



IMPLEMENTATION OF THE TRADE AGREEMENTS ACT (TAA)

Implementation of TAA has been a hot topic among GSA schedule contractors in recent years. A number of contractors have settled highly publicized False Claims Act actions. The settlements were based upon allegations that the companies misrepresented the country of origin (COO) of products delivered under the contract. All indications are that TAA compliance will continue to be a priority at GSA. This whitepaper provides information to help Schedule contractors understand their TAA obligations.

What does the Act require?

Products delivered under the contract must be:

- Wholly the growth, product, or manufacture of the U.S. or a designated country
- Substantially transformed into a new and different article of commerce in the US or a designated country

When does TAA apply?

The GSA schedule contract contains clauses implementing TAA.

In 2020 TAA applies to acquisitions that exceed \$182,000 (\$7,00,000 for construction contracts). This threshold is subject to revision by the U.S. Trade Representative approximately every 2 years. GSA applies the TAA threshold based on the total value of the entire GSA schedule, not the value of an individual company's contract.

Are there special requirements for GSA schedule holders?

Some GSA solicitations require that an offeror submit a description of the system that it uses to assure TAA compliance and describe how it monitors the system. If an offeror is a reseller it must obtain written assurance from suppliers that all products shipped will be TAA compliant.

How does the government decide if an item is TAA compliant?

The contracting officer relies on the contractor's self-certification. Determining a product's country of origin can be complex when an item is made of many components, with manufacturing and assembly processes occurring in various countries. Industry and Federal agencies rely on decisions of U.S. Customs and Border Protection (customs) in determining if, a product has been substantially transformed. To determine whether a particular product has been substantially transformed customs looks at the totality of the circumstances. Some factors that Customs considers include:

- The complexity of manufacturing or assembly processes
- Whether manufacturing processes result in a dramatic change in the character or functionality of the product
- Whether manufacturing processes result in a product with a different name, character, or use than that of the item from which it was transformed

Can a contractor get help in determining whether an item has been substantially transformed?

Customs maintains a searchable database of its decisions. <http://rulings.cbp.gov/>. Contractors may also request an opinion from third party experts. Washington Management Group (WGM) consultants can assist clients in determining a product's country of origin. A contractor can also request that customs make a determination about particular products. Only customs can make an official TAA determination.

Where can I find a list of Designated Countries?

The Federal Acquisition Regulations contain a list of designated countries at section 25.003. Some notable countries not on the list include China, India and Malaysia.

Does TAA apply to a contract for Services?

TAA applies in contracts for services. The impact of the Act is, however, significantly less than in contracts for products. A recent GAO decision confirmed that for services, country of origin is determined based on where a company is legally established, not on the location from which the service is ultimately provided.

Does TAA apply to a contract for Software?

TAA applies to contracts for Software. Software is a product. Country of origin is determined by where the product is substantially transformed. The complexity with software is determining where it is substantially transformed in cases where the software is not transformed into a tangible product (i.e. CD) but is instead downloaded to a computer. To determine where intangible software is substantially transformed, U.S. Customs and Border Protection (CBP) will look primarily to the country in which "software build" occurred. CBP describes software build as compiling source code into object code.



What can a contractor do to enhance its ability to comply with TAA?

Document your manufacturing processes

Require notification to your GSA Contracts administrator when there is any manufacturing change that affects country of origin

- Require suppliers to periodically certify country of origin; require suppliers to promptly notify your GSA Contracts administrator of any changes in country of origin
- Use the Modifications clause to promptly delete non-compliant products.