

# 'Made In America' Rules Raise Stakes For Gov't Contractors

By **Kristen Ittig and Amanda Sherwood** (April 9, 2026)

2026 is shaping up to be a pivotal year for "made in America" requirements in federal procurement. Rapid policy shifts, increased enforcement and evolving supply chain restrictions are creating both material compliance risks and competitive opportunities.

While donning the Stars and Stripes, and stocking up on fireworks for the U.S.' upcoming semiquincentennial, government contractors and grantees should take a hard look at how their business plans and supply chains align with both current law and the administration's stated priorities.

## Backdrop

Two baseline laws incentivize federal government procurement of U.S.-origin products: the Buy American Act and the Trade Agreements Act.[1]

As implemented through the Federal Acquisition Regulation, the BAA creates a price evaluation preference in federal agency procurements for "domestic end products," defined as articles manufactured in the U.S. and with a certain percentage of U.S.-origin components.[2]

The TAA implements the U.S.' obligations under the World Trade Organization Government Procurement Agreement, waives the BAA in procurements above a price threshold for items from "designated countries,"[3] and prohibits the procurement of products from nondesignated countries. The TAA uses a different definition of country of origin, asking if an item comes "wholly" from a country or "has been substantially transformed" in that country.[4]

While the BAA and TAA are the most broadly applicable domestic preference regimes, additional rules and regulations abound, including specifically in the grants context.[5]

Recent years have seen consistent efforts to strengthen these rules, to mixed effect. President Donald Trump in his first term issued a slew of executive orders intending to bolster the requirements to purchase U.S.-made goods, including:

- Executive Order No. 13788, signed April 18, 2017, on buying and hiring American;
- Executive Order No.13858, signed Jan. 31, 2019, on "buy American" preferences for infrastructure projects; and
- Executive Order No. 13881, signed July 15, 2019, on using American-made goods and materials.

He also explored disavowing U.S. participation in the WTO Government Procurement Agreement, a theme that we have not seen emerge in the second administration.



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President Joe Biden rescinded each of the executive orders listed above, along with others, but also issued his own executive orders and established the White House Made in America Office.[6]

While the rhetoric of Biden's Jan. 25, 2021, Executive Order No. 14005 was broad, stating that the U.S. government should "whenever possible" procure American-made goods, its impact was necessarily more limited given that the TAA is rooted in an international agreement.[7]

Also, the Federal Acquisition Regulatory Council in implementing the Biden executive order's amendments — which necessarily could only apply under the TAA threshold and where the BAA applies for other reasons — opted for incremental, less far-reaching changes than the executive order signaled.[8]

During this same time period, Congress passed the Infrastructure Investment and Jobs Act, which introduced yet another set of domestic preference standards. Through pandemic funding, both administrations further encouraged U.S. manufacturing and reshoring, both as a domestic preference and as a matter of supply chain risk mitigation and economic sovereignty.

## **Recent Developments**

Fast forwarding to the second Trump administration, domestic preferences and buy American requirements are again taking center stage as policy priorities.

Trump began his second term by promoting domestic manufacture from a different angle, using tariffs to render foreign-made goods more expensive.

While the Supreme Court's February decision in *Learning Resources Inc. v. Trump* struck down many of those efforts, the administration has emphasized it will continue to seek to use tariffs to incentivize domestic manufacture under different legal authorities.[9]

This elevates the already substantial importance of U.S. Customs and Border Protection in country-of-origin determinations, as CBP acts both as the enforcer of administration instructions and, more broadly, the most common publisher of country-of-origin determinations.

Aside from tariffs, on March 13 Trump issued an executive order on "made in America" advertising claims, targeting the protection of "patriotic consumers" who seek to purchase American-made products.[10] Executive Order No. 14392 directs the Federal Trade Commission to "prioritize enforcement actions" against sellers and manufacturers falsely claiming their products are "made in the USA" or something similar.

While the FTC's "made in the USA" enforcement has historically operated separately from the procurement requirements, government contractors should take note that the order states:

All agencies overseeing Government-wide acquisition contracts, any Multiple Award Schedule, or any other Government-wide indefinite delivery, indefinite-quantity contracts shall periodically review and verify any "Buy American Act", "Country of Origin USA", or similar American-origin claims for products acquired through these contracts. For any contractors or vendors found to misrepresent an American-origin

status of any product sold to the Government, the relevant agency shall remove the products from Government procurement availability and refer the relevant contractors or vendors to the Department of Justice, which may pursue actions under the False Claims Act.

This comes after the U.S. General Services Administration's Office of Inspector General included TAA compliance as a key risk area in its assessment of management and performance challenges for fiscal year 2026, flagging the need for additional controls to ensure TAA-noncompliant items are not offered on multiple award schedule contracts.[11]

Several recent regulatory changes have also placed supply chains under greater scrutiny. For example, at the end of 2025, the Federal Communications Commission, as mandated by the fiscal year 2025 National Defense Authorization Act, added uncrewed aircraft systems and UAS critical components to the "list of communications equipment and services (Covered List) that are deemed to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons." [12]

Then, on Jan. 7, pursuant to a national security determination from the U.S. Department of Defense, the FCC removed UAS and UAS critical components that qualify as "domestic end products" under the Buy American Standard from the covered list.[13]

This importation of the BAA's domestic content test into an unrelated, nonprocurement-related regulatory regime is novel, but the focus on supply chain risk is not. If adopted elsewhere, this approach could significantly expand the reach of domestic content rules beyond procurement into broader regulatory compliance frameworks.

