United States and abroad and violate American international legal rights.

The PRC also tries to hide its behavior, which demonstrates its own awareness that its fentanyl-promoting policies are unjustifiable. Indeed, in 2019, following an exposé of its VAT rebate practices regarding fentanyl and fentanyl analogues, the PRC attempted to block access to websites containing relevant information.²²³ Despite these efforts, the House Select Committee identified alternative sources of VAT rebate information—and these same methods are effective today to identify VAT rebate information—confirming that while the PRC has taken action to cover its tracks, it has not ceased its unreasonable and unjustifiable conduct.²²⁴

ii. The PRC Government Continues to Provide Grants, Awards, and Other Financial Incentives to Companies Openly Exporting Illicit Fentanyl Products

The House Select Committee additionally uncovered several instances where known producers of illicit fentanyl products directly or indirectly received monetary grants and other awards from the PRC government. As USTR has previously determined, such grants and awards can effectively operate as economic stimulus designed to facilitate the manufacture and export of PRC-origin products.²²⁵ These producers continue to enjoy the same benefits from the PRC

²²¹ *Id.*

²²² *Id.* at 13.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *See, e.g.,* U.S. Trade Rep., *Fact Sheet: WTO Case Challenging Chinese Subsidies*, attached as **Exhibit 103** (explaining that China is “providing export subsidies that are prohibited by the World Trade Organization” including

government today, and there is no evidence that the PRC has ceased giving such financial incentives. In other words, the PRC government crafts and implements policies to stimulate the manufacture and export of illicit narcotics that have no legitimate domestic market.

In the fentanyl context, the PRC government has provided—and continues to provide—financial support to at least the following companies that openly sell fentanyl products:

- **Shanghai Ruizheng Chemical Technology Co., Ltd. (“Ruizheng”)**: In 2023, Shanghai’s Minhang District provided export credit premiums and export credit insurance to Ruizheng, also known as “the Richest Group,” as part of a “foreign trade stabilization policy project.”²²⁶ Ruizheng is suspected of openly selling fentanyl products on PRC-based websites such as Alibaba. Despite this, Ruizheng received PRC government awards and was invited to PRC provincial government roundtables, such as a 2021 event discussing how small- and medium-sized technology businesses can contribute to the 14th Five-Year Plan.²²⁷ Ruizheng’s manufacturing facility is also *currently located* within the Shanghai Caohejing Hi-Tech Development Zone.²²⁸ As part of the Zone, Ruizheng receives a number of preferential policies, including an income tax reduction or exemption, R&D expense deductions, lower investment and registered capital requirements, and direct financial assistance.²²⁹
- **Gaosheng Biotechnology Co., Ltd. (“Gaosheng”)**: Gaosheng received government awards and site visits from PRC government officials while engaged in the sale of illegal narcotics online.²³⁰ As the House Select Committee found, “the Secretary of the Guangzhou Development Zone and

“cash grants for exporting” and “grants for research and development”); U.S. Trade Rep., *2023 Report to Congress on China’s WTO Compliance* (Feb. 2024) at 37 (stating that China “is the world’s largest provider of harmful fisheries subsidies” including “fishing vessel acquisition and renovation grants” and “grants for new fishing equipment”), attached as **Exhibit 92**.

²²⁶ House Select Committee Report at 19, attached as **Exhibit 1**; List of enterprises (projects) to be supported by Minhang District’s foreign trade stabilization policy projects in 2022, attached as **Exhibit 104**.

²²⁷ House Select Committee Report at 19, attached as **Exhibit 1**.

²²⁸ The listing for Ruizheng on Guidechem lists the organization’s address as Room 402, Building 5, No. 999, Jingyue Road, Minhang District Shanghai. Shanghai Ruizheng Chemical Technology Co., Ltd.’s Company Page on Guidechem, attached as **Exhibit 105**; Baidu Maps also lists Ruizheng at the same address. Baidu Maps result for Shanghai Ruizheng Chemical Technology Co., Ltd., attached as **Exhibit 106**; Ruizheng address lies within the Shanghai Caohejing Hi-Tech Development Zone according to maps produced by the development zone. Caohejing Development Zone Pujiang Hi-Tech Park Masterplan, attached as **Exhibit 107**.

²²⁹ List of policy incentives and subsidies for Shanghai Caohejing Hi-Tech Development Zone, attached as **Exhibit 108**.

²³⁰ Michael Lohmuller, et al., *Lethal Exchange: Synthetic Drug Networks in the Digital Era*, C4ADS (Nov. 17, 2020) at 13 and 19-22, attached as **Exhibit 109**.

the Deputy Director of the Guangzhou Development Zone Management Committee both visited the company and spoke approvingly of its businesses' impact on the provincial economy."²³¹ The House Select Committee also reviewed internal corporate records²³² that an employee left on a public website and "confirmed Gaosheng's widespread international online presence, including sales accounts on 98 websites and boasting of sales to the U.S., Mexico, UK, Russia, and Germany."²³³ Gaosheng also sells—as the House Select Committee confirmed—synthetic narcotics, including fentanyl analogues, as well as several other drugs that are illegal under PRC law. Gaosheng also referenced its status as "wholly state-owned" and noted that it "enjoy[s] tax exemption privileges."²³⁴ After receiving negative press coverage in the West, Gaosheng created a subsidiary company and invested 300 million RMB, likely to evade prosecution or sanctions for Gaosheng.²³⁵

The PRC government also subsidizes companies engaged in the manufacture and sale of illicit fentanyl through the provision of benefits afforded to companies located in Special Economic Zones ("SEZs"). Companies in SEZs enjoy "tax breaks, low rents, reduced import duties, and employment flexibility,"²³⁶ and are intended to promote growth and production. The United States Treasury Department has recently sanctioned multiple PRC fentanyl manufacturers located in SEZs. The PRC government's use of SEZs to promote illicit fentanyl exports is a direct violation of the trade provisions of the Anti-Trafficking Treaty explicitly requires States Party—like the PRC—to "suppress illicit traffic in narcotic drugs . . . *in free trade zones*."²³⁷ The PRC government's support for these companies is unjustifiable and unreasonable within the meaning of the Act, because this support violates the international rights of the United States—and the

²³¹ House Select Committee Report at 19, attached as **Exhibit 1**.

²³² Gaosheng internal records, attached as **Exhibit 110**.

²³³ House Select Committee Report at 19, attached as **Exhibit 1**; *see also* Gaosheng internal records, attached as **Exhibit 110**.

²³⁴ Gaosheng internal records, attached as **Exhibit 110**.

²³⁵ House Select Committee Report at 19-20, attached as **Exhibit 1**.

²³⁶ Dream Zhou, *China's Special Economic Zones*, MS Advisory (Dec. 21, 2022), attached as **Exhibit 111**; *see also* Testimony by Donald H. Im, *The CCP's Role in the Fentanyl Crisis*, Select Comm. on the Strategic Competition between the United States and the Chinese Communist Party, 118th Cong. (Apr. 2024), attached as **Exhibit 112**.

²³⁷ Anti-Trafficking Treaty at art. 18 (emphasis added), attached as **Exhibit 14**.

PRC’s commitments to the U.S. Government—as set forth in international agreements. The U.S. Government has already recognized several of these companies’ malign activities by sanctioning them:

- The Office of Foreign Assets Control (“OFAC”) sanctioned Wuhan Shuokang Biological Technology Co., Ltd. (“Wuhan Shuokang”) in April 2023 for the sale of fentanyl precursor chemicals.²³⁸ According to its OFAC designation, Wuhan Shuokang is located in Wuhan’s East Lake New Technology Development Zone.²³⁹ Companies in the free trade zone within the East Lake New Technology Development Zone “enjoy a series of services, including duty-free imports of equipment, bonded goods, tax rebates, and VAT and consumption tax-free transactions done within the territory.”²⁴⁰ They also remain “free from the import and export quota license system, the bonded warehousing storage period, the bank deposit account system for processing enterprises, and foreign exchange offset procedures for imports and exports so taxes and transactions can be settled in a foreign currency or [renminbi].” The free trade zone’s export volume increased from \$343 million in 2013 to \$6.71 billion in 2017.
- OFAC sanctioned Hanhong Pharmaceutical Technology Co., Ltd. (“Hanhong”) in October 2023 for selling xylazine.²⁴¹ Xylazine has been increasingly misused by narcotics traffickers who combine it with fentanyl to produce a deadly mixture. According to its OFAC designation, Hanhong is likewise located in Wuhan’s East Lake New Technology Development Zone.²⁴²
- Other companies sanctioned by OFAC located in industrial or high-tech development zones include Yason General Machinery Co., Ltd. (located in Xinxiang Industrial Park according to its OFAC designation),²⁴³ which sold pill press-related equipment and worked with a Mexico-based pill

²³⁸ Dep’t Treasury, *U.S. Sanctions Suppliers of Precursor Chemicals for Fentanyl Production* (Apr. 14, 2023), attached as **Exhibit 113**.

²³⁹ Off. of Foreign Assets Control, *OFAC Sanctions List Search: Wuhan Shuokang Biological Technology Co., Ltd.*, attached as **Exhibit 114**.

²⁴⁰ Screenshot of Wuhan’s East Lake New Technology Development Zone, attached as **Exhibit 115**.

²⁴¹ Dep’t Treasury, *Treasury Targets Large Chinese Network of Illicit Drug Producers* (Oct. 3, 2023), attached as **Exhibit 116**.

²⁴² Off. of Foreign Assets Control, *OFAC Sanctions List Search: Hanhong Pharmaceutical Technology Co., Ltd.*, attached as **Exhibit 117**.

²⁴³ Off. of Foreign Assets Control, *OFAC Sanctions List Search: Yason General Machinery Co., Ltd.*, attached as **Exhibit 118**.

equipment supplier;²⁴⁴ and Xingtai Dong Chuang New Material Technology Co., Ltd. (located in Fengjiazhai Industrial Zone according to its OFAC designation),²⁴⁵ which accepted wire payments on behalf of companies selling chemicals associated with fentanyl production, as well as protonitazene and xylazine.²⁴⁶

As explained below, the PRC government prohibits the domestic sale and use of illicit narcotics—meaning that there is no legitimate domestic market for illicit fentanyl. The PRC’s ongoing provision of grants, subsidies, and other direct financial incentives to companies that manufacture this lethal product thus serves no purpose other than to encourage the export of a deadly toxin abroad. Such market manipulation is unjustifiable and unreasonable within the meaning of Section 301. Obviously the PRC government’s support of these companies in the promotion of illicit fentanyl exports to the United States is unjustifiable and unreasonable under the Act.

iii. The PRC Government Refuses to Control Companies in Which It Has Ownership Interest that Are Involved in Fentanyl Trafficking

The House Select Committee identified several companies that are wholly or partially owned by the PRC government that are or recently were engaged in the manufacture and distribution of fentanyl, analogues, and precursors. There is no evidence that the PRC government has divested itself of these lucrative fentanyl manufacturers. In addition to the ones listed previously, they include:

- **Gaosheng Biotechnology Co., Ltd.**: As discussed above, Gaosheng’s internal documents demonstrate that it is wholly owned by the PRC government and remains so to this day.

²⁴⁴ Dep’t Treasury, *Treasury Sanctions China- and Mexico-Based Enablers of Counterfeit, Fentanyl-Laced Pill Production* (May 30, 2023), attached as **Exhibit 119**.

²⁴⁵ Off. of Foreign Assets Control, *OFAC Sanctions List Search: Xingtai Dong Chuang New Material Technology Co., Ltd.*, attached as **Exhibit 120**.

²⁴⁶ Dep’t Treasury, *Treasury Targets Large Chinese Network of Illicit Drug Producers* (Oct. 3, 2023), attached as **Exhibit 116**.

- **Yafeng Biological Technology Co., Ltd. (“Yafeng”)**: Yafeng is listed by Northern Electric Power as a state-owned enterprise in Hebei Province.²⁴⁷ Specifically, Yafeng is owned by a PRC state-owned prison, Hebei Province Shijiazhuang Prison,²⁴⁸ which has been linked to human rights abuses.²⁴⁹ Yafeng operated several websites that sold illicit synthetic narcotics, including cathinones, synthetic cannabinoids, and U-47700, a powerful synthetic opioid tied to drug poisoning deaths. Yafeng boasts “10 years’ experience,” with sales “mainly in America, Europe, Australia, Southeast Asia, Middle East, and South Africa,” and advertises that its “packaging can be made to measure, normally foil bags and hidden food bags.”²⁵⁰ It also “offer[s] our guarantee that 100% of our shipments will clear customs.”²⁵¹ As the House Select Committee explained, foil bags and hidden food bags are common decoys or “stealth” packaging used by drug distributors to avoid detection by customs and law enforcement.²⁵² Yafeng ended formal operations in 2022, but its operations continue to this day through the sale of product on Protonitazene.com by two affiliated companies, HBBenton, AKA “BentonPharmacy,” and Hiersun Biological Technology Company.²⁵³
- **Yuancheng Group (“Yuancheng”)**: Yuancheng is one of the largest exporters of fentanyl precursors worldwide, has received several government grants and subsidies, and has a CCP member serving as its legal representative and the chief executive officer of several of its subsidiaries and shell companies.²⁵⁴ According to the House Select Committee, Yuancheng “was ‘repeatedly praised by Communist Party officials,’ even as it openly engaged in illegal narcotics sales.”²⁵⁵ Yuancheng’s owner admitted that the company “knows these precursors are used to make

²⁴⁷ N. Elec. Power, *Northern Electric Power Hospital Recruitment (Beijing Electric Power Hospital)* (Aug. 15, 2024), attached as **Exhibit 121**.

²⁴⁸ House Select Committee Report at 20, attached as **Exhibit 1**.

²⁴⁹ Amnesty Int’l, *Urgent Action: Falun Gong Practitioner Said to Have Been Tortured in Detention* (Sept. 23, 2016), attaches as **Exhibit 122**.

²⁵⁰ House Select Committee Report at 20, attached as **Exhibit 1**.

²⁵¹ *Id.*

²⁵² *Id.* at 20-21.

²⁵³ The “contact us” list on Yafeng’s former website lists Skype account Suansuan1222 as a contact method. Yafeng Contact Us page, attached as **Exhibit 123**; HBBenton’s archived website lists that same Skype account as the account of the company’s chief executive officer. HBBenton 2020 contact page, attached as **Exhibit 124**; A post on Kompas lists nannie@hiersunchem.com as the contact information for HBBenton. Kompas Post for HBBenton, attached as **Exhibit 125**; The same Kompas webpage also lists Protonitazene.com as the company’s store. Several product pictures on Protonitazene.com also list HBBenton emails for contact information. Screenshot of HBBenton email on Protonitazene.com, attached as **Exhibit 126**.

²⁵⁴ House Select Committee Report at 22, attached as **Exhibit 1**.

²⁵⁵ *Id.*

fentanyl” and the “marketing materials ma[d]e this clear.”²⁵⁶ Yuancheng was not “selling to hospitals or pharmaceutical companies [but instead] tak[ing] orders from anyone,” and accepted payment in “Bitcoin, Western union, and direct bank transfer” while promising guaranteed clearance through customs.²⁵⁷ There is no evidence that Yuancheng has changed its behavior, or that the PRC has ended its relationship with the company.

