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Free Trade and Illegal Drugs: Will NAFTA Transform the United States Into the Netherlands?

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Free Trade and Illegal Drugs: Will NAFTA Transform the United States Into the Netherlands?

ABSTRACT

In the postwar era, the United States typically has taken an approach to dealing with illegal drugs different from Europe. Americans have favored prohibitionist measures to combat drug use, while Europeans have gradually relaxed many of their illicit substance laws. Recently, however, there has been a growing movement within the United States to decriminalize and legalize marijuana. Numerous states have already reformed their laws to allow doctors to prescribe marijuana to patients. Moreover, many states are dramatically decriminalizing personal use of cannabis.

A review of postwar Europe's experience with drugs provides a useful paradigm to explain the U.S.'s shifting attitude. It also suggests that free trade may play a role in drug legalization. Following World War II, European nations began removing barriers to trade and ultimately joined to form a supranational organization, the European Union, largely erasing national borders. As free trade spread across Europe, so too did drug legalization, beginning in the Netherlands and eventually following on most of the continent. More recently, the United States formed a free trade zone with Canada, which has recently decriminalized marijuana, and with Mexico, which has been the main conduit for illegal drugs. As the model presented in this Note predicts, the United States has gradually loosened its drug laws as illicit substances stream across its open borders. Free trade makes it easier to move goods of any kind, legal or illegal, across borders, which increases the prevalence of drugs while reducing their cost. Once one member of a free trade association legalizes drugs, it may only be a matter of time before all others adopt similar policies as cheap drugs flow across borders. As drugs become more prevalent in society, a nation's ability to incarcerate users is strained, and drugs become quasi-normalized—leading to decriminalization and legalization. Thus, the European experience with drugs suggests free trade may be one of the causes of recent drug legalization and decriminalization movements in the United States.

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I. INTRODUCTION

In recent years, the number of U.S. states that have passed some form of marijuana reform laws has surged.¹ Typically, these laws either legalize marijuana for medical purposes or decriminalize its use.² The notion underlying medical marijuana laws is that cannabis is effective in the treatment of certain ailments and that physicians should be able to prescribe the drug at their discretion.³ These state laws typically allow patients to possess, buy, and use cannabis, and they also shield users from criminal prosecution so long as their conduct remains within specified grounds.⁴

The decriminalization movement has also picked up speed as states have recently relaxed penalties associated with certain types of

1. See generally National Organization for the Reform of Marijuana Laws (NORML), *Active State Medical Marijuana Programs*, at http://norml.org/index.cfm?Group_ID=3391 (last visited Feb. 20, 2005) [hereinafter NORML, *State Medical Marijuana*]; see generally National Organization for the Reform of Marijuana Laws (NORML), *State Guide to Marijuana Laws*, at http://www.norml.org/index.cfm?Group_ID=4516 [hereinafter NORML, *State Guide*].

2. See generally NORML, *State Medical Marijuana*, *supra* note 1; see generally NORML, *State Guide*, *supra* note 1.

3. See, e.g., WASH. REV. CODE § 6951A.005 (2003).

4. *Id.*

drugs.⁵ Generally, states have reduced criminal liability for those caught with small amounts of cannabis-related drugs meant for personal use.⁶ Along with the reduced criminal penalties, states have begun advocating treatment-based alternatives instead of jail time, which is increasingly seen as unproductive and excessively expensive.⁷ Thus, the United States is in the midst of redefining its attitude toward certain forms of drug use, as evidenced by current state legislation that medicalizes and decriminalizes cannabis products.

While there are many influences that contribute to a movement, this Note posits that free trade via NAFTA is a significant impetus behind the movement to legalize and decriminalize cannabis in the United States. Europe's steady march toward legalization over the past fifty years demonstrates how free trade agreements foster the spread of relaxed drug legislation. Denmark and the Netherlands were the first European nations to legalize cannabis products in the 1970s.⁸ Since then, most European Union states, and even some European states that are not parties to the agreement, have adopted similar laws.⁹ Across the ocean, Canada recently decriminalized marijuana and made it available via a doctor's prescription.¹⁰ Moreover, the U.S.'s northern neighbor has traditionally supplied the United States with cannabis even while Canada itself deemed the drug illegal, leading one to suspect that shipments across the border will increase in the future.¹¹ In addition, Mexico has indicated it may relax its drug laws, widely known for being ineffective and unenforced.¹² As such, this Note proposes the U.S.'s situation is

5. See generally NORML, *State Guide*, *supra* note 1.

6. *Id.*

7. *Id.*

8. See National Organization for the Reform of Marijuana Laws (NORML), *European Drug Policy: Analysis and Case Studies*, at http://norml.org/index.cfm?Group_ID=4415 (last visited Feb. 20, 2005) [hereinafter NORML, *Analysis and Case Studies*].

9. See National Organization for the Reform of Marijuana Laws (NORML), *European Drug Policy: 2002 Legislative Update*, at http://norml.org/index.cfm?Group_ID=5446 (last visited Feb. 20, 2005) [hereinafter NORML, *2002 Legislative Update*]; see NORML, *Analysis and Case Studies*, *supra* note 8.

10. Clifford Krauss, *Canada Introduces Measure Adjusting Penalties for Marijuana*, N.Y. TIMES, May 28, 2003, at A11 [hereinafter Krauss, *Penalties for Marijuana*]; Clifford Krauss, *Canada to Offer Marijuana to Medical Patients*, N.Y. TIMES, July 10, 2003, at A4 [hereinafter Krauss, *Marijuana to Patients*].

11. RCMP (Royal Canadian Mounted Police), *Drug Situation in Canada- 2002* (July 2003), at http://www.rcmp-grc.gc.ca/crimint/drugs_2002_e.htm#marihuana (last visited Feb. 20, 2004).

12. See generally J. Patrick LaRue, *The "Ill-cit" Effects of NAFTA: Increased Drug Trafficking into the United States Through the Southwest Border*, 9 CURRENTS: INT'L TRADE L.J. 38 (2000) (noting Mexico's lack of drug enforcement); see, e.g., *Mexico-Drugs Mexican State of Nuevo Leon Studies Drug Legalization*, EFE NEW SERVICE, Mar. 16, 2001 [hereinafter *Mexico-Drugs*].

similar to that of those European nations that had not yet legalized cannabis after the Dutch and Danish removed criminal liability associated with the drug. The United States is part of a free trade agreement with neighbors that either explicitly or effectively do not share its attitude concerning illegal drugs.¹³ Accordingly, one can interpret the current movement to medicalize or decriminalize cannabis occurring at the state level of the United States as the nation's first step down the path to outright legalization.

Part II of this Note examines the marijuana medicalization and decriminalization movement in the United States and shows the U.S. populace's shifting attitudes toward the drug. Then the Note reviews the European experience by offering a review of the European Union and Member States' drug laws in Part III. Here, this Note discusses the free trade zone in Europe generally and illustrates how drug reform began in two states and eventually grew to cover most of the continent. Part IV of this Note offers a brief overview of NAFTA and then highlights Canadian and Mexican trends relating to drug legalization and importation into the United States while drawing corollaries to European history. Part V highlights the effects of economic liberalization on drug trafficking and discusses how one country's decision to legalize drugs affects other nations. Part VI concludes the Note by suggesting that the United States is heading toward cannabis legalization due, in part, because of the transnational consequences of its free-trade partners' decisions to legalize and decriminalize certain drugs.

II. THE U.S.'S MERCURIAL RELATIONSHIP WITH DRUGS

A. Drug Legislation: Historical Development

Though surprising, many drugs now illegal were completely legal and used openly for roughly the first half of U.S. history.¹⁴ In this unregulated environment, Americans went to stores and bought cocaine, opiates, and marijuana in plain view of the law.¹⁵ While early U.S. law permitted these activities, drug use slowly transformed from being acceptable to something socially frowned upon.¹⁶ Thus,

13. See Krauss, *Marijuana to Patients*, *supra* note 10; see LaRue, *supra* note 12.

14. Lisa M. Bianculli, *The War on Drugs: Fact, Fiction and Controversy*, 21 SETON HALL LEGIS. J. 169, 171-72 (1997).

15. *Id.* at 172.

16. *Id.*

drugs enjoyed a substantial period of legality, only becoming illegal within the last century.¹⁷

The prohibitionist spirit first gripped San Francisco, which shut down the city's Chinese-run opium dens in 1875.¹⁸ National legislation followed less than a half century later, when Congress passed the Harrison Narcotics Act in 1914 (hereinafter 1914 Act),¹⁹ predating the infamous Prohibition.²⁰ The 1914 Act did not address the legality of marijuana, but "used the taxing power of Congress to regulate the manufacture, importation, sale and possession of opium, coca products, and their derivatives."²¹ The Act "[limited] the distribution of cocaine and heroin to health care professionals, as opposed to the free use that had been in effect prior to the statute."²² Later, the Supreme Court held the Act criminalized any distribution regardless of status as a health care professional.²³

While Congress later repealed the prohibition on alcohol, the federal government continued to regulate cocaine, opium, and marijuana.²⁴ Finally, Congress consolidated all prior drug laws into the Comprehensive Drug Abuse Prevention and Control Act of 1970 (hereinafter "1970 Act").²⁵ The 1970 Act "consolidated federal laws that addressed trafficking and drug use."²⁶ Afterwards, the United States declared "war on drugs," and the national discussion centered on how best to win that war.

B. *Evolving Attitudes: Medical Marijuana and Decriminalization*

Interestingly, attitudes about drugs appear to be under transition.²⁷ Though there are many voices clamoring for harsher sentences and renewed efforts to eradicate drugs from the United States, a different approach has surfaced.²⁸ Legalization,

17. *Id.*

18. *Id.*

19. *Id.*

20. See U.S. CONST. amend. XVIII (repealed in 1933; prohibiting the importation, sale and consumption of alcohol).

21. Bianculli, *supra* note 14, at 172.

22. Amanda Kay, *The Agony of Ecstasy: Reconsidering the Punitive Approach to United States Drug Policy*, 29 FORDHAM URB. L. J. 2113, 2142 (2002).

23. *Id.*

24. See, e.g., Marijuana Tax Act, 75 Pub. L. No. 238 (1937) (regulating marijuana; other statutes regulated other illicit substances).

25. See generally Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C.A. § 801 (2004).

26. Bianculli, *supra* note 14, at 173.

27. See, e.g., Graham Boyd & Asa Hutchinson, *America's Oldest War: The Efficacy of United States Drug Policy*, 30 FORDHAM URB. L.J. 401 (representing the emerging debate between advocates of a new drug policy and those who continue to favor a more punitive approach).