The 2026 NDAA contains numerous provisions not yet incorporated into regulation that seem poised to result in even more focus on Americanizing defense-related supply chains. These include, among many others:

- Sections 834 and 835, requiring a strategy to eliminate sourcing of optical glass and computer displays from North Korea, China, Russia and Iran;
- Section 836, requiring the establishment no later than Jan. 1, 2027, of an online repository company information related to the compliance of covered products with sourcing requirements;
- Section 838, requiring identification of all critical infrastructure "that relies on materials or components the origin of which is a foreign entity of concern"; and
- Section 842, prohibiting the acquisition of advanced batteries from certain foreign sources.[14]

Intriguingly, in Section 833, the 2026 NDAA envisions a framework granting contractors that discover supply chain noncompliance a waiver, allowing them to deliver those items if they disclose the issue and implement a corrective action plan.

In addition, agencies have been working to gather more information on components' country of origin, potentially signaling an intent to analyze the supply chain risks associated with the global supply chain.

In sum, the government's focus on prioritizing domestic manufacture is continuing to grow, and companies should expect that the administration and federal agencies will continue

using all available tools to incentivize domestic manufacturing and the purchase of American-made goods.

### **Other Legal Developments**

Given the dearth of reported domestic preference cases, two recent court decisions bear mention as indicators that, while the administration is keen on shoring up domestic manufacturing and domestic preferences, agencies are still probing the boundaries.

In *DaVinci Company v. U.S.*, the U.S. Department of Veterans Affairs set aside a procurement for small business, which would generally mean that the BAA applies rather than the TAA.[15] None of the offerors were manufacturers of the product, leading the VA to seek a waiver of the nonmanufacturer rule and a determination that any foreign products — including those from non-TAA countries — could be procured.

In August 2025, the U.S. Court of Federal Claims determined that this went around the intent of Congress. Once the BAA's domestic protections were waived, the agency was required to impose the TAA requirements, even in the case of a small business set-aside.

*Cosette Pharmaceuticals v. U.S.* also involved a VA procurement, this time a procurement for which there was no argument but that the TAA applied.[16] The VA selected a non-TAA-compliant offer for award after rejecting a TAA-compliant offer on the basis that it was too expensive, and thus met the TAA exception invoked when an offer is "insufficient to fulfill the requirements." [17]

In a November 2025 decision, the Claims Court disagreed, finding that "too expensive" was not the same as "insufficient," and declaring impermissible the VA's comparison of a sole TAA-compliant offer with non-TAA-compliant offers to establish a competitive range.

### **Looking Forward**

Given the continuing focus on bolstering American manufacturing and mitigating supply chain risk, along with the increasingly complex compliance landscape, contractors and grantees should carefully examine their supply chain and country-of-origin compliance processes to best position themselves to compete.

#### ***Validate country-of-origin representations.***

Companies should verify their products' country of origin, and ensure their country-of-origin paperwork is up to date and in order. The administration has announced faulty country-of-origin claims as an enforcement priority, heightening the risk of even accidental noncompliance. And, failure to include the required country-of-origin certificates in bids can lead to elimination from a federal procurement.

For example, in June 2025, the U.S. Government Accountability Office found in *Matter of: Automated Precision Inc.* that given the solicitation's inclusion of Defense Federal Acquisition Regulation Supplement 252.225-7000, which requires submission of a Buy American certificate, the agency was not required to further instruct an offeror to submit its certificate, even when the company claimed that its domestic production of the product in question was "indisputable." [18]

### ***Reassess supply chain strategy.***

Diligence into existing supply chains should include consideration of whether investing in moving aspects of the supply chain to the U.S. might make sense. It appears that the current toolkit of domestic preference laws and regulations is here to stay. And the administration's difficulties implementing its domestic manufacturing priorities through tariffs coupled with prioritization of economic sovereignty could result in a renewed emphasis on the use of procurement and grant regulations to accomplish those goals.

### ***Confirm applicable compliance regime.***

Companies should confirm their understanding of which preferences apply to their projects. As outlined above, the BAA and TAA use different country-of-origin tests, which might yield different results when applied to particular products. Other funding sources carry bespoke domestic preference requirements, and what is acceptable in one context may not be in another.