- **Zhejiang Netsun Co., Ltd. (“Zhejiang Netsun”)**: Zhejiang Netsun, owner of Chemnet.com,²⁵⁸ is a publicly traded company but features two CCP members on its board.²⁵⁹ The PRC holds a small ownership stake in the company. According to the House Select Committee, its “e-commerce sites openly sold fentanyl analogues, fentanyl precursors, and other synthetic narcotics, with many still available for sale today.” Across only three of its e-commerce sites, the House Select Committee identified over 400 sales of illicit narcotics (*e.g.*, fentanyl precursors, nitazenes) and chemicals found on the DEA Special Surveillance List (SSL)—a list that ‘identifies laboratory supplies which are used in the manufacture of controlled substances and chemicals.’ In addition, [Zhejiang] Netsun serves as the billing or technical contact (suggesting it is the web host) for over a hundred individual PRC chemical companies, including Yafeng, that previously or presently sell illegal drugs online.”²⁶⁰

Again, because there is no legitimate domestic market for illicit fentanyl, the only reason these companies continue to manufacture this lethal toxin is to export it abroad. By maintaining an ownership interest in these entities, the PRC provides them with unfair, market-distorting advantages that facilitate and enable the export of a deadly poison overseas. In this way, too, the PRC government engages in practices that are unjustifiable and unreasonable under Section 301. The PRC government’s direct ownership stake in these companies demonstrates the PRC government’s own violation of the trade provisions of the Anti-Trafficking Treaty, which is binding upon both the United States and the PRC.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ CNinfo page for Zhejiang Netsun, attached as **Exhibit 127**.

²⁵⁹ *See* Prospective Eyes Personal Profile on Duo Mingqing, attached as **Exhibit 128**; *see also* Prospective Eyes Personal Profile on Yu Yi, attached as **Exhibit 129**.

²⁶⁰ House Select Committee Report at 22-23, attached as **Exhibit 1**.

iv. The PRC Government Must Start Prosecuting Manufacturers of Illicit Fentanyl Destined for Export

The PRC government consistently fails to engage in efforts to stop illegal trafficking in narcotics, including fentanyl and its analogues. And the government has shown no signs of changing its ways after repeated outcry from the United States and the international community. Its actions demonstrate not only unwillingness to cooperate with U.S. authorities but outright interference with U.S. efforts to stem the flow of fentanyl across its borders.

The PRC government deliberately thwarts U.S. law enforcement investigations into illicit fentanyl manufacturers. Multiple current and former federal agents testified confidentially to the House Select Committee regarding instances where PRC officials notified illicit fentanyl manufacturers of U.S. investigations, thereby allowing the manufacturers to skirt and evade U.S. authorities.²⁶¹ Donald Im, a retired DEA agent, confirmed this pattern in his written testimony, noting “[w]hen we passed leads regarding a China-based company involved in drug or precursor chemical trafficking, Ministry of Public Security officials would ask for additional details of the company in question and the scope of our investigation. We subsequently determined and realized through sources, the targeted company, if owned or was linked to a Chinese Communist Party (CCP) member, would be notified and warned that U.S. law enforcement authorities were either investigating or monitoring them.”²⁶²

Similarly, on the limited occasions when U.S. law enforcement was granted access to potential narcotics manufacturing sites, PRC regulatory authorities delayed requests for days,

²⁶¹ *Id.*

²⁶² Testimony by Donald H. Im, *The CCP’s Role in the Fentanyl Crisis*, Select Comm. on the Strategic Competition between the United States and the Chinese Communist Party, 118th Cong. (Apr. 2024) at 2, attached as **Exhibit 112**.

allowing manufacturers time to vacate and clean up suspected sites.²⁶³ And in the even rarer circumstance when the United States did successfully arrest and prosecute a PRC citizen for narcotics, the PRC government refused to assist the investigation and published a warning to PRC drug traffickers to avoid “falling into US snares and arrest-entrapment.”²⁶⁴

The House Select Committee details one particularly egregious example of the PRC’s refusal to participate in U.S. efforts to bring drug traffickers to justice in its report:

In May 2018, a U.S. Department of Justice investigative team met with senior officials at the PRC’s Ministry of Public Security’s headquarters in Beijing to share information from DOJ’s investigation into the Zheng Drug Trafficking Organization. In that meeting, PRC officials admitted that the Zhengs were trafficking in fentanyl analogues but claimed that they could not prosecute the case because the substances were not scheduled under PRC law. DOJ then presented PRC officials with legal analysis of various Chinese felony provisions and evidence establishing that the Zhengs had violated them, with the seniormost PRC official ultimately agreeing that the Zhengs had violated PRC law. Despite this agreement, the officials refused to engage further, claiming that “different staff” handles these types of violations and that they would not be in until the following week. Despite the U.S. investigative team offering to change their flights to meet the “different staff” to discuss further cooperation, the PRC seniormost official refused and ended the meeting, stating that they would be in touch for further cooperation.

The PRC did not cooperate further despite repeated requests from the United States. The DOJ charged the Zhengs less than three months later, with the PRC asking DOJ not to prosecute the case shortly before the indictment. *The U.S. Attorney General announced the indictment and asked the PRC to investigate the Zhengs under its laws. It did not.* Instead, Yu Haibin, a senior official with the office of the China National Narcotics Control Commission, falsely claimed that “[t]he U.S. side failed to provide China any evidence to prove Zheng violated Chinese law, and the U.S. knows clearly about that.” The United States thereafter sanctioned the Zhengs, crippling the organization.²⁶⁵

²⁶³ Lauren Greenwood & Kevin Fashola, *Illicit Fentanyl from China: An Evolving Global Operation*, U.S.-China Econ. and Sec. Review Comm’n (Aug. 24, 2021), attached as **Exhibit 130**.

²⁶⁴ House Select Committee Report at 24, attached as **Exhibit 1**; Jacob Gu, *China Warns Its Citizens on ‘Entrapment’ by US Law Enforcement*, Bloomberg (July 10, 2023), attached as **Exhibit 131**.

²⁶⁵ House Select Committee Report at 24-25 (emphasis added), attached as **Exhibit 1**.

On top of its efforts to thwart U.S. investigations and prosecutions, the PRC government has completely failed to follow up on any of the hundreds of leads by U.S. investigators demonstrating that PRC entities and individuals are engaged in illicit international trafficking of fentanyl and its analogues and precursors. Despite the existence of U.S. sanctions and indictments against individuals and companies, and reports by investigative groups linking those entities to drug trafficking, the PRC government has failed to take action against these companies.²⁶⁶ In fact, former PRC Foreign Minister Qin Gang boasted in 2022 that “not a single criminal case has been opened in China that involves the manufacturing, trafficking and smuggling of fentanyl-related substances since their scheduling.”²⁶⁷ The House Select Committee undertook a review of PRC prosecutions and confirmed that no prosecutions linked to international trafficking have taken place.²⁶⁸ To date, there is no evidence that the PRC government has undertaken—or plans to undertake—any prosecutions related to the international trafficking of illicit fentanyl (one prosecution referenced above was for domestic sales). Neither is there any evidence that the PRC government has, or plans to, prosecute the money laundering networks operating in the PRC that facilitate the export of fentanyl—as explained in Part V.C above. That is, despite its substantial capabilities to detect illegal conduct, the PRC government *has not initiated one single prosecution* of international trafficking related to illicit fentanyl or its precursors.

²⁶⁶ *Id.* at 25; Dep’t Justice, *Justice Department Announces Eight Indictments Against China-Based Chemical Manufacturing Companies and Employees* (Oct. 3, 2023), attached as **Exhibit 132**; Dep’t Justice, *Justice Department Announces Charges Against China-Based Chemical Manufacturing Companies and Arrests of Executives in Fentanyl Manufacturing* (June 23, 2023), attached as **Exhibit 133**; Dep’t Treasury, *Treasury Targets Large Chinese Network of Illicit Drug Producers* (Oct. 3, 2023), attached as **Exhibit 1**.

²⁶⁷ Embassy of the People’s Republic of China in the United States, *Ambassador Qin Gang Takes an Interview with Newsweek on the Fentanyl Issue* (Sept. 30, 2022), attached as **Exhibit 135**.

²⁶⁸ House Select Committee Report at 25, attached as **Exhibit 1**.

All this stands in stark contrast to the PRC government’s treatment of domestic drug trafficking. As the House Select Committee explained, “[t]he PRC ruthlessly investigates, prosecutes (with no presumption of innocence), and executes many potential drug traffickers within its borders.”²⁶⁹ Meanwhile, despite domestic prosecution laws that some have considered “draconian,” penalties for mislabeling *export* shipments of illicit fentanyl are light and usually not enforced.²⁷⁰ That is, the PRC government refuses to tolerate the trafficking of illicit fentanyl and its precursors within its own borders, but *actively incentivizes its export to the United States and other countries*—despite numerous express and implied international commitments by the PRC to stem the trade in these products. The PRC government’s indifference to—and support for—illicit drug exports is unjustifiable and unreasonable under the Act because this policy violates the PRC government’s obligations to the United States under the trade provisions of the Anti-Trafficking Treaty.

v. The PRC Government Is Not Restricting, but Rather Is Allowing, the Open Sale of Fentanyl for Export on PRC Internet Sites While Censoring Content about Domestic Sales

Similar to its prosecution of illicit fentanyl trafficking, the PRC government allows international online sales of illicit fentanyl and its precursors to go largely unchecked, which is dramatically different from its harsh treatment of domestic online sales.

There is no question that the PRC government employs rigid and thorough control of anything sold on its internet. The PRC employs a “highly secure, heavily monitored system” for surveillance of online activity formally called the “Golden Shield Project” but frequently called

²⁶⁹ *Id.* at 31 (citing Benjamin Haas, *Thousands in China watch as 10 people sentenced to death in sport stadium*, *The Guardian* (Dec. 17, 2017), attached as **Exhibit 136**).

²⁷⁰ *Follow the Money: The CCP’s Business Model Fueling the Fentanyl Crisis*: Hearing before the House Fin. Services Subcomm. on Nat’l Sec., Illicit Fin., and Int’l Fin. Institutions, 118 Cong. 52-389 (Mar. 2023) (statement of John A. Cassara), attached as **Exhibit 137**.

the “Great Firewall.”²⁷¹ The Great Firewall is the “most sophisticated content-filtering Internet regime in the world,” according to the OpenNet Initiative.²⁷² There are over “66,000 rules controlling the content that is available to people using search engines” in the PRC.²⁷³ In short, “the PRC is a command state . . . If the CCP was to direct its robust censorship apparatus that is very effective in thwarting websites it deems a threat to its regime, it could easily do the same with companies’ websites advertising fentanyl and other dangerous and illegal drugs. But the PRC authorities do not act. Rather, they allow [these sites to] flourish” through trade.²⁷⁴

Anonymity on the PRC internet is also essentially impossible. As the House Select Committee explained, “[t]he PRC requires that internet users use National IDs to sign into any social media service or website in the country,” and it can “immediately locate an internet user through location tags,” and monitor payment applications and banks.²⁷⁵ Yet, the PRC government has neither prosecuted companies that sell illicit fentanyl for export online nor taken action to stop the exports.

As a result, despite the PRC government’s promises to act to curtail fentanyl sales abroad, thousands of companies within the PRC remain actively and openly engaged in the online sale of

²⁷¹ Sonali Chandel, et al., *The Golden Shield Project of China: A Decade Later An in-depth study of the Great Firewall*, Inst. of Elec. and Elec. Eng’rs (Jan. 2, 2020), attached as **Exhibit 138**.

²⁷² Stanford Univ., *Free speech vs Maintaining Social Cohesion: Background Information* (2011), attached as **Exhibit 139**.

²⁷³ Steven Lee Myers, *China’s Search Engines Have More Than 66,000 Rules Controlling Content, Report Says*, New York Times (Apr. 26, 2023), attached as **Exhibit 140**; Jeffrey Knockel, et al., *Missing Links: A comparison of search censorship in China*, The Citizen Lab (Apr. 26, 2023), attached as **Exhibit 141**.

²⁷⁴ Testimony by John A. Cassara, *Follow the Money: The CCP’s Business Model Fueling the Fentanyl Crisis*, Comm. On Financial Service, Subcommittee on National Security, Illicit Finance, and International Financial Institutions, 118th Cong. (March 23, 2023) at 11, attached as **Exhibit 138**.

²⁷⁵ House Select Committee Report at 26, attached as **Exhibit 1**.

fentanyl and its precursors and analogues.²⁷⁶ In a limited investigation of only seven e-commerce sites, the House Select Committee uncovered over 31,000 sales of illicit narcotics by over 2,000 different PRC companies.²⁷⁷ Many of those companies expressly advertised their ability to transport the substances into the United States, and many showed other indicia of drug trafficking, such as accepting Bitcoin as payment—Bitcoin is illegal in the PRC—or offering special packaging designed to evade detection by customs authorities.²⁷⁸ There is no indication that these tactics have changed since the PRC government’s July 2024 promises.

²⁷⁶ Screenshot of Zhengzhou Lingzhiyue Technology Co., Ltd.’s updated fentanyl intermediary stock, attached as **Exhibit 142**; Screenshot of a ChemicalBook listing for protonitazene, attached as **Exhibit 143**; Screenshot of a ChemicalBook listing for xylazine, attached as **Exhibit 144**; Screenshot of a Guidechem listing for isotonitazene, attached as **Exhibit 145**; Screenshot of a Trade Asia listing for isonitazene, attached as **Exhibit 146**; Screenshot of fentanyl product listings from Anhui Zhongda Biotechnology Co., Ltd., attached as **Exhibit 147**; Screenshot of Protonitazene website listing, attached as **Exhibit 148**; Screenshot of Trade Asia page stating “Don’t worry about customs issues,” attached as **Exhibit 149**; Screenshot of Carfen for sale by Ficher Chem Co. Ltd. (taken Sept. 30, 2024), attached as **Exhibit 150**.

²⁷⁷ House Select Committee Report at 27, attached as **Exhibit 1**.

²⁷⁸ *Id.*; see also Screenshot of a ChemicalBook listing for protonitazene, attached as **Exhibit 143**; Screenshot of a ChemicalBook listing for xylazine, attached as **Exhibit 144**; Screenshot of a Guidechem listing for isotonitazene, attached as **Exhibit 145**; Screenshot of a Trade Asia listing for isonitazene, attached as **Exhibit 146**; Screenshot of fentanyl product listings from Anhui Zhongda Biotechnology Co., Ltd., attached as **Exhibit 147**; Screenshot of Protonitazene website listing, attached as **Exhibit 148**; Screenshot of Trade Asia page stating “Don’t worry about customs issues,” attached as **Exhibit 149**.



