

PASS THE KUSH: ESTABLISHING A VIABLE JAMAICAN CANNABIS EXPORT INDUSTRY UNDER CURRENT INTERNATIONAL DRUG REGIME

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INTRODUCTION

Can a business built on an internationally controlled plant grow into a sustainable source of capital for an economically trodden island nation? The land of roots, rock, reggae, and the birthplace of Bob Marley¹ has approved well over a million pounds of cannabis exports to be shipped abroad.² This amount of cannabis exports could mean that Jamaica is finally ready to capitalize on the highly stigmatized herb its nation's reggae artists are known for singing about.

The global cannabis market is budding and is projected to reach \$102.2 billion U.S. dollars by 2030.³ Internationally, over the past five decades, countries have been moving toward liberalization of the

1. Robert Witmer, *Review: Roots, Rock, Reggae [film] by Jeremy Marre*, LAT. AM. MUSIC REV. / REV. DE MÚSICA LAT. AM. (1990), available at <https://doi.org/10.2307/780130> (last visited Feb. 27, 2024).

2. Alicia Smith, *Gov't to Formulate Local Cannabis Policy Following Canadian Company Backlash*, JAM. OBSERVER (Mar. 7, 2023, 12:16 AM), available at <https://www.jamaicaobserver.com/news/govt-to-formulate-local-cannabis-policy-following-canadian-company-backlash/> (last visited Feb. 27, 2024).

3. Grand View Research, *Legal Marijuana Market Size Worth \$102.270.6 Billion by 2030*, GRAND VIEW RSCH. (2022), available at www.grandviewresearch.com/press-release/global-legal-marijuana-market (last visited Feb. 27, 2024).

cannabis plant and its by-products.⁴ In 2015, Jamaica became the first Caribbean state to decriminalize the possession and personal use of ganja, as cannabis is locally termed on the island, in small quantities.⁵ Subsequently, in September 2018, Jamaica sent the first commercial shipment of medical cannabis oil from the Caribbean to Canada for analytical testing purposes.⁶ This shipment signaled Jamaica's first step in positioning itself as a global player in the growing medical Cannabis international export industry.

Accessing the global cannabis markets could help transform Jamaica's developing economy.⁷ Although cannabis has been used by many for centuries, the cannabis industry is still in its infancy, leaving Jamaica with little guidance on establishing its international medical cannabis export industry. Jamaica needs to finalize import and export regulations that can support a viable industry, spur economic growth while maintaining health and safety, and sustain adherence to international drug treaties.

However, the state of the current international drug regime has stunted Jamaica's attempt to establish import/export regulations since 2015.⁸ The government's inability to adequately find solutions for several legal issues in the international arena is the primary cause of this delay, as the impending regulations would need to include provisions that cover these issues.⁹

4. See Brian Maciver, *Cannabis Legalization World Map: Updated*, CANNABIS BUSINESS TIMES (July 2017), available at <https://www.cannabisbusinesstimes.com/article/cannabis-legalization-world-map/> (last visited Apr. 10, 2024).

5. Parliament of Jamaica, *The Dangerous Drugs (Amendment) Act, 2015*, PARLIAMENT OF JAM. (2015), available at <https://www.cla.org.jm/sites/default/files/documents/The%20Dangerous%20Drugs%20%28Amendment%29%20Act%2C%202015.pdf> (last visited Feb. 27, 2016) [hereinafter DDAA].

6. MJBizDaily Staff, *First Medical Marijuana Shipment from Jamaica Head to Canada*, MJBIZDAILY (Dec. 17, 2021), available at <https://mjbizdaily.com/first-medical-marijuana-shipment-from-jamaica-heads-to-canada/> (last visited Feb. 27, 2024).

7. Steven Davenport and Bryce Pardo, *The Dangerous Drugs Act Amendment in Jamaica: Reviewing Goals, Implementation, and Challenges*, 37 INT'L. J. OF DRUG POL'Y 60, 60-67 (Nov. 2016), available at <https://www.sciencedirect.com/science/article/abs/pii/S0955395916302729#:~:text=In%20April%202015%2C%20the%20Government,for%20medical%20cannabis%20and%20hemp> (last visited Feb. 27, 2024); The Economist, *Jamaica's Cannabis Gamble*, THE ECONOMIST (Apr. 17, 2019), available at <https://www.economist.com/the-americas/2019/04/17/jamaicas-cannabis-gamble> (last visited Feb. 27, 2024).

8. Marta Rychert et al., *Issues in the Establishment of a Therapeutic Cannabis Market under Jamaica's Dangerous Drugs Amendment Act 2015*, 86 INT'L. J. OF DRUG POL'Y 1, 4-5, (Dec. 2020).

9. *Id.*

This note examines the legal issues that have surfaced because of cannabis's controversial scheduling in the United Nations (UN) drug treaties, and the Commission on Narcotic Drugs' failure to reschedule cannabis according to recommendations by the World Health Organization (WHO),¹⁰ along with the changing global attitude towards cannabis in the international community.¹¹ Further, this note assesses the developing cannabis industries in other countries, comparing their approach to Jamaica's interim strategy to address limitations to accessing international markets imposed by U.N. drug treaties and U.S. federal drug policies.

Section II of this note recounts a brief history of international cannabis regulations focusing on those imposed by the UN. Section III analyzes several international approaches taken in a growing global trend toward liberalization of cannabis and the creation of markets for primarily medical but also local recreational use of cannabis. Section IV explains various legal issues that are hindering the establishment of a viable cannabis industry due to the inability of the international drug regime to support large scheme commercialization of highly scheduled drugs. Section V concludes this note with a recommendation for how Jamaica should draft its import-export legislation to avoid some of the risks associated with violating international drug treaties and maintaining good standing in international markets.

I. BACKGROUND

Cannabis has been regulated internationally since the 1925 UN Conference.¹² The cannabis plant existed before Christ and has many names, such as marijuana, ganja, hemp, and more.¹³ Before global prohibition, humans used the cannabis plant for medicine, recreation, religious purposes, food, and its fibers to make rope and textiles.¹⁴ Before global

10. WHO Expert Committee on Drug Dependence (ECDD), *WHO Cannabis Recommendations*, WORLD HEALTH ORG. (Jan. 24, 2019), available at https://cdn.who.int/media/docs/default-source/controlled-substances/unsg-letter-ecdd41-recommendations-cannabis-24jan19.pdf?sfvrsn=6070292c_2&download=true (last visited Feb. 27, 2024).

11. The Economist, *A Global Revolution in Attitudes Towards Cannabis Is Under Way*, THE ECONOMIST (Aug. 29, 2019), available at <https://www.economist.com/international/2019/08/29/a-global-revolution-in-attitudes-towards-cannabis-is-under-way> (last visited Feb. 27, 2024).

12. League of Nations, Second Opium Conf. Convention Chp. 3 Art. 4-5, Feb. 19, 1925 available at https://treaties.un.org/doc/Treaties/1925/02/19250219%2006-36%20AM/Ch_VI_6_6a_6bp.pdf (last visited Feb. 27, 2024).

13. John Hudak, *MARIJUANA: A SHORT HISTORY* 1-2 (2016).

14. *Id.* at 1-6.

prohibition, humans used the cannabis plant for medicine, recreation, religious purposes, food, and its fibers to make rope and textiles.¹⁵

Today, the plant is most known for the drug made from its flower that delivers a psychoactive effect.¹⁶ The International Drug Control System defines cannabis as a drug with limited therapeutic advantages and a high potential for abuse.¹⁷ As such, its use is limited to medical and scientific purposes, though the drug conventions do not define such purposes, creating a legal gap that further complicates legislation regulating cannabis use.¹⁸

A. *History of International Cannabis Regulation*

As late as the 1930s, the American Medical Association endorsed cannabis's potential medical value and low likelihood of addiction.¹⁹ So, when did things go south? In the 19th century, concern with the growth of opium addiction, primarily in China, led to the creation of an international drug control system beginning with the Shanghai Opium Commission of 1909.²⁰ Then, the U.S. pursued use restrictions in the Hague Conventions of 1912 and the 1925, 1931, and 1936 drug conventions of the League of Nations. Not achieving its desired results, the U.S. exited the 1925 conference believing its policies were not strict enough.²¹ During the 1940s and 50s, continued disorder of the illegal opium market resulted in U.S.-led efforts to create a new "single convention" to consolidate all existing drug treaties and establish a uniform regulatory system for global drug production to forcibly limit supply to "medical and scientific" needs.²²

Although cannabis was not the initial focus of international drug control, at the turn of the 20th century, global social change led to

15. *Id.* at 1-6.

16. *Id.*

17. Single Convention on Narcotic Drugs, 1961, March 30, 1961, 520 U.N.T.S. 204; Protocol Amending the Single Convention on Narcotic Drugs, 25 March 1972, T.I.A.S. No 8118, 976 UNTS 3 Article 5 [hereinafter 1961 Convention].

18. *Id.* at Art. 4(c)

19. John Collins, A Brief History of Cannabis and the Drug Conventions, *AJIL Unbound*, 114, 279-284 (Oct. 12, 2020) available at <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/brief-history-of-cannabis-and-the-drug-conventions/A8547C998A1D05173495BCD6012329C0> (last visited Feb. 27, 2024); *See also* [1961 Convention].

20. Francisco E. Thoumi, "Re-Examining the 'Medical and Scientific' Basis for Interpreting the Drug Treaties: Does the 'Regime' Have any Clothes?," *in* *After The Drug Wars* 19-29 (2016).

