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Economic Cooperation**

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Session VII

## **E-Commerce Chapter**

Submitted by: Peru



**Capacity Building Workshop on Negotiations of  
Services Chapters Under Free Trade Agreements  
with a Negative List Approach**

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**CAPACITY BUILDING WORKSHOP ON NEGOTIATIONS OF SERVICES  
CHAPTERS UNDER FTAS WITH A NEGATIVE LIST APPROACH  
E-COMMERCE CHAPTER**

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▶ 1

**SOURCE CODE**

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Obligation to not require the transfer of, or access to, source code of software, as a condition for the import, distribution, sale or use of such software, or of products containing such software.

Why is this obligation important?

Isn't this covered by the National Treatment, MFN, Local Presence or Market Access article?

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▶ 2

### AUTHENTICATION

Obligation to not adopt or maintain measures (laws and regulations) that:

- (a) prohibit authentication methods for electronic authentication; or
- (b) prevent parties to an electronic transaction to prove before a judicial or administrative authorities that their transaction complies with any legal requirements related to authentication.

Why is this obligation important?

Is this only relevant for services?

No. Remember... it is a FTA. Ex: It is important for trade in goods, investment activities or any other activity..

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### RELATION WITH THE NON-CONFORMING MEASURES?

Is there any relation between the E-Commerce articles and the National Treatment, Market Access, Local Presence or MFN articles?

Is there any relation between the E-Commerce articles and the Non-Conforming Measures?



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### RELATION WITH THE NON-CONFORMING MEASURES?

#### Example of Economy X:

Economy X has a Law of Radio and Television: At least 30% of the total weekly programs by television broadcasters must be produced in X.

Economy X included a Non-Conforming Measure in Annex I regarding the quota on programs:  
Sector: Broadcasting – Obligation affected: National Treatment

Economy X included the non-discrimination of digital products article in a E-Commerce

**Which prevails? The Annex I NCM or the E-Commerce article?**

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### RELATION WITH THE NON-CONFORMING MEASURES?

#### 2nd Example of Economy X:

Economy X is planning to implement a Law of Health Services, in order to require health service suppliers to develop all their activities in its territory.

Economy X included a Non-Conforming Measure in Annex II:  
Sector: Email Services – Obligation affected: Local Presence

Economy X included the Location of computing facilities article in a E-Commerce. Clinics could have their computing facilities abroad and could save the health records abroad.

**Which prevails? The Annex II NCM or the E-Commerce article?**

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## RELATION WITH THE NON-CONFORMING MEASURES

### Solution in some FTAs:

The obligations Non-Discriminatory Treatment of Digital Products, Cross-Border Transfer of Information by Electronic Means, Location of Computing Facilities shall not apply to

the non-conforming aspects of measures (laws, regulations) of CBTS, Investments and Financial Services.



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## CAPACITY BUILDING WORKSHOP ON NEGOTIATIONS OF SERVICES CHAPTERS UNDER FTAS WITH A NEGATIVE LIST APPROACH E-COMMERCE CHAPTER

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