

Let's learn about the Buy American Act (BAA)

The Buy American Act of 1933 (41 U.S.C. §§ 8301–8305) promotes the purchase of domestic products by the federal government. It requires federal agencies to procure “domestic end products” and use “domestic construction materials” for contracts that exceed a specified monetary threshold (usually around \$10,000), with some exceptions.



Defining a product as “domestic” depends on whether the product is in an “unmanufactured” or “manufactured” state.



Unmanufactured end products are raw materials, minerals, or other products that have not yet been transformed into their final state. An unmanufactured product must be mined or produced in the United States to be categorized as "domestic" based on the regulations outlined by the BAA.

Manufactured end products are considered "domestic" if they are manufactured in the United States, **and** either:

- (1) The cost of the components mined, produced, or manufactured in the U.S. is more than 60% of the total cost of all the components. The content threshold will increase to 65% in 2024 and 75% in 2029. For iron and steel products, the applicable percentage for the cost of domestic components is 95%; OR
- (2) The product is a Commercial Off-The-Shelf (COTS) item. These are products that one can readily purchase from stores within the U.S. without any additional customization or modification.

Whether a product is defined as “manufactured” is determined by individual agencies, including the Armed Services Board of Contract Appeals and the Civilian Board of Contract Appeals, and by courts as required. These boards assess whether these products have undergone a substantial change within the US.



In addition to the BAA, the Trade Agreements Act (TAA) imposes requirements for using federal procurement funds.



The Trade Agreements Act of 1979 (TAA) (19 U.S.C. §§ 2501–2581) stipulates that products originating from "designated countries" — with which the United States has established trade agreements and that are parties to the World Trade Organization Government Procurement Agreement (WTO GPA) — are eligible for equivalent treatment as domestic products. This pertains to specific federal procurements that exceed the specified monetary threshold (19 U.S.C. 2511; 48 C.F.R, 25.402 (a)).

The United States Trade Representative (USTR) revises the thresholds approximately every two years based on predetermined formulae under the agreements. The latest thresholds were released on November 26, 2021, and became effective on January 1, 2022. You can find more information here: <https://www.govinfo.gov/content/pkg/FR-2021-12-30/pdf/2021-28083.pdf>

Exceptions to the Buy American Act apply if:

- The procurement of domestic goods or use of domestic construction materials would be impractical or not in the public interest.
- The domestic products or construction materials of sufficient quality are not available in the quantities needed.
- The contracting officer concludes that the cost of domestic products or construction materials would be unreasonable.
- The goods are acquired specifically for resale in military commissaries.
- The agency procures information technology on the commercial market.
- The procurement is valued at or below a certain amount (generally \$10,000).
- The items are procured for use outside the United States.



You can find more information on BAA here:

<https://crsreports.congress.gov/product/pdf/R/R46748/1>