28. *Id.*

decriminalization, and regulation—topics once taboo—have attracted increasing support.²⁹ Alternative ideas have surfaced regarding rehabilitation, leniency, and the medical value of drug use.³⁰

1. Medical Marijuana in the United States

Perhaps the most visible evidence of the U.S.'s changing perception of drug use is the current discussion of medical marijuana. Generally, supporters assert that marijuana has a positive medicinal value and contend that doctors should have the right to legally prescribe it to patients in need.³¹ Below is a brief summary of such measures that demonstrate the growing support for this alternative view of drug use.

a. California

California led the charge to reshape the way Americans think about drugs by adopting a medical marijuana statute in 1996.³² Termed the "Compassionate Use Act," the legislation "ensure[s] that seriously ill Californians have the right to obtain and use marijuana for medical purposes."³³ The Act includes a non-exclusive list of diseases, such as "cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine" that the legislature felt marijuana could help treat.³⁴ Moreover, the law specifically "encourage[s] federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need."³⁵

b. Arizona

Also in 1996, "65 percent of [Arizona] voters approved Proposition 200 . . . [establishing] legal protections for seriously ill patients by allowing doctors to prescribe Schedule I controlled substances such as marijuana."³⁶ Before the patient can receive any illicit drugs under the law, the Proposition requires "the written opinion of a second medical doctor" to confirm that the controlled

29. *Id.*

30. *Id.*

31. See National Organization for the Reform of Marijuana Laws (NORML), Medical Use, at http://www.norml.org/index.cfm?Group_ID=5441 (last visited Feb. 20, 2005) [hereinafter NORML, Medical Use].

32. See NORML, State Medical Marijuana, *supra* note 1.

33. CAL. HEALTH & SAFETY CODE § 11362.5(b)(1)(A) (West 2004).

34. *Id.*

35. *Id.* at § 11362.5(b)(1)(A).

36. NORML, State Medical Marijuana, *supra* note 1.

substance is appropriate.³⁷ While the “second opinion” feature indicates hesitation to open the door to the medicalization of drugs, the Proposition represents a departure from the prior ideology that drugs were always bad.³⁸

c. Alaska

In 1998, Alaskan voters approved a measure that not only legalized marijuana for patients in need, but also allowed citizens to cultivate legally “no more than six marijuana plants, of which no more than three may be mature.”³⁹ Alaskan law also provides for a “registry identification card” for those who need otherwise illicit drugs in order to clear up any confusion should they encounter law enforcement officials.⁴⁰

d. Oregon

In 1998, Oregonians decided to “[remove] state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a signed recommendation from their physician.”⁴¹ Importantly, the Oregon legislation sets a low threshold for those seeking to obtain marijuana by allowing doctors to prescribe the drug whenever it “may provide a medical benefit.”⁴²

e. Washington

Citing “humanitarian compassion,” Washington law allows people to obtain marijuana whenever their physician, using her “professional medical judgment and discretion,” deems it necessary.⁴³ Though the law fails to create a state registry, it allows “patients legally [to] possess or cultivate no more than a 60-day supply of marijuana.”⁴⁴

37. ARIZ. REV. STAT. § 13-3412.01(2004).

38. See John C. Lawn, *A Symposium on Drug Decriminalization: The Issue of Legalizing Illicit Drugs*, 18 HOFTSTRA L. REV. 703, 703 (1990) (indicating that drugs are not bad because they are illegal, but that they are inherently evil).

39. NORML, *State Medical Marijuana*, *supra* note 1.

40. ALASKA STAT. § 11.71.090 (Michie 2004).

41. NORML, *State Medical Marijuana*, *supra* note 1.

42. OR. REV. STAT. § 475.300(2) (2003).

43. WASH. REV. CODE. § 69.51A.005 (2004).

44. NORML, *State Medical Marijuana*, *supra* note 1.

f. Maine

Similarly, Maine law allows patients to obtain marijuana provided their doctor recommends its use.⁴⁵ Maine followed Alaska's lead and allows cultivation of at most six marijuana plants, no more than three of which may be mature.⁴⁶ In addition, Maine recently "increase[d] the amount of useable marijuana a person may possess from one and one-quarter ounces to two and one-half ounces."⁴⁷

g. Hawaii

Hawaiian law allows patients to receive marijuana as treatment for their illnesses so long as "the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient."⁴⁸ Interestingly, Hawaiian legislators chose to allow the cultivation of seven plants (one more than in Alaska and Maine) by those who medically need marijuana.⁴⁹

h. Nevada

In 2000, Nevada voters approved a law "remov[ing] state-level criminal penalties on the use, possession and cultivation of marijuana by patients who have written documentation from their physician" that they need the drug.⁵⁰ Moreover, Nevada followed Hawaii's lead by permitting "three mature marijuana plants ... and four immature marijuana plants," along with "one ounce of usable marijuana."⁵¹

i. Colorado

Colorado law allows patients to keep on their persons two ounces of marijuana, as well as cultivate six plants, three mature and three immature.⁵² Patients must keep documentation of their medical necessity so that they may present it to any authority who questions their possession use of marijuana.⁵³

45. ME. REV. STAT. ANN. tit. 22 § 2383-B (West 2003).
46. NORML, *State Medical Marijuana*, *supra* note 1.
47. *Id.*
48. HAW. REV. STAT. § 329-122 (2003).
49. *See* NORML, *State Medical Marijuana*, *supra* note 1.
50. *Id.*
51. NEV. REV. STAT. § 453A.200 (2004).
52. COLO. CONST. Art. XVII, § 14 (2003).
53. *Id.*

j. Maryland

Recently, Maryland enacted a law allowing “a medical marijuana affirmative defense” to drug charges.⁵⁴ Moreover, the law dictates that those caught with relatively small amounts of cannabis for personal use receive a maximum fine of \$100.⁵⁵

2. The Decriminalization Movement

a. The New York Example

New York’s drug laws, enacted under Governor Rockefeller, have governed the state’s approach to illicit substances since their passage in 1973.⁵⁶ The laws boast “lengthy and frequently mandatory sentences for possession and distribution of controlled substances, on the assumption that harsh and certain punishment would deter and reduce drug abuse and related crime.”⁵⁷ From this mantra flowed the legal reasoning that those who sold two or more ounces of heroin should face the same penalties as those convicted of first degree murder.⁵⁸ These sentences were not only stringent, but they were also mandatory, based on the assumption that “certainty of punishment will contribute to deterrence.”⁵⁹ Thus, New York has, for the past thirty years, enforced a system of drug laws that imposes lengthy mandatory penalties on those convicted of drug offenses.⁶⁰

Opinions seem to have shifted recently, and opposition to the state’s tough drug laws has intensified, with some going so far as to hint at “civil disobedience” should reform not come quickly.⁶¹ In response, Governor Pataki “announced that he would seek legislation to dramatically reform the . . . drug laws” during his State of the State Address in 2001.⁶² A year later, nothing had been done: Pataki

54. See NORML, *State Medical Marijuana*, *supra* note 1.

55. Robert Weiner & Amy Rieth, *Canada, Maryland Going to Pot; Studies Suggest Marijuana Has No Medicinal Value*, WASH. TIMES, July 2, 2003, A17.

56. See N.Y. PENAL LAW 220.00 to 220.65 (McKinney 2000) (encompassing New York’s narcotics legislation).

57. Susan N. Herman, *Measuring Culpability by Measuring Drugs? Three Reasons to Reevaluate the Rockefeller Drug Laws*, 63 ALB. L. REV. 777, 777 (2000).

58. N.Y. Penal Law 220.43(1); N.Y. Penal Law 125.27 (McKinney 1998); Herman, *supra* note 57, at 782

59. Herman, *supra* note 57, at 787.

60. See N.Y. PENAL LAW 220.00 to 220.65 (listing the drug laws New York has had in place for the past thirty years).

61. Joyce Shelby, *Drug Law Foes Push Petitions*, DAILY NEWS, May 7, 1999, at 2.

62. Michael Massing, *Jurors to State Drug Laws: Throw ‘em Out*, NEWSDAY, Jan. 10, 2001, at A38.

“came up with a tepid reform plan, which Democrats ... refused to vote on because in an election year they were afraid of being seen as soft on drugs.”⁶³ Since then, New York has decriminalized marijuana use and has given some discretion back to its judges in terms of sentencing; however, activists such as “former HUD Secretary Andrew Cuomo, singer-songwriter Carly Simon and hip-hop music mogul Russell Simmons” continue to push for further legislation.⁶⁴ In fact, Simmons and fellow entertainers and politicians held a rally at New York’s City Hall “demanding softer drug sentencing laws.”⁶⁵ Hence, the tide is turning away from New York’s Rockefeller Drug Laws, and the question now is not whether to pass new legislation, but what the new legislation should mandate.

b. Shared Attitudes

The debate surrounding New York’s Rockefeller Drug Laws is illustrative of a growing trend in the United States, in state governments have softened penalties for illicit substance use, possession, and sale.⁶⁶ Currently, ten states have decriminalized marijuana in some way: Alaska, California, Colorado, Maine, Minnesota, Nebraska, New York, North Carolina, Ohio, and Oregon.⁶⁷ Such schemes typically rule out jail time for persons caught using or possessing relatively small amounts of marijuana.⁶⁸ Though each state continues to punish those who attempt to sell or possess large quantities of the drug, the fact that twenty percent of the states no longer seriously punish personal use of marijuana indicates a movement toward decriminalization.⁶⁹

c. Lingering Reluctance

While recent attitudes seem to point to a growing openness in U.S. society toward cannabis decriminalization, there have been signals that the United States is not completely ready to walk down

63. Sheryl McCarthy, *It’s Time for Tough Questions About Drug Law*, NEWSWEEK, May 9, 2002, at A40.

64. *Time for Real Reform; Governor Pataki’s Latest Plan to Overhaul the Rockefeller Drug Laws is Worthy But Lacking*, THREE STAR EDITION, July 18, 2003, at A10.

65. Curtis L. Taylor, *Rallying Against ’70s Drug Laws; Stars, Politicians Call for Softer Sentencing*, NEWSDAY, June 5, 2003.

66. See National Organization for the Reform of Marijuana Laws (NORML), *State by State Laws*, at http://www.norml.org/index.cfm?Group_ID=4516 [hereinafter NORML, *State Laws*] (last visited Feb. 20, 2005) (providing a diagram that shows current New York marijuana restrictions).

