



Government Provisional Acts

PRODUCT COMPLINACE – US Government

- **Buy American Act (1933)** - The Buy American Act ("BAA", originally 41 U.S.C. §§ 10a–10d, now 41 U.S.C. §§ 8301–8305) passed in 1933 by Congress and signed by President Hoover on his last full day in office (March 3, 1933). **The Buy American Act** applies to all U.S. federal government agency purchases of goods over certain contract thresholds. The BAA restricts purchases of supplies and construction materials to domestic products, unless an exception or waiver applies. Unmanufactured products must be mined or produced in the United States. There is a two-part test for manufactured articles: (1) article must be manufactured in the United States, and (2) cost of U.S. components must exceed 50% of the cost of all components in the item. Note: this calculation does not include labor and overhead for final assembly in the United States. The component cost test is waived for commercial-off-the-shelf (COTS) items. (FAR 25.001(c)(1). BAA waivers may be available, often at the discretion of the contracting officer.
- **Buy America Act (1983)** - The Buy America Act applies only to grants issued by the Federal Transit Administration and Federal Highway Administration for transit-related procurements in excess of the stated procurement amount. Federal grants to state, municipal, local governments, including transit authorities, may also contain Buy America Act conditions. Projects funded by the Federal Highway Administration require all iron and steel products and their coatings to be 100% U.S.-manufactured. Projects funded by the Federal Transit Administration require all steel and manufactured products to have 100% U.S. content and to be 100% U.S.-manufactured. Different rules apply to rolling stock (trains, buses, trolleys, etc.) The Buy America Act is not limited by the NAFTA or WTO Agreement on Government Procurement.
- **American Recovery and Reinvestment act (ARRA 2009)** - The American Recovery and Reinvestment Act of 2009 (ARRA) (Pub.L. 111–5), nicknamed the Recovery Act, was a stimulus package enacted by the 111th U.S. Congress and signed into law by President Barack Obama in February 2009. Developed in response to the Great Recession, the ARRA's primary objective was to save existing jobs and create new ones as soon as possible. Other objectives were to provide temporary relief programs for those most affected by the recession and invest in infrastructure, education, health, and renewable energy. ARRA applies to all funded public building and works projects, which will include federal, state and local projects. There is no requirement with regard to the origin of components or subcomponents in manufactured goods used in the project, as long as the manufacturing occurs in the US.
- **Trade agreement act of 1979** - The TAA supersedes the Buy American Act, because the TAA allows the President to waive the Buy American Act under certain conditions. Federal Acquisition Regulations (FAR) Subpart 25.4 includes guidance for TAA compliance.^[2] In general, a product is TAA compliant if it is made in the United States or a "Designated Country". Designated Countries include:
 - Those with a free trade agreement with the United States such as Canada, Mexico, Australia, and Singapore



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- Countries that participate in the World Trade Organization Government Procurement Agreement (WTO GPA), including Japan and many countries in Europe
- Least developed countries such as Afghanistan, Bangladesh, Laos, and Ethiopia
- Caribbean Basin countries such as Aruba, Costa Rica, and Haiti

LABELING COMPLIANCE - FTC

- **“Made in USA”** - To qualify for a ‘Made in USA’ or ‘Made in America’ label, a product must be “all or virtually all” manufactured in America according to the Federal Trade Commission (FTC). This encompasses all fifty states, US territories, and the District of Columbia. Products bearing this label should have little to no overseas content. However, some parts may be imported from other countries in order for the US manufacturer to successfully produce. This is usually based on availability of certain raw materials and/or the assembly requirements of certain components or parts of a product.
- **“Made in USA with Foreign & Domestic Components”** - Some materials or parts are Made in USA.
- **“Assembled in the USA”** - products displaying an ‘Assembled in the USA’ label will contain a higher percentage of imported components but will be physically assembled in America. The FTC states that these products need to have undergone a significant transformation on American soil. What this means is a good portion of the parts and components, whether imported or manufactured in the US, will need to be assembled together directly in the US and must produce a distinct product that is unique to the assembling company.
- **Substantial Transformation (NIST)**– Substantial transformation test applies to the ARRA buy American act as well as the FTC labeling requirements for “Made or assembled in the USA”. A Substantial transformation occurs when an imported article emerges from processing as a new and different article, with a new name, character and use.

The following questions provided therein may be helpful to determine whether or not substantial transformation has occurred. It is likely that substantial transformation has occurred in the U.S. if the answer is “yes” to either (or a combination of) Question 1, 2, or 3 below:

1. Were all of the components of the manufactured goods manufactured in the U.S., and were all of the components assembled into the final production in the U.S.? (If the answer is yes, then it is clearly manufactured in the U.S., and the inquiry is complete.)
2. Was there a change in character for use of the good or the components in the U.S.? (These questions are asked about the finished good as a whole, not about each individual component.)
 - Was there a change in the physical and/or chemical properties or characteristics designed to alter the functionality of the good?
 - Did the manufacturing or processing operation result in a change of a product(s) with one use into a product with a different use?
 - Did the manufacturing or processing operation result in the narrowing of the range of possible uses of a multi-use product?

If the answer is yes to any of 2a, 2b, or 2c, then the answer to Q.2 is yes.

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3. Was/were the process(es) performed in the U.S. (including but not limited to assembly) complex and meaningful?
- Did the process(es) take a substantial amount of time?
 - Was/were the process(es) costly?
 - Did the process(es) require a number of different operations?
 - Did the processes require particular high level skills?
 - Was substantial value added in the process(es)?

If the answer is yes to at least two of 3a, 3b, 3c, 3d, or 3e, then the answer to Q.3 is yes.

These questions all focus on manufacturing, processing, assembly, or integration of the components or subcomponents into a finished good. Design, planning, procurement, component production, or any other step prior to the process of physically bringing together the components into the item used in and incorporated into the Recovery Act project cannot constitute part of substantial transformation.

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