

*International Rules & how
they impact the Ganja
Industry in Jamaica*

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Presentation Outline

- Treatment of cannabis/ganja under the United Nations Drug Control Conventions
- The implications of being designated “a major production & transit” country for illicit narcotic drugs
- The US dichotomy – Federal vs State rules
- ‘De-risking’ & the correspondent banking problem
- Complying with international rules to safeguard the Jamaican economy



UN Drug Control Conventions

- 1961 Single Convention on Narcotic Drugs as amended by the 1972 Protocol
- 1971 Convention on Psychotropic Substances
 - **New psychoactive substances (NPS) such as synthetic cannabinoids not regulated**
- 1988 Convention against Illicit Traffic in Narcotic Drugs & Psychotropic Substances
 - **Requires State Parties to criminalize certain forms of conduct which is unlawful under the Single Convention including that related to the cultivation & trade in cannabis**

Single Convention (as amended)

- ❑ The general obligation is “to limit **exclusively to medical & scientific purposes** the production, manufacture, export, import, distribution of, trade in, use & possession of drugs.”
 - ✓ This is subject to any **Constitutional** limitations
- ✘ Cannabis is a **Schedule I & IV drug**, i.e. considered to be **particularly liable to abuse & to produce ill effects, & such liability should not be offset by substantial therapeutic advantages**
- ✓ An exception exists where the drug, by appropriate methods of denaturing or by other means has been modified so that it is not liable to be abused or have ill effects; e.g. **hemp**
- ✓ Another exception relates to cultivation for purely **horticultural** purposes
- Strict regime for cultivation, production & trade

Single Convention regime for cultivating ganja

- The Agency shall **designate the areas** in which, and the plots of land on which, cultivation of ganja is permitted
- Only **farmers licensed** by the Agency shall be authorized to engage in such cultivation
- Each licence shall **specify the extent of the land** on which the cultivation is permitted
- All farmers shall be required to deliver their total ganja crop to the Agency. The Agency shall **purchase and take physical possession of such crops** as soon as possible, but **not later than 4 months after the end of the harvest**
- The Agency shall have the **exclusive right of importing, exporting, wholesale trading and maintaining stocks** of ganja (*versus* medicinal preparations such as oils)

Jamaica largest Caribbean supplier of marijuana to the US, report says



United States Department of State

Bureau for International Narcotics and Law Enforcement Affairs

International Narcotics Control Strategy Report

‘2014 International Narcotics Control Strategy Report’ the US State Department said Jamaica continued to make “slow but steady progress” in combating narcotics trafficking, corruption and organized crime in 2013.

INEFFICIENT CRIMINAL JUSTICE SYSTEM

Washington said that while the government and law enforcement authorities are committed to combating narcotics and illicit trafficking, their efforts were only moderately effective in 2013 because of a lack of sufficient resources; corruption; an inefficient criminal justice system; and the inability of lawmakers to adopt meaningful legislation to combat corruption and gangs. Lawmakers increased their discussion of loosening Jamaica’s law prohibiting the personal use of marijuana, the report stated.

It said that an estimated 15,000 hectares (ha) of marijuana is grown in all 14 parishes of Jamaica, generally in areas inaccessible to vehicular traffic on small plots in mountainous areas.

The police and military, supported by the United States, employed teams of civilian cutters to cut growing plants, seize seedlings and cured marijuana, and burn them in the field. But the report noted that because Jamaican law prohibits the use of herbicides, only manual eradication was conducted in 2013. Eradication of marijuana decreased in 2013, with the destruction of 247 ha of growing cannabis, 1.9 million seedlings, and 285 kilograms (kg) of seeds – down from 711 ha, 2.58 million seedlings and 785 kg of seeds destroyed in 2012.

US designated major source & transit countries

- 17 LACs named as “**major illicit drug producing and/or drug-transit countries**”:
- Bahamas; Belize, **Bolivia**, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, **Jamaica**, Mexico, Nicaragua, Panama, Peru & **Venezuela**
- Of these countries, Bolivia & Venezuela were designated by President Obama as having “**failed demonstrably**” during the previous 12 mths to adhere to their obligations under International Drug Conventions. But the President determined that continued bilateral support *only for Venezuela* is vital to US national interests.