67. *Id.*

68. *Id.*

69. *Id.*

the legalization path.⁷⁰ Particularly, voters in Nevada, Arizona, and Ohio expressed their disdain for loosening their states' drug laws in 2002.⁷¹ Nevada residents voted down "a proposal that would have allowed anyone to possess up to 3 ounces of marijuana."⁷² Arizona rejected a plan that "would have made state law enforcement the broker for medicinal marijuana."⁷³ Finally, Ohio citizens rejected plans to provide treatment to "nonviolent drug offenders ... instead of serv[ing] jail time."⁷⁴ These votes, in conjunction with the 1986 Oregon and 2000 Alaska votes defeating "pro-pot proposals" that would have allowed citizens to "grow and posses small amounts of [marijuana]," demonstrate the continued vitality of prohibitionist ideology in the United States.⁷⁵

III. A PARADIGM FOR ANALYSIS: POSTWAR EUROPE

A. Overview of the European Union

1. Historical Roots

The European Union (EU) has its roots in centuries of conflict, bloodshed, and turmoil.⁷⁶ By the conclusion of World War II, the situation was such that "in the period 1870 to 1945 France and Germany had fought each other three times, with terrible loss of life."⁷⁷ After years of diplomacy had failed to bring peace to the continent, European leaders looked toward economic and political integration as a means to prevent future conflicts.⁷⁸ Accordingly, France, West Germany, Luxembourg, Belgium, Italy, and the Netherlands created the European Coal and Steel Community (ECSC).⁷⁹ The ECSC had a "High Authority" capable of deciding

70. See Bob Keefe, *Election 2002: Across the Nation: Issues: Voters Bust Hope to Make Pot Legal*, ALTANTA J. & CONST., Nov. 7, 2002, at 15A.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. Europa, *The History of the European Union*, at http://europa.eu.int/abc/history/index_en.htm (last visited Feb. 20, 2005) [hereinafter Europa, History of the EU].

77. *Id.*

78. *Id.*

79. *Id.*

issues on coal and steel, and it was Europe's first attempt at creating a supranational government.⁸⁰

Following the ECSC, the member nations entered into the Treaties of Rome in 1957, "creating the European Atomic Energy Community and the European Economic Community (EEC)."⁸¹ Importantly, the six countries "set about removing trade barriers between them and forming a 'common market'."⁸² Then, in 1976, the member states combined the existing institutions into "a single Commission and a single Council of Ministers, as well as, the European Parliament."⁸³ Around the same time Denmark, Ireland, and the United Kingdom joined the EEC, followed in the 1980s by Greece, Spain, and Portugal.⁸⁴

2. Formation and Future of the European Union

The Treaty of Maastricht, which entered into force in 1993, gave official birth to the European Union.⁸⁵ In this Treaty, the existing members of the EEC "introduced new forms of co-operation between [themselves]-for example on defense, and in the area of 'justice and home affairs'."⁸⁶ The Treaty set out plans to create a single currency, adopt new common policies, make citizenship supranational, develop a common foreign policy, and bolster internal security.⁸⁷ Only two years later the EU welcomed three new members: Austria, Finland, and Sweden.⁸⁸ With this latest expansion, the EU now boasts fifteen members, and "all governments now recognize that the era of absolute national sovereignty is gone."⁸⁹

Following the collapse of the Soviet Union, the EU has taken an active role in courting Eastern European countries.⁹⁰ The EU has begun negotiations for the entrance of an additional ten countries based upon a variety of economic, political, and social characteristics.⁹¹ Each country negotiates individually on accession to the EU and creates a unique integration schedule designed to meet the nation's specific needs.⁹²

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. Europa, EU at a Glance: A Brief History of European Integration, at http://europa.eu.int/comm/publications/booklets/eu_glance/12/txt_en.htm (last visited Feb. 20, 2005) [hereinafter Europa, History of European Integration].

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. Europa, History of European Integration, *supra* note 85.

92. *Id.*

3. Open Borders and the Single Currency

Europe has slowly but surely eliminated barriers to trade for the past half century, and now few impediments remain.⁹³ The ECSC began this process by lowering tariffs on coal and steel, and the principle of “forming a common market” became institutionalized following the Treaties of Rome in 1957.⁹⁴ As a result of more than forty years of negotiation and persistent struggle to eliminate barriers to trade, the EU boasts an almost perfect single market.⁹⁵ While lowering tariffs, the Member States have smoothed over the potentially inflammatory effects of free trade by agreeing to adopt common policies.⁹⁶ At first, these policies revolved around heavy industry, but have gradually expanded to cover agriculture and the free movement of EU citizens.⁹⁷

In addition to its single market, one of the most visible characteristics of the EU is the euro currency.⁹⁸ The concept of the euro dates back to 1992, when the Member States “decided to go for economic and monetary union (EMU), involving the introduction of a single European currency managed by a European Central Bank.”⁹⁹ The euro officially became a currency in January 1999 after irreversible exchange rates had been set amongst the joining Member States and each had passed a number of convergence criteria.¹⁰⁰ Finally, in January 2002, the euro first appeared as a hard currency, with member nations’ national monies expiring no longer than six months later.¹⁰¹ Now the euro has been in circulation for more than three years and is currently valued higher than the U.S. dollar.¹⁰²

B. Redefining Illegality

European attitudes toward drugs were markedly different a half century ago. Following World War II, Europe’s drug policies focused on incarcerating dealers and users alike. This type of policy stands in stark contrast to the prevailing drug laws of most EU (and even non-EU) nations today. Generally speaking, the shift in European nations’ attempts to deal with illicit drugs appears to correlate with the region’s economic integration. It appears that the drug legalization

93. Europa, History of the EU, *supra* note 76.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. Europa, History of the EU, *supra* note 76.

100. *Id.*

101. *Id.*

102. *Id.*; see also <http://money.cnn.com/markets/currencies/> (last visited Mar. 22, 2005).

and decriminalization movement began in the Netherlands and gradually spilled over international boundaries to encompass most of Europe.

1. The Netherlands

From the close of World War II until the early 1960s the Netherlands had a rather unremarkable drug policy. The nation was described as "God-fearing, hard-working and sober."¹⁰³ In the 1960s, however, "the use and misuse of illegal substances in The Netherlands grew from almost nonexistent to constitute a serious health and public order problem in urban areas."¹⁰⁴ After studying the increased drug use for four years the government decided in 1972 that it needed to review and reform its drug laws.¹⁰⁵ In addition, a sudden increase in the availability and subsequent spread of heroin throughout the urban areas of Amsterdam and Rotterdam increased pressure on elected officials to devise a new strategy to confront illicit drugs.¹⁰⁶

Dutch lawmakers responded to the drug problem by passing the Opium Act of 1976. Principally, the Opium Act "distinguishes between 'drugs presenting unacceptable risks' (heroin, cocaine, LSD and amphetamines) and 'cannabis products' (hashish and marijuana)."¹⁰⁷ In addition to creating this distinction between types of drugs, the Opium Act featured heavy penalties for those using unacceptable drugs and lesser punishments for marijuana use.¹⁰⁸ The idea was "to separate the drug markets and the user groups and thus to protect the users of cannabis products from getting involved in the hard drug scene and from getting lost in the fringes of society."¹⁰⁹ Four years later, however, a reemergence of heroin led officials to conclude "that it was not sufficient to rely on prevention of drug use and treatment programs, but that there should be a range of strategies and services made available to minimize or reduce the harm inflicted upon drug addicts who were unable or unwilling to achieve abstinence."¹¹⁰ This idea, dubbed "harm reduction," became the bedrock of Dutch drug policy.¹¹¹

103. Henk Jan van Vliet, *A Symposium on Drug Decriminalization: The Uneasy Decriminalization: A Perspective on Dutch Drug Policy*, 18 HOFSTRA L. Rev. 717, 718 (1990).

104. *Id.* at 721 (author states "between the mid-sixties and the mid-seventies").

105. *Id.* at 722.

106. *Id.* at 723-24.

107. *Id.* at 724.

108. *Id.*

109. Vliet, *supra* note 103, at 725.

110. *Id.* at 726.

111. *Id.*

In addition to minimizing the damage drug use inflicts upon the user, Dutch lawmakers developed plans and procedures to normalize the drug culture.¹¹² Early in the 1980s, Dutch lawmakers came to believe “that the eradication of drugs and their use is an unrealistic option, as history had shown drug use to be concomitant with human culture.”¹¹³ Instead of casting users to the periphery of society, the Dutch policy began treating them as “normal people to whom [they] can make ‘normal’ demands and who should be offered ‘normal’ opportunities.”¹¹⁴ Importantly, Dutch law shifted from viewing drug users as “criminals [or] as dependent patients,” and instead tried to incorporate them into society while reducing the dangers associated with drugs.¹¹⁵ Accordingly, the drug trade has become part of everyday Dutch life, as “[m]ore than 95 percent of the retail trade in soft drugs in downtown Amsterdam takes place in coffeeshops.”¹¹⁶

The Dutch have walked a careful line between their drug policy and the United Nation’s Single Convention on Narcotic Drugs, which bars outright legalization.¹¹⁷ In accordance with its treaty obligations, the Dutch government may technically impose a fine or misdemeanor upon a person in possession of marijuana-based drugs.¹¹⁸ Dutch enforcement guidelines, however, indicate that “possession of less than 30 grams of cannabis products [is] placed on the lowest priority level, meaning that no active criminal investigation or prosecution [is] undertaken.”¹¹⁹ As for dealers, the guidelines designate “a special kind of drug dealer, the ‘dealer in cannabis products . . . trusted by and working under the protection of the staff of a youth center . . . who gets the opportunity to sell cannabis products in that youth center to the exclusion of others.’”¹²⁰ If a drug dealer meets these criteria, she will only face prosecution if she conducts her business in a disruptive manner.¹²¹ Later, in 1991, the Netherlands tightened its regulations on coffeeshops in response to a dramatic increase in their number. Under these new regulations, owners, while operating their shop, “are not to (1) advertise, (2) trade in hard drugs, (3) sell drugs to minors, (4) sell drugs in quantities of more than 30 grams . . . [and] (5) are held responsible for preventing any public disturbance or nuisance. . . .”¹²² Thus, Dutch drug policy represents a carefully struck balance between adhering to existing

112. *Id.* at 727

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 730.

117. *Id.* at 723.

118. *Id.* at 731.

119. *Id.*

120. *Id.* at 731-32.

121. *Id.* at 732.

122. NORML, Analysis and Case Studies, *supra* note 8.

international obligations and effectively legalizing certain types of drug use and sale.

