

Report on the Impact of Free Trade Agreements on Buy American Laws

This report is a joint assessment made by the Secretary of Commerce, the United States Trade Representative, and the Director of the Office of Management and Budget

February 2024



Introduction

Section 70934 of the Infrastructure Investment and Jobs Act (IIJA) requires the Secretary of Commerce, the United States Trade Representative, and the Director of the Office of Management and Budget to assess the impacts in a publicly available report of all United States free trade agreements (FTAs), the World Trade Organization Agreement on Government Procurement (GPA), and Federal permitting processes¹ on the operation of Buy American laws, including their impacts on the implementation of domestic procurement preferences. This report provides that joint assessment and is divided into the following four major sections:

- U.S. Trade Agreement Obligations and the Impact on the Operation of Buy American Laws and Domestic Procurement Preferences
- Measuring the Monetary Impact of U.S. Trade Obligations on Buy American Laws and Domestic Procurement Preferences
- Statistical Shortcomings of Available Federal Procurement Data
- Assessment of Impact of Trade Agreement Commitments on Buy American Laws and Domestic Procurement Preferences

I. U.S. Trade Agreement Obligations and the Impact on the Operation of Buy American Laws and Domestic Procurement Preferences

U.S. federal government procurements are governed by domestic statutory and regulatory requirements, as well as international commitments.

There are three primary pieces of legislation that require the U.S. Government to afford preferential treatment to U.S. or FTA- and GPA-partner goods and services in federal procurement: (1) the Buy American Act (BAA), (2) the Trade Agreements Act of 1979 (TAA), and (3) the Small Business Act of 1953 (SBA).

At or below the micro-purchase threshold (currently \$10,000²), there are no BAA restrictions.³ Procurement officials are authorized to purchase goods and services from any supplier, domestic or foreign, trading partner or not.

The Buy American Act

The BAA applies to purchases exceeding \$10,000 and generally requires Federal government agencies to purchase only U.S.-made goods. The BAA has a two-part test for determining

¹On March 6, 2023, OMB, in coordination with the Chair of the Council on Environmental Quality, and the Executive Director, Federal Permitting Improvement Steering Council, published M-23-14, “Implementation Guidance for the Biden-Harris Permitting Action Plan.” It provides detailed guidance to agencies on carrying out the initiatives of the Permitting Action Plan issued May 11, 2022. Accordingly, Federal permitting processes are not included in the scope of this report.

² See 48 CFR 2.101 at definition of micro purchase threshold.

³ See 48 CFR 25.100(b).

whether a manufactured product⁴ is considered U.S.-made, otherwise referred to in the Federal Acquisition Regulation (FAR) as a “domestic end product”: (1) the item must be manufactured in the United States, and (2) more than 60 percent of the cost of all the component parts must also be manufactured in the United States.⁵ There are, however, six basic exceptions⁶ to this general requirement:

- if a domestic product is not available;
- if a domestic product is an unreasonable cost (20 percent more than the import ordinarily; or 30 percent more if offered by a domestic small business; 50 percent if the acquisition is made by the Department of Defense (DOD) for both large and small business);
- if it is in the “public interest” to procure from another country;
- if the procurement is for commercial information technology equipment⁷;
- if a domestic product is for use outside of the United States; or
- if the goods purchased are specifically for commissary resale.

The Trade Agreements Act

The TAA, as amended, authorizes the President to waive, with respect to countries that become parties to the GPA or another international agreement and provide “appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products,” the application of any law, regulation, or procedure that provides a preference for U.S.-made goods.⁸ In order for the President to designate a country to benefit from such a waiver, that country must be (1) a party to the United States-Mexico-Canada Agreement (USMCA), (2) a party to the GPA, (3) a “non-major industrial country” willing to assume similar obligations and provide competitive procurement opportunities (such as in a FTA), or (4) a least-developed country.⁹ (These countries are referred to as “designated countries”).¹⁰

Executive Order 12260 delegates the authority to exercise this waiver to the United States Trade Representative (USTR), and the USTR has waived discriminatory purchasing requirements for goods, services, and suppliers of U.S. trading partners which have assumed reciprocal government procurement obligations consistent with the requirements of the TAA. Specifically, this means that Federal agencies must extend national treatment to offers of eligible products and services from designated countries by providing them “equal consideration as domestic offers.”¹¹

⁴ An unmanufactured product is a domestic end product if it is product mined or produced in the United States.

⁵ The percentage is defined in the Federal Acquisition Regulation (FAR). On March 7, 2022, the FAR Council issued a final rule amending the FAR to implement section 8 of E.O. 14005, Ensuring the Future is Made in All of America by All of America’s Workers. Effective October 25, 2022, the domestic content threshold increased from 55 to 60 percent, and then will increase to 65 percent starting in 2024, and 75 percent starting in 2029. For further information: <https://www.federalregister.gov/documents/2022/03/07/2022-04173/federal-acquisition-regulation-amendments-to-the-far-buy-american-act-requirements>.

⁶ See 48 CFR 25.100(b) and 25.103.

⁷ This exception was added by Congress in Section 535 of Division F, Title V of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199) and Section 517 of Division H, Title V of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447). See also 48 CFR 25 (Jan. 3, 2006).

⁸ 19 USC § 2511(a).

