



# KPMG LLP's Trade Enforcement Survey 2018

July 2018

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# Objectives and methodology

## Objectives

- To receive key information on how industry peers are preparing for, or managing, U.S. Customs and Border Protection (CBP) reviews and audits
- To gather information on what companies are seeing from CBP in terms of regulatory audit focus, investigations, and other enforcement activities

## Methodology

- Web-based survey conducted February 2018
- Total number of respondents: 144
  - Mix of industries—top three are Apparel/Footwear, Pharmaceutical/Biotech/Chemical, and Automotive

# Executive summary

- One-third of respondents estimate the total annual value of goods imported into the United States is more than \$1 billion.
  - Most estimate their annual U.S. duty liability to be less than \$100 million.
- Thirty-one percent of respondents have undergone or been contacted by CBP regarding a customs audit or review.
- Of those who were audited, one-third indicated they were randomly selected.
- On average, companies paid \$1.8 million in additional duties due to the audit.
- Lessons learned from the overall process/experience of a customs audit: be organized, have clear and consistent processes/procedures, and have supporting documentation.
- Four in 10 indicated they are extremely likely to consider outside assistance to help prepare/support the process, in the event of a CBP audit.



# Key findings

- One-third estimated that the total annual value of goods imported into the United States is more than \$1 billion.
  - Respondents' enrollment in ISA is partly determined by membership, or lack thereof, in C-TPAT.
  - Audits were extended due to turnover in CBP staff, ongoing information requests, lack of organization, and other causes.
- One-third of respondents (33 percent) estimate their company's total annual value of goods imported into the United States to be more than \$1 billion.
  - Most (82 percent) estimate their total annual U.S. duty liability to be less than \$100 million.
  - A significant majority (65 percent) are currently not enrolled in the Importer Self-Assessment (ISA) program.
    - Of those not enrolled, nearly one-third (31 percent) say it is due to the fact that they are not a Customs-Trade Partnership Against Terrorism (C-TPAT) member.
  - While every importer is assigned to a CBP Center of Excellence and Expertise (CEE), nearly 4 in 10 (39 percent) indicated they are either unaware of their participation or not active in the CEE.
  - One-third of respondents have undergone or been contacted by CBP regarding a customs audit or review in the last five years, with one-third undergoing a Focused Assessment.
  - Of those contacted, a significant majority (61 percent) say their audit has concluded.
    - Fifty-four percent say their audit lasted between one to three years.
    - Reasons are varied for an extended duration of an audit.
  - Almost half of the companies filed a prior disclosure as part of the audit.
    - Among those who did, duty payments ranged from \$25,000 to \$15 million.\*

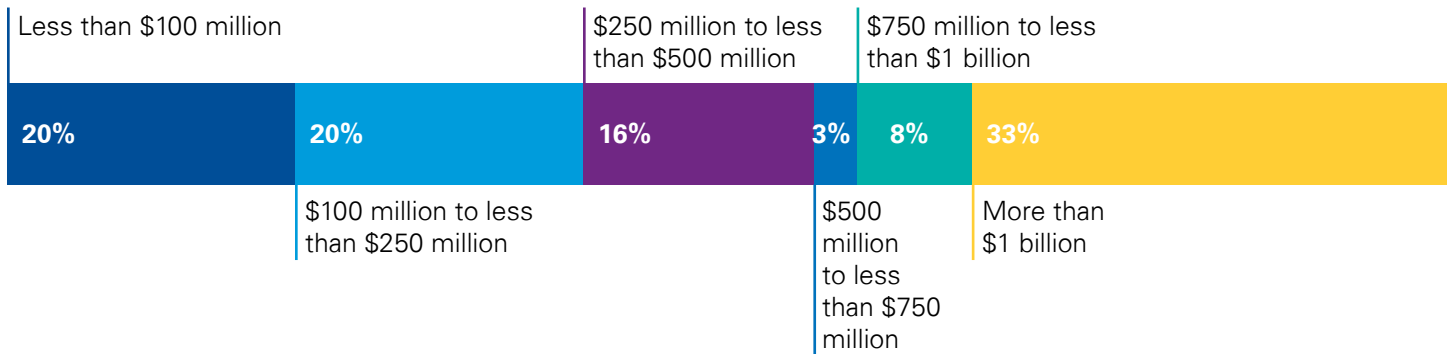
\*Small sample size

- Varied response to scope and primary focus of audit including classification, valuation, Foreign Trade Zone (FTZ), and Free Trade Agreement (FTA).
- One-third (33 percent) shared that they believed the audit happened randomly.
- Significant majority (62 percent) say their company was not found liable for past unpaid duties as a result of the audit.
  - Among those who were liable, a significant majority (63 percent) say CBP used negligence as a basis for the penalties.
- Nearly half (47 percent) used a third-party service provider to help prepare for or manage the audit; more than one-third (36 percent) prepared and managed it themselves.
  - Many (75 percent) found the third-party service provider support extremely helpful.
- The majority of respondents (58 percent) are somewhat confident that they are prepared for a CBP audit, but are aware of potential risks.
- Almost half (47 percent) cite valuation as the most significant risk in terms of custom compliance.
- While almost half cited valuation as the most significant risk, only 3 in 10 (30 percent) have reviewed their 2017 trial balance for accounts containing payments or costs that may need to be reported to CBP as an assist or addition to value.
  - One-fourth (25 percent) say they are planning to do so in the future.
- About half (49 percent) conducted an arm's-length circumstance of sale analysis for related-party transactions.

- For those companies found liable for past unpaid duties, CBP used negligence as a basis for the penalties.
- Respondents who used third-party service providers' help in preparing and managing the audit found the support extremely helpful.
- Companies feel they are prepared for a CBP audit but are also well aware of potential risks of such an audit.
- Four in 10 companies are extremely likely to consider outside assistance to help prepare/support the process, in the event of a CBP audit.

