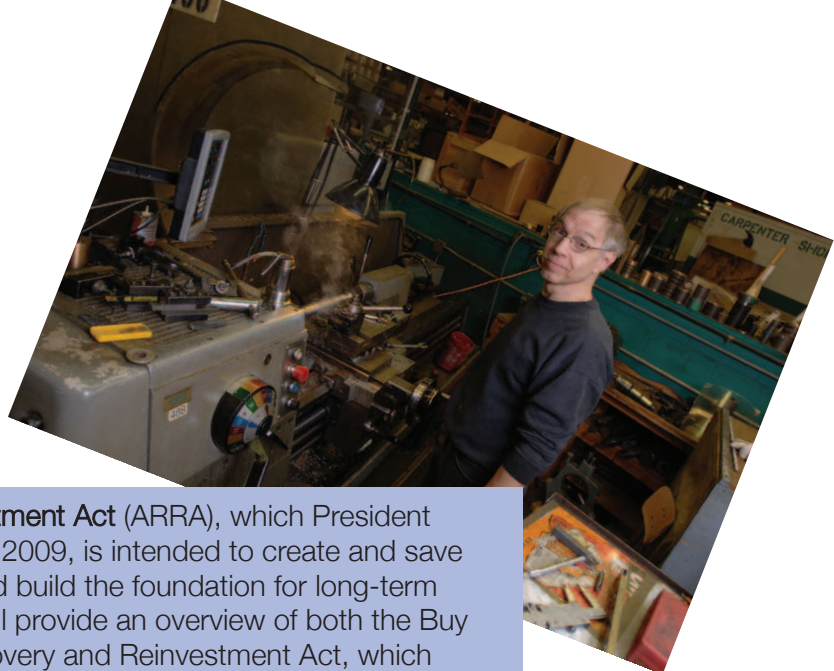


SLOAN®



American Recovery and Reinvestment Act and the Buy American Act *Overview*

December 2010



The American Recovery and Reinvestment Act (ARRA), which President Obama signed into effect in February 2009, is intended to create and save jobs, jumpstart the U.S. economy and build the foundation for long-term economic growth. This document will provide an overview of both the Buy American Act and the American Recovery and Reinvestment Act, which includes Buy American provisions.

Of course, these programs are very complex, and it is important to become familiar with the requirements and how to adhere to them. The U.S. government requires strict compliance with the rules and maintains an active enforcement program. You may incur severe civil and criminal penalties if the government discovers that you have willfully provided product that does not comply without notifying the government of non-compliance.

This document will more fully explore the Buy American Act, the American Recovery and Reinvestment Act, and related details to help you gain familiarity.

How Sloan Valve Fits in

Sloan Valve Company, with headquarters and manufacturing facility located in Franklin Park, Illinois, is well suited to take advantage of projects that must comply with the Buy American Act and/or the American Recovery and Reinvestment Act as fully 94% our products and parts meet the requirements of the Buy American Act. Please refer to the separate Product Compliant Document for details or visit us online at www.sloanvalve.com.

Sloan is fully committed to supporting the country through the BAA and the ARRA, and we stand behind these initiatives with our many U.S.-manufactured products. We strive to help our customers, in turn, meet their objectives of properly fulfilling the requirements of these Acts for projects that call for compliance. For more than 100 years, Sloan has produced quality, water-efficient plumbing systems in the U.S., and we are proud to enable our customers to do their part to support America.