⁹ 19 USC § 2511(b).

¹⁰ Designated countries also include members of the Caribbean Basin Economic Initiative. See FAR 25.405.

¹¹ FAR 25.402(a)(1).

The TAA does not, on its own, waive any Buy American laws through statute; it provides the authority to the President (delegated to the USTR) to modify or withdraw any waivers granted.¹² The TAA prohibits the waiver of any small business or minority preferences including those established by the SBA.¹³

To encourage other countries to join the GPA or otherwise open their procurement markets to U.S. suppliers, goods, and services, the TAA prohibits the purchase of goods and services that are not from designated countries for all GPA-covered procurements (unless the Federal agency receives no offer or the offers are insufficient).¹⁴ This prohibition prevents suppliers from non-eligible countries such as China and Russia from bidding on and providing goods and services for covered procurements, with certain exceptions. Unlike the BAA, the TAA does not provide a price-based exception allowing non-designated countries to compete on covered procurements. However, because the prohibition only applies to covered procurements above the GPA threshold (\$183,000 for goods and services), it does not bar products from third countries from fulfilling other procurements, even if they are covered procurements under an FTA that applies at a lower threshold (for example, \$100,000 for goods and services under the United States-Korea Free Trade Agreement (KORUS)). In addition, procurements conducted through small business set-asides are not covered procurements under the GPA and U.S. FTAs, so the BAA does apply to these procurements, as do the six basic exceptions under the BAA, including for purchases of information technology equipment. As a result, it is possible that an agency could purchase Chinese-made goods valued over \$183,000 through a small business set-aside from a small business importer who qualifies as a non-manufacturer.¹⁵

The TAA also uses a different determination for the country of origin of products than the BAA. Whereas the BAA contains a two-part test to determine whether the manufactured goods are of U.S.-origin, the TAA uses the “substantial transformation” test to determine the country of origin for eligible products.¹⁶ That means that the country where the product was made into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed is the country of origin for TAA-covered procurements.¹⁷ The Federal government does not require suppliers to report the percentage of domestic or foreign-origin content for these procurements.

TAA Designated Countries

¹² 19 USC § 2511(c).

¹³ 19 USC § 2511(f).

¹⁴ 19 USC § 2512(a); FTA thresholds are updated every two years to account for inflation, while GPA thresholds are updated every two years based on the exchange rate between U.S. Dollars and Special Drawing Rights at the International Monetary Fund, which is used by all GPA Parties.

¹⁵ A business may qualify as a nonmanufacturer if it: does not exceed the 500 employee alternative size standard for nonmanufacturers; is primarily engaged in the retail or wholesale trade and normally sells the type of products being supplied; takes ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; supplies the end products of a small business manufacturer or processor made in the United States, or obtains a waiver of such requirement. For further information:

<https://www.sba.gov/partners/contracting-officials/small-business-procurement/nonmanufacturer-rule>. See also 13 CFR 121.406.

¹⁶ 19 USC § 2518(3)(b).

¹⁷ 48 CFR § 25.003.

The United States has included commitments on government procurement in trade agreements for over 40 years. The first such commitment was made in the 1981 GATT Code on Government Procurement (GATT Code). In 1994, the GPA replaced the GATT Code. Every U.S. FTA (except the U.S.–Jordan FTA, which requires Jordan to join the GPA) contains procurement obligations. As a result, the United States has procurement obligations in force with 59 signatories to the World Trade Organization (WTO)’s GPA or U.S. FTAs: Armenia, Aruba, Australia, Bahrain, Canada, Chile, Taiwan (participating in the WTO as “Chinese Taipei”), Colombia, Costa Rica, Dominican Republic, El Salvador, the European Union (EU) (which includes Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, and Sweden), Guatemala, Honduras, Hong Kong, Iceland, Israel, Japan, the Republic of Korea, Liechtenstein, Mexico, the Republic of Moldova, Montenegro, Morocco, New Zealand, Nicaragua, Norway, Oman, Panama, Peru, Singapore, Switzerland, Ukraine, and the United Kingdom.

TAA Covered Procurements

The GPA and the government procurement chapters of U.S. FTAs include market access “schedules” that set forth the criteria for determining whether a procurement is covered. The criteria include: (1) monetary thresholds, (2) entities, (3) excluded goods, services, or construction services, and (4) other exclusions.

The GPA and the government procurement chapter of each U.S. FTA set forth thresholds below which procurements are excluded from the agreement’s trade obligations. For the GPA, the 2022-2023 thresholds for goods and services (excluding construction) at the central/Federal government level is \$183,000. For U.S. FTAs, the threshold varies from \$50,000 for suppliers, goods, and services of Israel to \$183,000 for the suppliers, goods, and services of some other U.S. FTA partners.

Procurement obligations only apply to entities specified in the schedule, which generally reflects U.S. sensitivities. While the U.S. schedule covers almost all procurement of Federal agencies, there are notable exclusions. For example, in the GPA, the U.S. schedule does not cover procurements by the U.S. Postal Service, the Federal Aviation Administration, or Amtrak. In another example, as relates to reciprocity, since Japan does not cover its space agency, JAXA, the U.S. schedule excludes Japan from competing for otherwise GPA-covered NASA procurements.

