

A Dope Opportunity: Maximizing the Likelihood of Canada's Cannabis Industry Sustaining Its Global Dominance in the Context of International Law

In 2019, the global markets are replete with fast-flourishing industries.¹ Green technology, cryptocurrency, mobile apps and cannabis are all magnitudes more prominent on the stock indices and on the lips of the general public than they were ten years, or in some cases fewer than twenty-four months,² prior. Among these growing sectors, the cannabis industry is unique, and not just because it is a centuries old cash crop in a sea of modern technological innovations. Cannabis is special because it is a market in which Canadian firms are dominating the global trade.³ Canada's ongoing international cannabis supremacy represents a remarkable opportunity for our nation. The world's cannabis trade may be worth upwards of almost \$200 billion⁴ by the year 2025,⁵ and for a country with an annual gross domestic product that has never exceeded \$2.5 trillion,⁶ that constitutes a significant prospect.

In order to fully capitalize on it, however, it is incumbent on the Canadian government to pass legislation and to advance positions that further the interests of the nation's cannabis industry. As cannabis ostensibly remains prohibited by the text of more than one treaty to which Canada is a party, this might appear at odds with Canada's international obligations. However, a progressive and nuanced reading of international agreements suggests that policies and

¹ See, *inter alia*, Eric Niiler, "Can New Energy Technology Save the Planet?", (2015) Seeker <<https://seeker.com>>; Julia Horowitz, "JPMorgan's move into crypto puts the rest of the industry on notice", (2019) CNN <<https://cnn.com>>; Drew Johnson, "Three Trends That Will Shape The App Industry In 2018", (2017) Forbes <<https://forbes.com>>; Thomas Pellechia, "Legal Cannabis Industry Poised For Big Growth, In North America And Around The World", (2018) Forbes <<https://forbes.com>>.

² According to Google Trends, which monitors Internet search and browsing activity, even the term "cryptocurrency" was virtually unsearched as recently as March of 2017. See Google Trends <<https://trends.google.com>>.

³ Craig Giammona & Kristine Oworm, "'Capitalistic' America Faces Canada Fight for Cannabis Supremacy", (2018) Bloomberg <<https://bloomberg.com>>.

⁴ All figures in this paper are in Canadian dollars.

⁵ Vanmala Subramaniam, "Cannabis producers could be chasing global market worth \$194 billion in seven years: BMO report", (2018) Financial Post <<https://financialpost.com>>.

⁶ Trading Economics <<https://tradingeconomics.com/canada/gdp>>.

positions facilitating the liberalization of the cannabis trade, both in Canada and globally, are in fact in observance of the rules ordained by global conventions.

Canada's Dominance of the Global Cannabis Trade

On October 17, 2018, Canada became the second country to legalize recreational marijuana use. Although Uruguay legalized in 2017, Canada was seen by many as the first mover on the nascent legal cannabis scene.⁷ This may be due in part to the fact that Uruguay is a small nation with little international clout, while Canada is a G7 nation of more than ten times its size, but it is also likely a result of Canada's reputation (and reality) of having a pro-pot culture. Indeed, Canada has about 300 times more people who use cannabis daily than Uruguay has.⁸ When considering this disparity and other factors,⁹ it's easy to see why Canada is viewed as the first real player in the legal cannabis market. That view is no mirage. Revenue from Canadian recreational marijuana sales is expected to be between \$4.9 billion and \$8.7 billion annually, the high end of which equals the country's revenue from wine.¹⁰

The scope of Canada's cannabis industry is not limited to the area within its borders, either. Canadian firms are developing a significant international presence, providing marijuana to states across the globe that allow medical marijuana use.¹¹ Canadian cannabis companies

⁷ See, e.g., Danielle Adams, "Canada Has a First-Mover Advantage in the Cannabis Industry", (2018) Investing News <<https://investingnews.com>>; Kristine Owrn, "Canada is the world leader in legal pot. How long will it last?", (2018) Bloomberg <<https://bloomberg.com>>.

