

Main Foreign Trade Challenges for Companies in 2023

Alberto Campos-Vargas, Eduardo Sotelo-Cauduro, Juan Carlos Jiménez-Labora Mateos and María Luisa Mendoza-López

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Introduction

The commercial dynamics of the world are constantly changing. This forces the laws applicable in every country regarding international trade to be modified in order to adapt to the new needs of the world, and to become more competitive and attractive in an environment of global competition.

In Mexico, the entry into force of the Agreement between Mexico, the United States and Canada (USMCA), as well as different internal changes in the way of managing international trade and the ways in which the authorities supervise this type of operations, make necessary a deep and detailed analysis of how companies are complying with these obligations and how they are responding to such changes. For this reason, at Sánchez Devanny we undertook the task of conducting a study to know which are the main challenges that companies will face in 2023 in terms of Foreign Trade. This is the report of the results of such research.

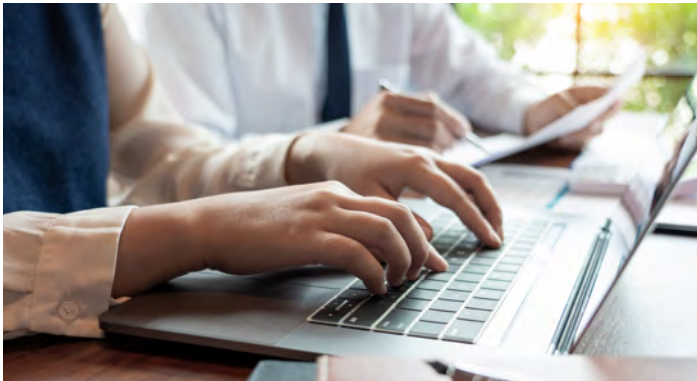
Purpose

The purpose of this study was to know the opinion of Foreign Trade decision makers of medium and large companies with operations in Mexico on how they face or prepare to face the necessary changes in their foreign trade operations in terms of:

- » Customs Clearance Procedure
- » Foreign Trade Operations Auditing
- » Auditing Powers
- » Non-Tariff Restrictions and Regulations.

With this information, we seek to identify the main regulatory challenges they will face in 2023, and simultaneously streamline their foreign trade operations.

Methodology



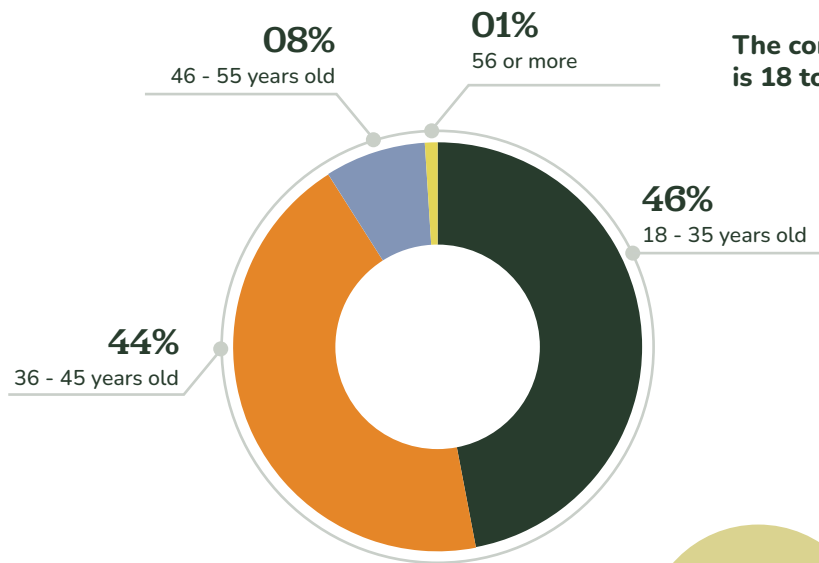
The specialized agency in market research *Estadística Aplicada*, S.C. interviewed more than 108 decision-makers closely related to Foreign Trade issues from companies having operations in Mexico.

The Companies interviewed were in general large and medium sized. These interviews were conducted either through telephone or online questionnaires, giving us a greater context of these operations.

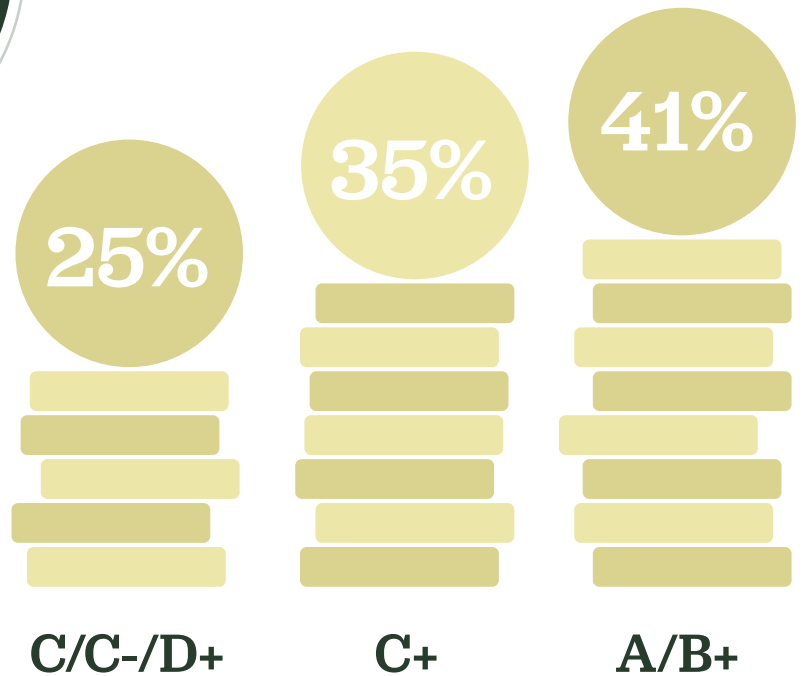
This study was supervised together with the team of specialists in our Foreign Trade and Customs practice at Sánchez Devanny.