Most recently, the Netherlands has moved toward providing medical marijuana for patients in need.¹²³ Such patients may go to any pharmacy with their prescription and obtain cannabis pursuant to their doctor's orders.¹²⁴ The government plans to contract with authorized individuals to grow "pharmaceutical-grade cannabis."¹²⁵ Similarly, the Dutch have completed a schedule of clinical trials for providing heroin to addicts.¹²⁶ To date, some 300 users are registered with the government and receive prescription heroin.¹²⁷ These users, as well as anyone else seeking drugs, may visit one of the Netherlands' twenty one "supervised drug consumption rooms," located in eleven different cities.¹²⁸ Thus, the Dutch have not only continued to hold their permissive views toward soft-drug use, but have been expanding and experimenting with medicalizing certain types of drugs.¹²⁹

2. Denmark

Along with the Dutch, the Danish have a long history of legalizing certain types of drug use, beginning with the Christiania Experiment in the early 1970s.¹³⁰ Here, a group of people moved into an abandoned military barracks near Copenhagen and "declared the area to be 'liberated'."¹³¹ The government allowed the group to continue occupying the area as a social experiment.¹³² Though the area was once rife with gang lords and hard drugs, the community banded together in 1979 to expel undesirable members.¹³³ Afterward, the city retained an "open air drug scene" revolving around marijuana and hash, which led to a number of conflicts with the government.¹³⁴ The late 1980s and early 1990s saw many conflicts, as government "normalization" attempts failed to bring the community

123. NORML, 2002 Legislative Update, *supra* note 9.

124. *Id.*

125. *Id.*

126. European Monitoring Centre for Drugs and Drug Addiction, Annual Report 2003: The State of the Drugs Problem in the European Union and Norway, at <http://ar2003.emcdda.eu.int/en/home-en.html> (last visited Feb. 20, 2005) [hereinafter European Annual Report 2003].

127. *Id.*

128. *Id.*

129. NORML, Analysis and Case Studies, *supra* note 8; *see generally* European Annual Report 2003, *supra* note 126.

130. NORML, Analysis and Case Studies, *supra* note 8.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

into compliance with Danish drug laws.¹³⁵ Though the government gave the city “an ultimatum to ‘normalize’ everything ... or be closed down,” the threat was just that, as “Parliament granted a ‘stay of execution’.”¹³⁶ Hence, the Christiania Experiment marks Denmark’s early legalization efforts.¹³⁷

In addition to Christiania, Danish lawmakers distinguish between the acquisition and types of possession of drugs.¹³⁸ Though the Danish technically define acquisition and all types of possession as criminal offenses, they have followed the Dutch example and issued directives meant to reduce prosecution of activities that are “personal” in nature.¹³⁹ In cases in which the defendant has acquired drugs for her own use, “the courts rarely view small amounts as ‘acquisition’ and generally do not invoke severe penalties under the law.”¹⁴⁰ Possession of drugs for personal use “is not an offense,” while simple and large-scale possession may result in jail time.¹⁴¹ The Danish distinguish between the amount and type of drugs when characterizing possession as either simple, “meaning smaller amounts of less harmful drugs,” and large-scale, which can result in “up to ten years in prison.”¹⁴² Thus, Denmark followed in some degree the example set by The Netherlands in decriminalizing and legalizing certain types of drugs based on personal use.¹⁴³

3. Switzerland

Though not a member of the EU, Switzerland is bordered by Italy, France, Austria, and Germany, which are all EU states. Switzerland first entertained drug legalization in 1988 when Leftist city councilors campaigned and won support for the creation of an open-air drug park in the city of Zurich.¹⁴⁴ Under the system, drug users were given free reign to buy, sell, and use drugs under official surveillance in a specific area of the city.¹⁴⁵ The aim was “to provide drugs, clean needles and emergency medical care to Zurich’s own addicts.”¹⁴⁶ Instead of serving the Swiss alone, “the city turned into a haven for thousands of users from other parts of Switzerland and

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. Bernard D. Kaplan, *Drug Legalization That Failed*, BALT. SUN., Feb. 20, 1995, at 11A.

145. *Id.*

146. *Id.*

foreign countries.”¹⁴⁷ The legalized drug area, named Platzpitz Park, became known throughout Europe as “needle park” and eventually junkies were directed toward a train station outside the public’s eye.¹⁴⁸ Perhaps the last straw came as “open warfare broke out between rival Lebanese and Croatian gangs disputing control over [the] lucrative and, for them, relatively risk-free market.”¹⁴⁹ Thus, city officials ended their experiment with legalized drugs, after seven years, in 1995.¹⁵⁰

Though Zurich’s experiment ended, the Swiss have since set up a program to provide users access to hard drugs.¹⁵¹ The plan aims to get addicts off the street and into a supervised environment where they can obtain “clean” drugs, with the ultimate goal of “[getting] addicts off the street and, eventually off heroin.”¹⁵² The government provides the heroin as well as the needles needed for injection in an effort to prevent addicts from acquiring diseases or resorting to crime to find their drugs.¹⁵³ In addition to safe injection rooms and prescription drugs, users can also obtain medical advice and assistance finding work or housing.¹⁵⁴ Thus, Switzerland has continued to embrace some forms of hard-drug legalization even after the failed Zurich experiment.¹⁵⁵

The Swiss government took up the issue of drug legalization three years later, in 1998, when its citizens voted on a plan to legalize all drugs.¹⁵⁶ Under the plan, “the use and sale of such drugs as marijuana, heroin and cocaine” would be completely legal.¹⁵⁷ Proponents of the legislation commented that it “would put an end to the black market in drugs, by handing the supply of both hard and soft drugs to the state, and by issuing users with a smart card, which, they think, would limit bingeing and exclude foreigners and children from taking part.”¹⁵⁸ In addition, the pro-legalization camp highlighted the decreased cost for users and reduced risk of impure drugs entering the market.¹⁵⁹ Ultimately, Swiss voters rejected the proposal “by a margin of three-to-one,” thus handing the legalization movement a temporary setback.¹⁶⁰

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Drugs in Switzerland on Prescription*, ECONOMIST, Nov. 28, 1998, at 51 [hereinafter *Drugs in Switzerland*].

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. CNN *Worldview* (CNN television broadcast, Nov. 29, 1998).

The Swiss legalization movement was only forestalled by the 1998 vote, and the government later introduced a plan to legalize the use, cultivation, and sale of marijuana.¹⁶¹ Under the new law, the government ended “all civil and criminal penalties on the personal use, possession and cultivation of cannabis by those over 18 years of age.”¹⁶² Similar to the Netherlands, the Swiss law provides for the creation of coffee shops that are allowed to sell relatively small quantities of marijuana.¹⁶³ Thus, the Swiss have mirrored their EU neighbors in legalizing the use of certain drugs that are commonly available across their borders.¹⁶⁴

4. Portugal

Portugal has moved within the past five years from a traditional criminalization stance on drug use to one favoring decriminalization and legalization of certain illicit substances.¹⁶⁵ Before 1999, Portugal criminalized the possession and acquisition of drugs.¹⁶⁶ The government did not distinguish between any types of drugs, mandating the same penalties for those found with marijuana as those found with heroin.¹⁶⁷ Later, in the late 1990s, the government decriminalized “the use and possession of drugs for personal use.”¹⁶⁸ Instead of jail time, users received fines and counseling along with the possible revocation of driving privileges and mandatory community service.¹⁶⁹ Finally, Portugal ended all criminal punishment arising from the use and possession of marijuana and other drugs for personal use.¹⁷⁰ While the police may still confiscate the drug, users may keep up to a ten-day supply of narcotics on their person without risking jail time.¹⁷¹ Thus, Portugal has dramatically liberalized its position on drugs since the late 1990s.¹⁷²

161. *Swiss Government Moves to Okay Marijuana Use, Cultivation and Sale* (Mar. 15, 2001), at http://www.norml.org/index.cfm?Group_ID=4276 [hereinafter *Swiss Government*].

162. NORML, 2002 Legislative Update, *supra* note 9.

163. *Swiss Government*, *supra* note 161.

164. *Id.*

165. NORML, Analysis and Case Studies, *supra* note 8.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. NORML, 2002 Legislative Update, *supra* note 9.

171. *Id.*

172. *See id.*; NORML, Analysis and Case Studies, *supra* note 8.

5. Belgium

Like Portugal, Belgium has liberalized its drug laws over the past decade.¹⁷³ Previously, the government criminalized drug use when done in groups, as opposed to drug use by a single person alone.¹⁷⁴ In addition, the acquisition and possession of drugs was a criminal offense.¹⁷⁵ Beginning in 1998, however, attitudes began to change as “Belgium officials decided to relax the enforcement of prohibitionist laws regarding cannabis.”¹⁷⁶ Most recently, government officials moved in 2001 to ensure that prosecutors and judges “no longer interfere in the lives of people who use cannabis on a personal basis and who do not create harm or do not show dependence.”¹⁷⁷ The cultivation and possession for personal use of marijuana is now no longer criminally prosecuted.¹⁷⁸ Despite the change in directives, Belgium has yet to alter its laws in a manner similar to the Dutch model.¹⁷⁹ Instead, Belgium has undergone a liberalization of its drug laws more akin to Portugal’s experience.¹⁸⁰

6. United Kingdom

Until recently, the United Kingdom (U.K.) has followed drug policies similar to those of the United States; however, reforms indicate that the two nations are diverging.¹⁸¹ In the U.K., “possession and acquisition of drugs is an offense, and the U.K. divides drugs into three categories for the purpose of law enforcement.”¹⁸² As such, drug users of all types have been subject to jail time if caught by the police.¹⁸³ The climate changed in 2001 when “a powerful committee in Britain’s House of Lords recommended the legalization of cannabis-based drugs for medical purposes.”¹⁸⁴ While the group stopped short of advocating complete legalization, the government also began experimenting with “turning a blind eye on

173. NORML, *Analysis and Case Studies*, *supra* note 8.

174. *Id.*

175. *Id.*

176. *Id.*

177. NORML, 2002 Legislative Update, *supra* note 9.

178. *Id.*

179. *Id.*

180. *See id.*; NORML, *Analysis and Case Studies*, *supra* note 8.

181. *See* NORML, *Analysis and Case Studies*, *supra* note 8.