⁸ An estimated 120,000 Uruguayans were marijuana users prior to the nation's legalization, with approximately 15% of the 120,000 (18,000) using daily. Nearly a third of Canadians smoked or ingested marijuana prior to legalization. Recent research suggests that 43% of Canadian users indulge daily. See Ella Jordan, "Marijuana legalisation in Uruguay", (2018) Centre for Public Impact <<https://centreforpublicimpact.org>>; see "World Drug Report 2016", (2016) United Nations Office on Drugs and Crime <<http://unodc.org>>; see Leslie Young, "Cannabis IQ: Almost half of Canadian pot users say they use daily. Here's why regular use is risky", (2018) Global News <<https://globalnews.ca>>. 37 million × 33% × 43% = 5.25 million Canadians (~292 × the 18,000 Uruguayans) are daily users.

⁹ Other factors include red tape surrounding Uruguay's cannabis industry, organized crime's stronghold on the Uruguayan market, and the fact that many Uruguayan pharmacies are beholden to American financial institutions and cannot do business relating to an American controlled substance. Jordan, *supra* note 8.

¹⁰ "Recreational Marijuana: Insights and Opportunities", (2018) Deloitte, at 5.

¹¹ Harrison Jordan, "A country-by-country guide to Canada's cannabis exports", (2017) Lift <<https://news.lift.co>>.

are even expanding into markets where using marijuana for medicinal purposes currently remains disallowed, in anticipation of eventual legalization.¹² All told, Canadian firms export cannabis products to nations on all six continents, including everywhere from our southern neighbours the United States to Australia, Germany and Brazil.¹³ The last two countries listed are especially significant. Brazil is much closer to Uruguay, which has its own legal pot industry, than it is to Canada, but it is a Canadian company that has a major deal with the exclusive supplier of Brazilian medical marijuana.¹⁴ Germany is in fact right next door to the Netherlands, a nation where marijuana has been legal in some capacity since 1976,¹⁵ yet the majority of medical marijuana that Germans consume is imported from Canada.¹⁶

The numbers bear out Canada's position as the worldwide leader of the cannabis trade. The most important and influential marijuana companies are primarily Canadian.¹⁷ And while many of the other firms are American, the Canadian firms are far bigger. For example, Canada's two largest companies, Canopy and Tilray, are each valued at over \$14 billion, while even the largest American firms, such as Curaleaf, Green Thumb and MedMen, are worth fewer than \$3 billion.¹⁸ In terms of total market capitalization, Canadian cannabis companies dwarf the rest of the world.¹⁹

The reasons behind Canada's dominance of the cannabis industry are multifold. In 2000, the courts declared Canada's prohibition of cannabis unconstitutional and ordered the federal

¹² Alex MacPherson, "CanniMed signs supply deal with South African company", (2017) Saskatoon StarPhoenix <<https://thestarphoenix.com>>.

¹³ Jordan *supra* note 11.

¹⁴ *Id.*

¹⁵ Nicole Grether, "In the Netherlands, 38 years of lessons on 'tolerating' pot", (2014) Al Jazeera <<https://aljazeera.com>>.

¹⁶ Alfredo Pascual, "Medical marijuana demand, imports continue to climb in Germany", (2018) Marijuana Business Daily <<https://mjbizdaily.com>>.

¹⁷ Giammona & Owrap *supra* note 3.

¹⁸ *Id.*

¹⁹ *Id.*

government to create a mechanism through which medical users could access it.²⁰ The government responded by instituting a licensing system enabling private marijuana producers to engage in competition for the medical cannabis market.²¹ Canada instantly had the world's most organized marijuana marketplace, and this has since grown into a booming industry.²²

Increased legalization has only compounded this advantage. As the Toronto Stock Exchange and Canadian Securities Exchange are the world's two major exchanges for cannabis companies, Canadian firms have easy access to capital markets. The TSX in particular only lists companies operating in countries where marijuana is legal, meaning American companies cannot list on it. While the CSE does allow American firms to list, that in itself is helping to make Toronto the world's centre for financing the cannabis trade, an ancillary benefit to Canadian cannabis firms.²³ Additionally, Canadian firms can crosslist on the major American indices, while their American counterparts cannot, because they are breaking federal law.