Companies profile

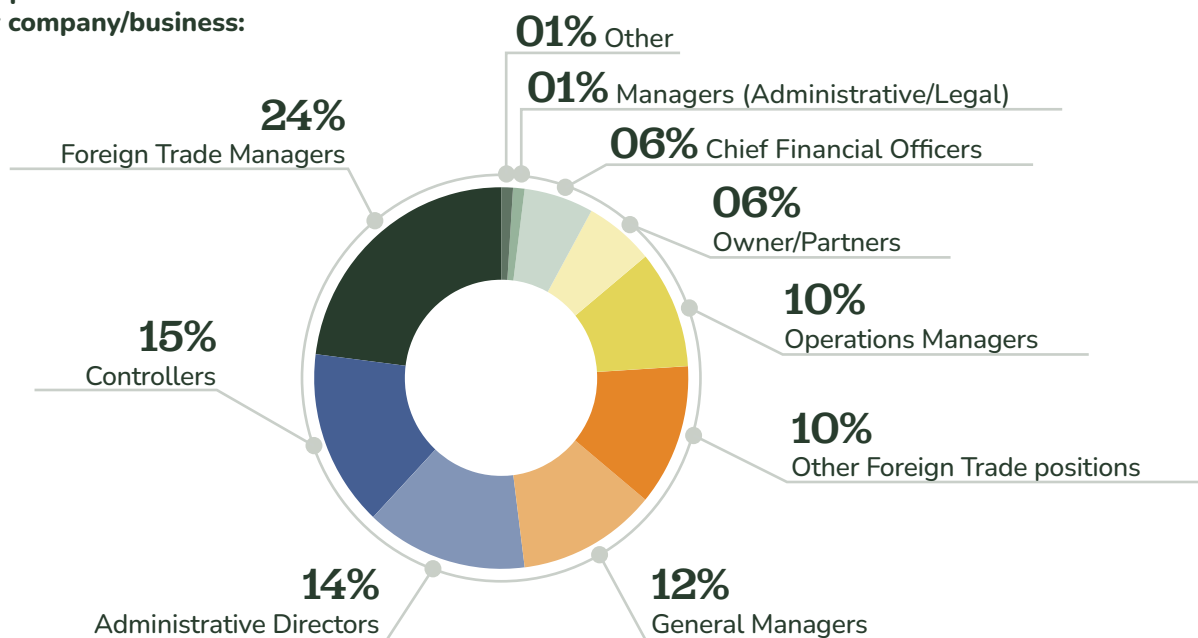




The majority of interviewed people are in the “A/B” socioeconomic status.



Main position the interviewees have in their company/business:

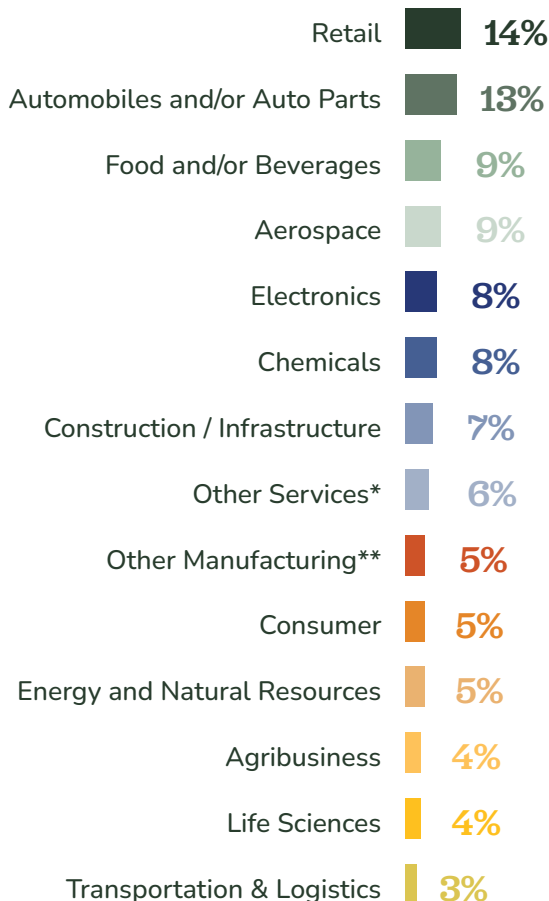


Number of employees



Average number of employees: 220

Business/Sector:



*What type of services?

Commercial sector (3%), Transportation (1%), Specialized Industrial Instrumentation Services (1%), Other services (1%).

**What type of manufacturing?

Steel (3%), Paper (1%), Machinery and precision equipment (1%).

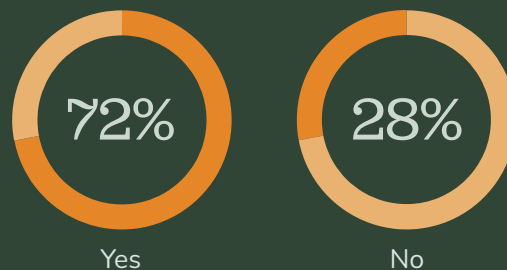
Sectors included in some industries:

- » *Retail* – Footwear, Clothing, Sporting goods, Furniture and accessories, office accessories.
- » *Construction/Infrastructure* – building materials, industrial construction machinery and equipment, bathroom furniture and fixtures manufacturers and distributors, paint manufacturers and distributors.
- » *Consumer* – cosmetics and perfumery, personal care products manufacturers and distributors, home care products manufacturers and distributors.
- » *Life Sciences* – Pharmaceuticals, dietary supplement manufacturers, medical equipment and instruments, tobacco.

Challenges before and during customs clearance procedure.



Do you know who is the new authority in charge of resolving problems that arise at the time of customs clearance procedure?



Base: Total respondents (108)

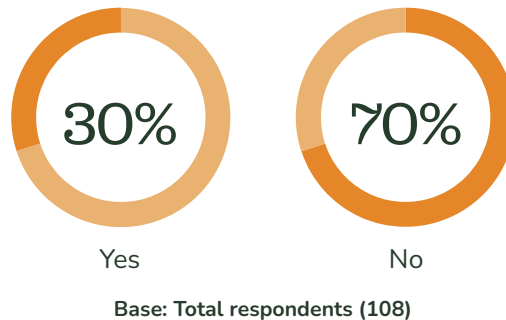
The market was asked if they were aware of the new authority in charge of resolving problems that arise at the time of customs clearance procedure, and 72% of the companies interviewed said that they were aware of it, while 28% were not.

The 28% of companies that do not know the new authority in charge of these issues run the risk of initiating procedures with the wrong authorities and losing time in these processes, which can translate into economic losses or delays in the flow of their operations. Although, in practice, it is still not entirely clear which activities are to be reviewed/validated

or managed by each authority, it is important for companies to at least know that the Mexican National Customs Agency (ANAM, per its acronym in Spanish) exists and that some import and/or export processes must be carried out before.

72% of the companies that responded to the survey said that they are aware of the existence of ANAM as the new authority in charge of resolving any problems that may arise during customs clearance, although this does not necessarily mean that all their procedures are correctly handled by ANAM.

Has your company implemented any changes in its processes as a result of the entry into force of ANAM? Could you comment on what changes were implemented?



The above graph shows that although 72% of the companies interviewed (as shown in the previous graph) are aware about ANAM and its entry into operation, very few of them have implemented changes to their foreign trade processes as a result of this situation, so there is a risk of mistakes, errors or omissions that can cause problems and/or time or economic losses for the companies.