QUICK DETAILS:

- Product Name: Carfen
- Cas 59708-52-0
- Molecular Formula: C24H30N2O3
- Molecular Weight: 394.515 g/mol
- PubChem CID: 62156
- Packaging: Aluminium Foil
- Shipping: HK,EMS,EUR,UPS,Fedex,DHL,TNT
- Payment Terms: Money Gram,bitcoin,T/T

Advantages:

- 1.Safe & fast shipment: very good packaging way,experienced shipping agent with at least 5 years.
 - 2.High delivery rate.Discreet package,high passing rate to USA,AU,RU,France,Poland,new zealand,CA,etc.
 - 3.Samples offered before big order
 - 4.Quality guaranteed
 - 5.100% refunded if item out of stock or inferior quality.
 - 6.Speed research & extend of new products.
- Best service, response within 24 business hours;

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guidechem.com/trade/safe-delivery-99-pure-n-deseth

Delivered	Time of delivery	Shipping Route
Delivered (16 Days)	2023-09-05	Germany DHL Paket → Spain Cercos Spar
Delivered (15 Days)	2023-08-22	Germany DHL Paket → France La Poste (C)
Delivered (13 Days)	2023-09-22	Germany DHL Paket → Germany
Delivered (10 Days)	2023-09-04	United Kingdom Royal Mail → Unknown

Payment methods:
Bank Transfer(T/T), Bitcoin, Western union(Alipay), USDT

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279 Screenshot of Carfen for sale by Ficher Chem Co. Ltd. (taken Sept. 30, 2024), attached as **Exhibit 150**.

280 Screenshot of Guidechem listing discussing Bitcoin acceptance, attached as **Exhibit 151**.

The House Select Committee also engaged in undercover communications with narcotics vendors within the PRC and, despite making it clear that the investigator intended to purchase precursors for the purpose of making illicit fentanyl, 26 vendors responded immediately with offers to sell.²⁸¹

The PRC government allows these advertisements and communications to take place on its heavily monitored web when they pertain to exports. Yet, the government has drastically different protocols for domestic sales. As the House Select Committee reported, a prominent investigative organization called Citizen Lab conducted an analysis that found that the PRC government uses its surveillance capability to block search results that would match with domestic fentanyl consumption, such as “fentanyl + cash on delivery,” but does not block common phrases related to fentanyl exports.²⁸² In other words, the PRC can prevent the online marketing and exports of fentanyl and precursors, but elects not to do so. This policy is unjustifiable and unreasonable, because the PRC is violating its trade obligations under the Anti-Trafficking Treaty (which requires the PRC to strictly regulate the drug trade) and the PRC government’s commitments to the United States through those trade agreement provisions.

vi. The PRC Government Has the Ability to Effectively End the Export of Fentanyl to the United States

Beyond its ability to monitor—and shut down—web traffic, the PRC government has the undoubted means to police corporate behavior and stem the tide of fentanyl to the United States. The government’s tight control over PRC corporations, including restraints on the manufacturing, sales, and pricing of individual products, cannot be seriously contested. The PRC government has attested to its power, including in a recent U.S. Supreme Court case concerning allegations of

²⁸¹ House Select Committee Report at 26, attached as **Exhibit 1**.

²⁸² *Id.* at 30-31.

price-fixing in the Vitamin C market. In connection with that case, the PRC government submitted *multiple* factual statements documenting its total and complete control over the regulation of foreign trade, testifying that the alleged price-fixing at issue was “a regulatory pricing regime mandated by the government of China.”²⁸³

Another tool at the PRC government’s disposal is the corporate social credit system (“CSCS”): a data-driven scoring system to rate the trustworthiness of all business entities registered in the PRC.²⁸⁴ Using this rating system, the PRC government can track corporate behavior—like violations of national laws—and impose punishments on the company, including inability to obtain loans, real estate, permits, and other governmental authorizations. Early analysis of the CSCS demonstrates that the system has “powerful behavioral modification potential,” and effectively “nudg[es] businesses to adopt the industrial and social policies favored by the CCP, possibly even if they hurt the company’s bottom line.”²⁸⁵ This ability to enforce CCP policies on companies and induce compliance underscores the PRC government’s ability to regulate, and indeed prohibit, exports of illicit fentanyl by PRC enterprises. Again, the PRC government’s failure to do so demonstrates a *per se* unjustifiable abrogation of the United States’ international rights and unreasonable behavior towards the United States.

B. The PRC Government’s Acts, Policies, and Practices Regarding Illicit Fentanyl Trade Are Unjustifiable as They Violate Peremptory and Non-Derogable International Norms, Thereby Violating the United States’ International Legal Rights

The PRC government’s support of illicit fentanyl exports and refusal to meaningfully regulate illicit fentanyl trade in the manner described above, constitute unjustifiable acts, policies,

²⁸³ *Animal Sci. Prod., Inc. v. Hebei Welcome Pharm. Co. Ltd.*, 585 U.S. 33, 37 (2018).

²⁸⁴ Stanford Univ. Ctr. on China’s Econ. and Institutions, *China’s Corporate Social Credit System and Its Implications* (Jan. 15, 2023), attached as **Exhibit 28**.

²⁸⁵ *Id.*

and practices under the Act. Through these policies, the PRC government violates America's international legal rights, pursuant to 19 U.S.C. § 2411(a), and burdens U.S. commerce by encouraging trade in a substance that kills hundreds of thousands of Americans and thereby diminishes the American workforce, reduces U.S. commercial output, weakens the competitive positions of affected U.S. goods and services industries, and results in a GDP impact of approximately five percent.

At the outset, the PRC's acts, policies, and practices violate American citizens' international right to life, the taking of which causes an economic harm that burdens U.S. commerce. The right to life is the "supreme right from which no derogation is permitted, even in situations of armed conflict and other public emergencies."²⁸⁶ Bedrock principles of international law and fundamental human rights prohibit the PRC government's acts without exception or excuse. But to put a finer point upon it, the right of the United States—and its citizens—to be free from the PRC government's unjust and unjustifiable fentanyl export policies finds expression in numerous international instruments. To name just a few:

- The Universal Declaration of Human Rights ("Declaration")—which sets forth the fundamental rights that all nations must protect—recognizes that every person "has the right to *life*, liberty and *security of person*;" "to work;" to "a standard of living adequate for the health and well-being of himself and of his family;" and "to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." The Declaration emphasizes that *no State has the right "to engage in any activity or to perform any act aimed at the destruction of any of [these] rights and freedoms[.]"* And it emphasizes that respect for these rights "is essential to promote the development of friendly relations between nations."²⁸⁷
- The International Covenant on Civil and Political Rights affirms that "recognition of the inherent dignity and of the equal and inalienable rights of all

²⁸⁶ Human Rts. Comm., *General Comment No. 36*, Article 6, The Right to Life, CCPR/C/GC/36, Sept. 3, 2019, attached as **Exhibit 152**.

²⁸⁷ United Nations Gen. Assemb. Res. 217 (III) A, *Universal Declaration of Human Rights*, art. 5 (Dec. 10, 1948) (emphasis added), attached as **Exhibit 153**.

members of the human family is the foundation of freedom, justice and peace in the world,” and demands “respect for, and observance of, human rights and freedoms,” including “the inherent right to life.”²⁸⁸

- Crimes Against Humanity—generally defined to include “inhumane acts . . . causing great suffering, or serious injury to body or to mental or physical health,” when “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”²⁸⁹—are crimes that “threaten the peace, security[,] and well-being of the world.” The prohibition against these crimes is absolute: they are of “concern to the international community as a whole,” “must be prevented in conformity with international law,” and “must not go unpunished.”²⁹⁰

Next, the United States also has an absolute and indisputable international right to be free from foreign state policies that promote, facilitate, or participate in the export of illicit narcotics to the United States. These rights find expression, *inter alia*, in peremptory norms of international law requiring states to prevent, prosecute, and punish trade in illegal drugs. The PRC government has repeatedly breached these obligations, and thereby violated the international rights of the United States, by actively promoting the production and export of illicit fentanyl and its precursors to the United States.

The regulations governing the cross-border trade in drugs are set forth in a series of international instruments which establish the PRC government’s non-derogable obligation to prevent and combat the production and cross-border flow of illicit drugs. The PRC’s obligation was first explicitly established on January 23, 1912, when representatives from China, France, Germany, Italy, Japan, the Netherlands, Persia (now Iran), Portugal, Russia, Siam (now Thailand),

²⁸⁸ *International Covenant on Civil and Political Rights*, opened for signature Dec. 19, 1966, T.I.A.S. No. 92-908, 999 U.N.T.S. 171 (entered into force in the United States Sept. 8, 1992), attached as **Exhibit 154**.

²⁸⁹ United Nations, *Report of the International Law Commission*, Seventy-first Session, A/74/10 at 12, attached as **Exhibit 155**.

²⁹⁰ *Id.* at 11. While the convention on Crimes Against Humanity remains in draft form, the prohibition on these crimes is absolute. The definition originates in the post-World War II charters, has been included in the jurisdictional instruments of several international tribunals, and is recognized by the United States. See Cong. Rsch. Serv., *International Atrocity Crimes and Their Domestic Counterparts* (Apr. 3, 2024), attached as **Exhibit 156**.

the United Kingdom, and the British overseas territories (including what is now India) executed the International Opium Convention.²⁹¹ The treaty gained near-universal acceptance seven years later, when the States Party to the Peace Treaties of Versailles and St. Germain-en-Laye simultaneously became party to the Convention.²⁹²

The execution of the Convention marked the establishment of a new *jus cogens* norm obligating all countries to actively prevent the production and trafficking of drugs.²⁹³ In the intervening century, international recognition in, and support for, that norm has only increased. Thus, in 1961, the international community adopted the Single Convention on Narcotic Drugs (“Single Convention”), an instrument drafted with input from 73 nations, including the PRC, to promote “the health and welfare of mankind.”²⁹⁴

The Single Convention explicitly addresses the commercial harms caused by the cross-border trade in illicit substances. Thus, the Single Convention “recogniz[ed] that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind.”²⁹⁵ And, by adopting the treaty, the countries of the world expressly recognized “their duty to prevent and combat this evil.”²⁹⁶ Since 1964, the trade in fentanyl has been controlled pursuant to this treaty.²⁹⁷

²⁹¹ United Nations Off. on Drugs and Crime, *The 1912 Hague International Opium Convention*, attached as **Exhibit 157**.

²⁹² *Id.*

²⁹³ See Eduardo Jiménez de Aréchaga, *International Law in the Past Third of a Century* (1978) at 64-67, attached as **Exhibit 158**. A *jus cogens* norm is one which permits no derogation given the fundamental values it upholds. See Anne Lagerwall, Oxford Bibliographies, *Jus Cogens* (last modified May 29, 2015), attached as **Exhibit 159**.

²⁹⁴ *Single Convention on Narcotic Drugs of 1961, amended by 1972 Protocol*, Mar. 25, 1972, 976 U.N.T.S. 105, pmb.

²⁹⁵ *Id.* (emphasis added).

²⁹⁶ *Id.* (emphasis added).

²⁹⁷ See Cong. Rsch. Serv., *China Primer: Illicit Fentanyl and China’s Role* (Feb. 20, 2024), attached as **Exhibit 51**.

In 1988, the governments of the world again affirmed the importance of stopping the transnational trade in illicit drugs through the trade provisions of the Anti-Trafficking Treaty, which complements and reinforces the Single Convention. Like the Single Convention, the Anti-Trafficking Treaty's trade provisions expressly address the commercial impact of the illegal drug trade and require member states, including the PRC, to prevent and combat such trade through a series of explicit trade focused obligations. The Anti-Trafficking Treaty reflects the "deep[] concern[]" of the States Party for "the magnitude of and rising trend in the illicit production of, demand for, and traffic in narcotic drugs and psychotropic substances, which pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural[,] and political foundations of society."²⁹⁸ The governments of the world expressed specific distress regarding "the fact that children are used in many parts of the world as an illicit drug consumers market," finding this practice "a danger of incalculable gravity."²⁹⁹ And the states directly identified the "illicit traffic and other related organized criminal activities" as a threat to "legitimate economies" and "the stability, security[,] and sovereignty of States."³⁰⁰ They accordingly recognized that "eradication of illicit traffic is a collective responsibility of all States," and emphasized that suppressing such traffic "demands urgent attention and the highest priority."³⁰¹ Together, the Single Convention and Anti-Trafficking Treaty create international rights affording governments support in combatting and protection from the illegal drug trade, as well as binding obligations on states to eradicate that trade. In other words, these international commitments recognize the fundamental rights and obligations of states with regard to the trade in illicit drugs.

²⁹⁸ Anti-Trafficking Treaty, pmbl. (emphasis added), attached as **Exhibit 14**.

²⁹⁹ *Id.* (emphasis added).

³⁰⁰ *Id.* (emphasis added).

³⁰¹ *Id.* (emphasis added).

Each year, the countries of the world reaffirm their multilateral commitments to eradicating illicit drug trade through trade-related resolutions of the U.N. General Assembly. These documents underscore that the “international drug control conventions concern the health and welfare of humankind” and are “an indispensable part of the international legal framework for the design and implementation of drug policies”—*especially those governing the cross-border drug trade*.³⁰² The resolutions also recognize the commercial costs sustained when governments fail to abide by their obligations under the anti-narcotic conventions, specifically noting “deep concern at the high price paid by society and by individuals and their families as a result of the world drug problem.”³⁰³

The PRC government’s obligations to the international community broadly—and the United States specifically—extend to its trade in illicit fentanyl. More recently, governments have expressed “grave concern” regarding the “proliferation and diversion of chemical precursors used in the illicit manufacture of narcotic drugs and psychotropic substances.”³⁰⁴ In keeping with this trend, the United States has played a key role in ensuring that trade in chemical precursors for illicit fentanyl are controlled by the international drug control agreements and documents—thereby ensuring that States’ obligations under these treaties extend to these substances.

As a consequence of these obligations, the PRC government is required to establish national laws controlling the manufacturing, sale, and export of illicit fentanyl. In 2017, the United States officially asked the U.N. Commission on Narcotic Drugs (the “Commission”) to add the two chemicals most commonly used to produce illicit fentanyl to the Anti-Trafficking Treaty

³⁰² United Nations Gen. Assemb. Res. 22/685, Nov. 9, 2022, No. A/RES/77/238.

³⁰³ United Nations Gen. Assemb. Res. 22/685, Nov. 9, 2022, No. A/C.3/77/L.13/Rev.1 (emphasis added).

³⁰⁴ *Id.*

schedule of controlled substances.³⁰⁵ In 2022, the United States again “urged” the Commission to “control three [additional] chemicals used by drug traffickers to produce illicit fentanyl” that are “driving overdose deaths in the United States.”³⁰⁶ The action marked part of the White House’s “efforts to reduce the supply of illicit fentanyl driving overdose deaths.”³⁰⁷ In response, the Commission “voted unanimously to take international action and control the acquisition, production, and export of three precursors used to manufacture illicit fentanyl and its analogues.”³⁰⁸

By adding the fentanyl precursors to the list of substances controlled under the trade provisions of the Anti-Trafficking Treaty prohibiting exports of illicit drugs, the Commission obligated signatories—*including the PRC*—to establish national laws to control these substances. Specifically, the PRC is required to adopt measures criminalizing “[t]he production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance[.]”³⁰⁹ The PRC is also obligated to criminalize “inciting or inducing others, by any means, to commit any of the offences established” in the Anti-Trafficking Treaty, “or to use narcotic drugs or psychotropic substances illicitly.”³¹⁰ In addition, the PRC is required to enable its competent authorities “to identify, trace, and freeze or seize proceeds, property, instrumentalities or any other” proceeds from illicit drug sales.³¹¹ The PRC is

³⁰⁵ White House, *At Urging of U.S., UN Commission Acts Against “Precursor” Chemicals Used to Produce Illicit Fentanyl* (Mar. 16, 2022), attached as **Exhibit 160**.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Anti-Trafficking Treaty at art. 3.1(a), attached as **Exhibit 14**.

