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## A New Approach to Counternarcotics Supply-Side Policy

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# Contents

<b>1. EXECUTIVE SUMMARY</b>	<b>1</b>
A new target for counternarcotics policy	1
The synthetic revolution in illicit drugs	2
Economic statecraft	2
A new approach	4
Calculating border adjustments and border tolls	5
<b>2. ECONOMIC STATECRAFT</b>	<b>6</b>
Carbon Border Adjustment Mechanisms	8
Drug policy prior to prohibition	9
<b>3. ECONOMIC STATECRAFT AND FENTANYL</b>	<b>10</b>
Analogues and enforcement: The shortcomings of the single convention	10
Deficits in governance: China and Mexico	13
Addressing deficits in governance: the United States	16
The fentanyl supply chain	20
<i>Networks</i>	21
Cartels versus networks	23
Cartels <i>and</i> networks	26
<b>4. A NEW APPROACH TO COUNTERNARCOTICS POLICY</b>	<b>27</b>
Supply-side counternarcotics objectives	28
Outlining a new approach	28
Primary interventions: Formal linkage	29
<i>Negotiation linkage</i>	30
<i>Advantages of linkage</i>	32
Secondary interventions: Border adjustments and border tolls	32
<i>Border adjustments</i>	32
<i>Advantages of border adjustments</i>	32
<i>Border tolls</i>	33
<i>Advantages of border tolls</i>	34
Tertiary interventions: smart sanctions	34
Economic statecraft requires enhanced data collection and analysis	37
Regional dashboards	39
<b>5. CONCLUSION</b>	<b>40</b>
Appendix A: Trade Authorities and Their Recent Application	41
Appendix B: Review of Current counternarcotics sanctions	43

## About the Author

**Kathleen J. Frydl** holds a Ph.D. in history and specializes in American political development in the twentieth century. Her published work includes two books: the award-winning *The GI Bill* (2009), and *The Drug Wars in America: 1940-1973*, named one of Vox’s “Best Books We Read in 2014.” Her work on government response to “disorder” extends beyond illegal drugs to include kindred subjects like kidnapping (published in *Studies in American Political Development*) and foundlings (published in the *Journal of Policy History*). Writing for a general audience, her work has appeared in *Vox*, *Dissent*, *The American Prospect*, and the *Washington Monthly*. Her next book, *Liberalism and the Reinvention of the Modern Corporation*, will be published in 2025 by Oxford University Press.

# 1. Trade not war: Executive summary

According to a joint study conducted by Stanford University and the medical journal *The Lancet*, the opioid crisis is on track to claim 1.2 million U.S. lives in this decade. To better respond to this first-order public health crisis, this white paper proposes an alternative approach to international supply-side counternarcotics policy designed to reduce fentanyl-related overdose deaths.

## A new target for counternarcotics policy

As Thomas R. Dye argues, policy models should “identify what is significant.”<sup>1</sup> This is the most crucial of all stages, Dye explains, given that “deciding what will be the problems is even more important than deciding what will be the solutions.”<sup>2</sup>

This white paper nominates the regulatory and other failures of governance that facilitate the traffic in illegally manufactured fentanyl as the appropriate target for U.S. supply-side counternarcotics policy. Most crucially, countries without established and enforced drug-production rules that fail to govern chemically similar “analogues,” and without established and enforced “know-your-customer” provisions for the transport of drugs or their precursors, tolerate *deficits in governance* which render them susceptible to large-scale traffic in illegally manufactured fentanyl. The international counternarcotics treaties currently relied upon as a basis for drug policy either do not address, or do not adequately respond to, these failures of governance. A counternarcotics policy directed at governments differs markedly from the current approach to international supply-side policy, which assigns responsibility to Mexican criminal organizations and relies on law enforcement as the appropriate response. Notably, as several impartial reviews conducted by the Government Accountability Office and Congressional Research Service observe, counternarcotics policy premised on enforcement against criminal targets has gone without an evaluation “measuring impact, not output.”<sup>3</sup> Equally significant, empirical analyses of drug enforcement suggest that drug traffickers respond to these interventions with competitive adaptation, leaving their networks more resilient and, in some cases, more autonomous.<sup>4</sup>

The counternarcotics framework offered here also differs from proposals put forward by drug policy reformers who identify demand for illicit drugs as most significant and, in response, propose a variety of interventions to diminish or more safely satisfy that demand, measuring the effects of these interventions on the reduction of overdose deaths. These crucial interventions notwithstanding, drug supply remains an urgent question for counternarcotics policy. Contrary to a standard narrative, illegally manufactured fentanyl did not appear in U.S. markets in response to demand among opioid users. Although Chinese and Mexican officials remonstrate their American counterparts by insisting that the demand for drugs lies at the heart of the opioid epidemic, research demonstrates that the market for fentanyl specifically is “*supply-led*”: that is, users would prefer an opioid other than fentanyl.<sup>5</sup> Fentanyl is an efficiency gain for traffickers and a highly unreliable and dangerous product for its users. Additionally, the harm-reduction efforts supported by many drug reformers do little to reduce drug exposure, another key driver of overdose deaths.

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1. Thomas R. Dye, *Understanding Public Policy*, 11<sup>th</sup> edition (New Jersey: Prentice Hall, 2005): 28.

2. *Ibid.*, 32.

3. Quote from *Ibid.*, 333. For discussion of these reviews and citations, see “Cartels vs. Networks.”

4. Phrase is from sociologist Michael Kenney’s work, [From Pablo to Osama](#), in which he observes “competitive adaptation” in cocaine traffic in Colombia. For discussion and citations, see “Cartels vs. Networks.”

5. For discussion and citations, see “A New Approach.”

The model set forward here adopts elements of both current counternarcotics policy and the agenda of drug reformers: Supply matters, and so too does the crucial outcome of reducing overdose deaths.

## The synthetic revolution in illicit drugs

A cheap and incredibly potent drug, fentanyl is the most devastating component of the “revolution toward synthetics,” or the move to an illicit drug market dominated by drugs made entirely from man-made components.<sup>6</sup> Because of its unique features, illegally manufactured fentanyl has been identified by leading experts as a pointed challenge to current supply-side counternarcotics policy. In April 2023, Jonathan Caulkins and Peter Reuter argued that the small amounts of fentanyl needed to produce numerous batches of potentially lethal opioids undermined the traditional goal of supply-side policy: interdict supply to raise the street price of drugs.<sup>7</sup> The members of the bipartisan United States Commission on Combating Synthetic Opioid Trafficking agreed, noting that fentanyl and other synthetics have a “confounding” effect on “traditional efforts” intended to “reduce supply and raise prices.”<sup>8</sup>

More than just the features of fentanyl hinder the goals of traditional supply-side policy. The illicit production of fentanyl currently centered in Mexico is *networked* at crucial points: independent brokers who manage importation of precursor drugs, outsourced and loosely coordinated networks involved in fentanyl synthesis, and outsourced and more closely coordinated traffic of fentanyl across the border. These networks are designed to withstand interdiction of supply as well as the arrest of key leaders. In fact, drug trafficking networks exist and can thrive in the absence of large-scale organized crime, as is the case in modern day cocaine traffic sourced to Colombian networks. A policy response designed to dismantle drug trafficking organizations does not necessarily achieve, or even address itself to, supply-side counternarcotics objectives.

## Economic statecraft

In the place of a current supply-side policy stymied by the logistics of fentanyl and the organization of drug traffic, this white paper proposes an alternative approach targeting governments by means of “economic statecraft,” a term of art to describe the use of economic tools as “instruments of politics” to “get others to do what they would not otherwise do.”<sup>9</sup>

Notably, this alternative scheme is focused on nation-states, not criminals, as the appropriate target of policy. The shift is both appropriate and advantageous. Compared to criminals, governments respond in desirable ways to incentives and sanctions; they are uniquely situated to effect the structural change needed to influence the trafficking networks operating within their jurisdiction. At the same time, this alternative scheme extracts international counternarcotics policy from the routine work of diplomacy, where it is subordinated

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6. Remarks of Vanda Felbab-Brown in “Mexican Cartels, Fentanyl, and the Global Synthetic Drugs Revolution,” available at <https://www.youtube.com/watch?v=B3okEVwhUDQ>.

7. Jonathan Caulkins and Peter Reuter, “Stopping Fentanyl at the Border Won’t Work: We Must Reimagine Drug Law Enforcement,” April 17, 2023, <https://www.scientificamerican.com/article/stopping-fentanyl-at-the-border-wont-work-we-must-reimagine-drug-law-enforcement/>.

8. United States Commission on Combating Synthetic Opioid Trafficking: Final Report, p.xi. [https://www.rand.org/content/dam/rand/pubs/external\\_publications/EP60000/EP68838/RAND\\_EP68838.pdf](https://www.rand.org/content/dam/rand/pubs/external_publications/EP60000/EP68838/RAND_EP68838.pdf).

9. David A. Baldwin, *Economic Statecraft*, (Princeton: Princeton University Press, 2020 edition): p1.; p.7. Jean-Marc F. Banchard and Norrin M. Ripsman elaborate: “Economic statecraft refers to an attempt by a sender state to influence a target state either to do something it would not ordinarily do or to forgo an action that it would otherwise engage in, by the manipulation of the market in a manner that provides economic benefits to states that comply and/or imposes economic penalties on those who fail to comply.” Jean-Marc F. Banchard and Norrin M. Ripsman, *Economic Statecraft and Foreign Policy: Sanctions, Incentives, and Target State Calculations*, (London: Routledge Press, 2013): 5.

to other urgent matters and held hostage to a classic “principal-agent problem”: other governments unwilling or incapable of acting on behalf of American counternarcotics priorities.

The deficits in governance fueling the traffic in illegally manufactured fentanyl are amplified by the opportunities furnished by a world connected through trade and travel. Researchers recently found “that fentanyl smuggled via legal imports killed approximately 15,000-20,000 Americans per year over the 2017-2020 period,” accounting for “30-40% of all opioid deaths over these years.” They conclude that “fentanyl smuggling represents an important new external cost of trade.”<sup>10</sup> Significantly, they stress that imports from places other than Mexico and China account for most of the overdose-import relationship, suggesting that traffickers in Mexico and China often route contraband destined for the United States through other countries and that “drug smuggling is more ubiquitous and diverse than previously realized.”<sup>11</sup>

People crossing the border at legal ports of entry represent the other major artery of fentanyl traffic. When analysts look to drug seizures to determine patterns of drug traffic, they find that most fentanyl seizures (over 90 percent) take place at these ports or their interior vehicle checkpoints. In comparison, migrants crossing the border illegally account for less than 0.5 percent of all fentanyl seizures.

When paired with deficits of governance, the relation between drug traffic and the movement of goods and people over the border—characterized here as *structural interdependence*—makes possible unilateral action in keeping with the global architecture of trade. For example, efforts to curb global emissions using trade policy rely in part on structural interdependence: Trade is a major driver of global emissions, primarily through international shipping, which accounts for 90 percent of all global trade channels.<sup>12</sup> Based on this structural interdependence, the EU recently imposed a requirement on importers of goods from countries without an effective carbon-pricing scheme, a deficit of governance they view as in urgent need of compensation. Specifically, importers must purchase “carbon border adjustment mechanism” or CBAM certificates—to “pay the difference between the carbon price paid in the country of production and the price of carbon allowances” in the EU.<sup>13</sup>

Crucially, border adjustments are calculated to rectify disparities—not impose punishment. Because they balance rather than bias trade, border adjustments conform to global agreements that prioritize transparency and fairness. Designing a fentanyl border adjustment to comply with these agreements optimizes policy leverage without provoking retaliation, providing a template to sustain counternarcotics policy beyond the preferences of any one person or political party. I strongly urge treaty-compliant border adjustments and recommend the calculation of border tolls following similar principles of transparency and fairness.

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10. A reviewer points out that the supply of several illegal drugs might also be considered an “external cost of trade,” and I agree—see Kathleen J. Frydl, *The Drug Wars in America, 1940-1973*, (New York: Cambridge University Press, 2013). But none of these supply chains has been as lethal as fentanyl; the catastrophic overdose deaths related to the drug undoubtedly motivated researchers discussed in *passim* to measure its cost.

11. Timothy J. Moore, William W. Olney, and Benjamin Hansen, “Importing the Opioid Crisis? International Trade and Fentanyl Overdoses,” NBER Working Paper 31885, <http://www.nber.org/papers/w31885>.

12. International Maritime Organization, “Introduction,” available at <https://www.imo.org/About/>.

13. European Parliament News, “Deal reached on new carbon leakage instrument to raise global climate ambition,” December 13, 2022, available at <https://www.europarl.europa.eu/news/en/press-room/20221212IPR64509/deal-reached-on-new-carbon-leakage-instrument-to-raise-global-climate-ambition>.

## A new approach

This proposal links the deficits of governance driving production of illegally manufactured fentanyl to the structural interdependence between illegally manufactured fentanyl and trade and travel.<sup>14</sup> In effect, this linkage reconceptualizes the borders of the United States as an instrument of accountability for source or transit countries to rectify their deficits in governance, as well as a data collection site to verify that these efforts result in desirable supply-side outcomes.

In considering forms of economic statecraft, this white paper utilizes the continuum of care first delineated by the Institute of Medicine: primary (prevention); secondary (early detection and management); and tertiary (mitigation).<sup>15</sup> As a primary intervention, I propose bringing revised or existing trade agreements to bear on the regulatory inadequacies—or deficits in governance—that facilitate large-scale production and transit of illegally manufactured fentanyl or its precursors. As a secondary intervention, I argue for both border adjustments and border tolls calculated to level the playing field between well-regulated and poorly regulated drug markets that serve as source or transit countries. Finally, as a tertiary step, I add “smart” sanctions to reinforce the discrete and well-identified objectives of U.S. supply-side policy.

Specifically, I urge U.S. policymakers to:

- **consider enforcement linkage**
  - establish that trade-distorting tariffs applied to countries without an “analogue” (chemically similar) drug component to their drug regulatory scheme, and/or without sufficient drug regulatory enforcement, and/or without established and enforced “know-your-customer” provisions for the transport of drugs or their precursors qualify under the “general exception” to “most favored nation” status found in Article XX of the World Trade Organization;
  - use the national security discretion available under the Trade Expansion Act of 1962 to impose border adjustments on imports from countries that qualify under the general exception and have been identified as a major source or transit hub for non-medical production of fentanyl, fentanyl analogues, and/or their precursors—and to raise or lower adjustments based on progress made in achieving identified outcomes;
  - impose a border-crossing toll at legal ports of entry (a person-centered border adjustment)—and raise or lower fees based on progress made in achieving identified outcomes.
- **consider negotiation linkage**
  - For example, negotiate future regional trade agreements signed by the U.S., Mexico, and Canada to import and update the obligations of existing drug control treaties and add analogue, enforcement, and know-your-customer components as part of a sector-specific chapter on drugs, with monitoring and enforcement powers similar to the labor provision of the recently ratified U.S.-Mexico-Canada Agreement.<sup>16</sup>

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14. For literature review, see Giovanni Maggi, “Using Language of Issue Linkage,” *The Handbook of Commercial Policy* (K. Bagwell and R.W. Staiger, eds.), available at [https://economics.yale.edu/sites/default/files/2022-10/IssueLinkageDraft\\_041216.pdf](https://economics.yale.edu/sites/default/files/2022-10/IssueLinkageDraft_041216.pdf) [hereafter: Maggi, “Linkage”].

15. See Institute of Medicine *Reducing Risk for Mental Disorders: Frontiers for Preventive Intervention Research*, (Washington DC: National Academies Press, 1994); see also Lisa A. Kisling and Joe M. Das, “Prevention Strategies,” *StatPearls*, available at <https://www.ncbi.nlm.nih.gov/books/NBK537222/>.

16. A reviewer points out that the current legal status of marijuana in Canada and several U.S. states would complicate a strict “copy and paste” of the existing drug control treaties that prohibit the drug. Accordingly, I use the word “update” to acknowledge the necessity for the revision or omission of certain components of existing drug control treaties.

To a limited extent, counternarcotics policy already relies on some tools of economic statecraft: financial sanctions targeting individuals or entities involved in illegal drug traffic. But policymakers impose these sanctions to advance an enforcement agenda structured on a “cartel” logic of culpability, with no discernable outcome linked to the lethal flow of fentanyl traffic in mind. In this paper, I recommend deploying sanctions differently: through a trade-based model of supply-side counternarcotics policy, where trade agreements provide a framework; border-adjustments and border tolls incentivize identified objectives; and sanctions serve to reinforce these objectives.

## Calculating border adjustments and border tolls

Border adjustments are calculated, not subjectively determined or decided on an *ad hoc* basis. For example, to develop its carbon border adjustment mechanism, the EU embarked on a formal study phase to identify carbon-intensive industries, then developed a methodology to calculate the emissions “footprint” of all imported goods.<sup>17</sup>

In order to impose border adjustments and border tolls for fentanyl, the United States will need to perform similar analyses. Specifically, the United States will need to determine the incidence and measure the amounts and potency of illegally manufactured fentanyl crossing the borders by virtue of imports and travelers at legal ports of entry; it will also need to conduct a formal assessment of precursor traffic destined for Mexico and any other significant drug production sites. Any fentanyl intercepted between legal ports of entry should also be factored into this analysis, given that any “competitive adaptation” on the part of traffickers, like switching to smuggling via illegal entry, is still indicative of an underperforming drug regulatory system.

In the case of fentanyl border adjustments and border tolls, the “footprint” in question is overdose fatalities related to fentanyl. Calculating this footprint has its share of complexity—as does linking these to deficits in governance. For the purposes of fleshing out a model, I nominate commonsense supply-side objectives: the overproduction and oversupply of illegally manufactured fentanyl, counterfeit pills containing fentanyl, and the adulteration of other illegal drug supplies with fentanyl. Since the border-adjustments and tolls proposed here will generate revenue, this paper includes a proposal to create regional dashboards for data collection and evidence-based demand interventions in the United States.

Taken together, I propose a counternarcotics policy of “*open strategic autonomy*,” a phrase coined by officials of the European Union to describe a posture that preserves the fundamentals of free trade, endorses multilateral and bilateral cooperation, and pursues sovereign decision-making when deemed necessary. Such changes would place counternarcotics policy on new footing, equal to what the first-order public health crisis of fentanyl demands, and better prepare the U.S. to meet the challenges of the new era of synthetic drugs.

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17. For a concise summary, see Congressional Research Service, “Border Carbon Adjustments: Background and Developments in the European Union,” CRS Report R47167, February 21, 2023, available at <https://crsreports.congress.gov/product/pdf/R/R47167>.