21. *Id.*

22. *Id.*

cannabis's inclusion on the list of controlled substances.²³ In 1932, cannabis was dropped from the British Pharmacopeia due to its “unpredictability” and the advent of “new and better” synthetic drugs that did away with ancient herbal remedies.²⁴ Then, the increasing recreational use and drug abuse of cannabis in the U.S. prompted states to prohibit its use, resulting in the Marijuana Tax of 1937.²⁵ During the same period, Ireland made cannabis illegal in 1934.²⁶ By the 1950s, many countries established strict regulations or prohibitions that both directly and indirectly targeted cannabis use.²⁷ This global rise in prohibitions led to cannabis's prescription as a narcotic drug listed in Schedule I and IV of the 1961 U.N. Single Convention on Narcotic Drugs (1961 Convention).²⁸ Thereafter, the stigma attached to cannabis has only recently begun to unravel.²⁹

B. The United Nations Drug Conventions

The 1961 Convention was the first in a series of drug treaties that comprise the current international drug regime and is the primary international treaty that regulates narcotic drugs.³⁰ Three international conventions frame the current system of worldwide drug control.³¹ These are the 1961 Convention, as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances (1971 Convention), and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention).³² These international drug control treaties provide a framework for countries to classify, control, and regulate drugs and substances while considering their potential for abuse,

23. *Id.*

24. Parliament.UK, *Chapter 2 History Of The Use of Cannabis*, available at <https://publications.parliament.uk/pa/ld199798/ldselect/ldsctech/151/15103.htm> (last visited Jan. 10, 2024).

25. Tod H. Mikuriya, *Marijuana in Medicine*, California Medicine (January 1969), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1503422/pdf/califmed00019-0036.pdf> (last visited Feb. 27, 2024).

26. Sam Saarsteiner, *The History of Cannabis Regulation*, Clark Hill (Jul. 5, 2022) available at <https://www.clarkhill.com/news-events/news/the-history-of-cannabis-regulation/> (last visited Feb. 27, 2024).

27. *Id.*

28. See 1961 Convention; see *Id.*

29. Mikuriya, *supra* note 25.

30. International Narcotics Control Board, *1961 Convention*, available at <https://www.incb.org/incb//conventions/index.html?lng=en> (last visited Feb. 27, 2024).

31. *Id.*

32. *Id.*

medical use, and impact on public health.³³ The treaties, primarily the 1961 and 1971 Conventions, classify controlled substances into four schedules, beginning with Schedule I (most restricted) to Schedule IV (the least restricted).³⁴

The 1961 Convention focuses on the illicit traffic and unauthorized consumption of controlled substances.³⁵ The Convention lists cannabis, cannabis resin, and its extracts under Schedule I, and until December 2020, on Schedule IV of its regulatory framework. Schedule I drugs are limited in all phases of trade to medical and scientific purposes, including manufacture, possession, use, and domestic and international trade.³⁶ The Convention also requires states that have ratified the treaties to require government participation in any phase of import and export through government authorizations such as licensing or state ownership.³⁷

Under the 1971 Convention, cannabis derivatives, tetrahydrocannabinol, and delta-9-tetrahydrocannabinol (THC) are currently under Schedule I and II.³⁸ Drugs in Schedule I of this convention measured a high risk of abuse that pose severe risks to public health, with little to no therapeutic value acknowledged by the Commission on Narcotic Drugs (CND).³⁹ Schedule II includes drugs with a risk of abuse and low or moderate therapeutic value.⁴⁰ The 1971 Convention limits and controls the manufacture, export, import, distribution, and stocks of, trade-in, and use and possession of substances within Schedule I.⁴¹ The 1971 Convention requires medical prescriptions for the lawful use of Schedule I and II substances.⁴² Those distributing these regulated substances must use warning packaging and labeling and keep a distribution record.⁴³

Broadening the scope of the treaties, the 1988 Convention goes further than the two preceding conventions, which primarily focus on

33. *Id.*

34. 1961 Convention, *supra* note 20, at Schedules.

35. Collins, *supra* note 19.

36. 1961 Convention Article 4(c).

37. *Id.* art.23.

38. UN General Assembly, *1971 Convention on Psychotropic Substances*, 9 December 1975, A/RES/3443. [hereinafter 1971 Convention].

39. *Id.* at Resolution II.

40. *Id.*; Sean Stephenson, *An Opening for Global Trade in Cannabis? What December's Vote under the UN Drug Treaties Mean for Global Cannabis Trade*, CAN. REGULATORY REV. (Nov. 26, 2020) available at <http://www.canadaregulatoryreview.com/an-opening-for-global-trade-in-cannabis-what-decembers-vote-under-the-un-drug-treaties-means-for-global-cannabis-trade/> (last visited Feb. 27, 2024)

41. 1971 Convention at art. 5, ¶ 2.

42. *Id.* at Art. 2, ¶ 7 (a)(ii).

43. *Id.* at Art. 7, ¶ e.

preventing the diversion of drugs to illicit markets.⁴⁴ This Convention includes provisions that add precursor chemicals to the list of controlled substances and is the only convention to address personal consumption (recreational use) contrary to the requirements of the 1961 or the 1971 Conventions.⁴⁵

Though not driven by cannabis regulation, together, the Conventions create a unified system of controls for cannabis, the cannabis plant, and cannabis resin.⁴⁶ Under Article 4 of the 1961 Convention, parties must “limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in, use and possession of drugs.”⁴⁷ The 1961 and 1971 Conventions place more than 100 controlled substances in four schedules according to their therapeutic value and propensity for abuse.⁴⁸ As a result of cannabis’s category as a Schedule I drug among substances with a high potential for abuse and little to no therapeutic use (including heroin, fentanyl, and other opioids)⁴⁹, states that choose to allow medical and scientific production of cannabis need to follow the strict regulatory structures for opium production for their operation to be considered licit under the conventions.⁵⁰ Note that the conventions do not distinguish between legal and illegal drugs.⁵¹ Instead, they specify the licit and illicit purposes and ways of handling the scheduled drugs.⁵²

Still, there remains the question of whether the international drug regime has any force.⁵³ As treaties, the obligations the regime imposes

44. See generally U.N. Convention on Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, U.N. Doc. E/Conf. 82/16, reprinted in 28 I.L.M. 493 (1988), 1582 U.N.T.S. 95. [hereinafter 1988 Convention]; See generally 1961 Convention; See generally 1971 Convention.

45. 1988 Convention, *supra* note 45, at Art. 3(2).

46. See John Collins, *Symposium On Drug Decriminalization, Legalization, And International Law – A Brief History of Cannabis And The Drug Convention*, Cambridge (Oct. 12, 2020), available at

<https://www.cambridge.org/core/services/aop-cambridge-core/content/view/A8547C998A1D05173495BCD6012329C0/S2398772320000550a.pdf/a-brief-history-of-cannabis-and-the-drug-conventions.pdf> (last visited Feb. 27, 2024).

47. 1961 Convention at Art. 4(c).

48. 1961 Convention at Schedules; 1971 Convention at Schedules.

49. 1961 Convention at Schedule I.

50. 1961 Convention at Art. 2, ¶ 7.

51. 1961 Convention at Definitions; 1971 Convention at Definitions; 1988 Convention at Definitions.

52. *Id.*

53. Thoumi, *supra* note 20.

are not directly enforceable by a UN body.⁵⁴ Instead, the 1961 Convention established the International Narcotics Control Board (INCB) in 1968, which monitors and assists governments with treaty compliance as an “independent and quasi-judicial monitoring body for the implementation of the United Nations International drug control conventions.”⁵⁵ The INCB is activated in the event of apparent violations of the treaties.⁵⁶ The INCB collaborates with participating states to propose appropriate remedial measures to governments not fully abiding by the provisions of the treaties or encountering difficulties in applying them.⁵⁷ When prompted by governments that have not taken steps necessary to remedy a severe situation of treaty non-compliance, the INCB has the discretion to call the matter to the attention of the parties concerned, the Commission on Narcotic Drugs and the Economic and Social Council.⁵⁸

Article 14 of the 1961 Convention and Article 19 of the 1971 Convention set out measures that the INCB may take to ensure the execution of the provisions of those Conventions.⁵⁹ As a last resort, the INCB may recommend to member parties that they cease the import of drugs, the export of drugs, or both, to or from the concerned country or territory until “satisfied as to the situation in that country or territory.”⁶⁰ To that end, the INCB publishes an annual report that provides recommendations based on evaluations and information received from countries and territories.⁶¹ To date, the INCB has only invoked Article 14 of the 1961 Convention and Article 19 of the 1971 Convention concerning a limited number of States.⁶² Afghanistan is currently the only state that action has been taken against under article 14 of the 1961 Convention.⁶³

54. Dave Bewley-Taylor & Martin Jelsma, *The UN drug control conventions: The Limits of Latitude*, TRANSNAT'L INST. (March 2012), available at <https://www.tni.org/files/download/dlr18.pdf> (last visited Feb. 27, 2024).

55. *Mandate and Functions*, INT'L NARCOTICS CONTROL BD., available at <https://www.incb.org/incb/en/about/mandate-functions.html> (last visited Feb. 27, 2024).

56. *Id.*

57. *Id.*

58. U.N. Single Conference on Narcotic Drugs, art. 14(d), U.N. Doc., (Mar. 23, 1961) [Hereinafter 1961 Convention]; 1971 Convention *supra* note 38, at art.9.

59. 1961 Convention, *supra* note 58; 1971 Convention, *supra* note 58.

60. 1961 Convention *supra* note 58, at, art. 14.

61. *Mandate and Functions*, *supra* note 55.

62. *Treaty Compliance*, INT'L NARCOTICS CONTROL BD., available at <https://www.incb.org/incb/en/treaty-compliance/index.html> (last visited Feb. 27, 2024).

