



U.S. General Services Administration

WELCOME

The Trade Agreements Act

General Services Administration



Discussion Areas

- An overview of the Trade Agreements Act (TAA)
- Definition of substantial transformation
- Berry Amendment
- How to stay in compliance with the TAA



Background

- The Trade Agreements Act (TAA) is the enabling statute that implements numerous multilateral and bilateral international trade agreements and other trade initiatives.
(Reference 19.U.S.C. 2501, et seq.)
- The Federal Acquisition Regulation (FAR) Part 25 (Foreign Acquisition) is the primary regulatory authority.



What are the TAA's purposes?

- (1) to ...implement the trade agreements of the Trade Act of 1974;
- (2) to foster the growth and maintenance of an open world trading system;
- (3) to expand opportunities for the commerce of the United States in international trade; and
- (4) to improve the rules of international trade and to enforce these rules.



Why is the TAA important?

- Contractors who do not comply with the TAA requirements can end up paying fines of millions of dollars. (ex: OfficeMax, Staples and Office Depot.)



Where can the full list of designated countries be located?

- FAR Clause 52.225-5.
- How many total countries are listed?



“Designated Countries” (1 of 4):

- Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom;



“Designated Countries” (2 of 4):

- Australia, Bahrain, Canada, Chile, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, or Singapore



“Designated Countries” (3 of 4):

- Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia; or



“Designated Countries” (4 of 4):

- Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Montserrat, Netherlands Antilles, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago.



What is the difference between the TAA and the Buy American Act (BAA)?

- The TAA and the Buy American Act are two completely different statutes. Applicability is based on the dollar value of the acquisition. The Buy American Act ***does not apply*** to Schedule contracts except in very rare cases.



Main Items of Interest

- The TAA uses the “substantial transformation” rule, to determine the country of origin. The BAA uses a different rule.
- The eligible countries for the TAA are those listed in the FAR. The eligible countries for the BAA can be any.



When is a product substantially transformed?

- When it cannot be used for the intended purpose in its subassembly stage.
- Example: The components of a computer may be made in non-designated countries, and they may be assembled in a designated country. They cannot function as a computer until they are assembled.



Question

- Who is ultimately responsible for ensuring that GSA schedule contractors are compliant with the TAA?



Answer

- The offeror/contractor.
This is per FAR 52.212-3(g)(4), Trade Agreements Certificate.
- Why? Because the offeror/contractor possesses the necessary detailed knowledge regarding the origin of parts, manufacturing site, and value-added process.



Where does the offeror certify compliance with the TAA?

- In the Trade Agreements Certificate in the MAS solicitations.



What does the Trade Agreements Certificate say?

- (i) ...each end product... is a U.S.-made or designated country end product...
- (ii) ...list as other end products those end products that are not U.S.-made or designated country end products.
- Other End Products: (line item number and country of origin)



What is an “end product”?

- An article, material, or supply to be acquired under the contract for public use.
- (FAR 52.225-5(a) gives more details).



Requirements for End Products

- Must be either:
- 1) Wholly the growth, product, or manufacture of the subject country; or



Requirements for End Products (Continued)

- 2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in the subject country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.



Why does the TAA apply to the MAS Contracts?

- These contracts exceed \$193,000.
- GSA considers the total value of the acquisition to be the estimated dollar value of the entire Schedule inclusive of all options. Since the estimated dollar value of each Schedule exceeds \$193,000, a Schedule solicitation and contract will include the Trade Agreements Clause.



Are there any DoD-Specific requirements that are separate from the TAA / BAA?

➤ Yes

➤ The Berry Amendment

- If certain items are purchased using the DoD's money, they must be from the U.S.
- Which items?



Berry Amendment (Continued)

- food; clothing; tents, tarpaulins, or covers; cotton...; woven silk or woven silk blends; spun silk yarn for cartridge cloth; synthetic fabric...; canvas products, or wool; or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials; and hand or measuring tools.



How does a Contractor comply with these requirements?

- MAS Contractors are contractually obligated to be in compliance with the TAA.
- There is no contractual requirement for contractors to have a “system” in place to monitor and document TAA compliance.



Monitoring TAA Compliance

- Contractors should have some formal or informal process in place to help ensure that they are meeting the contractual requirement to be compliant and should have some method of documenting their efforts.
- Contractors should be able to explain the process that they use.



Question

- What should a customer do if an item that they routinely purchase is removed from a MAS contract?



Answer

- GSA may no longer be the source of supply of a particular item if it is noncompliant.
- **The National Customer Service Center (NCSC) on 1-800-488-3111 is available to assist customers with any questions or concerns.**



Contact Information

- Suzanne Winnard, Procurement Analyst
suzanne.winnard@gsa.gov
Acquisition Management
Program Analysis Branch (QVOBA)
2200 Crystal Drive, Suite 806
Arlington, VA 22202
(703) 605-2832