
HOW WILL CHANGES TO THE BUY AMERICAN ACT AFFECT U.S. OPERATIONS?

The session will begin at 15:00

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Recent Changes to Buy American Act and Other U.S. Domestic Preference Laws

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What Are U.S. Domestic Preference Laws?

- U.S. domestic preference laws are designed to support U.S. manufacturing and U.S. jobs and provide favorable treatment to U.S.-made goods.
- There are several different laws and requirements depending upon the particular U.S. Government agency, state government, or other procurement offering.
- Examples:
 - Buy American Act / Trade Agreements Act – General U.S. Government Procurement
 - Buy America - U.S. Department of Transportation (DOT) (but will be expanding under new Infrastructure Investment and Jobs Act)
 - Berry Amendment and Specialty Metals Provision – U.S. Department of Defense

Overview and Agenda

- Background on Biden Administration
- Overview of Current U.S. Domestic Preference Laws
 - Buy American Act
 - Trade Agreements Act
 - Buy America
 - Berry Amendment and Specialty Metals Provision
- Infrastructure Investment and Jobs Act
- Q&A

Developments in the Biden Administration

- President Biden continues to promote aspects of an “America First” agenda
- Executive Order 14005 “Ensuring the Future Is Made in All of America by All of America’s Workers” (Jan. 25, 2021)
 - Maximize the U.S. Government’s purchasing of goods and services produced in the U.S. (U.S. goods, U.S. workers, U.S. components)
 - Centralizes waiver review process with new “Made in America” office
 - Replace “component test”, increase domestic content requirements for end products and construction
 - Does NOT revoke any U.S. commitments under trade agreements or the WTO

Buy American Act

(General U.S. Government procurement)

- Buy Americanu Act of 1933 (BAA) generally requires domestic end products and domestic construction materials:
 - (1) Must be manufactured in the United States; and
 - (2) Either:
 - (a) The cost of the components mined, produced, or manufactured in the United States exceeds 55% of the cost of all components, or
 - (b) Commercially available off-the shelf (COTS) items

Buy American Act

(General U.S. Government procurement)

- For products that are wholly or predominantly of iron or steel (or combination of both), the standard is stricter:
 - (1) Must be manufactured in the United States; and
 - (2) The cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components
- COTS items wholly/predominantly of iron or steel does not waive the domestic content test
- Increased price preference for domestic products to 20% (previously 6%) for large businesses and 30% (previously 12%) for small businesses

Buy American Act - Proposed Changes

July 30, 2021 – Proposed Changes to the Federal Acquisition Regulation related to Buy American Act

Key proposed changes include:

Increase the domestic content threshold initially from 55% to 60%, to increase the threshold to 65% in two years, and to increase the threshold to 75% five years after the second increase.

Temporarily allow use of the former domestic content threshold “in instances where end products or construction materials that meet the new domestic content threshold are not available or are of unacceptable cost.”

Higher price preferences will be applied for end products and construction material deemed to be critical or made up of critical components.

Contractors are required to report the domestic content of “critical” items delivered under federal contracts.

Trade Agreements Act

(General U.S. Government procurement)

- In many procurements (particularly those above a certain monetary threshold), the restrictions under the BAA are waived under the Trade Agreements Act of 1979 (TAA) which allows for similar treatment of end products and construction materials that are manufactured in a “qualifying country”
 - Reflects U.S. commitments to certain international agreements, including free trade agreements and the World Trade Organization (WTO) Agreement on Government Procurement (GPA).
 - Denmark is a qualifying country

Buy America

- Buy America is part of the Surface Transportation Assistance Act of 1982 — it applies to projects funded by the Department of Transportation and contains procurement requirements for (1) iron and steel; (2) rolling stock; and (3) other manufactured products.
- The general requirement is they need to be produced in the United States; however, the produced in the United States requirements vary.
- There is no *favorable* treatment for products from countries subject to trade agreements

Buy America

- For example, for DOT's Federal Transit Administration:
 - 1) Very stringent requirements for steel and iron end products (items primarily of iron and steel) – all steel and iron manufacturing processes must take place in the U.S.
 - 2) Rolling stock: transit vehicles such as buses, vans, cars, railcars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services
 - The cost of components produced in the United States is more than 70 percent of the cost of all components of rolling stock
 - Final assembly of rolling stock takes place in the United States
 - 3) Slightly less stringent requirements for other manufactured products to be produced in the United States
 - All manufacturing processes for the product must take place in the U.S.
 - All of the components of the product must be of U.S. origin. A component is considered of U.S. origin if it is manufactured in the United States, regardless of the origin of its subcomponents.

Berry Amendment / Speciality Metals Restriction

(U.S. Department of Defense)



Berry Amendment generally requires the Department of Defense to purchase certain products that have been entirely grown, reprocessed, reused, or produced within the United States.

Certain exceptions apply

- e.g. procurements by vessels in foreign waters

Speciality Metals Restriction – Generally requires that certain types of steel and metal alloys contained in aircrafts, missile and space systems, ships, tank and automotive items, weapon systems, ammunition, or any components within, purchased by DOD must be melted or produced in the United States.

Infrastructure Investment and Jobs Act

(Infrastructure Projects)

- General requirement: all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States. The term “produced in the United States” is defined as follows:
 - In the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the U.S. (no waiver for COTS items).
 - In the case of manufactured products, that the manufactured product was manufactured in the U.S. and the cost of the components of the manufactured product that are mined, produced, or manufactured in the U.S. is greater than 55% of the total cost of the components of the manufactured product (unless another standard applies under U.S. law or regulation).
 - In the case of construction materials, that all manufacturing processes for the construction material occurred in the U.S.

Infrastructure Investment and Jobs Act

(Infrastructure Projects)

- On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act into law. The Act requires every U.S. federal agency, within 180 days of enactment (May 14, 2022), to impose a domestic preference requirement for every “infrastructure project” that receives federal funding.
 - The term “infrastructure” is defined to include, at a minimum: (1) roads, highways, and bridges; (2) public transportation; (3) dams, ports, harbors, and other maritime facilities; (4) intercity passenger and freight railroads; (5) freight and intermodal facilities; (6) airports; (7) waters systems including drinking water and wastewater systems; (8) electric transmission facilities and systems; (9) utilities; (10) broadband infrastructure; and (11) buildings and real property.
 - The term “project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Opportunities and Limitations



What does this mean for Danish companies seeking to do business in the United States?

How does this impact U.S. commitments to trading partners?

What can Danish companies do now?

Questions?



THANK YOU