# Detailed findings

**One-third estimate the total annual value of goods imported by their company into the United States is more than \$1 billion.**



n = 144

Q. What would you estimate to be the total annual value of goods imported into the United States by your company?

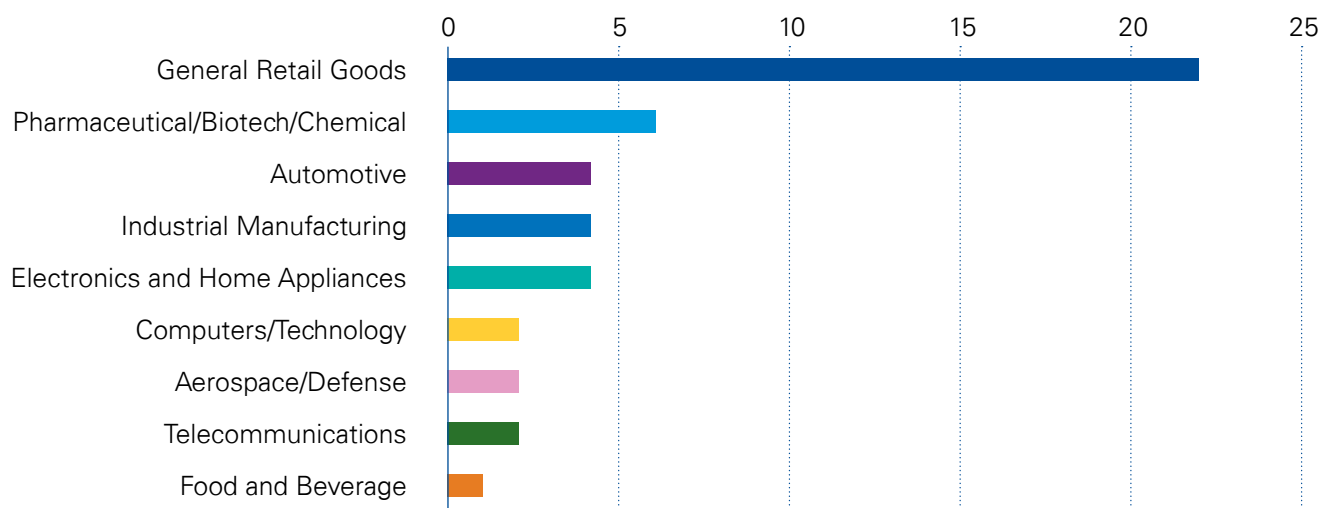
**A significant majority are currently not enrolled in the ISA program.**



n = 144

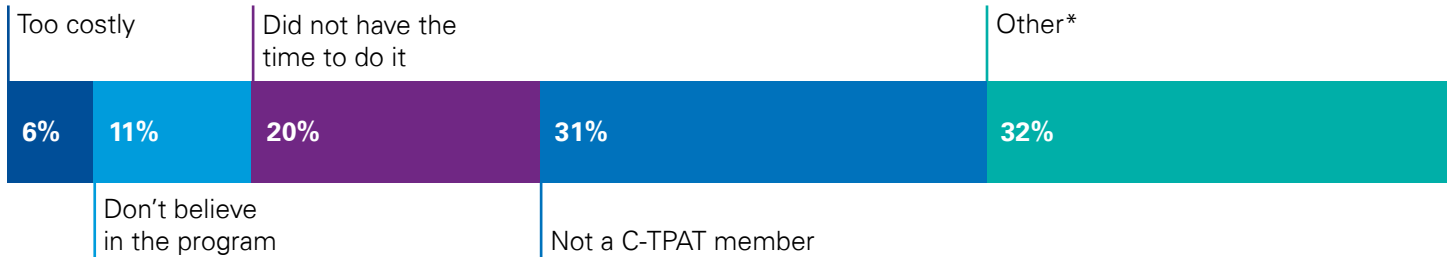
Q. Are you currently enrolled in the Importer Self-Assessment (ISA) program?

**Currently enrolled in the ISA program listed by industry:**





**Of those not enrolled in ISA, nearly one-third say it is because they are not a C-TPAT member.**



**\*Other responses**

- Awaiting completion of Focused Assessment
- Cost/benefit
- New compliance program or internal program is evolving
- Legal advised against it due to recently completed audit
- Prioritization of resources
- Was not aware of the program

n = 94

Q. Why have you decided not to participate in the ISA program?

**Most estimate their company's total annual U.S. duty liability is less than \$100 million.**



n= 144 | Does not equal 100% due to rounding

Q. What would you estimate to be your company's total annual U.S. duty liability?

# Customs audit activity

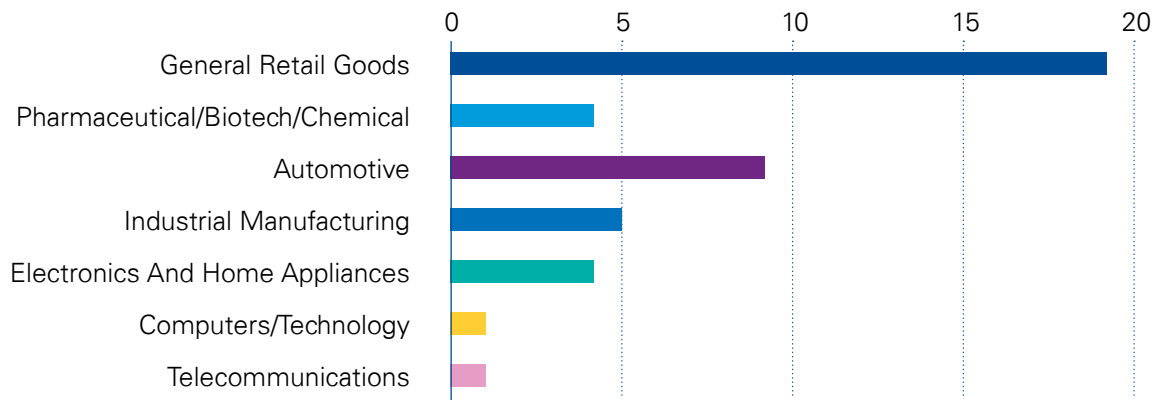
**One-third of respondents have undergone or been contacted by CBP regarding an audit or review in the last five years.**



