

The Trade Agreements Act

The Trade Agreements Act of 1979 (19 U.S.C. §§ 2501 – 2581) (“TAA”) implements several trade agreements that guarantee signatory countries non-discriminatory treatment in government procurements conducted in other signatory countries. The TAA allows U.S. government contractors to furnish the U.S. Government products and services from countries with which the U.S. has signed multilateral or bilateral free trade agreements or that have otherwise been determined to be TAA “Designated Countries.”¹

To meet the TAA’s country of origin (“COO”) requirements for products, U.S. government contractors (and their subcontractors/suppliers) must supply items that are either:

- (i) produced or manufactured in the U.S. or a Designated Country; or
- (ii) “substantially transformed” into new and different articles of commerce in the U.S. or a Designated Country.

“Substantial transformation” is determined on a totality of the circumstances basis – focusing on whether an article that consists of components from one or more other countries has been transformed into a new article of commerce with a name, character or use distinct from that of the components from which it was transformed.²

U.S. Customs and Border Protection (“CBP”) has the authority to interpret and apply the TAA’s COO test and rules, including substantial transformation analysis, by issuing final determinations and advisory rulings.³

The CBP has issued rulings applying the “substantial transformation” analysis to software, focusing on the software build process which gives the final software product a new and distinct name, character and/or use.⁴

Software that is substantially transformed in either the U.S. or a Designated Country is TAA compliant.

¹“Designated Country” means any of the following countries:

- (1) a World Trade Organization Government Procurement Agreement (“WTO GPA”) country;
- (2) a Free Trade Agreement (“FTA”) country;
- (3) certain specified “least developed” countries; or
- (4) a Caribbean Basin country.

² See 19 U.S.C. § 2518(4)(B).

³ See 19 Code of Federal Regulations (“CFR”) Part 177, Subpart B.

⁴ See, e.g., CBP Headquarters Ruling (“HQ”) HQ H192146 (Jun. 8, 2012); HQ H243606 (Dec. 4, 2013); and HQ H268858 (Feb.12, 2016).