Major Money Laundering Countries

- A major money laundering country is defined by statute as one "**whose financial institutions engage in currency transactions involving significant amounts of proceeds from international narcotics trafficking.**" FAA § 481(e)(7).
- But FIs engaging in transactions involving significant amounts of proceeds of other serious crime are vulnerable to narcotics-related money laundering → **list including all jurisdictions, whose FIs engage in transactions involving significant amounts of proceeds from all serious crime:**
- Afghanistan, **Antigua & Barbuda**, Australia, Austria, **Bahamas**, **Belize**, Bolivia, Brazil, **British Virgin Islands**, Burma, Cambodia, **Canada**, **Cayman Islands**, China, **Colombia**, **Costa Rica**, Cyprus, **Dominican Republic**, **France**, Gaza, **Germany**, **Greece**, **Guatemala**, Guernsey, Guinea-Bissau, **Haiti**, **Hong Kong**, India, Indonesia, Iran, Iraq, Isle of Man, **Israel**, Italy, **Japan**, Jersey, Kenya, Latvia, Lebanon, Liechtenstein, **Luxembourg**, Macau, **Mexico**, **Netherlands**, Nigeria, Pakistan, **Panama**, **Paraguay**, Philippines, Russia, Singapore, Somalia, Spain, **Switzerland**, **Taiwan**, Thailand, Turkey, Ukraine, United Arab Emirates, **United Kingdom**, **United States**, **Uruguay**, **Venezuela**, West Bank, and Zimbabwe. ●₈

US realpolitik



- The Controlled Substances Act (“CSA”) = illegal under US federal law to manufacture, distribute, or dispense ganja
- But 23 states + District of Colombia have legalized marijuana-related activities
- Internal US conflict addressed through memos:
 - Cole memo
 - FinCEN guidance
 - Supplemental Cole memo

The US solution



- Cole memo provides guidance to DOJ attorneys & law enforcement to focus enforcement resources on persons whose conduct interferes with key priorities
- FinCEN guidance clarifies how FIs can provide services to marijuana-related businesses (MRBs) consistent with their Bank Secrecy Act (BSA) obligations
- Cole supplemental guidance extends enforcement priorities to prosecutions for money laundering, BSA offences etc