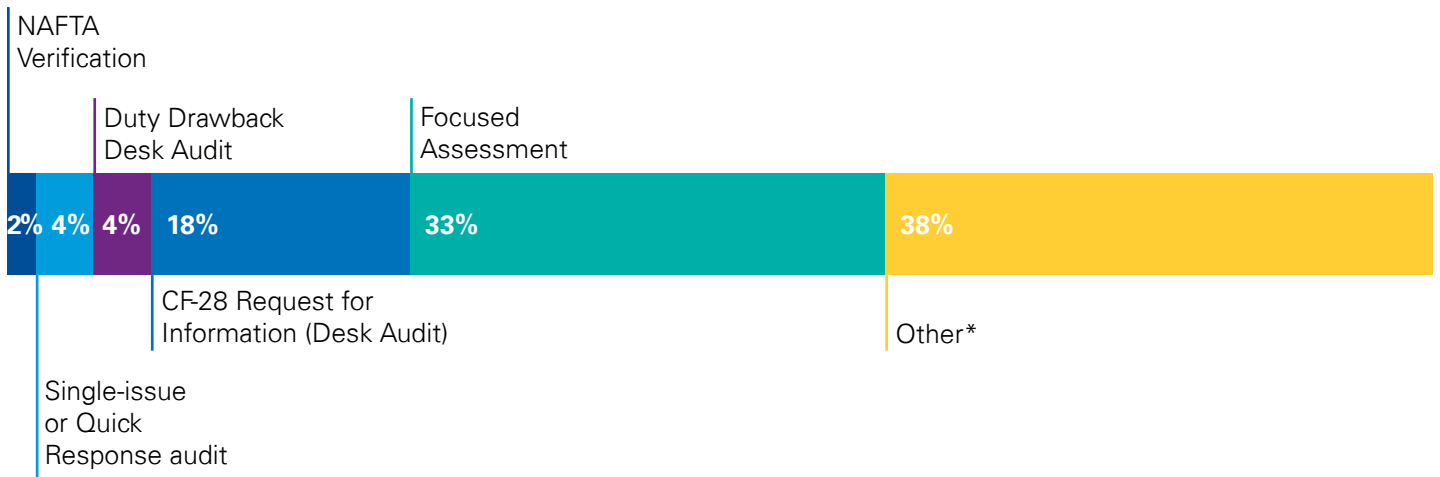
n = 144  
Q. In the last five years, have you undergone or been contacted by CBP regarding a customs audit or review?

**Of those that were audited or subject to a CBP review, 27 percent were ISA members.**

**Of those who have undergone or been contacted by the CBP regarding an audit or review listed by industry:**



**Among those who have been contacted by CBP regarding an audit, one-third underwent a Focused Assessment.**

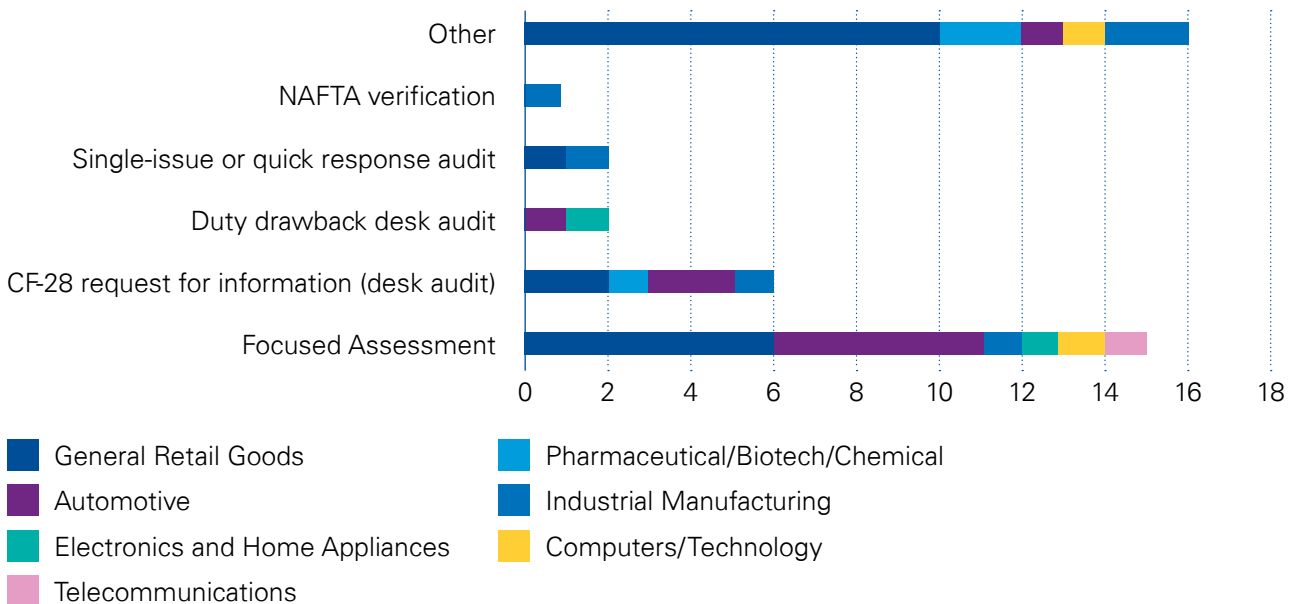


**\*Other responses**

- FTZ and C-TPAT revalidation
- ISA – Continuation review
- Referral audit
- Preassessment audit
- Informed compliance letter

n = 45  
Q. Please select the audit type below:

