

# Simplifying the BAA, TAA, and ARRA



## *It's an alphabet soup of As, Bs, Ts and Rs—and anyone who wants to be involved with the construction of a public building or public work must decipher the codes involved.*

But where to start? The Buy American Act, the Trade Agreements Act, and the American Reinvestment and Recovery Act are complex government regulations which could require legal assistance to understand them fully. The simplest answer is that, in order to participate in a government or public works project, the materials and finished goods you source must be manufactured in the U.S. or, if the dollar value of the contract is high enough, one of 70+ foreign countries with which the U.S. has a trade agreement.

However, in this global economy, that's far easier said than done, as many manufactured goods are made up of components from a wide range of locations around the world. The government recognizes this, and in the BAA, TAA and ARRA, it tries to make allowances for varying degrees of foreign supply, especially from those nations with whom we have signed trade agreements.

This document will attempt to give you a broad overview of each of these regulations, as well as how they relate to sourcing products from T&S Brass. While T&S, like nearly every U.S. manufacturer, sources some goods from overseas, **the vast majority of the products T&S Brass sells are made right here in the U.S., from raw materials and components also sourced and manufactured in the U.S.**

---

*Legal disclaimer: It's important to note that these are very complex topics which are constantly being updated by additional regulations and clarifications. While this document provides some general guidelines, it is not intended to be legal advice; please consult your legal counsel for further guidance.*

## *The Buy American Act (BAA)*

The Buy American Act was passed in 1933 during the Great Depression to protect American jobs. In essence, the BAA was federal legislation that required the U.S. government to “prefer” American-made products. Of course, as with much government legislation, there are a number of definitions, exceptions and loopholes which complicate understanding of the regulation.

First and foremost, the definition of what is considered to be “manufactured in the U.S.” must be determined. The government considers something to be U.S.-manufactured when the product is substantially transformed domestically. See Exhibit 1 (p. 5) for a more complete explanation of this term; essentially, the product must end up looking far different, with substantial time, cost or skill involved in producing the product for it to be considered to have been manufactured in the U.S. Foreign components may be utilized in the “U.S.-manufactured product,” but the cost of the domestic components (materials and/or labor) must exceed 50% of the total cost of all components for the product to be considered U.S.-manufactured, per the BAA regulations.

Second, the BAA gives a “minimum purchase” threshold under which the BAA almost always applies, with no exceptions for other trade agreements. The complication here is that, thanks to the TAA, this threshold is different, depending on which country you would like to source materials from and still remain BAA-compliant. Exhibit 2 (p. 6) attempts to show the most recent figures (updated January 1, 2010, and effective through 2011).

Various exceptions apply in the lengthy list of BAA regulations, with one key exception applying to commercially available off-the-shelf products (commonly known as the “COTS exclusion”). If you can purchase the product commercially off of the shelf, it does not matter how many foreign components are utilized in the actual product—only that the COTS product was manufactured in the U.S., per the substantial transformation definition.

Next, the BAA exceptions allow for situations when the cost of purchasing a domestically manufactured product would be “unreasonable.” Complicated evaluation factors are applied in varying circumstances and for different governmental agencies, but a good rule of thumb is that when purchasing a domestically produced good would increase the cost by more than 12% over a foreign-made good, the BAA does not apply.

The last exception is a logical one: if you can’t source a U.S.-made product in reasonable quantities and quality for your application, then the BAA does not apply.

***The bottom line in its simplest form? The BAA requires you to buy products that are substantially transformed in the U.S., using at least 50% domestic components and labor, whenever reasonably possible.***



## ***The Trade Agreements Act (TAA)***

If the total dollar value of the contract for supply or construction exceeds a certain threshold, then things get more interesting with the applicability of the Trade Agreements Act (TAA). With a few exceptions (see Exhibit 2, p. 6), for supply contracts over \$203,000 and construction contracts over \$7.8 million, the TAA amends the BAA to allow the use of products manufactured in more than 70 countries with whom the U.S. holds trade agreements.

The TAA was passed in 1979 to protect the trading interests of the U.S. and key foreign allies by revising regulations that hindered international trade. In essence, regulations like the BAA had made it more difficult for countries with whom the U.S. had trade agreements to compete on a level playing field when it came to government contracts.