U.S. procurement schedules in the GPA and U.S. FTAs include a number of goods and services exclusions that reflect domestic priorities and sensitivities. These exclusions range from specific goods bought by a certain agency (such as goods covered by the Berry Amendment with respect to DOD) to certain services and programs; U.S. trade obligations only apply to procurements above the relevant threshold by a covered entity for covered goods and services that are not otherwise excluded from coverage under the trade agreement. For procurements that are not

covered by U.S. trade obligations, it is not necessary to waive any domestic procurement preferences of the Buy American laws.

Other Procurements Excluded from U.S. Trade Obligations

There are a number of procurement preferences for U.S. goods and services that are excluded from U.S. trade agreement obligations. Because these are excluded procurements under U.S. trade agreements, Buy American laws still apply. These include:

- Small business set asides – The United States excludes any procurement set aside on behalf of a small or minority-owned business. Procurements of goods set aside for small businesses are subject to the BAA requirements, unless they qualify as a non-manufacturer, and are provided a greater price preference (30 percent versus 20 percent). The SBA automatically reserves federal procurements of between \$10,000 and \$250,000 for U.S. small businesses. This threshold for the automatic small business set-aside increased from \$150,000 to \$250,000 in 2018 to account for inflation. Because the United States excludes small business set-asides from U.S. international agreements, the rising threshold effectively provided greater application of the BAA while remaining compliant with U.S. international commitments.
- Waivers for Federal Assistance Programs in U.S. States – Whether domestic sourcing preferences in the Buy American laws apply to state procurements funded by Federal assistance depends on the specific program. Steel, iron, and manufactured products attached to Federal funds for mass transit and transportation projects subject to Buy America preferences are explicitly excluded from U.S. trade obligations.¹⁸ Thus, the preferences apply to these specific state procurements.
- War material – The United States covers procurements by the DOD under most of its FTAs and the WTO GPA. However, these obligations exclude the procurement of arms, ammunition, and war material. These exclusions include procurements of major defense equipment such as aircraft, combat vehicles, and ships.
- Berry Amendment – The United States also excludes DOD procurements covered by the Berry Amendment. These procurements include textiles, footwear, hand tools, specialty metals, and food. Related to the Berry Amendment, similar purchases of textiles and clothing footwear by the Department of Homeland Security are excluded with respect to the Coast Guard and the Transportation Security Administration for all agreements except the U.S.–Chile FTA.
- Agricultural goods – The United States excludes agricultural goods procured by the U.S. Department of Agriculture (USDA) in the furtherance of an agricultural support program or a human feeding program.
- Goods produced in prisons and certain nonprofits – The United States exempts its acquisitions from Federal Prison Industries, Inc. and nonprofits employing people who are blind or severely disabled (the Ability One program) from its procurement obligations.

¹⁸ See WTO GPA, United States Coverage Schedule, Annex 2, note 5, available at <https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=UnitedStates&AnnexNo=2&ContentCulture=en>

- Federal procurement also excludes the following services from the TAA: dredging, research and development, telecommunications, transportation, and any service in support of military services overseas.

II. Measuring the Monetary Impact of U.S. Trade Obligations on Buy American Laws and Domestic Procurement Preferences

As discussed above, U.S. trade agreement obligations result in the waiver of certain domestic purchasing requirements. As part of the analysis into the impact of these agreements on the operation of Buy American laws, it is important to examine the value of contracts where the BAA applies versus the amount and value of contracts that are covered by U.S. trade agreements. For the purposes of assessing the impact of trade agreements on the operation of Buy American laws as required by the Act, and given the availability of data, this quantitative analysis will focus on U.S. Government procurement at the Federal level. U.S. procurement statistics are also submitted annually to the WTO Committee on Government Procurement in accordance with the GPA's data reporting requirements.¹⁹

The U.S. Federal Procurement Data System Next Generation (FPDS-NG), which is part of the SAM.gov Data Bank, is the main depository of Federal procurement statistics. Contracting officers are required to input data on contract actions into FPDS-NG as part of making a contract award and then review the data for accuracy.²⁰ This quantitative assessment uses data from SAM.gov, which includes data points from the Trade Agreements Report and the Buy American Place of Manufacture Report.

Federal TAA-Eligible Procurement

Using data from the FPDS-NG Trade Agreements Report (TAR), the United States reports statistics to the WTO Committee on Government Procurement on the total value of TAA-eligible federal procurement open specifically to GPA parties. This data on TAA-eligible procurement shows the total value of federal procurement that TAA-designated countries are able to compete for under the TAA, not the total value that they were actually awarded.

The three most recent fiscal years with complete data available are 2013 to 2015 (*see* Table 1)²¹. During this period, total annual federal procurement averaged \$449.9 billion, with \$164.4 billion (37 percent) for manufactured goods.²² Of the \$449.9 billion, TAA-eligible federal procurement averaged \$154.8 billion, or 34 percent of all U.S. federal procurements of goods and services.

¹⁹ Per Article XVI.4 of the GPA, members are required to report procurement statistics for covered central, subcentral, and other government entities. For the United States, central government entities correspond to covered federal entities.

²⁰ 48 CFR § 4.604(b).

²¹ Due to the use of multi-year contracts, the total dollars obligated for contracts awarded in a given fiscal year will not be fully accounted for until up to six years from the initial award date. As a result, FY2015 is the most recent year for which complete data is available as of the drafting of this report.