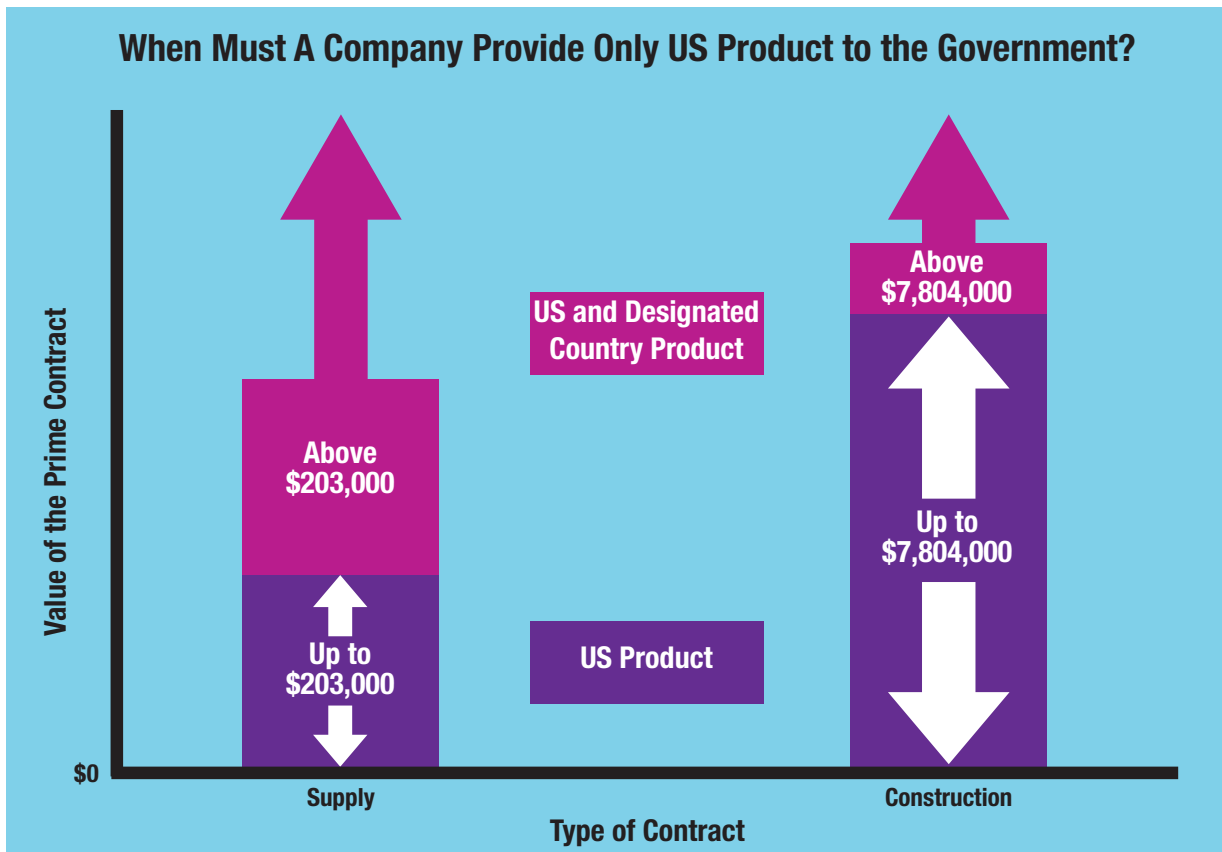
The Buy American Act (“BAA”) requires that the U.S. government purchase only U.S.-made products. Like many other regulations, the key is to follow where the money is coming from. Knowing how the BAA applies means knowing two things:

1. how the contract was funded (i.e., the U.S. Government or states, general contractors, etc.); and
2. what contract clauses are included by the higher-tier entities (i.e. the U.S. Government, the general contractor, the plumbing contractor, etc.). This is not mere boilerplate: **every quote or bid is a certification that your product complies with the contract's BAA (and, if included, Trade Agreements Act — “TAA”--) clauses.**

With that background, you need to do two more things. First, read the clauses in the document you are actually responding to — be it an Invitation for Bid, a Request for Quote, or something similar. Next, get an idea of the contract value. Contract value drives the choice of clause:

- If you are selling products directly to the government (not for use in construction), you must provide U.S. product as long as the estimated total value of the contract with the government is less than \$203,000.
- If your contract for sale of products to the government is more than \$203,000, you may provide U.S. products or products that have been “substantially transformed” in designated countries (please see Page 6).
- If your product is going into a construction site, and the value of the contract for the prime contractor is less than \$7,804,000, you must provide U.S. product.
- If the value of the contract is more than \$7,804,000, you may again provide U.S. products or products that have been “substantially transformed” in designated countries.

The chart below illustrates when a company must provide U.S. product and when the company may provide U.S. or designated country product.



Once it is clear what type of contract and product must be supplied, the question becomes: what does it mean to supply U.S. product or designated country product?

¹ These dollar amounts change on a regular basis so check the Federal Acquisition Regulation for the most up-to-date threshold amounts.

² The value of the contract includes all option years. Thus if the prime contract is for one base year plus three option years, add all the years together to arrive at the value of the contract. It is not based on the value of an individual purchase order.