63. *Id.*

C. Cannabis for Medical and Scientific Use

The convention includes no accepted definition of what constitutes “medical and scientific use,” creating a legal gap that seems to allow flexibility for ratifying countries to adopt various interpretations.⁶⁴ The conventions purposefully left undefined, the criteria for “medical and scientific use” to leave interpretive room within the conventions as they are meant to apply to countries worldwide.⁶⁵ The commentary on the 1961 Convention explicitly suggests just that by stating that the term “‘medical purposes’ does not necessarily have exactly the same meaning at all times under all circumstances.”⁶⁶ Therefore, the term is open to national interpretation. This allowance of flexible interpretations suggests that there is room within the treaty framework for acceptance of uses that do not purport to illicit trafficking to be deemed as “medical” or “scientific” in purpose so long as it is “justified under the rational constitutional principles and basic concepts” of a nation’s legal system.⁶⁷

According to legal experts in the Netherlands, the definition of “medical” in international conventions may be interpreted more broadly. This could encompass policy measures that extend beyond traditional medical treatments, such as the legalization and regulation of the cannabis markets so long as they promote public health, which is the primary concern of the treaties.⁶⁸ Nonetheless, the commentary on the convention does not purport to support such broad interpretation within the bounds of the treaty framework.⁶⁹ Scholars project that for parties that make changes toward “flexible interpretations” of specific “treaty provisions will over time become part of the acceptable scope for interpretation” of licit purposes.⁷⁰ That is, so long as they do not present a serious offense.⁷¹ Under the 1988 conventions, a serious offense only constitutes drug

64. 1961 Convention, *supra* note 58; *Guidance on Drug Policy: Interpreting the UN Drug Conventions*, ALL PARTY PARLIAMENTARY GRP. FOR DRUG POL’Y REFORM 19 (2016), available at https://www.unodc.org/documents/ungass2016/Contributions/Civil/APPG_for_Drug_Policy_Reform/Guidance_print_copy.pdf (last visited Feb. 27, 2024); Thoumi, *supra* note 20.

65. John Collins, *Rethinking ‘Flexibilities’ in the International Drug Control System – Potential, Precedents and Model for Reforms*, 60 INT’L J. OF DRUG POL’Y 107, 108 (2018).

66. Commentary on the Protocol Amending the Single Convention on Narcotic Drugs, U.N. Doc., (Mar. 25, 1972); Collins, *supra* note 65, at 109.

67. 1971 Convention *supra* note 38, at art. 22; Bewley-Taylor, *supra* note 54, at 15.

68. Bewley-Taylor & Jelsma, *supra* note 54, at 15.

69. *Id.*

70. *Id.* at 3.

71. *Id.* at 6.

trafficking, and the convention only marginally penalizes other drug offenses.⁷²

II. A MOVE TOWARD INTERNATIONAL LEGALIZATION

Over the last two decades, a global trend has been toward legalizing marijuana.⁷³ Due to the changing attitude of the global community, and by the recommendation of the World Health Organization (WHO), twenty-seven of the fifty-three member states of the U.N.'s central drug policy-making body, the CND, voted to remove cannabis from Schedule IV in December of 2020.⁷⁴ Though the drug remains on Schedule I where it is still heavily regulated, more countries are now open to recognizing the medicinal and therapeutic uses of cannabis and more willing to make the drug available for medical purposes.⁷⁵ Currently fifty countries have adopted medicinal cannabis programs, while Canada, Uruguay, and twenty-one U.S. states have legalized cannabis for recreational use (including Washington D.C. and Guam).⁷⁶ Jamaica is one of the countries that has legalized cannabis for medicinal, therapeutic, scientific, and sacramental use.⁷⁷ Moreover, Jamaica has also joined an increasing number of countries that are entering the cannabis industry to import and export the plant under the Drug convention's medical and scientific trade exemption.⁷⁸

It is essential to look to countries that entered the industry before Jamaica to see how they have navigated a highly regulated industry while keeping with the legal framework of the drug conventions. This section

72. U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, art. 3, para. 4a, 7, 1988, 1582 U.N.T.S. 95

73. INCB, *The International Narcotics Control Board Expresses Concern over the Trend to Legalize Non-medical Use of Cannabis, which Contravenes the 1961 Single Convention on Narcotic Drugs*, INCB, (Mar. 9, 2023), available at <https://www.incb.org/incb/en/news/press-releases/2023/international-narcotics-control-board-expresses-concern-over-the-trend-to-legalize-non-medical-use-of-cannabis—which-contravenes-the-1961-single-convention-on-narcotic-drugs.html> (last visited Feb. 27, 2024).

74. *UN Commission Reclassifies Cannabis, yet Still Considered Harmful*, U.N. NEWS (Dec. 2, 2020) available at <https://news.un.org/en/story/2020/12/1079132> (last visited Feb. 27, 2024).

75. *Id.*

76. *Id.*; Claire et al., *Where is Marijuana Legal? A Guide to Marijuana Legalization*, U.S. NEWS (Feb. 16, 2023), available at <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization> (last visited Feb. 27, 2024).

77. DDAA

78. Cannabis Licensing Auth., *Interim Measures to facilitate the Export of Cannabis for Medical, Scientific and Therapeutic Purposes*, CLA, (Jam.) available at https://www.cla.org.jm/sites/default/files/documents/Interim%20Measures%20-%20Export%20of%20Cannabis_0.pdf (last visited Mar. 25, 2024).

analyzes the establishment of a medical cannabis industry in states that have somewhat avoided international backlash as a result.

A. Canada

In July 2001, Canada legalized medical cannabis use through implementation of the Marihuana Medical Access Regulations (MMAR).⁷⁹ Then, in October 2018, Canada enacted the Cannabis Act and became the second country to legalize the cultivation, possession, acquisition, and consumption of cannabis.⁸⁰ To do this, Canada removed cannabis from its Controlled Drugs and Substances Act, and it is now regulated similarly to alcohol.⁸¹ In accordance with the statute, cannabis and its byproducts are taxed, and the government implements penalties for persons who provide cannabis to minors and for those who drive under the influence of the drug.⁸² Restrictions are also in place to limit home production, distribution, public consumption, sale hours, and areas of permissible sale.⁸³

Following treaty provisions for market regulation, Canada required Marijuana Related Businesses (MRBs) to have licenses to operate.⁸⁴ After legalization, licensed Canadian operators found it difficult to finance their establishments because most banks refused to offer loans to businesses whose primary dealings involved cannabis.⁸⁵ In 2018, Alterna Savings and Alterna Bank, were one of the few banks in the country willing to bank cannabis and as a result was the primary bank for two-thirds of the then 100 licensed growers.⁸⁶ Still, Canadian companies have some advantages over U.S. companies and those in developing nations regarding government support, access to capital markets, and a more supportive

79. Health Canada, *Understanding the New Access to Cannabis for Medical Purposes Regulations*, GOVERNMENT OF CANADA (Aug. 2016) available at <https://www.canada.ca/en/health-canada/services/publications/drugs-health-products/understanding-new-access-to-cannabis-for-medical-purposes-regulations.html> (last visited Mar. 25, 2024).

80. Cannabis Act, 2018 (S.C. 2018, c.16) (Can.), available at https://laws-lois.justice.gc.ca/eng/annualstatutes/2018_16/FullText.html#:~:text=The%20objectives%20of%20the%20Act,operating%20outside%20the%20legal%20framework (last visited Mar. 25, 2024).

81. *See id.*

82. *See id.*

83. *See id.*

84. Cannabis Licensing Auth., *supra* note 78.

85. Suzanne K. Daigle, *Legal Impediments to Banking Services for Recreational Cannabis Businesses: Comparing Oregon to Canada*, 21 OR. REV. INT'L L. 215, 224-25 (2020).

86. Doug A. Bloomberg, *Alterna CEO Embraced Weed Business When Nobody Else Would*, TORONTO STAR (Apr. 6, 2018), available at <https://www.thestar.com/business/2018/04/06/alterna-ceo-embraced-weed-business-when-nobody-else-would.html> (last visited Mar. 25, 2024).

banking system.⁸⁷ These benefits allowed the Canadian cannabis industry to grow. By January 2019, Canadian cannabis was being sold online for recreational use, and the government and private companies also operated retail storefronts.⁸⁸ Still, Canada, with its cold climate, may be at a disadvantage compared to companies based in tropical environments such as Jamaica, where the weather and soil are optimal for high quality cannabis cultivation.⁸⁹ Consequently, Canada experienced periods of cannabis shortage from licensed operators, and the limited number of retailers in the industry.⁹⁰

Also of consequence, the limited number of storefronts contributed to a disappointing sales volume for the industry.⁹¹ Additionally, pricing in the legal market, was double that of the illegal market, making illegal cannabis a more attractive option for customers.⁹² With that, regulated supplier issues in 2020 threatened to give the illicit cannabis trade an advantage and eventually led to a build-up in inventory of legal cannabis so much that companies believed they would remain in supply for the next two years without restocking.⁹³ These issues indicate a potential future need to import to increase supply, offer better quality options, and reduce prices.

87. Cannabis Licensing Auth., *supra* note 78; Kevin Harriott et al., *Prospects for Development of the Cannabis Industry*, JAM. FAIR TRADING COMM'N 1 (June 2022), available at <https://jftc.gov.jm/wp-content/uploads/2022/08/2022.06.07-FTC-Study-into-the-Prospects-for-Development-of-the-Cannabis-Industry-1.pdf> (last visited Mar. 25, 2024) [hereinafter Prospects].

88. Daniel T. Myran & Catherine R.L. Brown & Peter Tanuseputro, *Access to Cannabis Retail Stores Across Canada 6 Months Following Legalization: A Descriptive Study*, NATIONAL INSTITUTE OF HEALTH (Aug. 6, 2019), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6715107/> (last visited Mar. 25, 2024).

89. *Cannabis in Jamaica* ALCHIMIA GROW SHOP, available at <https://www.alchimiaweb.com/blogen/cannabis-jamaica/> (last visited Mar. 25); William Turvill, *'The Legal Stuff Is Garbage': Why Canada's Cannabis Black Market Keeps Thriving*, THE GUARDIAN (Mar. 18, 2020), available at <https://www.theguardian.com/society/2020/mar/18/cannabis-canada-legal-recreational-business> (last visited Mar. 25, 2024).

90. Chris Wattie & Nichola Saminather, *Canada Kicks Off Muted Pot Party as 1st G7 Nation to OK Recreational Cannabis*, THOMSON REUTERS (Oct. 17, 2018), available at <https://www.reuters.com/article/canada-marijuana/canada-kicks-off-muted-pot-party-as-1st-g7-nation-to-ok-recreational-cannabis-idUKL4N1WE6C9> (last visited Mar. 25, 2024).

91. Prospects, *supra* note 87.

92. *Id.* at ¶ 30.