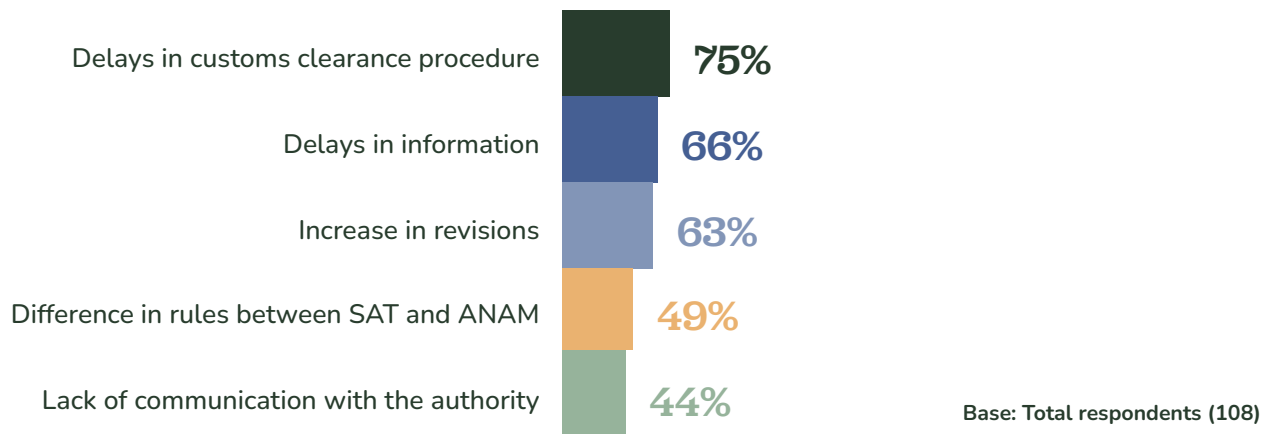
Some of the main changes that some companies have implemented include adding time to the planning phase

of their operations. Others have increased internal reviews, others have hired consultants on the subject, etc.

Our recommendation is that companies should be trained on the changes derived from the entry into operation of the ANAM, as well as the daily changes between the division of functions of the Tax Administration Service (SAT, per its acronym in Spanish) and the ANAM, since it is possible that provisions established at the beginning of operations of the ANAM are now being changed.

Have you experienced any of the following operational complications in your foreign trade activities as a result of the entry into operation of the Mexican National Customs Agency (ANAM)?

Difficulties experienced in your foreign trade activities (Yes)



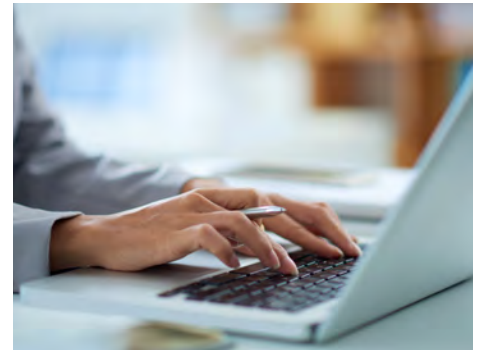
From this graph, we note that most of the companies interviewed have had some complications derived from the entry into force of ANAM.

We can emphasize that delays in customs clearance procedures as well as delays in information can be prevented if the requirements that must be submitted with ANAM for each foreign trade operation are known in detail.

Likewise, revisions that could be made by the authorities involved in these processes could be prevented if the necessary documents are available in each case, as well as knowledge of the due process, is followed.

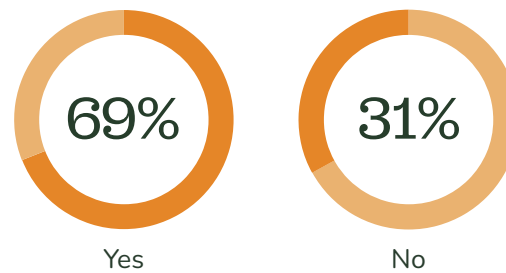
To achieve the above, it is important to have specialized advice to guide companies on these issues, so that they can expedite the solution of these problems to prevent losses or fines for the interruption of the flow of goods. Nevertheless, few companies have opted to hire specialists in the field.

Our recommendation is to clearly identify the origin of the problem in relation to ANAM and to work with a specialist who can assist or guide on the best way to solve it without interfering with the flow of operations.

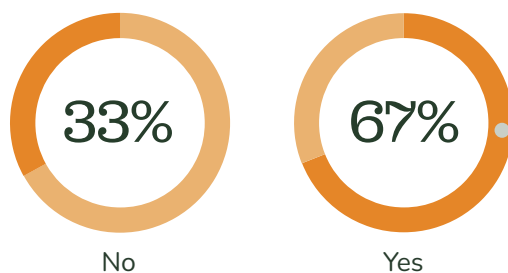


Do you know what requirements the documentation must comply during the importation of fixed assets? Do you have an internal fixed asset review procedure or policy? Could you tell us which departments or areas of your company are involved in this review procedure?

Do you know what requirements of the documentation must comply during the importation of fixed assets?



Do you have an internal fixed asset review procedure or policy?



Base: Total respondents (108)

Departments of the company involved in the review (73)



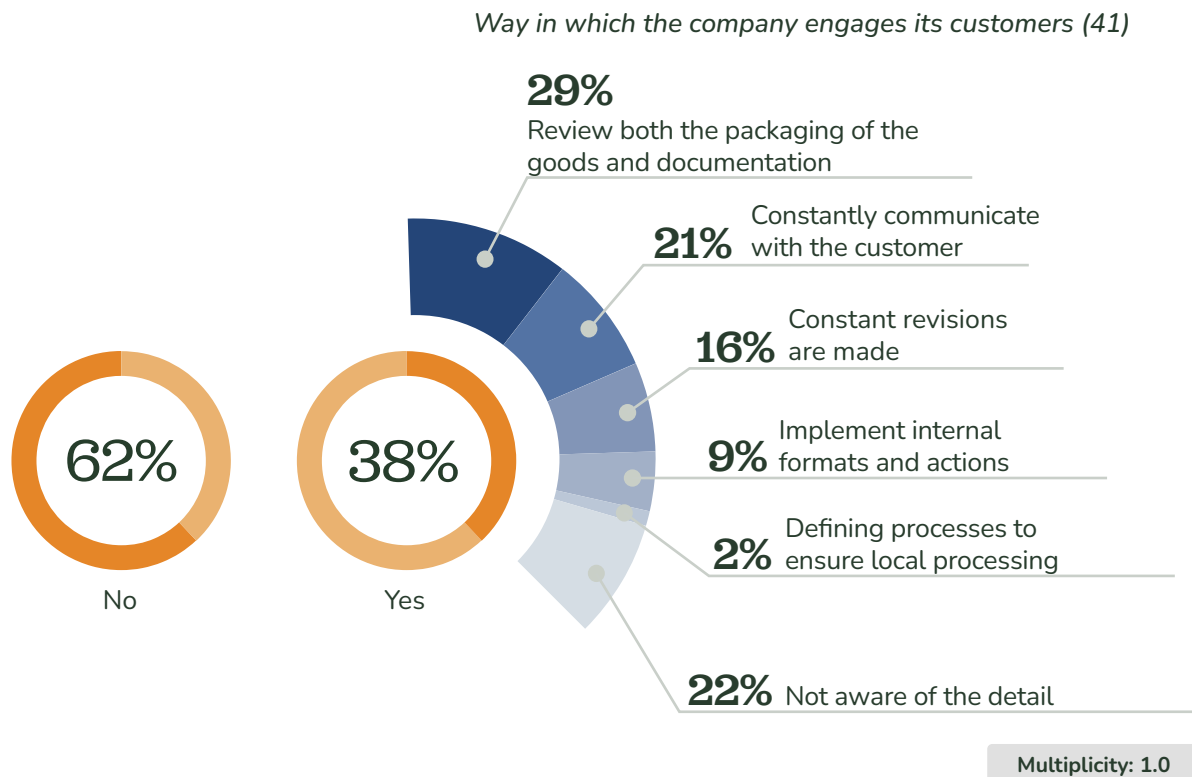
From this graph we can see that, despite the fact that the importation of fixed assets is an issue that has represented significant challenges for years, there are still companies (31% of those that responded to the survey) that still don't know the requirements that the documents need to satisfy for the importation of fixed assets. Therefore, it is important that they carry out an audit to establish the legal status of such assets and, if necessary, gather the missing documents or regularize them before any review by the authorities is carried out.