**Of those who have undergone a Focused Assessment listed by industry:**

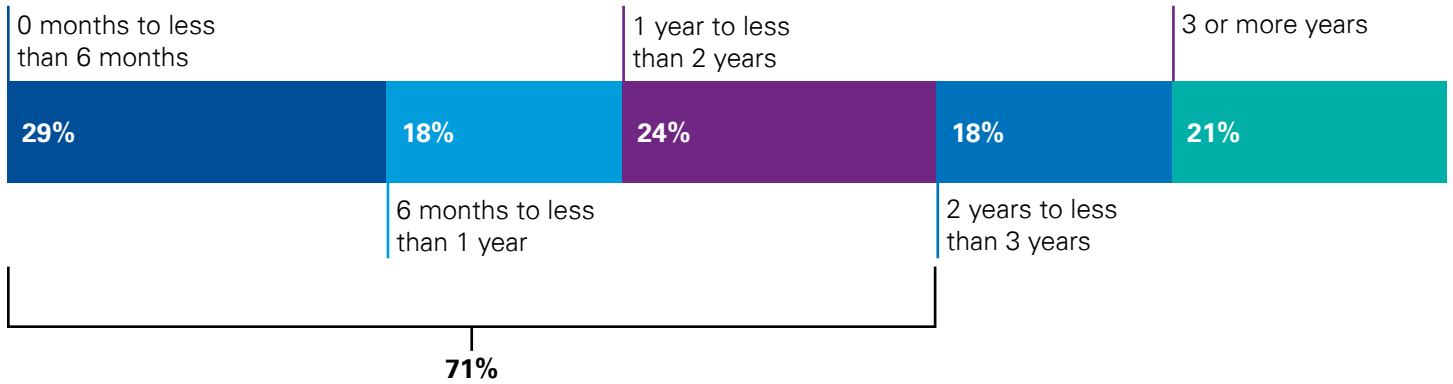


**Among those who have undergone or have been contacted by the CBP, a significant majority say their audit has concluded.**



n = 28

**54 percent said their audit lasted more than one year**



n= 144 | Does not equal 100% due to rounding

**Of all the industries, automotive audits lasted the longest, with the majority taking over two years to complete.**



### Reasons for extended duration of the audit:

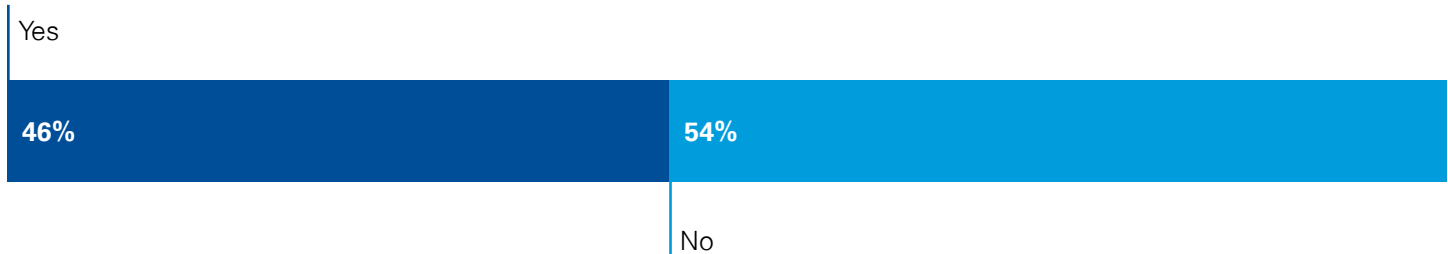
- “Extensive requests for information from CBP with extensive follow-up requests for information”
- “Internal data acquisition and data analysis by CBP”
- “Internal staff left the company”
- “CBP switched auditors midstream more than once”
- “Change of audit team and many priority changes at CBP”
- “Limited Customs resources”



### Scope/primary focus areas of the audit:

- “Classification, FTZ, value, assists”
- “FTAs, classification, origin, assists”
- “Issuance of multiple CF28s re: FTA, value, HTS classification”
- “Purchased a company that was under an audit—valuation, assists”
- “Results of product analysis performed by CBP altered classification code”
- “Reviewed transaction value, classification, AD/CVD, and IPR (intellectual property rights)”
- “Acceptability of transfer pricing for customs purposes”
- “Duty minimization verification (U.S. goods returned)”
- “CBP wanted us to prove that we were actually manufacturing in Mexico, and were not using a Mexico facility as a transshipment point in order to claim NAFTA”
- “Standard questions pertaining to import/export controls meeting drawback requirements”
- “Verifying NAFTA eligibility”

## Majority did not file a prior disclosure as part of the audit.



Among those who said “**yes**,” associated duty payments were:

Min: \$25,000  
 Max: \$15,000,000  
 Avg: \$1,864,100

**Of those that did file a prior disclosure, general retail goods and automotive companies indicated the highest filing percentage.**

n=28

Q. Did your company file a prior disclosure in preparation, during, or at the conclusion of the audit?

## One-third say the audit was based on random selection.



Twenty percent of respondents indicated that the audit was due to follow-up on a past matter, with one respondent indicating their audit “was a response to a prior disclosure.”

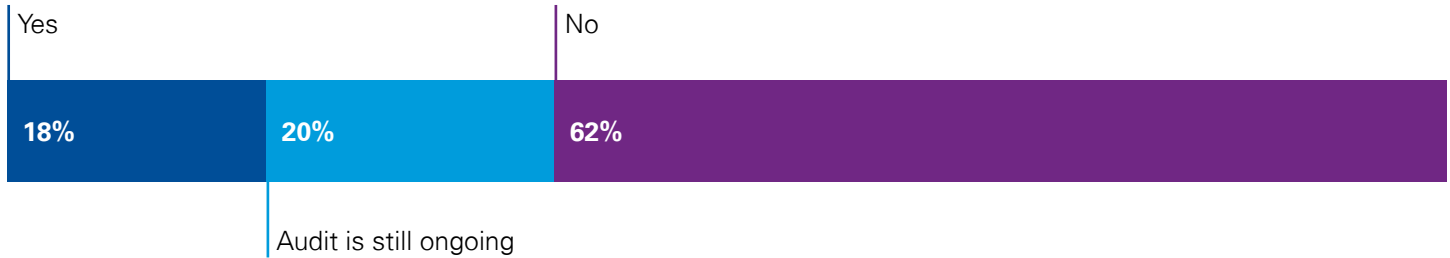
### \*Other responses:

- Annual FTZ review
- Regularly expected audit for participation in FTZ and C-TPAT
- Targeted by CEE
- Response to a prior disclosure
- Change in sourcing pattern and ADD entries

n= 45

Q. Do you know what caused the audit?

**Significant majority say their company was not found liable for past unpaid duties as a result of the audit.**



n = 45

**For those who were liable for past unpaid duties, a significant majority say CBP used negligence as a basis for the penalties.**



n = 8

\*Required a prior disclosure be filed

**Many say their company was not found liable for Customs fines or other penalties as a result of the audit.**



n = 28

Q. Was your company found liable for customs fines or other penalties as a result of the audit?

**Nearly half used a third-party service provider to help prepare for/manage the audit; more than one-third managed internally.**



n = 45  
 Q. Did you use a third-party service provider to help prepare for or manage the audit?