182. *Id.*

183. *Id.*

184. *Cannabis . . . Based Drug Legalization Suggested*, UNITED PRESS INT’L, Mar. 23, 2001, at General News.

users” in select neighborhoods, such as south London.¹⁸⁵ In these areas, police stopped arresting, searching for, and confiscating drugs from people who used them personally.¹⁸⁶ The government then declared that “the high use of cannabis is not associated with major health problems for the individual or society,” and in 2002 it began the process of downgrading the possession and use of the drug to a Class C violation.¹⁸⁷ Accordingly, marijuana users are no longer arrested by the police and receive warnings instead.¹⁸⁸ Thus, the U.K. has moved from a traditional “tough on drugs” policy toward one that allows the use of certain drugs while retaining stiff penalties associated with “harder” substances.¹⁸⁹

7. Luxembourg

Luxembourg’s experience with drug legalization is similar to Portugal’s and Belgium’s.¹⁹⁰ The government did not distinguish soft drugs from hard ones, and the use of illicit substances carried criminal penalties.¹⁹¹ Recently, officials have reclassified cannabis “as a ‘Category B’ controlled substance, effectively decriminalizing personal possession and use of the drug by adults.”¹⁹² While users still face potential fines if caught in possession of marijuana, they no longer risk jail time.¹⁹³ The government retained relatively stiff penalties associated with major traffickers of cannabis, and it continues to classify the possession, use, and sale of “harder” drugs, such as cocaine and heroin, as criminal offenses.¹⁹⁴ Thus, Luxembourg has moved from criminalizing all drug use to giving tacit approval for personal consumption of cannabis, like Portugal and Belgium.¹⁹⁵

185. John Gray, *Comment & Analysis: Injecting Some Sense: Millions of People Want to Use Drugs and Prohibition Will Not Stop Them*, *GUARDIAN*, July 10, 2001, at 15.

186. *Id.*

187. National Organization for the Reform of Marijuana Laws (NORML), British Health Experts, Liberal Democrats Back Pot Law Change (Mar. 14, 2002), at http://www.norml.org/index.cfm?Group_ID=5048.

188. National Organization for the Reform of Marijuana Laws (NORML), U.K House of Commons Backs Pot Reclassification (May 23, 2002), at http://www.norml.org/index.cfm?Group_ID=5303.

189. *Id.*; see NORML, Analysis and Case Studies, *supra* note 8.

190. See NORML, Analysis and Case Studies, *supra* note 8; NORML, 2002 Legislative Update, *supra* note 9.

191. NORML, Analysis and Case Studies, *supra* note 8.

192. NORML, 2002 Legislative Update, *supra* note 9.

193. *Id.*

194. *Id.*

195. See NORML, Analysis and Case Studies, *supra* note 8; see NORML, 2002 Legislative Update, *supra* note 9.

8. Italy and Spain

Italy and Spain have taken similar approaches to drug legalization.¹⁹⁶ Italy, in 1990, and Spain, in 1992, removed criminal penalties associated with drug use deemed personal in nature.¹⁹⁷ When police in either country find drugs on a person, they will nevertheless seize the substance and report the person to administrative authorities.¹⁹⁸ Should the person be found guilty of possession of drugs for personal use, he or she faces possible fines (Spain) or revocation of driving privileges (Italy).¹⁹⁹ Moreover, both countries emphasize referring offenders who display signs of addiction to counseling agencies that will try to help such persons overcome their habits.²⁰⁰ Thus, Italy and Spain moved away from a strict prohibitionist drug policy over a decade ago to one that bars criminal penalties associated with personal drug use.²⁰¹

9. Germany

German law is generally tougher on drug use than the laws of its neighboring countries, though judicial interpretation has led to conflicts and questions surrounding the enforcement of the legislation.²⁰² German law criminalizes the acquisition and possession of drugs, and users found guilty may face jail time of up to four years.²⁰³ Interestingly, German courts are left with a considerable amount of discretion to characterize the amount of drugs found in the penalty phase of the trial.²⁰⁴ Even more startling is that the German Supreme Court overturned "federal laws outlawing cannabis in April of 1994."²⁰⁵ The national legislation remains on the books, however, leading police to give a low priority in "prosecuting people in possession of cannabis for personal use."²⁰⁶ Thus, German law represents a half-measured legalization of drugs: drugs are criminalized, but courts refuse to enforce the law with regard to

196. European Monitoring Centre for Drugs and Drug Addiction, European Legal Database on Drugs, *Decriminalization in Europe?*, available at http://eldd-cma.emdda.eu.int/comparative_doc/Decriminalisation_Legal_Approaches.pdf (last visited Feb. 20, 2005).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. NORML, Analysis and Case Studies, *supra* note 8.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

certain substances, causing police to allow personal use of cannabis.²⁰⁷

10. France

France has also wrestled with how to treat drug users. Recent government directives indicate the nation is moving toward decriminalization and legalization.²⁰⁸ Currently, France does not distinguish between hard and soft drugs; use of either type of substance carries criminal penalties.²⁰⁹ In addition, French law criminalizes the “possession, acquisition and/or trafficking” of drugs and imposes jail time ranging from two to ten years.²¹⁰ In 1978, the Minister of Justice “instructed prosecution dealing with cases of illicit use of cannabis to restrict action to a formal warning and recommendation that the user seek help from an institution providing psychological or educative support.”²¹¹ The French government expanded this policy in 1987 to encompass all drug use “with the exception to those people who exhibit symptoms of abuse ... [in which case] treatment can be made compulsory.”²¹² In 1999, the Ministry of Justice issued another directive that encouraged prosecutors to seek rehabilitative measures instead of prison time for minor offenders.²¹³ The report stated that “the imprisonment of drug users [who have] not committed other related offences must be the last resort.”²¹⁴ Finally, Justice Minister Maiylyse Lebranchu began an open debate on the merits of complete cannabis legalization in 2002 after studies revealed approximately half of the teenage population in France had used the drug.²¹⁵ Thus, France has been moving gradually toward the legalization of cannabis and the decriminalization of drug use generally, though it has yet to normalize completely illicit substances.²¹⁶

207. *Id.*

208. *Id.*; see NORML, 2002 Legislative Update, *supra* note 9.

209. NORML, Analysis and Case Studies, *supra* note 8.

210. *Id.*

211. *Id.*

212. *Id.*

213. NORML, 2002 Legislative Update, *supra* note 9.

214. *Id.*

215. *French Justice Minister Calls for Pot Decriminalization Debate*, (Jan. 24, 2002), at http://norml.org/index.cfm?Group_ID=5027 [hereinafter *French Justice Minister*].

216. See *French Justice Minister*, *supra* note 215; NORML, Analysis and Case Studies, *supra* note 8; see NORML, 2002 Legislative Update, *supra* note 9.

11. Outliers: Austria, Finland, Greece, and Sweden

Austria has resisted the trend toward decriminalization and legalization and continues to send users to jail for violations of illicit substance laws.²¹⁷ The 1998 Narcotic Substances Act maintained criminal penalties; however, it did incorporate therapeutic solutions to drug addictions similar to those found in other EU Member States.²¹⁸ Importantly, police have no discretion as to the reporting and prosecution of those found with drugs; therefore, everyone caught using, possessing, or selling drugs faces government action.²¹⁹ Thus, Austria has retained its relatively tough stance on drug use.²²⁰

Finland was the first Nordic country to criminalize drug use and continues to maintain a traditional attitude toward illicit substances.²²¹ Drug use, sale, and possession first became crimes in Finland in 1966, and the general principles of Finnish law were codified in the Narcotics Act of 1993.²²² Under this legislation, possession, use, and sale of any drug contained in the U.N. Treaty is a criminal act, and the law imposes affirmative obligations on citizens to report known drug users.²²³ There has been some movement toward espousing liberal views of drugs; however, reform bills in 1994 and 2001 directed prosecutors to waive proceedings and penalties if the amount is insignificant.²²⁴ While this represents a step toward drug legalization and decriminalization, the general scene in Finland is relatively dissimilar to that of its neighboring EU nations.²²⁵

Greek law also takes a relatively tough stance on drug use compared to many EU members.²²⁶ In Greece, use of any drug is illegal; however, the law draws an interesting distinction between addicts and non-addicts.²²⁷ Non-addicts caught using or possessing drugs are subject to criminal penalties ranging from two to five years in jail.²²⁸ An addict, defined as “any person who, having succumbed to the habit of drug use, is incapable of overcoming it without the help

217. ELDD: European Legal Database on Drugs, Country Profiles — Austria, at http://eldd.emcdda.eu.int/databases/eldd_country_profiles.cfm?country=AT (last visited Feb. 20, 2005).

218. *Id.*

219. *Id.*

220. *Id.*

221. ELDD: European Legal Database on Drugs, Country Profiles — Finland, at http://eldd.emcdda.eu.int/databases/eldd_country_profiles.cfm?country=FI (last visited Feb. 20, 2005).

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. NORML, Analysis and Case Studies, *supra* note 8.

227. *Id.*

228. *Id.*

of specialized therapy,” does not face criminal prosecution.²²⁹ Instead the person must enroll in therapy to detoxify himself.²³⁰ In spite of the novel approach to treating different types of drug users, Greek drug laws remain relatively strict.²³¹

Sweden arguably boasts Europe’s most stringent drug laws. Governed principally by the Narcotics Punishment Act of 1968 and buttressed by several additional laws passed in the late 1980s and early 1990s, Swedish officials criminally prosecute almost all occasions of drug use, possession, and sale.²³² The laws encompass all types of drugs, though punishments differ depending upon the type of drug involved.²³³ Moreover, Swedish officials confiscate and criminalize possession of paraphernalia associated with drug use in addition to the drugs themselves.²³⁴ Thus, Sweden has resisted the trend toward legalization and decriminalization, opting to retain its tough drug laws.²³⁵

IV. NORTH AMERICA: THE EUROPE OF TWENTY YEARS AGO?

A. *The North American Free Trade Agreement*

The North American Free Trade Agreement (NAFTA) created a free trade zone among Mexico, the United States, and Canada.²³⁶ NAFTA negotiators focused on six subjects: market access, foreign investment, financial and other services, intellectual property, dispute settlement, and government procurement.²³⁷ In addition, NAFTA incorporated social goals of environmental protections and workers’ rights into the Agreement.²³⁸ While all parts are important features of the Agreement, this Note focuses chiefly on market access and the ramifications it has on trade between the nations.

Market access implies principally the lowering of tariffs that nations charge imports crossing their borders.²³⁹ Regarding NAFTA,

229. *Id.*

230. *Id.*

231. *Id.*

232. ELDD: European Legal Database on Drugs, Country Profiles — Sweden, at http://eldd.emcdda.eu.int/databases/eldd_country_profiles.cfm?country=SE (last visited Feb. 20, 2005).

233. *Id.*

234. *Id.*

235. *Id.*

236. See EDWARD ELGAR, NORTH AMERICAN ECONOMIC INTEGRATION: THEORY AND PRACTICE (1999) (detailing the history, purposes and policies of NAFTA).

237. *Id.* at 263.