³ For use of products from Mexico and a few other countries, the value of the construction contract must exceed \$9,110,318.

U.S. Product (BAA Compliance)

The default setting is that the Buy American Act applies to all government purchases for under \$203,000 (supplies) and \$7,804,000 (construction). What does it mean to supply a “U.S. product” (or a BAA-compliant product)? U.S. law requires that U.S. product must:

1. Be **manufactured in the United States**; and
2. The **cost of domestic components must exceed 50 percent** of the total cost of the components...

Thus, the finished product must be both manufactured in the United States and 50% of the cost of components must be from domestic components.

Here, “**manufacture**” means **completion of the product into the required form**. In other words, if, to meet the specifications of the order, the company must assemble certain foreign components into the product, that **assembly** constitutes “manufacture.” It doesn’t really matter how complex the process is, but rather if the assembly is required to meet the government specifications. However, keep in mind that this test is often a judgment call, and you should contact your Sloan Representative if you have any doubts that your product is “manufactured” in the U.S. Second, **the cost of components must still be at least 50% domestic** – this generally means that at least half of your cost of manufacture or acquisition of components must come from U.S. manufactured products.

Several exceptions to this general rule exist, but only two apply to most plumbing supply contracts:

- First, if your product is considered a Commercial Off the Shelf (“COTS”) item, **the U.S. Government only requires manufacture in the United States**. To be a COTS product, the product must be a “commercial item,” which means a product that can be used by the public and that the public can purchase from you. Thus, if someone can walk into your office or call your sales representative and buy the product, the product is a “commercial item.” This even applies to a modification of a commercial item – instead of the regular telephone, the government would like to add the speaker phone function. However, if the modification is government specific (in other words, someone off the street couldn’t ask for that modification), the product then is no longer commercial.
- The second exception to the BAA is if not enough U.S. manufacturers make the product. The government can issue a waiver of the BAA on a case-by-case or broad, class basis. The government has a list of products that it has already determined cannot be obtained in the U.S. – the broad basis. Most commercial products would not fall into this category. However, if a particular part is no longer made in the U.S. (or it is, but only one manufacturer makes it and the cost is exorbitant), you can ask the government to waive the Buy American requirement for that particular contract.

In summary, the general rule is that the government may only purchase U.S. products, which are (1) **manufactured in the United States** and (2) **50% of the cost of components are domestic**. Where the product is COTS, the test is manufacture in the United States – the components or subcomponents may be manufactured anywhere. If the product is truly unavailable in the U.S., you may ask the government for a waiver.

U.S. and Designated Country Product (TAA Compliance)

As stated above, when the prime contract exceeds a certain dollar amount (\$203,000 for supplies and \$7,804,000 for construction), the government can purchase both U.S. and designated country product (also known as **TAA-compliant** product). When the value of the contract exceeds these amounts, the COTS exception does not apply. Designated countries include Mexico, Canada, and Taiwan, but not China. Please see Page 6 for a complete listing of designated countries.

For designated countries, the government requires the product to be manufactured or “substantially transformed” in the United States or a designated country. To determine **substantial transformation**, the government will examine:

1. The **country of origin** of the item’s components,
2. The **extent of the processing** that occurs within a country,
3. Whether the processing renders a product with a new name, character, and use are **primary considerations** in such cases,
4. The **resources expended** on product design and development,
5. Extent and nature of **post-assembly** inspection and testing procedures, and
6. The **degree of skill** required during the actual manufacturing process.

If you have any doubt as to whether your product qualifies, please consult your Sloan Representative, visit www.sloanvalve.com, or call 1-800-9-VALVE-9.

In summary, where the value of the contract exceeds \$203,000 (for supplies) or \$7,804,000 (for construction contracts), the government may purchase U.S. products or products manufactured or substantially transformed in a designated country.

What about ARRA or the Recovery Act?

The Recovery Act also contains a “Buy American” requirement that limits the purchase of products for construction contracts using Recovery Act funds to certain designated countries. The Recovery Act restrictions are similar to existing BAA rules but differ in subtle, yet important, ways.

Again, the type of contract determines what rules to apply. If the prime contract is for supplies, then the standard rules (as detailed above) apply. If the prime contract is for construction (as determined by the government), then the following rules typically apply.