93. Sean Williams, *The Canadian Marijuana Industry Has a Surprising \$1 Billion Problem*, MOTLEY FOOL (Feb. 22, 2022), available at <https://www.fool.com/investing/2020/02/22/the-canadian-marijuana-industry-has-a-surprising-1.aspx> (last visited Mar. 25, 2024).

Nonetheless, Canada is a world leader in cannabis exports.⁹⁴ The North American nation has been exporting cannabis to markets around the world since 2016.⁹⁵ The foremost factor driving the rapid growth in cannabis exports is cannabis oil, the only legalized variant in the European Union, where the majority of the Canada's exports are directed.⁹⁶

Still, according to one researcher, the vulnerabilities developed in the Canadian industry due to "mediocre product quality, uncompetitive pricing, [...] and heavy regulatory burdens."⁹⁷ Later, this note addresses similar factors the Jamaican government must consider as it develops its own cannabis industry.

B. Uruguay

In 2013, Uruguay was the first nation in the world to fully legalize cannabis for medical and recreational use.⁹⁸ Uruguay's legislative framework requires customers to register to buy cannabis so that the government can monitor individual purchase ensuring that users cannot exceed monthly established limits.⁹⁹ Pharmacies are the only authorized retailers of the product.¹⁰⁰ However, customers can grow personal plants or purchase cannabis from not-for-profit cannabis clubs.¹⁰¹ The government also sets fixed prices for cannabis products.¹⁰² Currently, the government only permits four strains for retail, and each has a capped THC level of 9% (cannabis flower usually contains 15-30% THC per gram).¹⁰³

94. *How Canada's Oversupply of Cannabis Is an Export Opportunity*, CAN. CANNABIS EXCH. (Oct. 25, 2022), available at <https://canadiancannabisx.com/how-canadas-oversupply-of-cannabis-is-an-export-opportunity> (last visited Mar. 25, 2024).

95. Matt Lamers, *Canadian Medical Cannabis Exports Tripled Last Year, as Race for European Market Position Intensifies*, MJBIZDAILY (Mar. 21, 2019), available at <https://mjbizdaily.com/canadian-medical-cannabis-exports-tripled-in-2018> (last visited Mar. 25, 2024).

96. Adam Drury, *Top Countries Exporting Cannabis*, GREENRUSHDAILY (July 23, 2018), available at <https://greenrushdaily.com/business/countries-exporting-cannabis> (last visited Mar. 25, 2024).

97. Prospects, *supra* note 87, at ¶ 34.

98. *Global Cannabis: Uruguay*, MJBIZDAILY (Sept. 4, 2019), available at <https://mjbizdaily.com/global-cannabis-uruguay> (last visited Mar. 25, 2024).

99. Prospects, *supra* note 87, at ¶ 35.

100. *Id.*

101. *Id.*

102. *Id.*

103. Prospects, *supra* note 87, at ¶ 35; About Cannabis, *Government of Canada*, available at <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/about.html> (last visited Mar. 25, 2024).

Yet, this South American nation is still not one of the top exporters of cannabis. Domestic suppliers seem to have their hands full with Uruguay's local demand for cannabis.¹⁰⁴ Though demand is high, the strict government regime led to low supply, with only 16 of 1,200 pharmacies enrolled to sell cannabis, with this number falling to 12 in 2018.¹⁰⁵ As of September 2019, the government has only issued two licenses for cultivation, and only two companies were growing for recreational markets.¹⁰⁶

Further, Uruguayan cannabis companies have issues with financing since banks are reluctant to accept business from MRB for fear of U.S. retaliation.¹⁰⁷ In 2017, American banks, including Bank of America, sent letters that warned they would stop doing business with banks in Uruguay that provided services to state-controlled cannabis sales.¹⁰⁸ The letters were premised on the 2001 Patriot Act, which U.S. banks say prevents them from doing business with foreign banks that service the sale of federally illegal controlled substances.¹⁰⁹ This control includes cannabis, which is still federally illegal in the U.S.¹¹⁰ A significant reason for legalizing cannabis in Uruguay was to divert proceeds away from the illicit trade of the substance to quell associated crimes while meeting local recreational needs.¹¹¹ This justification may be the constitutional principle that Uruguay uses to defend its flexible interpretation of the drug treaties to allow for a medical and recreational liberalization of cannabis and the establishment of a local market for both purposes. The American bank blockade seems to make achieving this social goal more difficult.

Nonetheless, North American companies have taken advantage of the legal regime by operating in Uruguay, where they enter the market by acquiring local companies, such as Aurora Cannabis and Khiron, with grower licenses and medicinal licenses.¹¹² The issue with North American ownership of the few viable cannabis companies is that unless Uruguay implements some protectionist measures, the cannabis market will

104. Drury, *supra* note 96.

105. Prospects, *supra* note 87, at ¶ 36.

106. *Id.*

107. Beatriz Spiess & Anabela Aldaz, *2020 Global Cannabis Guide Chapters—Uruguay*, JDSUPRA (Nov. 23, 2020), available at <https://www.jdsupra.com/legalnews/2020-global-cannabis-guide-chapters-31623> (last visited Mar. 25, 2024).

108. Ernesto Londoño, Pot Was Flying Off the Shelves in Uruguay. Then U.S. Banks Weighed In, *NY Times* (Aug. 25, 2017), available at <https://www.nytimes.com/2017/08/25/world/americas/uruguay-marijuana-us-banks.html> (last visited Mar. 25, 2024).

109. *Id.*

110. 21 U.S.C. § 812.

111. Spiess & Aldaz, *supra* note 107.

112. See *MJBizDaily*, *supra* note 98.

not stimulate sufficient economic growth for the developing Uruguayan economy, which undoubtedly is yet another reason the country has legalized the drug.

C. United States

Federally, the United States regulates cannabis as a Schedule I drug according to the Controlled Substance Act of 1970 (CSA).¹¹³ Cannabis is in a more restrictive category than cocaine, which is in Schedule II.¹¹⁴ Schedule I substances are considered to have a high potential for abuse, with no currently accepted medical use and treatment in the United States.¹¹⁵ The CSA prohibits the manufacture, distribution, sale, and possession of Schedule I substances with limited exceptions for medical and scientific purposes, much like the U.N. drug treaties.¹¹⁶

Nevertheless, the cannabis industry in the U.S. is in a unique position because though cannabis is federally illegal, thirty-eight states, three territories, and Washington D.C., have legalized its medical and/or recreational use.¹¹⁷ This contradictory system is possible because, under the U.S. Constitution, each state retains its sovereignty and right to regulate matters of health and safety within its borders pursuant to its police power.¹¹⁸ However, federal laws have affected the growth of the U.S. cannabis industry in states where it is legal in several ways. Namely, MRBs cannot transport cannabis across state lines, not even for transfers between states that have legalized it.¹¹⁹ Nor can it be exported outside the United States, even under the medical and scientific exception, because international exports would be subject to federal restrictions.¹²⁰ Additionally, cannabis companies face formidable challenges with respect to accessing banking and financing services for their operations.¹²¹ The crux of the issue lies in the fact that financial institutions and banks

113. 21 U.S.C. § 812.

114. *Id.*

115. *Id.*

116. 21 U.S.C. § 801.

117. *State Medical Cannabis Laws*, NCSL (updated Jun. 22, 2023), available at <https://www.ncsl.org/health/state-medical-cannabis-laws> (last visited Mar. 25, 2024).

118. U.S. CONST. amend. X

119. Olivia Wathne, *Transporting Marijuana: Laws and Regulations*, FINDLAW (Sept. 8, 2023), available at <https://www.findlaw.com/cannabis-law/cannabis-laws-and-regulations/transporting-marijuana-laws-and-regulations.html> (last visited Mar. 25, 2024).

120. *See generally id.*

121. William Wolfe, *US Cannabis Cos. Must Beware Predatory Lending Practices*, LAW360 (Oct. 26, 2022), available at <https://www.law360.com/articles/1542981/us-cannabis-cos-must-beware-predatory-lending-practices> (last visited Mar. 25, 2024).

that would offer services to MRBs that are authorized and licensed under state regulations are at risk of criminal prosecution under several federal statutes.¹²² As a result, these MRBs face a significant hurdle in accessing the critical financial infrastructure required to operate and grow their businesses.¹²³ Thus, MRBs, though operating legally in their perspective states to grow, market, or sell cannabis, are essentially locked out of the banking system and have great difficulty maintaining a checking account, accepting credit and debit transactions, and paying tax revenues among other banking issues.¹²⁴

In connection to banking, U.S. MRBs have limited ability to attract capital from institutional investors, leaving them vulnerable to a practice known as predatory lending, where financing agreements often include high-interest rates and equity transfers in exchange for capital.¹²⁵ Hence, in the U.S., cannabis is risky business as the current federal bank blockade subjects MRBs to predatory lending, and forcing companies to operate primarily in cash putting them at risk for crimes, such as theft and burglary, and ultimately limits their ability to expand.¹²⁶

However, federal legislation provides some protection to MRBs in states that have legalized marijuana for medical or recreational use. The primary legislation that protects state medical and recreational marijuana programs is the Rohrabacher-Blumenauer Amendment.¹²⁷ This amendment prohibits the Department of Justice (DOJ) and the Justice Department's Drug Enforcement Agency (DEA) from using federal funds to prevent states from implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.¹²⁸ Since Rohrabacher-Blumenauer is part of a congressional spending bill, it must be renewed every congressional year. For the fiscal year 2023, the legislation, also known as Rohrabacher-Farr amendment, was approved by the House in June of 2022, but did not pass in the Senate.¹²⁹ To avert government shutdown President Biden on November 16, 2023, signed a

122. *Id.*

123. *Id.*

124. *Id.*

125. Wolfe, *supra* note 121.

126. *Id.*

127. H. Amdt.332 to H.R.2578-114th Congress (2015-2016) (2023), available at <https://www.congress.gov/amendment/114th-congress/house-amendment/332/text> (last visited Mar. 25, 2024).