³¹⁰ *Id.* at art. 3.1(c.).

³¹¹ *Id.* at art. 5.

required to “*prevent trade in* and the diversion of materials and equipment for illicit production or manufacture of narcotic drugs and psychotropic substances.”³¹² And the PRC is obligated to take appropriate measures to ensure that its commercial carriers are not used to transport, or export, illicit substances.³¹³ These obligations extend to free trade zones, where the PRC must ensure equally “stringent” measures “to suppress illicit traffic in narcotic drugs, psychotropic substances, and” listed substances.³¹⁴ Beyond these obligations, the PRC government is required to “co-operate closely” with the United States “with a view to enhancing the effectiveness of law enforcement action to suppress the commission of” drug offenses—including the manufacture and sale of illicit fentanyl precursors.³¹⁵ Notably, these are all trade obligations—*i.e.*, obligations that require the PRC to take certain actions to regulate the drug market, including by working to eliminate the supply of and demand for illicit narcotics.

Obviously, the PRC government’s fentanyl export promotion practices and lack of legal prohibitions on illicit fentanyl trade directly defy these commitments and obligations on trade. Despite repeatedly recognizing (as both signatory to the international drug conventions and member of the U.N. General Assembly) its obligation to combat the manufacture, sale, traffic, and use of illicit drugs, the PRC government actively—and deliberately—promotes these activities abroad. There is no question that the PRC government understands its obligations and simply chooses not to comply with them. The government’s participation in—and accession to—the international drug conventions demonstrate its understanding that its acts, policies, and practices with respect to illicit fentanyl exports violate international law concerning trade and cause

³¹² *Id.* at art. 13 (emphasis added).

³¹³ *Id.* at art. 15.

³¹⁴ *Id.* at art.18.

³¹⁵ *Id.* at art. 9.

significant economic harm to its target countries' commerce.³¹⁶ And the PRC government knows that it has an inviolable and non-derogable duty to address its acts, policies, and practices with respect to its complicity in illicit fentanyl trade.

Whereas the Anti-Trafficking Treaty—including its trade provisions—requires the PRC government to criminalize “[t]he production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance,”³¹⁷ the PRC government actively induces such behavior. For instance, as noted, the government uses its VAT rebate system to encourage exports of fentanyl by providing a 13 percent rebate on illicit fentanyl products.³¹⁸ The PRC government provides monetary grants and awards to facilitate the manufacture and export of fentanyl analogs and precursors produced in the PRC.³¹⁹ The government allows companies to openly advertise their illicit fentanyl drugs on the internet.³²⁰ And, rather than cooperate with U.S. law enforcement (as required by the trade provisions of the Anti-Trafficking Treaty, making cooperation also a U.S. international legal right), the PRC government actively thwarts American investigations into illicit fentanyl manufacturers in the PRC, even going so far as to alert these manufacturers of ongoing investigative efforts.³²¹ Indeed, the PRC government even participates in the ownership of companies that manufacture and export illicit fentanyl analogues and precursors, thereby directly participating in the very activities that

³¹⁶ See generally *id.*; *Single Convention on Narcotic Drugs of 1961, amended by 1972 Protocol*, pmbl., Mar. 25, 1972, 976 U.N.T.S. 105.

³¹⁷ Anti-Trafficking Treaty, pmbl., attached as **Exhibit 14**.

³¹⁸ *Se* Pt. VI.A.i., *supra*.

³¹⁹ *See* Pt. VI.A.ii, *supra*.

³²⁰ *See* Pt. VI.A.v, *supra*.

³²¹ *See* Pt. VI.A.iv, *supra*.

the Anti-Trafficking Treaty requires the PRC government to prevent.³²² These actions, beyond being inconsistent with the Anti-Trafficking Treaty’s trade provisions, separately and collectively, unjustifiably violate the United States’ international rights.

Further, the PRC government breaches its international obligations under the Anti-Trafficking Treaty and the Single Convention and violates a peremptory norm of international law—one that permits no derogation. The PRC government’s acts, policies, and practices encouraging and facilitating the production in and export of illicit fentanyl is *per se* unjustifiable—because the peremptory norm that requires all states to eradicate the trade in and use of illicit drugs “reflect[s] and protect[s] fundamental values of the international community,” is “hierarchically superior to other rules of international law,” and is “universally applicable.”³²³

In this context, the Act (19 U.S.C. § 2411) provides an appropriate—and necessary—mechanism to address these violations by the PRC government that in turn violate the United States’ international legal rights. Rather than instituting an exclusive dispute settlement mechanism, the Anti-Trafficking Treaty includes recommendations for resolving disputes between member states. That provision, set out at Article 32(1), states that Parties “shall consult together with a view to the settlement of” any disputes by any “peaceful means of their own choice.”³²⁴ This provision does not mandate any specific dispute settlement process. Instead, it allows sovereign states to use any “peaceful means” to adjudicate their disputes. (Petitioner notes that, even though Article 32(2) of the Anti-Trafficking Treaty states that disputes that are not settled in the manner prescribed in paragraph 1 “shall be referred . . . to the International Court of Justice for

³²² See Pt. VI.A.iii, *supra*.

³²³ See United Nations, *Report of the International Law Commission*, Sixty-seventh Session, A/74/10 at 142, attached as **Exhibit 161**.

³²⁴ Anti-Trafficking Treaty at art. 32(1), attached as **Exhibit 14**.

decision,” this provision is not applicable here, because the PRC unilaterally declared that it “does not consider itself bound by” this paragraph, opting out of this provision.) Thus, measures under the Act requested in this Petition (19 U.S.C. § 2411) are appropriate for resolving the PRC’s acts, policies, and practices that have caused it to violate its treaty obligations and thereby violate U.S. international rights. In short, there is no forum for adjudicating the PRC government’s harmful acts, policies, and practices concerning the fentanyl trade.

C. The PRC Government’s Illicit Fentanyl Policies Are Unreasonable as They Constitute a Persistent Pattern of Conduct Under Which It Fails to Adhere to Its Commitments to the United States

In addition to being unjustifiable, the PRC government’s acts, policies, and practices with respect to illicit fentanyl trade are unreasonable. These policies and practices are unfair and inequitable for the same reasons that they are unjustifiable—*i.e.*, they promote the export of a deadly poison into the United States, thereby causing a crisis resulting in the deaths of hundreds of thousands of American citizens, which in turn diminishes the competitiveness of American companies, destabilizes the American economy, and harms U.S. commerce in the order of magnitude of five percent of GDP—all in violation of the PRC government’s international obligations and the United States’ international rights.

But the PRC government’s fentanyl policies are additionally unreasonable because they demonstrate a persistent pattern of conduct by the government to fail to effectively enforce its commitments to the United States under the Single Convention and Anti-Trafficking Treaty *and* apart from those instruments. As elaborated in greater detail in Part V above, the PRC government’s failure to adequately restrict exports of illicit fentanyl has a long history. In 2019, nearly a decade after the United States first identified the PRC as the primary source of illicit fentanyl imports, the PRC government committed to clamp down on exports of fentanyl-related

substances.³²⁵ To date, the PRC government has utterly failed to follow through. Even at the time, analysts questioned the PRC government’s commitment.³²⁶ As detailed above, the government was already obligated to control the manufacture and export of fentanyl, and the PRC government’s promises have turned out to be nothing more than the suspected “soothing but empty rhetoric from China’s leaders.”³²⁷

Just one year after renewing its commitment to combat the fentanyl crisis caused by the PRC’s exports, the government’s cooperation stalled.³²⁸ Unsurprisingly, the PRC government initially blamed the U.S. Department of Commerce for the breakdown. And two years later, the PRC government disavowed all pretense of cooperation in response to House Speaker Nancy Pelosi visiting Taiwan.³²⁹ In other words, the PRC government has already walked back its trade-related counternarcotic commitments. The PRC government has given no justification for encouraging and facilitating the manufacture or export of illicit fentanyl, nor can it. These actions are patently unjustifiable and unreasonable.

The PRC government’s recent statements about collaboration in the fight against illicit fentanyl is equally meaningless. As in the past, the PRC’s hints toward cooperation are no guarantee that the country will finally stop violating its longstanding obligation to prevent the production and export of fentanyl. The PRC government has a history of breaking its international

³²⁵ Michael Martina, *Corrected: U.S. Welcomes China’s Expanded Clampdown on Fentanyl*, Reuters (Apr. 2, 2019), attached as **Exhibit 162**.

³²⁶ George Serletis, Off. of Indus., Int’l Trade Comm’n, *Deadly High-purity Fentanyl from China is Entering the U.S. through E-Commerce Channels* (Sept. 2019), attached as **Exhibit 163**.

³²⁷ Michael Martina, *Corrected: U.S. Welcomes China’s Expanded Clampdown on Fentanyl*, Reuters (Apr. 2, 2019) (quoting Rep. Chris Smith), attached as **Exhibit 162**.

³²⁸ See Cong. Rsch. Serv., *China Primer: Illicit Fentanyl and China’s Role* (Feb. 20, 2024), attached as **Exhibit 51**.

³²⁹ *Id.*

commitments for political or economic gain. Consider the PRC government’s unreasonable behavior regarding IP. Between 2010 and 2016, the PRC government made numerous bilateral commitments relating to technology transfers—repeatedly promising that it would protect proprietary information, cease requiring trade secret sharing as a condition of market access, and limit disclosure of sensitive IP.³³⁰ Nevertheless, the PRC government “remains on the priority watch list with the USTR,” given the “many serious concerns regarding IP protection and enforcement in the [PRC].”³³¹

The PRC government has similarly reneged on its promise of peaceful reunification with Taiwan. In September 2015, Xi Jinping stated that “China does not intend to pursue militarization” of the South China Sea,³³² and emphasized that the country had “[n]o plans to invade Taiwan.”³³³ To the contrary, the PRC government has relentlessly pursued “a reckless and provocative militarization of those disputed outposts, they have deployed anti-ship cruise missiles, expanded military radar and signal intelligence capabilities, constructed dozens of fighter jet hangars, and have built runways capable of accommodating combat aircraft.”³³⁴

As discussed in detail above, the PRC government has done—and will continue to do nothing with respect to illicit fentanyl exports. As explained in commentary published by the Brookings Institution:

Three U.S. presidential administrations – those of Barack Obama, Donald Trump, and Joe Biden – have devoted diplomatic focus to induce and impel China to tighten

³³⁰ See U.S. Trade Rep., *Findings of the Investigation into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974* (Mar. 22, 2018) at 8, attached as **Exhibit 164**.

³³¹ Aaron R. Wininger, *USTR Releases 2024 Special 301 Report on IP Protection – China Remains on the Priority Watch List*, Schwegman Lundberg Woessner (Apr. 29, 2024), attached as **Exhibit 165**.

³³² Dep’t State, *China’s Empty Promises in the South China Sea* (Sept. 27, 2020), attached as **Exhibit 35**.

³³³ Aadil Brar, *China Official Walks Back Xi’s Assurance to Biden*, Newsweek (Nov. 23, 2023), attached as **Exhibit 166**.

³³⁴ Dep’t State, *China’s Empty Promises in the South China Sea* (Sept. 27, 2020), attached as **Exhibit 35**.

its regulations vis-à-vis fentanyl-class drugs and their precursor chemicals and to more diligently enforce these regulations. China, however, sees its counternarcotics enforcement, and more broadly its international law enforcement cooperation, as strategic tools that it can instrumentalize to achieve other objectives. Unlike the U.S. government, which seeks to delink counternarcotics cooperation with China from the overall bilateral geostrategic relationship, China subordinates its counternarcotics cooperation to its geostrategic relations.³³⁵

In short, because the PRC’s “counternarcotics cooperation – or its absence – remains determined by the state of U.S.-China overall geopolitical relationship . . . the hope that despite the geopolitical rivalry, counternarcotics could prove a domain of U.S.-China cooperation has not materialized.”³³⁶

Instead of following through on its commitments, the PRC government uses counternarcotics trade cooperation as a carrot to achieve its broader geopolitical objectives. Indeed, the PRC government’s conduct exemplifies its view that drug warfare, enabled through exports, is a legitimate means of competition. A treaty published by the CCP’s army, the PLA, recognized that the CCP cannot be successful in modern warfare without pursuing asymmetric means, like drug warfare.³³⁷

Aside from what we have discussed above, we can point out a number of other means and methods used to fight a non-military war, some of which already exist and some of which may exist in the future, for example psychological warfare that causes intimidation to the enemy and break down his will; smuggling warfare that throws markets into confusion and attacking economic order; media warfare that manipulates audio and video to guide public opinion; drug warfare that cause disasters in other countries and make huge profits [...] (emphasis added).

The PRC government’s drive to push illicit fentanyl to the U.S. market—in direct defiance of its prior international legal commitments—is thus another avenue by which it can weaken the United

³³⁵ Vanda Felbab-Brown, *China’s Role in the Fentanyl Crisis*, Brookings Inst. (Mar. 31, 2023) (emphasis added), attached as **Exhibit 23**.

³³⁶ *Id.* (emphasis added).

³³⁷ House Select Committee Report at 35-36, attached as **Exhibit 1**.

States. The PRC government has been, through illicit fentanyl exports, eroding the U.S. workforce, weakening U.S. industrial and services sector output, lessening U.S. productivity, and constraining U.S. GDP by five percent.³³⁸

VII. THE PRC GOVERNMENT’S FENTANYL POLICIES BURDEN AND RESTRICT U.S. COMMERCE

The PRC’s acts, policies, and practices with respect to illicit fentanyl trade cause substantial harm to U.S. citizens that, in turn, significantly burdens and/or restricts U.S. commerce with no signs of lessening.³³⁹ They also give PRC companies an unfair competitive advantage, compromise the performance and competitiveness of American companies, undermine the U.S. labor market, and disrupt supply chains by weakening industrial output in goods and services. These economic harms are directly tied to the influx of illicit fentanyl and its precursors and will continue until the PRC takes all necessary measures to substantially ban the exports of illicit fentanyl into the United States and meaningfully enforce those bans.

Again, the Act (19 U.S.C. § 2411) does not restrict the definition of U.S. “commerce.” While it provides examples of “commerce,” including services associated with international trade and foreign direct investment with implications in trade in goods, the statute expressly states that the definition is not exhaustive. In fact, legislative history contemplates a broad definition of “commerce” discussed in Section IV.D above. Thus, Petitioner discusses both the impact on the trade-related aspects of commerce as well as the broader economy, consistent with statutory intent, here.

³³⁸ *Id.*

³³⁹ The following discussion details (i) the degree to which U.S. commerce is burdened or restricted by the PRC’s unjustifiable, unreasonable, and discriminatory policies, (ii) the volume of trade in the goods or services involved, and (iii) a description—either in text or attached as an exhibit—of the methodology used to calculate the burden or restriction on U.S. commerce. *See* 15 C.F.R. § 2006.1(a)(7).