The key provision of the TAA, as it relates here, is that goods manufactured (“substantially transformed”—see Exhibit 1, p. 5) in designated countries with whom the U.S. has trade agreements are now treated the same as goods produced in the U.S. (It’s interesting to note that the TAA does not apply a component percentage test to these products, unlike the BAA requirements for U.S.-manufactured products.)

There is, as mentioned, a minimum dollar value threshold for the TAA. This threshold is different depending on whether the contract is a supply contract or a construction contract, and depending on which trade agreement the foreign country is party to. The WTO GPA (World Trade Organization Government Procurement Agreements) and individual FTAs (Free Trade Agreement), for example, frequently apply different thresholds. (See Exhibit 2, p. 6, for the most current thresholds.)

Another restriction is that not all state and local governments are party to these trade agreements, which could mean that projects for these government entities would not be covered under the TAA exceptions. Most states accept the WTO agreements, but most are not covered by the North American Free Trade Agreement (NAFTA), for instance.

***The bottom line in its simplest form? If the product you wish to source for the government is produced in a country with which the U.S. has a trade agreement, the TAA will allow that product to be treated as if it were domestically made, as long as the appropriate contract threshold is exceeded.***

## The American Recovery and Reinvestment Act (ARRA)

The ARRA was passed in 2009 and included a wide variety of funding and projects intended to spur the slumping economy during the Great Recession. The primary purpose of the ARRA was to provide government funding and impetus to get public works projects and related jobs off the ground. However, the Act also mandated that projects that received ARRA funds use domestically sourced raw materials and finished goods.

As you might expect, exceptions and clarifications also abound. First, the ARRA applies only to construction or repair projects of public buildings or public works and does not apply to government supply contracts. Second, the ARRA also applies only when ARRA funds are involved, so its restrictions would not apply if the project were funded in some other manner. Third, the ARRA eliminates the component test for all products. Thus, as long as a product is “substantially transformed” in the U.S., the percentage of components from foreign countries is unimportant. (See Exhibit 1, p. 5, for a discussion on substantial transformation.)

Fourth, exceptions are granted where goods are not available domestically in sufficient quantities or quality. Fifth, if the cost of using a domestically sourced product is more than 25% higher than a foreign sourced product, the ARRA does not apply.

Sixth, the TAA waivers also apply to the ARRA, treating products made in countries covered by a trade agreement with the U.S. as though they were domestically made. However, countries in the Caribbean Basin are not included in this exception, and, as before, state and local governments receiving ARRA funds may not always be party to foreign trade agreements.

***The bottom line in its simplest form? If you are sourcing products for a construction project funded by the ARRA, you must use domestically produced products (with no regard for foreign component content), or products sourced from a country covered by a U.S. trade agreement.***



## How all this applies to T&S

T&S Brass manufactures more than 5,000 products that comply with the requirements of the BAA and the ARRA, without any exceptions necessary.

T&S Brass was founded in the U.S. in 1947, and since then, our associates have been meticulously designing, building and testing some of the most rugged and high-quality products in the commercial plumbing industry. While we do source some products overseas, these products make up a very small portion of our portfolio. The vast majority of our products—over 5,000—are created right here in the U.S.

***The bottom line in its simplest form? The vast majority of T&S Brass products—over 5,000—are manufactured in the U.S. and meet the requirements of the BAA and ARRA, with no TAA exceptions required.***

Still family owned and operated, our associates at our Travelers Rest, SC, headquarters and our Simi Valley, CA, warehouse take pride in delivering the finest in American craftsmanship and service. For a complete, up-to-date list of all the products and parts that meet the requirements of the BAA and ARRA, please visit [www.tsbrass.com](http://www.tsbrass.com).



## exhibit 1:

### ***Substantial transformation***

The U.S. government defines a product as domestically manufactured if the “substantial transformation” of that product’s subcomponents occurred in the U.S.

The term “substantial transformation,” however, is a complex one with many tests to determine whether that requirement is met. The simple answer is that the end product must look or perform dramatically different than it started. For example, putting parts into a package does not qualify as being “substantially transformed,” nor does simple machining or simple modification of the original material.