Canada also has a competitive advantage in research and development. The sheer size of Canada's largest cannabis firms allows them to partake in more costly, future-focused research than smaller companies can manage. This is exemplified by the deal that the aforementioned cannabis titan Tilray entered into with Canadian pharmaceutical company Sandoz; the firms' strategic cooperation will include joint research and development.²⁴ While marijuana growers have always experimented and tried to develop new strains of cannabis flower, it is the Canadian cannabis industry that is developing different lines of health and wellness products derived from the plant.²⁵

²⁰ *R v Parker*, [2000] 49 OR (3d) 481; 188 DLR (4th) 385. The Crown did not appeal to the SCC.

²¹ Daniel Tencer, "U.S. Cannabis Producers Fear Canada Will 'Dominate The Industry'", (2018) Huffington Post <<https://huffingtonpost.ca>>.

²² *Id.*

²³ Jay Rosenthal, "Canada Has Smoked The World Cannabis Market With Legalization", (2018) Huffington Post <<https://huffingtonpost.ca>>.

²⁴ Mark Rendell, "Big Pharma's first foray into cannabis arrives with Sandoz-Tilray deal", (2018) Financial Post <<https://financialpost.com>>.

²⁵ Rosenthal *supra* note 23.

Canada's Position Moving Forward

There is no guarantee that Canada's stranglehold on the cannabis industry will last forever. Canada may have been the first player on the scene, but other countries are rapidly preparing to enter the game. Chinese and European investors are exploring ways to enter the market,²⁶ and the United States Congress is contemplating measures that would help American cannabis companies raise capital and receive services from major financial institutions.²⁷ Denmark legalized medicinal marijuana in 2018 and within a few months, not only did cannabis company StenoCare go public on the Copenhagen Stock Exchange,²⁸ but the company's stock immediately soared up to nearly quadruple the IPO price.²⁹ Such valuations proved to be based on more than empty speculation; exactly a year after legalizing medicinal use, the Danish government legalized medicinal exports of cannabis products.³⁰ For comparison, Canadians were using medicinal marijuana for twelve years before the Canadian government allowed exports.³¹ This discrepancy in lengths of time between permitting use and permitting exports should not induce surprise. Canada was first to arrive, but in doing so, they laid out the path for everyone else to easily follow.

²⁶ See Louise Moon, "Global cannabis industry eyes China for production and investment", (2018) South China Morning Post <<https://scmp.com>>; Rupert Neate, "High stakes: cannabis capitalists seek funds to drive drug trade", (2018) The Guardian <<https://theguardian.com>>.

²⁷ Measures include the SAFE Act and STATES Act. See, e.g., "Proposed U.S. Federal Cannabis Legislation", (2019) Davis Polk & Wardwell LLP <<https://goo.gl/yku2aa>>.

²⁸ Jacob Gronholt-Pedersen, "Danish cannabis IPO aims to benefit from surge in investor interest", (2018) Reuters <<https://reuters.com>>.

²⁹ Jacob Gronholt-Pedersen, "High as a kite? Danish cannabis firm StenoCare shares surge on debut", (2018) Reuters <<https://reuters.com>>.

³⁰ Matt Lamers, "Denmark approves 'bulk' medical cannabis exports as European programs stall", (2019) Marijuana Business Daily <<https://mjbizdaily.com>>.

³¹ *Marihuana for Medical Purposes Regulations*, SOR/2013-119, as repealed by *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230, as repealed by *Cannabis Regulations*, SOR/2018-144.

Furthermore, some industry experts already foresee the branding power of American multinationals overpowering the Canadian cannabis industry,³² and even some Canadians are pessimistic about their nation's companies' ability to maintain their strong market presence.³³ This pessimism is borne not just of market threats from international cannabis companies but of perceived mismanagement by the Canadian state as well. Experts and leaders in Canada's cannabis industry are concerned that the government's decision to delay the sale of certain cannabis products, including edibles, combined with the fact that marijuana marketing is all but banned in Canada, will prevent Canadian firms from gaining as much market share as they otherwise could.³⁴

It also bears mentioning that although Canadian cannabis companies certainly have more institutional support than their American peers, financial institutions in Canada have been slow to adapt to the needs of the Canadian pot industry. Whether they are simply displaying the same conservative approach that helped mitigate the effects that Canadians experienced during the 2008 financial crisis, or whether in consideration of their American exposures and of the White House's current stance on marijuana they are navigating this fledgling industry with

³² Kristine Owrn, "Canada won't keep its cannabis lead for long, once the American brand machine gets rolling, say insiders", (2018) Financial Post <<https://financialpost.com>>.