238. *Id.*

239. *Id.*

improving market access meant the “elimination of all tariffs on imports among the three countries, with tariffs to be phased out over fifteen years according to four stages of liberalization.”²⁴⁰ While the specific years and phases are not particularly important to this Note, it is significant that “by the year 2009, there will be no tariffs on goods traded among the three countries of North America.”²⁴¹ Thus, NAFTA has dramatically increased the ability of each member nation to gain access to each other’s markets through the gradual elimination of tariffs.²⁴²

While some of NAFTA’s specific effects will be discussed later in the Note, some statistics concerning the levels of trade between the United States, Canada, and Mexico highlight the general impact of the Agreement. In 1994, the United States exported approximately \$43.5 billion of goods to Canada and imported \$48 billion worth of goods as imports.²⁴³ In 2003, the United States sent roughly \$62.5 billion in goods to its northern neighbor and received back \$119.4 billion in goods.²⁴⁴ Importantly, the sheer dollar amount of imports the United States received from Canada more than doubled.²⁴⁵ The story of U.S. trade with Mexico appears very similar to that of its trade with Canada.²⁴⁶ In 1994, the United States exported about \$51 billion and imported nearly \$50 billion worth of goods.²⁴⁷ In 2003, the United States exported roughly \$97.5 billion and imported a whopping \$138 billion worth of goods and services.²⁴⁸ Focusing on the level of imports, one immediately notices that the dollar value has almost tripled.²⁴⁹ Thus, general figures indicate that the amount of goods and services moving across NAFTA members’ borders has risen dramatically since the Agreement’s inception.²⁵⁰

B. Canada: Changing Attitudes and Historical Roots

Canada has shifted toward softening its drug laws, as demonstrated by recent decriminalization laws.²⁵¹ In May 2003, the

240. *Id.*

241. *Id.* at 264.

242. *Id.*

243. U.S. Census Bureau — Department of Commerce, *Foreign Trade Statistics*, at <http://www.census.gov/foreign-trade/balance/c0006.html> [hereinafter Canada Statistics].

244. *Id.*

245. *Id.*

246. U.S. Census Bureau — Department of Commerce, *Foreign Trade Statistics*, at <http://www.census.gov/foreign-trade/balance/c2010.htm> [hereinafter Mexico Statistics].

247. *Id.*

248. *Id.*

249. *Id.*

250. See Canada Statistics, *supra* note 243; Mexico Statistics, *supra* note 246.

251. Krauss, *Penalties for Marijuana*, *supra* note 10.

Canadian government moved to decriminalize marijuana possession.²⁵² The new plan calls for fines ranging from \$190 to \$290 for those caught possessing “up to 15 grams-about 20 cigarettes” worth of cannabis.²⁵³ At the same time, Canadian officials plan to step up prosecution efforts against major suppliers of cannabis and increase penalties associated with trafficking behavior.²⁵⁴ Though the new law does not remove all penalties associated with cannabis, it sends the clear message that prosecution of those who possess relatively small amounts is a low priority.²⁵⁵ Thus, Canada’s decriminalization of marijuana points to a shift in the nation’s policy toward the drug.²⁵⁶

In addition to decriminalizing marijuana use, Canada has recently medicalized the drug.²⁵⁷ Physicians can now prescribe cannabis to patients who are in pain.²⁵⁸ Once a patient has obtained a prescription, he or she may fill it with government-grown marijuana.²⁵⁹ Government officials commented that they are setting up the program to address the needs of people who are prescribed cannabis but currently do not have a legal way to obtain it.²⁶⁰ While the plan has yet to be formally implemented, the government is currently working on setting up a pilot program that will eventually lead to fully medicalized marijuana.²⁶¹ Thus, Canada’s plan to distribute marijuana to patients highlights the nation’s relaxation of its drug laws.

Moreover, Canadian cannabis has been steadily flowing into the United States.²⁶² As early as 1998, Canadian and U.S. officials noted that “Canadian-grown, high-potency marijuana has become so popular among Americans that it [was] quickly turning into an unofficial currency in the narcotics underworld.”²⁶³ Much of the cannabis is grown in the Vancouver area, and authorities note that it “is estimated to be the third-largest agricultural crop in both Ontario and British Columbia.”²⁶⁴ The operations are so entrenched in Vancouver that officials have commented that “they could take down

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. Krauss, *Marijuana to Patients*, *supra* note 10.

258. *Id.*

259. *Id.*

260. National Organization for the Reform of Marijuana Laws (NORML), *Medicinal Pot May Soon be in Drugstores* (Feb. 19, 2004), at <http://www.mapinc.org/norml/v04/n294/a04.htm>.

261. *Id.*

262. *See* Krauss, *Penalties for Marijuana*, *supra* note 10.

263. Barry Brown, *Pot Boom Shows Grass is Greener in Canada*, BOSTON HERALD, Aug. 2, 1998, at 15.

264. *Id.*

an operation a day and it would have no impact.”²⁶⁵ These activities led the U.S. National Drug Intelligence Center to caution as early as 1998 that Canadian marijuana exports have become “a significant problem.”²⁶⁶ Moreover, U.S. Customs has found that cannabis seizures increased from 813 pounds in 1998 to 2,650 pounds in 2001, and to 20,983 pounds in 2002.²⁶⁷ Hence, the Canadian-American cannabis trade appears to be steadily increasing, supplying U.S. citizens with high-quality marijuana.²⁶⁸

C. *Mexico: The Amsterdam to the South of the United States*

Though Mexico’s anti-drug policy is remarkably similar to that of the United States, the narcotics trade is a vibrant part of Mexico’s national economy.²⁶⁹ In the global narcotics trade, Mexico is the conduit to the largest drug-consuming society in the world, the United States.²⁷⁰ In effect, “the role of Mexicans ... is to facilitate [drug] transportation from South to North America.”²⁷¹ As such, Mexico “has historically been the most conspicuous supplier of marijuana, heroin and cocaine for U.S. importers.”²⁷² Thus, despite having anti-drug laws in place, Mexico serves as a major point of entry for drugs into America.²⁷³

In the post-NAFTA era, it has become harder for authorities to detect and destroy drug cartels, as narcotics traffickers have set up intricate networks and complex business practices.²⁷⁴ Modern drug traffickers typically create “legitimate businesses” that they use as fronts for their illegal activities.²⁷⁵ Such companies often revolve around trucking, shipping, railway, and storage, all of which play integral roles in the drug trade.²⁷⁶ Moreover, the Mexican cartels have adopted distinctive non-cartel like qualities that reduce the likelihood of their exposure to law enforcement.²⁷⁷ Unlike their predecessors, Mexican drug rings are normally structured in small cells, each capable of independent operation.²⁷⁸ Hence, if officials are able to destroy one group, the larger organization remains

265. *Id.*

266. *Id.*

267. Krauss, *Penalties for Marijuana*, *supra* note 10.

268. *See id.*; Brown *supra* note 263.

269. MARIA CELIA TORO, MEXICO’S ‘WAR’ ON DRUGS: CAUSES AND CONSEQUENCES 1 (1995).

270. *Id.* at 2.

271. *Id.* at 1.

272. *Id.*

273. *Id.*

274. LaRue, *supra* note 12, at 39.

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

unaffected.²⁷⁹ In addition, “Mexican traffickers have evolved into ‘poly-drug’ traffickers.”²⁸⁰ By transporting many types of drugs, the new cartels are much less dependent upon one substance as a “cash crop.”²⁸¹ The result is that approximately thirty percent of the heroin imported into the United States comes from Mexico, and sixty percent of the cocaine imported into the United States comes from Mexico, buttressing the cannabis market that “Mexico continues to dominate.”²⁸² Thus, Mexican drug cartels have emerged as sophisticated and diversified operations that operate in the shadows of legal businesses to supply the United States with illicit substances of all kinds.²⁸³

1. NAFTA’s Facilitation of Mexican Drug Trafficking Operations

Drug cartels take advantage of NAFTA’s borderless society to ship drugs from Mexico into the United States. Principally, the cartels focus on trucking, truck cargo, railway, migrants, and money laundering operations to advance their goals.²⁸⁴

NAFTA has greatly enhanced Mexican traffickers’ ability to use trucking to export drugs into the United States.²⁸⁵ Both before NAFTA went into effect and afterward, “many traffickers expanded into legitimate businesses that could be used for smuggling.”²⁸⁶ Trucking was a prime target for these traffickers because “the number of trucks crossing the U.S.-Mexican border increased from 2.5 million in 1993 (the year NAFTA was passed) to 3.7 million in 1997,” and to even more today.²⁸⁷ Out of all these trucks, U.S. officials believe approximately one percent are actually inspected, leaving most to pass through freely.²⁸⁸ Once inside the United States the trucks may travel virtually unchallenged because most restrictions on where the trucks may travel have been lifted.²⁸⁹ In addition, programs such as the “line-release”, which allows certain trucks unfettered access to the United States, guarantee that those trucks will not be inspected upon crossing the border.²⁹⁰ In this environment

279. *Id.*

280. *Id.* at 40.

281. *Id.*

282. *Id.*

283. *Id.*

284. *Id.* at 40-43.

285. *Id.* at 40.

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. See Kal Raustiala, *Law, Liberalization & International Narcotics Trafficking*, 32 N.Y.U. J. INT’L L. & POL. 89, 134 (1999) (mentioning the “line release” program allowing for pre-approved trucks, to enter the U.S. without being inspected).

it is not surprising that Mexican traffickers would purchase part of the Del Monte fruit company and officials would later find a truck carrying what appeared to be Del Monte tomatoes to have sealed bundles of cash in the cans.²⁹¹ Thus, Mexican traffickers have increased their interest in the trucking industry to take advantage of NAFTA's opening of the U.S. border.²⁹²

Because of the tremendous amount of trucking between the United States and Mexico, traffickers have begun to focus on cargo theft as a means to smuggle drugs as well.²⁹³ Approximately eighty five percent of U.S.-Mexican trade takes place via trucks that cross at any one of fifteen border checkpoints.²⁹⁴ Traditionally, the U.S. government has given truck cargo theft a low priority and only prosecuted in certain circumstances.²⁹⁵ This cargo theft problem is even more problematic, however, because the actual goods stolen from the trucks are drugs, not the legal items reported missing.²⁹⁶ Compounding the problem is the disincentive for shippers to report their losses for fear that producers will stop employing them or law enforcement will become suspicious of their activities.²⁹⁷ As a result, no one knows how much the cargo theft amounts to, though officials estimate the figure to be between three and ten billion dollars annually.²⁹⁸ Thus, traffickers have taken advantage of NAFTA's promotion of trade via trucking to import illicit substances disguised as insignificant cargo losses.²⁹⁹

The railroad is proving to be an effective means of trafficking drugs from Mexico into the United States.³⁰⁰ As companies have sought to minimize transportation costs, they have turned increasingly toward railways like "RailTex" and the "NAFTA Railway."³⁰¹ Since NAFTA's inception, RailTex has reported continuously booming profits, and the NAFTA Railway is in the process of connecting the three signatory nations along one system.³⁰² Importantly, these new railways are privately owned, providing even greater opportunities for smugglers to hide their products amongst legitimate goods.³⁰³ Additionally, authorities in the United States and Mexico have historically given a low priority to screening rail

291. LaRue, *supra* note 12, at 41.

292. *See id.* (noting that smugglers are using legitimate truck companies).