The government is looking for a major change in the physical or chemical properties of the components, or for a process that requires considerable time, cost or skill.

#### **Use the following checklist as a test for “substantial transformation” in the U.S.:**

**Yes**

1. *Were all components manufactured and assembled in the U.S.?*

2. *Did the physical or chemical properties of the components alter significantly during the manufacturing process?*

3. *Did the manufacturing process transform the components into a product with a completely different use?*

4. *Did the manufacturing process change a multi-use component into a single-use product?*

5. *Did the manufacturing process take significant time?*

6. *Was the manufacturing process costly?*

7. *Did the manufacturing process require high-level skills?*

8. *Did the manufacturing process require multiple different operations?*

9. *Did the manufacturing process add significant value?*

*If you checked “yes” on at least one of boxes 1, 2, 3, or 4, then you have most likely met the requirements for substantial transformation.  
Or, if you checked “yes” on at least two of boxes 5, 6, 7, 8, or 9, then you have also most likely met the requirements for substantial transformation.*

## exhibit 2:

### *BAA/TAA/ARRA thresholds*

The U.S. government allows exceptions to the domestic production requirements of the BAA and ARRA for contracts that exceed certain thresholds. These exceptions apply only to countries with whom the U.S. has trade agreements, and different countries have different thresholds. This chart shows an overview of the most recent thresholds, as of January 1, 2010, which are in force through 2011.

| country                  | trade agreement | supply threshold | construction threshold |
|--------------------------|-----------------|------------------|------------------------|
| Aruba                    | WTO             | \$203,000        | \$7,804,000            |
| Australia                | FTA             | 70,079           | 7,804,000              |
| Austria                  | WTO             | 203,000          | 7,804,000              |
| Bahrain                  | FTA             | 203,000          | 9,110,318              |
| Bangladesh               | WTO             | 203,000          | 7,804,000              |
| Belgium                  | WTO             | 203,000          | 7,804,000              |
| Benin                    | WTO             | 203,000          | 7,804,000              |
| Bhutan                   | WTO             | 203,000          | 7,804,000              |
| Botswana                 | WTO             | 203,000          | 7,804,000              |
| Burkina Faso             | WTO             | 203,000          | 7,804,000              |
| Burundi                  | WTO             | 203,000          | 7,804,000              |
| Canada                   | NAFTA           | 25,000           | 9,110,318              |
| Cape Verde               | WTO             | 203,000          | 7,804,000              |
| Central African Republic | WTO             | 203,000          | 7,804,000              |
| Chad                     | WTO             | 203,000          | 7,804,000              |
| Chile                    | FTA             | 70,079           | 7,804,000              |
| Comoros                  | WTO             | 203,000          | 7,804,000              |
| Costa Rica               | CAFTA-DR        | 70,079           | 7,804,000              |
| Denmark                  | WTO             | 203,000          | 7,804,000              |
| Djibouti                 | WTO             | 203,000          | 7,804,000              |
| Dominican Republic       | CAFTA-DR        | 70,079           | 7,804,000              |
| El Salvador              | CAFTA-DR        | 70,079           | 7,804,000              |
| Equatorial Guinea        | WTO             | 203,000          | 7,804,000              |
| Finland                  | WTO             | 203,000          | 7,804,000              |
| France                   | WTO             | 203,000          | 7,804,000              |
| Gambia                   | WTO             | 203,000          | 7,804,000              |
| Germany                  | WTO             | 203,000          | 7,804,000              |
| Greece                   | WTO             | 203,000          | 7,804,000              |
| Guatemala                | CAFTA-DR        | 70,079           | 7,804,000              |
| Guinea                   | WTO             | 203,000          | 7,804,000              |
| Guinea-Bissau            | WTO             | 203,000          | 7,804,000              |
| Haiti                    | WTO             | 203,000          | 7,804,000              |
| Honduras                 | CAFTA-DR        | 70,079           | 7,804,000              |
| Hong Kong                | WTO             | 203,000          | 7,804,000              |
| Ireland                  | WTO             | 203,000          | 7,804,000              |
| Israel                   | WTO             | 203,000          | 7,804,000              |
| Italy                    | WTO             | 203,000          | 7,804,000              |
| Japan                    | WTO             | 203,000          | 7,804,000              |
| Kiribati                 | WTO             | 203,000          | 7,804,000              |
| Korea                    | WTO             | 203,000          | 7,804,000              |
| Lesotho                  | WTO             | 203,000          | 7,804,000              |
| Liechtenstein            | WTO             | 203,000          | 7,804,000              |
| Luxembourg               | WTO             | 203,000          | 7,804,000              |
| Malawi                   | WTO             | 203,000          | 7,804,000              |
| Maldives                 | WTO             | 203,000          | 7,804,000              |
| Mali                     | WTO             | 203,000          | 7,804,000              |
| Mexico                   | NAFTA           | 70,079           | 9,110,318              |
| Morocco                  | FTA             | 203,000          | 7,804,000              |
| Mozambique               | WTO             | 203,000          | 7,804,000              |
| Nepal                    | WTO             | 203,000          | 7,804,000              |
| Netherlands              | WTO             | 203,000          | 7,804,000              |