³³ See *id.* Afzal Hasan, president and general counsel of Ottawa-based cannabis venture capitalist firm CannaRoyalty: "The people that for whatever foolish reason thought Canada was going to dominate the world of cannabis, they need to disabuse themselves of that notion. There is literally no industry in the world that we have an advantage in. We're not as aggressive and competitive and capitalistic as the folks down south."

³⁴ Jessica Vomiero, "Canada could be a leader in the global cannabis market — if the rules loosen up: experts", (2018) Global News <<https://globalnews.ca>>. Hasan (see *supra* note 32): "Our regulators, they're trying to do the right thing but unfortunately, there's a trade off. If you have regulation that's too conservative and protectionist, what you have is economic activity being stifled." Brad Poulos, a Ryerson University professor and expert in the intersection of business and cannabis: "The Canadian government has for the most part taken a pretty conservative approach. A lot of people in the industry consider this to be prohibition 2.0."

reservation, many Canadian banks have been hesitant to supply financial services to cannabis companies.³⁵

Nonetheless, it would be premature to conclude that Canada will necessarily see the erosion of its cannabis hegemony. In addition to underestimating the size and significance of Canada's head start, such a diagnosis neglects to consider the possibility that Canada will undergo legislative changes better facilitating Canada's position as the world's predominant cannabis supplier.

Germany, having legalized medical marijuana two years ago, is the largest country in which the sale of cannabis is legal and investors who put money in Danish cannabis see Germany as the "golden goose" of Europe's incipient medical marijuana economy.³⁶ In addition to being about fourteen times the size of Denmark, Germany has experienced repeated failed attempts at instituting a legal homegrown production system,³⁷ making it prime territory for companies looking to expand their reach. But while the largest Danish cannabis company, the previously mentioned StenoCare, has had a peak valuation of \$40 million,³⁸ Canadians have already put more than \$400 million of foreign direct investment into Danish cannabis production.³⁹ Canopy, for instance, has begun construction on a one million square foot greenhouse on Danish soil.⁴⁰ For reference, an 800,000 square foot greenhouse Canopy just finished building in Canada cost \$150 million.⁴¹ Additional facilities in Portugal and Israel have Canadian

³⁵ Vanmala Subramaniam, "'They still don't like you': Why major Canadian banks remain cool to the red-hot cannabis sector", (2018) Financial Post <<https://financialpost.com>>.

³⁶ Lamers, *supra* note 30.

³⁷ See, e.g., "Germany delays roll-out of medical marijuana", (2018) DW <<https://dw.com>>.

³⁸ Gronholt-Pedersen, *supra* note 29.

³⁹ Lamers, *supra* note 30.

⁴⁰ Matt Lamers, "Aurora's CA\$150 million cannabis greenhouse fully licensed for cultivation, sales", (2019) Marijuana Business Daily <<https://mjbizdaily.com>>.

⁴¹ *Id.*

cannabis companies poised to supply the entire European Union.⁴² Canada has not merely had a head start, but Canadian firms have their sights on the finish line.

Branding and Domestic Law

Concerns about the great power of the American branding machine are not completely unfounded. Some industry experts point to the distinction between tomato farmers outside of the United States as compared to American multinational ketchup titan Heinz, and the discrepancy between their earnings, and see parallels to the way the competition for the cannabis trade may play out for Canadian producers.⁴³ Whether some American firm ends up being the Heinz of cannabis is certainly far from a foregone conclusion, but so is the notion that Canadian companies will be able to hold off the coercive power of American capital. On Canada's first day of legal pot sales, it is estimated that at least 95% of consumers were completely unaware of the brand of marijuana they had purchased.⁴⁴