- Generally, all iron, steel, and **manufactured goods** used on the construction project must be produced in the United States.
- However, the restriction does not apply to iron or steel components incorporated into a manufactured good (such as iron or steel components in a fixture), unless that manufactured good is predominantly made of iron or steel.
- As before, once the value of the construction contract exceeds \$7,804,000, the government may purchase products that have been substantially transformed in Recovery Act Designated Countries. For prime construction contracts valued at less than \$7,804,000, the Recovery Act requires that all construction material be manufactured in the U.S.
- In terms of iron and steel, because Canada recently entered into a trade agreement with the U.S., government funding may be used to purchase Canadian iron and steel, in addition to the U.S. iron and steel.

The main difference between the Recovery Act restrictions and the standard restrictions is that different agencies of the government may come to different conclusions regarding projects. One agency may say that one type of project is a construction project but other agencies may not agree. **Thus, read the contract documents!**

States and state agencies again have different rules and some countries may be designated by the federal government but not the state government. Please confer with legal counsel if you plan to sell or are selling to a state agency.

“Made in USA” Labeling Guidelines

A U.S. product that qualifies under the rules above may not qualify to be marked as “Made in USA.” The Federal Trade Commission regulates claims of U.S. origin to prohibit “unfair or deceptive acts or practices.” The government’s principle is that unless a product is wholly of domestic origin, it is deceptive for a company to promote a product with an unqualified “Made in USA” claim. Thus, if a product is partially assembled in a foreign country or if it is assembled in the United States with a portion of foreign parts, it generally may not bear a “Made in USA” mark. Products that qualify for the “Made in USA” designation would most likely qualify as a U.S. product.

In reality, the government requires “all or virtually all” parts to be made or labor to be performed in the United States to qualify for the “Made in USA” label. Final assembly must take place in the United States and only a negligible amount of foreign content may be in the finished product. The government will look at a number of factors to determine whether the product has a negligible amount of foreign content. When thinking about this issue, a manufacturer should consider the cost of goods sold or inventory costs of the subject products, which are generally limited to the total cost of all manufacturing materials, direct manufacturing labor, and manufacturing overhead.

In summary, you should closely monitor any foreign content in products that the company would like to label as “Made in USA.” The government requires an “all or virtually all” domestic requirement on component content and labor; any foreign content must be negligible.

* * * * *

We hope the discussion above assists in your understanding of the U.S. government procurement laws and regulations as well as the FTC’s “Made in USA” labeling requirements.

Designated Countries

Afghanistan	East Timor	Latvia	Sao Tome and Principe
Angola	El Salvador	Lesotho	Senegal
Aruba	Equatorial Guinea	Liberia	Sierra Leone
Australia	Eritrea	Liechtenstein	Singapore
Austria	Estonia	Luxembourg	Slovak Republic
Bahrain	Ethiopia	Madagascar	Slovenia
Belgium	Finland	Malawi	Solomon Islands
Benin	France	Maldives	Somalia
Bhutan	Gambia	Mali	Spain
Bulgaria	Germany	Malta	Sweden
Burkina Faso	Greece	Mauritania	Switzerland
Burundi	Guatemala	Mexico	Taiwan
Cambodia	Guinea	Morocco	Tanzania
Canada	Guinea-Bissau	Mozambique	Togo
Central African Republic	Haiti	Nepal	Tuvalu
Chad	Honduras	Netherlands	Uganda
Chile	Hong Kong	Nicaragua	United Kingdom
Comoros	Hungary	Niger	Vanuatu
Costa Rica	Iceland	Norway	Yemen
Cyprus	Ireland	Oman	Zambia
Czech Republic	Israel	Peru	
Democratic Republic	Italy	Poland	
Congo	Japan	Portugal	
Denmark	Kiribati	Romania	
Djibouti	Korea (Republic of)	Rwanda	
Dominican Republic	Laos	Samoa	

Please note, this list may change and the list may be different if you are receiving a grant or a contract and under the Recovery Act. Please consult legal counsel to ensure that this list is up-to-date.

Frequently Asked Questions

1. What is the American Recovery and Reinvestment Act?

In February of 2009, President Obama signed the American Recovery and Reinvestment Act (“ARRA”). The purpose of the ARRA is to create and save jobs, jumpstart the U.S. economy, and build the foundation for long-term economic growth. The Act includes measures to modernize the nation’s infrastructure, enhance America’s energy independence, expand educational opportunities, increase access to health care, provide tax relief, and protect those in greatest need.