Multiplicity: 1.5



Additionally, we consider that it is important that those companies that stated that they do know the requirements that the documentation must include during the importation of fixed assets, also carry out audits to verify that everything is in order, since there may be mistakes or involuntary omissions at the time of preparing the files of these assets, since most of the areas assigned with this responsibility are Finance and Administration and not Foreign Trade, who must be aware of this issue in order to perform it correctly.

Do you involve your customers or foreign suppliers in the review and control of fixed assets? How do you involve your customers or foreign suppliers in the review and control of fixed assets?

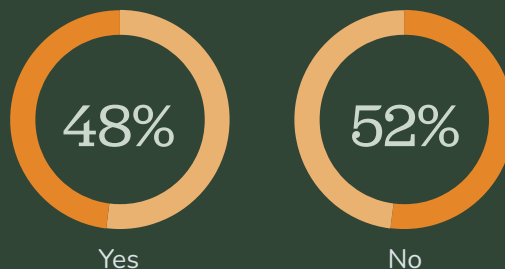


From this graph we can observe that 62% of the companies interviewed don't involve their clients or foreign suppliers in the review and control of fixed assets, which means that they are taking a high risk of not correctly integrating the files to support the legal stay of these assets in the country. In these situations, it is recommended that they make the appropriate modifications to their processes to achieve efficient communication and cooperation between the company and its clients or suppliers related to these assets.

Audit of foreign trade operations



In the last 24 months, has your company been audited in Foreign Trade matters?

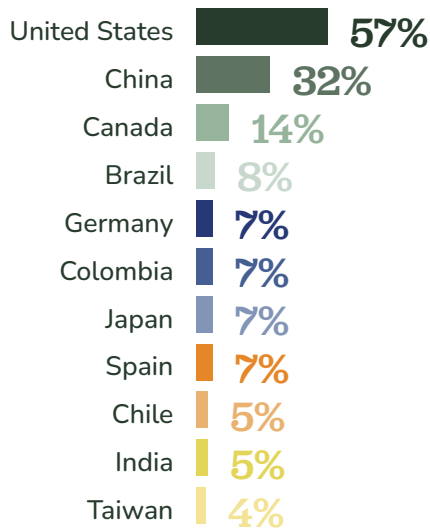


Base: Total respondents (108)

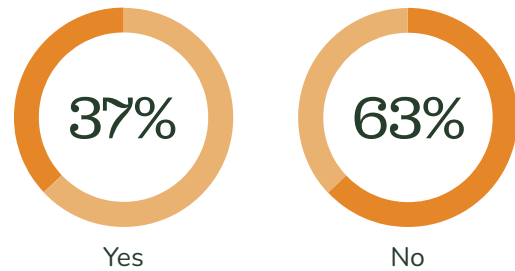
We asked the companies if during the last 24 months they have been audited in Foreign Trade matters and 52% said No, while 48% said Yes, which means that the authority has been very active in terms of the reviews it carries out regarding the correct performance of Foreign Trade operations and related obligations.

Among the main issues that companies expressed that are being subject to review by the authorities are Tax, Logistics, and Inventory aspects, which is why we recommend that companies prepare themselves with preventive audits that detect irregularities, errors or omissions in time and correct them to avoid fines and other types of penalties when they are reviewed by the authority.

From which countries does your company import goods?



Has any supplier been subject to any verification of origin by SAT?



Base: Total respondents (108)

Multiplicity: 2.1



From the above graphs we can clearly observe that our country's main trading partners are the United States, China, Canada, and Brazil, which forces companies to understand clearly and in detail the requirements of the exchange of goods with these countries to avoid non-compliance.

In addition, it is important to highlight that this year China overtook Canada as the second country that most of the companies interviewed have commercial exchange with, which shows as a fact the increase of business relations with the Asian country, either due to Nearshoring or the interest of Chinese companies to use Mexico as a platform to get their products to the United States.

Regarding verifications of origin, 37% of the companies interviewed said that some of their suppliers have been subject to verification of origin by SAT, while 63% of the interviewed companies said that none of their suppliers have been subject to such a situation. In our experience, importers are aware of this type of verification once the procedure is already advanced, reducing the possibility of participating in showing the origin of the merchandise.

Our recommendation is to implement preventive actions and agreements between foreign suppliers and importers that allow a coordinated response in the case of these verifications, such as the creation of a file that proves the origin according to the applicable rule and establishes notification commitments between supplier and importer in case of receiving these types of verifications.

Finally, it is important to remember that these types of procedures are highly formal and require the legal and technical support of Mexican experts in the field.

What other foreign trade issues do you consider to be a challenge for your company?



Base: Total respondents (108)

Multiplicity: 3.0

This graph is quite interesting due to the fact that the officers we interviewed are concerned about some issues over which they have control; for example, regarding delivery times and financial costs that depend mainly on the company being prepared, trained and having the proper support for foreign trade operations, in order to avoid fines or complications that may result in delays or additional costs for the company.