293. *Id.* at 41.

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.*

299. *See id.*

300. *See id.*

301. *Id.* at 41-42.

302. *Id.*

303. *Id.*

cargo, which is inherently difficult to check for drugs.³⁰⁴ Accordingly, there is little information available concerning drug trafficking via trains.³⁰⁵ Thus, as the railway system has blossomed, drug traffickers have dovetailed on licit trade to conceal their illegal goods.³⁰⁶

Along with trucks and trains, Mexican cartels have used the increasing human traffic across the border to smuggle drugs into the United States.³⁰⁷ Though illegal immigration has always been a problem along the U.S.-Mexican border, “the increase in trade flow and the influx of Mexican migrant workers created by NAFTA have made it easier for Mexican traffickers” to move drugs into the United States.³⁰⁸ While the nature of illegal immigration makes it difficult to quantify the problem, U.S. officials reported detaining approximately eight times the number of Mexicans carrying drugs across the border in 1998 than they did in 1994.³⁰⁹ Moreover, agents have continually been discovering increasing use of tunnels to transport drugs into the United States.³¹⁰ As an example, a government official discovered a tunnel with approximately 3,300 pounds of marijuana in a truck in San Ysidro, a crowded tourist area.³¹¹ Authorities noted that this was the fifth tunnel they found that year and speculated that there were probably more that remained undiscovered.³¹² Consequently, Mexican cartels are using human pack “mules” with increasing frequency to transport drugs into the United States.³¹³

Besides having to deal with the drug trafficking operations based within its borders, Mexico has recently been flirting with decriminalization and legalization ideologies.³¹⁴ In 2001, the governor of Mexico’s most industrialized state, Nuevo Leon, expressed interest in drug legalization.³¹⁵ The governor commented that “[legalization] is something that is very complex, and it should be approached with an open mind and studied with other alternatives in order to be truly successful in fighting drug trafficking.”³¹⁶ In addition, the governor of Chihuahua has “launched a study of marijuana legalization within the state” and teamed up with former New Mexico governor Gary

304. *See id.* at 42.

305. *Id.*

306. *See id.*

307. *See id.*

308. *Id.*

309. *Id.*

310. *See* Anna Cearley & Janine Zuniga, *Agents Discover Border Tunnel; 3,300 Pounds of Marijuana Found in a Nearby Truck*, SAN DIEGO UNION-TRIB., Apr. 5, 2003, at B-1.

311. *Id.*

312. *Id.*

313. LaRue, *supra* note 12, at 42.

314. *Mexico-Drugs*, *supra* note 12.

315. *Id.*

316. *Id.*

Johnson to push for drug reform.³¹⁷ Leftist elements within Mexico have also joined the cause for legalization, claiming that U.S. drug policy represents an encroachment on Latin America's sovereignty.³¹⁸ Finally, the city of Merida hosted a legalization summit that featured many prominent government officials from Latin America.³¹⁹ Thus, Mexico has signaled that it may be reconsidering its U.S. style anti-drug measures.³²⁰

D. North America: Functionally Similar to Europe

The current climate among NAFTA member states is comparable to Europe. Both continents operate in a climate of free trade and relatively open borders.³²¹ In Europe this has been accomplished via the EU, which has eliminated all tariffs between signatory states and provided for increased movement of human traffic across borders.³²² Likewise, NAFTA slashed tariffs between the United States, Canada, and Mexico, resulting in significant increases in trade among the three nations, along with substantial movement of people throughout the continent.³²³ In addition to free trade, both regions boast some members that have relaxed drug laws compared to their neighbors.³²⁴ In Europe, this began with the Netherlands and Denmark, and it has eventually grown to encompass most of the continent.³²⁵ Similarly, Canada has historically been a source of cannabis and has recently moved to decriminalize marijuana use.³²⁶ Moreover, Mexico has effectively legalized drugs because of its inability to control

317. Juan G. Tokatlian, *Normalizing the Drug Economies: Colombia's Legalization Debate; Drug Economies of the Americas*, NACLA REP. ON THE AM., Sept.-Oct. 2002, at 38, 40.

318. *Id.*

319. *Global Drug Reformers Hold First Legalization Summit, February 12-15 in Merida, Yucatan, Mexico*, U.S. NEWSWIRE, Jan. 24, 2003, at <http://releases.usnewswire.com/getrelease.asp?id=12045>.

320. *See id.*; *see also Mexico-Drugs*, *supra* note 12.

321. *See Raustiala*, *supra* note 290, at 143-46 (discussing the similar effects free trade has had on drugs in NAFTA member states and Europe).

322. CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Dec. 24, 2002, O.J. (c 325) 33 (2002), arts. 23, 39-42; *see also* Craig Jackson, *Constitutional Structure and Governance Strategies for Economic Integration in Africa and Europe*, 13 TRANSNAT'L L. & CONTEMP. PROBS. 139, 171 nn. 156-57 (2003).

323. *See generally* LaRue, *supra* note 12.

324. *See id.*; *see also* Krauss, *Penalties for Marijuana*, *supra* note 10; Krauss, *Marijuana to Patients*, *supra* note 10; NORML, *Analysis and Case Studies* *supra* note 8; NORML, 2002 Legislative Update, *supra* note 9.

325. *See* NORML, *Analysis and Case Studies*, *supra* note 8, NORML, 2002 Legislative Update, *supra* note 9.

326. *See* Krauss, *Penalties for Marijuana*, *supra* note 10 (discussing Canada's relaxation of criminal sanctions); Krauss, *Marijuana to Patients*, *supra* note 10 (discussing Canada's plan to offer marijuana to certain medical patients).

sophisticated cartels that operate within its borders and because of its failure to enforce drug laws.³²⁷ Hence, the United States resides in a climate similar to the Europe of twenty years ago: it has opened its borders to neighbors that either do not have, or do not enforce, laws concerning substances it defines as illegal.

V. FREE TRADE'S CORROSIVE EFFECTS ON NATIONAL DRUG LAWS

A. *Economic Liberalization Facilitates Drug Trafficking Operations*

Trade liberalization facilitates drug trafficking by lowering the price of inputs, improving transportation routes, increasing trade volume, limiting states' inspection abilities, and enabling easier money laundering.³²⁸ Notably, free trade lowers the costs of obtaining legal products and services that are necessary for drug production and trafficking.³²⁹ Many illicit substances, like cocaine and heroin, require an array of chemicals to be purified.³³⁰ Economic liberalization makes it easier and cheaper to obtain these materials.³³¹ These chemical precursors are notoriously difficult to track and regulate; hence, they often find their way into drug cartels' hands.³³² Moreover, attempts to control otherwise legal precursors inherently affect free trade and often may entail breaching liberalization agreements.³³³ Thus, economic liberalization decreases the cost of obtaining chemicals needed to manufacture illegal substances, thereby facilitating the drug trade.³³⁴

Economic liberalization also results in improvements in transportation, which help increase trade in licit and illicit goods.³³⁵ Free trading nations often seek to improve their national infrastructures to allow for greater commerce.³³⁶ Along with the legal goods flowing over these improved networks, illicit substances also enjoy the same advantages of decreased transportation costs.³³⁷ Importantly, the movement toward containerization has greatly

327. See LaRue, *supra* note 12, at 45-47.

328. See Raustiala, *supra* note 290, at 116-23 (detailing how free trade has these effects).

329. *Id.* at 116.

330. *Id.* at 117.

331. *Id.* at 116-17.

332. *Id.* at 117.

333. *Id.*

334. *Id.*

335. *Id.* at 117-18.

336. *Id.* at 118.

337. *Id.*

helped drug traffickers move their product without detection.³³⁸ Generally, containerization “involves the shipping of goods in large, standardized, sealed metal containers that can be moved quickly and mechanically.”³³⁹ Though these containers greatly decrease the cost of trade, they “create large bundles of goods that are difficult to inspect, and hence [there are] ... more opportunities for smuggling.”³⁴⁰ Consequently, the improvements in transportation that accompany economic liberalization facilitate drug trafficking by reducing costs and providing increased opportunities for smuggling.³⁴¹

Smuggling’s greatest facilitator may be the increased trade volumes associated with economic liberalization agreements.³⁴² As transnational trade increases and trade technologies improve, illegal drug traffickers benefit from the reduction of transportation costs.³⁴³ Moreover, traffickers enjoy an extra benefit in that “higher trade volume results in more places to hide drugs and, ceteris paribus, a lower probability of interdiction and seizure.”³⁴⁴ As more goods flow across the border, customs officials become increasingly overburdened and unable to adequately inspect shipments that may or may not contain illicit substances.³⁴⁵ Thus, the increase in trade that accompanies and serves as the goal of economic liberalization facilitates drug smuggling by lowering transaction costs and providing more opportunities to sneak illicit substances across borders.³⁴⁶

Free trade also helps drug traffickers by limiting the amount of inspection possible at the border.³⁴⁷ As mentioned earlier, the sheer volume of goods flowing across national lines as a result of free trade puts practical limits on the ability of customs officials to inspect packages for illicit substances.³⁴⁸ Equally important is the tendency of free trade agreements to limit sovereign states’ abilities to conduct such inspections because inspections are considered non-tariff barriers.³⁴⁹ For example, fewer than five percent of trucks are inspected at the busy San Ysidro border point between the United States and Mexico because of “concern over the impact of delays on

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.* at 117-18.

342. *Id.* at 118-19.

343. *See id.* at 118-19.

344. *Id.* at 119.

345. *See id.* at 119-21.

346. *Id.* at 116-23.

347. *See id.* at 119-21.

348. *Id.* at 120.