128. *Id.*

129. N.J. Cannabis Regul. Comm'n, PRN 2023-008, (N.J. 2023), available at [https://www.nj.gov/cannabis/documents/rules/\(F\)%20PRN%202023-008%20\(NJCRC%2017_30\).pdf](https://www.nj.gov/cannabis/documents/rules/(F)%20PRN%202023-008%20(NJCRC%2017_30).pdf) (last visited Mar. 25, 2024).

short-term bill, the Continuing Resolution (CR), making the Rohrabacher–Farr effective through February 2, 2024.¹³⁰

Nonetheless, the DOJ investigates cannabis enterprises even in states with a legal system.¹³¹ In several cases, the first review prompted a second request for information.¹³² This review process creates more uncertainty in the market, and, for some that receive a second request for documentation, a significant effect on stock prices.¹³³ Additionally, the cannabis industry is still awaiting legislation to liberalize cannabis or, at a minimum, grant federal protections to banks that provide services to such companies.¹³⁴ The Secure and Fair Enforcement (SAFE) Banking Act is one such legislation that has passed the House several times. Still, it continually fails to pass in the Senate.¹³⁵ The SAFE Banking Act is proposed legislation that, if passed, would prohibit federal regulators from punishing banks, insurers, and other financial institutions for providing services to cannabis companies operating legally within states that have legalized marijuana.¹³⁶ The SAFE Banking Act could increase the number of financial institutions that provide services to MRBs, giving such businesses more banking and financing options, and reducing some risks associated with opening and sustaining MRBs.¹³⁷

Still, though the passage of the SAFE Banking Act could potentially reduce some of the risks associated with U.S. cannabis, it would not be a

130. Scott Wong and Kate Santaliz, *Biden signs funding bill, averting a government shutdown*, NBC NEWS (updated Nov. 17, 2023), available at <https://www.nbcnews.com/politics/congress/senate-approve-funding-government-shutdown-stopgap-bill-rcna125325> (last visited Mar. 25, 2024); Agustin Rodriguez et. al., *Georgia's Medical Marijuana Program: DEA Busts the Low-Dose Party Before It Starts*, JDSUPRA (Dec. 13, 2023), available at <https://www.jdsupra.com/legalnews/georgia-s-medical-marijuana-program-dea-3513439/> (last visited Mar. 25, 2024).

131. James M. Cole, *Guidelines Regarding Marijuana Enforcement*, U.S. DEP'T JUST. (Aug. 29, 2013), available at <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited Mar. 25, 2024).

132. Daigle, *supra* note 85.

133. Wolfe, *supra* note 121.

134. Alex Malyshev & Sarah Ganley, *Cannabis Industry Looks Ahead to 2023 After Facing Challenges in 2022*, REUTERS (Jan. 19, 2023 10:28 AM ET), available at <https://www.reuters.com/legal/litigation/cannabis-industry-looks-ahead-2023-after-facing-challenges-2022-2023-01-19/> (last visited Mar. 25, 2024).

135. Dario Sabaghi, *The SAFE Banking Act's Potential Impact on The Marijuana Industry*, FORBES (Jan. 24, 2023 06:00 AM ET), available at <https://www.forbes.com/sites/dariosabaghi/2023/01/24/the-safe-banking-acts-potential-impact-on-the-marijuana-industry/?sh=168aff75d31e> (last visited Mar. 25, 2024).

136. *Id.*

137. *Id.*

complete solution.¹³⁸ So long as cannabis remains federally illegal, the industry will remain at high risk.¹³⁹ The only proper solution would be the federal legalization of cannabis or its removal from Schedule I of the CSA.¹⁴⁰ The country seems to be moving in that direction.¹⁴¹ In 2022, President Biden announced that his administration would reform federal law to declassify marijuana as a Schedule I drug in the CSA, but he set no clear timeline for this initiative.¹⁴²

Even with full legalization, the historical stigmatization of cannabis may still present issues for MRBs in the U.S. For instance, though Canada has legalized marijuana, Canadian MRBs still struggle to obtain bank accounts due to associated risks. Though, arguably, should the U.S. legalize marijuana, the results would differ as fear of ruining relations with U.S. banks and financial institutions is the root cause of foreign banks', including those in Canada, hesitation in working with MRBs.¹⁴³ Presently, U.S. federal banking laws present the most significant blockade to the growth of the international cannabis industry.¹⁴⁴

In the meantime, U.S. cannabis companies have been working around the banking blockade in several ways. For one, "there is a growing trend of U.S.-based cannabis companies tapping into the Canadian capital markets to seek needed financing, bankruptcy protection, and the opportunity to list their company on the Canadian stock exchange."¹⁴⁵ Second, though most big banks refuse cannabis companies, according to the Financial Crimes Enforcement Network (FinCEN), about 755 financial institutions were banking cannabis in September of 2021.¹⁴⁶

138. Wolfe, *supra* note 121.

139. *Id.*

140. *Id.*

141. *Id.*

142. *Statement on Marijuana Reform*, 2022 DAILY COMP. PRES. DOC. 00883 (Oct. 6, 2022), available at <https://www.govinfo.gov/app/details/DCPD-202200883> (last visited Feb. 28, 2024).

143. Neil Hartnell, *US 'Cut off' Fear on Marijuana Pursuit*, THE TRIBUNE (Oct. 28, 2020), available at <http://www.tribune242.com/news/2020/oct/28/us-cut-fear-marijuana-pursuit/> (last visited Feb. 28, 2024).

144. Rohan Clarke, *Navigating the US "Green Rush": Anti-Money Laundering and De-Risking Implications for Banking Cannabis-Related Businesses in Jamaica*, 29(2) J. FIN. CRIME 564, 564 (2021).

145. Wolfe, *supra* note 121.

146. FIN. CRIMES ENFORCEMENT NETWORK, U.S. TREASURY, MARIJUANA BANKING UPDATE: MONTHLY COUNT OF DEPOSITORY INSTITUTIONS PROVIDING BANKING SERVICES TO MARIJUANA-RELATED BUSINESSES (Sept. 30, 2021), available at https://www.fincen.gov/sites/default/files/shared/305326_MJ%20Banking%20Update%204th%20QTR%20FY2021_Public_Final.pdf (last visited Feb. 27, 2024).

Additionally, MRBs are using cashless ATMs and turning to small banks and credit unions that are joining the industry and pairing up with corporate law firms that teach companies how to do their due diligence when seeking funding to avoid predatory lending.¹⁴⁷

Though most big banks refuse cannabis companies,¹⁴⁸ the U.S. industry still has an advantage over those in developing countries with even fewer banking options. While there are federal banking protections for companies operating within the legal parameters of their U.S. states, no such protections are in place for foreign companies operating under the legal regimes of their country's drug laws. Jamaica is a prime example, that having legalized the scientific and therapeutic use of cannabis, is still struggling to work around the international drug laws and the U.S. federal bank blockade to establish a viable cannabis industry.¹⁴⁹

D. Jamaica

Though many have regarded Jamaica as cannabis heaven, for over a century, Jamaican cannabis laws were among the strictest in the world.¹⁵⁰ With the relaxed international views on cannabis, Jamaica now looks to capitalize on the plant that has been a part of its nation's culture for generations, regardless of global and local prohibitionist attempts.¹⁵¹

1. History of Cannabis Regulation in Jamaica

Until the 2015 Dangerous Drugs Amendment Act (DDAA), illegal use, possession, production, and distribution of cannabis often carried severe penalties.¹⁵² Under statutes before the DDAA, simple, low-level possession could sustain a conviction of three to five years in prison.¹⁵³ Further, in 2014, only a year before legalization, per capita arrest for

147. See Wolfe, *supra* note 121.

148. Clark, *supra* note 144.

149. *Id.*

150. *Id.*

151. *Id.*

152. Steven Davenport & Bryce Pardo, *The Dangerous Drugs Act Amendment in Jamaica: Reviewing Goals, Implementation, and Challenges*, 37 INT'L J. DRUG POL'Y 60, 60 (2016), available at https://www.sciencedirect.com/science/article/abs/pii/S0955395916302729?casa_token=3tn8P3VWYDkAAAAA:3I59OMH_7RFDZDQYnDHsHwdY_oeff1T_E0CZeqqjNILabh5veN1WUiExZnP6hWa6fQTt7wEsTIYQ (last visited Feb. 28, 2024).

153. The Dangerous Drug Act, JAM. MINISTRY OF JUST., Part IIIA § 7C (1948), available at [https://laws.moj.gov.jm/legislation/statutes/D/The%20Dangerous%20Drugs%20Act%20\(2\)_0.pdf](https://laws.moj.gov.jm/legislation/statutes/D/The%20Dangerous%20Drugs%20Act%20(2)_0.pdf) (last visited Feb. 28, 2024).

cannabis possession in Jamaica was more than double that of the United States.¹⁵⁴

Jamaica participates in the three U.N. treaties established to control the illicit traffic of narcotic drugs and psychoactive substances.¹⁵⁵ Jamaica's obligation to observe the international drug conventions shapes the regulatory framework of its cannabis industry which aims to foster the legal cultivation, retail, import and export, research, development, and medical use of marijuana.¹⁵⁶ Due to Jamaica's financial interdependence on the U.S., a central enforcer of the U.N. drug conventions, it must take due diligence to avoid international repercussions.¹⁵⁷ This caution is especially warranted considering Jamaica's reputation as a major supplier of illicit marijuana in its region.¹⁵⁸

According to a 2014 report by the INCB, Jamaica was the largest illicit producer and exporter of cannabis in Central America and the Caribbean, accounting for approximately one-third of cannabis produced in the Caribbean.¹⁵⁹ Facing scrutiny from powerful international agents, it is easier to understand why for decades, Jamaica developed strict cannabis laws as evidence that it was taking its best measures to comply with U.N. drug conventions and minimize illicit cannabis trade. Such restrictions seemed especially necessary since cannabis, until 2020, was classified on Schedule IV of the 1961 Convention along with the deadliest and most addictive opioids, including heroin, and recognized as having no therapeutic purposes.¹⁶⁰

154. Davenport & Pardo, *supra* note 152, at 60-61.

155. See Anthony Clayton et al., *Jamaica's Cannabis Industry: Policy Framework*, JAM. CANNABIS LICENSING AUTH., available at <https://www.cla.org.jm/wp-content/uploads/2023/06/Jamaicas-Cannabis-Industry-Policy-Framework-002.pdf> (last visited Feb. 28, 2024).