The commercial effects of the PRC-fueled fentanyl crisis—including the impact of the human lives lost—cut across every sector of the U.S. economy and related commerce—impacting health care and insurance premiums, increasing criminal justice and counter-trafficking expenditures, affecting the housing market, exacting a staggering toll in the form of lost productivity and reduced commercial output in the goods and services industry, resulting in less domestic and international trade.³⁴⁰ The impact on U.S. GDP is estimated to be five percent. Additionally, while tax revenues decline due to lost earnings and decreased productivity, federal expenses—which are collected through taxation on American companies and individuals—increase to cover health care, child welfare, addiction treatment, and efforts to police the border and combat the traffic in and sale of fentanyl.³⁴¹ These harms will not go away unless the PRC materially alters its acts, policies, and practices that are the subject of this Petition.

The influx of illicit fentanyl exported by the PRC costs the United States over a trillion dollars each year. In 2017, the CDC estimated total annual opioid-related costs of \$1.02 trillion,³⁴² and those are rising. Those costs are only rising. In 2022, the congressional JEC—led by Don Beyer (D-VA)—concluded that the opioid epidemic cost the United States nearly \$1.5 trillion in 2020 alone, which amounts to seven percent of GDP.³⁴³ Illicit fentanyl—as the primary driver of the opioid crisis (approximately 70 percent)—bears the lion’s share of responsibility for these

³⁴⁰ Claire Klobucista and Mariel Ferragamo, *Fentanyl and the U.S. Opioid Epidemic*, Council on Foreign Relations (Dec. 22, 2023), attached as **Exhibit 36**.

³⁴¹ Cong. Budget Off., *The Opioid Crisis and Recent Federal Policy Responses* (Sept. 2022), attached as **Exhibit 167**.

³⁴² Curtis Florence, et al., *The Economic Burden of Opioid Use Disorder and Fatal Opioid Overdose in the United States, 2017*, Drug and Alcohol Dependence (Jan. 1, 2021) at 7, attached as **Exhibit 168**; see also Sean M. Murphy, *The Cost of Opioid Use Disorder and the Value of Aversion*, Drug and Alcohol Dependence (Dec. 1, 2020) at 6 (estimating that U.S. taxpayers bear approximately \$93 billion in costs), attached as **Exhibit 169**.

³⁴³ U.S. Joint Econ. Comm., *JEC Analysis Finds Opioid Epidemic Cost U.S. Nearly \$1.5 Trillion in 2020* (Sept. 28, 2022); U.S. Global Leadership Coalition, *Combating the Rise of Fentanyl and Synthetic Drugs Through U.S. Foreign Policy* (Apr. 2024), combined and attached as **Exhibit 170**.

costs, approximately \$1 trillion in economic impact and approximately 5 percent of U.S. GDP.³⁴⁴ These figures capture a broad spectrum of the U.S. economy, including general commerce. And, as the number of fatal fentanyl poisoning deaths continue to remain at high levels, so too will the economic burden and resulting restraints on U.S. commerce.³⁴⁵ Chairman Beyer’s conclusion was indeed grim: “*As a nation, we are now less healthy, less economically competitive[,] and less secure as a result of the opioid epidemic.*”³⁴⁶ Other members of the Joint Committee echoed this sentiment, asserting that it is now “*abundantly clear that the opioid epidemic is not only a health crisis, but also an economic and national security one.*”³⁴⁷

Several states have separately calculated the individual costs of the fentanyl crisis on their economies and individual citizens:

- **Arizona.** In 2023, the cost of the fentanyl crisis in Arizona—a border state that plays a key role in preventing trafficking of illicit fentanyl from the PRC into the United States—reached an all-time high of \$58 billion, approximately 11 percent of Arizona’s annual GDP.³⁴⁸
- **Colorado.** In 2023, the total cost of fentanyl-related poisoning deaths in Colorado was estimated to be \$16 billion, a total *in excess* of the amount collected in state taxes in 2019 and equal to three percent of Colorado’s GDP in 2023.³⁴⁹
- **Virginia.** In 2021, the Virginia Department of Health and Virginia Commonwealth University’s Center on Society and Health calculated that

³⁴⁴ See Claire Klobucista and Mariel Ferragamo, *Fentanyl and the U.S. Opioid Epidemic*, Council on Foreign Relations (Dec. 22, 2023), attached as **Exhibit 36**.

³⁴⁵ U.S. Joint Econ. Comm., *JEC Analysis Finds Opioid Epidemic Cost U.S. Nearly \$1.5 Trillion in 2020* (Sept. 28, 2022); U.S. Global Leadership Coalition, *Combating the Rise of Fentanyl and Synthetic Drugs Through U.S. Foreign Policy* (Apr. 2024), combined and attached as **Exhibit 170**.

³⁴⁶ *Id.* (emphasis added).

³⁴⁷ *Id.* (emphasis added).

³⁴⁸ Kamryn Brunner and Glenn Farley, *Arizona’s Ongoing Fentanyl Crisis*, Common Sense Inst. (June 24, 2024), attached as **Exhibit 171**.

³⁴⁹ Steven L. Byers, *Colorado’s Fentanyl Problem and the Economic Costs*, Common Sense Inst. (June 2024) at 3, attached as **Exhibit 172**.

the overall cost of the opioid epidemic was more than \$5 billion in 2021, amounting to an average of \$588 per Virginian.³⁵⁰

- **Pennsylvania.** In 2019, the Auditor General of Pennsylvania reported that illicit fentanyl had caused a marked increase in disease, kinship care, child abuse and domestic violence rates, neonatal abstinence syndrome, labor market disruptions, criminal justice costs, and community harm—all of which imposed unique and varied costs on the state of Pennsylvania.³⁵¹

A breakdown of the overall economic costs associated with the fentanyl crisis and analysis of the costs imposed by the epidemic on specific commercial sectors reinforces the staggering, continuing burden to U.S. commerce caused by the PRC’s fentanyl policies.

Reduced Quality and Loss of Life. The reduced quality of life and loss of life due to drug addiction and poisoning deaths are by far the most significant costs caused by the fentanyl crisis. Although it is, of course, impossible to put a value on a human life, researchers frequently estimate the value of a statistical life.³⁵² These estimates “play a very large role in determining the benefit-cost assessments for many government policies[.]”³⁵³ Using the value of a statistical life methodology, *the CDC estimates that opioid poisonings cost the United States \$480.7 billion in lives lost in 2017.*³⁵⁴ Quality of life refers to a person’s ability to function, and recognizes the impact of chronic, disabling conditions on an individual and society more broadly.³⁵⁵ *The CDC estimates that the reduced quality of life resulting from opioid use disorder cost the United States*

³⁵⁰ Olivia Trani, *The opioid epidemic cost Virginians \$5 billion in 2021, new data shows*, Va. Commonwealth Univ. (Jan. 17, 2024), attached as **Exhibit 173**.

³⁵¹ Eugene A. DePasquale, *A Deadly Dose: Fentanyl’s Impact in Pennsylvania*, PA Auditor Gen. (Oct. 16, 2019) at 4-6, attached as **Exhibit 174**.

³⁵² Jonathan Colmer, *What is the meaning of (statistical) life? Benefit-cost analysis in the time of COVID-19*, Oxford Review of Econ. Policy (Aug. 29, 2020), attached as **Exhibit 175**.

³⁵³ *Id.* at 2.

³⁵⁴ Ctrs. for Disease Control and Prevention, *Economics of Injury and Violence Prevention* (Oct. 8, 2024), attached as **Exhibit 176**.

³⁵⁵ Luis Prieto and José A. Sacristán, *Problems and solutions in calculating quality-adjusted life years (QALYs)*, Health and Quality of Life Outcomes (Dec. 19, 2003), attached as **Exhibit 177**.

\$390 billion.³⁵⁶ In 2020, the JEC estimated that the cost of these harms had increased by 37 percent.³⁵⁷ The costs associated with loss of life and loss of quality of life ripple across commercial sectors and impose increased costs on U.S. companies in the form of higher taxes, loss of workers, reduced industry output and therefore reduced sales, and broader economic costs. They also diminish the global competitiveness of American firms, with a U.S. GDP impact of, as noted, five percent.

Health Care and Insurance Costs. The PRC’s exports of illicit fentanyl to the United States also imposes unreasonable burdens on the U.S. health insurance, healthcare, and medical industries. The NIH estimates that opioid abuse costs commercial insurers an average of \$14,000 per person and costs Medicaid an average of \$15,100 per person—resulting in an increased burden of more than \$89 billion on the health insurance industry.³⁵⁸ The NIH identified this number by multiplying the per-person costs identified above by the estimated number of persons with opioid use disorder, which, in 2020, resulted in more than \$89 billion in annual costs to the healthcare sector.³⁵⁹ Considering that U.S. fentanyl imports cause more than 70 percent of all poisoning deaths, over \$62 billion of those costs are attributable to fentanyl alone. Premier, Inc. (“Premier”), a leader in healthcare improvement, analyzed 12 months of data from 647 care facilities to determine the estimated costs of fentanyl-driven poisoning deaths. Premier concluded that opioid poisoning costs the American health care system more than \$11 billion annually—with Medicare

³⁵⁶ Curtis Florence, et al., *The Economic Burden of Opioid Use Disorder and Fatal Opioid Overdose in the United States, 2017*, Drug and Alcohol Dependence (Jan. 1, 2021) at 7, attached as **Exhibit 168**.

³⁵⁷ U.S. Joint Econ. Comm., *JEC Analysis Finds Opioid Epidemic Cost U.S. Nearly \$1.5 Trillion in 2020* (Sept. 28, 2022); U.S. Global Leadership Coalition, *Combating the Rise of Fentanyl and Synthetic Drugs Through U.S. Foreign Policy* (Apr. 2024), combined and attached as **Exhibit 170**.

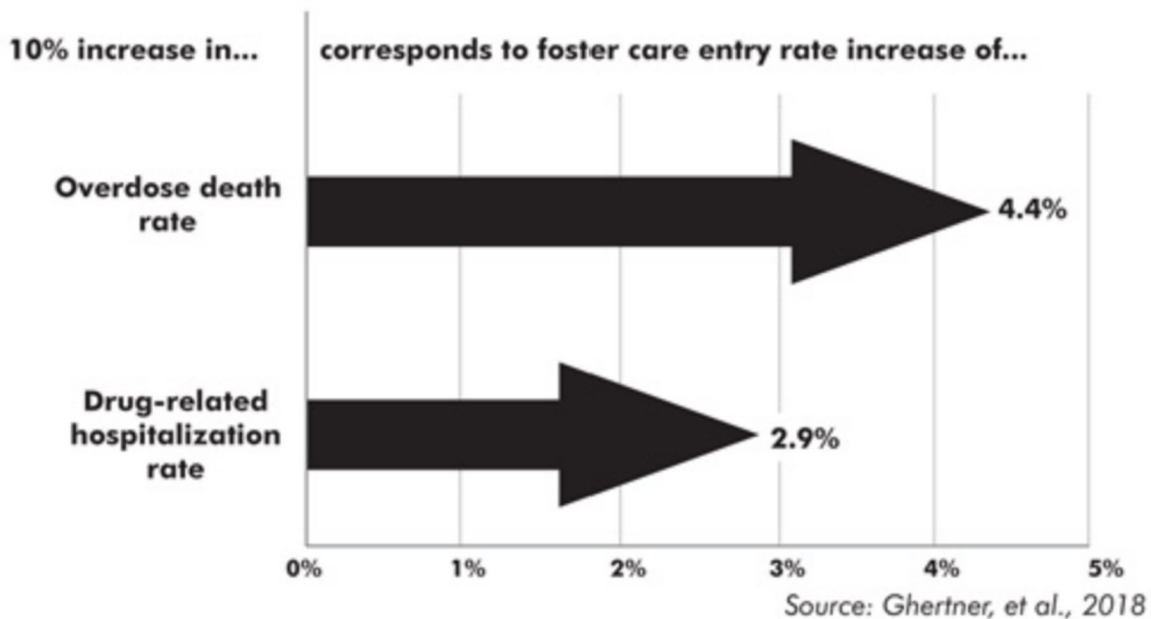
³⁵⁸ Sean M. Murphy, *The Cost of Opioid Use Disorder and the Value of Aversion*, Drug and Alcohol Dependence (Dec. 1, 2020) at 4 and 6, attached as **Exhibit 169**.

³⁵⁹ *Id.*

and Medicaid bearing \$7.4 billion in costs.³⁶⁰ Obviously, the impact on health care and insurance costs directly impact the services sector, rendering American healthcare and insurance companies less competitive domestically and globally.

Foster and Childcare Costs. The PRC’s fentanyl exports also impose a multigenerational cost, namely the lasting impact on children, families, and the foster care system.³⁶¹ According to researchers with Virginia Tech in a study published by the NIH, more than 2.6 million children have lost their parents due to drug poisoning death, incapacitation, or addiction and are living in homes without any biological parent.³⁶²

Relationship between Overdose Death and Drug-Related Hospitalization Rates and Foster Care Entry Rates, 2011-2016



³⁶⁰ Premier, Inc., *Opioid Overdoses Costing U.S. Hospitals an Estimated \$11 Billion Annually* (Jan. 3, 2019), attached as **Exhibit 178**.

³⁶¹ Jeanne Whalen, *The Children of the Opioid Crisis*, Wall Street Journal (Dec. 15, 2016), attached as **Exhibit 179**.

³⁶² Megan L. Dolbin-MacNab & Lyn M. O’Connell, *Grandfamilies and the Opioid Epidemic: A Systemic Perspective and Future Priorities*, Springer Nature (Jan. 25, 2021) at 1, attached as **Exhibit 180**.

The absence of so many biological caregivers overwhelms the foster care system. In 2016, researchers with Pennsylvania State University conservatively estimated that the opioid crisis imposes an additional \$3 billion dollars on an already overtaxed child welfare system, with the vast majority of those costs arising due to increased foster care needs.³⁶³ As the above chart from the U.S. Department of Health and Human Services explains, “a 10 percent increase in overdose death rates correspond[s] to a 4.4 percent increase in the foster care entry rate,” and a “10 percent increase in the average county’s drug-related hospitalization rate correspond[s] to a 2.9 percent increase in its foster care entry rate.”³⁶⁴ Further, higher drug poisoning death rates have also been linked to higher rates of child maltreatment.³⁶⁵ That is, illicit fentanyl—and the debilitation it leaves in its wake—has a dramatic impact on individuals, children, and the foster care system.

The effects of the fentanyl epidemic on children—and the institutions dedicated to serving them—show no sign of abating. The United Hospital Fund and Boston Consulting Group estimate that by 2030, more than 4.3 million children will be affected by the fentanyl crisis—*resulting in costs well in excess of \$400 billion arising from health care, special education, child welfare, and criminal justice spending*.³⁶⁶ These costs—caused by the PRC’s fentanyl exports and which continue to this day—are a direct financial burden on U.S. commerce through companies and individuals (like Petitioner’s members) in the form of increased taxes. And by adversely impacting the criminal justice, child welfare, and education system, the costs on U.S. commerce result from,

³⁶³ Daniel M. Crowley, et al., *Considering the Child Welfare System Burden From Opioid Misuse: Research Priorities for Estimating Public Costs*, American Journal of Managed Care (July 25, 2019), attached as **Exhibit 181**.