**Many of those who did use a third-party service provider found support extremely helpful.**



“(The) CBP process can be cumbersome, but if you have your paperwork, process, and controls in place, it is pretty straightforward.”

Respondent to KPMG Trade Enforcement Survey

n = 28  
 Q. Did you find the third-party service provider support helpful?



# Lessons learned

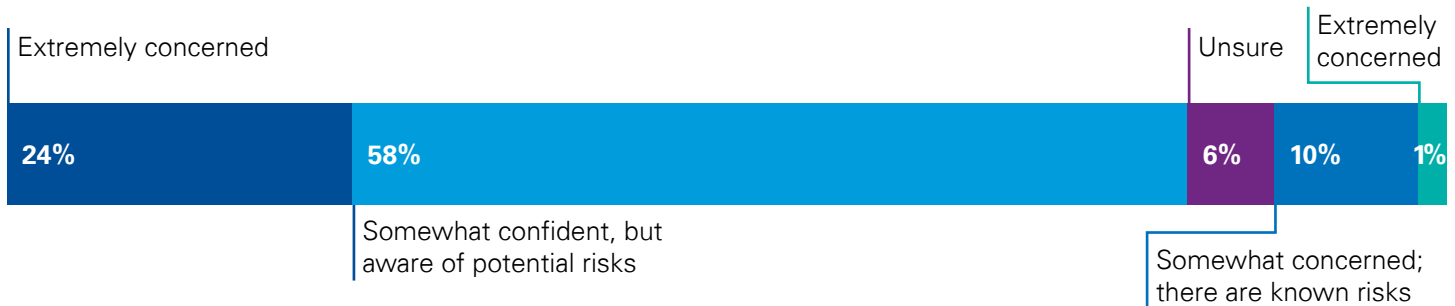
## Lessons learned from the overall process/experience of a Customs audit or review

- “Prepare more organized and complete written procedures and supporting documentation.”
- “Keep good relations with CBP and be honest, open, and friendly.”
- “Be prepared.”
- “Data availability and interdepartment communications are critical.”
- “Organization, intercompany alignment, consistent responses to CBP”
- “Perform postentry audits and check for additions to value.”
- “Sample and test all areas of customs activity.”
- “Better tracking and record retention”
- “CBP process can be cumbersome but if you have your paperwork, process, and controls in place, it is pretty straightforward.”
- “Clear procedures, document management program”
- “Ensuring there is a customs compliance manual that is up-to-date and procedures reflect organization’s process”



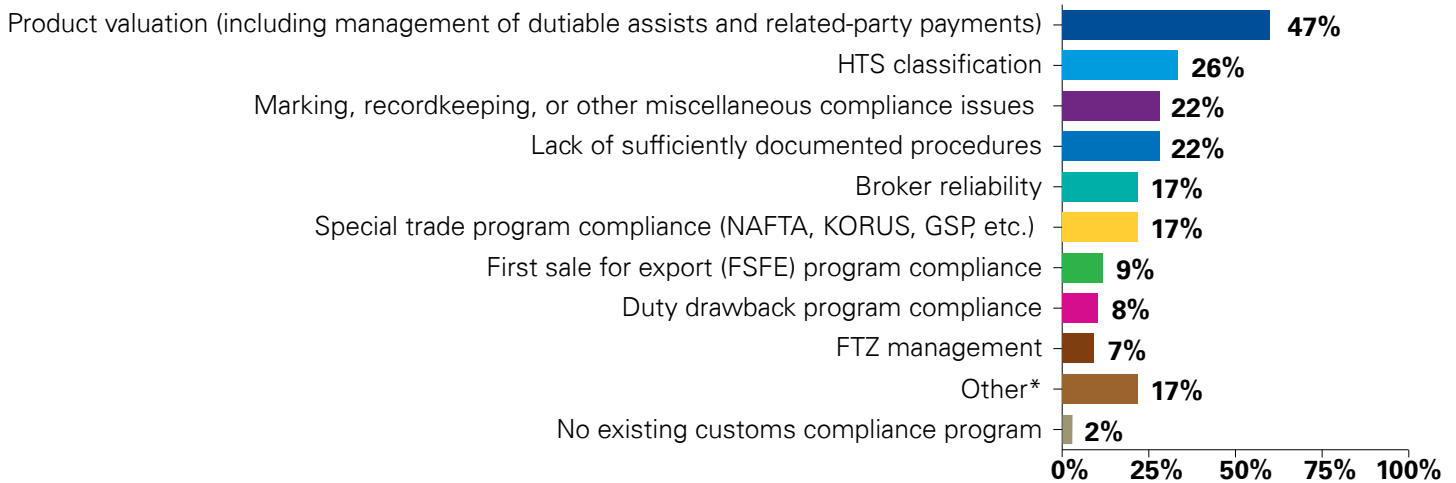
# Looking forward

The majority of respondents are somewhat confident that they are prepared for a CBP audit, but are aware of potential risks.



n=144  
Q. How confident are you that you are prepared for a CBP audit?

Almost half cite valuation as the most significant Customs compliance risk.