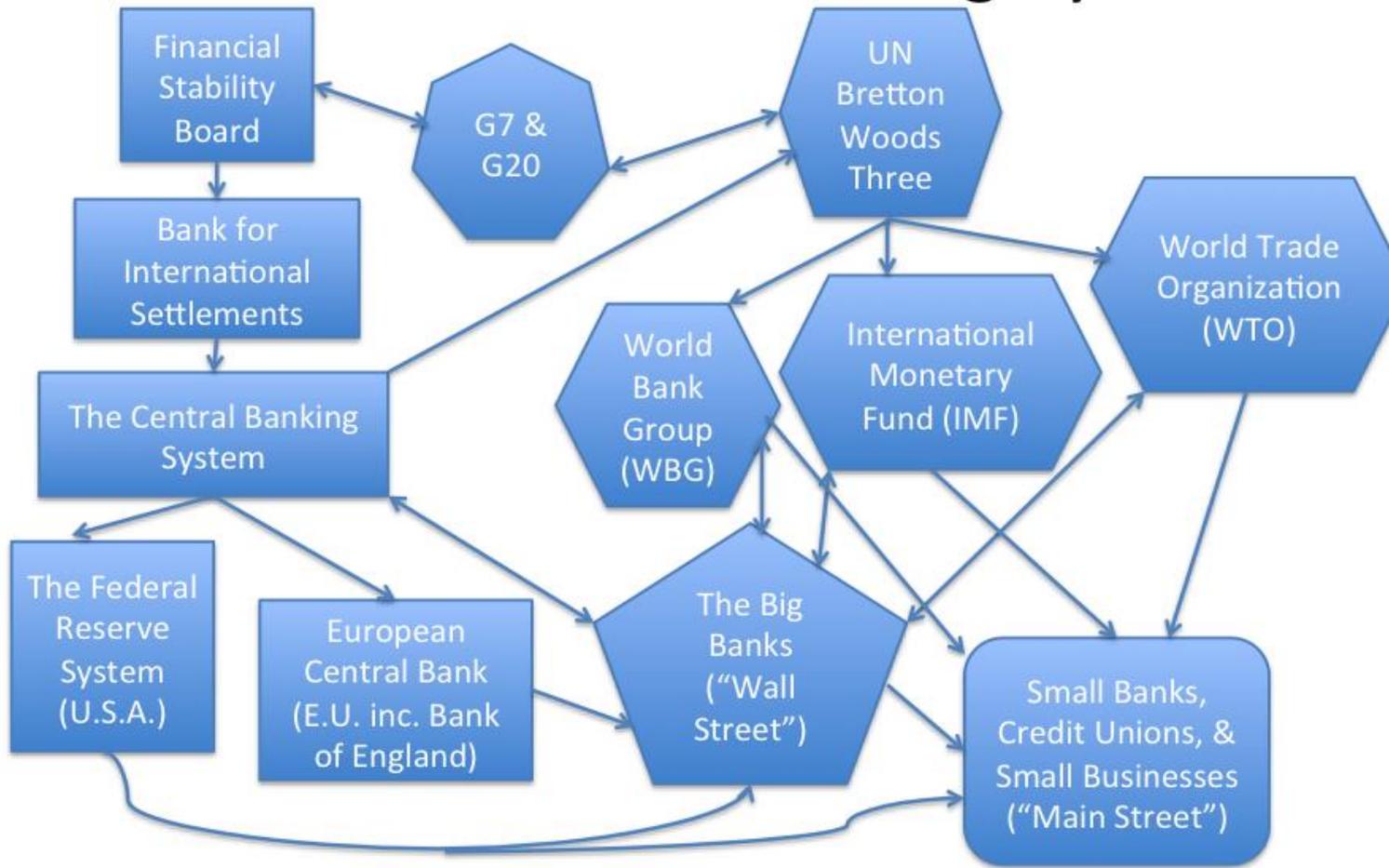


- **Preventing the distribution of marijuana to minors;**
- **Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;**
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- **Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;**
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- **Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;**
- **Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands;** and
- Preventing marijuana possession or use on federal property.

FinCEN guidance

- As part of its customer due diligence, an FI must assess whether a marijuana-related business (MRB) implicates one of the Cole Memo priorities or violates state law
 - FIs accountable for compliance with US Federal & State law
- ❑ An FI providing services to a MRB must file suspicious activity reports (“SARs”) irrespective of the lawfulness of the activity under state law as federal law prohibits the distribution & sale of ganja → suggested thresholds & “red flags”:
 - ❑ “**Marijuana Limited**” SAR – business not implicate Cole Memo priorities or violate state law
 - ❑ “**Marijuana Priority**” SAR – business suspected non-compliant
 - ❑ “**Marijuana Termination**” SAR – FI must terminate to meet AML compliance programme

The International Banking System



Correspondent banking (CB)

- Wolfsberg Group principles on foreign CB relations:
- An FI may not rely solely on the international rating of the jurisdiction in which a CB Client operates re **the fight against money laundering & terrorism finance**
 - ***“To a large extent, licensing, registration & other controls implemented by Jamaica, adequately prevent criminals & their associates from entering the financial sector. BOJ & FSC succeed to a fair extent in promoting compliance with the AML/CFT requirements” [CFATF Report on Jamaica]***
- Re branches, subsidiaries or affiliates (BSA) of the CB Client parent - facts unique to the BSA may require **enhanced due diligence** [e.g. Scotia et al]
- Downstream CBs must also be checked [e.g. Credit Union]
- Suspicious activities monitored & reported

Complying with international rules to safeguard the Jamaican economy

- *WE DON'T HAVE A CHOICE ...*

- *THANK YOU!*