³⁶⁴ Laura Radel, et al., *Substance Use, the Opioid Epidemic, and the Child Welfare System: Key Findings from a Mixed Methods Study*, Dep’t Health and Human Serv. (Mar. 7, 2018) at 3-4, attached as **Exhibit 182**.

³⁶⁵ *Id.* at 3.

³⁶⁶ Suzanne C. Brundage, et al., *The Ripple Effect: National and State Estimates of the U.S. Opioid Epidemic’s Impact on Children*, United Hospital Fund (Nov. 2019) at 2, attached as **Exhibit 183**.

inter alia, the substantial weakening of the U.S. labor force which impacts U.S. employment, productivity, output in goods and services, and overall competitiveness in the global market.

Employee Productivity and Impact on the Labor Market. The PRC’s fentanyl policies also burden U.S. commerce by compromising the competitiveness of American companies and undermining U.S. employment and the labor market. The adverse influence of fentanyl on labor force participation is well-supported. In 2016, Princeton economist Alan Krueger determined that nearly half of men ages 25 to 54—a critical part of the labor market—who are not working take daily pain medication.³⁶⁷ Dr. Krueger reasoned that legal, prescription opioids account for approximately 43 percent of the decline in men’s labor force participation—and as much as 25 percent of the decline in women’s labor force participation.³⁶⁸ Without a doubt, the increasing rates of fentanyl-related fatalities—which are the leading cause of death among Americans in their prime working years—and of fentanyl addiction cause a direct decline in the labor market. The decreased labor force reduces the pool of employees for hire, which is particularly concerning given the tightness of the U.S. labor market and growing demand for the U.S. workforce.³⁶⁹ Indeed, employers across the country report that they struggle to find “applicants who can pass a drug test.”³⁷⁰ And the Brookings Institution reports that jobs with the highest rates of opioid poisoning fatalities are the backbone of the American economy: construction, extraction (*e.g.*

³⁶⁷ Fred Dews, *How the opioid epidemic has affected the U.S. labor force, county-by-county*, Brookings Inst. (Sept. 7, 2017), attached as **Exhibit 184**; see also Alan B. Krueger, *Where Have All the Workers Gone? An Inquiry into the Decline of the U.S. Labor Force Participation Rate*, Brookings Inst. (Sept. 7, 2017), attached as **Exhibit 185**.

³⁶⁸ Fred Dews, *How the opioid epidemic has affected the U.S. labor force, county-by-county*, Brookings Inst. (Sept. 7, 2017), attached as **Exhibit 184**.

³⁶⁹ *Id.*

³⁷⁰ Jackie Calmes, *Hiring Hurdle: Finding Workers Who Can Pass a Drug Test*, New York Times (May 17, 2016), attached as **Exhibit 186**; see also *The 2018 Joint Economic Report*, H. Rept. 115-596, 115th Cong. (2018) at 189, attached as **Exhibit 187** (noting that Ohio employers have reported that “many applicants either withdraw their application upon discovering they must take a drug test, or they take it and fail” and “drug abuse also hinders worker relocation from less productive positions to more productive positions that generally offer higher wages”).

mining), food preparation and service, health care practitioners, health care support, and personal care and service.³⁷¹ The loss of individuals in these jobs due to addiction or illicit fentanyl poisoning has a marked effect on U.S. commerce.

Moreover, when individuals grappling with fentanyl addiction enter the labor market, their productivity is impacted. Researchers with the University of Chicago have determined in an NIH-published study that workers with substance use disorders take nearly 50 percent more days of unscheduled leave than other workers and have an average turnover rate 44 percent higher than the workforce as a whole.³⁷² These workers are also more likely to experience occupational injuries that result in time away from work.³⁷³ Thus, co-workers and other employees—as well as employers—must also bear the economic burden of the PRC’s illicit fentanyl exports.

Additionally, employees with drug use disorders impose higher health insurance and workers’ compensation costs on their employers and other insurance plan members—further distorting the market. In 2016 alone, the Kaiser Family Foundation reported that large employer plans spent approximately \$2.6 billion on addiction-related costs.³⁷⁴ The direct costs associated with health insurance and workers’ compensation claims—and the indirect costs associated with absenteeism, turnover, and lost productivity—thus cost U.S. employers (and, by extension, their other employees) thousands of dollars per employee each year.³⁷⁵

³⁷¹ Julia Paris, et al., *The economic impact of the opioid epidemic*, Brookings Inst. (Apr. 17, 2023), attached as **Exhibit 188**.

³⁷² Eric Goplerud, et al., *A Substance Use Cost Calculator for US Employers With an Emphasis on Prescription Pain Medication Misuse*, *Journal of Occupational and Env’t Med.* (Nov. 2017), attached as **Exhibit 189**.

³⁷³ James W. Price, *A Comparison of Random and Post-Accident Urine Opiate and Opioid Tests*, *Journal of Addictive Diseases* (Mar. 16, 2015), attached as **Exhibit 190**.

³⁷⁴ Cynthia Cox, et al., *A look at how the opioid crisis has affected people with employer coverage*, PETERSON-KFF Health System Tracker (Apr. 5, 2018), attached as **Exhibit 191**.

³⁷⁵ Eric Goplerud, et al., *A Substance Use Cost Calculator for US Employers With an Emphasis on Prescription Pain Medication Misuse*, *Journal of Occupational and Env’t Med.* (Nov. 2017), attached as **Exhibit 189**.

In sum, the PRC's exports of illicit fentanyl to the United States that diminish America's labor force, reduce the competitiveness of American companies, reduce output (including exports), dampen innovation, and result in less competitive industries imposing a negative impact on U.S. commerce in the order of five percent of U.S. GDP.

Housing and Real Estate Markets. The PRC's fentanyl exports also damage the U.S. housing and real estate markets, further burdening U.S. commerce. There is no question that the presence of illicit fentanyl in a community degrades the local housing market and continues to undermine that market for years after. A 2022 study published in the Journal of Real Estate Finance and Economics used data on opioid prescriptions and housing sales in Ohio to assess the impact of opioid use on housing prices.³⁷⁶ The authors concluded that one standard deviation increase in opioid pills dispensed correlated to a 5.8 percent *decrease* in housing appreciation.³⁷⁷ Reinforcing the connection, a complementary study from the Imperial College London found that a *decrease* in opioid usage correlated to an *increase* in housing prices.³⁷⁸ The implications of these studies are clear: the prevalence of illicit fentanyl in a community adversely affects the housing market and home-owners. Further, the housing industry influences U.S. interest rates, which then impacts U.S. commerce, including productivity and output in goods and services. An increase in housing costs leads to lower federal reserve interest rates, and vice-versa

Consumer Finance. The PRC's fentanyl exports directly burden the U.S. consumer finance sector. Congress explicitly named financial institutions among the service industries protected by the Act, and the PRC's unjustifiable and unreasonable exports burden this key portion of U.S.

³⁷⁶ Walter D'Lima & Mark Thibodeau, *Health Crisis and Housing Market Effects - Evidence from the U.S. Opioid Epidemic*, Journal of Real Estate Fin. and Econ. (Jan. 14, 2022) at 735, attached as **Exhibit 192**.

³⁷⁷ *Id.*

³⁷⁸ Claudia Custodio, et al., *Opioid Crisis and Real Estate Prices* (Feb. 21, 2024), attached as **Exhibit 193**.

commerce. The reasons for this are manifold. As multiple studies make clear, fentanyl abuse and poisoning deaths lead to loan defaults and, as a result, higher interest rates for all individuals in the region.³⁷⁹ As discussed in the Journal of Financial and Quantitative Analysis, in just the auto loan industry, the fentanyl-driven opioid epidemic “may be responsible for an additional 80,000 . . . defaults per year, representing \$1.2 billion of outstanding debt. The resulting defaults can also spill over into the \$100 billion auto loan securitization market.”³⁸⁰ This makes the U.S. automotive and related financing sectors weaker and less competitive. Plus, individuals living in areas impacted by illicit fentanyl are subject to higher interest rates and less flexible credit terms, with the impact on U.S. commerce being a reduction in consumer spending, which leads to less domestic industry output and reduced competitiveness in both traded goods and services.

Criminal Justice Costs. The PRC’s fentanyl exports also restrict U.S. commerce by subjecting American companies and individuals to increased tax burdens in the form of heightened criminal justice costs. This is unsurprising considering the documented link by the National Bureau of Economic Research between drug misuse, mental health, and crime—with increased drug use generating “spillover effects on criminal behaviors.”³⁸¹

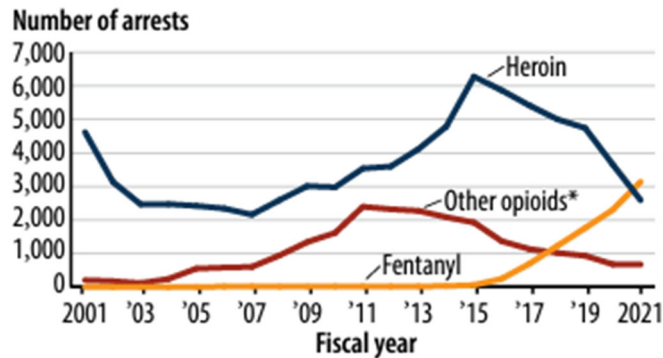
One key driver of criminal justice costs for illicit fentanyl is the number of arrests and related costs of investigation, prosecution, sentencing, and prison time associated with illicit fentanyl trafficking.

³⁷⁹ Mark Jansen, *Spillover Effects of the Opioid Epidemic on Consumer Finance*, Journal of Fin. and Quantitative Analysis (Sept. 2023), attached as **Exhibit 194**; Sumit Agarwal, et al., *The Opioid Epidemic and Consumer Credit Supply: Evidence from Credit Cards* (Aug. 11, 2022), attached as **Exhibit 195**; see also Wenli Li, et al., *The Economic Impact of the Opioid Epidemic*, Fed. Reserve Bank of Philadelphia (2023) at 11, attached as **Exhibit 196**.

³⁸⁰ Mark Jansen, *Spillover Effects of the Opioid Epidemic on Consumer Finance*, Journal of Fin. and Quantitative Analysis (Sept. 2023) at 2,368 (emphasis added) (citation omitted), attached as **Exhibit 194**.

³⁸¹ Dhaval Dave, et al., *Prescription Drug Monitoring Programs, Opioid Abuse, and Crime*, Nat’l Bureau of Econ. Rsch. (Aug. 2018) at 4, attached as **Exhibit 197**.

FIGURE 1
Federal and state arrests by the Drug Enforcement Administration involving heroin, fentanyl, and other opioids, FY 2001–2021



Note: See appendix table 1 for counts.
 *Includes oxycodone, hydrocodone, hydromorphone (Palladone), oxymorphone, opioid treatment pharmaceuticals, opium, and morphine.
 Source: Bureau of Justice Statistics, based on data from the Drug Enforcement Administration, Defendant Statistical System, fiscal years 2001–2021.

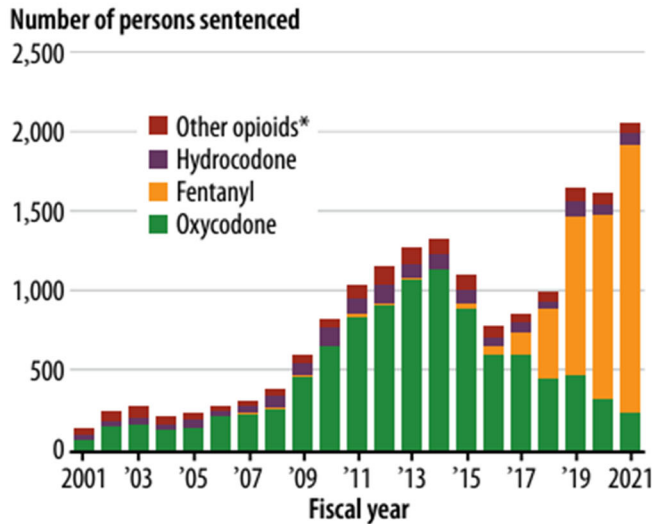
For example, as detailed in the chart above, between fiscal year 2020 and fiscal year 2021, the number of drug arrests made by the DEA for fentanyl increased by 36 percent.³⁸² In 2021, for the first time, the number of arrests made by the DEA for fentanyl *exceeded* the number of arrests for heroin,³⁸³ demonstrating the preeminence of illicit fentanyl as the primary driver of the opioid crisis. This marks a significant increase in arrests for fentanyl, which have been steadily increasing since 2001 with no sign of stopping.³⁸⁴

³⁸² Mark A. Motivans, *Heroin, Fentanyl, and Other Opioid Offenses in Federal Courts, 2021*, Dep’t Justice (July 10, 2024), attached as **Exhibit 198**.

³⁸³ *Id.*

³⁸⁴ *Id.*; see also U.S. Sentencing Comm’n, *QuickFacts: Fentanyl Trafficking*, attached as **Exhibit 199** (noting that in fiscal year 2023 more than 16 percent of all drug trafficking offenses involved fentanyl and that fentanyl trafficking offenses have increased by approximately 245 percent since 2019).

FIGURE 5
Number of persons sentenced for a drug offense involving fentanyl and other pharmaceutical opioids, by drug type, FY 2001–2021



Note: Includes cases where persons were sentenced under U.S. Sentencing Guidelines Chapter Two, Part D (Drug Guidelines). The primary drug is the drug that results in the greatest penalty (when multiple drugs are involved). See appendix table 5 for counts.

*Includes hydromorphone (Dilaudid), opium, morphine, methadone, oxymorphone, and codeine.

Source: Bureau of Justice Statistics, based on data from the U.S. Sentencing Commission, Monitoring File, fiscal years 2001–2021.

A study by the NIH concluded that the total opioid-related criminal justice costs borne by the U.S. taxpayer amounted to \$29.9 billion dollars.³⁸⁵ And the CDC estimated annual criminal justice costs of approximately \$7,000 *per affected person*.³⁸⁶ These costs are borne by every U.S. citizen (including Petitioner’s members) and business and show no signs of decreasing. The increased economic burden on all U.S. individuals and entities through increased taxes creates downward pressure on productivity and output, leading to fewer traded goods and services, and decreased overall U.S. commerce.

³⁸⁵ Sean M. Murphy, *The Cost of Opioid Use Disorder and the Value of Aversion*, Drug and Alcohol Dependence (Dec. 1, 2020) at 6, attached as **Exhibit 169**.

³⁸⁶ Feijun Luo, et al., *State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose — United States, 2017*, Ctrs. for Disease Control and Prevention (Apr. 16, 2021), attached as **Exhibit 200**.

Money Laundering. The PRC’s fentanyl exports also impact U.S. commerce with sophisticated money laundering schemes that accompany fentanyl trafficking,³⁸⁷ involving complex financial operations tacitly supported by the PRC government.³⁸⁸ Indeed, through their participation in the fentanyl trade, PRC organized criminal groups with ties to their government have become the “world’s premier money launderers.”³⁸⁹ As the House Select Committee determined, these financial crimes enable the PRC government to influence international financial systems while damaging U.S. commerce.³⁹⁰ These complicated money funneling schemes enable the transfer of illicit funds into global markets, distorting legitimate financial systems and allowing hostile foreign actors to gain influence. The broader implications of these financial crimes extend beyond the drug trade, threatening the integrity of U.S. financial institutions and further destabilization of the global economy.