## 2. Economic statecraft

In his classic text on the subject, David A. Baldwin defines economic statecraft as the use of “economics as an instrument of politics” to “get others to do what they would not otherwise do.”<sup>18</sup>

Economic statecraft is exercised in the form of incentives (“carrots”) or sanctions (“sticks”). Jean-Marc Banchard and Norrin Ripsman further elaborate that sanctions amount to a “coercive strategy” while incentives support a “persuasive strategy.”<sup>19</sup>

### Economic statecraft: Sanctions or negative conditionality

Trade		Capital	
<i>embargo</i>	prohibition on exports	freezing assets	impounding assets, denying access to bank accounts or other financial assets owned by the target country
<i>boycott</i>	prohibition on imports		
<i>tariff increase</i>	increase in taxes on imports from target state(s)	controls on import or export	restrictions on who can transfer how much capital for what purposes into and out of a country
<i>tariff discrimination (unfavorable)</i>	imports from target countries treated less favorably than those from other countries		
<i>withdrawal of MFN (most favored nation)</i>	ceasing to treat imports from target state(s) as favorably as imports from other countries	aid suspension	reduction, termination, or slowing of aid transfers
<i>blacklist</i>	ban on doing business with firms that trade with the target country	expropriation	seizing ownership of property belonging to the target state
<i>quotas (import or export)</i>	quantitative restrictions on imports or exports		
<i>license denial (import or export)</i>	refusing permission to import or export particular goods	taxation (unfavorable)	assets of the target state may be taxed in a discriminatory manner
<i>dumping</i>	deliberate sale of exports at prices below the cost of production in order to disrupt the economy of target country	withholding dues to international organization	non-payment, late payment, or reduced payment of previously agreed financial obligations
<i>preclusive buying</i>	purchase of a commodity in order to deny it to the target country	threats of the above	some research indicates that the threat of sanctions is more effective than the sanctions themselves **
<i>threats of the above</i>	some research indicates that the threat of sanctions is more effective than the sanctions themselves **		

Modified from Baldwin, *Economic Statecraft*, p.40.

\*\*see Daniel W. Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review* 13, no. 1 (March 2011): 98.

18. David A. Baldwin, *Economic Statecraft*, (Princeton: Princeton University Press, 2020 edition): p1.; p.7. Jean-Marc F. Banchard and Norrin M. Ripsman elaborate: “Economic statecraft refers to an attempt by a sender state to influence a target state either to do something it would not ordinarily do or to forgo an action that it would otherwise engage in, by the manipulation of the market in a manner that provides economic benefits to states that comply and/or imposes economic penalties on those who fail to comply.” Jean-Marc F. Banchard and Norrin M. Ripsman, *Economic Statecraft and Foreign Policy: Sanctions, Incentives, and Target State Calculations*, (London: Routledge Press, 2013): 5.

19. Jean-Marc F. Banchard and Norrin M. Ripsman, *Economic Statecraft and Foreign Policy: Sanctions, Incentives, and Target State Calculations*, (London: Routledge Press, 2013): 5.

## Economic statecraft: Incentives or positive conditionality

Trade		Capital	
<i>tariff discrimination (favorable)</i>	imports from target countries treated more favorably than those from other countries	investment guarantees	government insurance against some of the risks of private foreign investors
		encouragement of private capital imports or exports	variety of incentives to import or export capital
<i>granting MFN (most favored nation)</i>	treating imports from target state(s) as favorably as imports from other countries	providing aid	extension or continuation of aid via bilateral or multi-lateral channels in the form of grants and/or loans
<i>subsidies to exports or imports</i>	exports to or imports from the target state(s) may be subsidized		
<i>tariff reduction</i>	lowering tariffs in general or on particular products from target state(s)		
<i>direct purchase</i>	payment for services or goods		
<i>granting license(s)</i>	permission to import or export particular goods	taxation (favorable)	especially favorable taxation of foreign capital investment
<i>promises of the above</i>		promises of the above	

Modified from Baldwin, *Economic Statecraft*, p.41.

Policy evaluations of the efficacy and efficiency of economic statecraft vary considerably. As Baldwin cautions, these tools must be assessed in context, sometimes serving merely as a “lesser evil” or most feasible option. For example, the 1940 sanctions imposed by the United States on export of aviation fuel, iron, and steel to Japan, though frequently cited for its failure to prevent the Japanese attack on the United States, nevertheless kept critical war material beyond the reach of Tokyo for a conflict that was widely viewed as inevitable.<sup>20</sup> Other analysts find more clear-cut examples of success, but only under certain conditions. Banchard and Ripsman argue that the “carrots and sticks” of economic statecraft “can produce considerable change in a target state’s policies,” but only when calibrated to produce “*political* costs and incentives, rather than merely *economic* ones,” and these political costs and incentives “outweigh the target state’s political interest in maintaining the status quo.”<sup>21</sup>

Multiple rationales support the use of economic statecraft to achieve counternarcotics objectives. Below, I review the analogous, contemporary example of border adjustments for carbon emissions as well as the history of U.S. counternarcotics policy prior to prohibition.

The suitability of economic statecraft to address the fentanyl crisis is discussed in the next section.

20. Baldwin, *Economic Statecraft*, xvi.

21. Jean-Marc F. Banchard and Norrin M. Ripsman, *Economic Statecraft and Foreign Policy: Sanctions, Incentives, and Target State Calculations*, (London: Routledge Press, 2013): 3.

## Carbon Border Adjustment Mechanisms

The recent decision of the European Union (EU) to pursue “open strategic autonomy,” using the global trade system to “act more forcefully and assertively” on all fronts, has resulted in a breakthrough agreement on the use of trade sanctions.<sup>22</sup>

The EU requires its members to “cap and trade,” allowing companies to emit carbon dioxide until they reach a pre-set limit, “above which they must buy permits and pay for the extra pollutants they release.”<sup>23</sup> In December 2023, the Union reached an agreement to charge fees on imports to its members unless these products were produced under their own effective emissions scheme, “leveling the playing field” for carbon-price in manufacture. Specifically, the EU will require importers to purchase “carbon border adjustment mechanism” (CBAM) certificates—to “pay the difference between the carbon price paid in the country of production and the price of carbon allowances” in the EU.<sup>24</sup> Using this border adjustment, the EU hopes to place “carbon and climate at the heart of trade.”<sup>25</sup> Notably, to develop its carbon border adjustment mechanism, the EU embarked on a formal study phase to identify carbon-intensive industries, then developed a methodology to calculate the emissions “footprint” of all imported goods.<sup>26</sup>

Proponents of border adjustments must address the problem of “leakage.” For example, in the case of CBAM, if exports are simply displaced to other countries without an effective emissions regulatory scheme, then the policy will not effectively curb global emissions. For this reason, tools like border adjustments are designed to apply to all similar imports, regardless of origin, and officials must take great care when assessing the carbon “intensity” of imports.<sup>27</sup>

Despite the tacit acknowledgment that, lacking an effective appellate court, the WTO is not able to arbitrate disputes, border adjustments benefit from compliance with relevant treaties, including transparent criteria, as a default optimization process that allows for sanctions without retaliation.

In the United States, the Federal Energy Regulatory Commission has permitted border adjustments assessed in an individual state on electricity sourced from other states. In 2013, the state of California launched a border adjustment on imports of electricity from jurisdictions without a “cap and trade” framework.<sup>28</sup> Economists debate whether adjustments such as these should apply to all imports from a jurisdiction without cap-and-trade, or to industry-specific benchmarks applied to individual firms. Nevertheless, in a recent analysis, researchers found that “realized emissions” were lower than a simulated worst-case scenario of substantial leakage—in this case, the diversion of “out-of-state zero-carbon resources” to California while

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22. Henry Farrell and Abraham Newman, *Underground Empire: How America Weaponized the World Economy*, (New York: Henry Hold, 2023): 127.

23. Emma Bubola, “Europe Reaches Deal for Carbon Tax Law on Imports,” *The New York Times*, December 13, 2022, available at <https://www.nytimes.com/2022/12/13/world/europe/eu-carbon-tax-law-imports.html>.

24. European Parliament News, “Deal reached on new carbon leakage instrument to raise global climate ambition,” December 13, 2022, available at <https://www.europarl.europa.eu/news/en/press-room/20221212IPR64509/deal-reached-on-new-carbon-leakage-instrument-to-raise-global-climate-ambition>.

25. Emma Bubola, “Europe Reaches Deal for Carbon Tax Law on Imports,” *The New York Times*, December 13, 2022, available at <https://www.nytimes.com/2022/12/13/world/europe/eu-carbon-tax-law-imports.html>.

26. For a concise summary, see Congressional Research Service, “Border Carbon Adjustments: Background and Developments in the European Union,” CRS Report R47167, February 21, 2023, available at <https://crsreports.congress.gov/product/pdf/R/R47167>.

27. Rafael Leal-Arcas, “Trade Proposals for Climate Action,” *Trade, Law and Development*, vol. 6, no. 1 (Summer 2014): 15.

28. It is worth noting that this reported served as a model for the EU’s CBAM. Mark Leonard *et al.*, “The Geopolitics of the European Green Deal,” European Council on Foreign Relations (2021): 13.

shuffling more carbon-intensive resources elsewhere.<sup>29</sup> Despite accounting irregularities and other strategies of evasion, border adjustments can achieve their objectives.

## Drug policy prior to prohibition

In using the tools of economic statecraft to address illegal drug traffic, the United States would be returning to its original approach to counternarcotics policy.

The Harrison Narcotics Tax Act of 1914, a tariff and tax regime, supplied the basis for drug regulation in the United States for decades.<sup>30</sup> In 1922, Congress passed the Jones-Miller Act (“Narcotic Drugs Import and Export Act”) designed to contract the import of narcotic materials to only that which was deemed as medically necessary, a quota set by the Department of Treasury.

A trade-based approach to drug regulation afforded tremendous unilateral discretion to U.S. policymakers when pursuing their own counternarcotics objectives. Tied to whims of Bureau of Narcotics Commissioner Harry Anslinger, these gambits did not always meet with success. As historian William McAllister writes, international drug treaties gave Anslinger “important leverage at home and abroad” by awarding him the power to “determine from which states U.S. firms could buy raw material [for the manufacture of narcotics] and to which countries American manufacturers could export.”<sup>31</sup> If Anslinger determined a country engaged in illegal drug traffic, he could bar any of its drug imports or block American drug exports destined for it.<sup>32</sup> Anslinger added to those powers by inducing Congressman Fiorello LaGuardia to introduce a bill “requiring all shipments from states not party to [the International Opium Convention of 1912] to be searched for illicit drugs.” Just as Anslinger intended, Turkish officials previously hostile to that treaty and its 1925 successor rushed to ratify both rather than watch Turkish exports languish in American ports.<sup>33</sup>

In 1947, at Anslinger’s request, the Assistant Secretary of the Treasury threatened to cease pharmaceutical exports to Cuba if it failed to expel notorious kingpin “Lucky” Luciano, who was bound by his release from prison in the United States to remain in exile in Italy. “You may inform your Ambassador at Havana,” the Assistant Secretary of the Treasury wrote to the U.S. Secretary of State in March of 1947, “that the Bureau of Narcotics intends to withhold exportation of narcotic drugs to Cuba as long as Salvatore Lucania [Luciano’s correct name] is on Cuban soil.”<sup>34</sup> Within days, Luciano was sent packing.

Other contemporary examples of trade linkage fared less well. When diversion of opium gum produced in India came to the attention of Congress, legislators threatened to slow customs inspections for imports originating in any state tolerating diversion.<sup>35</sup> But the United States actually relied on Indian opium gum imports for medical purposes. Fearful of any interruption to urgent supply, the State Department and Commissioner Anslinger worked to assuage the concerns of Congress. Outraged by diversion from Iran,

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29. Meredith Fowle et al., “Border Carbon Adjustments When Carbon Intensity Varies across Producers: Evidence from California,” *AEA Papers and Proceedings*, (2021), available at <https://haas.berkeley.edu/wp-content/uploads/WP321.pdf>.

30. Kathleen J. Frydl, *The Drug Wars in America, 1940-1973*, (New York: Cambridge University Press, 2013).

31. Article 15, William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000): 98.

32. William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000): 108.

33. William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000): 108.

34. Frydl, *Drug Wars*, 95-96.

35. William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000): 167.

Commissioner Anslinger moved to ban imports of its opium two years later, in 1948.<sup>36</sup> When Iran responded by raising the prospect of closer relations with the Soviet Union, Commissioner Anslinger switched to a strategy of incentives: namely, the possibility of sourcing more legal supply in Iran. Yet, as the Korean War pressed Anslinger to buy more narcotic material regardless of cost, his threats to slow customs inspections rung hollow. William McAllister suggests that, at this point, Anslinger appeared as a “boy who called wolf,” attempting to bully source countries when in fact he was in need of their supply.<sup>37</sup>

Prior to the modern drug control treaties, unilateral issue-linkage in the hands of U.S. counternarcotics officials was erratic and extreme—and, at times, effective. Success varied based on the status of trade relations, particularly the balance struck between the particular demands and available leverage.

### 3. Economic statecraft and fentanyl

The tools of economic statecraft can better serve counternarcotics policy by directly addressing the inadequacies of the current counternarcotics regime and by offering the more realistic opportunity to influence the networked traffic in illegally manufactured fentanyl.

#### Analogue and enforcement: The shortcomings of the single convention

The existing global architecture of counternarcotics policy recognizes and balances the twin goals of providing adequate supply of medical drugs while also constraining the illegal supply for non-medical use. This framework was established by modern treaties brokered in the United Nations: the Single Convention on Narcotic Drugs 1961, as amended in 1972; the Convention on Psychotropic Substances of 1971; and the Convention Against Illicit Traffic in Narcotic and Psychotropic Substances of 1988. U.S. officials confirm the importance of drug regulation when they point to the successful scheduling of fentanyl analogues and precursors under the Single Convention by a source country as extremely significant steps in their efforts to combat illegally manufactured fentanyl.

The International Narcotics Control Board (INCB) oversees the operation of the Single Convention and monitors the trade in controlled substances, which relies on an international scheduling of drugs for the purpose of trade and corresponding schedules implemented by each country for the purposes of import, export, and internal regulation. (In the United States, the Controlled Substances Act of 1970 established the existing schedule of drugs.) Through the work of the INCB, the Single Convention supports an international, independent monitor of applicable controls for various substances, including each country’s declared medical and scientific needs for relevant controlled substances.

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36. William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000): 169.

37. William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000): 170.

## Single Convention, as Amended\*

Schedule	Definition; Accompanying Rules (Illustrative Example)
I	“Substances with addictive properties, presenting a serious risk of abuse”; Highly controlled in import and export & limited to medical and scientific purposes at all phases with no stock-piling allowed; required specific authorization and record-keeping to participate in any phase, including consumption ( <i>fentanyl</i> )
II	“Substances normally used for medical purposes and given the lowest risk of abuse”; Also controlled in import and export, but stock-piling allowed; may be dispensed without prescription ( <i>codeine</i> )
III	“Preparations of substances listed in Schedule II, as well as preparations of cocaine”; Least controlled, no import or export authorizations required ( <i>preparations of codeine</i> )
IV	“The most dangerous substances, already listed in Schedule I, which are particularly harmful and of extremely limited medical or therapeutic value”; Particularly dangerous drugs for which all Schedule I rules apply with additional constraints that amount to a ban, with an exception for research use ( <i>heroin</i> )

\*Quotes from [https://www.euda.europa.eu/publications/topic-overviews/classification-of-controlled-drugs/html\\_en](https://www.euda.europa.eu/publications/topic-overviews/classification-of-controlled-drugs/html_en)

Though this system has been successful in many respects, it is less suited to detect and respond to an illicit synthetic drug pipeline fed by an array of criminal actors, “gray” market operators who straddle the line between legal and illegal drug production, and mid-size or small firms who escape the attention of regulators.

The Single Convention falls short in two ways. First, all UN treaties—including the Single Convention—operate without an “analogue” component.<sup>38</sup> In 1986, the U.S. Congress passed the Controlled Substance Analogue Enforcement Act, which declared drugs “substantially similar” to already prohibited drugs to be regarded as prohibited, and likewise those “substantially similar” to already highly controlled drugs to be regarded as highly controlled—even if, as chemical structures, they had not yet been discovered or synthesized.<sup>39</sup> Many other countries followed suit—but not all, and international treaties have yet to make this vital revision. As a result, in the absence of an analogue component to the Single Convention, participants in the underground supply chain for many synthetic drugs, including fentanyl, perform “regulatory arbitrage,” advantageously exploiting the differences in regulation between jurisdictions. Without an analogue law, a substance that performs similarly to fentanyl or its precursors may be legal and not subject to any controls in countries that have not revised their laws. Chao Wang and colleagues found that, in 2020, “144 fentanyl-related substances were found with no legitimate uses. 122 of these substances were not under international control and 43 were possible fentanyl precursors.” As they also point out, scheduling these new drugs under existing treaties requires “gathering evidence and making a scientific review of harms, (which) can be time-consuming.”<sup>40</sup>

The second, even more serious shortcoming of the Single Convention (and other drug control treaties) is the lack of enforcement. Neither the UN nor any other international body has drug control policing powers inside sovereign nation-states. Diplomatic historian William B. McAllister demonstrates that the negotiations to establish the modern international drug conventions ceded ground on enforcement in order to reach consensus and achieve ratification.<sup>41</sup> As a result, better enforcement of existing drug regulations hinges on cooperation from the source or transit countries, including any pressure that U.S. diplomats or INCB members may bring to bear. Though the source or transit country might prove willing to schedule

38. Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 40.

39. *Ibid.*, 39.

40. Chao Wang *et al.*, “The Evolving Regulatory Landscape for Fentanyl: China, India, and Global Drug Governance,” *International Journal of Environmental Research and Public Health*, vol.19, no.2 (February 2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC8871795/>.

41. William B. McAllister, *Drug Diplomacy in the Twentieth Century*, (London and New York: Routledge, 2000) [hereafter, “McAllister, ‘Diplomacy’”].

a drug or precursor, it often remains unwilling and/or unable to invest the necessary resources to enforce these changes.

That is not to say the INCB lacks any powers whatsoever. The Board attempts to identify flaws and apply informal pressure to individual countries to enhance and better enforce drug regulations. The persuasive power of the INCB rests on Article 14 of the Single Convention, which supplies the Board with several options.<sup>42</sup> Lacking informal resolution, INCB can refer the problem to the attention of the UN General Assembly, a “name and shame” tactic that may ultimately place a country in breach of treaty. Ultimately, the INCB can also avail itself of the power to implement a drugs embargo, a “nuclear option” that would halt the import or export of drugs (or both) from the offending country. The drugs embargo could lift after a designated period of time, or the INCB may keep in place until it is satisfied that the instigating problem has been addressed.