The reason for that is clear: cannabis branding in Canada is subject to extremely stringent conditions.⁴⁵ For example, advertising cannot associate marijuana with fun, and logos on packages must be smaller than the mandatory health warnings.⁴⁶ In these and other respects, the treatment of cannabis is akin to that of tobacco, despite the fact that the government has generally treated marijuana more like alcohol than tobacco,⁴⁷ as well as the scientific consensus that while cigarettes are essentially poison,⁴⁸ consuming cannabis can have at least some health benefits.⁴⁹ Thus, not only is it consistent with both the beliefs of the

⁴² Alfredo Pascual & Matt Lamers, "Lawsuit throws German cannabis program into limbo; deadline delayed to Dec. 11", (2018) Marijuana Business Daily <<https://mjbizdaily.com>>.

⁴³ Owrn, *supra* note 32.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ "Cannabis vs. alcohol: How the law differs", (2018) CTV News <<https://ctvnews.ca>>.

⁴⁸ See, e.g., Kjell Bjartveit & Aage Tverdal, "Health consequences of smoking 1–4 cigarettes per day", (2005) 23:5 Tobacco Control 315 <<https://tobaccocontrol.bmj.com>>.

⁴⁹ See, e.g., Ronald Ellis et al, "Smoked Medicinal Cannabis for Neuropathic Pain in HIV: A Randomized, Crossover Clinical Trial" (2008) 34:8 Neuropsychopharmacology 672.

scientific community and the current stance of the federal government, but relaxing the laws around cannabis marketing and branding would allow Canadian companies to more effectively establish control of the market, by connecting with consumers and establishing value in the brands themselves.⁵⁰ Harmonious with this rationale, allowing the sale of a broader range of products, including creams, sprays and edibles, would only further facilitate companies' ability to create both brand awareness and market share.⁵¹

To draw on a popular example of market domination, Switzerland is known worldwide for its production of watches. This fact, however, is part and parcel of the reality that Swiss icon Rolex is by far the most famous watch brand in the world,⁵² and that, for example, even the vast majority of the most well-known luxury watch brands in the United States are Swiss.⁵³ If Canada wants to continue being at the forefront of the cannabis trade, it is imperative that its government allows its brands to grow to the iconic international stature of Rolex.

Imports and Exports

The federal government can further aid the nation's cannabis companies by legalizing recreational, in addition to medicinal, imports and exports. Currently, that would only facilitate more potential trade with Uruguay, but the eventual legalization of recreational pot use in the United States is ineluctable,⁵⁴ and some see it as imminent.⁵⁵ Allowing Canada's well-established cannabis giants to hit the ground running upon the end of American prohibition would increase their ability to gain market share south of the border. Also in fact, to do otherwise may be in contravention of Canada's international obligations. GATT dictates that all parties to

⁵⁰ Vomiero, *supra* note 34.

⁵¹ See Owram, *supra* note 32; Vomiero, *supra* note 34.

⁵² Ranking the Brands <<https://www.rankingthebrands.com/Brand-detail.aspx?brandID=65>>.

⁵³ Rob Bates, "What Are the 4 Most Popular Watch Brands?", (2017) JCK <<https://jckonline.com>>.

⁵⁴ See, e.g., Lyle Hauser, "Canada's legalization of marijuana offers a blueprint for the U.S.", (2019) Stat News <<https://statnews.com>>.

⁵⁵ Ryan Browne, "2019 is the year the US legalizes cannabis, CEO of pot firm Acreage says", (2019) CNBC <<https://cnbc.com>>.

the agreement will refrain from instituting, among other things, "regulations" whose effects would be "to afford protection to domestic production."⁵⁶ By allowing both recreational and medicinal domestic marijuana production while limiting imports to cannabis produced for domestic consumption, Canada is clearly favouring domestic producers. To comply with GATT, Canada should allow its cannabis producers and retailers to sell and acquire recreational products internationally, and so should every other country that allows recreational use. That last fact is key to Canada's interests. Canada is setting the blueprint for cannabis regulation on which other countries will base their own laws and positions.⁵⁷ It is for the benefit of Canada's cannabis companies to have as many countries as possible allow the import and export of recreational marijuana, and to the extent that Canada acts on the position that legalizing recreational use demands allowing recreational imports, other countries will consider the standard compliant measure to be allowing recreational imports and exports when they are planning their regulations.