349. *See* Alan Wright, *The North American Free Trade Agreement (NAFTA) and Process Patent Protection*, 43 AM. U. L. REV. 603, 615 (1994).

perishable agricultural products.”³⁵⁰ Drug traffickers quickly learn which items are infrequently inspected, and they move to hide their cargo among those goods.³⁵¹ Hence, economic liberalization’s reduction of border inspections assists traffickers of illicit drugs move their goods across national boundaries.³⁵²

Finally, economic liberalization has helped drug traffickers launder the profits of their activities.³⁵³ Despite some advances in the monitoring of electronic banking, “factors that assist world trade, financial activities, and economic enterprise can also facilitate related activities such as money laundering.”³⁵⁴ As a result of the increased size, complexity, and computerization of international financial transactions, “the swifter movement and multi-layering stages of money laundering [are] much easier.”³⁵⁵ Thus, free trade’s deregulation of international finance has made it considerably easier for drug traffickers to launder money made from their illegal activities.³⁵⁶

B. The Consequences of Free Trade’s Increased Drug Trafficking

Increased drug trafficking resulting from free trade agreements not only leads to the increased movement of cheaper drugs across borders, but it may also spur the relaxation of domestic illicit substance laws. Naturally, increased drug trafficking results in the increased flow of drugs across borders, making drugs more widely available to the public and, in some sense, normalized.³⁵⁷ As drugs become increasingly acceptable, more people are able to become involved in the trade, and consequently the costs of incarcerating drug offenders increases. These rising costs eventually strain a state’s limited resources and prompt the government to seek cheaper alternatives to criminalization.³⁵⁸ Moreover, free trade seriously debilitates a state’s ability to keep drugs out, thereby presenting a bleak outlook for states that hope to maintain current drug laws.³⁵⁹ As discussed earlier, free trade not only lowers the costs of drug

350. See Raustiala, *supra* note 290, at 121.

351. *Id.*

352. *Id.* at 119-21.

353. *Id.* at 122.

354. *Id.* at 123.

355. *Id.*

356. Raustiala, *supra* note 290, at 122-23.

357. See generally LaRue, *supra* note 12 (documenting increase of drug trafficking across the border by various methods).

358. See, e.g., *Conyers Set to Introduce Treatment Bill for Federal Offenders*, ALCOHOLISM & DRUG ABUSE WKLY., Aug. 14, 2000, at 1 [hereinafter *Conyers*] (explaining a bill which would divert low-level offenders from incarceration to treatment).

359. See LaRue, *supra* note 12, at 46 (explaining impact NAFTA has had on U.S. “drug war”).

trafficking, but it seriously undermines domestic efforts to keep drugs from crossing the border.³⁶⁰ As states come to realize they simply cannot stop illegal drugs from entering their country, they search for alternatives to their losing strategy, namely, decriminalization and legalization.³⁶¹ Thus, by making it easier for traffickers to import drugs and harder for states to patrol their borders, free trade has the secondary effect of encouraging sovereign states to relax their illicit substance laws.

VI. CONCLUSIONS

A. *The United States: The Beginnings of Decriminalization and Legalization*

The recent effort to medicalize and decriminalize cannabis in the United States may indicate the beginning of relaxed drug laws. Currently, ten states allow some form of medical marijuana.³⁶² Generally, these states have asserted that the drug helps relieve pain in some circumstances and that doctors should have the authority to prescribe it at their discretion.³⁶³ Moreover, the decriminalization movement has attracted growing support among individual states.³⁶⁴ New York's continuing struggle to reform the strict "Rockefeller Drug Laws" represents this change in philosophy, and ten states have already adopted measures that greatly reduce penalties associated with the possession, use, and sale of small amounts of drugs.³⁶⁵ In addition, there have been a number of "pro-pot" proposals that, although rejected, demonstrate that the movement has reached even more states.³⁶⁶ Thus, the United States appears to be reconsidering its tough stance on certain types of drugs, as manifested by the medical-marijuana and decriminalization movements.

360. See Raustiala, *supra* note 290.

361. See, e.g., Conyers, *supra* note 359 (offering treatment as an alternative).

362. See generally NORML, State Guide, *supra* note 1; NORML, State Medical Marijuana, *supra* note 1 (discussing briefly Alaska, Arizona, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, Vermont and Washington state medical marijuana programs).

363. See, e.g., WASH. REV. CODE § 69.51A.005 (2003).

364. See generally NORML, State Guide, *supra* note 1. A map showing the United States and what laws each state has regarding marijuana use can be found at http://norml.org/index.cfm?wtm_view=&group_ID=4516 (last visited Feb. 20, 2005).

365. See *id.*; see also Herman, *supra* note 57.

366. See Keefe, *supra* note 70 (citing 2002 election results where marijuana restriction reduction issues were voted down).

B. *The United States in a Europe-Like Environment*

The EU and NAFTA are similar in that each arrangement reduces barriers to trade among signatory nations. The EU began as a simple steel agreement among six nations and has grown to encompass almost all of Western Europe. Within the EU zone there are no tariffs on any Member States goods. Nationals enjoy almost complete mobility from country to country, and most signatories use a common currency. As such, the barriers that once existed in Europe hardly exist today, and "all governments . . . recognize that the era of absolute national sovereignty is gone."³⁶⁷ While NAFTA does not create a supra-national governing body for the United States, Mexico, and Canada, the Agreement has increased trade among the three nations.³⁶⁸ Under the NAFTA system there has been a gradual elimination of tariffs and trade barriers among the Member States.³⁶⁹ Consequently, trade has dramatically risen between Canada, Mexico, and the United States. Hence, the EU and NAFTA are similar in that both arrangements have acted as catalysts for trade among member nations.³⁷⁰

In addition to residing in a free trade zone, the United States is also in a situation akin to that of many of the European nations that at one time had not yet relaxed their drug laws, but were surrounded by states that had. At the federal level, the United States continues to maintain its criminal penalties associated with drugs; however, Canada no longer criminalizes personal cannabis use, and Mexico cannot control the flow of drugs within its borders.³⁷¹ Canada has traditionally been a source of cannabis for the United States, and recent decriminalization and medicalization legislation suggests that Canada is heading down the same path that the Netherlands followed approximately thirty years ago.³⁷² Looking southward, Mexico has historically been the chief exporter of illegal drugs to the United States; the government appears unable to enforce its illicit substance laws, making it an effectively legalized drug zone.³⁷³ In these circumstances, the U.S.'s actions to decriminalize and medicalize certain drugs appear remarkably similar to those of the U.S.'s

367. PASCAL FONTAINE, *EUROPE IN TEN POINTS* 8 (1995). The 1998 Version can be found at http://europa.eu.int/comm/publications/booklets/eu_glance/12/txt_en.htm (last visited Feb. 20, 2005).

368. See generally ELGAR, *supra* note 236, at 288-89.

369. *Id.* at 263-65.

370. See *supra* text accompanying notes 244-51.

371. See 21 U.S.C.S. § 801 (2004); LaRue, *supra* note 12; see, e.g., Krauss, *Penalties for Marijuana*, *supra* note 10.

372. See Krauss, *Penalties for Marijuana*, *supra* note 10; Krauss, *Marijuana to Patients*, *supra* note 10.

373. See LaRue, *supra* note 12.

European counterparts. Just as most European nations have relaxed their drug laws, the United States appears to be doing the same.³⁷⁴ Thus, the United States resides in a climate akin to Europe following Dutch and Danish legalization, and it is responding similarly to European nations that gradually loosened their domestic illicit substance laws.

C. *An Explanation: The Corrosive Effects of Free Trade*

Given the circumstances above, it seems likely that free trade plays an integral role in causing nations to reform their drug laws. Free trade has the general effect of opening up borders and loosening restrictions on imports.³⁷⁵ While this liberalization is meant to apply to legitimate commerce, illicit substances also benefit from the relaxed barriers to entry.³⁷⁶ Specifically, drug traffickers enjoy the lower cost of inputs, better transportation, increased trade, limited inspection abilities, and the ease of money laundering associated with economic liberalization.³⁷⁷ Hence, free trade agreements impede sovereign states' abilities to prevent illegal drugs from crossing their borders while simultaneously making it easier to produce and import the illicit substances.³⁷⁸ As a result, drugs become cheaper and more prevalent in society.³⁷⁹ Though it is difficult to find explicit linkages, the boom in illegal drugs most likely causes free trading nations to admit that their eradication is impossible and move toward legalization. Moreover, legalization and decriminalization movements may enjoy a boost in acceptability as illegal drugs become quasi-normalized in society because of their increased prevalence. Thus, free trade among states with different drug laws seems to result in a race to the bottom between member states, as each nation is quasi-forced to accept the most relaxed legislation due to their inability to stop illicit substances at its border.

D. *Summation*

To conclude, this Note proposes that U.S. drug policy is in flux and is moving toward legalization of certain substances, as represented by the current medical-marijuana and decriminalization movements. In addition, the postwar European experience provides a

374. See generally NORML, *Analysis and Case Studies*, *supra* note 8; NORML, 2002 Legislative Update, *supra* note 9; NORML, *State Guide*, *supra* note 1.

375. Raustiala, *supra* note 290, at 115.

376. *Id.* at 115-16.

377. See *id.* at 116-23.

378. See *id.*; see also Wright, *supra* note 349.

379. See *id.* at 134-35 (detailing the effect free trade has had on drug trafficking and prices in Europe).

valuable lens from which to interpret the recent developments in U.S. drug policy. Europe gradually created a virtually borderless continent over the past half century.³⁸⁰ Importantly, drug legalization has gradually spread across the landscape following the reduction of trade barriers.³⁸¹ Similarly, the United States resides in a free trade zone in which its partners either have relaxed their drug laws³⁸² or simply cannot enforce them.³⁸³ As the model predicts, the U.S. response has been to move toward legalization.³⁸⁴ Moreover, this Note offers an explanation for the effect that free trade seems to have on domestic drug legislation. Economic liberalization reduces sovereign states' abilities to block drugs from crossing their border while lowering the costs of production and making it easier for traffickers to import illicit substances.³⁸⁵ The result is that more, cheaper drugs flow into states that continue to define certain substances as illegal.³⁸⁶ Eventually, this influx of drugs forces sovereign states to re-examine, and ultimately relax, their drug laws, because it becomes clear that they cannot keep the substances out. Hence, this Note suggests that when one member of a free trade agreement legalizes drugs others will eventually follow. Considering this paradigm, the U.S. movement to relax its drug laws appears to be at least partially a consequence of its involvement in NAFTA.

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380. See generally Europa, History of the EU, *supra* note 76.

381. See generally NORML, Analysis and Case Studies, *supra* note 8; NORML, 2002 Legislative Update, *supra* note 9.

382. See Krauss, *Penalties for Marijuana*, *supra* note 10.

383. See LaRue, *supra* note 12 (documenting various issues concerning the enforcement of the laws).

384. See generally NORML, State Guide, *supra* note 1.

385. *Supra* Part V; see generally Raustiala, *supra* note 290.

386. See generally *id.*

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