²² Total annual federal procurement of goods obtained from Buy American Act Place of Manufacture Report, FY2013-15. *See* Table 2.

Procurements of TAA-eligible goods accounted for 12 percent of all federal procurements during this period.

Table 1. Total Federal and TAA-Eligible²³ Procurement, Billions					
Fiscal Year	Value of Total Federal Procurement	Value of All TAA-Eligible Procurements (Goods and Services)		Value of TAA-Eligible Procurement of just Goods	
		Value	Share of Total Federal Procurement	Value	Share of Total Federal Procurement
2013	\$463.4	\$173.0	37%	\$55.9	12%
2014	\$446.2	\$129.0	29%	\$39.6	9%
2015	\$440.1	\$162.5	37%	\$62.0	14%
2013 - 15 Avg.	\$449.9	\$154.8	34%	\$52.5	12%

Source: Sam.gov Data Bank, Total federal procurement from Federal Contract Actions and Dollars Report, TAA-eligible procurements from Trade Agreements Report, FY2013-15.²⁴

U.S. Procurements of Foreign Manufactured Products

Using data from the FPDS-NG Buy American Act Place of Manufacture Report, the following data present details on the value of procurement awarded under various BAA waivers and the country of origin for procurements awarded. The U.S. Government does not use this data in any official statistical reporting to the WTO Committee on Government Procurement because of concerns about the accuracy and lack of detail available, as the level of data collected does not align directly to international obligations or domestic regulations on how country of origin is applied. Neither the GPA nor any FTAs require a country to report on country of origin due to the difficulty of collecting such data accurately in both the United States and foreign countries. However, this is the only data currently collected by the Federal government pertaining to country of origin. This data provides statistics only on procurements of goods and not services.

From 2013 to 2015, total annual Federal procurement averaged approximately \$449.9 billion. During this period, U.S. BAA waivers for U.S. federal procurements of goods manufactured outside of the United States averaged \$9.4 billion, or 6 percent of the average \$164.4 billion spent on all manufactured goods (see Table 2). The leading waiver type was for *use outside of the United States*, at \$7.3 billion, or 78 percent of U.S. procurements of foreign-manufactured goods during that period. This was followed by waivers for *domestic non-availability*, averaging

²³ Contracts that are above the established GPA thresholds, issued by covered entities, and are for covered goods, services, and construction services.

²⁴ This data was pulled from the Federal Procurement Database – Next Generation’s (FPDS-NG) Federal Contract Actions and Dollars Report and Trade Agreements Report (TAR) found on Sam.gov. Federal Contract Actions and Dollars data for FY2013-15 was pulled on March 1, 2022. TAR Data for FY2013 was pulled on October 1, 2019, data for FY2014 on October 1, 2020, and data for FY2015 on October 1, 2021. The TAR tracks obligations on single and multi-year contracts initially signed in a specific fiscal year throughout their lifetime. It is not directly comparable to data pulled from other parts of FPDS-NG, including other standard reports such as the Place of Manufacture report, which contain obligations made in the stated fiscal year on contracts awarded in the stated fiscal year or in previous fiscal years in the case of multi-year contracts.

\$0.8 billion, or 8 percent, and *Trade Agreements Act*, averaging \$0.6 billion, or 6 percent. Procurements from *qualifying countries (DOD funds only)* were the fourth largest category, averaging \$0.5 billion, or 6 percent of federal procurements for goods manufactured outside of the United States.

Table 2. Value of U.S. Federal Action Obligations by Manufacturing Location and BAA Waiver Type	
Location of Manufacture and BAA Waiver Type	FY2013-15 Avg, Billions
Manufactured Outside of the United States	\$9.4
Use Outside of United States	\$7.3
Domestic Non-Availability	\$0.8
Trade Agreements Act	\$0.6
Qualifying Country (DOD funds only)	\$0.5
Commercial Information Technology	\$0.2
Resale	\$0.0
Unreasonable Cost of Domestic End Product	\$0.0
Public Interest Determination	\$0.0
Manufactured in the United States	\$154.9
Total Manufactured End Products Dollars	\$164.4
<i>Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, FY2013-15 Avg.</i>	

U.S. Procurements of Foreign Manufactured Products Identified as TAA Procurements

The following assessment examines FY2015 specifically, as this is the most recent year for which complete U.S. statistics on GPA-eligible procurement is available (as discussed previously). According to the FY2015 data, federal procurements of foreign manufactured goods identified as TAA procurements totaled \$0.4 billion.²⁵ This amounted to 0.7 percent of the \$62.0 billion in U.S. procurement of manufactured goods open to competition by GPA parties that year (see Table 3).

Table 3. TAA-Identified Procurements of Foreign-Manufactured Goods Compared to GPA-Eligible Procurement, FY2015	
GPA-Eligible Procurement	Billions
Total GPA-Eligible Procurement of Goods and Services	\$162.5
Total GPA-Eligible Procurement of Goods	\$62.0
Total TAA-Identified Procurement Awarded of Foreign-Manufactured Goods	\$0.4
Share of Eligible Procurement of Goods	
TAA-Identified Procurement Awarded of Foreign-Manufactured Goods, Share of GPA-Eligible Procurement of Goods	0.7%

²⁵ This portion of the assessment uses FY2015 data exclusively, as detailed data from the Buy American Act Place of Manufacture Report is only available from individual contracts awarded, and limitations on data output from the FPDS-NG platform precluded analysis of additional fiscal years. In addition, FY2015 data are more closely comparable to TAA-eligible data submitted to WTO GPA.

Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, Award Detail, and Trade Agreements Report, Open and Limited Tendering, FY2015.

Statistics show that federal procurements of foreign manufactured goods identified as TAA procurements constitute less than 1 percent of all federal purchases of such products (see Figure 1). In FY2015, federal procurements of foreign manufactured goods totaled \$158.6 billion, of which \$62.0 billion was eligible for competition by GPA parties. Only \$0.4 billion of those procurements awarded were identified as TAA procurements, amounting to 0.7 percent of GPA-eligible procurements of manufactured goods and only 0.3 percent of all federal procurements of manufactured goods.

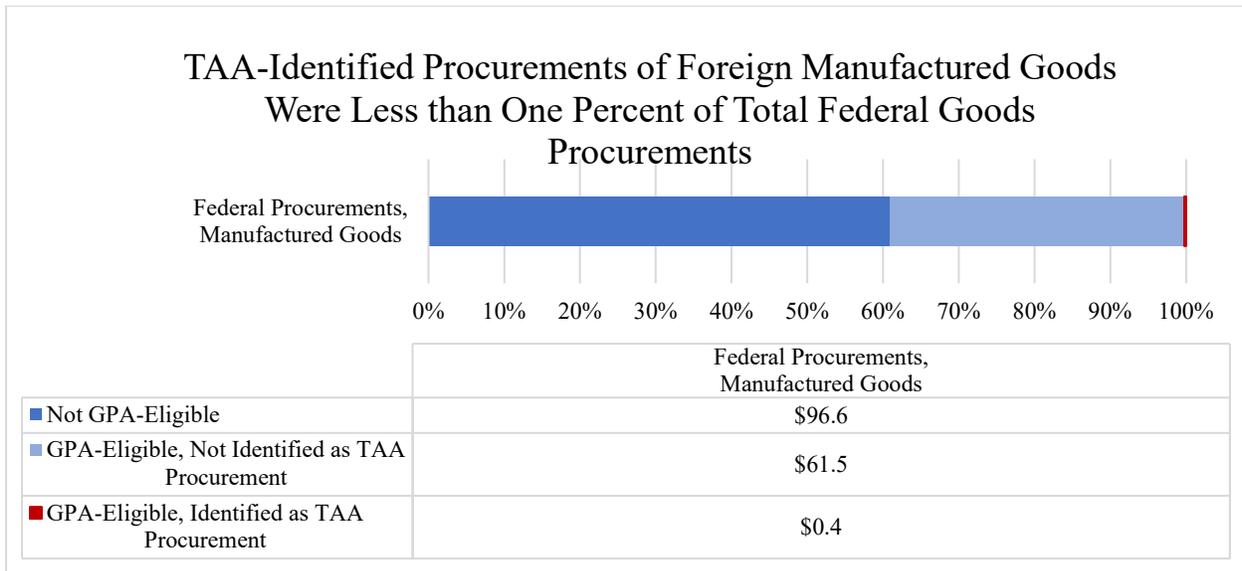


Figure 1: Federal Procurements of Goods by GPA-Eligibility and TAA Procurement, FY2015, Billions. Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, Trade Agreements Report. USG calculations.

TAA-Identified Procurements by Product Country of Origin

In FY2015, the top five sources of foreign manufactured products identified as TAA procurements were Germany, Mexico, Canada, France, and Japan (see Figure 2). Together, these countries accounted for procurements totaling \$315 million, or 77 percent of all such TAA-identified procurements. Germany was the top country of product origin, supplying \$127.1 million worth of manufactured products, or 29 percent of TAA procurements of foreign manufactured goods, while Mexico supplied \$62.0 million (14 percent), Canada supplied \$54.7 million (13 percent), France supplied \$40.3 million (9 percent), and Japan supplied \$31.3 million (7 percent). The United Kingdom, Spain, Australia, and Israel were also notable sources of TAA-identified manufactured products.

Germany, Mexico, and Canada were Lead Sources of Foreign Manufactured Products Identified as TAA Procurements