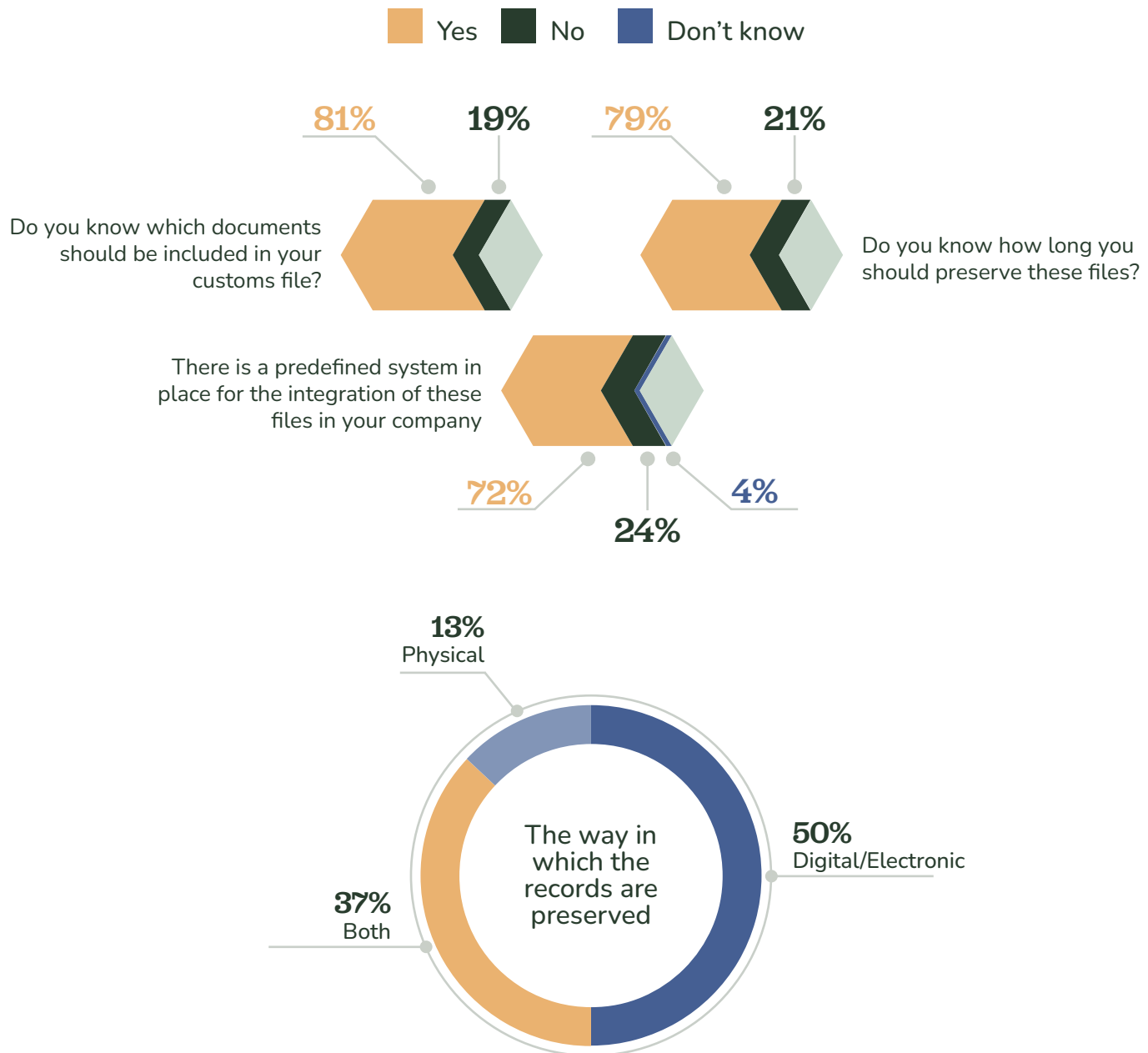
Regarding standards, regulations, and certifications, it is essential that companies are constantly requesting their advisors for recent information on changes to these standards, and the impact they will have on business operations in order to be prepared.

Finally, regarding customs controls, inventory controls, and international agreements, foreign trade specialists can also advise the company on whether these are being implemented correctly or if they should be modified to comply with current laws and rules and avoid fines or penalties to the company.

Therefore, we can conclude that it is essential for the company to have a close and solid relationship of trust with its foreign trade advisors in order to identify these issues and address them before they become a burden for the company.

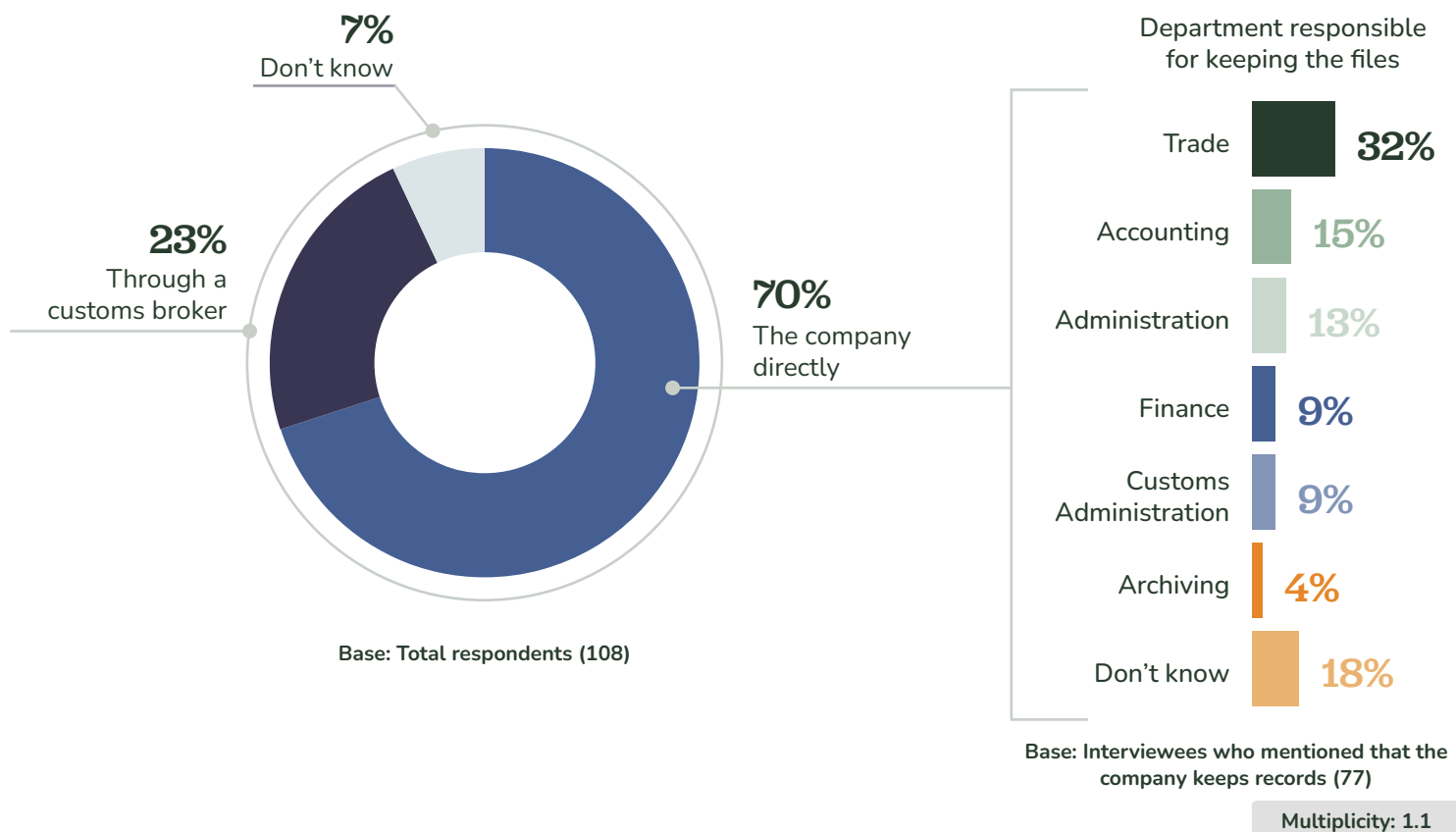


Do you know which documents should be included in your customs files? Do you know how long you should keep these files? Is there a predetermined system for the integration of these files in your company? How do you preserve these files?