Crucially, the INCB has never imposed a drug embargo, and has only threatened sanctions five times since the ratification of the Single Convention.<sup>43</sup> In response to “name and shame,” countries mediated a settlement or capitulated to the INCB. In recent years, however, as the international treaty system has stalled, so too have the deterrent effects—and use—of INCB’s “name and shame” powers. Some analysts point to marijuana legalization in developed countries as diluting the power of “name and shame” to work as a “deterrent and corrective mechanism.”<sup>44</sup>

Facing no meaningful external pressure, these governments also tolerate regulatory shortcomings in the shipment of controlled substances, including crucial precursors. In the United States, the Controlled Substances Act includes “Know-Your-Customer” stipulations for all highly controlled substances, requiring manufacturers and distributors of these drugs to collect and periodically analyze information regarding their customers, including dispensing data. Failure to follow “Know-Your-Customer” rules with due diligence can result in prosecution by the Department of Justice.<sup>45</sup> Source and transit countries for illegally manufactured fentanyl countries do not impose or properly enforce “Know-Your-Customer” regulations—and neither the Single Convention nor pressure from the U.S. can compel them to do so.

A Single Convention without an analogue component and without suitable enforcement powers cannot meet the challenge of fentanyl specifically, or the synthetic revolution in drugs more broadly speaking. The future of illegal drug traffic lies in labs, not fields. Fentanyl is the most devastating component of what Vanda Felbab-Brown has called the “revolution toward synthetics,” or the move to an illicit drug market dominated by drugs made entirely from man-made components.<sup>46</sup> Journalist Mike Powers argues that the evolution of the illegal marketplace to what he calls “Drugs 2.0” began with users purchasing drugs on the dark web with virtual impunity, enticing manufacturers to source supply from the same off-the-radar marketplace.<sup>47</sup> Amid the expansive possibilities provided by unscrupulous sellers, some innovators synthesized “novel psychoactive substances”

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42. Summary drawn from David R. Bewley-Taylor, *International Drug Control: Consensus Fractured*, (London and New York: Cambridge University Press, 2012).

43. Dave Bewley-Taylor and Mike Trace, “The INCB: Watchdog or Guardian of the UN Drug Control Treaties?” February 2006, available at [https://www.beckleyfoundation.org/wp-content/uploads/2016/04/BF\\_Report\\_07.pdf](https://www.beckleyfoundation.org/wp-content/uploads/2016/04/BF_Report_07.pdf).

44. International Drug Policy Consortium, “The Spectre of Article 14,” January 2023, [https://www.swansea.ac.uk/media/IDPC-GDPO-analysis-of-INCB-Annual-Report-for-2021\\_FINAL\\_January\\_2023.pdf](https://www.swansea.ac.uk/media/IDPC-GDPO-analysis-of-INCB-Annual-Report-for-2021_FINAL_January_2023.pdf).

45. See, for example, the Deferred Prosecution Agreement: <https://www.justice.gov/usao-sdny/press-release/file/1156391/dl>.

46. Remarks of Vanda Felbab-Brown in “Mexican Cartels, Fentanyl, and the Global Synthetic Drugs Revolution,” available at <https://www.youtube.com/watch?v=B3okEVwhUDQ>.

47. Michael Powers, *Drugs 2.0: The Web Revolution That's Changing How the World Gets High*, (London: Portobello/Granta Publishing, 2013).

(NPS) like K2, a synthetic engineered to mimic THC, a crucial active compound found in marijuana. The European Monitoring Centre for Drugs and Drug Addiction reports that, between 1997 and 2010, 150 new illicit drugs were synthesized. The same number of new illicit drugs appeared during the next three years.<sup>48</sup>

As the pace of illegal drug synthesis accelerates, the regulation of chemicals presents the most relevant and meaningful site of intervention.<sup>49</sup>

In recognition of this fact, and the Single Convention's inability to perform this role, Chao Wang and colleagues recommend an entirely new international fentanyl drug control treaty.<sup>50</sup> But, given the history of international drug treaty negotiations and the current fractious state of General Assembly meetings of the United Nations devoted to drug control, it is unlikely that a substantive and robust international treaty could reach consensus, let alone ratification.

## Deficits in governance: China and Mexico

The inadequacies of the current international drug regime frustrate the objectives of U.S. counternarcotics policy, where diplomats urging more regulation and better enforcement often lose out to *competing priorities* and face off against a classic *principal-agent* problem: other governments unwilling or incapable of responding to U.S. demands. Lacking analogue laws and adequate enforcement—including enforcement against rogue actors—neither China or Mexico is equipped to deal with the production of illegally manufactured fentanyl or its precursors.

Nor would any other country implicated in substantial traffic in or transit of illegally manufactured fentanyl be so equipped, whether or not that country contended with a serious problem in organized crime. The descriptions of deficits of governance in China and Mexico offered below are meant only for illustration. These details may vary between and among source and transit countries, but the rule never does: by definition, substantial traffic in illegally manufactured fentanyl or illicit traffic in its precursors signals serious deficits in governance.

### China

By all accounts, U.S. observers view China, and specifically the inability and refusal of the government to effectively regulate its domestic chemical industry, as a major instigator of the fentanyl epidemic. In 2013, the government restructured its regulatory body and renamed it the “China Food and Drug Administration”; in 2018, the agency reorganized again. Nonetheless, in the absence of serious enforcement, organizational reforms are, as one observer notes, “meaningless.”<sup>51</sup> One consultant told journalist Ben Westhoff that for as long as “you can produce chemicals without serious supervision” in China, the problem of illegally manufactur-

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48. As found in Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 33.

49. On the declining significance of territory for the production of illegal drugs, see Jonathan Caulkins, Vanda Felbab-Brown, and Keith Humphreys, “How Synthetic Opioids Can Radically Change Global Illegal Drug Markets and Foreign Policy,” Brookings Commentary, April 30, 2018, available at <https://www.brookings.edu/articles/how-synthetic-opioids-can-radically-change-global-illegal-drug-markets-and-foreign-policy/>.

50. Chao Wang et al., “The Evolving Regulatory Landscape for Fentanyl: China, India, and Global Drug Governance,” *International Journal of Environmental Research and Public Health*, vol.19, no.2 (February 2022), available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC8871795/>.

51. See Katherine Tobin of US-China Economic Security Review Commission, as quoted in Westhoff, *Fentanyl Inc.*, p.215

tered fentanyl or precursors “will persist.”<sup>52</sup> Analysts at Strider Technologies estimate 1,500 Chinese entities are involved in some way in the fentanyl industry.<sup>53</sup> Crucially, China lacks the equivalent of the “analogue law” passed by the United States in 1986, so each new fentanyl-analogue must first be discovered before it is eventually scheduled.<sup>54</sup>

Naturally, China’s involvement in the supply of illegal fentanyl has sparked conversation and debate regarding the degree and direction of intentionality behind the actions taken, or not taken, by the government. Felbab-Brown argues that China “subordinates” American requests for action on fentanyl to other objectives. “Beijing rarely acts against the top echelons of large and powerful Chinese criminal syndicates that provide the Chinese government with various services,” Felbab-Brown observes, “unless they specifically contradict a narrow set of interests of the Chinese government.”<sup>55</sup> Dr. Celina Realuyo adds that China lacks incentive to pursue wayward chemical suppliers and money-laundering operations because the government wants the U.S. dollars these operations provide.<sup>56</sup>

Analysts agree that China supplied most of the finished fentanyl reaching the United States prior to 2019.<sup>57</sup> Following the government’s scheduling of fentanyl and analogues, China Post also increased compliance with advanced electronic data standards. The government also began to monitor the export of pill press machines more closely.<sup>58</sup>

U.S. officials hailed these developments; many observers find the scheduling of fentanyl analogues in particular amounted to a major shift in the illegal fentanyl trade, moving synthesis to Mexico. But bilateral cooperation was short-lived. Following a decision by the U.S. Department of Commerce to deprive a laboratory linked to human rights abuses of U.S. supplies and U.S. House Speaker Nancy Pelosi’s visit to Taiwan, the “PRC formally suspended bilateral counternarcotics cooperation in August 2022.”<sup>59</sup>

Amid strained relations, the DEA launched “Sleeping Giant,” a major, multi-faceted investigation of the Chinese government’s role in money laundering and the supply of precursors, finding evidence of actual support of certain chemical brokers in addition to government indifference. Accordingly, in September 2023, President Biden placed China on the list of major illicit drug transit or drug-producing countries.

Equipped with new leverage, President Biden held a meeting with Chinese President Xi during the APEC summit in San Francisco in November 2023. During this meeting, both countries pledged to restore bilateral counternarcotics enforcement.<sup>60</sup> Following this apparent diplomatic breakthrough, U.S. officials hoped for more regulatory and enforcement action from Chinese authorities.

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52. Kai Pflug quoted in Westhoff, *Fentanyl Inc.*, p.184.

53. Cate Cadell and Lily Kuo, “Despite Fentanyl Crackdown, Chinese Sellers Are Open for Business,” *Washington Post*, June 20, 2024, available at <https://www.washingtonpost.com/world/2024/06/20/china-fentanyl-mexico-us/>.

54. Westhoff, *Fentanyl Inc.*, p.217.

55. Testimony of Dr. Vanda Felbab-Brown in Senate, “Strengthening International Cooperation.”

56. Question and answer at 1:11, Dr. Celina B. Realuyo, in Senate, “Strengthening International Cooperation.”

57. For extensive treatment of this transition, see Westhoff, *Fentanyl Inc.*

58. Testimony of Dr. Vanda Felbab-Brown Senate, “Strengthening International Cooperation.”

59. Testimony of the Dr. Celina B. Realuyo in Senate, “Strengthening International Cooperation.”

60. Celina Realuyo notes signs of cooperation in advance, and in preparation for, the Biden-Xi meeting. See *Ibid.*

In the main, these hopes have not materialized. Christopher Urben laments the fact that, although Chinese officials can access WeChat and other messaging tools, they do not share any information gained with American officials, hampering money-laundering and other investigations.<sup>61</sup> The unwillingness of China to adopt a due-diligence Know-Your-Customer law is a source of frustration for many observers. Finally, even when it comes to settled points of cooperation, Senator Sherrod Brown finds China's collaboration amounts to the "bare minimum" and is in need of "constant monitoring."<sup>62</sup>

## Mexico

China's refusal to regulate its drug industry has attracted attention from several quarters. By comparison, the state of drug regulation in Mexico has received little.

As it currently stands, according to *InSight Crime*, Mexico boasts an "impeccable legal framework for the regulation of precursor chemicals," but is nevertheless prone to corruption and inefficiency.<sup>63</sup> The foundation of the Mexican drug regulation is supplied by a "General Health Law," comparable to the U.S. Controlled Substances Act, as well as a diversion and trafficking act and a watchlist for dual-use substances. And yet, the lack of "collaboration between relevant government entities means that much of the precursor chemical supply chain goes unmonitored."<sup>64</sup>

Also remarkable is the infrequency of prosecutions for diverted chemicals in Mexico. As in the United States, the system for reporting diversion relies on voluntary cooperation from the private sector. It is unclear whether fault for the lack of prosecutions lies with the companies, who may not file reports, or the authorities, who may not follow up. (In the initial wave of the opioid crisis, the United States suffered from regulatory inadequacies in the import of drug precursors and distribution of finished opioids.<sup>65</sup>) An additional problem in Mexico, however, is the corruption of Mexico's top health agency (Cofepris, or Comisión Federal para la Protección de Riesgos Sanitarios), charged with issuing import permits for precursors and monitoring drugs through their stages of production. (The DEA performs these tasks in the United States.) In November 2022, the head of Cofepris revealed that rings of corrupt networks inside the agency allowed the import and diversion of precursors to drug traffickers, sometimes awarding import licenses to ghost companies. As is the case with China, Mexico's regulatory regime for drugs is not backed by adequate state capacity to execute its mandate.

Despite obvious shortcomings in drug regulation, U.S. diplomats prioritize security and enforcement cooperation in their exchanges with Mexico. In recent years, security collaboration between the United States and Mexico has been tested by the presidency of Andrés Manuel López Obrador (AMLO), who ended an era of close collaboration with American officials.

This is not to say that AMLO had no counternarcotics strategy at all. According to Vanda Felbab-Brown, AMLO "hoped that if he does not interfere with Mexico's criminal groups, they will eventually redivide

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61. Testimony of Christopher J. Urben in "Strengthening International Cooperation."

62. Letter from Senator Sherrod Brown to Honorable Janet Yellen, Secretary of the Department of Treasury, December 12, 2023, available at [https://www.brown.senate.gov/imo/media/doc/letter\\_to\\_treasury\\_on\\_counter-fentanyl\\_strike\\_force.pdf](https://www.brown.senate.gov/imo/media/doc/letter_to_treasury_on_counter-fentanyl_strike_force.pdf).

63. Victoria Dittmar and Annie Pforzheimer, "Mexico's Laws to Regulate Chemicals Work on Paper But Not in Practice," *InSight Crime*, May 10, 2023, <https://insightcrime.org/investigations/mexico-laws-regulate-chemicals-work-on-paper/>.

64. *Ibid.*

65. Kathleen J. Frydl, "The Pharma Cartel," in *The War on Drugs: A History*, ed. David Farber (New York: New York University Press, 2021): 303-342.

Mexico's economies and territories among themselves, and violence will subside."<sup>66</sup> Nathan Jones and colleagues agree, observing that the government deployed "its new National Guard to effectively reify the battle lines between cartels and prevent conflict. In this sense the National Guard is patrolling the spaces between organized crime groups—not removing them."<sup>67</sup>

While this willingness to refrain from any systematic or aggressive enforcement against cartels exacerbated tensions between Mexico and the United States, the 2020 indictment and arrest in Los Angeles of Mexican Secretary of Defense Cienfuegos for alleged links to organized crime plunged relations to a new low. In response, AMLO threatened to end all cooperation with U.S. enforcement officials. Washington hoped that the return of Cienfuegos back to Mexico—where he was swiftly exonerated after a cursory review of the charges—would restore some measure of cooperation.<sup>68</sup> But, as Celina B. Realuyo points out, the Mexican Congress responded by passing "legislation to limit U.S. law enforcement operations and intelligence sharing. This further frustrated U.S. counternarcotics investigations;" the AMLO government "also paused the issuance of visas for U.S. Drug Enforcement Administration (DEA) agents."<sup>69</sup> The following year, the U.S. and Mexico engaged in negotiations in order to place relations on a better footing. As the result of these talks, the Mexican government added dual-use precursors to its "chemical watch list" in 2022, despite AMLO's frequently issued denials that synthesis of illegal fentanyl takes place in Mexico.

Despite these promising signs of high-level engagement, the long and colorful history of "performative" enforcement still characterizes much of the Mexican government's on-the-ground operations. Recently Reuters found that Mexico waged an "imaginary war on drugs," including the inflation of the number of raids conducted against drug labs.<sup>70</sup>

Neighboring countries with even more fragile governments buckle under the weight of criminal activity, much of it tied to Mexico. One analyst referred to Central America as a "Silicon Valley" for organized crime, an incubator of new ventures.<sup>71</sup> Inasmuch as the ventures involve the production and smuggling of dangerous and illegal drugs, these avenues for innovation present a serious public health threat to the United States.

## Addressing deficits in governance: the United States

The opioid crisis in the United States demonstrates that systemic reforms targeting the methods of drug traffickers offer more hope than targeting the drug traffickers themselves. Illustrative in this regard are the significant investments in infrastructure and regulation which the United States government has undertaken to meet the challenge of the opioid crisis: revision of and more attention to agricultural production quotas

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66. Testimony of Dr. Vanda Felbab-Brown in Senate, "Strengthening International Cooperation." According to Benjamin T. Smith, similar expectations surrounded Peña Nieto at the start of his presidency. See Smith, *The Dope*, p.397.

67. Nathan P. Jones et al., "A Social Network Analysis of Mexico's Dark Network Alliance Structure," *Journal of Strategic Security*, vol.15, no.4 (2022), available at <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=2046&context=jss>.

68. Tim Golden, "Dropping the Charges Against General Cienfuegos Was Bill Barr's Call," *Pro Publica*, December 8, 2022, available at <https://www.propublica.org/article/william-barr-mexico-cartels-cienfuegos-case>.

69. Testimony of Dr. Celina B. Realuyo in Senate, "Strengthening International Cooperation."

70. Drazen Jorgic and Jackie Botts, "Under US pressure over fentanyl, Mexico wages 'imaginary war on drugs,'" *Reuters*, December 21, 2023, available at <https://www.reuters.com/world/americas/under-us-pressure-over-fentanyl-mexicowages-imaginary-war-drugs-with-raids-2023-12-21/>; and Drazen Jorgic, Jackie Botts, and Stephen Eisenhammer, "Exclusive: Amid U.S. pressure on fentanyl, Mexico raises drug lab raids data," *Reuters*, March 17, 2023 available at <https://www.reuters.com/world/americas/amid-us-pressure-fentanyl-mexico-raises-drug-lab-raids-data-2023-03-17/>.

71. Samantha Schmidt and Arturo Torres, "The Takeover: A Narco-Revolt Takes a Once Peaceful Nation to the Brink," *Washington Post*, April 12, 2024, available at <https://www.washingtonpost.com/world/interactive/2024/ecuador-gang-takeover-noboa-cocaine/>.

and more closely monitored opioid distribution, mail service, and border inspection. These efforts constrain various targets—legal, “gray,” or criminal actors—or they remain agnostic on the question of perpetrator by targeting a method that affects any person who might use it.

## Reforms targeting the methods of illegal drug traffic

Intervention	Description	Evaluation
Dark web	<p>The “dark web,” or websites unindexed by search engines, featured heavily as an interface between buyer and seller in the heyday of “amateur” fentanyl production. Nor has that traffic abated. In the spring of last year, the federal “Criminal Opioid and Darknet Enforcement” task force collaborated with international law enforcement agencies to produce arrests and seizures related to fentanyl traffic.<sup>72</sup></p> <p>As a result, as <i>Wired</i> magazine reported, “despite the trend away from dark-web fentanyl sales,” Congress recently introduced “Dark Web Interdiction Act” designed to make the task force permanent and increase the penalties related to fentanyl.<sup>73</sup></p>	<i>Not evaluated against outcomes of interest.</i>
Mail	<p>In 2018, lawmakers passed the Synthetics Trafficking and Overdose Prevention (STOP) Act, requiring that all U.S. destination packages include Advanced Electronic Data for customs and package-level data. This was more an aspirational goal than an enforceable obligation.</p>	<p><i>Not evaluated against outcomes of interest.</i></p> <p><i>Output evaluation:</i> By 2020, the U.S. Postal Service reported that packages from China “nearly fully” complied with the Advanced Electronic Data requirement.<sup>74</sup></p>
	<p>U.S. Customs and Border Protection (CBP) increased staff for international mail facilities by 20 percent and deployed non-intrusive laser scanners to examine U.S. destination packages.</p>	<p><i>Not evaluated against outcomes of interest.</i></p> <p>The Department of Homeland Security Inspector General finds these scanners unable to detect fentanyl at low purity (10 percent or less).<sup>75</sup></p>

72. Department of Justice Press Release, “Largest International Operation Against Darknet Trafficking of Fentanyl and Opioids Results in Record Arrests and Seizures,” May 2, 2023, available at <https://www.justice.gov/opa/pr/largest-international-operation-against-darknet-trafficking-fentanyl-and-opioids-results>.