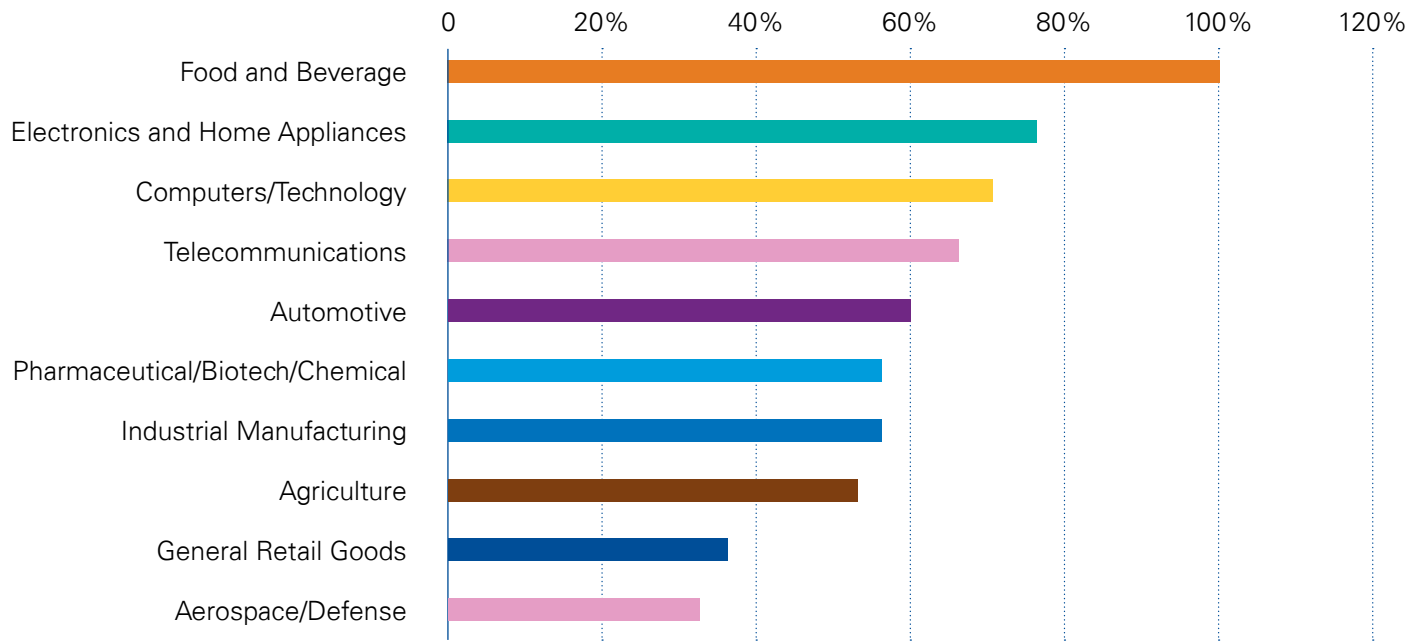
### Other responses\*

- Customer invoice quality
- DPL screening; country of origin
- Export declarations
- Free-of-charge goods
- Compliance program gaps
- Managing AD/CVD items
- Newly acquired companies and integration complexity
- Recordkeeping
- Resources
- Reconciliation
- Trade enforcement
- Trade remedy cases
- Vendor managed inventory

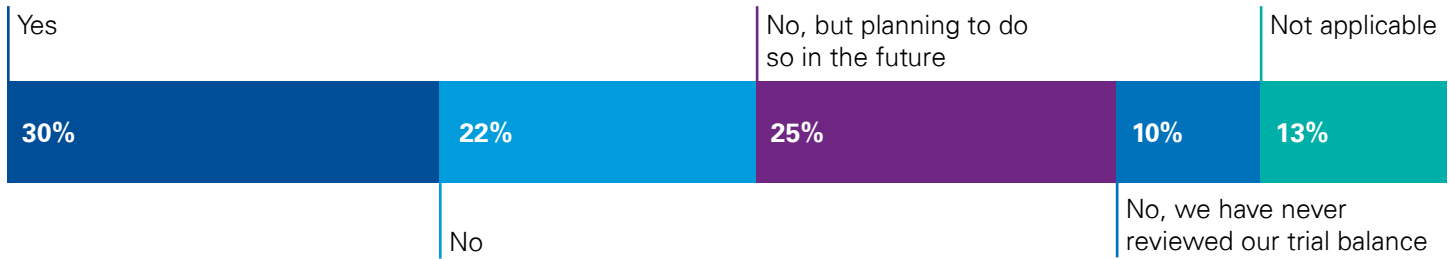
n = 144  
Q. What would you characterize as your most significant risk in terms of customs compliance?

Multiple responses allowed

**Of those the 47 percent who selected product valuation listed by industry:**



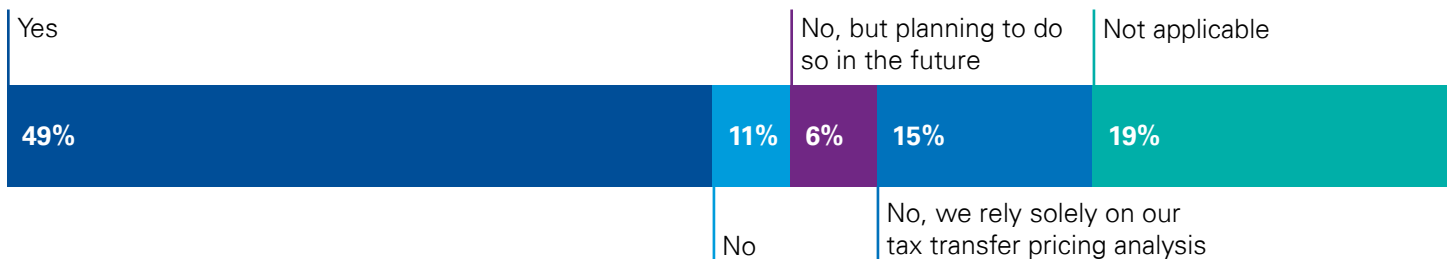
**Three in 10 have reviewed their 2017 trial balance for accounts containing payments or costs that may need to be reported To CBP.**



n = 144

Q. Have you reviewed your 2017 trial balance for accounts containing payments or costs that may need to be reported to CBP?