156. Press Release, Jam. Cannabis Licensing Auth., Due Diligence, the Cornerstone of Jamaica's Regulated Medicinal Cannabis Industry (Dec. 19, 2018), available at https://www.cla.org.jm/sites/default/files/documents/Due%20Diligence%2C%20the%20cornerstone%20of%20Jamaica%E2%80%99s%20regulated%20Medicinal%20Cannabis%20Industry_December%2019%2C%202018.pdf (last visited Feb. 28, 2024).

157. *Id.*

158. *Id.*

159. *Rep. of the Int'l Narcotics Control Bd. for 2014*, U.N. Int'l Narcotics Control Bd., U.N. Doc. E/INCP/2014/1 (Mar. 3, 2015), available at https://www.unodc.org/roseap/uploads/archive/documents/Publications/2015/incb/INCB_Annual_Report_2014_EN.pdf (last visited Feb. 28, 2024).

160. U.N. News, *supra* note 74.

2. Cannabis Regulation in Jamaica Today

In 2015, with the passage of the DDAA, Jamaica decriminalized personal cannabis possession of up to two ounces, legalized home cultivation of up to five plants, and established a commercial therapeutic cannabis market.¹⁶¹ The DDAA also created the Cannabis Licensing Authority (CLA), an agency of the Ministry of Industry, Investment, and Commerce (MIIC), to establish and regulate the marijuana and hemp industry in Jamaica.¹⁶²

The CLA issues five types of licenses for the cultivation, processing, research and development, retail, and transport of cannabis for medical, therapeutic, and scientific purposes.¹⁶³ The CLA also ensures that licensees comply with the terms and conditions of their licenses and the law.¹⁶⁴ The current regulations do not cover licenses for importing and exporting cannabis.¹⁶⁵ Jamaican cannabis import-export legislation has been underway since 2015, and though delayed, the Jamaican government has hinted that such regulations are in the finalization stage.¹⁶⁶ The passage of the impending law will make Jamaica one of ten countries with a cannabis export regime.¹⁶⁷ As an interim measure, the CLA grants export authorizations to licensees with valid import permits from the receiving country.¹⁶⁸ The regulations passed by the CLA still do not allow for the import of cannabis.¹⁶⁹ However, plant preparations, such as extracts and tinctures, may be imported with the approval of the Chief Medical Officer (CMO).¹⁷⁰

161. DDAA

162. *Id.*

163. *Get the Facts - Cannabis Licensing*, JAM. INFO. SERV. (Mar. 27, 2019), available at <https://jis.gov.jm/information/get-the-facts/get-the-facts-cannabis-licensing/> (last visited Feb. 28, 2024).

164. *Id.*

165. *Id.*

166. Albert Ferguson, *Regulations to Support Cannabis Export Coming—Green*, JAM. GLEANER (May 20, 2019), available at <https://jamaica-gleaner.com/article/news/20190520/regulations-support-cannabis-export-coming-green> (last visited Feb. 28, 2024).

167. Toni Allen, *Where in the World is Cannabis Legal?*, THCAFFILIATES (Feb. 5, 2024), available at <https://thcaffiliates.com/legal-status-maps/> (last visited Feb. 28, 2024).

168. Cannabis Licensing Auth., *supra* note 78.

169. *Id.*; *Frequently Asked Questions*, CANNABIS LICENSING AUTH., available at <https://www.cla.org.jm/faqs/> (last visited Feb. 28, 2024).

170. *Id.*

Since 2015, the CLA has granted 133 licenses.¹⁷¹ As of May 2022, the CLA issued 156 Export Authorizations to more than 10 countries.¹⁷² The impending regulations, once finalized, will replace the interim measures.¹⁷³ In the meantime, the CLA grants Export Authorizations to license holders to export cannabis inflorescence/buds and extracts from Jamaica to accepting countries worldwide.¹⁷⁴ The CLA also requires that the receiving country be a signatory to the U.N.'s International Drug Control Conventions.¹⁷⁵ Hence, for a Jamaican company to export cannabis products to a U.N. Drug Convention signatory such as Canada, which has legalized cannabis for medical and recreational use, a licensed Canadian entity must first apply to Health Canada for an importation license.¹⁷⁶ Then, only after the import permit is granted, can a licensed Jamaican company apply for an export permit from the CLA.¹⁷⁷

For the 2023-2024 fiscal year, the CLA is projecting an increase in exports of cannabis for medical and therapeutic purposes, and reports that demand for Jamaican cannabis is increasing in the global marketplace.¹⁷⁸ Jacana, a prominent Jamaican cannabis company, states that this increase stems from three competitive advantages of building an international cannabis company based in Jamaica.¹⁷⁹ The first is having human capital with multi-generational experience in cannabis cultivation.¹⁸⁰ Second, optimal equatorial conditions allow for low-cost production of high-

171. *Licensing Statistics*, CANNABIS LICENSING AUTH., available at <https://www.cla.org.jm/licensing-statistics/> (last visited Feb 28, 2024).

172. Chanel Spence, *CLA Projects Increase in Cannabis Exports*, JAM. INFO. SERV. (May 12, 2022) available at <https://jis.gov.jm/cla-projects-increase-in-cannabis-exports/> (last visited Feb 28, 2024).

173. *No Hindrance to Commercial Exports while Import/Export Regulations are Impending*, CANNABIS LICENSING AUTH. (June 2, 2020), available at <https://www.cla.org.jm/sites/default/files/documents/Press%20release-Cannabis%20Licensing%20Authority%20-%20Clarification%20on%20Forbs%20Article%20-%20Companies%20Pulling%20Jamaican%20Investment%201.pdf#:~:text=permit%20is%20determined%20by%20the%20country%20issuing%20the,result%2C%20commercial%20quantities%20are%20not%20excluded%20from%20export>. (last visited Feb. 28, 2024).

174. *Id.*

175. *Id.*

176. *See* Cannabis Licensing Auth., *supra* note 78.

177. *See Id.*

178. Spence, *supra* note 172.

179. *The Future for Jamaican Cannabis Has Never Been Greener*, JACANA JAM. (Nov. 2, 2023), available at <https://jacana.life/the-future-for-jamaican-cannabis-has-never-been-greener/> (last visited Feb. 28, 2024).

180. *Id.*

grade or medical-grade cannabis.¹⁸¹ Lastly, the world has a long-standing consumer association with Jamaica having the best cannabis.¹⁸²

III. LEGAL ISSUES PREVENTING THE VIABLE ESTABLISHMENT OF A JAMAICAN CANNABIS IMPORT- EXPORT INDUSTRY

The medical cannabis market is one of the fastest-growing worldwide.¹⁸³ Only few countries, including Uruguay, Canada, Malta, Mexico, and Thailand, and 21 U.S. states, have liberalized recreational cannabis use.¹⁸⁴ However, approximately 30 countries have decriminalized recreational cannabis, meaning there is little to no penalties for those found in possession for personal or low-profile use.¹⁸⁵ Following this wave of legalization is a growing trend in the legalization of medical cannabis exports.¹⁸⁶

In 2018, Jamaica became the first Caribbean Island to join the cannabis export industry with its shipment of medical cannabis oil to Canada.¹⁸⁷ The passage of the DDAA established a regulatory framework for Jamaica's budding cannabis industry by launching the CLA.¹⁸⁸ Consequently, the promulgation of local import-export regulations has been impending since 2015 due to international legal challenges that the country must circumvent to implement a therapeutic market and eventually, a viable export industry.¹⁸⁹ A primary concern stems from Jamaica's need to maintain favorable diplomatic relationships within the international arena by not violating the U.N. drug treaties.¹⁹⁰ Though the 1961 and 1971 Conventions permit cannabis use and its export for medical and scientific purposes, its status as a Schedule I drug makes regulating and developing a cannabis export industry considerably more complex.¹⁹¹

181. *Id.*

182. *Id.*

183. Nataliia Aliekperova et al., *Perspectives on formation of medical cannabis market in Ukraine based on holistic approach*, 2 J. CANNABIS RSCH. (2020).

184. *Id.*

185. Countries Where Weed is Illegal 2024, *World Population review*, <https://worldpopulationreview.com/country-rankings/countries-where-weed-is-illegal> (last visited Apr. 10, 2024).

186. *See Id.*

187. MJBizDaily, *supra* note 6.

188. Prospects, *supra* note 87, at ¶ 11.

189. Rychert et al., *supra* note 8.

190. *Id.*

191. *See* Jacana, *supra* note 179.

Further, while Jamaica's decriminalization of personal possession and use may operate permissibly with the current drug regime, there is still no internationally accepted definition of constitutes medical and scientific use, thus other countries, such as the U.S. are not required to accept Jamaica's interpretation of the drug convention provisions. This inconsistent system of treaty interpretation has created several challenges currently stunting the potential growth of the country's medical cannabis export industry.¹⁹²

A. The International Drug Regime and Foreign Policy Considerations

Jamaica's international obligations have had a significantly impacted the reformation and implementation of the DDA.¹⁹³ Undeniably, the CLA is explicitly formulated to ensure Jamaica adequately observes the three international drug conventions.¹⁹⁴ A case study of the Jamaican cannabis market which included findings from interviews with twenty-two key informants (KIs) from the government, industry, academics, and NGO sector, revealed that civil servants and policymakers on the island often presented themselves as feeling powerless and dependent on international obligations.¹⁹⁵ Some KIs describes the limited policy choices that the government has proposed to propel the industry as evidence of policymakers' fear of potential international repercussions.¹⁹⁶

Since Jamaica, for many years, held the record for being the largest illicit producer and exporter of cannabis herb, cannabis was a major issue for which Jamaica was monitored, evaluated, and punished.¹⁹⁷ Hence, before establishing a viable export industry, Jamaica must ensure that its domestic affairs and legal framework surrounding the cannabis industry are consistent with its international obligations.¹⁹⁸ The DDAA not only decriminalizes possession of up to two ounces of cannabis and the home growing of plants for personal use but also permits members of the Rastafarian faith to smoke cannabis for sacramental purposes.¹⁹⁹ Further, the CLA, created by the DDAA, establishes a regulated industry for cannabis' medical, therapeutic, or scientific applications.²⁰⁰ The establishment

192. MJBizDaily, *supra* note 6.

193. Rychert et al., *supra* note 8.

194. Cannabis Licensing Auth., *supra* note 158.

195. Rychert et al., *supra* note 8.

196. *Id.*

197. *Id.*

198. *Id.*

199. DDAA

200. *Id.*

of a cannabis industry under the DDA created a series of issues that call into question whether the Jamaican regulatory framework is within the prohibitive parameters of the UN drug treaty regime.²⁰¹

B. Is Jamaica's DDAA Policy Permissible under the Treaty Framework?

There is a set of questions that must be answered first.

