



Commercial Software and the Trade Agreements Act (TAA)

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Trade Agreements Act (TAA) compliance is required for agencies procuring commodity software. Therefore it is important for the procuring authority to validate that contract vehicles are in compliance with the Trade Agreements Act (TAA). Agencies, in establishing a contract or task order, must ensure that all products listed on a contract, including third party software, included in the license or service are manufactured (created) or "substantially transformed" in a "designated country" (see table 1).

Software may consist of components from various countries, and the components may also be compiled in a different country. Thus, it can be difficult to determine which country is the "country of origin." The trade agreements test to determine country of origin is "substantial transformation" (e.g., transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article) (refer to FAR 25.001(c)).

The responsibility for making a determination of substantial transformation rests solely with the contractor. The contractor's option is to inquire through The Office of Regulations and Rulings within U.S. Customs and Border Protection – which is the Federal agency responsible for making substantial transformation determinations or giving their opinions. Their determinations or opinions are based upon tariff laws. The contractor may also request an opinion from a third party expert or make the determination on their own.

GSA uses the Industrial Operation's Analysts (IOA) to validate TAA compliance. GSA contractors/suppliers have had to reach settlements in cases brought under the civil False Claims Act (FCA) for alleged TAA non-compliance. Even with GSA diligence, it is in the interest of agencies working with OEM/dealers/resellers to ask for specific representations and warranties of TAA compliance in connection with letters of supply and, in some cases, to agree to indemnify the GSA contract holder for financial consequences of any TAA non-compliance. As previously noted, this should expand to third party software that the provider includes in the license/use agreement. It is in an agencies interest not to risk the General Accountability Office (GAO) overturning an award based on the awardee expressly declining to certify that the product to be provided would comply with the TAA as required by the terms of the solicitation.



The current threshold for the applicability of the Trade Agreements Act (for a supply or service contract) is \$203,000. The U.S. Trade Representative revises this threshold approximately every two years (refer to FAR 25.402(b)). GSA applies the threshold on a Schedule-wide basis, and therefore the Trade Agreements Act applies to all Schedule contracts and orders. All Schedule products and services must come from the U.S. or a designated country.

Sometimes an item consists of components from various countries, and the components are assembled in an additional country. It can be difficult to determine which country is the “country of origin.” The trade agreements test to determine country of origin is “substantial transformation” (e.g., transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article) (refer to FAR 25.001(c)).

It is the OEM/reseller/contractor role to secure a determination of substantial transformation. The OEM/reseller/contractor may apply to The Office of Regulations and Rulings within U.S. Customs and Border Protection, the Federal agency charged with making substantial transformation determinations based upon tariff laws. The OEM/reseller/contractor may also request an opinion from a third party expert or make the determination on their own.

Table 1. TAA Designated Countries (valid as of February 11, 2015)

Afghanistan	Angola	Antigua and Barbuda
Armenia	Aruba	Australia
Austria	Bahamas	Bahrain
Bangladesh	Barbados	Belgium
Belize	Benin	Bhutan
Bonaire	British Virgin Islands	Bulgaria
Burkina Faso	Burundi	Cambodia
Canada	Central African Republic	Chad
Chile	Colombia	Comoros
Costa Rica	Croatia	Curacao
Cyprus	Czech Republic	Democratic Republic of Congo
Denmark	Djibouti	Dominica
Dominican Republic	El Salvador	Equatorial Guinea
Eritrea	Estonia	Ethiopia
Finland	France	Gambia



Germany	Greece	Grenada
Guatemala	Guinea	Guinea-Bissau
Guyana	Haiti	Honduras
Hong Kong	Hungary	Iceland
Ireland	Israel	Italy
Jamaica	Japan	Kiribati
Korea (Republic of)	Laos	Latvia
Lesotho	Liechtenstein	Liberia
Lithuania	Luxembourg	Madagascar
Malawi	Mali	Malta
Mauritania	Mexico	Montserrat
Morocco	Mozambique	Nepal
Netherlands	Nicaragua	Niger
Norway	Oman	Panama
Peru	Poland	Portugal
Romania	Rwanda	Saba
Samoa	Sao Tome and Principe	Senegal
Sierra Leone	Singapore	Sint Eustatius
Sint Maarten	Slovak Republic	Slovenia
Solomon Islands	Somalia	South Sudan
Spain	St. Kitts and Nevis	St. Lucia
St. Vincent & the Grenadines	Sweden	Switzerland
Taiwan (Penghu, Kinmen & Matsu)	Tanzania	Timor-Leste
Togo	Trinidad and Tobago	Tuvalu
Uganda	United Kingdom	Vanuatu
Yemen	Zambia	

- The Trade Agreements Act (TAA) gave the President of the United States the authority to **waive** the Buy American Act (BAA) requirements for certain procurements and that waiver authority was delegated by the President to the U.S. Trade Representative (USTR).
- The USTR has waived the BAA for eligible products in acquisitions covered by various trade agreements such as the World Trade Organization Government Procurement Agreement (WTO GPA) – which includes 39 countries, including, most recently, Taiwan, the North American Free Trade Agreement, the Israeli Trade Agreement Act, etc.
- To fall under a **TAA exemption**, a supply or service must originate from a "**designated country**."
- See FAR 25.003, Definitions, for the lists of such countries.