International Drug Treaties

Of course, entertaining the idea of nations tailoring cannabis law to suit international regulations is contingent on the legalization of cannabis itself being consistent with international law. Upon examining the relevant treaties, however, it might appear that legalizing recreational marijuana use violates Canada's obligations. The major UN drug treaties are the 1961 Single Convention on Narcotic Drugs,⁵⁸ the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.⁵⁹ While the 1961 Convention alone may have left some wiggle room for a state to allow cannabis

⁵⁶ General Agreement on Tariffs and Trade, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, art III:1, Apr. 15, 1994, 1867 UNTS 187 (1994).

⁵⁷ See Hauser, *supra* note 54.

⁵⁸ As amended in 1972.

⁵⁹ See "The International Drug Control Conventions", (2013) United Nations Office on Drugs and Crime <<http://unodc.org>>.

production,⁶⁰ the 1971 Convention schedules cannabis⁶¹ among the most restricted drugs,⁶² and the 1988 Convention requires the criminalization of cultivating, purchasing or possessing marijuana.⁶³

The popular view is that Canada is indeed in violation of international drug treaties.⁶⁴ The International Narcotics Control Board, assigned by the 1961 Convention to help ensure that states act in accordance with drug treaties,⁶⁵ stated that Canada's legalization "cannot be reconciled with the country's international obligations".⁶⁶ Scholarship suggests that Canada has three options: denouncing the international drug treaties, issuing a unilateral reservation with respect to the elements of the treaties which Canada's cannabis laws violate, or advocating for treaty reform.⁶⁷ The act of denouncing the treaties is one that other nations are unlikely to follow, and thus incongruous with Canada's desire to help bring about cannabis liberalization in other countries, and a unilateral reservation, too, is far from the cooperative, global approach that it is

⁶⁰ See Single Convention on Narcotic Drugs [hereinafter 1961 Convention], art 28, Mar. 30, 1961, 520 UNTS 151 (1961). The Convention explicitly provides for the contingency that a "Party permits the cultivation of the cannabis plant for production". Additionally, it does not demand Parties enact strictly prohibitive regulations, but requires "prevent[ing] the misuse of, and illicit traffic in, the leaves of the cannabis plant." Misuse is undefined (and not mentioned again in the Convention), and Canada technically has criminalized illicit—as in unlicensed—traffic of cannabis, so although permitted production was presumably contemplated as meaning industrial hemp production (a process whose permission was sanctioned explicitly elsewhere in the Convention), it is not incontrovertibly clear from a literal reading of the text that Canada's Cannabis Act violates this Convention.

⁶¹ Convention on Psychotropic Substances [hereinafter 1971 Convention], Schedule 1, ST/CND/1/Add.2/Rev.3, Feb. 21, 1971, 1019 UNTS 175 (1971).

⁶² 1971 Convention, art VII.

⁶³ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [hereinafter 1988 Convention], art III:1-2, Dec. 20, 1988, 1582 UNTS 95 (1988).

⁶⁴ See, *inter alia*, Patrick Cain, "Marijuana ban will stay in UN treaties — for now", (2018) Global News <<https://globalnews.ca>>; German Lopez, "Canada just legalized marijuana. That has big implications for US drug policy.", (2018) Vox <<https://vox.com>>.

⁶⁵ 1961 Convention, art V.

⁶⁶ International Narcotics Control Board Secretariat, "International Narcotics Control Board expresses deep concern about the legalization of cannabis for non-medical use in Canada", (2018) International Narcotics Control Board <<https://incb.org>>.

⁶⁷ See *generally* Roojin Habibi & Steven Hoffman, "Legalizing Cannabis Violates the UN Drug Control Treaties, But Progressive Countries like Canada Have Options", (2018) 49:2 Ottawa L Rev 427 (Habibi and Hoffman argue that there are four options, but consider treaty reform and the rescheduling of cannabis separately, whereas this paper frames them as part of the same overall strategy).

in Canada's interests to take. The best position for Canada to hold is that changes in knowledge and perception of drugs over the past few decades have necessitated treaty reform.

