New historical chapter for North American trade United States, México, Canada Agreement - USMCA

Morena Altieri*[a]

[a]*University of Naples "L'Orientale", Naples, Italy*

Abstract

The North American Free Trade Agreement (NAFTA) is a regional agreement signed between the governments of Canada, the United States and Mexico to make the creation of a free trade area effective. It entered into force on 1 January 1994. The conclusion of this agreement has always given rise to conflicting and opposing ideas. Today, this agreement has been in place for 26 years, and even now we have not reached a conclusion that brings the whole of public opinion into agreement. This article will try to see how the agreement has changed trade relations between countries, between the United States and Mexico in particular, analyzing changes in import and export flows and their impact on the trade balance, the role of Foreign Direct Investment and how the Peso crisis changed the impact of the agreement in the early years, thus giving an example of how events outside the agreement directly influence the results of the agreement. The new USMCA agreement, called NAFTA 2.0, will be analyzed and the areas that the three countries wanted to strengthen with the aim of forming a process of globalization and obtaining a single trade area will be addressed.

Keywords: *United States; Canada; Mexico; North American Free Trade Agreement; United States-Mexico-Canada Agreement; International trade.*

On November 30, 2018, Canada, Mexico, and the United States signed the new agreement on the sidelines of the G20 leaders' summit in Buenos Aires. The results of the aforementioned agreement preserve the key elements of the trade relationship, incorporating new and updated provisions that seek to address 21st century trade issues in order to promote opportunities for nearly half a billion people in North America. Inspired by the success of the European Economic Community (1957-1993), with regard to the elimination of tariffs in order to stimulate trade between its members, in 1994 the United States, Mexico and Canada created the largest free trade region in the world under the North American Free Trade Agreement (NAFTA) (Wall 2000)[1], involving at the time of its creation the North American Free Trade Agreement (NAFTA), 370 million people. Its objective was the removal of trade barriers and investment between signatory countries, with the aim of economic growth (Congressional Research Service 2017).

The TLCAN trilateral agreement - Tratado de Libre Comercio de America del Norte, in its Spanish acronym - was signed by the Heads of State of the Three Countries: the

* Morena Altieri, *E-mail*: dr.morenaaltieri@gmail.com .

President of the United States, George H.W. Bush; The President of the United Mexican States, Carlos Salinas de Gortari, and the Prime Minister of Canada, Brian Mulroney, on December 17, 1992, entered into force on January 1, 1994. The main provisions of NAFTA have affected bilateral trade flows, eliminating tariffs and the many non-tariff barriers to trade, thus affecting exports and imports between participating countries and their trade balances (North American Free Trade Agreement Implementation Act 1993). The countries have therefore begun to specialize in the production of goods, of which they already had an advantage, with the possibility of increasing the availability of goods on the market and thus freely exchanging between them at the market price, without any increase due to the costs that may be involved in an international trade transition (Bureau of Economic Analysis, International Trade in Services).

In late 1994, the Weight crisis in Mexico split public opinion on the negotiation and enforcement of NAFTA. The U.S. Congressional Budget Office, the CBO, had predicted an initial appreciation of pesos, increasing investment and then regaining depreciation when Mexico (García 2012) generated a trade surplus sufficient to repay its debt, so appropriate policies had to be implemented so as not to have harsh consequences. One of the choices that led to the crisis was President Solinas' decision to introduce a new debt instrument: the "Tesobonos" (short-term securities, denominated in pesos but with a dollar adjustment clause that secured dollar repayments), to finance the growing current account deficit. President Solinas, through these financial maneuvers, tolerated banking, some of which resulted in corruption. This scenario caused investors to start selling off their dollar bonds outside Mexico, reducing the Central Bank's reserves. The Mexican Central Bank bought Mexican lenders to keep the monetary base steady instead of letting the monetary supply fall and the peso interest rate rise. The crisis erupted as soon as the new President of Mexico, Ernesto Zedillo Ponce de Leon, took office. There was a 15% devaluation of the pesos, letting it float. With inflation rising, real domestic demand contracted sharply, coinciding with the sharp drop in U.S. exports to Mexico, growth in Mexico's imports, and a sudden and sudden decline in the trade balance. The decrease in the value of the Peso has made Mexican goods less expensive than U.S. goods. As a result, U.S. exports to Mexico tended to increase whenever Mexico experienced economic expansion and clearly increased the U.S. trade balance with Mexico. NAFTA seems to have contributed to a resolution of the Mexican crisis and to the rapid growth of Mexico. The free trade agreement provided for the removal of barriers in the financial sector and therefore capital, by strengthening foreign direct investment (FDI), i.e. all investments made by operators resident in a country aimed at either setting up a subsidiary abroad (investment greenfield) or acquiring holdings of a foreign company (mergers and acquisition), with the aim of guaranteeing the investor a certain power in the management and management of the company (Pastor, 2008). Historically, the United States has been present with substantial investment in the Canadian and Mexican economies, making it the main investor. With NAFTA, the relationship has strengthened further, increasing the amount of investment that the United States allocated to the two countries (Burfisher, Robinson and Thierfelder 2001).