73. Andy Greenberg, “Chinese Labs are Selling Fentanyl Ingredients for Millions in Crypto,” *Wired Magazine*, May 23, 2023, available at <https://www.wired.com/story/fentanyl-ingredients-chinese-labs-cryptocurrency/>.

74. Celina B. Realuyo, Professor of Practice William J. Perry Center for Hemispheric Defense Studies at the National Defense University on U.S. Efforts in Disrupting the Illicit Fentanyl Trade through Cooperation with China and Mexico, Senate, “Strengthening International Cooperation.”

75. Office of Inspector General, Department of Homeland Security, “Limitations of CBP OFO’s Screening Device Used to Identify Fentanyl and Other Narcotics,” September 2019, available at <https://www.oig.dhs.gov/sites/default/files/assets/2019-10/OIG-19-67-Sep19.pdf>.

<i>Border</i>	<p>Only a small fraction of vehicle and pedestrian traffic crossing the southern border is routed to intensive inspections of x-rays and drug detection dogs. (All rail traffic crossing the border from Mexico into the United States undergoes scanning.<sup>76</sup>) The CBP plans to introduce non-intrusive laser scanners to inspect more carefully larger segments of border traffic. Currently in operation on a limited basis, this “equipment sitting in warehouses” awaits funding from Congress in order to deploy.<sup>77</sup></p>	<p><i>Not evaluated against outcomes of interest.</i></p> <p><i>Output evaluations:</i></p> <p>The seizures linked to border screening and associated investigations have been widely publicized. The Department of Homeland Security claims credit for interdicting over 43,000 pounds of fentanyl (only a small portion of which is tested for purity).<sup>78</sup></p> <p>In its own evaluation, CBP has suggested that the “needle in the haystack” work of intercepting fentanyl shipments in the massive amounts of cross-border traffic requires coordination with intelligence (including, presumably, data-driven analysis and artificial intelligence) to identify likely carriers.<sup>79</sup></p> <p>In light of this and other limitations, former ONDCP and CBP director Gil Kerlikowske argues that the United States “will not be able to seize [its] way out of this issue,” regardless of any technical improvements at the southern border.<sup>80</sup></p>
	<p>According to the CBP, new systems should be installed by 2026 and, following their deployment, scanning rates “are estimated to increase from 1-2% of personally-owned vehicles to approximately 40 percent, and from 15-17 percent for commercial vehicles to more than 70 percent.”<sup>81</sup></p>	
	<p>Recommendations: Senators Maggie Hassan and James Lankford have introduced legislation to require DHS to increase the inspection of vehicles and pedestrians traveling into Mexico, hoping to interdict illegal weapons as well as bulk cash, laundered money from the proceeds of the drug trade.<sup>82</sup></p>	

76. Nick Miroff, “As Lethal Fentanyl Flows Across the Border, CBP Tries Powerful Scanning Technology,” February 13, 2022, available at <https://www.washingtonpost.com/national-security/2022/02/13/fentanyl-smuggling-border-scanning-technology/>.

77. Quote is Senator James Lankford, 1:04 minute mark in Senate, “Strengthening International Cooperation.”

78. U.S. Department of Homeland Security, Fact Sheet: DHS is on the Front Lines Combating Illicit Opioids, Including Fentanyl, December 22, 2023, <https://www.dhs.gov/news/2023/12/22/fact-sheet-dhs-front-linescombating-illicit-opioids-including-fentanyl>.

79. U.S. Customs and Border Patrol, “CBP: America’s Front Line Against Fentanyl,” available at <https://www.cbp.gov/frontline/cbp-america-s-front-line-against-fentanyl>.

80. As quoted in Nick Miroff, “As Lethal Fentanyl Flows Across the Border, CBP Tries Powerful Scanning Technology,” February 13, 2022, available at: <https://www.washingtonpost.com/national-security/2022/02/13/fentanyl-smuggling-border-scanning-technology/>.

81. U.S. Customs and Border Patrol, “CBP: America’s Front Line Against Fentanyl,” available at <https://www.cbp.gov/frontline/cbp-america-s-front-line-against-fentanyl>.

82. Statement of the Chair, Senator Maggie Hassan, in Senate, “Strengthening International Cooperation.”

## Criminal punishment of drug traffickers and users

Intervention	Description	Evaluation
<i>Kingpin</i>	The Department of Justice targets high level drug traffickers in federal indictments.	<i>Not evaluated against outcomes of interest.</i>
<i>Low-level targeting: escalations</i>	<p>Following a classic model of deterrence, the U.S. Sentencing Commission has implemented a number of changes focused on counterfeit pills specifically. In 2018, the Commission introduced “a 4-level sentencing enhancement for knowingly misrepresenting or knowingly marketing fentanyl or fentanyl analogues as another substance (which equates to an approximate 50% increase in sentence).” The DEA subsequently wrote the Commission that this increase was not enough. More recently, the Commission has proposed a 2-level enhancement with more precise mens rea definitions: “increased culpability of an individual who acted with willful blindness or conscious avoidance of knowledge that the substance the individual represented or marketed as a legitimately manufactured drug contained fentanyl or a fentanyl analogue.”<sup>83</sup></p> <p>Increasingly, state jurisdictions levy murder charges for fentanyl dealing. Many states have had “drug-induced homicide” laws on the books for decades, but prosecutors typically did not invoke them. Recently, however, similar to the U.S. Sentencing Commission, prosecutors have shown a willingness to charge homicide in cases of counterfeit pills, particularly in the overdose deaths of young people.<sup>84</sup> According to the Drug Policy Alliance, over 20 states have “drug-induced homicide” laws.<sup>85</sup></p>	<p><i>Theoretical difficulty:</i> In order to successfully deter dealers with criminal punishment and shape the market, dealers first and foremost must know what they are dealing. As it stands now, “dealers themselves often have no idea whether the heroin, pills, cocaine, or methamphetamines they’re selling are actually unadulterated.”<sup>86</sup></p> <p>Second, dealers must be effectively deterred by increased punishment. Research conducted on this question converges: certainty of apprehension deters criminals,<sup>87</sup> but harsher sentencing has no additional deterrent effect.<sup>88</sup></p> <p><i>Outcome evaluation:</i> An extensive review by Harold Pollack and Peter Reuter conducted in 2014 found that neither increased risk of arrest nor longer sentences affects the street price of drugs.<sup>89</sup></p>

83. All quotes from U.S. Sentencing Commission, 2023 Amendments in Brief, available at [https://www.ussc.gov/sites/default/files/pdf/amendment-process/amendments-in-brief/AIB\\_818.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/amendments-in-brief/AIB_818.pdf).

84. “According to research from the Health in Justice Action Lab, the number of DIH prosecutions (2021) has grown approximately 10-fold over the last decade.” Jennifer J. Carroll *et al.*, “A Discussion of Critical Errors,” *World Medical and Health Policy*, available at <https://onlinelibrary.wiley.com/doi/full/10.1002/wmh3.570>.

85. Dave Collins, “Should Drug Dealers Be Charged with Murder?” *Associated Press*, February 25, 2019, available at <https://apnews.com/article/a5deb83c79974ff3a40188043e5a6931>.

86. Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 237.

87. Daniel S. Nagin, “Deterrence in the Twenty-First Century,” *Crime and Justice*, vol.42 (2013), available at <https://www.jstor.org/stable/10.1086/670398>.

88. Severe punishment is not more of deterrent than more lenient punishment: Deterrence: A Review of the Evidence by a Criminologist for Economists,” *Annual Review of Economics*, vol.5 (2013): 83-105.

89. Harold A. Pollack and Peter Reuter, “Does Tougher Enforcement Make Drugs More Expensive,” *Addiction*, December 2014, available at <https://pubmed.ncbi.nlm.nih.gov/24621331/>.

<p><i>Arrest users for possession</i></p>	<p>Pew reports that in 2019 more people were arrested for drug possession than for any other crime: 1.35 million<sup>90</sup></p>	<p><i>Outcome evaluation:</i> Samuel Friedman and colleagues tested “whether changes in arrests for possession of heroin or cocaine in large US metropolitan areas from 1992 to 2002 were associated with later changes in the population prevalence of injection drug use,” and found that changes in arrest did not predict injection drug use. As they note, their “results are inconsistent with criminal deterrence theory and raise questions about whether arresting people for hard drug use contributes to public health.”<sup>91</sup></p>
<p><i>Prosecution for drug possession</i></p>		<p><i>Outcome evaluations:</i> A remarkable study examined the cost of prosecuting simple drug possession in Baltimore city—including the opportunity costs—and found “substantial time and resource investment on the part of the government in prosecuting nonviolent simple drug possession offenses”: \$4.8 – \$18.0 million in 2018 and \$3.4 - \$13.1 million in 2019.<sup>92</sup> In light of the “extensive evidence that criminalization is an ineffective deterrent for drugs and a driver of negative health outcomes in the community,” the researchers recommend that policymakers “weigh carefully” the prosecution of simple drug possession.</p> <p>In a 2018 analysis, Pew Charitable Trust “found no statistically significant relationship between state drug imprisonment rates and three indicators of state drug problems: self-reported drug use, drug overdose deaths, and drug arrests.”<sup>93</sup></p>

If people-targeting can offer only marginal gains within the United States, there is no reason to believe it will yield better results elsewhere.

Drug policy officials in the United States are keenly aware of the importance of method-targeting and regulatory reforms in source and transit countries. I argue that motivating these changes should be central focus of supply-side counternarcotics policy.

### The fentanyl supply chain

The United States does not import finished fentanyl or its precursors to supply its medical and research needs.<sup>94</sup> Following strict controls, domestic companies synthesize all of the ingredients and final product needed for these purposes. Not surprisingly, the overwhelming majority of fentanyl found on the street market and fueling the overdose crisis is illegally manufactured. A recent in-depth review of medical reports found that, among overdose deaths attributed to fentanyl or its analogues, 89% could be confirmed as

90. Pew Charitable Trusts, “Issue Brief: Drug Arrests Stayed High Even As Imprisonment Fell from 2009 to 2019,” February 2022, available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/02/drug-arrests-stayed-high-even-as-imprisonment-fell-from-2009-to-2019>.

91. Samuel R. Friedman *et al.*, “Drug Arrests and Injection Drug Deterrence,” *American Journal of Public Health*, February 2011, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3020200/#:~:text=First%2C%20incarcerating%20drug%20users%20removes,initiating%20or%20continuing%20drug%20use>.

92. Saba Rouhani *et al.*, “Estimating the Economic Costs of Prosecuting Simple Drug Possession in Baltimore City,” Johns Hopkins School of Public Health, April 2023, available at <https://americanhealth.jhu.edu/sites/default/files/estimating-economic-costs-prosecuting-simple-drug-possession-baltimore-city-april-2023.pdf>.

93. Pew Charitable Trusts, “Issue Brief: More Imprisonment Does Not Reduce State Drug Problems,” March 2018, available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.

94. Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 201.

illegally manufactured fentanyl, and only 1% could be confirmed as pharmaceutical fentanyl.<sup>95</sup>

The current approach to counternarcotics conflates the threat of fentanyl with that posed by cartels, but evidence suggests that the tools to counteract the threat of fentanyl are not the same as those intended to punish drug trafficking organizations. Networks dominate the supply chain for illegally manufactured fentanyl; policy designed to affect networks in desirable ways should therefore dominate counternarcotics policy.

## Networks

Analysis of illegally manufactured fentanyl in Mexico discloses that the supply chain is *networked* at crucial points: independent brokers who manage importation of precursor drugs, outsourced and loosely coordinated networks involved in fentanyl synthesis, and outsourced and more closely coordinated traffic of fentanyl across the border.<sup>96</sup>

## Importation of chemicals

Most of the open-source research on fentanyl focuses on professional criminal traffickers in Mexico. In this literature, the prevailing view is that Mexican traffickers arrange for the import of precursor chemicals, usually from China. Once through customs, the contraband is claimed by a seemingly ordinary import/export outfit, sometimes a front company. These brokers service multiple drug-trafficking organizations—a rare instance of non-exclusivity in an underground economy that often compels agents of a criminal organization to work only for one client.<sup>97</sup> Analysts at *InSight Crime* note that precursor brokers earn “relatively small returns” when judged “in relation to the size of the overall chemical market.”<sup>98</sup> Modest profits and easily concealed exchanges make the brokers difficult to spot and difficult to target effectively.

## Fentanyl synthesis

Likewise, the synthesis of precursors into fentanyl is also outsourced, but perhaps more coordinated and within more control of traffickers. The locations of laboratories are nearly impossible to map, especially given that only “a small number of production facilities could satisfy most of the traffickers’ needs.”<sup>99</sup> *InSight Crime* reviewed press releases from Mexican law enforcement agencies and found that the fentanyl labs identified in those reports were mostly in Culiacán, Tijuana, and Ciudad Juárez.<sup>100</sup> Significantly, according to the same analysis, “those working in the manufacture of fentanyl tend to be criminal cells subcontracted by larger organizations — when operating in their territory — or independent networks.”<sup>101</sup>

By inference, this node of the fentanyl supply chain also features modest profits, and therefore forms yet

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95. Julie O'Donnell, “Using death scene toxicology evidence to define involvement of heroin, pharmaceutical morphine, illicitly manufactured fentanyl and pharmaceutical fentanyl in opioid overdose deaths,” *Addiction*, (May 2022), available at <https://pubmed.ncbi.nlm.nih.gov/34882865/>.

96. As one reviewer commented, networked supply chains are the “usual situation for production of all sorts of illegal drugs, both crop-based and synthetic, and to supply markets in the U.S. and other countries.”

97. See Steven Dudley *et al.*, “The Flow of Precursor Chemicals for Synthetic Drug Production in Mexico,” *InSight Crime*, March 2023, available at <https://insightcrime.org/wp-content/uploads/2023/05/The-Flow-of-Precursor-Chemicals-for-Synthetic-Drug-Production-in-Mexico-InSight-Crime-March-2023.pdf> [hereafter: “Dudley, ‘Precursor’”]: 60.

98. Dudley, “Precursor,” p.10.

99. Dudley, “Precursor,” p.90.

100. *Ibid.*

101. Dudley, “Precursor,” p.91.

another resilient bulwark, separating production from the central or crucial components of drug trafficking organizations. These “labs” — some of them, extremely crude — are difficult to locate using physical or financial information and difficult to disrupt meaningfully via enforcement. *InSight* analysts find that not just fentanyl but methamphetamine production is “outsourced to various semi-autonomous cells, which sometimes work under the supervision of these larger groups and sometimes operate independently, creating a *vibrant, flexible, and resilient market* (emphasis mine).”<sup>102</sup>

### *Transport of illegally manufactured fentanyl*

Finally, because drug seizures can sometimes reflect patterns of drug traffic,<sup>103</sup> we can infer that illegally manufactured fentanyl may primarily come to the United States through legal ports of entry, since most fentanyl seizures (over 90 percent) take place at these ports or their interior vehicle checkpoints. In comparison, migrants crossing the border illegally account for less .5 percent of all fentanyl seizures. As the Cato Institute points out, the strong bias in favor of legal entry only makes sense, given that vehicles crossing the border at these ports are “97 percent less likely to be searched” than migrants crossing the border illegally.

Significant amounts of fentanyl are trafficked via commercial imports (often without the carrier knowing). Researchers recently found “that fentanyl smuggled via legal imports killed approximately 15,000-20,000 Americans per year over the 2017-2020 period,” accounting for “30-40% of all opioid deaths over these years.”<sup>104</sup> As they conclude, “it is clear that fentanyl smuggling represents an important new external cost of trade.” These researchers also note that imports from places other than Mexico and China account for most of the overdose-import relationship, suggesting that traffickers in Mexico and China often route contraband destined for the United States through other countries and that “drug smuggling is more ubiquitous and diverse than previously realized.” According to Ben Westhoff, substantial amounts of fentanyl once arrived over the Canadian border; traffickers may return to this smuggling route in the future.<sup>105</sup>

Also of note, analysts suggest India as a source country for fentanyl precursors, and a possible successor to China as the principal one. Those citing closer law enforcement ties to India view this a potentially positive development,<sup>106</sup> while those who note India supports even less regulation and features even more corruption in government view it as a potentially negative one.<sup>107</sup>

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102. Dudley, “Precursor,” p.10.

103. My thanks to Jonathan Caulkins for providing the following citation: The Congressional Research Service finds that “seizure data can provide insight into various elements of drug flows such as smuggling points into the United States and target markets within the country” but “there is no central database housing information on illicit drug seizures from all law enforcement agencies, federal or otherwise.” See Kristin Finklea, “Illicit Drug Flows and Seizures in the United States: What Do We [Not] Know?,” July 3, 2019, available at [https://www.everycrsreport.com/files/20190703\\_R45812\\_3371b585a0cd2b25793f16fafc762c79fb32836d.pdf](https://www.everycrsreport.com/files/20190703_R45812_3371b585a0cd2b25793f16fafc762c79fb32836d.pdf).

104. Timothy J. Moore, William W. Olney, and Benjamin Hansen, “Importing the Opioid Crisis? International Trade and Fentanyl Overdoses,” NBER Working Paper 31885, <http://www.nber.org/papers/w31885>.

105. Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 152

106. See Vanda Felbab-Brown and Christopher J. Urban testimony in “Strengthening International Cooperation to Stop the Flow Fentanyl into the United States,” House Subcommittee on Emerging Threats and Spending Oversight, March 20, 2024, available at <https://www.hsgac.senate.gov/subcommittees/etso/hearings/strengthening-international-cooperation-to-stop-the-flow-of-fentanyl-into-the-united-states/> [hereafter “Senate, ‘Strengthening International Cooperation’”].

107. Dudley, “Precursor,” pp.58-59; Ben Westhoff also argues that a shift from China to India would make epidemic worse not better: Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 225.

## Cartels versus networks

There exists a profound disconnect between how researchers characterize fentanyl supply and the conception policymakers rely upon as a basis for current supply-side interventions.

