

Critical Developments for the Global Supply  
Chains of Japanese Businesses  
グローバル・サプライチェーンの重要な最新動向  
日本企業における留意点

October 5, 2021, 9 a.m. (JST)



# Securing Critical Supply Chains: Congress and the White House

- Securing domestic supply chains has been a keen area of focus for the White House and Congress alike.
- The COVID-19 pandemic laid bare concerns that US supply chains are too heavily dependent on foreign sources, particularly with regards to high-tech inputs (including semiconductors and battery technologies), pharmaceuticals (including Active Pharmaceutical Ingredients, or APIs), and critical minerals.
- These are complex issues, and the debate is ongoing.



# Executive Order 14017 – America's Supply Chains

- 100-Day Supply Chain Review

- Semiconductor manufacturing and advanced packaging
- High capacity batteries
- Critical Minerals
- Pharmaceuticals and APIs



- Year-Long Sectoral Review

- Defense-industrial base, focused on:
  - Select kinetic capabilities
  - Energy storage/batteries
  - Microelectronics,
  - Castings and forgings
- Public health and biological preparedness
- Information and communication technology
- Energy sector
- Transportation industrial base
- Agricultural commodities and food products

# Congressional Actions

- Congress is watching closely, with bills aimed at:
  - Incentivizing domestic semiconductor production.
  - Promoting the shift to electric vehicles.
  - US-China competitiveness.
  - Tightening domestic preference programs.
  - Ensuring government agencies rely on domestic pharmaceutical and API production.





# US Regulatory Actions & Policies Related to Supply Chains in Government Contracting

- Contractors must comply with a variety of laws and regulations that are specific to selling to the US government.
- Recent modifications to regulations and US government acquisition policies mark significant changes for contractors across the US and their suppliers around the world.
- Such areas include:
  1. Domestic Sourcing
  2. Cybersecurity Requirements
  3. Other Supply Chain Considerations



# US Government Regulatory Actions – *Domestic Sourcing*

- Most federal procurements, with some exceptions, are subject to one of **two domestic sourcing** regimes: (1) the Buy American Act (“BAA”) or (2) the Trade Agreements Act (“TAA”).
- Recent actions by the previous and current administrations have not affected the TAA but have the BAA.
- The BAA generally applies to supply contracts under \$182,000 and construction contracts under \$7.008 million.



# US Government Regulatory Actions – *Domestic Sourcing*

- The Federal Acquisition Regulation Council (FAR Council) published a final rule implementing former President Trump's directives which became effective on January 21, 2021. The final rule makes three key changes to BAA requirements:
  1. Creation of **new category of products** that are “**wholly or predominantly** of iron or steel”
  2. Increase to **the percentage of total component costs** attributable to domestic components in order to qualify as a “domestic end product” to **55%**.
  3. Price evaluation preference for civilian agency:
    - Large business from **6%** to **20%**
    - Small businesses from **12%** to **30%**

# US Government Regulatory Actions – *Domestic Sourcing*

- BAA Rules:
  - Manufactured end product to be considered domestic:
    - It must be manufactured in the US, and
    - A certain percentage of all component parts must be manufactured in the US



- *More Changes Ahead for BAA:*
  - January 25, 2021: President signed Executive Order (E.O.) 14005, “Ensuring the Future Is Made in All of America by All of America's Workers” (86 FR 7475, January 28, 2021)
  - July 30, 2021: The FAR Council issued a proposed rule to address Section 8 of this E.O., which requires the FAR Council to strengthen the impact of the Buy American Act.

# US Government Regulatory Actions – *Domestic Sourcing*

- Proposed Rule Changes to BAA (cont.):

1. Increase to Domestic Content Threshold: (*applies to non-steel and iron products*).

- Upon implementation, the threshold would increase from 55% to 60%...
- ...then increase to 65% in two years, and
- ...finally increase to 75% five years after the second increase.



- *Proposed Rule Changes to BAA (cont.):*

- 2. Fallback Threshold:

- Until 1 year after the increase of the domestic content threshold to 75% allows for the acceptance of the former domestic content threshold in instances where end products or construction materials that meet the new domestic content threshold when...
  - 1. Not available, or
  - 2. Unacceptable cost

## ■ Proposed Rule Changes to BAA (cont.):

### 3. Critical Products & Components Price Preference:

- *Potential* higher price preferences will be applied for products and construction material deemed to be critical.
  - Semiconductor manufacturing
  - Large capacity batteries
  - Critical minerals and materials
  - Pharmaceuticals and active pharmaceutical ingredients
  - DoD-specific:
    - Kinetic capabilities
    - Energy storage/batteries
    - Microelectronics
    - Castings and forgings

- Proposed Rule Changes to BAA (cont.):

- 4. Post-Award Reporting Requirement:

- Contractors would be required to provide specific domestic content of:
      1. Critical items
      2. Domestic end products containing a critical component, and
      3. Domestic construction material containing a critical component, that were awarded under a contract.
    - This requirement would not apply for commercially available off-the-shelf (COTS) items.