The geographical proximity of the three signatories influenced the decision to concentrate the largest flow of investment within NAFTA. For example, the main destination for US investment is the Mexican "maquiladoras" (Armenti and Pagliula 2009): foreign companies located on the Border between Mexico and the United States, subject to special duty-free tax treatment. The function was to receive the inputs of the central enterprise, assemble and work them thus producing the finished product, resold for the most part to the company commissioning the work, taking advantage of a relatively less expensive workforce, with the aim of remaining competitive in a globalized market (De Janvry 1996).

The relationship between the three countries has created a competitive and more integrated market, contributing to growth in some industrial sectors such as textiles, electronics and automotive with the annexed establishment of the NAFTA-TAA (Trade Adjustment Assistance) (Cardarelli and Kose 2004) program, which provided assistance to workers operating in companies affected by increasing imports (U.S. Congressional Budget Office 1993). Assistance could cover employment services, support allowances, job search, transfer allowances or training courses. There will also be a further program, "Alternative Trade Adjustment Assistance", for workers over 50 years of age, allowing to accept a re-use with a perception of lower salary and subsistence from the State (having chosen a program, the worker cannot take advantage of both). A business program has also been set up: The Trade Adjustment Assistance for Firms (Bureau of Economic Analysis, International Trade in Services), to help manufacturing companies affected by international competition. It consists of a division of costs between government and enterprise, for projects made ad hoc to improve the competitiveness of a company. When today's President-in-Office of the United States, Donald Trump took office in 2017, he decided to renegotiate NAFTA, calling it the worst trade deal ever concluded, at the heart of his approach, was a promise to bring more production jobs back to the United States. Representatives from Canada, the Mexican United States and the United States began renegotiating the agreement in August 2017 (U.S. International Trade Commission). However, months of negotiations have led to little progress. At the end of August 2018, the United Mexican States and the United States announced that they had reached agreement on a new trade phase that preserved much of NAFTA, but introducing a number of significant changes. Canada, decides to join the new trade agreement, on September 30, under the new name of "United States - Mexico- Canada Agreement"- USMCA, signed by Canadian Prime Minister Justin Trudeau, Mexican President Enrique Pena Nieto and US President Donald Trump (Puig 2019).

Comparing the two agreements, they can present a brief overview of what the new one contains:

- Country of origin rules: vehicles must have 75% of their manufacturing components in Mexico, the United States or Canada in order to benefit from zero tariffs (from 62.5% under NAFTA) (Bureau of Economic Analysis, Trade in Services);

- Work provisions: 40/45% of car parts must be made by workers earning at least $16 an hour by 2023. Mexico has agreed to pass new labor laws to offer greater protections to workers, including migrants and women (Zahniser, Angadjivand, Hertz, Kuberka and Santos 2015).

It is assumed that these laws facilitate the union of Mexican workers.

- U.S. farmers gain greater access to the Canadian dairy market: The United States has led Canada to open its dairy market to U.S. farmers (Persaud 2014).

-Intellectual property and digital commerce: the agreement extends the terms of copyright to 70 years beyond the author's life (up to 50). It also includes new provisions to manage the digital economy, such as banning duties on things like music, e-books, and protections for internet companies. They are therefore not responsible for the content of the products by their users.

-Sunset clause: the agreement adds a 16-year suspension provision. It is also subject to review every six years, at which point the United States, Mexico, and Canada may decide to extend the USMCA.A revised version was signed on December 10, 2019 and ratified by all three countries.