In the case of policy, the prevailing depiction of drug traffickers as “cartels” structures interventions. The Drug Enforcement Agency states bluntly: the “Sinaloa and Jalisco Cartels are at the heart” of the fentanyl crisis.<sup>108</sup> Use of the term “cartels” implies a set of hierarchical and internally differentiated organizations which, taken together, constitute a monopoly over an economic sector. Its members may collaborate with each other on industry-wide goals; in other contexts, they may compete with one another. These groups recruit, train, and replace personnel. Drug trafficking organizations in Mexico very often stake a claim to territory (or “plaza”); their members have specific assignments and specialties. The definition of cartel is well-bounded enough for researchers to estimate that they are among Mexico’s largest employers, with over 150,000 members.<sup>109</sup>

Some modify the cartel concept to operate as more of a “franchise.” According to Mike Vigil, a retired DEA official, the “Sinaloa cartel has expanded to over forty countries, and it operates very much like McDonalds” in that “[s]ubsidiaries in places like Belgium or France or Spain run their distribution networks, but they buy their product from the parent company, which is Sinaloa.”<sup>110</sup> (Few if any drug policy analysts would dispute that distributors operate separately from drug traffickers who run supply chains.)

In light of these organizational characteristics, cartel might be as good a word as any to describe these traffickers. Ioan Grillo points to the “overwhelming evidence that there *are* powerful networks of organized crime in Mexico that are unleashing horrific violence.”<sup>111</sup> Grillo allows that these groups “vary in their structures from the sprawling Zetas to the federative Sinaloa Cartel to the pyramidal Knights Templar,” but he emphasizes the abiding importance of territory and a willingness to use violence to control it. As drugs pass through a cartel-controlled territory (plaza), the cartel will demand money or a portion of drugs in exchange for safe passage. Grillo’s interview with a member of the Juárez Cartel confirmed the 25% tax on drugs, a surcharge that now extends to all illegal activity, and some legal business as well.

When Grillo put the question of cartel organization to Ben Smith directly, Smith nominated two models for cartels: large organizations that are “international, hierarchical (with at least three levels) and complex” like Sinaloa and Jalisco, and groups that “control a significant chunk of territory and tax all the illegal activity in it.” Sinaloa and Jalisco operate this way, but this second category also includes “over a dozen mobs.” This two-tier depiction of Mexican drug trafficking organizations is confirmed by researchers who used network analysis to map alliances between and among organized crime groups.<sup>112</sup> These researchers found a “bi-polar” world dominated by Jalisco and Sinaloa. According to their analysis, Jalisco operated on “a hierarchical, centralized, internal alliance structure” with “almost no subgroup ties.” In contrast, the Sinaloa

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108. Drug Enforcement Administration, “National Drug Threat Assessment 2024,” available at <https://www.dea.gov/sites/default/files/2024-05/5.23.2024%20NDTA-updated.pdf>; See also testimony of Dr. Vanda Felbab-Brown: “From the precursors, the Sinaloa Cartel and Cartel Jalisco Nueva Generación (CJNG) synthesize fentanyl in Mexico and then smuggle it to the United States.” Senate, “Strengthening International Cooperation.”

109. Rafael Preto-Curiel, “Reducing cartel recruitment is the only way to lower violence in Mexico,” *Science*, vol.381, no.6664 (September 21, 2023), available at <https://www.science.org/doi/10.1126/science.adh2888>.

110. Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 158.

111. Grillo, “What Are Cartels,” *CrashOut*, October 26, 2023, available at <https://www.crashoutmedia.com/p/what-are-cartels>.

112. Nathan P. Jones et al., “A Social Network Analysis of Mexico’s Dark Network Alliance Structure,” *Journal of Strategic Security*, vol.15, no.4 (2022), available at <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=2046&context=jss>.

Cartel alliance structure featured “denser connections” of “more interconnectivity.” Of the four groups with ties to both Jalisco and Sinaloa, three specialized in money-laundering—and one of these, Clan Zheng, was “a money laundering and fentanyl trafficking group.”

On the other hand, several drug policy analysts argue that the word “cartel” has outlived its utility, or never really described the nature of drug traffic at all.<sup>113</sup> Many of these analysts describe the evolution of drug trafficking from hierarchies to networks as a response to enforcement, or what an economist might call a “learning effect.” The classic analysis of learning effects as applied to the counternarcotics policy is sociologist Michael Kenney’s work, *From Pablo to Osama*, in which he observes “competitive adaptation” in cocaine traffic in Colombia. Vertical organizations or “wheel networks” with an identifiable and centralized command structure furnish law enforcement with a target. Following the successful removal of their leadership, as happened with the Medellín Cartel, horizontal networks built to minimize risk will take their place. Drug traffickers do not merely shift territory; they modify their business practice to protect themselves from subsequent enforcement efforts.

Since Kenney’s landmark work, other analysts have affirmed and elaborated upon the importance of networks. Guadalupe Correa-Cabrera describes this as a “transnational network of smaller and relatively independent businesses operating horizontally” and “facilitators” like corrupt government officials.<sup>114</sup> Deborah Bonello argues that a horizontal network model applies to fentanyl traffic as well. Power in drug trafficking “is now distributed more horizontally than vertically,” she observes, a “fragmented” world of traffic where the “chain of command is not as powerful as it once was.”<sup>115</sup> In his encompassing history of drug traffic in Mexico, historian Benjamin T. Smith finds cartels to be a “shorthand, a convenient fiction” that gave some shape to “a fluid, amorphous, and (though they dared not say it) unbeatable marketplace ecosystem.”<sup>116</sup> Anthea McCarthy-Jones and colleagues provide a formal analysis of the evolution of drug trafficking organizations “from hierarchies to networks,” including “network responses to law enforcement pressure” as among the forces driving this change.<sup>117</sup>

This shift from vertical to horizontal drug networks can be formally modeled.<sup>118</sup> In 2019, the *Proceedings of the National Academy of Sciences* published a study demonstrating the effects of interdiction on cocaine traffic.<sup>119</sup> Absent any outside enforcement pressure, drug traffickers vertically integrate to minimize transaction costs “associated with incomplete price information and labor supply, identifying reliable transaction partners, and enforcing transaction agreements.” By minimizing the number of intermediaries, traffickers can maximize profits—but, as their contraband travels greater distances between individual nodes, they also increase their risk of interdiction and the number of potential informants who might “flip” to law enforcement. These vulnerabilities “disrupt[] that vertical integration, forcing decentralization of trafficking deci-

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113. For summary and discussion, see Ioan Grillo, *El Narco*, and Grillo, “What Are Cartels,” CrashOut, October 26, 2023, available at <https://www.crashoutmedia.com/p/what-are-cartels>.

114. Small Wars Journal, “Perspective: The Myth of the Mexican ‘Cartels,’” April 17, 2023, available at <https://smallwarsjournal.com/jrnl/art/perspective-myth-mexican-cartels>.

115. Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 157.

116. Benjamin T. Smith, *The Dope: The Real History of the Mexican Drug Trade*, (New York: Norton, 2021): 368.

117. Andrea McCarthy-Jones et al., “From hierarchies to networks: The organizational evolution of the international drug trade,” *International Journal of Law, Crime, and Justice*, vol.63 (December 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S1756061620301907>.

118. A reviewer pointed me to the seminal work of Peter Reuter, *Disorganized Crime: The Economics of the Visible Hand*, (Cambridge, Mass.: M.I.T. Press, 1983).

119. Nicholas R. Magliocca et al., “Modeling cocaine traffickers and counterdrug interdiction forces as a complex adaptive system,” *Proceedings of the National Academies of Science*, vol.116, no.16 (April 1, 2019), available at <https://www.pnas.org/doi/10.1073/pnas.1812459116>.

sions to minimize risk.” Researchers modeled two alternatives: one with a network “agent” who considered local and network-wide transaction costs, and another with individual agents who considered only local transaction costs.<sup>120</sup> The model with the network agents conformed to known trafficking patterns, successfully replicating “the ‘cat-and-mouse’ dynamic between narco-traffickers and interdiction forces others have qualitatively described.” The result is a set of “emergent, self-organized, and highly adaptive systems,” the evolution of which “are highly path dependent—that is, they result from the location and timing of past interdiction events.” The researchers echoed the previous analyses of cocaine traffic when they concluded that “narco-trafficking is as widespread and difficult to eradicate as it is because of interdiction, and increased interdiction will continue to spread traffickers into new areas, allowing them to continue to move drugs north.” Recent intelligence gained from phone intercepts by Europol also attest to “flexible, less hierarchical, and less fragile” networks of cocaine traffic.<sup>121</sup>

In the face of fragmented and horizontally-aligned traffickers, several drug policy analysts question the “utility of the kingpin strategy” premised on the concept of a “cartel,” nominating in its place “a modified strategy that would target the middle operational layer of each major criminal group to handicap the groups’ regeneration capacity.”<sup>122</sup> This kind of targeting would also need to be evaluated for its impact, not its output.<sup>123</sup>

Also of note, security assistance and escalation of interdiction powers intended to curb the cartels have failed to demonstrate—or even attempt to measure—the counternarcotics outcomes of most interest to ordinary Americans. In 1989, Congress appointed the Department of Defense as the “single lead agency” in drug interdiction efforts. Shortly after this appointment, the U.S. Government Accountability Office (GAO) found that the Defense Department’s “detection and monitoring efforts have not had a significant impact on the national goal of reducing drug supplies.”<sup>124</sup> Since that time, the U.S. Military’s Northern and Southern Command has continued to supply intelligence on drug trafficking to civilian authorities. In 2024, GAO concluded that the Defense Department “has not assessed the agency-wide effectiveness of its counternarcotics and counter-transnational organized crime activities and does not have a plan for future assessments.” In addition, “contrary to key practices, [the Department of Defense] has not identified measurable outcomes for each strategic objective.”<sup>125</sup> In a sweeping review encompassing Plan Colombia, a multi-year, \$10 billion program to aid Colombian counternarcotic efforts, the GAO observed that, although “U.S. agencies that provide counternarcotics assistance to Colombia conduct performance monitoring of their activities,” they do “not consistently evaluate ... the effectiveness of their activities in reducing the cocaine supply.” Despite procedures to the contrary, the State Department “has not evaluated the effectiveness of its eradication and interdiction activities” and, consequently, “the U.S. government lacks key information to determine the most

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120. See *Ibid.*, “The Network Agent was able to perceive and act on network-wide interdiction risk information enabling trafficking to shift to lower risk yet still profitable locations elsewhere in the network; without a Network Agent trafficking only exploited locally viable locations...Differences in outcomes between the alternative model versions demonstrated that the two-level structure of narco-trafficking decision making was more realistic.”

121. Ed Caesar, “Crooks’ Mistaken Bet on Encrypted Phones,” *The New Yorker*, April 24, May 1 2023, p.37

122. Vanda Felbab-Brown, AMLO’s Security Policy: Creative Ideas, Tough Reality, Brookings Institution, March 2019, as cited in Congressional Research Service, “Mexico: Organized Crime and Drug Trafficking Organizations,” updated June 7, 2022, available at <https://sgp.fas.org/crs/row/R41576.pdf>.

123. Quote from *Ibid.*, 333. For discussion of these reviews and citations, see “Cartels vs. Networks.”

124. General [Government] Accountability Office, “Drug Control: Impact of DoD’s Detection and Monitoring on Cocaine Flow,” September 1991, GAO/NSIAD-91-297, available at <https://www.gao.gov/assets/nsiad-91-297.pdf>.

125. Government Accountability Office, “Counter-Narcotics: DoD Should Improve Coordination and Assessment of Its Activities,” April 2024, GAO-24-106281, available at <https://www.gao.gov/assets/gao-24-106281.pdf>.

effective combination of counternarcotics activities.”<sup>126</sup> These deficiencies notwithstanding, Plan Colombia served as a model for the Mérida Initiative of 2007, a security cooperation agreement with Mexico that aimed to combat drug traffickers, modernize the Mexican criminal justice system, enhance border security, and “build a culture of lawfulness.” In 2010, the GAO reported that the \$1.6 billion spent on the program went without “measurable targets” and did not “measure outcomes.”<sup>127</sup> Nearly 10 years and \$3 billion later, the GAO was still urging agencies to “adopt outcome rather than just output measures.”<sup>128</sup>

## Cartels and networks

From the perspective of the rule of law in Mexico, the conception of “cartel” retains descriptive power—though the best policy to counteract the influence of these organizations remains far from clear. However, from the perspective of supply-side counternarcotics policy, the model of a drug trafficking chain dominated by “networks” should structure policy.

Acknowledging the dominance of Sinaloa and Jalisco, Steven Dudley of *InSight Crime* nonetheless considers the word “cartel” as obscuring rather than illuminating their operation, particularly when it comes to fentanyl traffic.<sup>129</sup> He suggests that it is time to “retire” the word cartel as “it is virtually meaningless and gets us further, rather than closer, to understanding modern-day criminal organizations and how best to direct resources to fight them.”<sup>130</sup> These organizations “are broken into factions and spread across a huge geographic expanse,” with the majority of their resources concentrated “in northwest Mexico.” He points to the consensus among law enforcement and analysts that traffickers “are complex, multi-layered criminal networks,” some portion of which is comprised of “legal companies that supply the chemicals needed to make fentanyl.” Given that the “precursor market is inseparable from the broader chemical industry,” the fentanyl supply chain is “intimately linked to our global economy.” In addition to the network of precursor suppliers, “brokers, cooks, and distributors” are also often distinct from the organization of drug traffickers. For Dudley, “few of these actors have direct connections with the large criminal organizations repeatedly cited...as the DEA’s main targets, the Sinaloa Cartel and the (Jalisco Cartel).” To the contrary, “the Sinaloa Cartel and (Jalisco Cartel) business model does not depend on exerting strict control over the importers and cooks because...there is no harvest season or weather patterns inhibiting their ability to make fentanyl.”<sup>131</sup>

Only government reforms, either in policy or enforcement, can hope to influence the operation of drug networks. Accordingly, instigating these changes should be the focus of counternarcotics policy.

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126. Government Accountability Office, “Colombia: U.S. Counternarcotics Assistance Achieved Some Positive Results, But State Needs to Review the Overall U.S. Approach,” December 2018, GAO-19-106, available at <https://www.gao.gov/assets/gao-19-106.pdf>.

127. “Assessing the Merida Initiative: A Report from the Government Accountability Office,” found in Hearing Before the Committee on Foreign Affairs, House of Representatives, July 21, 2010, available at <https://www.govinfo.gov/content/pkg/CHRG-111hhrg57608/html/CHRG-111hhrg57608.htm>.

128. Congressional Research Service, “Mexico: Evolution of the Mérida Initiative,” January 13, 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF10578/19>.

129. Steven Dudley, “After U.S. Hearing on Fentanyl, Is It Time to Retire the Word ‘Cartel?’” *InSight Crime*, February 22, 2023, available at <https://insightcrime.org/news/after-us-hearing-fentanyl-time-retire-word-cartel/> [hereafter: Dudley, “Cartel”].

130. Dudley, “Cartel.”

131. All quotes from Dudley, “Cartel.”

## 4. A new approach to counternarcotics policy

The United States not only has good reason to establish a new counternarcotics policy model; it has considerable leverage to do so. Contrary to a standard narrative, illegally manufactured fentanyl did not appear in U.S. markets in response to demand among opioid users. No one asked for fentanyl. Although Chinese and Mexican officials remonstrate their American counterparts by insisting that the demand for drugs lies at the heart of the opioid epidemic, research characterizes the demand for fentanyl as “supply-led”: that is, the supply creates the demand. It is an efficiency gain for traffickers and a highly unreliable and dangerous product for its users.

In 2017, when fentanyl first eclipsed heroin in street markets, researchers found fentanyl exposure was common, but reported preference for the drug was low and exposure to it was inadvertent, resulting from a reported preference for and consumption of heroin.<sup>132</sup> Around the same time, one study conducted in Vancouver, Canada, found that, among intravenous drug users, preference for fentanyl over other illegal opioids increased modestly from 4.4% of the study group in 2017 to 6.6% in 2018.<sup>133</sup> Among long-time heroin users, researchers report that user preference for heroin with fentanyl, as opposed to heroin without it, is “mixed,” with many assuming a fatalistic view that exposure to fentanyl was “unavoidable.”<sup>134</sup>

As exposure increased, so too did the numbers of users who expressed a preference for fentanyl. A 2019 cross-sectional analysis returned a 27% rate of preference for fentanyl over other illegal opioids.<sup>135</sup> In 2022, interviews with a group of people who use drugs in West Virginia found that 43.4% preferred fentanyl. As fentanyl preference grows over time, it is easy to agree with the researchers in New York City who concluded that user preferences demonstrated “participants’ decreased consumer agency and greater exposure to systemic factors.”<sup>136</sup>

Though a majority of drug users still don’t prefer fentanyl, the rise of a significant number who do have an expressed preference for fentanyl followed pervasive exposure rather than preceding it. This is not a case of supply catering to demand; this is a case of supply creating demand. As researchers publishing in the journal *Addiction* noted in 2019, “evidence points to a supply-led addition of fentanyl to the drug market.”<sup>137</sup> The fact that fentanyl is found in counterfeit pills, dyed and pressed to look like an easily identified pharmaceutical, makes this point obvious. If consumers of these pills wanted fentanyl, they would not be sold disguised as something else. The common practice of mixing fentanyl into other street drugs like methamphetamine or cocaine without informing users of its presence in a product also provides *prima facie* evidence that at least some people who consume fentanyl do not actually seek it out.

132. Jennifer J. Carroll *et al.*, “Exposure to fentanyl-contaminated heroin and overdose risk among illicit opioid users in Rhode Island: A mixed methods study,” *International Journal of Drug Policy*, (June 2017) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5560423/>.

133. Sarah Ickowicz *et al.*, “Increasing Preference for Fentanyl among a Cohort of People who use Opioids in Vancouver, Canada, 2017-2018,” *Substance Use and Addiction Journal*, (January 2022), available at <https://journals.sagepub.com/doi/abs/10.1080/08897077.2021.1946892>.

134. See Kate LaForge *et al.*, “Knowledge, attitudes, and behaviors related to the fentanyl-adulterated drug supply among people who use drugs in Oregon,” *Journal of Substance Abuse Treatment*, (October 2022), available at <https://pubmed.ncbi.nlm.nih.gov/35932759/#:-:text=Results%3A%20People%20who%20use%20drugs,other%20people%20who%20use%20drugs>). Ben Westhoff reports that fentanyl users in Estonia would “prefer heroin.” see Ben Westhoff, *Fentanyl, Inc.: How Rogue Chemists Created the Deadliest Wave of the Opioid Epidemic*, (New York: Grove Press, 2019): 45-46.

135. Kenneth B. Morales *et al.*, “Preference for drugs containing fentanyl from a cross-sectional survey of people who use illicit opioids in three United States cities,” *Drug and Alcohol Dependence*, vol.204 (November 2019), available at <https://www.sciencedirect.com/science/article/pii/S0376871619303163>.

136. Adelya A. Urmanche *et al.*, “Fentanyl preference among people who use opioids in New York City,” *Drug and Alcohol Dependence*, vol.237 (August 2022), available at <https://www.sciencedirect.com/science/article/abs/pii/S0376871622002563>.

137. Sarah G. Mars *et al.*, “Illicit fentanyls in the opioid street market: desired or imposed?” *Addiction*, (December 2018), available at <https://pubmed.ncbi.nlm.nih.gov/30512204/>.

