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Cannabis in Cascadia: Impacts of Legalization in the Region

Border Policy Research Institute

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Introduction. The policies regulating the use and sale of cannabis have historically been constructed differently in the United States and Canada, yet both countries had deemed recreational use to be illegal. Beginning in 2012, however, individual states in the U.S. began to legalize recreational cannabis, including Washington, Oregon, and most recently, California. In 2017, the Government of Canada passed similar legislation. If Canada’s legislation goes into effect in mid-2018, the West Coast of North America will become the only contiguous region where recreational consumption and sale of cannabis are permitted across multiple jurisdictions (see Map 1, next page). However, because cannabis remains federally illegal in the U.S., the Canada-U.S. border presents both legal and social challenges that are continually emerging as the recreational cannabis industry expands.

This Border Policy Brief examines the development of the recreational cannabis industry in the ‘Cascadia’ region of western British Columbia and Washington State, highlighting the strong regional nature of its legalization, as well as the implications of legalization for the Canada-U.S. border.

Background. Over the past decade public opinion towards cannabis has become more supportive in both the U.S. and Canada, driving shifts in public policy that have varied across different jurisdictions. Some areas have chosen to lessen penalties for possession of small amounts of cannabis, while others have chosen to decriminalize it, create medical cannabis programs, and, more recently, fully legalize adult-use recreational cannabis.

Legalization started with medical cannabis in California in 1996 and Washington and Oregon followed suit in 1998. Over the next decade and a half, more states would look into cannabis as a medicine and enact similar programs, tailored to their individual needs. In 2001, Canada became one of the first nations with a federal medical cannabis system. If legalization of recreational cannabis goes into effect later this year, Canada will become the first country with a fully legalized market for recreational cannabis.

Regional Development. The Western slopes of British Columbia, Washington State, and Oregon, are often referred to as the ‘Cascadia’ region due to their similarities in geography, culture, and economics. The cannabis industry began to spread northward into this region, from California to British Columbia, establishing cross-border connections as early as the 1960s. The border itself may have facilitated this regional development, as draft dodgers, and later the U.S. war against drugs, resulted in Canada being a destination for both individuals and industries engaged in cannabis consumption/production.
With the opening of California’s market at the beginning of 2018, the entire west coast of the U.S. from Alaska to California has legalized recreational cannabis. If Bill C-45, The Cannabis Act, passes in Canada’s Senate (it passed the House on November 27, 2017) and is enacted into law, that contiguous jurisdiction becomes significantly larger, and will cross the Canada-U.S. border.

**Legislation.** The issue of cannabis legalization is an interesting case study in policy transfer across the border. In 2016, the Government of Canada established the Task Force on Cannabis Legalization and Regulation with the mandate to consult and provide input on the design of Canada’s new regulatory framework for legalizing cannabis. The Task Force engaged in numerous consultations, including a study tour to Washington State, which helped shape recommendations on product safety issues, tax and pricing structures, and public education programming.

The regulatory framework that will be established in Canada if Bill C-45 is enacted would be similar to that of Washington, with some notable differences. The Act would allow Canadians eighteen years of age and older to possess, share, purchase, grow, and create cannabis and cannabis products. The minimum age in Washington, however, is twenty-one and individuals are not allowed to grow their own cannabis. Also, each Canadian province will set up their own regulated retail system. The provinces will be allowed to raise (but not lower) the minimum age for cannabis consumption, set restrictions on where cannabis may be consumed, establish requirements for home grows, and even lower the personal possession limits. British Columbia, for example, set the minimum age to nineteen and anticipates there will be both public and private retail options in the province, while Ontario established a government monopoly run by the new Ontario Cannabis Retail Corporation. The tax structure also differs, with Canada electing to employ a flat tax of 10 percent on cannabis worth more than $7.80 per gram and a tax of $0.78 per gram on cannabis worth less than $7.80. The stated reasoning behind this tax structure, which is considerably lower than Washington’s, is to increase price competition with the illicit market, thereby shifting as much business as possible to the newly established legal market. Because most of the hands-on regulation will be done by the provinces, the federal government has agreed to give 75 percent of cannabis revenues to the provinces.