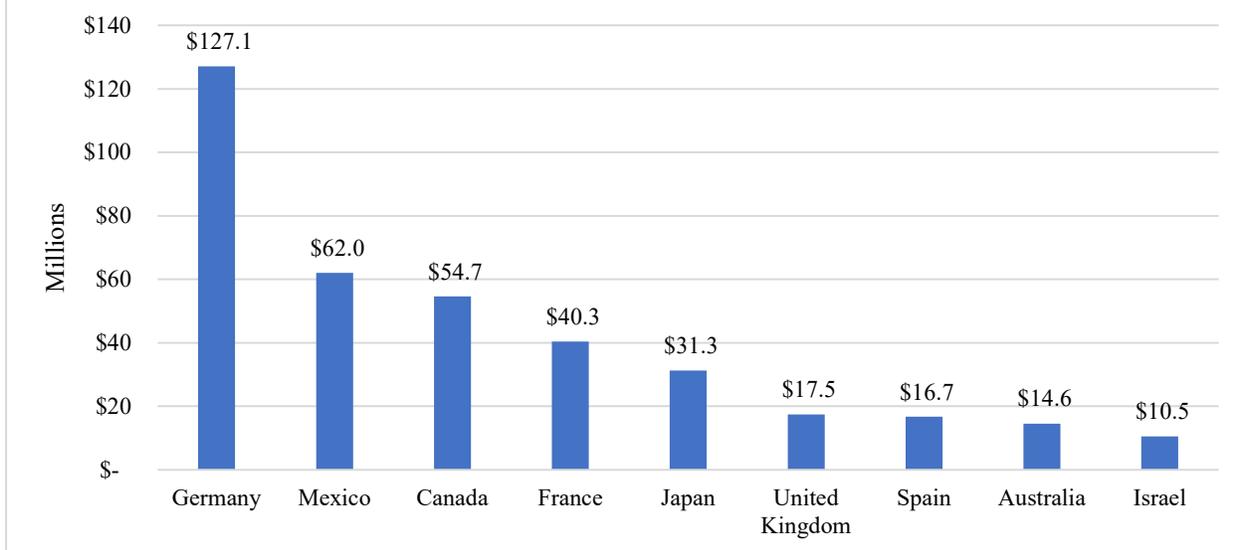


Figure 2: Federal Procurements of Foreign Manufactured Goods Identified as TAA Procurements by Country of Product Origin, FY2015. Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report.

According to the Buy American Act Place of Manufacture Report, 5 percent of procurements for foreign manufactured goods identified as TAA procurements, totaling \$21.7 million, were reported having a country of origin that was not a TAA-designated country (see Table 4). The United Arab Emirates was the largest source of such procurements, totaling \$8.3 million, followed by those from Gabon (\$3.9 million), China (\$3.2 million), Turkey (\$1.3 million), Zimbabwe (\$1.2 million), and Malaysia (\$1.0 million). The report identified 41 additional non-TAA designated countries as the origin of TAA-identified procurements of goods. It is unclear why procurements from non-TAA designated countries would be identified as TAA procurements within the Buy American Act Place of Manufacture Report. This could be the result of inaccurate or incorrectly recorded contract data into FPDS-NG or may be an example of where contracting officers need better training in order to conduct all procurements consistent with FAR procedures.

Product Country of Origin	Value, Millions
TAA-Designated Countries	\$410.4
Non-TAA-Designated Countries	\$21.7
United Arab Emirates	\$8.3
Gabon	\$3.9
China	\$3.2
Turkey	\$1.3
Zimbabwe	\$1.2
Malaysia	\$1.0
Other	\$2.7

No Country of Origin Listed	\$0.0
Total	\$432.5

Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, Award Detail, FY2015.

TAA-Identified Procurements by Product Category

In FY2015, the largest category of foreign-manufactured goods among TAA-identified procurements was medical, dental, and veterinary equipment and supplies, totaling \$102 million, or 24 percent of all TAA-identified procurements (*see* Figure 3). Other top categories included information technology equipment, software, supplies, and support equipment (\$41.8 million), instruments and laboratory equipment (\$35.2 million), motor vehicles, cycles, and trailers (\$27.7 million), clothing, individual equipment, and insignia (\$25.8 million), aircraft and airframe structure components (\$22.3 million), aircraft components and accessories (\$20.3 million), communication, detection, and coherent radiation equipment (\$20.2 million), metalworking machinery (\$13.7 million), and furniture (\$10.3 million). Collectively, the top ten categories of goods among TAA-identified procurements accounted for 74 percent of all TAA-identified procurements of foreign-manufactured goods.