VIII. COUNTERMEASURES REQUESTED

The countermeasures requested in this Petition are designed to address the acts, policies, and practices of the PRC, including but not limited to those that that run afoul of the PRC government’s international obligations to prosecute the production and export of illicit fentanyl and fentanyl precursors, combat the trafficking of fentanyl and fentanyl precursors, and cooperate with the United States in eliminating the production and export of illicit fentanyl and precursors. As elaborated above, the PRC’s acts, policies, and practices have unjustifiably and unreasonably burdened and restricted the commerce of the United States in amounts calculated to near \$1 trillion in a single year and five percent of U.S. GDP (not to mention the intangible and immeasurable

³⁸⁷ House Select Committee Report at 32, attached as **Exhibit 1**.

³⁸⁸ *Id.* at 34.

³⁸⁹ *Id.* at 3.

³⁹⁰ *Id.* at 32-38.

price of lost sons and daughters and mothers and fathers). Despite these calculated costs, Petitioner believes that an initial countermeasure level of \$50 billion in annual trade value may be sufficient, when combined with existing countermeasures on the PRC pursuant to the Act, to compel the PRC government to take actions necessary to substantially restrict exports of fentanyl and fentanyl precursors to the United States. However, if no compelling action is taken by the PRC government at this countermeasure level, higher countermeasure levels are justified by the economic damages noted in the Petition resulting from the PRC's acts, policies, and practices.

As detailed in this Petition, the PRC's violations have run the gamut from direct financial incentives in support of exports of illicit fentanyl to direct stakes in companies tied to illicit fentanyl trade. These are added to indirect incentives such as the PRC government's systematic failure to prosecute exporters of illicit fentanyl and precursor manufacturers, failure to leverage the extensive tools at its disposal to prevent export sales of fentanyl, and preferential treatment for online export-oriented marketing communications to outright promotion of the exports of illicit fentanyl. Despite the deep and broad powers that the PRC government has at its disposal to monitor and control its population and economy, the government's efforts to date are a paper-over exercise. While banning illicit fentanyl in its domestic market, the PRC government encourages its export to the United States.

In order to compel the PRC government to take reasonable, actionable, and easily instituted measures to stop the illegal trade of fentanyl from its shores and eliminate the acts, policies, and practices documented above that have unjustifiably and unreasonably burdened U.S. commerce, this Petition proposes the following seven possible countermeasures: (1) adding to the existing PRC tariffs imposed under the Act in 2018 (stemming from countermeasures enacted pursuant to the April 6, 2018 USTR determination regarding the PRC government's technology transfer,

intellectual property, and innovation acts, policies, and practices (“Section 301 IP case”)) a further \$50 billion in revenue collections; (2) tailoring additional tariffs imposed on imports, resulting in \$50 billion in annual tariff revenue, to be placed on PRC goods and services that are currently harming U.S. industries, which could include goods subject to current Section 301 IP case tariffs and/or tariffs imposed pursuant to section 232 of the Trade Expansion Act of 1962, as amended, (“Section 232 case”); (3) blocking the import of certain goods or services from PRC entities in the chemical, biotechnology, pharmaceutical, and/or agricultural sectors or those that otherwise negatively impact U.S. supply chains and growth of U.S. industry; (4) outbound investment restrictions on PRC entities involved in emerging and foundational technologies as identified by the U.S. Government, including biotechnology, pharmaceutical, and/or technology companies; (5) bans on prevalent PRC mobile applications, such as WeChat, Temu, SHEIN, CapCut, and others in order to shift users to U.S. platforms; (6) in conjunction with countermeasures 1 and/or 2, elimination of *de minimis* exemptions for all PRC goods shipments; and (7) requirements that the PRC purchase \$50 billion of U.S. agricultural products and/or U.S. manufactured automobile vehicles.

These nine measures of remedy are designed to be applied in singularity for some or in conjunction with others to create a solution that imposes a cost on the PRC’s unjustified and unreasonable acts, policies, and practices, that countermeasures the harm these acts, policies, and practices have caused, and that impels the PRC to stop the production, shipment, and broader trade of illicit fentanyl from its shores and globally. These seven countermeasures are designed to be applied individually for some or in conjunction with others to create a solution that imposes a cost on the PRC’s unjustified and unreasonable acts, policies, and practices, that addresses the harm

such acts, policies, and practices have caused to U.S. commerce, and compel the PRC government to stop the production and export of illicit fentanyl to the United States.

A. Tariffs and Product Bans

Under the Act, USTR is permitted a broad latitude of actions to address foreign government acts, policies, or practices that are unjustified and unreasonable and burden or restrict U.S. commerce. Actions that USTR is authorized to take include the imposition of tariffs “or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees[,] or restrictions on the services of, such foreign country for such time” as USTR deems appropriate.³⁹¹ Further, USTR may take action against any goods or “economic sector,” without regard to whether the goods or economic sector in question were “involved in the act, policy, or practice that is the subject of such action.”³⁹² In addition to the imposition of fees and other restrictions, the Act also permits USTR, subject to the direction, if any, of the President, to take “all other appropriate and feasible action within the power of the President,” including not only powers with respect to trade but also powers “with respect to any other area of pertinent relations with the foreign country.”³⁹³

To address the PRC’s acts, policies, and practices, USTR could add to (*i.e.* double) the tariffs currently being applied to imports from the PRC stemming from countermeasures enacted under the Section 301 IP case through the addition of the countermeasures proposed here.³⁹⁴ The list of products currently subject to the Section 301 IP case tariffs has been well vetted and subject to a litany of comments and a full range of considerations. Adding to such tariffs will emphasize

³⁹¹ 19 U.S.C. § 2411(c)(1)(B).

³⁹² *Id.* § 2411(c)(3).

³⁹³ *Id.* § 2411(b)(2).

³⁹⁴ *See China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation*, 89 Fed. Reg. 76,581 (U.S. Trade Rep. Sept. 18, 2024) (note of modification of actions), attached as **Exhibit 201**.

to the PRC government the seriousness to which the U.S. Government takes the harms caused by the PRC's acts, policies, and practices on the production and export of illicit fentanyl. Such action should ensure that the PRC government remains steadfast in its efforts to eliminate illicit fentanyl production and trade, rather than turning on and off efforts and cooperation as it has over the past four years.

It is important to note that the implementation of such additional tariffs will not be expected to adversely impact the U.S. economy in the aggregate. As evidence, according to a March 2023 finding by the U.S. International Trade Commission ("USITC") concerning the impacts of the Section 301 IP case tariffs on U.S. economic growth, the USITC found:

Across all sectors that include products covered by section 301 tariffs, the Commission's model estimates that tariffs decreased imports from China by 13 percent on average during 2018 to 2021. Meanwhile, the tariffs increased the price of domestically produced products and the value of domestic production by 0.2 percent and 0.4 percent on average, respectively, during the period.³⁹⁵

Further, according to a finding from the Economic Policy Institute, the 301 IP case tariffs had nothing to do with inflationary increases. The tariffs—implemented in 2018—had little effect on U.S. prices, and inflation only increased after the pandemic recession began in early 2020.³⁹⁶

Given its broad authorities, USTR can also apply countermeasures in the form of tariffs—up to \$50 billion—on select PRC goods and services that are harming U.S. industries. While products subject to such tariffs could include goods subject to the current Section 301 IP case and Section 232 case actions, tariffs could also be placed on certain PRC goods subject to antidumping ("AD") and countervailing duty ("CVD") orders. PRC products subject to AD/CVD orders have

³⁹⁵ See U.S. Int'l Trade Comm'n, *Economic Impact of Section 232 and 301 Tariffs on U.S. Industries* (May 2023) at 23, attached as **Exhibit 202**.

³⁹⁶ See Adam S. Hersh, *Revoking tariffs would not tame inflation*, Econ. Policy Inst. (June 21, 2022), attached as **Exhibit 203**.

been found by the USITC to have injured U.S. industries, and therefore, additional tariffs on these goods should not only help provide additional support to injured U.S. industries and workers, but also compel the PRC government to rectify its acts, policies, and practices concerning exports of illicit fentanyl.

In conjunction with other countermeasures, USTR could also choose to block the import of certain goods or services from PRC entities involved in the chemical, biotechnology, pharmaceutical, technology, and/or agricultural sectors or goods or services that have been determined by the U.S. Government to negatively impact U.S. supply chains and/or compromise the national security of the United States. As noted above, USTR may take action against any goods or any “economic sector,” without regard to whether the goods or economic sector in question were “involved in the act, policy, or practice that is the subject of such action.” For instance, as described in this Petition, PRC chemical companies ship fentanyl precursors abroad, including through the United States, which are subsequently used to produce fentanyl that is brought into the United States. The specific companies subject to the blocks should include those identified by DOJ.³⁹⁷ Other entities and companies could also be subject to product bans where these entities have shared ownership, control, or production relationships with indicted companies. USTR can also look to block product imports from certain PRC companies involved in biotechnology, pharmaceutical, agricultural production, or technology sectors that materially impede the growth or development of similarly situated U.S. companies or those that create national security vulnerabilities for U.S. supply chains.

B. Outbound Investment Restrictions

³⁹⁷ See Dep’t Justice, *Justice Department Announces Eight Indictments Against China-Based Chemical Manufacturing Companies and Employees* (Oct. 3, 2023), attached as **Exhibit 132**.

The White House has already taken action to implement a program that would require the notification and/or restriction of certain outbound investments and other transactions by U.S. persons in “covered activities” related to the semiconductors and microelectronics, quantum information technologies, and artificial intelligence systems sectors.³⁹⁸ While this program has yet to be implemented, USTR could look to include additional industries such as those identified in congressional legislation (*e.g.*, hypersonics, satellite-based communications, and LiDAR remote sensing technology). Further, USTR could seek to apply outbound investment restrictions on PRC entities involved in emerging and foundational technologies, as identified by the U.S. Government, including such technologies identified in the biotechnology, pharmaceutical, and broader technology sectors.

C. Mobile Application Bans

All three branches of the U.S. Government have taken some action to address the national security risks that arise as a result of the operations and ownership of the PRC mobile applications, such as TikTok. However, other PRC mobile applications continue to operate in the United States. These include WeChat, Temu, SHEIN, and CapCut, among others. USTR should consider a broad or limited ban on these or any other PRC mobile apps. Such an action, done in combination with other countermeasures, could be effective motivation for the PRC to commit to sustained action to excise and end illicit fentanyl production and export.

D. Elimination of All *de Minimis* Shipment Exemptions

Through Executive action, the Biden Administration has denied the application of the *de minimis* import exception for any shipment containing products covered by tariffs imposed under

³⁹⁸ See White House, *Executive Order on Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern* (Aug. 9, 2023), attached as **Exhibit 204**.

Section 201 or 301 of the Trade Act of 1974, as amended, or Section 232 of the Trade Expansion Act of 1962.³⁹⁹ The issuance of this Executive action was a positive step in addressing the flow of fentanyl and fentanyl precursors into the United States, given that PRC chemical manufacturers exploit the *de minimis* exemption and lower customs screening standards to conceal shipments of illegal and dangerous products. Further regulating such shipments by ending the *de minimis* exception for all PRC-origin goods would help increase CBP scrutiny of imports. This should be done in conjunction with the tariff countermeasures proposed above.

E. Purchase Requirements

In order to redress the PRC's illicit fentanyl exports, USTR could enter into agreements with the PRC government that compel the additional purchase of \$50 billion of U.S. agricultural goods. Such an agreement could also apply to a requirement for the purchase of U.S. manufactured automobile vehicles. In matters of fair play, where the U.S. Government has sought to address the PRC's unfair trade practices, the PRC government has habitually countered unfairly by restricting access to its markets for U.S. agricultural goods, among other goods. Accordingly, if the PRC government fails to end its exports of illicit fentanyl to the United States, the USTR could impose a countermeasure that requires the PRC to expand its market to U.S. agricultural products, and potentially U.S. vehicles.

IX. CONCLUSION

Through provision of economic benefits, interference with U.S. prosecutions and investigations, and intentional non-enforcement of its anti-trafficking policies, the PRC has—for over a decade—promoted the flow of deadly illicit fentanyl into the United States by aggressively

³⁹⁹ See White House, *FACT SHEET: Biden-Harris Administration Announces New Actions to Protect American Consumers, Workers, and Businesses by Cracking Down on De Minimis Shipments with Unsafe, Unfairly Traded Products* (Sept. 13, 2024), attached as **Exhibit 21**.

supporting and failing to adequately regulate its exports and utilize requisite enforcement mechanisms. The PRC government, through the provision of economic incentives, interference with U.S. prosecutions and investigations, and failure to implement adequate laws and enforcement mechanisms has, for over a decade, promoted the flow of deadly poison into the United States. Over the last five years, efforts to resolve this issue via diplomatic channels has proved to be unsuccessful. Over the last five years, efforts to resolve this issue via diplomatic channels have proven unsuccessful. The PRC government has repeatedly promised to crack down on fentanyl producers and work with the U.S. Government to stem the tide, but its promises have been disingenuous, fleeting, and, in any event, inadequate to the task at hand. That nearly all of the fentanyl that is killing Americans in droves come from the PRC is a universally accepted fact and proves this point. Still, the PRC continues to promote fentanyl exports, thwart U.S. authorities, and turn a blind eye to conduct that is unlawful, all with impunity. While this happens, Americans are dying, American communities are devastated, and American industries bear the heavy burden on U.S. commerce in terms of increased taxes, diminished workforce, lower productivity and output, dampened innovation, and lost market opportunities. The consequential impact on U.S. GDP is, again, significant—estimated at five percent.

The CCP presides over the most sophisticated surveillance state in human history. It has represented to the Supreme Court that it exercises complete control over foreign trade. The PRC government absolutely can, but has yet to, eradicate the global scourge that is its exports of illicit fentanyl because it does not see doing so as in its interest. In fact, the converse is true. The PRC knows quite well that its totally unjustifiable and unreasonable acts, policies, and practices of allowing fentanyl exports are gravely harming the U.S. economy and significantly burdening U.S. commerce. There are ample public reports that confirm these facts. To emphasize, the PRC

government will not change its behavior without the appropriate leverage by the U.S. Government, and of course the U.S. Government cannot opt out of exerting maximum pressure on this issue. It is the U.S. Government that has been entrusted by the American people to protect them against foreign trading partners' unjustified and unreasonable acts, policies, and practices, and in the PRC's case with respect to illicit fentanyl exports, it is the immense harm incurred by the United States through the deaths of the hundreds of thousands of its citizens and resultant impact on U.S. commerce and U.S. GDP.

This is why this Petition is so important. Within the U.S. Government, USTR is uniquely positioned to make an impact by initiating the requested investigation under the Act, and being prepared to move forward with countermeasures sufficient to incentive the PRC to end its surge of illicit fentanyl exports that are undermining U.S. international rights and burdening U.S. commerce, as described.