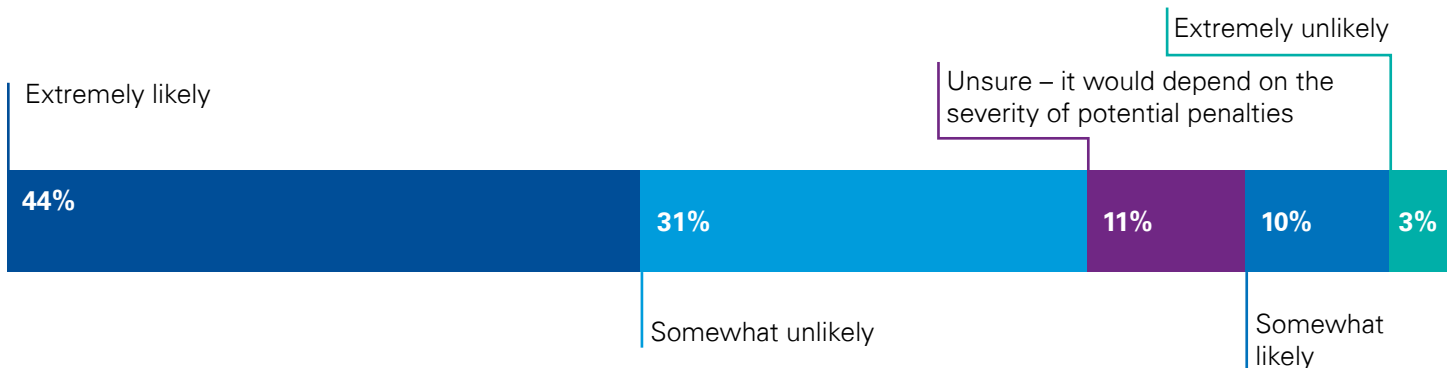
**About half conducted an arm’s-length circumstance of sale analysis for related-party transactions.**



n = 144

Q. If you have related-party transactions, have you conducted an arm’s-length circumstance of sale analysis?

**Over 4 in 10 are extremely likely to consider outside assistance to help prepare/support the process in the event of an audit.**



n= 144 | Does not equal 100% due to rounding

Q. In the event of a CBP audit, how likely are you to consider outside assistance to help prepare and support you in the process?

# Commentary

Trade is currently undergoing a once in a generation shift, and importers of all kinds are feeling the pressure of increased enforcement and uncertainty. Just as importers are maturing and growing more sophisticated, CBP is becoming noticeably better at targeting and enforcement, as demonstrated by the survey results.

Outside of Focused Assessments, ISA participation may not insulate a company from other types of audits, such as desk or single-issue audits.

While Focused Assessments are still being used frequently by CBP, desk audits and single-issue audits are also being used by CBP to hone in on particular areas of risk or to react quickly to an emerging risk.

CBP is leveraging data to focus its audit inquiries and enforcement campaigns, including through the CEE. Importers that are not reviewing their data are at a significant disadvantage.

Audits may start off with a narrow scope, but discussions and additional inquiries are leading to areas that were not a part of the original audit scope.

Recent trade remedies, such as 232 or 301 tariffs, create further scrutiny over imports and are likely to increase CBP's scrutiny of imports that may be subject to such tariffs.

Valuation was cited as one of the higher-risk areas, yet companies are generally not looking at their trial balance or conducting Customs arms-length circumstance of sale analysis on their related-party transactions.

CBP's technical expertise in certain areas, such as valuation, is prompting importers to turn to external third parties to assist them with Customs audits.