Federal agencies may themselves be mistaken, as in the DaVinci case summarized above.[19] And in April 2025, in *Matter of: Auburn Manufacturing Inc.*, the GAO dismissed a bid protest alleging that the agency improperly accepted a Chinese-made product where the solicitation included a BAA clause — DFARS 252.225-7011 — that does not prohibit Chinese goods as the TAA does, but rather establishes a price preference for domestic goods.[20]

### ***Use agency communications strategically.***

Offerors who have reason to doubt a competitor's domestic preference compliance may consider raising these concerns with the agency prior to submitting a proposal. The GAO has long refused to review domestic preference compliance, finding it to be a matter of contract administration for which the agency may rely on certifications of compliance.[21] When an agency is on notice of the issues prior to award, however, a challenge may be viable.[22]

## **Conclusion**

The Stars and Stripes are forever, and likewise are domestic preferences in federal spending. The convergence of widely varying requirements, increased enforcement, and evolving and sustained attempts to limit foreign sourcing, as well as the expanding regulatory use of domestic content concepts, suggests that "made in America" compliance is not a theoretical risk.

Companies that treat country-of-origin as a check-the-box exercise face increasing their exposure. Along with Yankee Doodle and You're a Grand Old Flag, contractors would be wise to add developments in this area to their 2026 playlist.

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[1] 41 U.S.C. Ch. 83 and 19 U.S.C. Ch. 13.

[2] See FAR 25.003. The applicable percentage was historically 50% but in recent years has moved to 55%, 60%, and now to 65%, and will move to 75% in 2029.

[3] Currently \$174k, 91 Fed. Reg. 188 (Jan. 2, 2026).

[4] 19 U.S.C. § 2518(4)(B). See also the authors' analysis of the Federal Circuit Acetris decision's impact on the application of the TAA country-of-origin test as published in The Government Contractor. Available at <https://www.arnoldporter.com/-/media/files/perspectives/publications/2020/03/the-government-contractor.pdf>.

[5] See, e.g., 10 U.S.C. §4862 (the "Berry Amendment"); 10 U.S.C. §4863 (specialty metals). A host of varying "Buy America" requirements have long applied to grants, particularly as to the steel, iron, and manufactured products used in federally funded projects. See, e.g., 49 U.S.C. § 5323(j), 2 C.F.R. Part 184. Recent grant-funded projects have included bespoke domestic preference requirements that resemble, but do not mirror, codified preferences.

[6] Executive Order No. 14005, "Ensuring the Future Is Made in All of America by All of America's Workers" (Jan. 25, 2021), available at <https://www.federalregister.gov/documents/2021/01/28/2021-02038/ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers>.

[7] See the authors' views on this EO as published in the Government Contracting Law Report, available here: <https://www.arnoldporter.com/-/media/files/perspectives/publications/2021/04/kristen-e-ittig-charles-a-blanchard-lynn-fischer-f.pdf>.

[8] See the authors' summary of the FAR rulemaking published in Law360, available here: <https://www.law360.com/articles/1411234/far-council-takes-moderate-approach-to-buy-american>.

[9] Learning Resources Inc. v. Trump, 607 U.S. \_\_\_\_ (2026) (No. 24-1287); Trump v. V.O.S. Selections Inc., 607 U.S. \_\_\_\_ (2026) (No. 25-250).

[10] <https://www.whitehouse.gov/presidential-actions/2026/03/ensuring-truthful-advertising-of-products-claiming-to-be-made-in-america/>.

[11] ee <https://www.gsaig.gov/sites/default/files/management-challenges/OIG%20Assessment%20of%20GSA%27s%20Management%20and%20Performance%20Challenges%20for%20FY%202026.pdf> at 11-12.

[12] See 47 U.S.C. §§ 1601-1609. The Covered List is available at <https://www.fcc.gov/supplychain/coveredlist>.

[13] <https://docs.fcc.gov/public/attachments/DA-26-22A1.pdf> ("Jan. 2026 FCC Notice").

[14] <https://www.congress.gov/bill/119th-congress/senate-bill/1071/text>.

[15] DaVinci Company v. United States, 178 Fed. Cl. 63 (2025).

[16] Cosette Pharmaceuticals v. United States, No. 25-CV-279, 2025 WL 3210727 (Fed. Cl. Nov. 17, 2025).

[17] See 19 U.S.C. § 2512(a)(2).

[18] B-422063.2, June 18, 2025, 2025 CPD ¶ 144.

[19] 178 Fed. Cl. 63, 72 (2025) ("The TAA's goals remain active until Congress decides the mischief is no more").

[20] B-423308, B-423308.2, March 26, 2025, 2025 CPD ¶ 88.

[21] See W&K Container Inc., B-422234.2, March 12, 2024, 2024 CPD ¶ 72 (denying protest where awardee provided a TAA certificate with its proposal, even where after award it became apparent that awardee did not plan to do so, because whether the awardee ultimately "delivers end products in accordance with its TAA representations is a matter of contract administration, which [GAO] will not review").

[22] See HPI Federal LLC, B-422583, Aug. 9, 2024, 2024 CPD ¶ 189 (protest sustained when awardee's proposal only provided a certification that product was "assembled in Mexico," which did not provide sufficient information for the procuring agency to find that substantial transformation, as required for TAA compliance, had occurred).