On March 13, 2020, the USMCA approved, kicking off a new historical chapter for North American trade. After months of negotiations, the USMCA came into force on July 1, 2020 bringing about a major change. As one of the most modern trade agreements in the world, it focuses on the implementation of international standards and seeks to promote best practices for all industrial sectors. The expected result of the USMCA is mutually beneficial trade leading to freer markets, fairer trade, and robust economic growth in North America. Some of the chapters with key results include intellectual property, digital commerce, financial services, and the environment. Below are the main points of the various chapters of the Agreement.

Intellectual property: Modernized and high-level provides strong and effective protection and respect for fundamental intellectual property rights to drive innovation, create economic growth, and support American jobs. It requires full national copyright and related rights treatment so that U.S. creators are not deprived of the same protection that domestic creators receive in a foreign market. Continue to provide strong patent protection for innovators by setting patentability standards and patent office best practices to ensure that innovators, including small and medium-sized enterprises, can protect their inventions with patents. Include strong protection for pharmaceutical and agricultural innovators. It requires a minimum copyright duration of the author plus 70 years, and for those works with a copyright duration that is not based on a person's life, a minimum of 75 years after the first authorized publication. There are strict standards against circumvention of technological protection measures that often protect works such as digital music, films, and books. In addition, there are appropriate copyrighted steps to provide IP protection and predictability for legitimate businesses that do not directly benefit from the breach.

Procedures for the recognition of new geographical indications (GIs) are guaranteed, including strict standards for protection against the release of GIs that would prevent manufacturers from using common names, as well as establish a mechanism for consultation between the Parties on future GIs under international agreements. Finally, trademark protection provisions have been improved (including well-known brands), to help companies that have invested efforts and resources in creating goodwill for their brands.

For the first time, a trade agreement will require the following (United States International Trade Commission):

Office Law Enforcement Authority to stop goods suspected of counterfeiting or usurpation at every stage of entry, exit and transit into the territory of any Party: explicit recognition that IP protection procedures must be available to the digital environment for infringement of trademarks and copyrights or related rights; criminal proceedings and significant penalties for unauthorized recording of films, which is a significant source of pirated films online; civil and criminal penalties for theft of satellite and cable signals; protection against the theft of trade secrets, including against state-owned enterprises. In particular, the Chapter has the most robust protection for trade secrets of any previous U.S. trade agreement. It includes all the following protections against the embezzlement of trade secrets, including by state-owned enterprises: civil proceedings and remedies, criminal proceedings and sanctions, prohibitions on preventing the granting of trade secrets licenses, judicial procedures to prevent the disclosure of trade secrets during the litigation process, and penalties for government officials for unauthorized disclosure of trade secrets.

The new chapter of digital commerce, on the other hand, contains the strongest disciplines on digital trade of any international agreement, providing a solid basis for expanding trade and investing in innovative products and services. The new chapter of digital commerce, prohibits the application of customs duties and other discriminatory measures to electronically distributed digital products (e-books, videos, music, software, games, etc.), ensures that data can be transferred across borders and that limits on where data can be stored and processed are minimized, thus improving and protecting the global digital ecosystem, ensures that suppliers are not limited in the use of electronic authentication or electronic signatures , thus facilitating digital transactions; ensures that protections applicable to consumers apply in the digital market, including for privacy and use requested communications (United States-Mexico-Canada agreement). There is a limit to governments' ability to require the disclosure of algorithms and source code of proprietary computers, to protect the competitiveness of digital providers. It is possible to promote collaboration in addressing cybersecurity challenges, seeking to promote industry best practices to keep networks and services secure. There is also open access to government-generated public data, to improve innovative use in commercial applications and services. Finally, there is a limitation of the civil liability of Internet platforms for the third-party content that these platforms host or process, outside the scope of intellectual property, thus improving the economic profitability of these growth engines that depend on user interaction and user content. To facilitate increased cross-border trade, the United States has reached an agreement with Mexico and Canada to increase their de minimis shipping value levels. Canada will increase its de minimis level for the first time in decades, from C$20 to C$40 for taxes. Canada will also provide duty-free shipments up to C$150. Mexico will continue to provide $50 USD de minimis tax-free and will also provide duty-free shipments up to the equivalent level of USD$117. Shipping values up to these levels would enter with minimal formal entry procedures, making it easier for more companies, particularly small and medium-sized enterprises, to participate in cross-border trade (U.S. trade Representative).