## Commentary on survey findings – Actions to consider



Enhance processes and controls with focus on CBP's priority trade risks



Increase collaboration among internal compliance functions



Leverage data analytics tools to perform risk assessments



Actively participate with industry counterparts and associations

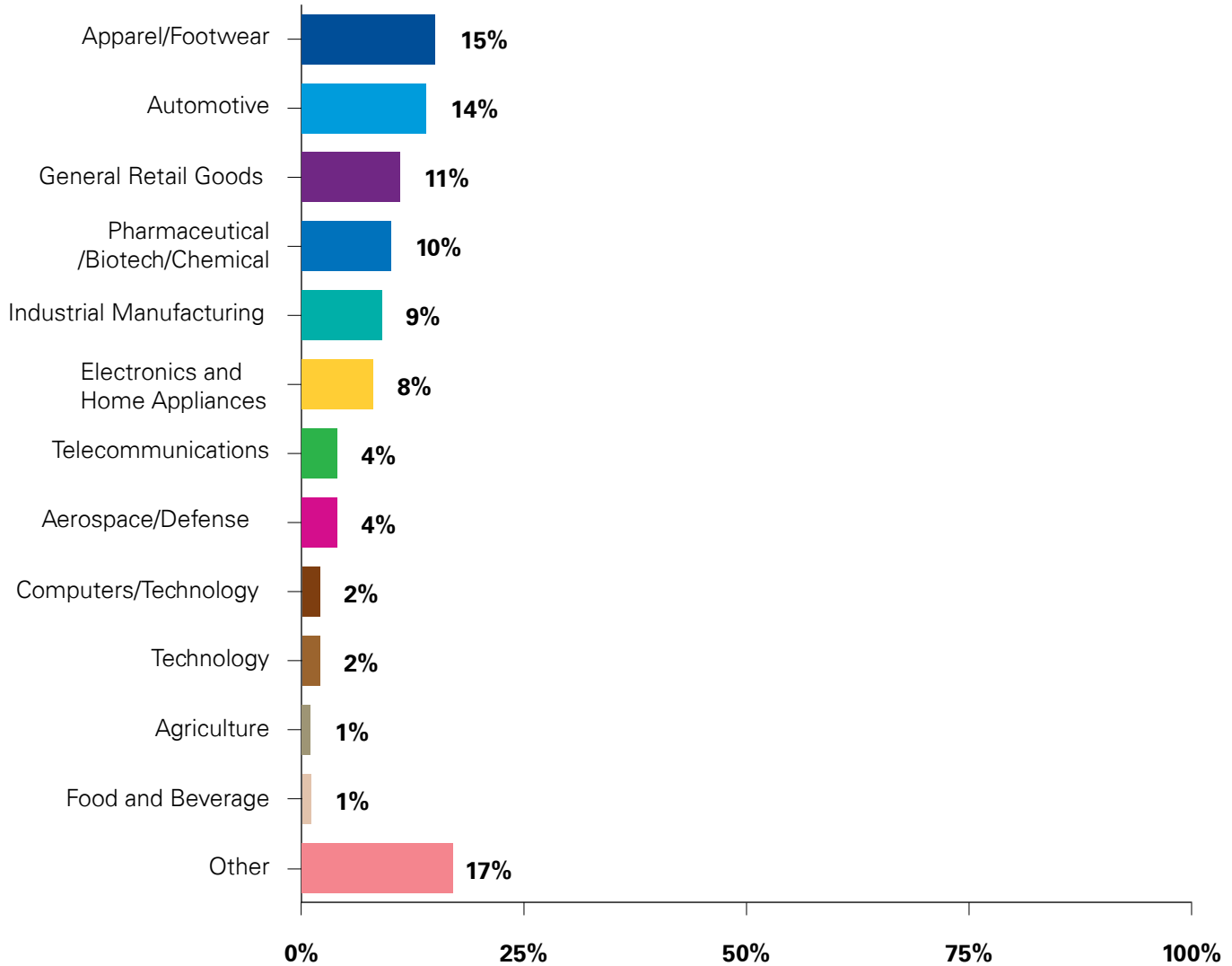


Develop or enhance internal and broker guidelines



Use voluntary disclosures as a tool in addressing compliance issues

# Industry



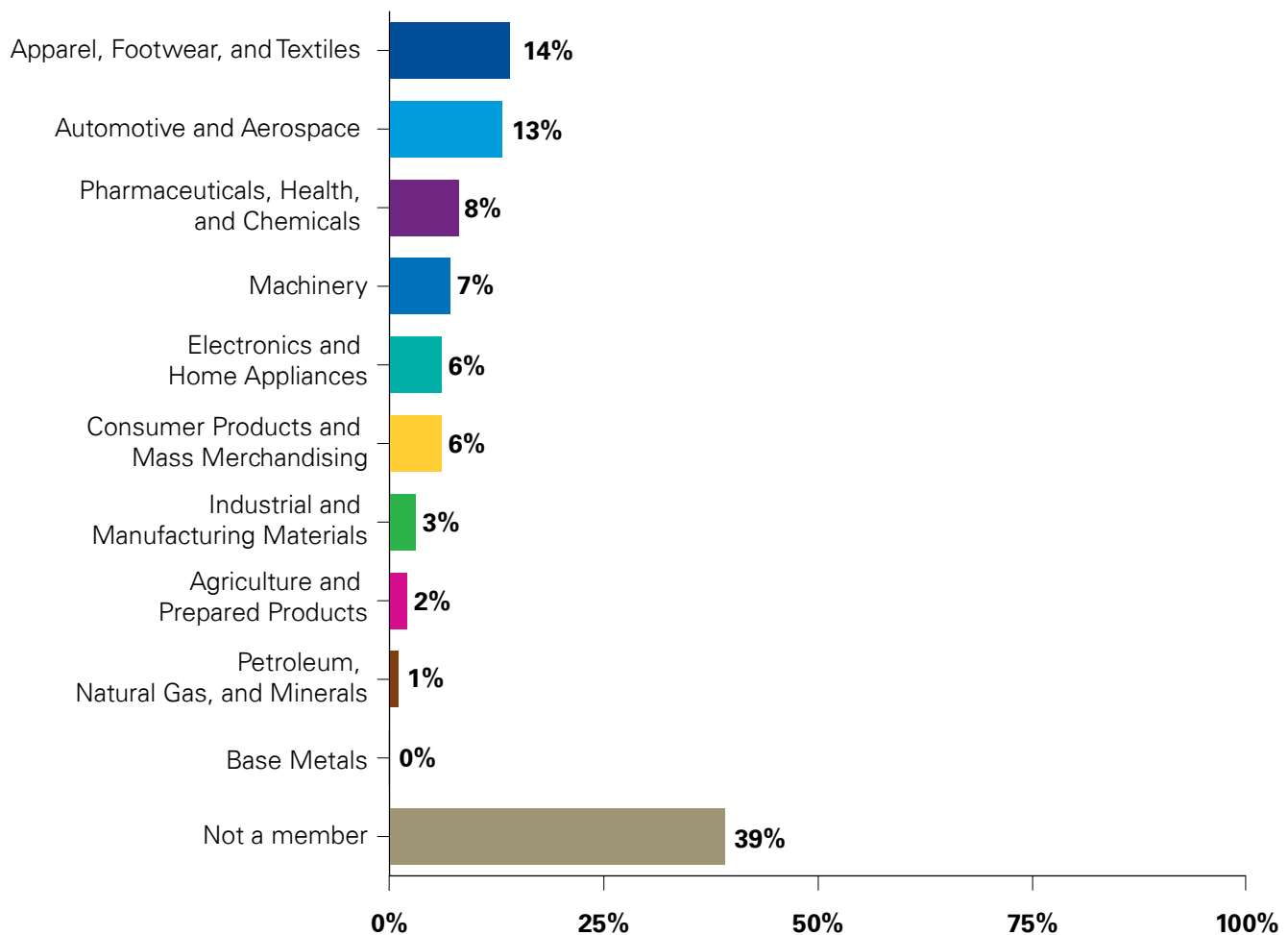
## Other responses include:

- Clean Energy
- Gaming
- Logistics/Transportation
- Natural Resources
- Oil and Gas

n = 144 | Does not equal 100% due to rounding

Q. Please select the industry most applicable to your business.

# Membership in CBP's CEEs



n = 144

Q. Are you a member of any of the following CBP's Center of Excellence and Expertise (CEEs)?

# About KPMG's Trade & Customs Services

KPMG LLP's Trade & Customs Services professionals can assist your company in reducing costs, improving efficiency, and mitigating risk issues related to engaging in cross-border business. We have the knowledge and experience to help implement the processes and approaches that may boost your competitive advantage in the marketplace.

The members of our practice work closely with trade and customs professionals from more than 60 countries in our network of KPMG International member firms around the world to provide global, forward-thinking trade and customs insights and advice. In the United States, our professionals include former U.S. Customs and Border Protection import specialists and field auditors; former Bureau of Industry and Security personnel; customs brokers and certified customs specialists; professionals with advanced degrees in business, economics, and law; and experienced technology, transportation, and logistics specialists.







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