2. What is the Buy American Act?

The Buy American Act (“BAA”) requires, with certain exceptions, that all the supplies and materials (including construction materials) purchased for the U.S. government using U.S. government money be manufactured in the United States. This includes all projects funded using U.S. government money – if you are being paid (for products) in part through money that came from the U.S. government, the BAA applies to you.

3. What does the BAA require?

For a product to qualify under the BAA, the product must be: manufactured in the United States and at least 50% of the cost of all its components must be from domestic components. The cost calculation can include overhead and general and administrative costs. Unless the product complies with the two requirements above, the U.S. government cannot purchase the product, with a few exceptions.

4. Are there pertinent exceptions to the BAA?

Yes, of primary importance is the Commercial Off the Shelf (“COTS”) exception. The COTS exception provides that for COTS products, products that are manufactured and sold to the public in substantial quantities and also sold to the government (with no modifications prior to delivery), the only requirement is that the COTS product be manufactured in the United States. No cost of components calculations are considered. The components that make up the end product can be sourced from any country.

5. What is the Trade Agreements Act?

Where the U.S. government has entered into a free trade agreement (such as NAFTA or the WTO Government Procurement Agreement), the Trade Agreements Act (“TAA”) waives the Buy American requirement and the government can purchase supplies that have been substantially transformed in certain countries as well as items that are either manufactured or substantially transformed in the United States.

6. What constitutes manufacture?

Manufacture is processing into a form as required by the government. Current law states that assembly into a specified form required by the government constitutes manufacture. Thus, if the government specifications require that the flanges be attached to certain places on a tube, the “assembly” of the flanges to the tube constitutes manufacture. However, if the government specifications only requires pills, packaging foreign pills into a box does not constitute manufacture. A product substantially transformed in a country is considered to be manufactured in that country. However, manufacture will not always translate to substantial transformation (for example, an assembled product into a specified form required by the government may not necessarily constitute substantial transformation).

7. What is substantial transformation?

Substantial transformation is where a product changes from mere parts and components into a final finished product fit for use, where an article emerges from processing as a new and different article of commerce that possesses a new name, character or use. In other words, substantial transformation will require more than mere assembly but does not mean that the product has to be completely manufactured in one country.

The analysis of whether a product has undergone substantial transformation is a highly fact, product and process specific (and differs from standard Customs law). Factors to consider are: (1) Country of origin of the item’s components; (2) Extent of the processing that occurs within a country; (3) Whether the processing renders a product with a new name, character, and use; (4) Resources expended on product design and development; (5) Extent and nature of post-assembly inspection and testing procedures, and (6) Degree of skill required during the actual manufacturing process. No single factor is dispositive. Generally, what is most important is the origin of the “brain” or primary component. Typically, it is the component that without it, the entire product would be useless. Another method of analysis would be whether the product changes customs categorization during the process. However, a mere customs category change would not necessarily indicate substantial transformation (for example, attaching a plug to a cable changes the customs designation of the cable, but does not necessarily result in substantial transformation).

8. Does this restriction apply to me? What if I am a subcontractor or vendor?

If the restrictions apply to the prime contractor or general contractor, then the restrictions apply to the entire supply chain – including all subcontractors and vendors. The restrictions apply to any person or company that is providing a product that will be used in support of a construction contract.

9. What if I am a subcontractor and my subcontract doesn’t exceed \$7,804,000?

If you are providing articles, supplies, materials or products to a contractor who is incorporating that item into a building funded by the ARRA, your product needs to be compliant even if your individual contract or purchase order does not exceed the \$7,443,000 threshold. The restrictions apply to the project based on the total cost of the project awarded to the prime contractor and not on the amount of the subcontractor’s contract or purchase order.

10. How do I confirm that my suppliers or vendors are providing products that comply with these restrictions?

You should ask your Sloan Representative where the product was manufactured. In most cases, the location of manufacture of the product will also be the location of substantial transformation. In some cases where the product is comprised of a number of components, it will be necessary to determine where those components came from. Typically, the supplier should know if the product contains foreign components and from where. For iron and steel, your manufacturer or supplier should know whether the processing in the United States meets the requirement.



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