Reform to the international drug treaties is not a simple matter, however. Under the three treaties, any Party to the Conventions can propose an amendment, which is delivered to the UN's Economic and Social Council via the UN Secretary-General.⁶⁸ However, even if ECOSOC endorses such an amendment, all Parties to the potentially amended Convention have the right to object, forcing ECOSOC to reject the amendment or approve it providing for the caveat that it will not apply to the objecting Parties.⁶⁹ The jurisprudence on the matter is limited; as stated previously, the 1961 Convention was amended in 1972, but the only submitted amendment since then was a 2008 proposal from Bolivia to remove the 1961 Convention's prohibition on chewing coca leaves.⁷⁰ Eighteen countries protested,⁷¹ and the ECOSOC rejected the amendment.⁷²

Bolivia temporarily withdrew from the 1961 Convention, was eventually granted a special exemption that allowed the country to remove its prohibition on coca leaves, and promptly rejoined the agreement.⁷³ They accomplished their objective. However, their goal was dissimilar to Canada's current ambitions. Bolivia wanted to preserve its traditional use of the coca leaf while remaining party to the 1961 Convention.⁷⁴ If all Canada wanted was to ensure its citizens could smoke weed, it need not take any steps. Rather, Canada wants to facilitate cannabis liberalization and trade worldwide.

⁶⁸ 1961 Convention, art XLVII; 1971 Convention, art XXX; 1988 Convention, art XXXI.

⁶⁹ *Id.*

⁷⁰ Evo Morales, Open Letter from President of Bolivia Evo Morales to UN Secretary-General Ban Ki-moon, (2008) United Nations Drug Control <<https://undrugcontrol.info>>.

⁷¹ "Objections and support for Bolivia's coca amendment", (2009) Transnational Institute <<https://tni.org>>.

⁷² Jamie Doward, "Bolivians demand the right to chew coca leaves", (2013) The Guardian <<https://theguardian.com>>.

⁷³ *Id.*

⁷⁴ See Morales, *supra* note 70.

Canada can accomplish this by balancing its attempts at reform with a careful, nuanced reading of the drug treaties arguing that cannabis legalization is indeed in accord with many of the precepts of the drug and other treaties, and that reform of the drug treaties is in fact necessary to best diminish illegal drug trafficking. This stance is bolstered by an interpretation of the three drug Conventions in light of the 1969 Vienna Convention on the Law of Treaties and the UN human rights framework.⁷⁵ The Vienna Convention states that a treaty is to be applied using "ordinary meaning" and with reference to its "object and purpose."⁷⁶ However, as alluded to earlier,⁷⁷ and as argued in other literature,⁷⁸ it is not always unquestionably apparent what conforms or fails to conform to the international drug treaties when using an ordinary, literal interpretation. Thus, it is incumbent on Parties to the drug Conventions to especially evaluate the object and purpose of the treaties when crafting their domestic regulations. Canada can argue that it has done just that in legalizing cannabis.

According to the Vienna Convention, preambles and annexes are considered part of the text which determine the treaty's purpose.⁷⁹ The 1988 Convention lacks a preamble, but the 1961 and 1971 Conventions include preambles indicating that the Parties are motivated by concern for "the health and welfare of mankind" and a desire to combat the "serious evil" of abuse and addiction, all while possessing consideration for what will constitute "effective measures" for pursuing these goals.⁸⁰ Also, the preambles are notably barren of any calls for

⁷⁵ As discussed *infra* in this paper, Canada's stance is that cannabis legalization helps combat the evils of drug addiction and abuse, which are mental health and thus human rights concerns. UN texts suggest that its human rights framework takes precedence over its drug framework. See United Nations General Assembly, "Study on the impact of the world drug problem on the enjoyment of human rights", (2015) A/HRC/30/65, Sep. 4, 2015.

⁷⁶ Vienna Convention on the Law of Treaties [hereinafter Vienna Convention], art XXXI:1, May 23, 1969, 1155 UNTS 331 (1969).

⁷⁷ See *supra* note 60.