First, can Jamaica decriminalize small-scale possession of personal use? As will be subsequently explained, the evidence suggests the answer is yes.²⁰² Though Article 3(2) of the 1988 Convention seems to require criminal penalties for the intentional “possession, purchase, or cultivation of narcotic drugs or psychotropic substances for personal consumption,” the article also provides an “escape clause” for countries to deviate from penal sanctions if the “constitutional principles and the basic concepts of its legal system” require it.²⁰³ This clause indicates there is no binding legal obligation for nations to criminalize possession for personal use under their domestic laws if it contradicts a fundamental principle of national law.²⁰⁴ Strengthening this interpretation of the escape clause, in 2005, the INCB found that “the practice of exempting small quantities of drugs from criminal prosecution is consistent with the international drug control treaties.”²⁰⁵

Second, is it permissible to allow Rastafarians to possess and smoke cannabis for sacramental purposes in places of Rastafarian worship? Again, this exception seems to be a reasonable interpretation under the escape clause considering that several states have made exceptions in their domestic law for the sacramental use of controlled substances. For example, the U.S. exempts peyote use, a Schedule I substance, in connection with religious ceremonies of the Native America Church (NAC) from the controls and sanctions of the Controlled Substances Act of 1970 (CSA).²⁰⁶ This exception is permissible within the bounds of the drug treaties as the escape clause within the 1988 Convention permits states the flexibility to deviate from strict enforcement of the convention when necessary to uphold “constitutional principles and the basic concepts of its legal system.”²⁰⁷ In the U.S. the Free Exercise Clause of the United

201. *Id.*

202. *Id.*

203. Bewley-Taylor & Jelsma, *supra* note 54.

204. *Id.*

205. *Id.*

206. 21 U.S.C. § 1307.31.

207. 1988 Convention, *supra* note 44, at art. 3 (1)(c).

States Constitution grants the NAC a constitutional right to use peyote for religious purposes in bona fide religious ceremonies as an exemption to the CSA.²⁰⁸ While the general treaty obligation is for nations to limit possession and consumption exclusively to medical and scientific purposes, there is no binding legal obligation to prohibit personal consumption under their domestic laws if it contradicts a fundamental principle of national law.²⁰⁹

Moreover, in leu of the INCB's lack of criticism of the U.S.'s interpretation of the conventions to permit exceptions for sacramental use of scheduled substances for particular groups, Jamaica's policy of allowing sacramental use of Cannabis for Rastafarians under the DDAA should be seen a permissible policy option within the current drug treaty framework.

Third, can Jamaica establish a therapeutic cannabis export industry? The short answer is yes. A country permitting legal production can ship cannabis and its byproducts internationally to other allowing countries, but only for medical and scientific purposes while following strict convention guidelines. However, the market for medical and scientific cannabis is limited.²¹⁰ Jamaica must cash into several markets to create a lucrative export industry.²¹¹ This may be what the country is trying to do when it established interim measures to export cannabis not only for medical and scientific, but also for therapeutic purposes.²¹² The issue with that policy is whether "therapeutic" cannabis use falls under the "medical and scientific exception" of the drug treaty framework. Should Jamaica find legitimate grounds to interpret the provision of the conventions to denote that therapeutic use falls under the definition of medical and scientific use, that may make this policy of the DDAA permissible within the current treaty framework.

Under Section 9(a)(2) of the DDAA, medical therapeutic or scientific purposes include research, clinical trials, therapy and treatment, and the manufacture of nutraceuticals and pharmaceuticals.²¹³ Article 3(1)(a)(ii) of the 1988 Convention distinguishes between licit and illicit uses of the drug.²¹⁴ The commentary of this provision does provide for

208. 21 U.S.C. § 1307.31.

209. Bewley-Taylor & Jelsma, *supra* note 54.

210. Matt Lamers, *Jamaica Minister: 'Cannabis Industry Not Hindered in Ability to Export'*, MJBIZ DAILY (Dec. 17, 2021) available at <https://mjbizdaily.com/jamaica-minister-cannabis-industry-not-hindered-in-ability-to-export/> (last visited Mar. 25, 2024).

211. *Id.*

212. U.N. News, *supra* note 74.

213. DDAA.

214. 1988 Convention, *supra* note 44.

the therapeutic use of cannabis but only for the treatment of drug addicts.²¹⁵ However, by nature of being in Schedule I, the convention does not recognize any therapeutic use of cannabis.²¹⁶ Though therapeutic medication, if prescribed by a licensed medical provider, should fit under the definition of medical use.²¹⁷ Further, the conventions commit themselves to permit countries to make the drug available for such purposes.²¹⁸

Thus far, Jamaica has been reprimanded by the INCB or any other actors in the international community for its establishment of a therapeutic cannabis market. Moreover, flexible interpretations of specific, uncontested treaty provisions by state parties will over time become part of the acceptable scope for interpretation.²¹⁹

C. Impediments to Financing the Industry Posed by U.S. Federal Banking Laws

Despite its legal status in Jamaica, domestic banks refuse to service the medical and therapeutic cannabis industry due to challenges created by the corresponding banking arrangements between Jamaican and U.S. banks.²²⁰ Though 39 states, two U.S. territories, and Washington D.C. have legalized medical and or recreational use, cannabis is still federally illegal in the U.S.²²¹

Two federal financial regulators, the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA), wield authority over both federal and state banks through federal deposit insurance.²²² Hence, all banks must comply with federal statutes such as

215. Commission on Narcotic Drugs and the Economic and Social Council, *Commentary On The United Nations Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances 1988*, (New York: United Nations, 1998) available at https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Commentaries-OfficialRecords/1988Convention/1988_COMMENTARY_en.pdf (last visited Mar. 25, 2024).

216. Collins, *supra* note 19.

217. 1971 Convention at Resolution II, *supra* note 42.

218. Single Convention on Narcotic Drugs, *supra* note 20, at preamble; 1971 Convention at Resolution II, *supra* note 42, at preamble; 1988 Convention, *supra* note 44, at preamble.

219. Bewley-Taylor & Jelsma, *supra* note 54.

220. Matt Lamers, *Jamaica looks to slash cannabis license processing time, but banking remains major obstacle*, MJBIZDAILY (Mar. 30, 2022), <https://mjbizdaily.com/jamaica-looks-to-slash-cannabis-license-processing-time-but-banking-remains-major-obstacle/> (last visited Apr. 10, 2024).

221. 21 U.S.C. § 812; Wolfe, *supra* note 121.

222. Moises Gali-Valezquez, CHANGES NEEDED TO PROTECT BANKING AND FINANCIAL SERVICES WHEN DEALING WITH THE MARIJUANA INDUSTRY note 48-49 (LexisNexis 2016).

the CSA and the USA Patriot Act, to avoid losing their federal deposit insurance, having their charters revoked, and various other civil and criminal penalties.²²³ Since cannabis is federally illegal, doing business with MRB puts banks at risk of federal prosecution, causing banks to largely refuse financial services to MRB.²²⁴

The CSA and the Patriot Act regulate U.S. banks. Both federal laws contain anti-money laundering provisions extending to foreign bank accounts.²²⁵ Section 319 of the USA Patriot Act extends federal banking regulations to foreign banks with “an interbank account in the United States with a covered financial institution.”²²⁶ Under the USA Patriot Act, banks, including foreign banks, are prohibited from servicing accounts that “involve the manufacture, importation, sale, or distribution of a controlled substance [(as the CSA defines the term)],” which includes cannabis.²²⁷

Globally, many countries, especially developing countries such as Jamaica and other developing states, rely heavily on American banks for money transfers and trade proceeds.²²⁸ Considering Jamaica’s dependency on remittances from U.S. migrants²²⁹, and its trade relationship with the U.S.²³⁰, Jamaican banks are subject to the Patriot Act.

For instance, the U.S. is Jamaica’s leading trading partner, accounting for almost 50% of the island’s total trade in 2021.²³¹ In Jamaica, many banks are unwilling or hesitant to fund MRBs out of fear of

223. *Id.*

224. Wolfe, *supra* note 121.

225. 21 U.S.C. § 812; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. Law 107-56 (2001).

226. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. Law 107-56, §319 (2001).

227. Talib Visram, *The first country to legalize pot is taking it slow*, CNN (Sept. 16, 2018), available at <https://money.cnn.com/2018/09/16/news/world/uruguay-cannabis-industry/index.html> (last visited Mar. 25, 2024).

228. OECD, *Making Development Co-operation Work for Small Island Developing States* 21- 33, OECD Publishing, Paris, 2018 .

229. *Remittances in the Caribbean: “More Than Just Money”*, IOM UN MIGRATION REG. OFF. FOR CEN., N. AM. AND THE CARIBBEAN, available at <https://rosanjose.iom.int/en/blogs/remittances-caribbean-more-just-money> (last visited Mar. 25, 2024).