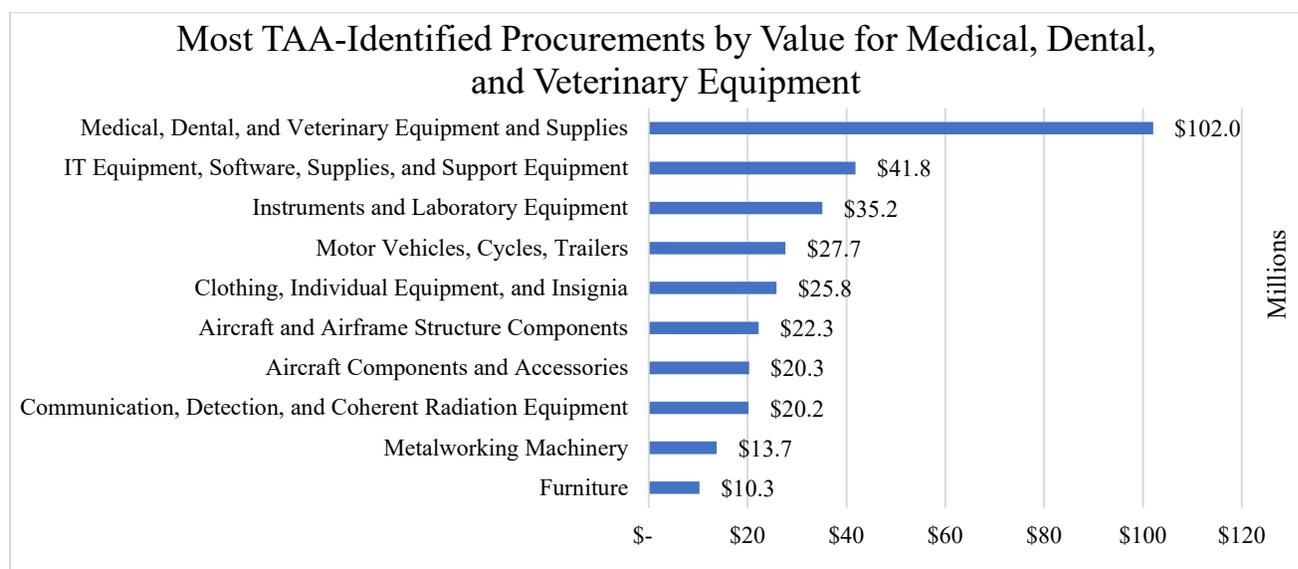


Figure 3: Top 10 Product Categories of Foreign Manufactured Goods Identified as TAA Procurements, FY2015. Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, Award Detail.

Among the top ten procured product categories, individual countries were the primary country of origin for six product categories measured by value (*see* Table 6). For the largest category – medical, dental, and veterinary equipment and supplies – Germany was the country of origin for 80 percent TAA-identified procurements of foreign manufactured goods. Mexico was the leading country of origin for information technology equipment, software, supplies, and support equipment and clothing, individual equipment, and insignia, with 74 percent and 98 percent respectively. Among other categories, Spain was the leading country of origin for aircraft and airframe structure components with 61 percent, while France was the leading source for aircraft components and accessories with 89 percent. Canada was the leading country of origin for

furniture with 95 percent. For the other four top product categories, two or more countries accounted for the majority of TAA-identified procurements of foreign manufactured goods.

Table 6. Top Product Categories and Top Country of Origin			
Product Category	Country of Product or Service Origin	Millions	Share
Medical, Dental, and Veterinary Equipment and Supplies	Germany	\$81.4	80%
IT Equipment, Software, Supplies, and Support Equipment	Mexico	\$31.1	74%
Clothing, Individual Equipment, and Insignia	Mexico	\$25.4	98%
Aircraft and Airframe Structure Components	Spain	\$13.5	61%
Aircraft Components and Accessories	France	\$18.0	89%
Furniture	Canada	\$9.7	95%
<i>Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, Award Detail, FY2015. USG calculations.</i>			

TAA-Identified Procurements by Procuring Agency

Of TAA-identified procurements of foreign manufactured goods, the DOD, the Department of Veterans Affairs (VA), and the Department of Homeland Security (DHS) procured the most by value, spending \$136.6 million, \$96.1 million, and \$94.1million in FY2015, respectively (see Figure 4). Collectively, these agencies’ procurements account for approximately 76 percent of TAA-identified procurements of foreign-manufactured goods that year. Additional leading agencies include the General Services Administration (GSA, \$22.2 million), the Department of Commerce (Commerce, \$19.6 million), and the Department of Health and Human Services (HHS, \$19.0 million).

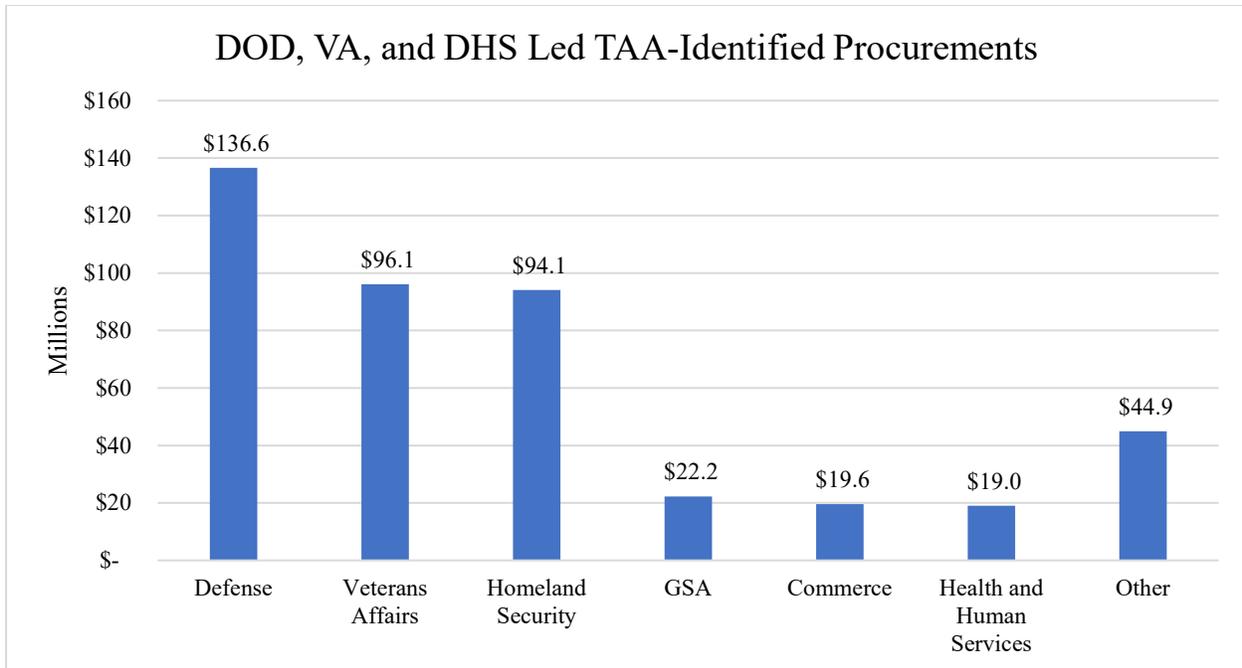


Figure 4: Federal Procurements of Foreign Manufactured Goods Identified as TAA Procurements by Funding Agency, FY2015. Source: Sam.gov Data Bank, Buy American Act Place of Manufacture Report, Award Detail.