To underscore, the Act's purpose is to protect the American people from unjustified and unreasonable foreign actions that burden and restrict U.S. commerce. That is precisely what is at issue here. USTR is statutorily authorized to rise to this challenge and end the economic toll and human disaster that the PRC-fueled fentanyl crisis is having on American families, communities, and economic interests. The PRC's unjustifiable and unreasonable acts, policies, and practices in support of illicit fentanyl production and exports not only burden and weaken U.S. commerce, they destroy lives and impose staggering costs on the U.S. economy and the public at large. Petitioner respectfully implores USTR to act and act quickly to investigate the PRC government's practices and impose countermeasures to compel the PRC government to end its harmful acts, policies, and practices or, at a minimum, enable the U.S. Government to recover the economic costs resulting from the PRC government's actions, consistent with 19 U.S.C. § 2411. Should the U.S.

Government impose countermeasures that generate tariff revenue, Petitioner recommends that some of that revenue handled by the Department of Treasury be apportioned to each U.S. state (based on a reasonable allocation formula) to help offset the economic costs they have incurred to combat fentanyl. Every day, 200 American lives are lost due to the PRC's illicit fentanyl exports. Petitioner thus ask that USTR initiate this investigation expeditiously to help address these issues.

Petitioner appreciates the USTR's attention to this matter. Please contact the undersigned with any questions regarding this Petition.

Respectfully submitted,

/s/ Nazak Nikakhtar

Honorable Nazak Nikakhtar
Nova J. Daly
Tatiana Sainati
Rebecca J. Fiebig
Krystal B. Swendsboe
Natalia Szlarb
Christina Lucas
Wiley Rein LLP
2050 M Street NW
202.719.7000

Counsel to Petitioner Facing Fentanyl, Inc.
www.facingfentanylnow.org
<http://www.ccpchemicalwar.org/>

EXHIBIT LIST	
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1	Select Comm. on the Strategic Competition between the United States and the Chinese Communist Party, <i>The CCP's Role in the Fentanyl Crisis</i> , 118th Cong., 1 st Sess. (2024)
2	Ray Donovan, former Chief of Operations, Drug Enf't Admin., <i>Ray Donovan Congressional Testimony</i>
3	Off. of Rep. Yadira Caraveo, <i>Congresswoman Caraveo Pushes for Aggressive Action Against Chinese-Derived Fentanyl</i> (Aug. 4, 2023)
4	Nev. Cnty. Pub. Health, <i>Fentanyl and Opioid Overdose Prevention</i>
5	NYC Health, <i>What is Fentanyl</i>
6	Starts with One, <i>What You Need to Know About Fentanyl</i>
7	NYU Sch. of Global Pub. Health, <i>More than 80% of People Who Inject Drugs Test Positive for Fentanyl —But Only 18% Intend to Take It</i> (May 31, 2023)
8	Ctr. for Disease Control and Prevention, <i>SUDORS Dashboard: Fatal Drug Overdose Data, Overall</i> (final data updated Feb. 26, 2024)
9	Nat'l Inst. On Drug Abuse, <i>Drug Overdose Deaths: Facts and Figures</i>
10	Ctr. for Disease Control and Prevention, <i>SUDORS Dashboard: Fatal Drug Overdose Data, New Hampshire</i> (final data updated Feb. 26, 2024)
11	Teresa Winstead, et al., <i>Unmet Needs, Complex Motivations, and Ideal Care for People Using Fentanyl in Washington State: A Qualitative Study</i> , Addictions, Drug & Alcohol Inst., Univ. Wash. (June 2023)
12	Brian Mann, <i>Critics Wary as China Promises Tighter Fentanyl Controls</i> , NPR (Aug. 30, 2024)
13	John Coyne and Liam Auliciems, <i>No, China Isn't Really Suppressing Its Production Of Fentanyl Precursors</i> , Australian Strategic Policy Inst. (Aug. 23, 2024)

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14	<i>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</i> , Dec. 20, 1988, 1582 U.N.T.S. 95, pmb1.
15	Dep't Health and Human Serv., Ctrs. for Disease Control and Prevention, <i>U.S. Overdose Deaths Decrease in 2023, First Time Since 2018</i>
16	Dep't Justice, <i>Attorney General Merrick B. Garland Delivers Remarks Announcing Eight Indictments Against China-Based Chemical Manufacturing Companies and Employees</i> (Oct. 3, 2023)
17	Drug Enf't Admin., <i>DEA Joins with Families Across the Country to Increase Awareness about the Dangers of Fentanyl</i> (Nov. 18, 2022)
18	Portland Police Bureau, <i>PPB Releases New Podcast on Dangers of Fentanyl (Photo)</i> (May 18, 2022)
19	Zongyuan Zoe Liu, <i>What Is China's Role in Combating the Illegal Fentanyl Trade?</i> , Council on Foreign Relations (Sept. 12, 2024)
20	Drug Enf't Admin., <i>Facts About Fentanyl</i>
21	White House, <i>FACT SHEET: Biden-Harris Administration Announces New Actions to Counter the Scourge of Fentanyl and Other Synthetic Drugs</i> (July 31, 2024)
22	White House, <i>Statement from Homeland Security Advisor Dr. Liz Sherwood Randall on New Actions to Combat Global Illicit Drug Manufacturing and Trafficking</i> (June 18, 2024)
23	Vanda Felbab-Brown, <i>China's Role in the Fentanyl Crisis</i> , Brookings Inst. (Mar. 31, 2023)
24	Letter from Sen. Charles Schumer, S. Majority Leader, to Sec'y of State Antony Blinken, Atty. Gen. Merrick Garland, and Off. of Nat'l Drug Control Policy Dir. Dr. Rahul Gupta (Sept. 12, 2024); Press Release, S. Majority Leader Chuck Schumer, <i>Schumer: New Agreement With China On Fentanyl Could Be Major Step Forward To Curb Opioid Crisis In New York, But Now We Need To Hold China Accountable And Make Sure There Is Compliance and Senator Details New Deal With China To Crack Down On Illicit Fentanyl And Vows To Watch Like A Hawk For Progress</i> (Nov. 16, 2023)

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26	Rana Mitter & Elsbeth Johnson, <i>What the West Gets Wrong About China</i> , Harvard Bus. Review
27	Dep't State, <i>Military-Civil Fusion and the People's Republic of China</i>
28	Stanford Univ. Ctr. on China's Econ. and Institutions, <i>China's Corporate Social Credit System and Its Implications</i> (Jan. 15, 2023)
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31	Trevor Hunnicutt, <i>Top US, China officials to meet on military, Taiwan, fentanyl</i> , Reuters (Aug. 27, 2024)
32	S. Appropriations Comm., <i>Senator Collins: The Fentanyl Crisis 'Begins and Ends in China'</i> (May 16, 2023)
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34	United Nations Off. on Drugs and Crime, <i>April 2019 – China: Announcement on Place All Fentanyl-Related Substances under National Control</i> (Apr. 2019)
35	Morgan Ortagus, <i>China's Empty Promises in the South China Sea</i> , Dep't State (Sept. 27, 2020)
36	Claire Klobucista & Mariel Ferragamo, <i>Fentanyl and the U.S. Opioid Epidemic</i> , Council on Foreign Relations (Dec. 22, 2023)
37	Reserved
38	Drug Enf't Admin., <i>DEA Administrator on Record Fentanyl Overdose Deaths</i>

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39	Ty Schepis, <i>Dozens of US adolescents are dying from drug overdoses every month – an expert on substance use unpacks the grim numbers with 3 charts</i> , Tex. State Univ. (Nov. 28, 2023)
40	Jasmine Zapata, <i>Public Health Advisory: Fentanyl Increasingly Present in Overdose Deaths in Wisconsin</i> , Wis. Dep’t of Servs. (Sept. 13, 2024)
41	Reserved
42	<i>Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation</i> , 85 Fed. Reg. 3,741 (Dep’t Commerce Jan. 22, 2020)
43	<i>Countering Illicit Fentanyl Trafficking</i> , Hearing Before the S. Comm. on Foreign Relations, 118th Cong. (2023) (testimony of Dr. Rahul Gupta)
44	<i>Tackling Fentanyl: The China Connection</i> , Hearing Before the Subcomm. on Africa, Glob. Health, Glob. Human Rights, and Int’l Orgs. of the H. Com. on Foreign Affs., 115th Cong. (2018) (testimony of Mr. Paul E. Knierim)
45	Comm’n on Combating Synthetic Opioid Trafficking, <i>Final Report</i> (Feb. 8, 2022)
46	<i>Banking Committee Introduces Bipartisan Bill to Address Fentanyl Crisis</i> , S. Comm. on Banking, Hous. & Urb. Aff., 118 th Cong. (2023)
47	Caitlin Yilek, <i>Joni Ernst says China is “intentionally poisoning” Americans amid fentanyl crisis</i> , CBS News (Feb. 10, 2023)
48	Bill Cassidy & Maggie Hassan, <i>As a Democrat and a Republican, we are united in warning China’s Xi on fentanyl, fair trade</i> , Fox News (Oct. 27, 2023)
49	H. Select Comm. on Strategic Competition between the United States and the Chinese Communist Party, <i>Investigation Findings: The CCP’s Role in the Fentanyl Crisis</i> (Apr. 16, 2024)
50	Drug Enf’t Admin., <i>National Drug Threat Assessment 2024</i> (May 9, 2024)
51	Cong. Rsch. Serv., <i>China Primer: Illicit Fentanyl and China’s Role</i> (Feb. 20, 2024)

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54	Qian Lang, <i>New Rules Let China's State Security Police Check People's Devices</i> , Radio Free Asia (May 8, 2024)
55	H. Select Comm. on Strategic Competition between the United States and the Chinese Communist Party, <i>Select Committee Unveils Findings into CCP's Role in American Fentanyl Epidemic—Report & Hearing</i> (Apr. 16, 2024)
56	Maia Szalavitz, <i>How Fentanyl Drove a Tsunami of Death in America</i> , New York Times (Sept. 27, 2024)
57	Lynn Arditi, <i>Stimulant users caught up in fatal 'fourth wave' of opioid epidemic</i> , NPR (July 9, 2024)
58	Drug Enf't Admin., <i>Year in Review: DEA Innovates to Fight Fentanyl</i> (Jan. 18, 2024)
59	Governor Gavin Newsom, <i>California Seized Enough Fentanyl to Potentially Kill the Entire Population of North America, Twice</i>
60	Drug Enf't Admin., <i>One Pill Can Kill</i>
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62	Kyle Dunphey, <i>DEA forecasts a record-breaking year for fentanyl seizures in Utah</i> , Utah News Dispatch (July 4, 2024)
63	Joseph H. Price, <i>The Trade and Tariff Act of 1984: An Analytical Overview</i> , 19 INT'L L. 321 (1985)
64	Jerry Cohen & Matthew McCullough, <i>International Trade Practice</i> (2024 ed.)
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67	<i>The Year in Trade 2022: Operation of the Trade Agreements Program 74th Rep.</i> , USITC Inv. No. 163-002 (Dec. 1, 2023)
68	Constitution Annotated, <i>Artl.S8.C3.2, Meaning of Commerce</i>
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72	U.S. Trade Rep., <i>Section 301 Investigation: Report on India’s Digital Services Tax</i> (Jan. 6, 2021)
73	U.S. Trade Rep., <i>Findings of the Investigation into China’s Acts, Policies, And Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974</i> (Mar. 22, 2018)
74	Fred Dews & Vanda Felbab-Brown, <i>The Killing Drugs Podcast: Synthetic Opioids Around the World</i> , “The fentanyl pipeline and China’s role in the US opioid crisis,” Official Transcript, Brookings Inst. (Oct. 1, 2024)
75	Brian Mann & Emily Feng, <i>Report: China continues to subsidize deadly fentanyl exports</i> , NPR (Apr. 16, 2024)
76	Geoff Mulvihill, <i>China’s agreement expected to slow flow of fentanyl into US, but not solve overdose epidemic</i> , AP News (Nov. 16, 2023)
77	Drug Enf’t Admin., <i>National Drug Threat Assessment 2020</i> (Mar. 2021)
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80	White House, <i>FACT SHEET: Biden-Harris Administration Continues Progress on Fight Against Global Illicit Drug Trafficking</i> (Nov. 16, 2023)
81	News Release, The Heritage Found., <i>Heritage Unveils Critical Report Exposing China’s Rile in Fueling America’s Fentanyl Crisis</i> (Sept. 9, 2024)
82	Bernd Debusmann Jr., <i>Can Joe Biden’s plan stop the flow of fentanyl to the US</i> , BBC (Nov. 21, 2023)
83	<i>China says no illegal fentanyl trafficking between it and Mexico</i> , Reuters (Apr. 10, 2023)
84	Dep’t Com., <i>Commerce Department to Add Nine Chinese Entities Related to Human Rights Abuses in the Xinjiang Uighur Autonomous Region to the Entity List</i> (May 22, 2020)
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94	<i>Depositary</i> , U.N. Treaty Collection
95	Oct. 13, 2024 screenshot of three fentanyl and fentanyl precursor product codes receiving a VAT refund rate percentage of 13 percent
96	Oct. 13, 2024 screenshot of ANPP code receiving a VAT refund percentage of 13 percent
97	Oct. 13, 2024 screenshot of NPP code receiving a VAT refund percentage of 13 percent
98	Oct. 13, 2024 screenshot of Other fentanyl and their derivatives (29333400) code receiving a VAT refund percentage of 13 percent
99	Oct. 13, 2024 screenshot of Other fentanyl and their derivatives (29349200) code receiving a VAT refund percentage of 13 percent
100	Oct. 13, 2024 screenshot of several fentanyl and fentanyl precursors (291333300) code receiving a VAT refund percentage of 13 percent
101	2018-2019 screenshot of several fentanyl and fentanyl precursors (291333300) code receiving a VAT refund percentage of 10 percent
102	2018-2019 screenshot of several fentanyl and fentanyl precursor product codes receiving a VAT refund rate percentage of 10-13 percent
103	U.S. Trade Rep., <i>Fact Sheet: WTO Case Challenging Chinese Subsidies</i>
104	List of enterprises (projects) to be supported by Minhang District's foreign trade stabilization policy projects in 2022
105	Shanghai Ruizheng Chemical Technology Co., Ltd.'s Company Page on Guidechem

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106	Baidu Maps result for Shanghai Ruizheng Chemical Technology Co., Ltd.
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124	HBBenton 2020 contact page
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126	Screenshot of HBBenton email on Protonitazene.com
127	CNinfo page for Zhejiang Netsun
128	Prospective Eyes Personal Profile on Duo Mingqing
129	Prospective Eyes Personal Profile on Yu Yi
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142	Screenshot of Zhengzhou Lingzhiyue Technology Co., Ltd.'s updated fentanyl intermediary stock
143	Screenshot of a ChemicalBook listing for protonitazene
144	Screenshot of a ChemicalBook listing for xylazine
145	Screenshot of a Guidechem listing for isotonitazene
146	Screenshot of a Trade Asia listing for isonitazene
147	Screenshot of fentanyl product listings from Anhui Zhongda Biotechnology Co., Ltd.

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148	Screenshot of Protonitazene website listing
149	Screenshot of Trade Asia page stating “Don’t worry about customs issues”
150	Screenshot of Carfen for sale by Ficher Chem Co. Ltd.
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