From these graphs we note that, despite the fact that most of the companies interviewed know and properly document their customs files, there is still a significant percentage that do not have it properly integrated, which represents a risk of a possible review from the authority that could result in fines or penalties.

Does your company keep these files, or are they retained by a customs broker? Which department or area of your company is responsible for keeping these files?



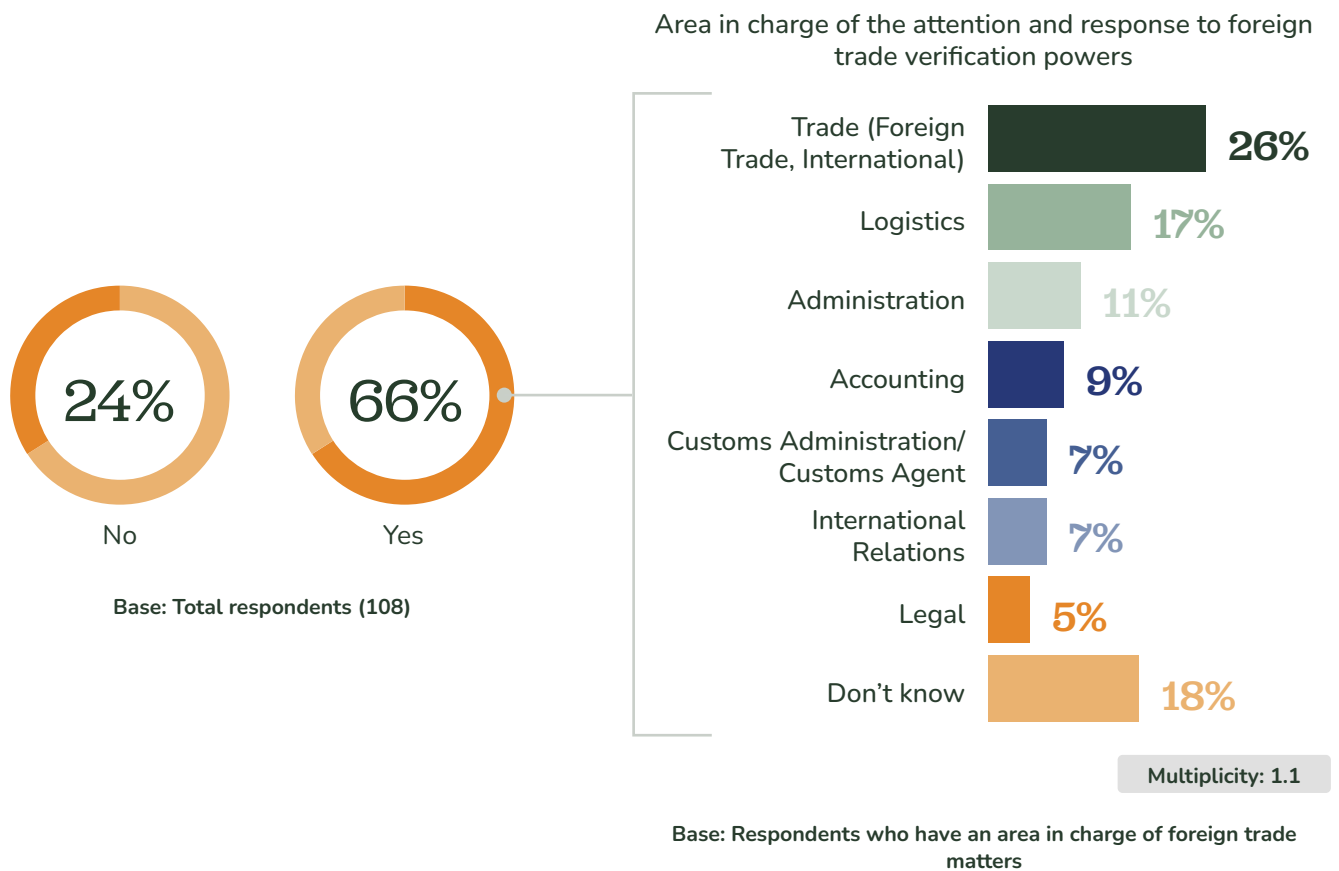
From these graphs we can observe that most of the companies prefer to keep their customs files (70%), nevertheless in most of these companies still don't consider that the Foreign Trade area is responsible for keeping these documents, because in case they need to be consulted for any review by the authority, if they do not have these files in order, properly integrated and at hand, there is a risk of submitting evidence improperly integrated, late or in the worst situation not submitting them, which would represent fines and other significant penalties for the company.

Our recommendation is that if your company is in this situation, consider the possibility of assigning the Foreign Trade area as the area responsible for the integration and safeguarding of these files, since these teams are generally the ones who receive and attend the requests for reviews or audits by the authority in the matter.



