



U.S. Department  
of Transportation

Federal Transit  
Administration

Chief Counsel

1200 New Jersey Avenue, SE  
Washington, DC 20590

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Dear Ms. Martin-Trudeau:

You have asked FTA for clarification on the calculation of domestic content for steel or iron that falls with 49 U.S.C. § 5323(j)(5), which was added to FTA's Buy America statute as part of the FAST Act.

Section 5323(j)(5) allows manufacturers of rolling stock to include in their calculation of domestic content the cost of steel or iron produced in the United States that is used in the rolling stock frames or car shells:

“In carrying out paragraph (2)(C) in the case of a rolling stock procurement receiving assistance under this chapter in which the average cost of a rolling stock vehicle in the procurement is more than \$300,000, if rolling stock frames or car shells are not produced in the United States, the Secretary shall include in the calculation of the domestic content of the rolling stock the cost of steel or iron that is produced in the United States and used in the rolling stock frames or car shells.”

You have asked about the relationship between Section 5323(j)(5) and the Buy America regulation at 49 CFR 661.11(i) and (j), which address the calculation of domestic content when subcomponents or raw materials manufactured in the U.S. is exported for inclusion in a component that is manufactured outside the U.S. Sections 661.11(i) and (j) provide:

“(i) If a subcomponent manufactured in the United States is exported for inclusion in a component that is manufactured outside the United States and it receives tariff exemptions under the procedures set forth in 19 CFR 10.11 through 10.24, the subcomponent retains its domestic identity and can be included in the calculation of the domestic content of an end product even if such a subcomponent represents less than 60 percent of the cost of a particular component.

(j) If a subcomponent manufactured in the United States is exported for inclusion in a component manufactured outside the United States and it does not receive tariff exemption under the procedures set forth in 19 CFR 10.11 through 10.24, the

subcomponent loses its domestic identity and cannot be included in the calculation of the domestic content of an end product.”

Apparently, some Buy America auditors are applying the tariff exemption in Section 661.11 to the language in 49 U.S.C. § 5323(j)(5). This results in manufacturers having to provide burdensome and costly documentation to establish applicability of the tariff exemption discussed in Sections 661.11(i) and (j).

The intent of 49 U.S.C. § 5323(j)(5) is to permit rolling stock manufacturers to receive credit for U.S. steel or iron used in car body shells without having to go through the requirements contained in Sections 661.11(i) and (j) regarding tariff exemptions. Therefore, the rolling stock manufacturer must provide sufficient documentation to establish that steel or iron used in its car body or shell is produced in the United States and the total cost of the steel or iron. Note that in this case, total cost includes only the cost paid to the U.S. steel producer and does not include costs for shipping, tariffs, etc.

Documentation to establish the cost of the steel produced in the United States (the raw material which retains its domestic identity) may include steel parts suppliers (only those to be integrated in the frame) to provide the rolling stock manufacturer with a U.S. Mill Test Report/Certificate (MTR/MTC), invoice for the parts or price list of the part supplier, and bill of materials for the car body or shell. Additionally, rolling stock manufacturers may have suppliers provide a “Supplier Buy America Certification,” which includes a detailed percentage of the U.S. steel content per part, an indication of the steel manufacturer (verified against the MTR) and finally the percentage the U.S. Steel Content of the Selling Price of the Part.

For pre-award audits, the rolling stock manufacturer may use its parts supplier price list to establish the total cost of the U.S. steel portion of the part based on the percentage provided by its parts supplier (Price x % U.S. Steel Content of Selling Price). For post-award audit, the cost is established the same way (Price x % U.S. Steel Content of Selling Price) except that at that point the manufacturer will have an invoice for the steel parts.

I trust this letter provides the requested clarification regarding 49 U.S.C. § 5323(j)(5). We will post a copy of this letter on our website, <https://www.transit.dot.gov/buyamerica>. If you have any further questions, please contact Richard Wong at [Richard.wong@dot.gov](mailto:Richard.wong@dot.gov) or Laura Ames at [Laura.Ames@dot.gov](mailto:Laura.Ames@dot.gov).

Sincerely,



Dana Nifosi  
Acting Chief Counsel

cc: Richard Wong  
Laura Ames