

## The Buy American Act

“U.S. legislation requires that government purchases give preference to domestic producers unless imports are at least a specified percentage cheaper,” writes Professor Alan Deardorff – Professor of Economics and Public Policy at The University of Michigan (“Glossary of International Economics”)

### Introduction

U.S. law, in particular The Buy American Act, require that in many cases, the U.S. Government purchase domestic products unless comparable imports are significantly cheaper. At Design Hardware, we acknowledge that balancing American’s global competitiveness with support for U.S. manufacturing is not simple. But we are committed to finding that balance within our family of companies, **Design Hardware, Mesker Door, Hollow Metal Xpress & Wood Door Xpress**. To provide you with the highest quality products at competitive prices, we utilize resources around the world while providing U.S. made goods that require the expertise of our American workforce supporting 300 families. Our family of companies also procures and outsources products and services in the U.S., including labor, marketing, engineering, and web services. It’s all part of our commitment to U.S. based business. At Design Hardware, we aggressively support the Buy American Act (BAA), and we’re determined to insure that our quality products are eligible for all State, Federal and Military Funded Construction Projects.

In the following sections, we address two important questions.

- What is the Buy American Act?
- Why many Design Hardware products comply with the Buy American Act.

### A closer look at the Buy American Act

#### **25.001 General.**

(a) The Buy American Act—

(1) Restricts the purchase of supplies that are not domestic-end products, for use within the United States. **A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see Subpart 25.1)**

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see [Subpart 25.2](#)).

(b) **The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements** (see [Subpart 25.4](#)). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in [Subpart 25.4](#).

(c) The test to determine the country of origin for an end product under the Buy American Act (see the various country “end product” definitions in [25.003](#)) is different from the test to determine the country of origin for an end product under the trade agreements, or the criteria for the report on end products manufactured outside the United States (see [25.004](#)).

- (1) The Buy American Act uses a two-part test to define a “domestic end product” or “domestic construction material” (manufactured in the U.S. and a formula based on cost of domestic components). The component test has been waived for acquisition of commercially available off-the-shelf items.
- (2) Under the trade agreements, the test to determine country of origin is “**substantial transformation**” (i.e., transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).
- (3) For the reporting requirement at [25.004](#), the only criterion is whether the place of manufacture of an end product is in the U.S. or outside the U.S., without regard to the origin of the components.
- (4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the definition of “domestic manufactured construction material” requires manufacture in the United States but does not include a requirement with regard to the origin of the components.

### **Why Design Hardware products comply with the Buy American Act (BAA)**

#### **Unreasonable Cost –**

In keeping with Section 2A, Executive Order 11051 specifies that the cost of an American product is “unreasonable” when the domestic-made product costs more than 6% of another specified product. Therefore, a foreign made product rendering 6% cost savings may comply with the BAA.

#### **Insufficient Quantity –**

Some foreign made products are covered by the “*exemption by reason of sufficient quantity*”, through our strategic U.S. Based Sourcing and Distribution, Design Hardware has one of the industry’s largest and broadest commercial door hardware inventories that allows many of our products to meet the “sufficient quantity” standard. So, our products may comply when domestic made products are not available in sufficient quantities.

The Design Hardware products qualifying due to either the “unreasonable costs” exemption or the “sufficient quantity” exemption:

- **Closers: 416 Series, 316 Series, 116 Series**
- **Locks: M Series, Z Series, X Series, V Series, I Series, K2 Series, J Series, D1/D2 Series**
- **Exit Devices: 1000 Series, 2000 Series, 1000/2000 Trim**
- **Hinges: BB5 Series, HW BB5 Series, Spring Series**
- **Flat Goods & Accessories: Stops, Push/Pulls**

## Trade Agreement Preference –

In keeping with the BAA and Definition 25.003 regarding countries that fall under the World Trade Organization Government Procurement Agreement (WTO GPA), Design Hardware wholly manufactures products in Taiwan, one of the countries identified by the WTO as exempt from the requirements of the BAA due to applicable trade agreements.

Our products that qualify by trade agreement preference:

- **Exit Devices: 1000 Series, 2000 Series, 1000/2000 Trim**
- **Flat Goods & Accessories: Door Stops, Door Viewers, Flush Bolts, Push/Pull**

## “Substantial Transformation” within the Trade Agreements –

According to the BAA and Definition 25.001, a substantial transformation is needed to comply with requirements for products used on BAA projects. “Substantial transformation” is not a separate exemption category or a way of complying with the Act, but rather a way of meeting the WTO exception to the Act. Design Hardware assembles and substantially transforms the following products in the U.S. So, the following products that qualify by trade agreement preference:

- **Locks: M Series**

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