## Supply-side counternarcotics objectives

For the purposes of fleshing out the use of economic statecraft for counternarcotics policy, I offer two common-sense counternarcotics goals. First, I present the goal of reducing the supply of illegally manufactured fentanyl. Given that highly-adulterated, fentanyl-containing pills account for nearly half (49%) of all total fentanyl seizures,<sup>138</sup> it is reasonable to infer that traffickers currently do not fear interdiction, but rather factor it into their cost of business. If they truly felt supply pressure from interdiction, they would smuggle small amounts of highly potent fentanyl that would be nearly impossible to detect and intercept.

Notably, I do not put forward the goal of total eradication. The interruption of supply for any dependent opioid user presents a danger to that user if no safe alternative can be accessed. Fentanyl compounds this danger, as demonstrated by the spike in overdoses following arrests or seizures disrupting street-level dealers. In 2023, a group of researchers obtained law enforcement seizure data in Marion County, Indiana, and linked it to spatial and temporal analysis of overdoses, fatal and non-fatal.<sup>139</sup>

At the very same time, the dangers of first-time or accidental exposure to fentanyl are equally acute. In the synthetic era, users who purchase illicit drugs do not know what they are using—and very often, dealers do not know what they are selling. Most deaths attributed to amphetamines, cocaine, and heroin involve fentanyl.<sup>140</sup> Accordingly, I present a second goal of reducing fentanyl contamination of other drug supplies and the number of fentanyl-containing counterfeit pills.

## Outlining a new approach

In considering economic statecraft as the new venue for drug policy, this white paper utilizes the continuum of care first delineated by the Institute of Medicine: primary (prevention); secondary (early detection and management); and tertiary (mitigation).<sup>141</sup> Primary interventions cost the least and produce the best outcomes—but, as a rule, they cast a wide net, often failing to identify or affect their intended target. The early interventions of secondary responses reach their intended audiences reasonably well and offer good results at some cost. Tertiary interventions typically do not influence the outcomes of most interest, but may offer ancillary benefits of real value. These harm reductions or mitigation strategies might be expensive, like the public cost of street arrests for drug possession, or they might not, like the provision of fentanyl strips to people who use street drugs. Regardless of financial expense, along both the dimensions of both supply and demand, tertiary interventions tend to be far less popular with the public, particularly when they follow earlier interventions that lack legitimacy or adequate investment.

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138. NIDA, “Over 115 Million Pills Containing Fentanyl Seized by Law Enforcement in 2023,” May 13, 2024, available at <https://nida.nih.gov/news-events/news-releases/2024/05/over-115-million-pills-containing-illicit-fentanyl-seized-by-law-enforcement-in-2023>.

139. “The 3 sources of data collected between January 1, 2020, and December 31, 2021, and used in this study included (1) property room drug seizure data from the Indianapolis Metropolitan Police Department, (2) fatal overdose data from the Marion County Coroner’s Office, and (3) nonfatal overdose calls for service and naloxone administration data from the Indianapolis Emergency Medical Services.” See Bradley Ray *et al.*, “Spatiotemporal Analysis Exploring the Effect of Law Enforcement Drug Market Disruptions on Overdose, Indianapolis, Indiana, 2020-2021,” *American Journal of Public Health* (July 2023), available at [https://ajph.aphapublications.org/doi/10.2105/AJPH.2023.307291?url\\_ver=Z39.88-2003&rfr\\_id=ori%3Aacrossref.org&rfr\\_dat=cr\\_pub++Opubmed](https://ajph.aphapublications.org/doi/10.2105/AJPH.2023.307291?url_ver=Z39.88-2003&rfr_id=ori%3Arid%3Aacrossref.org&rfr_dat=cr_pub++Opubmed).

140. “In the first six months of 2023, 82 percent of all heroin-related deaths involved fentanyl!” Drug Enforcement Administration, “National Drug Threat Assessment 2024,” p.30. For more on opioid co-involvement in cocaine and amphetamine, see Centers for Disease Control, “Co-involvement of Opioids in Drug Overdose Deaths Involving Cocaine and Psychostimulants,” NCHS Data Brief No.474 (July 2023), available at [https://www.cdc.gov/nchs/products/databriefs/db474.htm#section\\_1](https://www.cdc.gov/nchs/products/databriefs/db474.htm#section_1).

141. See Institute of Medicine *Reducing Risk for mental Disorders: Frontiers for Preventive Intervention Research*, (Washington DC: National Academies Press, 1994); see also Lisa A. Kisling and Joe M. Das, “Prevention Strategies,” *StatPearls*, available at <https://www.ncbi.nlm.nih.gov/books/NBK537222/>.

## Primary interventions: Formal linkage

Policymakers should remedy the shortcomings of the Single Convention by linking deficits of governance to other policy domains under “negative conditionality.”

### *Enforcement linkage*

The existing architecture of global trade, the World Trade Organization (WTO), offers three different paths to formally link counternarcotics to trade in some actionable way: compliance with WTO rules; exemption from them; and an argument that the lack of regulation in another country—in this case, drug regulation—is an “actionable subsidy” that should be compensated by a “countervailing duty.”<sup>142</sup>

1. In order to comply with GATT/WTO rules, a border adjustment must be calculated with a transparent methodology and equate to charges assessed on a similar domestic product. Often this approach is characterized as “leveling the playing field” between imports and domestic goods.
2. In order to qualify for an exemption, a border adjustment must qualify under the public health and safety exceptions listed in Article XX of the World Trade Organization. The Appellate Body of the WTO has found that the member states cannot use the Article XX exception to impose specific policies on other countries or to disguise protectionism.<sup>143</sup>
3. Finally, a border adjustment can be framed as a “countervailing duty” to compensate for the “protection subsidy” of inadequate drug regulation. Companies with goods produced in a country sponsoring adequate drug regulation pay a cost, and some substantial portion of the benefits generated by that cost extends to trading partners, as these goods do not offer a major vector for illegally trafficked fentanyl. In corresponding fashion, those without adequate regulation produce goods without paying these costs, allowing them to benefit from a “backdoor trade” subsidy that imposes unfair burdens on trading partners.

Counternarcotics policy could be formally linked to trade using any of these rationales. The United States could establish that trade-distorting tariffs applied to any of the countries without an “analogue” component to their drug regulatory scheme, and/or without sufficient drug regulatory enforcement, and/or without established and enforced “Know-Your-Customer” provisions for the transport of drugs or their precursors—or without similarly effective measures—qualify for WTO-compliant border adjustments.<sup>144</sup> Likewise, trade-distorting tariffs applied to these countries could qualify under the Article XX general exception, or the U.S. could assess them as a “countervailing duty.”

Each path to linkage requires a distinct rationale and carries a burden of evidence. Notably, to date, the structural interdependence between illegal drugs and trade has been demonstrated only for fentanyl. Below I sketch the basis for enforcement linkage under each WTO path:

- **Compliance:** Because of inadequate drug regulation in the sender country, imports from this country

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142. Summary from Resources for the Future, “Border Carbon Adjustments 101,” available at <https://www.rff.org/publications/explainers/border-carbon-adjustments-101/>.

143. World Trade Organization, DS58: United States—Import Prohibition of Certain Shrimp and Shrimp Products, summary available at [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds58\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm).

144. “We argue that a GATT (Article XX) exception is needed to the extent that the implied tariffs exceed negotiated rates (bindings) and violate the most-favored-nation principle.” Edward J. Balistreri et al., “Optimal environmental border adjustments under the General Agreement on Tariffs and Trade,” May 2019, available at <https://www.card.iastate.edu/products/publications/pdf/19wp591.pdf>.

carry substantial amounts of fentanyl. As the receiving country, the United States will estimate the cost of its own effective drug regulation and impose a border adjustment to level the playing field.

- **Article XX Exception:** Because of inadequate drug regulation in the sender country, imports from this country should be treated differently—assessed a tariff—because the fentanyl which accompanies these imports endangers public health.
- **Countervailing duties:** Because these imports were produced without the cost of effective drug regulation in the sender country, these imports benefit from unfair competitive advantage in the form of a subsidy. As the receiving country, the United States will estimate the cost of its own effective drug regulation and impose a countervailing duty to account for this subsidy.

Although countervailing duties offers the most flexible framework, encompassing the regulatory inadequacies that fuel the pipeline for all illegal drugs, a border adjustment specific to fentanyl may have its own sufficient merit—and provide a template for policy directed towards other dangerous synthetic drugs.

In weighing the options for enforcement linkage, several items are worth noting. First, the carbon border adjustment recently passed by the European Union is designed to be compliant with WTO rules, offering an analogous path to U.S. policymakers. Second, to date, it is extremely rare for the WTO Appellate Body to uphold an Article XX general exception.<sup>145</sup> Notably, the Appellate Body has found that the issue of illegal drugs qualifies for an Article XX exception; trade action must then be structured so as to apply to all similarly-situated countries in order to comply with the preamble (chapeau).<sup>146</sup> Finally, the Appellate Body is itself in serious crisis, in part because of case rulings that extend beyond its mandate.<sup>147</sup> Currently, the Body lacks a quorum. As policymakers and analysts consider the different paths to enforcement linkage, the ultimate rationale for such a linkage would ultimately be reviewed by a markedly different Appellate Body, if reviewed at all.

Ultimately, the path of “compliance” is most attractive for its dual nature: it is both a weapon and a shield. The only possible response from source or transit countries linked to large-scale fentanyl traffic would need to be reciprocal, carrying the same burdens of evidence, not retaliatory. Specifically, these countries must demonstrate similar regulatory inadequacies in the United States which fuel similarly grave harms linked to trade.

### *Negotiation linkage*

Another approach to formulate counternarcotics policy based on economic statecraft would be “negotiation linkage,” formally linking counternarcotics policy to trade negotiations. For example, future regional trade agreements signed by the U.S., Mexico, and Canada could import and update the obligations of all existing drug control treaties and add analogue, enforcement, and Know-Your-Customer components as part of a sector-specific chapter on drugs, with monitoring and enforcement powers similar to the labor provision of the recently ratified U.S.-Mexico-Canada Agreement.

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145. Only one has succeeded: an import ban on asbestos challenged by Canada: EC – Asbestos (available at [https://www.wto.org/english/tratop\\_e/envir\\_e/edis09\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/edis09_e.htm)). For discussion see Public Citizen Update, August 2015, available at [https://www.citizen.org/wp-content/uploads/general-exception\\_1.pdf](https://www.citizen.org/wp-content/uploads/general-exception_1.pdf).

146. See Michael McKenzie, “Case Note: European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries,” *Melbourne Journal of International Law*, vol.6, (2005), available at [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0010/1681147/McKenzie.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0010/1681147/McKenzie.pdf).

147. See summary in Keith M. Rockwell, “WTO Dispute Settlement Reform Hinges on Washington,” European Centre for International Political Economy, February 2024, available at <https://ecipe.org/blog/wto-dispute-settlement-reform-hinges-on-washington/>.

The deficits of governance driving fentanyl traffic could be linked to trade on the basis of positive or negative conditionality—that is, either trade preferences granted (“carrots”) or sanctions imposed (“sticks”) on the basis of eligibility. To date, negative conditionality has fared better with the WTO Appellate Body.<sup>148</sup> Any trade action which resulted from these agreements—preferences or sanctions—could be constructed to meet the three paths to linkage discussed above, or the participants in the trade agreement could apply for a waiver from standard trading obligations.<sup>149</sup>

In fact, on the basis of a waiver, the United States has successfully implemented a positively conditioned (“carrots”) trade agreement designed to combat the traffic in illegal drugs.<sup>150</sup> The Andean Trade Preference Act of 1991, later renewed as the Andean Trade Promotion and Drug Eradication Act (2002), used a waiver to grant special trade preferences to Bolivia, Colombia, Ecuador, and Peru to incentivize export-oriented agricultural industry in Andean countries, on the thinking that these economic channels would offer a viable alternative to, and ultimately help displace, the coca cultivation fueling the cocaine trade.<sup>151</sup>

Although the Andean Trade Acts encountered no difficulty in meeting trade rules, the trade preferences awarded to these countries yielded no significant results in diminishing cocaine traffic. At various points, the United States government expelled countries from the agreement or failed to include them in a series of extensions because, in the determination of U.S. officials, these governments did too little to disrupt the traffic in cocaine. In 2013, Congress allowed the agreement to lapse, because it no longer viewed the sole remaining trading partner (Ecuador) as a reliable ally in counternarcotics policy. In annual reports, the U.S. International Trade Commission found that the “ATPA continued to have a small, indirect, but positive effect on drug-crop eradication and crop substitution efforts in the ATPA countries.”<sup>152</sup> These minimal gains were evidently not enough to sustain the program.

The Andean Trade Act experience validates negotiation linkage as strategy that can comport with the global trade architecture—in this case, by obtaining a waiver. But it also serves as a cautionary tale regarding the effectiveness of positive conditionality. Its unimpressive results may also advise against linkage without structural interdependence. Most significantly, to the extent that the Andean Act addressed identified deficits in governance, it focused on the adequacy of law enforcement and interdiction, including cooperation with American drug officials. But enforcement is designed to deliver security objectives, not counternarcotics goals. This misdirected targeting may rank as the most important reason for the program’s lack of success.

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148. “Traditionally, ‘negative conditionality’ has been the common practice, whereby failure to comply with a particular condition results in the withdrawal of trade preferences.” Michael McKenzie, “Case Note: European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries,” *Melbourne Journal of International Law*, vol.6, (2005): 4.

149. “As provided for in footnote 2 of the Enabling Clause, another option available to developed countries seeking to provide special preferences to only a subset of developing countries is to apply for a waiver from their Article I:1 obligations.” Michael McKenzie, “Case Note: European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries,” *Melbourne Journal of International Law*, vol.6, (2005): 21.

150. Cf. the non-waiver based preference system implemented by European Community to “developing countries that have instituted measures to combat illegal drug production and trafficking,” which failed before the Appellate Body on the grounds that these preferences were not extended to all “similarly situated” countries, nor did EC supply a transparent means for selecting, admitting, and expelling countries from the list of beneficiaries. Michael McKenzie, “Case Note: European Communities—Conditions for the Granting of Tariff Preferences to Developing Countries,” *Melbourne Journal of International Law*, vol.6, (2005): footnote 7.

151. SEE United States — Andean Trade Preference Act, GATT BISD, 39th Supp, 385, GATT Doc L/6991 (1992) (Waiver Decision, adopted on 19 March 1992, renewed on 14 October 1996).

152. United States International Trade Commission, “The Impact of the Andean Trade Preference Act: Tenth Report,” 2003, available at <https://www.usitc.gov/publications/docs/pubs/332/pub3725.pdf>.

## Advantages of linkage

The linkages proposed here *focus on nation-states, not criminals, as the appropriate target of policy*. Compared to criminals, governments respond in desirable ways to incentives and sanctions; they are uniquely situated to effect the structural change needed to influence networks operating within their jurisdiction. At the same time, this scheme also extracts counternarcotics policy from diplomacy, where it is subordinated to other urgent matters and held hostage to a classic “principal-agent problem”: other governments unwilling or incapable of acting on behalf of American priorities.

In addition to appropriate targeting, the shift to trade boasts other benefits. Among these is a *deference to sovereign power*. Based on issue-linkage, the United States can make outcome-oriented demands of a fentanyl or precursor source or transit country, but it cannot dictate whether—or how—that country responds. Another advantage to this alternative approach is the *inherently reciprocal nature of trade*. When trade enables or significantly exacerbates a problem that jeopardizes public welfare, then the regional and global architecture of trade furnishes a venue to address it.

Issue linkage not only *multiplies the policy tools available to policymakers*, it offers *additional pathways to articulate and respond to injury*. Border adjustments, Article XX exceptions, or countervailing duties comprise only a portion of the list of available sanctions. These sanctions can be imposed as described here, or they might be imposed in response to infractions already detailed in trade agreements. For example, counterfeit pills smuggled from abroad and pressed to resemble trademarked drugs in the United States would seem *prima facie* to violate applicable trade law.<sup>153</sup> The USMCA contains numerous counterfeit provisions; if necessary, these could be expanded to include explicit mention of counterfeit drugs.<sup>154</sup>

## Secondary interventions: Border adjustments and border tolls

Successful issue-linkage allows U.S. officials to impose sanctions on trade in the form of border adjustments, tariffs that qualify under the general exception, or countervailing duties. (For a review of legislation establishing trade authorities and examples of their recent application, see Appendix A.)

### Border adjustments

Assuming a WTO-compliant counternarcotics policy modeled after the EU’s carbon policy, I urge policymakers to use the national security discretion available under the Trade Expansion Act of 1962 to impose border adjustments on imports from countries identified as a major source or transit hub for non-medical production of fentanyl, fentanyl analogues, and/or their precursors.

### Advantages of border adjustments

*Border adjustments offer agility*. Adjustments can pivot to any source or transit country for illegally manufactured fentanyl or its precursors; they do not rely on cultivating relations or establishing trust between enforcement agencies. This seems particularly important given recent indications that precursor source

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153. The DEA already pursues a parallel path in its efforts to combat counterfeit drugs pressed in the United States. See for example “DEA implements ecommerce outreach program to combat counterfeit drug production,” August 4, 2020, available at <https://www.dea.gov/press-releases/2020/08/04/dea-implements-ecommerce-outreach-program-combat-counterfeit-drug>.

154. Fentanyl-containing counterfeit pills from abroad would seem to violate relevant trade dumping laws as well, but in order to qualify as such, the drug industry in the United States would need to claim illicit street sales a portion of their legitimate market.

countries can, and most likely will, shift. Adjustments also allow greater flexibility in targeting discrete and defined outcomes — the cessation of traffic in “imposter pills” containing fentanyl, for example. The ability to formally identify and incentivize specific outcomes of interest allows policymakers to telegraph their preferences across domains, a marked contrast to informal enforcement priorities which may depend on personnel and capabilities.

What if the drug enforcement apparatus was converted to a logic of utility and applied with specific outcomes (other than price) in mind? For example, officials might decide to arrest those implicated in traffic in fentanyl pressed as a counterfeit drug, and exercise leniency for those traffickers who do not counterfeit their wares. These arrests might produce a temporary or marginal effect, but they also reset some portion of the drug supply chain. Successors filling the void may not have the same exposure to enforcement risk. In contrast, economic statecraft survives replacement. By inserting a domestic government in the chain of responsibility, economic statecraft identifies a target that is not often replaced — and can be incentivized even when replaced.

*Border adjustments make good use of power.* They not only defer to the sovereign power of source or transit countries to rectify the deficits in governance, they enhance the ability of policymakers in the United States to set and prioritize their own agenda. The targets and severity of border adjustments will depend on U.S. officials assessing fentanyl precursor and drug flows, not the serendipity of enforcement opportunities abroad. Border adjustments also operate independently of diplomatic relations, acting as a separate channel of its own standing which derives power from the amount and nature of trade between a source or transit country and the United States, rather than the amicability of current relations.