# US Government Regulatory Actions – *Domestic Sourcing*

- Proposed Rule Changes to BAA (cont.):
  - The FAR Council requests industry feedback on the proposed rule.
  - The period to submit comments to the rule were recently extended until **October 28, 2021**.
  - The propose rule can be found at the following link:

<https://www.federalregister.gov/documents/2021/07/30/2021-15881/federal-acquisition-regulation-amendments-to-the-far-buy-american-act-requirements>



# US Government Regulatory Actions – *Cybersecurity Requirements*

- Chinese in the Supply Chain or Within US Contractors Own Systems:
  - The US Government is concerned with certain Chinese items in their supply chain particularly with regard to cybersecurity threats.
  - Section 889 of the 2019 National Defense Authorization Act (NDAA) prohibits the federal government, government contractors, and grant and loan recipients from procuring or using certain “covered telecommunication equipment or services” that are produced by:
    1. Huawei
    2. ZTE
    3. Hytera
    4. Hikvision, and
    5. Dahua and
    6. their subsidiaries

...as a “substantial or essential component of any system, or as critical technology as part of any system” because of cybersecurity threats.

# US Government Regulatory Actions – *Cybersecurity Requirements*

- Prime contractors must, after completing a “reasonable inquiry,” represent to the federal government whether it:
  1. uses prohibited telecommunications and video surveillance equipment or services, or
  2. uses any equipment, system, or service that uses prohibited telecommunications equipment or services.



# US Government Regulatory Actions – *Cybersecurity Requirements*

- **Practical Tips for a Reasonable Inquiry & Compliance:**

- ✓ Check your inventory list to know what is in your facility and review equipment to make sure it is not on the list.
- ✓ Obtain certifications from vendors when a company is not able to independently verify certain equipment or services such as companies who use an outsourced IT model such as cloud provider.
- ✓ Document and retain the “reasonable inquiry” process and findings.
- ✓ Work with purchasing and IT departments (or outside IT vendors) to ensure that nothing is purchased or changed within an environment or facility unless it is first compared against the list of prohibited sources.
- ✓ Obtain certifications from subcontractors supplying items being supplied to the US government that items are not provided by one of the prohibited companies.

# US Government Regulatory Actions – *Unique Supply Chain Considerations*



- In addition to cyber risks, other items of concern in your supply chain related to government contracts include:
  1. Counterfeit Parts
  2. Defense Production Act



WHY IS EVERYTHING BROKEN



container shipping costs from China to US  
have increased 50% from one year ago

more than 70 ships backlogged at  
Los Angeles, Long Beach in Sept.

Trucking costs are 3-4x pre-pandemic

100K driver shortage in UK

FedEx spent \$450 million  
more than anticipated in  
2Q2021 on labor costs

US' biggest port extended operating hours to 24  
hours a day, 4 days per week, but nobody came

**THEY ARE RATIONING ALCOHOL IN PENNSYLVANIA**

Oil prices at highest level in three years

Power rationing in China,  
with many companies  
operating only 2-3 days/week

Some seafaring workers have  
been vaccinated 6+ times

**INFLATION IS BACK?!?!?!?**

Jan.-July 2021 saw a 23% increase in  
container ship handling compared to pre-  
pandemic

Price for artificial Christmas trees is up 25%  
this season

West coast warehouses are 98% occupied  
and Western US warehouses are 96.5%  
occupied; there is 25% less storage space  
than needed

- **Changed Consumption**
- **Panic Buying**
- **COVID-19**





Problem

- Goods
- Labor
- Logistics
- Global relations

- The doctrine that performance is excused or delayed upon the occurrence of certain events
- **Three components:**
  - Description of events that excuse/delay performance
  - Consequence of events occurring
  - Notice requirements if invoking



## Corporate Social Responsibility

- Approved by German Federal Council June 25, 2011
- Will Come into force January 1, 2023
- Companies must identify and assess human rights and environmental risks and establish an effective risk management system the prohibits child labor, forced labor, and certain environmental bad effects
- Applicable to companies with their head office in Germany and foreign companies with a branch office in German that employ more than 3,000 employees in Germany
  - In 2024, the threshold for applicability will be reduced to 1,000 employees
- Companies must issue a policy statement on their human rights strategy and introduce appropriate preventative measures – and ensure the same is in place at all direct suppliers
- If a human rights or environmental duties violation is found, company must take immediate remedial action, including potentially suspension or termination of business relationship with an offending supplier

- If a company obtains material knowledge of a potential human rights or environmental obligation by an *indirect* supplier, a risk analysis must be conducted on that indirect supplier and appropriate preventative measures must be taken
- Companies must set up a whistleblower system
- Companies must publish an annual report on the fulfilment of their due diligence obligations under this law on the company website
- The German Federal Office for Economic Affairs and Export Control has authority to enforce the new law by requesting information, issuing remediation orders, and imposing civil fines
- Violations may be fined up to EUR 800,000 or up to 2% of total worldwide annual group turnover for companies with worldwide annual turnover of more than EUR 400 million
  - For fines over EUR 175,000, companies can be barred from public tender offers in Germany for up to three years



**March 10, 2021 – European Parliament recommended initiating the preparation of a similar law**

# Contact Us

## US Trade Policy



**Ludmilla (Milla)  
Kasulke**

[Ludmilla.Kasulke@squirepb.com](mailto:Ludmilla.Kasulke@squirepb.com)

## US Government Contracts



**Karen  
Harbaugh**

[Karen.Harbaugh@squirepb.com](mailto:Karen.Harbaugh@squirepb.com)

## Supply Chains



**Sarah  
Rathke**

[Sarah.Rathke@squirepb.com](mailto:Sarah.Rathke@squirepb.com)