**Economic Impacts.** Legalization of cannabis may have significant impacts on economic development of the Cascadia region. According to the Washington State Liquor and Cannabis Board, total sales of cannabis in Washington grew from $259.5 million in 2015 to $1.37 billion in 2017. As a result, the state saw a 385% increase in excise tax revenues, collecting $64.9 million in excise taxes in 2015 and $314.8 million in 2017. The first two months of 2018 have already produced $534 million in sales and $120.6 million in excise tax. In Oregon, state tax revenue from cannabis sales have exceeded $135 million since retail stores opened twenty months ago. If the cannabis industry in the region continues to grow as expected, employment in the industry will need to increase to facilitate that growth.

As long as cannabis remains federally illegal in the U.S., any regional economic development benefits will be largely isolated within legal jurisdictions. If a change in federal policy was made to facilitate trade in cannabis between legal jurisdictions, individual cannabis economies would be able to connect and form a singular economy. Commerce of a connected cannabis economy could flow not just between Washington and British Columbia, but throughout a significant portion of North America. While no change in U.S. federal policy is forthcoming at this point, the potential significance of a possible interstate and internationally connected cannabis economy merits more analysis of the costs and benefits of the development of such an industry.
Other Impacts. There are also social impacts associated with legalization of cannabis. One of the main goals of both Washington and Canada has been to divert money away from criminal enterprise. One market analysis estimates the total cannabis market in North America, including all legal and illegal sales, at approximately $53.3 billion in 2016, with 13 percent of that coming from the legal market. The illicit market still controls 87 percent of the cannabis trade, but that is down from 90 percent the year before, and the legal market is projected to grow by 26 percent per year until it hits $21.6 billion by 2021. There are impacts on the justice system as well. The Ontario Public Health Association estimates that 60,000 Canadians are arrested every year for cannabis possession with enforcement costs approximating $1.2 billion per year. Legalization would eliminate some of this demand on the justice system, allowing law enforcement to focus their efforts elsewhere and citizens to avoid the negative impacts of an arrest record for cannabis possession.

Diversion of cannabis from one jurisdiction in which it is legal and readily available to another jurisdiction in which it remains prohibited is another issue associated with legalization. A recent study on diversion in Washington found that after Oregon’s legal cannabis market opened, retailers in Washington who were located along the Oregon border saw a significant decrease in sales. Researchers estimated that 41 percent of cannabis sales from Washington retailers along the Oregon border was diverted out of the state. They also noted that, while the counties in Washington that border Idaho account for 7.7 percent of the state’s population, they make up 18 percent of the market share. This cross-border diversion between states with different legal frameworks could contribute to increased enforcement actions (within the U.S.).

The Canada-U.S. border has historically acted as a barrier that resulted in asymmetrical cannabis markets, each with different levels of accessibility, pricing, and law enforcement consequences. Canada has traditionally been viewed as having more relaxed enforcement of cannabis laws compared to the U.S., as well as a thriving industry of ‘BC bud.’ Legalization on both sides of the border, however, should decrease illicit flows of cannabis into Washington, as the profitability of trafficking a substance that is legal on both sides of the border diminishes. This applies not only at the ports-of-entry, but also for large scale trafficking operations between ports-of-entry. If true, this would enable U.S. Border Patrol and the RCMP to dedicate resources to other illicit flows that are known to cross the Canada-U.S. border and are directly associated with transboundary criminal organizations, such as cocaine, methamphetamine, and fentanyl.

Finally, under Bill C-45, Canada will be home to the first and only legalized recreational cannabis market that is open to the world at large. Uruguay is currently the only country with a fully legalized recreational cannabis market. However, that market is off-limits to foreign nationals. This, coupled with the fact that so-called ‘cannabis tourism’ is a popular phenomenon even in countries with legally ‘grey’ or questionable markets, such as the Netherlands or Spain, suggests that Canada could see an increase in tourism and associated impacts.