The increase in the de minimis level with key trading partners such as Mexico and Canada are a significant achievement for small and medium-sized enterprises (SMEs) in the United States. These SMEs often lack the resources to pay customs duties and taxes, and bear the higher compliance costs that low and restrictive de minimis levels for trade impose on lower-value shipments, which SMEs often have to bear due to their lower business volumes. New traders, who enter the Markets of Mexico and Canada, will also benefit from lower costs to reach consumers. U.S. express couriers, who make many low-value shipments for these merchants, will also benefit from lower costs and greater efficiency. The updated financial services chapter includes commitments to liberalize financial services markets and facilitate a level playing field for US financial institutions, investors and investments in financial institutions and cross-border trade in financial services. The chapter also preserves the discretion of financial regulators to ensure financial stability. The chapter includes key obligations, such as: national treatment, to ensure that US financial service providers receive the same treatment as local providers; most-favored-nation treatment, to ensure that US financial service providers receive the same treatment as those in other countries; market access, which prohibits the imposition of certain quantitative and numerical restrictions that would limit the activity of US financial service providers. This agreement includes a ban on local data storage requirements in circumstances where a financial regulator has access to the data it needs to fulfill its regulatory and supervisory mandate (Wilson and Wood, 2016). The new chapter on financial services includes updated provisions to allow cross-border data transfer and an up-to-date market access obligation; the stronger transparency obligations of any US trade agreement, to ensure good regulatory practices regarding government licenses and other market access authorizations; a separate annex on cross-border trade commitments, including the application of national treatment and market access to an expanded list of cross-border services, such as portfolio management, investment advice and electronic payment services; specific procedures relating to investor-State dispute resolution requests with Mexico, including provisions on arbitrators' jurisdiction and a special procedural mechanism to facilitate the application of the prudential exception and other exceptions. The renegotiated agreement includes a chapter on macroeconomic policies and exchange rate issues, with new policy commitments and transparency on currency issues. The chapter will address unfair currency practices by requiring high-level commitments to refrain from competitive devaluations and targeting exchange rates, while significantly increasing transparency and providing accountability mechanisms. This approach is unprecedented in the context of a trade agreement and will help to strengthen macroeconomic and exchange rate stability. The United States, Mexico and Canada have agreed on a chapter on work that puts work obligations at the heart of the agreement, makes them fully enforceable, and represents the strongest provisions of any trade agreement.

The chapter on labor includes an annex on employee representation in collective bargaining in Mexico, under which Mexico engages in specific legislative actions to provide effective recognition of the right to collective bargaining (Puig, 2019). It also requires the parties to adopt and maintain in law and practice the labor rights recognized by the International Labor Organization, to apply their labor laws effectively and not to waive or derogate from their labor laws. There are also new provisions to ban the import of goods produced by forced labor, to tackle violence against workers exercising their rights at work and to ensure that migrant workers are protected by labor laws (Ilie Goga 2019). The chapter on dispute resolution establishes a one-of-a-kind US-Mexico Rapid Response Mechanism, which provides for the rapid monitoring and enforcement of labor rights to ensure the effective implementation of Mexico's historic labor reform in particular structures, while respecting sovereignty and due process (Hernandez, 2021). To support jobs in North America, the agreement contains new trade rules of origin to increase wages, requiring 40-45 percent of automotive content to made by workers earning at least $16 an hour. The three countries agreed on the most advanced, comprehensive, and high-standard environmental chapter of any trade agreement. Like the chapter on work, the chapter on the environment puts all environmental provisions at the heart of the agreement and makes them applicable. The Environment chapter includes the most comprehensive set of applicable environmental obligations of any previous U.S. agreement, including obligations to combat wildlife, timber, and fish trafficking; strengthening law enforcement networks to stem this trafficking; and to address urgent environmental issues such as air quality and marine litter.