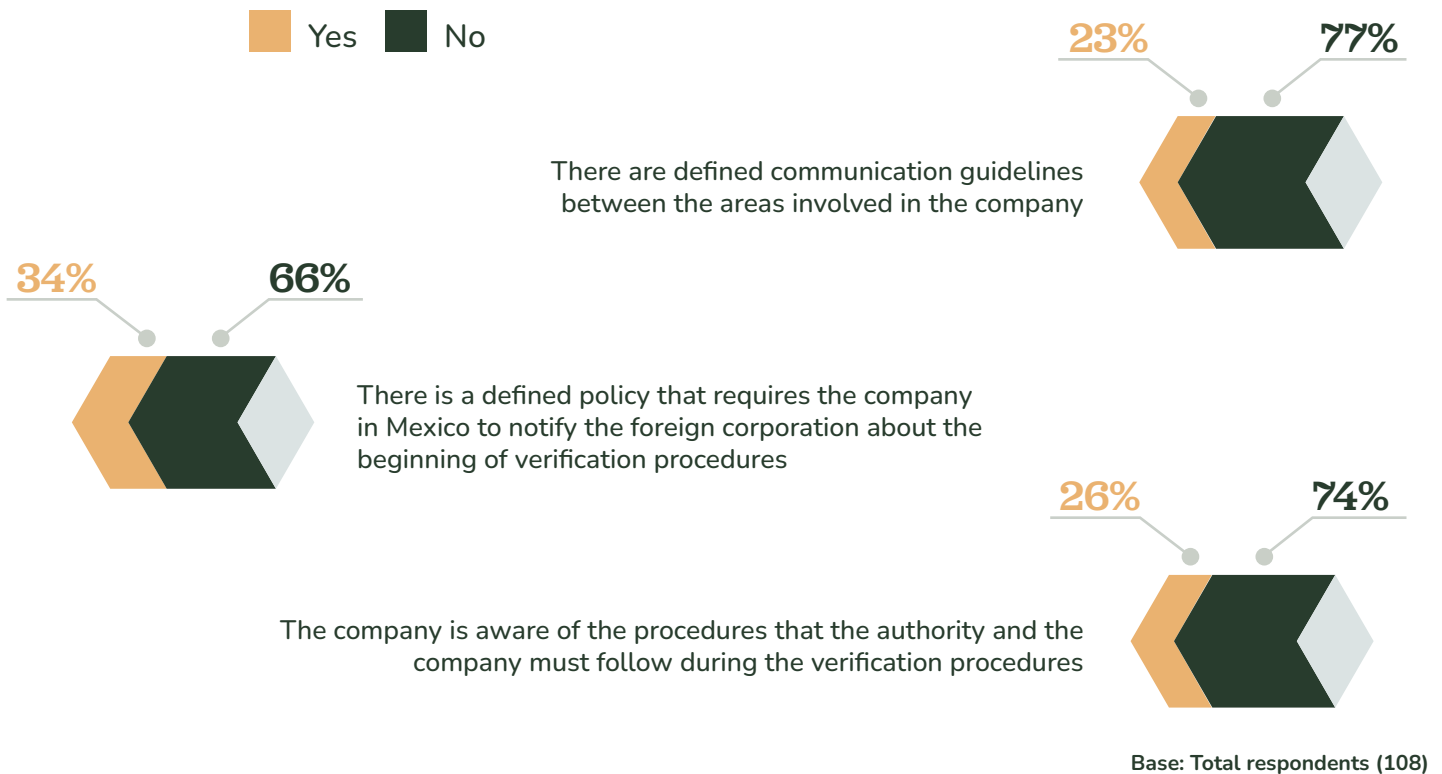


Is there a specific area in your company in charge of the attention and response to Foreign Trade verification powers? Which is the area in your company in charge of the attention and response to Foreign Trade matters?



From these graphs we see that there are companies that have foreign trade operations and that still don't have a specialized area for the attention and response to verification powers (34%), so it is important that this type of company assigns this responsibility to a specific area, especially to the Foreign Trade area, since this is the area that should be in charge of this matter, or that the procedure for immediate attention is established with their external consultants in order to avoid problems in the attention to these requirements.

Are there defined communication guidelines between the areas involved in your company? Is there a specific policy that forces the company in Mexico to notify the corporation abroad about the beginning of verification procedures? Do you know the procedures that the authority and the company must follow during the verification procedures?



Although in these graphs we can clearly observe that most of the companies that answered the survey assured that they have defined communication guidelines between internal areas and that they have a defined policy that forces the company in Mexico to notify the corporate abroad about the initiation of verification powers, we must establish that the guidelines, as well as the policies, must comply with certain requirements to be legally effective, so it will be necessary that the company verifies that in reality these documents have all the legal requirements that will give them legal validity.

Among others, the guidelines must be:

- » In written form
- » Have document approvals and revision control.
- » Description of the contents (table of contents)
- » Introduction
- » Glossary
- » Objective of the document
- » Scope
- » Applicable regulations
- » General Provisions

- » Guidelines
- » Annexes
- » Bibliography

The policies should be:

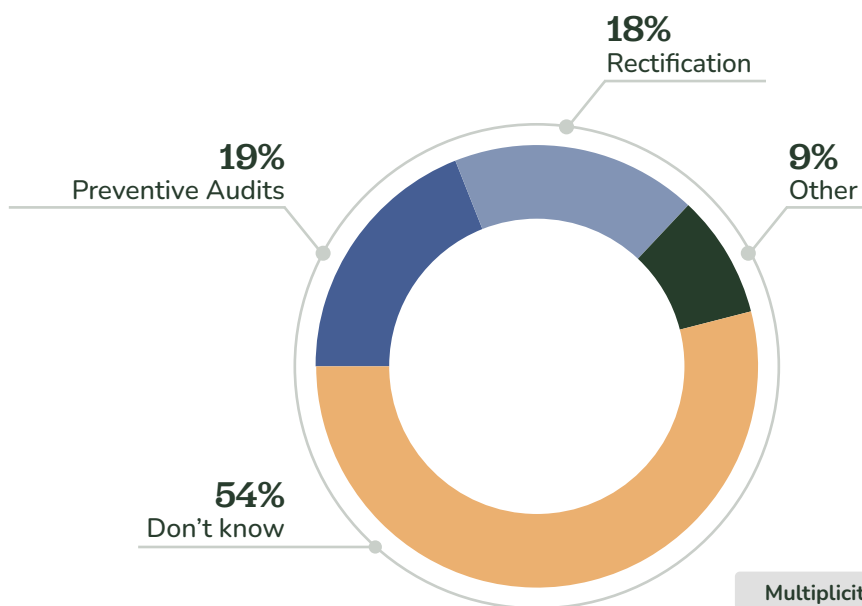
- » In written form
- » Have document approvals and revision control.
- » Description of contents (table of contents)
- » Introduction (table of contents)
- » Glossary
- » Objective of the document
- » Scope
- » Official company position on how to address the central theme of the policy
- » Rules and regulations
- » Focus on what NOT to do
- » Applicable sanctions
- » Exceptions (if there are any)

Having said the above, it will be important that companies review if they really have these documents within their companies in order to regulate operations between areas and avoid future problems regarding which area is responsible to receive, attend and give solutions to requests for verification powers, because if this issue is not clear, a situation may arise in which no area wants to be responsible for the issue, putting the company at risk for the consequences of not complying and attending these requests in time and form.

In addition, in our experience, conducting preventive audits with simulated deadlines and a procedure similar to the one followed by the authority helps to identify areas for improvement of these guidelines and internal policies.



What self-correction options are you aware of?

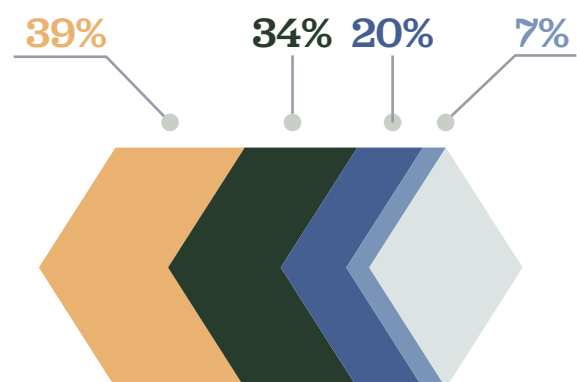
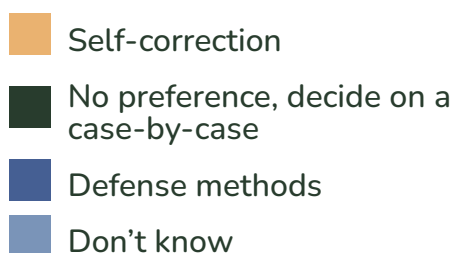


Even though the majority of the companies interviewed mentioned that they are aware of the self-correction options that exist, the vast majority (54%) are not aware of any particular option, and only 18% of the companies interviewed mentioned rectification, which is one of the self-correction options.