230. See Prospects, *supra* note 87.

231. *Jamaica—Country Commercial Guide*, INT’L TRADE ADMIN. (July 12, 2022), available at <https://www.trade.gov/country-commercial-guides/jamaica-market-overview> (last visited Mar. 25, 2024).

breaching U.S. federal laws and being flagged for money laundering.²³² Effectively, U.S. federal laws have resulted in a financial impediment not only to the growth of its domestic cannabis industry but also to the international cannabis industry.²³³

Actors within the licensed Jamaican cannabis industry have expressed that the inability to access banking services has reduced opportunities for financing the sector.²³⁴ Industry KIs spoke of many failed attempts to attract domestic investors.²³⁵ Local investors fear losing their legitimate business accounts if they get into the business.²³⁶ The head of the CLA and other leaders of government agencies involved in the industry stated that they could not get a bank account “for nearly a year.”²³⁷ With the current state of affairs, locals share the view that progress in the banking and financing of the cannabis industry depends mainly on policy changes in the U.S., rather than a domestic resolution.²³⁸

D. Emerging Protectionism

As a small, developing nation, Jamaica has fallen prey to the effects of globalization several times. Though lucrative, their bauxite, aluminum, tourism, and agricultural industries have all been foreign-dominated and, as a result, failed to provide sufficient profits to bolster sustainable economic growth for the country. Medical cannabis exports give Jamaica another chance to establish an industry that can make the country internationally competitive and spur significant profits. To achieve a viable but sustainable medical cannabis industry, Jamaica must protect domestic ownership and find markets willing to accept its exports.

However, the market for medical cannabis is relatively small thus far.²³⁹ The number of nations importing meaningful quantities is limited to a handful that includes Australia, Brazil, Germany, and, only recently,

232. Latonya Linton, *Gov't Working to Resolve Banking Issues Affecting Medical Cannabis Sector*, JAM. INFO.N SERV. (Nov. 5, 2020), available at <https://jis.gov.jm/govt-working-to-resolve-banking-issues-affecting-medical-cannabis-sector/> (last visited Mar. 25, 2024).

233. Clarke, *supra* note 144.

234. Rycher, *supra* note 11.

235. *Id.*

236. Clarke, *supra* note 144.

237. Edmond Campbell, *Like the plague!- Banks will not touch cannabis players, still refuse to open accounts for them*, JAMAICAN-GLEANER (Nov. 1, 2019) available at <https://jamaica-gleaner.com/article/lead-stories/20191101/plague-banks-will-not-touch-cannabis-players-still-refuse-open> (last visited Mar. 25, 2024).

238. Linton, *supra* note 232.

239. Lamers, *supra* note 210.

Israel.²⁴⁰ These nations have all begun to establish and increase their domestic production.²⁴¹ With few markets accepting imports, the industry is prone to protectionism. Canada, which has the most developed and largest medical cannabis market in the world, is not allowing commercial medical imports into the country.²⁴²

Recently, in early March of 2023, Cannaviva Jamaica Limited, an international Jamaican cannabis supplier, was granted the necessary permit by the CLA to import Canadian cannabis into Jamaica.²⁴³ Industry actors were displeased that Canada, which is currently not allowing Jamaican cannabis exports into its markets, was granted permission to export to Jamaica.²⁴⁴ The government is responding to the resulting uproar by promising to formulate a local cannabis policy to protect, support, and build the cannabis industry in Jamaica.²⁴⁵ Jamaica's Minister of Industry, Aubyn Hills, hinted at future travel to Canada to secure a bilateral trade deal.²⁴⁶ Hill also expressed that the government has authorized 2.5 million pounds of cannabis exports between 2018 and 2023, though only 1,608 pounds have been exported.²⁴⁷ Still, the idea is, as a cannabis-exporting country, Hill stressed that "we want to export more, we want this industry to grow more."²⁴⁸ For this growth to occur, Jamaica must find new markets and gain access to them by developing trade relationships.²⁴⁹

As the cannabis industry develops, there is local concern and need to protect domestic ownership of the industry while competing with the developed countries increasingly entering the market.²⁵⁰ The government must balance accepting needed foreign investment while preventing locals from completely selling out their shares in the industry to foreigners.²⁵¹ The interim regulations include measures to protect local ownership of the industry.²⁵² For example, to obtain a CLA license for cannabis

240. Matt Lamers, *Canada Accused of Cannabis "Protectionism" by Blocking Imports—even as Exports Soar*, MJBIZDAILY (Aug. 19, 2020), available at <https://mjbizdaily.com/canada-accused-of-cannabis-protectionism-by-blocking-imports/> (last visited Mar. 25, 2024).

241. *Id.*

242. *Id.*

243. Smith, *supra* note 2.

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*

248. Smith, *supra* note 2.

249. *Id.*

250. Bewley-Taylor & Jelsma, *supra* note 54.

251. *Id.*; Daigle, *supra* note 85.

252. See Cannabis Licensing Auth., *supra* note 78.

handling, individuals must be “ordinary residents” or have resided in Jamaica for the past three years.²⁵³ Also, licensed companies must demonstrate “substantial ownership and control by persons ordinarily resident in Jamaica.”²⁵⁴ However, foreign investment is an essential source of capital to finance the start-up costs of the industry.²⁵⁵

RECOMMENDATIONS

Considering the current state of the international drug regime, Jamaica’s efforts to establish an international market for its cannabis will likely continue to be impeded by the international drug conventions and the U.S. bank blockade until cannabis and its by-products are removed from Schedule I of the 1961 Convention and the American CSA.

The UN Drug Treaties and U.S. anti-money laundering federal laws have simultaneously suppressed the growth of Jamaica’s licit global medical and therapeutic cannabis trade businesses. Yet, according to the preamble of the UN Drug Convention, the ultimate goal of international drug control treaties is to combat illicit traffic and to “deprive persons engaged in illicit traffic of the proceeds of their criminal activities and thereby eliminate their main incentive for so doing,” and the “abuse of psychotropic substances.”²⁵⁶ However, superseding these drug control issues are human rights and the concern with the “health and welfare of mankind.”²⁵⁷ Thus, one must ask whether the legal framework created by these treaties, backed by U.S. anti-money laundering foreign policies, is genuinely achieving the goals they set out to accomplish while avoiding human rights abuses.

The plain answer is no. Cannabis is the most used federally illegal drug in the U.S. Regardless of its international prohibition, cannabis remains the most widely used drug worldwide.²⁵⁸ By restricting the lawful trade of the plant, the treaties, along with the U.S. anti-money laundering foreign policies, provide the basis for the illicit traffic of the drug.

Legalizing cannabis could divert proceeds from illicit traffickers and create profits for governments worldwide. The long-failed rationale for

253. *Id.*

254. *DDAA.*

255. Marta Rychert et al., *Foreign investment in emerging legal medicinal cannabis markets: the Jamaica case study*, GLOBALIZATION AND HEALTH 17, Apr. 1, 2021, at 38.

256. 1988 Convention, *supra* note 44.

257. Bewley-Taylor & Jelsma, *supra* note 54.

258. World Health Organization - Alcohol, Drugs and Addictive Behaviours Unit, *Cannabis*, WORLD HEALTH ORGANIZATION (2024), available at <https://www.who.int/teams/mental-health-and-substance-use/alcohol-drugs-and-addictive-behaviours/drugs-psychoactive/cannabis> (last visited Mar. 25, 2024).

cannabis prohibition has been dismantled by the WHO's Expert Committee on Drug Dependence, which in 2019 recommended that cannabis and several cannabis-related substances be rescheduled and removed from Schedule I.²⁵⁹ Additionally, recently, the U.S. Department of Health and Human Services has recommended that Cannabis be removed from Schedule I.²⁶⁰ Both recommendations acknowledge that cannabis has medical purposes and is not as dangerous as its co-scheduled drugs like heroin and fentanyl.²⁶¹

Further, as evidenced by Canada and Uruguay, even in countries that have legalized the drug to suppress criminal activities, complications with the drug treaties hindering its trade push individuals to the illicit market that can provide lower prices and less hassle to fulfill their medical and therapeutic needs. This is one way the drug treaties and U.S. anti-money laundering foreign policies contradict their objective of suppressing illegal trade. Rescheduling cannabis both in the drug conventions and in the U.S. could lead to significant progress on cannabis import and export not only in Jamaica but worldwide.

Further, by stigmatizing and essentially condemning ancestral, traditional, and religious uses of cannabis, there is a profound tension between human rights and the drug conventions. A global war on drugs has caused the disproportionate incarceration of racial and ethnic minorities despite evidence of mutual usage rates across races.

As evidenced by the trend in the global reshaping of attitudes towards cannabis, the UN drug treaties and the U.S. may be moving towards the liberalization of cannabis and its related substances. However, until then, Jamaica should do its best to develop its domestic cannabis trade to ensure a solid financial base once export impediments are lifted. Jamaica should include the measures below in its import-export legislation to achieve that end:

Continue to develop export-import legislation with flexible interpretations of the U.N drug conventions. However, it should ensure that it also reforms its constitution to include a persuasive legal argument that aligns with the "escape clause" for the purpose for which it has decriminalized cannabis. This will ensure that Jamaica is ready to launch as soon as U.S. federal legislation reschedules cannabis and or Congress finally agrees on a bill to support banking the licit trade.

259. WHO Expert Committee on Drug Dependence, *supra* note 10.

260. Christina Jewett & Noah Weiland, *Federal Scientist Recommend Easing restrictions on Marijuana*, NY TIMES (Jan. 12, 2024), available at <https://www.nytimes.com/2024/01/12/health/marijuana-fda-dea.html> (last visited Mar. 25, 2024).

261. *Id.*; WHO Expert Committee on Drug Dependence, *supra* note 10.

Jamaica must develop domestic banks independent of the U.S. to source funding for its cannabis industry. This will encourage the expansion and legitimate trade of cannabis. It will also put the industry in an excellent place to expand its export operations. Establishing funding sources will also decrease the risks associated with cash-only businesses.

Policymakers should learn from Canada's internal failures associated with its attempt at protectionism by expanding the availability of legitimate herb supply to avoid diversion of its proceeds to illicit trade. This may include developing mutually beneficial bilateral trade relations. Countries like Canada and Uruguay seem to be having supply issues and, as a result, may need a second source of cannabis to meet the rising demands of their populations. Jamaica should start with these two industries.