⁷⁸ See Habibi & Hoffman, *supra* note 67 at para 23. The authors label the international drug treaties as being "saturated with textual ambiguity" (quoting Neil Boister, *Penal Aspects of the UN Drug Control Conventions*, (2001) Kluwer Law International at 22).

⁷⁹ Vienna Convention, art XXXI:2.

⁸⁰ 1961 Convention; 1971 Convention.

prohibition; they in fact acknowledge that there will be "legitimate purposes" for drugs, including "the relief of pain and suffering",⁸¹ one of the common uses of marijuana.⁸²

By legalizing cannabis, Canada is striving towards the objectives of the drug treaties. There is no nation, including Canada, arguing that cannabis is harmless.⁸³ Canada has based its cannabis legalization on the premise that regulation, rather than prohibition, is the most efficacious way of battling those harms. By keeping the production, trafficking and consumption of marijuana above board, the government can more closely monitor and control use of the drug, and provide support for those suffering from addiction. This is compatible with the purpose of the drug treaties.

The past several decades have seen alterations in international trade and scientific consensus. Prohibition as a means of drug control in 2019 is far less effective than it was when the drug treaties were enacted. The massive amount of trade liberalization the world has undergone over the past several decades has facilitated illegal drug trafficking in many ways, including lowering the prices of legal inputs, lowering transport costs (by improving infrastructure), and increasing hiding places for drugs (by increasing the total volume of goods traded).⁸⁴ As the world progresses and becomes more globalized, drug prohibition is only going to get more difficult. Additionally, since the turn of the millennium, considerable research has indicated that there can be healthy effects to cannabis consumption.⁸⁵ Canada must try to convince its peers that in the interest of human welfare, cannabis compounds are rescheduled under the 1971 Convention, and that the 1961 and 1988 Conventions are amended to account for a broader array of drug control policies, including legalization and regulation.

⁸¹ *Id.*

⁸² See, e.g., Ellis *supra* note 49.

⁸³ See Cannabis Act, art VII (SC 2018, c 16). Among other things, the purpose of the Act is to limit the threat cannabis poses to young people.

⁸⁴ Kal Raustiala, "Law, Liberalization & International Narcotics Trafficking", (1999) 32:89 NYU J Int'l L & Pol. 116.

⁸⁵ See, e.g., Ellis *supra* note 49.

If Canada can show that cannabis legalization is authorized, the jurisprudence suggests that cannabis trade liberalization will be favoured. Domestic protectionism will constitute a violation of GATT. The WTO Appellate Body has on two occasions declared that pursuit of national drug policy cannot be used to skirt international trade obligations.⁸⁶ Under a UN drug framework in which cannabis regulation is permitted, or even encouraged, the positive implications for large Canadian cannabis firms are great, and certainly a topic for future study.

Conclusion

Canada is currently dominating the world's cannabis industry. As the market is worth hundreds of billions of dollars, this presents a special opportunity for any country, let alone one of our size. Although the prolongation and solidification of this hegemony is not a certainty, the Canadian state can help maximize the likelihood that the country sustains its dominance. Canada is in many ways setting the blueprint by which the world will liberalize drug use. By liberalizing domestic law, which both better facilitates the growth of Canadian firms and projects the standard that liberal cannabis law accords with international trade law, as well as suggesting drug treaty reform which incorporates a purposive reading of the initial agreements and a respect for the UN human rights framework, Canada can benefit the position of Canada's cannabis firms. Not only will such reform increase the strength of the Canadian cannabis economy, but it will reconcile any potential conflict between Canadian law and Canada's international obligations.

⁸⁶ See *European Communities - Conditions for the Granting of Tariff Preferences to Developing Countries* - AB-2004-1 - Report of the Appellate Body, WT/DS246/AB/R (Apr. 7, 2004) (the AB finding that a GSP scheme which favoured developing countries enacting laws to combat drug trafficking was unfair); see *Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear*, AB-2016-1 - Report of the Appellate Body, WT/DS461/AB/R, (Jun. 7, 2016) (the AB finding that Colombia's tariffs designed to combat illicit drug trafficking were unjustified).