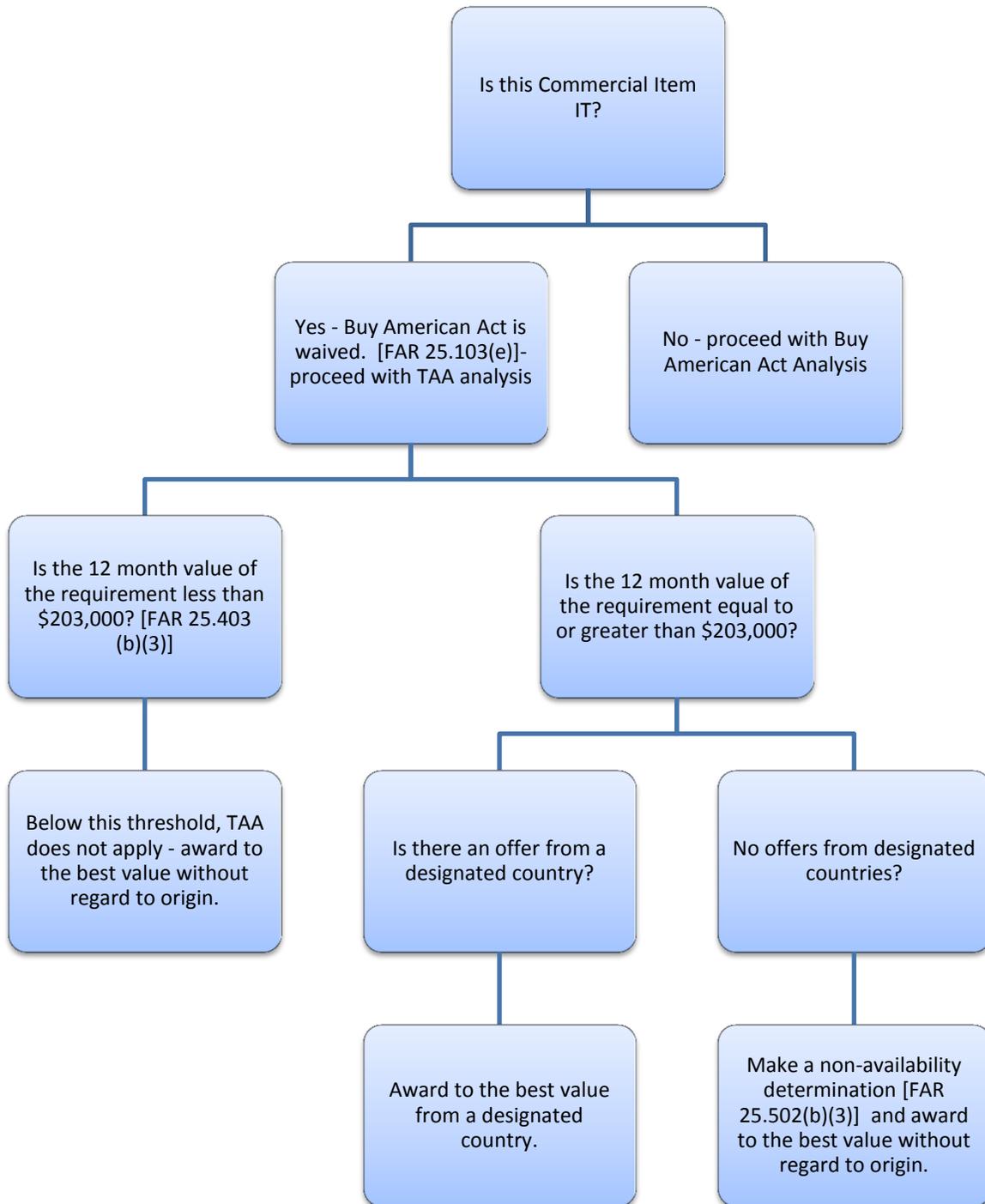


Figure 1: High-level view of Trade Agreements Act as it applies to acquisition of Commercial Item Information Technology