<table>
<thead>
<tr>
<th>Type of Product</th>
<th>Canada</th>
<th>Washington</th>
<th>Oregon</th>
<th>Colorado</th>
<th>California</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘usable marijuana’ (dried flower,</td>
<td>30 grams</td>
<td>1 ounce</td>
<td>1 ounce in public,</td>
<td>1 ounce</td>
<td>28.5 grams</td>
</tr>
<tr>
<td>‘bud’)</td>
<td></td>
<td></td>
<td>8 ounces at home</td>
<td></td>
<td></td>
</tr>
<tr>
<td>infused product in solid form</td>
<td>450 grams</td>
<td>16 ounces</td>
<td>16 ounces</td>
<td>800 mg of THC</td>
<td>8 grams</td>
</tr>
<tr>
<td>infused product in liquid form</td>
<td>2100 grams</td>
<td>72 ounces</td>
<td>72 ounces</td>
<td>800 mg of THC</td>
<td>8 grams</td>
</tr>
<tr>
<td>concentrates or extracts</td>
<td>7.5 grams</td>
<td>7 grams</td>
<td>5 grams</td>
<td>8 grams</td>
<td>8 grams</td>
</tr>
<tr>
<td>marijuana plants</td>
<td>4/household</td>
<td>N/A</td>
<td>4/household</td>
<td>6 plants/resident, limit of 12 plants/household</td>
<td>6/household</td>
</tr>
<tr>
<td>marijuana seeds</td>
<td>30 seeds</td>
<td>N/A</td>
<td>10 seeds</td>
<td>unspecified</td>
<td>unspecified</td>
</tr>
<tr>
<td>fresh cannabis</td>
<td>150 grams</td>
<td>no distinction</td>
<td>no distinction</td>
<td>no distinction</td>
<td>no distinction</td>
</tr>
</tbody>
</table>

Note: 1 ounce = 28.3495 grams
Policy Implications. Despite legalization in Canada and some U.S. states, the cross-border movement of cannabis remains illegal. In the Cascadia region, this will result in a situation in which the border is the sole jurisdiction where enforcement occurs. In recent years, as cannabis consumption becomes normalized and regulated, there is a growing misconception in Cascadia about the legality of cannabis; individuals who have purchased cannabis legally are at times unaware that it remains illegal at the border. With Canada (and an increasing number of U.S. states) legalizing recreational cannabis, it is likely that this confusion will grow, and both U.S. and Canadian customs officers will face an increasing number of cases related to recreational cannabis. Indeed, if legal cannabis sales are any indication of usage trends, the region is likely to see a growing number of consumers. This could result in ports-of-entry like Peace Arch/Douglas, the second busiest passenger crossing on the Canada-U.S. border, dedicating a disproportionate amount of inspection time and space to issues related to personal consumption/possession of cannabis. This has the potential to ‘thicken’ the border by consuming infrastructure and staffing resources resulting from the following:

1. Increased secondary inspection time dedicated to personal cannabis possession and/or cannabis residue/odors.
2. Potential for Canadians to be barred entry to the U.S. or denied participation in trusted traveler programs.\(^\text{13}\)
3. Increased processing times in primary inspection from more questioning about cannabis usage.

Given the likelihood of increased wait times that would result from the above factors, an increase in U.S. CBP and CBSA staffing, combined with a strong public awareness campaign could help to ameliorate the impact of Canada’s legalization on the border. At the same time, once recreational cannabis is legalized in Canada, Canadians seeking entry into the U.S. who admit to using cannabis may no longer risk being barred entry as they currently are.\(^\text{14}\) The policy framework that will guide U.S. CBP in these matters remains to be seen, but if small amounts of personal possession (which are legal in Washington, forthcoming in Canada) result in enforcement or administrative actions that require secondary referrals, it is likely that the border will indeed thicken for all travelers in the region.

Conclusion. Cascadia will be the first region along the Canada-U.S. border where there are contiguous jurisdictions with legal recreational cannabis markets that are bifurcated by an international boundary where cannabis is prohibited. The implications for the border remain to be seen, but the region will serve as an important testing ground for how the Canada-U.S. border will operate in a patchwork of legal frameworks, which are increasingly misunderstood by a growing number of residents in the region.

Endnotes

1. Uruguay was the first country to fully legalize recreational cannabis in 2013, but its market is only available for Uruguayan citizens.
3. Data based on information reported by each state government.
5. One of the criticisms of Washington’s original market was that the taxing structure inhibited competitiveness.
13. A non-citizen seeking entry into the U.S. can be denied based not only on possession of cannabis, but also if they admit to having consumed it. See Raiton, S., “Marijuana and Immigration,” Criminal Justice, Spring 2017.
14. It is possible that even after cannabis is legalized in Canada, a Canadian who admits to having consumed cannabis prior to its legalization could be barred from entry to the U.S.

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