Border adjustments also make good use of power by generating new stakeholders vested in resolving the deficits of governance. For example, in the case of the EU’s CBAM, importers must purchase a license to import carbon-intensive material; one of the requirements for maintaining their license is that they must estimate the price of carbon involved in their previous year’s imports and, if it below the EU price, they must pay the difference — costs which pass to consumers, weakening the price competitiveness of these imports. Given that border adjustments punish (or reward) the export businesses of a source or transit country, those closely tied to these businesses will presumably pressure their government to rectify those regulatory inadequacies which cost them money.

Finally, *border adjustments fail “well.”* For as long as source and transit countries shirk their responsibilities to better regulate drugs or address other relevant deficits in governance, they will generate revenue for expanding data collection and evidence-based interventions in the United States. If adjustments fail to work, then they fund what does.<sup>155</sup>

### *Border tolls*

People crossing the United States border bring tremendous cultural and economic benefits—and, unfortunately, a small number of them bring fentanyl. To date, the tremendous cost of fentanyl is unaccounted for in the levies charged at official border crossings—even though, by reports and available evidence, these crossings account for the majority of fentanyl smuggled into the United States.

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155. The concept of failure analysis is best known in the fields of engineering and data analysis. Systems can prove resilient in the face of failure by building redundancy or compartmentalizing systems so that failure is contained. Because counternarcotics policy is more prone to failure than success, it is just as important for any policy to “fail well” as it is to design and evaluate for success.

Existing tolls assessed at the border for entry into the United States vary by local jurisdiction and are usually designed to generate revenue to defray the costs of the infrastructure needed for busy ports of entry. I propose U.S. policymakers consider an entry toll applicable to all U.S. ports of entry and to all those desiring entry, including U.S. citizens. As with other aspects of this proposal, in order to calculate border tolls, policymakers would need accurate and ongoing information available to them regarding fentanyl smuggling routes into the U.S.

### *Advantages of border tolls*

Border tolls *generate needed revenue* for evidence-based, demand-side interventions. This revenue stream includes payments from U.S. citizens, who, judged by enforcement statistics, account for the majority of fentanyl smuggled into the United States.

### **Tertiary interventions: smart sanctions**

I propose that the current “smart” sanctions focused on criminal culpability should be replaced by targeting focused on utility—that is, the crucial components of networks that relate to lethal overdose.

A versatile tool of formidable scale, sanctions can target state or non-state actors. Sanctions imposed on individuals or business firms block a target’s access to any assets under U.S. jurisdiction, forbid any person in the United States from doing business with the target, and prohibit any named person from entering the United States. Sanctions carry no official evidentiary burden or requirement to charge a crime, but a “predicate offense” is cited when targets are named.

Following the end of the Cold War, U.S. policymakers found that global reliance on the dollar for trade and financial transactions dramatically enhanced their power of unilateral sanctions. According to Daniel W. Drezner, during the 1990s—sometimes called the “sanctions decade”—“there were nearly as many sanctions...as there were during the first 90 years of the twentieth century.”<sup>156</sup> Henry Farrell and Abraham Newman note that the development of the Eurodollar market, where the U.S. dollar served as a middle-man conversion currency for trades that did not involve any American party, established the U.S. dollar as the basis for much of the world’s trade.<sup>157</sup> Following the collapse of the Soviet Union, the dollar reached even further. To participate in trade, a country must obtain dollars, compelling financial institutions to “borrow, however temporarily, from U.S. counterparts and comply with the rules of the U.S. government.”<sup>158</sup> As Ethan B. Kapstein writes, “printing the world’s money is an enduring source of American leverage over international economic transactions that enables Washington to coerce cooperation when support from other countries for its policies is not forthcoming.”<sup>159</sup>

Though fragmented, the literature evaluating sanctions is extensive. While most smart sanctions target individuals or private corporations, their objective is to change the political behavior of a nation-state.

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156. Phrase “sanctions decade” is from Kapsstein, “Afterward,” p. 394. Daniel Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review*, vol.13, no.1 (March 2011): 97.

157. Henry Farrell and Abraham Newman, *Underground Empire: How America Weaponized the World Economy*, (New York: Henry Hold, 2023): 23.

158. Jeff Stein and Federica Cocco, “The Money War: How Four U.S. Presidents Unleashed Economic Warfare,” *The Washington Post*, July 25, 2024, available at [https://www.washingtonpost.com/business/interactive/2024/us-sanction-countries-work/?itid=ap\\_jeffstein](https://www.washingtonpost.com/business/interactive/2024/us-sanction-countries-work/?itid=ap_jeffstein).

159. Ethan B. Kapstein, “Afterword: Economic Statecraft: Continuity and Change,” in David A. Baldwin, *Economic Statecraft*, (Princeton: Princeton University Press, 2020 edition): 394.

Accordingly, that is the standard by which sanctions are evaluated. Drezner’s review of this literature finds convergence on several points: multilateral sanctions work better than unilateral ones; sanctions work better when imposed on democracies; when crafted to affect issues of “low salience”; and “when the sender and target did not anticipate frequent future interaction.”<sup>160</sup> As he points out, “[t]elling U.S. or U.N. officials that the key to making sanctions work was to threaten democracies on small matters of import does little good when policymakers are tasked with how best to alter Iranian or North Korean behavior.”<sup>161</sup> In general, the literature provides evidence that “smart sanctions are no better at generating concessions from the target state” than other approaches, but “solve several political problems for the sender countries” by imposing penalties without targeting innocent civilians.<sup>162</sup> Few analysts offer any appraisal of “smart” sanctions targeting corporations in order to exercise “extraterritorial regulation” beyond the interventions designed to combat money-laundering or extraterritorial regulation of financial institutions.<sup>163</sup>

Most recently, Treasury’s impressive sanctions machine has sparked concerns of “overreach,” courting unintended consequences by tempting countries to find a way to trade without relying on the U.S. dollar—including a shift to digital assets like Bitcoin.

Yet counternarcotics sanctions, the oldest form of “smart” sanctions targeting individuals, have gone without formal evaluation.

By all indications, these sanctions serve to reinforce the larger counternarcotics policy of the United States: punishment for its own sake, imposed with no outcome in mind or evidence of effectiveness. (For a discussion of current counternarcotics sanctions, see Appendix B: Review of current counternarcotics sanctions.)

According to reports, counternarcotics sanctions can be evaded by a number of strategies. First among them are the use of shell or front companies: corporations that exist in order to obscure ownership and economic activity. As Financial Crimes Enforcement Network warns banks, these companies “serve a critical role in enabling the supply chain and procurement of fentanyl precursor chemicals and manufacturing equipment by Mexico-based” drug trafficking organizations. “PRC-based suppliers generally sell fentanyl precursor chemicals and manufacturing equipment to shell and front companies under their control to create the façade of a legitimate transaction and to obfuscate the source of the illicit diversion,” FinCEN advises, and these transactions often involve “chemical brokers that control other shell and front companies to further obfuscate the supply chain.”<sup>164</sup> According to *InSight Crime*, “[c]reating shell companies in Mexico is relatively easy, and they’re often used in corrupt schemes.”<sup>165</sup>

Second, a foreign company may never face any significant domestic repercussions as a result of sanctions from U.S. officials. *InSight Crime* reports that Shanghai Fast Fine Chemicals, previously sanctioned by the

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160. Daniel Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review*, vol.13, no.1 (March 2011): 99.

161. *Ibid.*

162. Daniel Drezner, “Sanctions Sometimes Smart: Targeted Sanctions in Theory and Practice,” *International Studies Review*, vol.13, no.1 (March 2011): 104.

163. Edoardo Saravalle, “Recasting Sanctions and Anti Money Laundering: From National Security to Unilateral Financial Regulation,” *Columbia Business Law Review*, vol. 2022 (1): 550.

164. FinCen, “Supplemental Advisory on the Procurement of Precursor Chemicals and Manufacturing Equipment Used for the Synthesis of Illicit Fentanyl and Other Synthetic Opioids,” June 20, 2024, available at <https://www.fincen.gov/sites/default/files/advisory/2024-06-20/FinCEN-Supplemental-Advisory-on-Fentanyl-508C.pdf>.

165. “Dudley, “Precursor.”

Treasury Department, still operates.<sup>166</sup> Likewise, an investigation conducted by the *Washington Post* found that the traffic in precursors in China remains “largely unhindered,” despite targeted sanctions, after operations made “minor adjustments to avoid scrutiny, including tweaking customs labeling on packages and pivoting to alternative compounds that have virtually identical applications.” The *Post* found that Hebei Huanhao Biotechnology, placed under sanction by the United States in 2021, “continues to openly advertise precursor products.”<sup>167</sup>

In a recent letter to then-Treasury Secretary Janet Yellen, then-Senator Sherrod Brown, chair of the Senate Banking Committee, urged the Treasury Department to “define benchmarks and metrics to assess the effectiveness of its strategy for combating fentanyl trafficking,” Brown specifically asked Yellen to discern what action, if any, the governments “of China and of Mexico take regarding entities or persons designated under Executive Order 14059 for fentanyl trafficking.”

Notably, counternarcotics sanctions differ from many other “smart” sanctions in crucial respects. First and foremost, regimes are neither their explicit nor underlying target. Second, there is no established metric—no explicit outcome—against which to measure these efforts. Some evidence suggests that policymakers use counternarcotics sanctions for a chokepoint effect. According to Christopher J. Urben, sanctions, “if applied globally and on a quicker timetable, can effectively cut off manufacturers of precursor chemicals and facilitators of [transnational criminal organizations’] activity, including [Chinese money-laundering organizations], from the global financial system, diminishing their capabilities and making them targets for further enforcement efforts.”<sup>168</sup>

In considering “smart” sanctions, policymakers must weigh whether financial sanctions, like enforcement, result in the fragmentation of hierarchical organizations into networks, and, if so, whether such fragmentation contributes to outcomes of interest. In his seminal 1991 review of the application of social network analysis to criminal organizations, Malcolm Sparrow found the emerging data field of social network analysis “highly pertinent” to both understanding and targeting criminal organizations.<sup>169</sup> He urged close attention not only to the centrality of a particular node in the network, but also to “equivalence,” meaning “some notion of uniqueness.” Recruiters for a criminal organization, for example, might not feature as central to many directional nodes, but they might perform an exceptional and difficult service. The “most valuable targets,” he concluded, “will be both central and difficult to replace.”<sup>170</sup>

Since Sparrow’s publication, the application of network analysis to criminal intelligence has become a routine matter. At the same time, notions of “equivalence” do not seem to factor into enforcement decisions, particularly when it comes to “smart sanctions” targeting drug trafficking organizations. The typology of criminal networks produced by Steven Dudley and Matthew Taylor suggests that drug traffickers or “entrepreneurial networks” should be met with demand-reduction policies and the “targeting of chokepoints

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166. “Dudley, “Precursor.”

167. Cate Cadell and Lily Kuo, “Despite Fentanyl Crackdown, Chinese Sellers Are Open for Business,” *Washington Post*, June 20, 2024, available at <https://www.washingtonpost.com/world/2024/06/20/china-fentanyl-mexico-us/>.

168. Testimony of Christopher J. Urben in “Strengthening International Cooperation.”

169. Malcolm K. Sparrow, “The Application of Network Analysis to Criminal Intelligence: An Assessment of the Prospects,” *Social Networks*, (1991): 253.

170. *Ibid.*, 266.

in distribution chains and money laundering operations.”<sup>171</sup> To hamstring or possibly destroy a criminal network, the removal of recruiters and financiers might be a more effective methodology.

If sanctions prove successful in moving targets in desirable directions, it is worth noting that, as drug traffickers in Mexico venture to invest and control more legal business, they multiply the number of possible sanction targets.<sup>172</sup>

## Economic statecraft requires enhanced data collection and analysis

Reforms undertaken to rectify deficits in governance do not necessarily produce results. Institutional reorganization, escalation of force, or additional staff do not ensure effective drug monitoring; having regulations written on paper does not mean enforcement of regulation in practice. Border adjustments must be assessed, adjusted, and rescinded based on performance in identified outcomes of interest. Given the likelihood of competitive adaptation, this assessment should include not just monitoring at the legal ports of entry, but a systematic assessment of drugs confiscated by virtue of enforcement between these ports.<sup>173</sup>

### *Illegal drug flows: Data and analysis*

Developing the appropriate model, supported by the appropriate data collection and analyses, is imperative in order to use the tools of economic statecraft to achieve supply-side counternarcotics objectives of interest to ordinary Americans.

The lack of representative data on illegal drug price and purity has been a longstanding concern,<sup>174</sup> recently reiterated by several economists.<sup>175</sup> The drug policy model presented here underscores the importance of existing recommendations — and makes additional demands. In order to wield the tools of economic statecraft to achieve supply-side counternarcotics objectives that will reduce overdose deaths, it will be necessary to:

1. Characterize supply-side factors driving overdose deaths and identify outcomes of interest and any links to deficits of governance.

Without the benefit of these data, I nominate as factors driving overdose deaths the over-supply of illegally manufactured fentanyl; counterfeit pills containing fentanyl; and other illegal drug flows contaminated with fentanyl. I link these to deficits in governance in both China and Mexico.

2. Collect and analyze data gathered from the methods of drug traffickers. The U.S. should collect relevant data on illegal drugs at all ports of entry and interior checkpoints using randomized and

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171. Steven Dudley and Matthew Taylor, “Criminal Networks in the Americas,” *CLALS Working Paper Series* No. 33, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4004610](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4004610).

172. Significantly, these moves also potentially expand the sanction toolkit. In the past, following threats or violence against inspectors from the Department of Agriculture, the U.S. has briefly suspended avocado exports from Michoacan. Following this example, the U.S. should consider blocking top exports linked to recalcitrant trafficking organizations unwilling to comply with the explicit objectives of U.S. drug policy.

173. In 2012, the government reported that in “the last three years, federal authorities have discovered and shut down 22 completed cross-border smuggling tunnels in the Nogales area.” U.S. Immigration and Customs Enforcement, “ICE HIS, US Border Patrol Shut Down New Drug Smuggling Tunnel,” February 29, 2012, available at <https://www.ice.gov/news/releases/ice-hsi-us-border-patrol-shut-down-new-drug-smuggling-tunnel>.

174. Charles Manski *et al.*, *Informing America’s Policy on Illegal Drugs*, (Washington DC: National Academies Press, 2000): chapter 1.

175. See Timothy J. Moore, William W. Olney, and Benjamin Hansen, “Importing the Opioid Crisis? International Trade and Fentanyl Overdoses,” NBER Working Paper 31885, <http://www.nber.org/papers/w31885>; Bryce Pardo and Beau Kilmer, “Giving Drug Policy Decisionmakers the Data They Need,” RAND Testimonies, June 24, 2022, available at <https://www.rand.org/pubs/testimonies/CTA2133-1.html>.

systematic sampling. In addition, the same data should be collected from those crossing between legal ports of entry and factored into any analysis of drug flows.

Assuming a set point of 0, these data will monitor outcomes of interest. Let's assume that these data disclose a substantial decrease in counterfeit pills containing fentanyl crossing the southern border with Mexico.

3. Determine and alter border adjustments and tolls using a comprehensive model based on overdose deaths *and* all identified outcomes of interest. A model based only on identified outcomes of interest allows for competitive adaptation (in trade language, "leakage") or performative compliance by governments. A model based only on overdose deaths leaves policymakers in the dark regarding which lever to pull and when to pivot their focus to a different source or transit country.

Scenario 1: Mexico's counterfeit pill improvement score went up and overdose deaths related to counterfeit pills [ODP] containing fentanyl went down. Border adjustments and tolls on Mexican goods and crossings decrease by a corresponding amount.

Scenario 2: Mexico's counterfeit pill improvement score went up but ODP remained the same or increased. If data disclose that Mexican traffickers competitively adapted (for example, sent more powder over the border to be pressed in the U.S.), then border adjustments and tolls on Mexican goods and crossings remain the same or increase by the corresponding amount. However, if data disclose a new, significant source of these pills emerged (for example, direct mail from China), then border adjustments and tolls on Mexican goods and crossings decrease, but those on China increase.

The question of how to deal with the traffic in fentanyl precursors using the tools of economic statecraft deserves close consideration. In formulating the approach sketched here, the U.S. should conduct a formal and ongoing assessment of precursor traffic and evaluate which tools of economic statecraft, and which target selection, best respond to this traffic. It may be that factoring the failure to effectively regulate the receipt of precursors into the adjustments and tolls levied against a "finishing" country is the most efficient and effective response.<sup>176</sup> On the other hand, a strong case can be made for sanctions imposed directly on goods from precursor source countries—including countervailing duties—even if the precursors themselves are first routed to destinations outside the United States.

### *Calculating costs*

The "harm" inflicted by deficits of governance could be calculated based on mortality costs of illegally manufactured fentanyl. Using data from 2020, the U.S. Congress Joint Economic Committee estimated that opioid crisis mortality costs totaled "nearly \$1.5 trillion" annually.<sup>177</sup> Considering the average value of a statistical life as determined by the Environmental Protection Agency as well the subsequent increase in opioid overdose deaths and the mortality costs of other synthetic drugs, Charles Fain Lehman argues that the JEC's calculations are conservative, offering a mortality cost of "at least" \$2 trillion per year.<sup>178</sup>

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176. In this regard, it may be useful to examine the EU's characterization of embedded emissions in the supply chain to calculate the CBAM, or cost differential between the EU and other jurisdictions which do not support similarly effective carbon pricing schemes.

177. JEC, Democrats, Chairman Martin Heinrich, "The Economic Toll of the Opioid Crisis Reached Nearly \$1.5 trillion in 2020," September 28, 2022, available at <https://www.jec.senate.gov/public/index.cfm/democrats/issue-briefs?ID=CE55E977-B473-414F-8B88-53EB55EB7C7C>.

178. Charles Fain Lehman, "Can the Fentanyl Supply be Controlled," *The Causal Fallacy*, May 24, 2023, <https://thecausalfallacy.com/p/can-the-fentanyl-supply-be-controlled>.

More difficult to determine—but more familiar to the world of trade—would be a “cost” defined as the expenditures made on behalf of effective drug regulation and enforcement in the United States, and the unwillingness of other countries to assume this burden as the “harm.” Yet this is not a like-for-like analysis: the cost for China to regulate its chemical manufacture industry from its current starting point would be closer to the cumulative—rather than the current—cost of doing so in the United States. This approach also may not capture all relevant variables: for example, Mexico might find that a universal basic income is an expenditure that improves its scores on identified outcomes of interest more than money spent on policing. Equally important, money spent on improving drug regulation or enforcement in Mexico may not *result* in improved drug regulation or enforcement.