Environmental obligations include: prohibitions on some of the most harmful fishing subsidies, such as those for the benefit of vessels or operators involved in illegal, undeclared and unregulated (INTA) fishing; new protections for marine species such as whales and sea turtles, including a ban on shark pinning and a commitment to work together to protect marine habitat; obligations to improve the effectiveness of customs inspections of shipments containing wild fauna and flora to ports of entry and to ensure strong application to combat INTA fishing; the first ever articles to improve air quality, prevent and reduce marine litter, support sustainable forest management and ensure appropriate procedures for environmental impact assessments; require the parties to adopt, maintain and implement our relevant obligations under seven Multilateral Environmental Agreements (MEAs); robust and modernized mechanisms for public participation and environmental cooperation; the United States and Mexico have negotiated a separate environmental cooperation and customs verification agreement that will help strengthen our efforts to combat the trade in illegally captured wildlife, fish and timber. Very important is the agreement reached for the benefit of American farmers, breeders, and farms. Although agriculture has generally performed well under NAFTA, major improvements in the agreement will allow food and agriculture to trade more fairly and expand exports of American agricultural products. American milk producers will have new export opportunities to sell dairy products to Canada. Canada will provide new access for U.S. products including fluid milk, cream, butter, skimmed milk powder, cheese, and other dairy products. It will also eliminate its rates on whey and margarine. For poultry, Canada will provide new access for U.S. chicken and eggs and increase its access for turkey. Under a modernized agreement, all other tariffs on agricultural products traded between the United States and Mexico will remain at zero. The top priority for the American dairy industry in these negotiations was for Canada to eliminate its program that allows cheap dairy ingredients to sell off sales of U.S. dairy products to Canada and third-country markets. Following the negotiations, Canada will eliminate the so-called milk classes 6 and 7. In addition, Canada will apply export charges to its exports of skimmed milk powder, milk protein concentrates and infant food at volumes above the agreed threshold, which will allow U.S. producers to expand sales abroad (United States-Mexico-Canada agreement).

The text covers all biotechnology, including new technologies such as genetic editing, while the text of the Trans-Pacific Partnership covers only traditional rDNA technology. They agreed on provisions to improve the exchange of information and cooperation on trade-related issues in agricultural biotechnology. Building on NAFTA, the United States, Mexico, and Canada have decided to work together elsewhere on agricultural issues, improve transparency, and consult on issues affecting trade between countries. They agreed on several provisions to reduce the use of trade-distorting policies, including: do not use export subsidies or special World Trade Organization (WTO) agricultural safeguards for products exported to each other in the market; improving commitments to increase transparency and consultation on the use of export restrictions for food security purposes; if producers are supported, consider the use of internal support measures that have little or no distorting effects on trade or production and ensure the transparency of internal support programs. Canada and the United States have also agreed strict rules to ensure that tariff quotas administered in a fair and transparent manner to ensure operators' ability to use them to the full (United States-Mexico-Canada agreement). Canada has agreed to classify wheat imports from the United States in a way no less favorable than it accords to Canadian wheat, and not to require a country of origin declaration on its degree of quality or inspection certificate. Canada and the United States have also agreed to discuss issues relating to seed regulatory systems. In order to facilitate the marketing of food and agricultural products, Mexico and the United States have agreed that classification standards and services will not be discriminatory for all agricultural products and will establish a dialogue to discuss classification and quality trade issues. In the Chapter on Sanitary and Phytosanitary Measures (SPS), the United States, Mexico and Canada agreed to strengthen the disciplines for science-based SPS measures, while ensuring that the Parties have the sovereign right to protect human, animal and plant life or health (United States-Mexico-Canada agreement). The provisions include greater transparency on the development and implementation of SPS measures; advancement of science-based decision-making; improve processes for certification, regionalization and equivalence determinations; conduct systems-based audits; improving transparency for import controls; and work together to improve the compatibility of measurements. The new agreement will establish a new mechanism for technical consultations to resolve problems between the parties (United States-Mexico-Canada agreement).