III. Statistical Shortcomings of Available Federal Procurement Data

In order to fully understand the impact of U.S. trade obligations, the United States needs to know the value of U.S. Government procurement that is open to trade agreement partners and the value that is actually purchased by the government from trade agreements partners. The Trade Agreements Report in FPDS-NG reports that \$162.5 billion in Federal contracts were open to GPA parties in 2015. While the Buy American Act Place of Manufacture Report does provide some insight into the value of procurements awarded to products manufactured in TAA countries, these statistics fall short of providing a complete analysis. The United States does not use any of the data from the Buy American Act Place of Manufacture Report in its official statistical reporting to the WTO Committee on Government Procurement due to concerns with accuracy, lack of detail, and the fact that the country of origin data collected in this report does not align with country of origin determinations under both the BAA and the TAA.

When Federal contracting officers report data on government contracts, they do not currently have the option to indicate if a procurement was TAA eligible. They will indicate if a TAA waiver was applied for a foreign purchased product but it's unclear if this is done in every instance. Since the TAA automatically applies to procurements over the TAA threshold, the total value of procurements awarded under TAA, to both foreign and domestic products, may be underreported. There is no requirement to report if a contract was awarded as a domestic product under TAA or BAA or even if the contract was awarded under TAA or BAA procedures.

Federal agencies do, however, provide information regarding “place of manufacture”²⁶ and “place of performance.”²⁷ While these indicators provide insight into where the goods were produced, they do not line up directly with what is required for TAA consideration under U.S. trade agreements, *i.e.*, they do not indicate exactly where the finished product(s) in the contract were “substantially transformed.” The “Place of Manufacture” and the “Place of Performance” indicators also focus on the preponderance of goods and do not provide the details and values associated with goods originating from multiple countries when they are part of the same contract. Additionally, this data does not provide sufficient detail on domestic or foreign content that is required for qualification under the BAA.

It is also important to note that FY2015 data from the Buy American Act Place of Manufacture Report suggest TAA waivers were applied for procurements where non-TAA countries were identified as the country of origin, including China and North Korea. The presence of such data in the report suggests that TAA waivers have been applied incorrectly to procurements that were not open to competition from those countries. An alternative possibility is that contract data was incorrectly recorded in the FPDS-NG.

In order for agencies to make a more accurate assessment of the impact of free trade agreements on the operation of Buy American laws, the Federal government would need to require additional reporting on the country of origin as it aligns to requirements under both the TAA and BAA. The burden and additional paperwork that collecting this data would require could limit the ability or desire of some domestic suppliers to compete for Federal contracts. Further, it is unclear if Federal procurement officers would have the ability to verify such information provided by contractors, whether domestic or foreign. The Administration is evaluating whether these burdens can be made manageable in a way that does not outpace the value to the policymaking process of additional information collection.

IV. Assessment of Impact of Trade Agreement Commitments on Buy American Laws and Domestic Procurement Preferences

U.S. international trade agreement commitments allow TAA-designated goods, services, and suppliers to compete for those contracts that the United States has agreed to cover based on reciprocal coverage. These reciprocal commitments provide U.S. goods, services, and suppliers the ability to compete in and win contracts in GPA and FTA procurement markets around the world.

U.S. international commitments do not impact the operation of Buy American laws below the TAA threshold or where the United States has excluded procurements from trade agreement coverage, such as the Small Business Set Aside program for procurements up to \$250,000.

²⁶ Place of Manufacture indicates whether the end products procured by the contract are manufactured inside or outside the U.S. in accordance with the Buy American Act (see FAR 25.1) and any exception or reasons for waivers employed. (FPDS Data Dictionary).

²⁷ Place of Performance indicates the location of the principal plant or place of business where the items will be produced, supplied from stock, or where the service will be performed. (FPDS Data Dictionary).

The Federal government currently lacks the ability to make an accurate or complete assessment of the monetary impact of free trade agreements on the operation of Buy American laws due to the lack of accurate country of origin data collected during the procurement process.

Based on the data available, less than 1 percent of all federal contracts open to competition under the GPA were awarded to foreign goods identified as TAA procurements in the last year for which complete data is available. However, as noted in this report, this data does not account for the full value of foreign or domestic content or where the substantial transformation of a product took place, as is required by the BAA and TAA and it is unclear if the full value of TAA procurement is being reported. The federal procurement system relies on contractors' self-certification that they meet the requirements under BAA or TAA but does not require the contractors to provide detailed country of origin data aligning to those laws.

The Administration continues to review these issues and look for ways to update domestic preferences to fit the current realities of the American economy. This includes enforcement of existing "Made in America Laws" and consideration of future changes to such laws.