| country                        | trade agreement | supply threshold | construction threshold |
|--------------------------------|-----------------|------------------|------------------------|
| Nicaragua                      | CAFTA-DR        | 70,079           | 7,804,000              |
| Niger                          | WTO             | 203,000          | 7,804,000              |
| Norway                         | WTO             | 203,000          | 7,804,000              |
| Oman                           | FTA             | 203,000          | 9,110,318              |
| Peru                           | FTA             | 203,000          | 7,804,000              |
| Portugal                       | WTO             | 203,000          | 7,804,000              |
| Republic of Korea              | WTO             | 203,000          | 7,804,000              |
| Rwanda                         | WTO             | 203,000          | 7,804,000              |
| Sao Tome/Principe Sierra Leone | WTO             | 203,000          | 7,804,000              |
| Singapore                      | FTA             | 70,079           | 7,804,000              |
| Somalia                        | WTO             | 203,000          | 7,804,000              |
| Spain                          | WTO             | 203,000          | 7,804,000              |
| Sweden                         | WTO             | 203,000          | 7,804,000              |
| Switzerland                    | WTO             | 203,000          | 7,804,000              |
| Tanzania                       | WTO             | 203,000          | 7,804,000              |
| Taiwan                         | WTO             | 203,000          | 7,804,000              |
| U.R. Togo                      | WTO             | 203,000          | 7,804,000              |
| Uganda                         | WTO             | 203,000          | 7,804,000              |
| United Kingdom                 | WTO             | 203,000          | 7,804,000              |
| Vanuatu                        | WTO             | 203,000          | 7,804,000              |
| Western Samoa                  | WTO             | 203,000          | 7,804,000              |
| Yemen                          | WTO             | 203,000          | 7,804,000              |

To further complicate the issue, some government agencies have different dollar thresholds, and some government agencies (particularly state and local) are not covered by some trade agreements. Be sure to use these figures only as guidelines, and consult your legal counsel and the agency with whom you are contracting for the most accurate information.

## exhibit 3:

### *BAA/TAA/ARRA at a glance:*

|                                                                      | BAA | TAA | ARRA |
|----------------------------------------------------------------------|-----|-----|------|
| Covers government supply contracts                                   | x   | x   |      |
| Covers government construction contracts                             | x   | x   | x    |
| Product must be substantially transformed in U.S. or partner country | x   | x   | x    |
| Foreign components must be less than 50%                             | x   |     |      |
| Applies to any government project regardless of funding              | x   | x   |      |
| Applies only to government projects funded by ARRA                   |     |     | x    |
| Vast majority of T&S products comply                                 | x   | x   | x    |

#### *references:*

<sup>1</sup>"Decoding the 'Buy American' Regime" by Todd J. Canni; *Contract Management*; February, 2010; p. 18.

<sup>2</sup> *Ibid*; p. 22.



**RELIABILITY BUILT IN<sup>SM</sup>**

2 Saddleback Cove • P.O. Box 1088  
Travelers Rest, SC 29690  
Phone (800) 476-4103 • Fax (800) 868-0084  
[www.tsbrass.com](http://www.tsbrass.com) • Twitter: @TSBrass