The parties agreed to provide important procedural guarantees for the recognition of new geographical indications (GIs), including strict standards for protection against the issuance of GIs that would prevent US manufacturers from using common names, and to establish a mechanism for consultation between the parties on future geographical indications under international agreements. Mexico has agreed not to restrict market access in Mexico for U.S. cheeses labeled with certain names. The United States, Mexico and Canada have agreed on non-discrimination and transparency commitments on sales and distribution, as well as labelling and certification to avoid technical barriers to trade in distilled wine and spirits. They decided to continue the recognition of Bourbon Whisky, Tennessee Whisky, Tequila, Mezcal and Canadian Whisky as distinctive products. To meet regulations and technical standards for prepackaged foods and food additives, governments can request information from companies about proprietary company formulas. The United States, Mexico and Canada have agreed on the Annex on Proprietary Food Formulas, which requires each party to protect the confidentiality of such information in the same way for domestic and imported products. It also limits these information requirements to what is necessary to achieve legitimate objectives. An agreement has been reached that supports North American production and mutually beneficial trade. The new U.S.-Mexico-Canada (USMCA) agreement will create more balanced and reciprocal trade that will support well-paid jobs for Americans and grow North American economies. They concluded substantive discussions on the new rules of origin and procedures of origin, including product-specific rules for passenger vehicles, light trucks and car parts. This update of the rules of origin will provide greater incentives for the supply of goods and materials in the United States and North America, encouraging regional economic growth by requiring that 75% of automotive content be produced in North America.

The rules (United States-Mexico-Canada agreement):

• Helps incentivize up to billions a year;

• Helps preserve and return vehicle and component manufacturing in the United States;

• Transform supply chains to use more U.S. content, especially content that is critical to future car production and well-paid jobs;

• Fill the gaps in the current NAFTA agreement that incentivized low wages in the production of cars and components.

There is the use of trade rules to raise wages by requiring that 40-45% of automotive content be made by workers earning at least $16 an hour.

The rules: Support better jobs for U.S. manufacturers and workers by requiring a significant portion of the vehicle's content to be made with high-wage labor; ensure that U.S. manufacturers and workers are able to compete on an equal footing and incentivize investment in new vehicles and components in the United States; encourage more investment by car manufacturers in research and development in the region. Countries have agreed on stricter rules of origin that exceed those of NAFTA 1.0 and the Trans-Pacific Partnership (TPP), including for cars and car parts and other industrial products such as chemicals, steel-intensive products, glass, and fiber optics. This agreement surpasses NAFTA 1.0 and the TPP by establishing procedures that simplify certification and verification of rules of origin and promote strong enforcement. This includes new provisions on cooperation and enforcement that help prevent duty evasion before it happens. The new rules will help ensure that only manufacturers using sufficient and significant North American parts and materials receive preferential tariff benefits. New commitments have been included in the "Market Access" chapter, to reflect developments in U.S. trade agreements addressing non-tariff barriers related to trade in regenerated goods, import licenses, and export licenses (United States-Mexico-Canada agreement). The new chapter on market access will more effectively support trade in manufacturing products between the United States, Mexico and Canada by removing provisions that are no longer relevant, updating key references, and affirming commitments that were gradually introduced by the original agreement. Specifically, the chapter Market access: duty-free treatment for originating goods; prohibition of export duties, taxes and other charges and the waiving of specific customs processing costs; adds new provisions for transparency in import and export licensing procedures; Prohibits parties from applying:

(a) requirements to use local distributors for import;

(b) restrictions on the import of commercial goods containing encryption;

(c) restrictions on imports of used goods for regenerated goods;

(d) the requirements for consular operations and their tariffs and expenses; updates the provisions for the temporary duty-free admission of goods to cover shipping containers or other substantial holders used in the shipment of goods (United States-Mexico-Canada agreement).

The new provisions on textiles encourage greater North American production in trade in textiles and clothing, strengthen customs enforcement and facilitate wider consultation and cooperation between the parties on matters relating to trade in textiles and clothing.

The provisions: promote greater use of made in USA fibers, yarns, and fabrics. Restrictive rules allowing partial use of non-NAFTA inputs in the textile and clothing trade. Require sewing thread, pocket fabric, tight rubber bands and coated fabric, when incorporated into most garments and other finished products, to be made in the region so that such finished products can benefit from commercial advantages. To establish a chapter on textiles for North American trade, including the specific verification provisions for textiles and customs cooperation which provide new tools to strengthen customs enforcement and prevent fraud and circumvention in this important area.

The provisions of the new chapter on textiles are stronger than those of NAFTA 1.0 as regards the application and promotion of North American textile production (United States-Mexico-Canada agreement).

The United States, Mexico and Canada have also reached agreement on new trade provisions in specific manufacturing sectors, including information and communication technology, pharmaceuticals, medical devices, cosmetics, and chemicals. Each of the annexes includes provisions that exceed NAFTA 1.0 and TPP that promote greater regulatory compatibility, better regulatory practices, and increased trade between countries.

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