Calculating the “cost” of the deficits of governance driving fentanyl traffic requires careful thinking and a consensus of experts, but it is difficult to imagine an adequate articulation of “harm” and a calculation of “cost” that does not factor in the mortality costs of fentanyl overdose deaths.

### *Regional dashboards*

Revenue generated by border adjustments and border tolls should be directed to evidence-based interventions known to lower overdose deaths.

Local agencies coordinating demand-response policies report to local and state authorities—and, for some purposes, to federal authorities as well. These lines of accountability match the structure of government but not the operation of many drug markets. Typically, these coordinating bodies are without the capability to organize and invest certain strategies, like screening and drug education, tailored to regional drug markets.

To better coordinate enforcement, Congress authorized the creation of High Intensity Drug Trafficking Area (HIDTA) task forces designed to disrupt or dismantle drug trafficking organizations.<sup>179</sup> HITDA response teams collect information and develop intelligence on drug markets within their area of responsibility. Different HITDA task forces incorporate demand response through ADAPT programs (A Division for Advancing Prevention and Treatment). Each year, HITDA response teams report their outputs—the number and nature of their enforcement efforts—to Congress, but there is no evaluation of the operation of HITDAs against supply-side outcomes of interest, including traditional benchmarks of price or purity.

Border revenues should be directed to transform HITDAs into regional coordination points for data collection and evidence-based demand response. Demand-side policy filtered by population and region that is designed to keep a potential user from fentanyl would invest more in proactive measures like evidence-based drug education targeting populations of special concern: young people, returning soldiers, citizens returning from incarceration, and communities with high rates of overdose. In addition, upstream or “primordial” interventions like job creation in these regions or for these populations of special concern could keep potential—and perhaps existing—users from fentanyl.<sup>180</sup> Additionally, evidence-based drug screening and referral to treatment in these same populations could keep someone with an existing substance or alcohol use disorder from fentanyl, or keep an existing fentanyl user from an overdose. Inter-jurisdictional coordi-

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179. Office of National Drug Control Policy, “High Intensity Drug Trafficking Areas Program: 2024 Report to Congress,” available at <https://www.whitehouse.gov/wp-content/uploads/2024/02/2024-HIDTA-Annual-Report-to-Congress.pdf>.

180. Sehun Oh and Manuel Cano found that, particularly in areas with high fentanyl seizure rates (presumably, communities with higher rates of fentanyl circulating), one more job for every 100 Black workers is associated with .29 fewer drug overdose deaths per 100,000 Black Americans living in the same county. See Oh and Cano, “Black Americans’ Drug Mortality Increases and Local Employment Opportunities, 2010-2021,” *American Journal of Public Health*, (July 2024), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2024.307646>.

nating bodies should clear hurdles to accessing Opioid Agonist Therapy and ancillary support services, and consider offering heroin-assisted therapy where appropriate. Finally, fentanyl strips should be distributed to young people, citizens returning from incarceration, returning soldiers, and users who experienced a non-fatal overdose and/or logged an emergency room visit in the previous year.

To better understand and evaluate drug interventions in the United States, HIDTA centers should compile and share improved data on drug use, drug supply, and early warning systems. Additionally, HIDTA centers should perform analyses of regional drug mortality data for populations of special concern, including among the young; among cocaine, amphetamine, and counterfeit pill users; among long-time opioid users patronizing street markets; among citizens returning from incarceration, returning soldiers, and users who experienced a non-fatal overdose and/or logged an emergency room visit in the previous year.

## 5. Conclusion

This white paper positions the reduction of overdose deaths as the preeminent, structuring outcome: the reason for and the measure of any policy.

Set as a standard, this goal diversifies—and disciplines—the tools available to policymakers. In a world of fentanyl, drug composition and methods of consumption supersede the interest in drug price. In a world of fentanyl, supply-side interventions must offer meaningful incentives as well as effective punishments. In a world of fentanyl, demand-side interventions supported by evidence *and* evaluation take precedence over, and cannot be undermined by, supply-side policies not currently measured by any metric or accountable to any outcome.

This white paper puts forward a counternarcotics model that targets deficits in governance—offering agility, particularly the ability to redirect interventions to any source or transit country, and a focus on discrete outcomes of interest. Compared to the current, militant supply-side model targeting criminals, this approach offers a more restrained exercise of power, both in its deference to the sovereignty of other countries and in its stature as subordinate to evidence-based, demand-side interventions in the United States.<sup>181</sup> At the same time, economic statecraft affords greater discretion to American officials looking to curb illegal drugs entering the United States from abroad, extracting counternarcotics policy from the vagaries of diplomacy and the vulnerabilities inherent in relying on foreign enforcement agencies.

Most of all, by resting on a better understanding of fentanyl traffic, this alternative approach establishes an international supply-side counternarcotics policy that is outcome-oriented. Taken together, these features equip policymakers to confront the era of synthetic drugs, when source countries, drugs, drug formats, and the identity, nature, and methods of traffickers all change at a fast clip.

Fentanyl, a paradigm-shifting drug, is just the beginning—more synthetic drugs will follow. It is time to shift the policy paradigm.

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181. For the embrace of the “drug war” as a method to extend or preserve state power, both at home and abroad, see Kathleen J. Frydl, *The Drug Wars in America, 1940-1973*, (New York: Cambridge University Press, 2013).

# Appendix A: Trade Authorities and Their Recent Application

## Key Legislation Establishing Trade Authorities in the United States

Legislation	Summary
<i>Tariff Act of 1930</i>	<p>In the face of broad consensus supporting protectionist rates, the Smoot-Hawley tariff of 1930, named for its two legislative sponsors, featured the second highest rates of duty in American history—though this was originally assessed only on 40 percent of imports.</p> <p>In the words of one political observer, Smoot-Hawley was a “declaration of economic war by the strongest economic power against the whole of the civilized world.”<sup>182</sup> The United States continues to apply “Smoot-Hawley” rates to imports from North Korea and Cuba.</p> <p>Smoot-Hawley significantly enhanced the independence of the Tariff Commission and improved the organization of the tariff schedule.<sup>183</sup></p>
<i>Reciprocal Trade Agreement Act of 1934</i>	<p>Though less famous than its predecessor, the 1934 Trade Act was more influential, launching the United States on a path of free trade policy. The Act also provided a template for how future trade agreements would be reached. Specifically, Congress awarded to the President the authority to conclude agreements with trading partners to lower duties and eliminate trade restrictions without requiring any Senate approval whatsoever, provided such reductions did not exceed 50 percent of the existing rate, and provided he sought the “information and advice” of the Tariff Commission regarding the effect of such reductions.<sup>184</sup></p> <p>Though willing to grant the President more latitude, Congress retained considerable authority on trade relations by affixing an expiration to these powers, requiring a return to Congress for any renewal.</p> <p>The Reciprocal Trade Act also put forward a new, more realistic method for accommodating those economic producers injured by lower trade barriers: financial assistance.<sup>185</sup> This new form of “protection” dovetailed nicely with the concentration of more decision-making power in the executive branch, allowing for more coherent trade agreements that favored reduced trade barriers and lower tariffs.</p>
<i>Trade Expansion Act of 1962</i>	<p>In addition to renewing the President’s authority to cut tariffs, the Expansion Act allowed American delegates to conduct negotiations sector-by-sector (not item-by-item) and assess reciprocity—that is, judge the fairness of the agreement—by evaluating the entire package, as opposed to each constituent part.</p> <p>The Trade Expansion Act also authorized the Labor Department to pay unemployment compensation in higher amounts and for a longer period to workers displaced because of tariff cuts and award allowances for relocation and retraining. Eligibility for both forms of “trade adjustment assistance” was retroactive and determined by the independent U.S. Tariff Commission. Separately, the Act also authorized the Commerce Department to provide loan guarantees and tax deductions to industries injured by tariff cuts.</p> <p>Finally, as amended, Section 232 of the Act provides the President with the discretion to impose import restrictions, including tariffs, if the Department of Commerce has found that these imports pose a risk to U.S. national security.<sup>186</sup></p>

182. D.F. Fleming, “How the Smoot-Hawley Tariff Was Made,” Proceedings of the Annual Session of the Southern Political Science Association, no.9 (November 5-7, 1936): 17-18.

183. Note, “The Trade Act of 1971: A Fundamental Change in United States Foreign Trade Policy, The Yale Law Journal , vol. 80, no. 7(June 1971): 1425-26.

184. Note, “The Trade Act,” p.1426.

185. Note, “The Trade Act,” pp.1425-26.

186. Congressional Research Service, “Section 232 of the Trade Expansion Act of 1962,” April 1, 2022, available at [https://crsreports.congress.gov/product/pdf/IF/IF10667#:~:text=Section%20232%20of%20the%20Trade%20Expansion%20Act%20of%201962%20\(19,also%20self%20initiate%20an%20investigation](https://crsreports.congress.gov/product/pdf/IF/IF10667#:~:text=Section%20232%20of%20the%20Trade%20Expansion%20Act%20of%201962%20(19,also%20self%20initiate%20an%20investigation).

Trade Act of 1974	<p>Following the expiration of the 1962 trading authority, this Act reestablished the various programs of “trade adjustment assistance” as well as the President’s authority to reduce tariffs. Notably, Section 201 awards the President the power to impose temporary “safeguard measures” against imports if the U.S. International Trade Commission found that these imports harm or threaten to harm the health of U.S. industry. According to the Congressional Research Service: “Section 201 actions are deemed consistent with U.S. international obligations provided that they conform to the World Trade Organization (WTO) Agreement on Safeguards.”<sup>187</sup> Once these safeguards expire, the sitting president can extend them.</p> <p>The 1974 Act also stipulated that any other moves to lower trade barriers required congressional approval. To alleviate concern that a dilatory Congress would discourage trading partners from negotiating seriously with the American delegation, the 1974 Trade Act provided an expedited process for Congress to consider any necessary legislation without amendment, commonly referred to as “fast track trade negotiating authority.”</p>
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## Recent notable uses of trading authority

During his first term as President, Donald Trump implemented a variety of tariffs, each with a different design and stated purpose. Citing discretion awarded to the president to protect national security, Trump used the Trade Expansion Act of 1962 to impose steel and aluminum import tariffs (set at 25 and 10 percent, respectively), a protectionist gambit designed to benefit domestic suppliers. Separately, and also following the logic of protection, Trump imposed a tariff on all washing machines and solar products, arguing that the injury caused to domestic producers by foreign imports warranted protection under the 1974 Trade Act.

But his most famous tariffs were something else entirely. President Trump relied on the 1974 Trade Act—rather than the GATT/WTO dispute system—to impose tariffs on many imports from China and the European Union (EU) to punish unfair trading practices: failure to preserve intellectual property rights in the case of China, and unfair subsidy of the manufacture of airplanes in the case of the EU. The WTO Settlement Panel later authorized the tariff penalty assessed on the EU.<sup>188</sup>

Formal evaluations of these tariffs emphasize the cost to importers,<sup>189</sup> higher retail prices to consumers,<sup>190</sup> and the cost to exporters—especially agriculture—in the form of retaliatory tariffs.<sup>191</sup> Yet, although costly, these tariffs remain politically popular and largely still in place.<sup>192</sup> While the tariff on washing machines has expired, Joe Biden retained and, in some cases, modified the tariffs imposed by Donald Trump. An analysis of the China tariffs conducted by U.S. Trade Representative Katherine Tai concluded that these penalties carried injurious, unintended consequences. Nevertheless, the report recommended retaining these tariffs, reserving the right to add products to the tariff list, and increase tariffs already in place.<sup>193</sup>

187. Congressional Research Service, “Safeguards: Section 201 of the Trade Act of 1974,” January 13, 2021, available at <https://crsreports.congress.gov/product/pdf/IF/IF10786>.

188. Congressional Research Service, “Escalating U.S. Tariffs: Affected Trade,” January 29, 2020, available at <https://sgp.fas.org/crs/row/IN10971.pdf>.

189. United States International Trade Commission, “Economic Impact of Section 232 and 301 Tariffs on U.S. Industries,” March 2023, available at <https://www.usitc.gov/publications/332/pub5405.pdf>.

190. According to the Congressional Budget Office, “tariffs are also projected to reduce average real household income by \$1,277 (in 2019 dollars) in 2020.” CBO, “Chapter 2: Economic Outlook,” available at <https://www.cbo.gov/system/files?file=2020-01/56020-CBO-Outlook-Chapter2.pdf>.

191. David Autor *et al.*, “Help for the Heartland? The Employment and Electoral Effects of the Trump Tariffs in the United States,” January 2024, available at [https://www.nber.org/system/files/working\\_papers/w32082/w32082.pdf](https://www.nber.org/system/files/working_papers/w32082/w32082.pdf).

192. *Ibid.*

193. Office of the U.S. Trade Representative, “Four Year Review of Actions Taken in the Section 301 Investigation,” May 14, 2024, available at <https://ustr.gov/sites/default/files/USTR%20Report%20Four%20Year%20Review%20of%20China%20Tech%20Transfer%20Section%20301.pdf>.

## Appendix B: Review of Current counternarcotics sanctions

The history of modern counternarcotics sanctions begins in 1995, when President Bill Clinton invoked existing authorities under emergency powers to sign Executive Order 12978. This “Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers” order targeted Colombian drug traffickers, as identified by the State Department and Department of Justice, and those deemed to materially assist them. For all named targets, the Office of Foreign Asset Control (OFAC) of the Treasury Department blocked access to all financial assets in the United States.

Congress considered these tools to be valuable additions to counternarcotics policy and expanded their use beyond Colombian traffickers in the Foreign Narcotics Kingpin Designation Act (“Kingpin Act”), signed into law by Clinton in 1999. To this day, OFAC maintains an active list of all “Specially Designated Nationals and Blocked Persons,” tagged “SDNT” for those named under Executive Order 12978 and “SDNTK” for those named under the Kingpin Act.

In April 2018, the United States government sanctioned the first entity linked to traffic in synthetic drugs. Yet, in the months that followed, officials refrained from adding other entities to the list, despite unabated traffic in fentanyl. In 2019, Congress passed the Fentanyl Sanctions Act, providing tools that could be used against unregulated Chinese chemical manufacturers. (The Act also established the Commission on Synthetic Opioid Trafficking, the research and findings of which are cited *in passim*.)

Still, the sanctions tool languished under President Trump. His successor, Joe Biden, declared the opioid epidemic a national emergency during his first year in office. As part of that declaration, Biden signed Executive Order 14059, “Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade” in 2021. The “new tools” in 14059 included the ability to impose sanctions on a target regardless of whether or not they could be linked to an identified drug trafficking organization, as well as the ability to sanction foreigners who knowingly receive assets derived from the proceeds of drug traffic. Executive Order 14059 also included the ability to block a targeted person’s entry into the United States and expanded the list of prohibited transactions with “Specially Designated Nationals.”

White House statements at the time of the Executive Order indicated that this augmentation of previous sanction authorities was designed to “reflect[] the new realities of the 21st century drug trade.” According to officials, the decentralized nature of drug traffic was inadequately captured by the previous “comprehensive sanction packages...using the traditional ‘Kingpin’ model.” Immediately upon issuing the order, OFAC announced 25 new designations, several of them involved in Chinese chemical manufacture.

But Congress still saw room for more aggressive action. As part of the National Security Supplemental passed in the spring of 2024, Congress included the “21st Century Peace through Strength Act,” one portion of which was the “FEND Off Fentanyl” bill. The “Fentanyl Eradication and Narcotics Deterrence Act” doubled the statute of limitations for the underlying predicate offense which the Treasury Department could use as the basis for imposing sanctions. Even more important, FEND allowed the Treasury Secretary to designate financial transactions or institutions as a “money-laundering concern” if connected to fentanyl traffic. Following such designation, the Treasury Secretary can limit or totally bar designees from transacting with financial institutions in the United States. As one commentator noted, the “U.S. government already possessed broad authorities” for actions such as these, but the “FEND Off Fentanyl Act is a strong signal

from the Congress and the government that this will be elevated as a priority focus in the near future.”<sup>194</sup>

Following FEND Off Fentanyl, the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued new guidance to banks and other financial institutions on how to spot suspicious financial activity related to fentanyl traffic. Already the Bank Security Act of 1970 required these institutions to report cash payments of over \$10,000; the USA Patriot Act passed in 2001 mandated that these same institutions retain records of transactions for a period of five years, and to file a Suspicious Activity Report (SAR) if they spotted behaviors or transactions that Treasury had warned as possible indications of illegal activity. FEND Off Fentanyl added new flags to the list of enumerated suspicious activity, several of them linked to business transactions in and with China.

Since President Biden’s Executive Order, the Treasury Department has sanctioned hundreds of targets for drug trafficking. Without question, the Treasury Department has graduated from informal partner to a major, organizing force in the counternarcotics policy of the United States.

Accordingly, in 2023, Treasury Secretary Janet Yellen formed a “Counter-Fentanyl Strike Force.”

Officials from the Treasury Department also liaise with counterparts from major drug source and trafficking countries. The Treasury regularly holds “Roundtables” with Mexican officials to coordinate action and share intelligence. The North American Drug Dialogue Illicit Finance Working Group brings together finance officials from Canada, Mexico, and the United States to try to determine the money-laundering strategies used by major traffickers. In April of 2024, Secretary Yellen traveled to China to announce the “Joint Treasury-People’s Bank of China Cooperation and Exchange on Anti-Money Laundering,” intended to perform a similar function.

Treasury officials view sanction tools as more than just punishment. According to them, the “power and integrity of OFAC sanctions derive not only from OFAC’s ability to designate and add persons to the Specially Designated Nationals and Blocked Persons List (SDN List), but also from its willingness to remove persons from the SDN List consistent with the law.” (This article includes a chart of the number of targets sanctioned and *unsanctioned* in the era of “smart” sanctions.) In the eyes of the Treasury, then, sanctions are a tool for behavioral modification.

And yet, in the realm of counternarcotics, they are rarely evaluated with that purpose in mind. In fact, there is very little evaluation of counternarcotics sanctions at all, by any metric. Accepting sanctions as financial punishment inflicted for its own sake, former Treasury official and National Security Advisor Juan C. Zarate observes that the OFAC sanctions against Colombian traffickers amounted to “a virtual financial death penalty.” However, to the best of my knowledge, the expansion to new European markets and continued—now unprecedented—profit-making from cocaine has not factored into any evaluations of counternarcotics sanctions against Colombian targets.

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194. Quentin Johnson et al., “President Signs Expansive Sanctions Bill Into Law”, *Step toe: International Compliance Blog*, May 2, 2024, <https://www.step toe.com/en/news-publications/international-compliance-blog/president-signs-expansive-sanctions-bill-into-law-doubling-of-limitations-period-for-ieepa-violations-likely-to-have-major-impact.html#:~:text=While%20the%20US%20government%20already, focus%20in%20the%20near%20future>.