Although preventive audits help to identify any errors or omissions in foreign trade operations, they are not a self-correction option per se.

What is interesting here is that we can conclude that more than 80% of companies are not aware of the self-correction options available to them, which in many cases limits the strategies they can propose as solutions to complex situations for the benefit of the company.

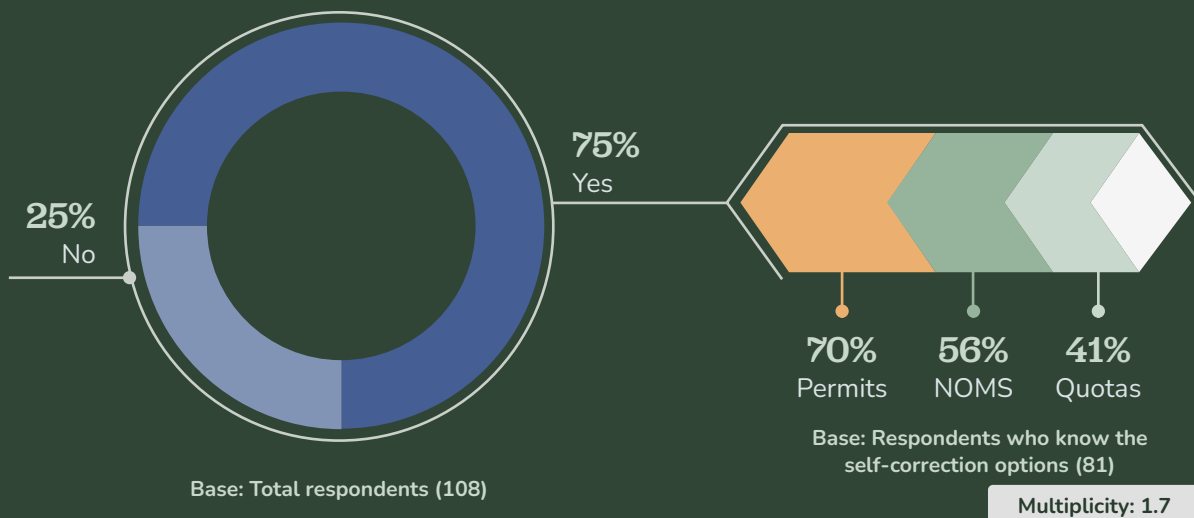
In the following graph we can see that 39% of the companies interviewed have a preference for self-correction before filing a legal defense against a contingency derived from the verification powers, so we can confirm that it is essential for companies to know in detail that are the self-correction options available to them in case of facing a contingency.



Non-Tariff Rules and Restrictions



Are you aware of the various non-tariff rules and restrictions that apply to the import/export of your products? What are the most common non-tariff regulations and restrictions that apply to the import/export of your products?



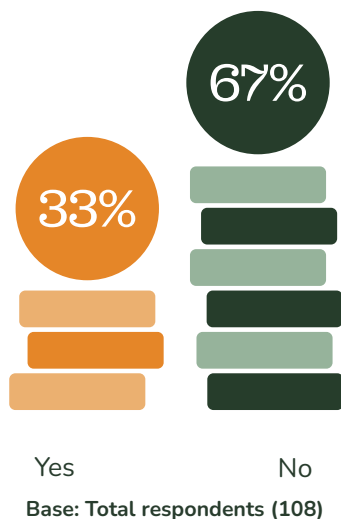
From this graph we can see that a quarter of the companies interviewed stated that they are NOT aware of the Non-Tariff Rules and Restrictions (RRNAs as per its acronym in Spanish), which could eventually cause a series of complications for them, since it is important for companies to be aware of them and especially to know their effects on their operations in order to avoid non-compliance and subsequent fines or penalties. Therefore, it is essential that companies that find themselves in this situation consult a specialist to guide them on

the basis of their activity, the products they sell and the effects of this on their foreign trade operations.

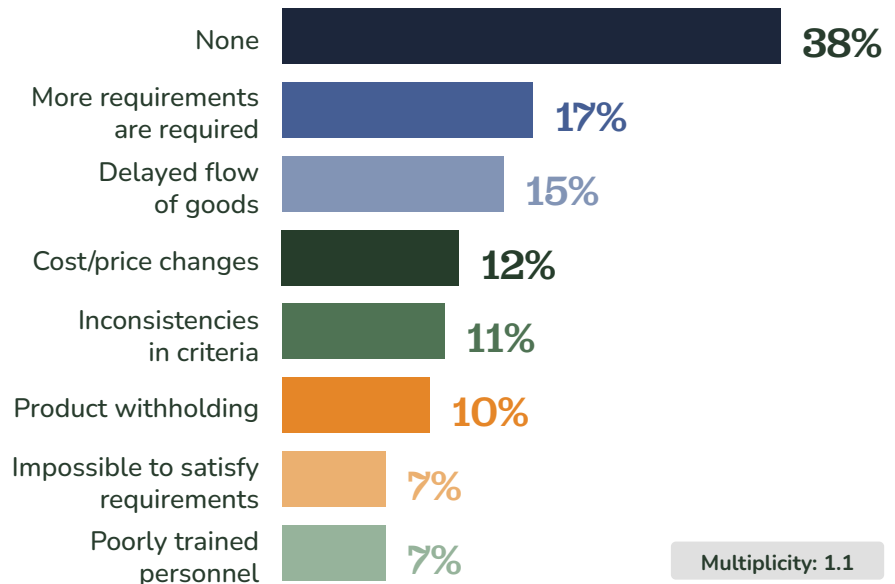
Due to the fact that Permits, Mexican Official Standards (NOMs as per its acronym in Spanish) and Quotas are constantly changing or adapting to internal and external market conditions, it is also important for companies that are familiar with them to keep up to date on changes to the RRNAs and the effects they may have on their company's operations.

Do you understand the concept or scope of goods considered sensitive or highly regulated? What challenges have you faced in complying with non-tariff rules and restrictions?

Are you aware of the concept or scope of highly regulated goods?



Challenges you have faced in terms of complying with non-tariff rules and restrictions



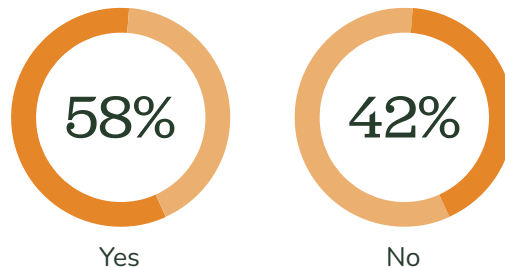
This graph is very important because there are lists of products considered highly regulated goods that are periodically updated, 33% of the companies that stated that they do not know the concept or scope of these types of goods should periodically review if their products have not been classified in this category because there are many risks of non-compliance with the provisions of the regulations applicable to these goods.

The other 67% of the survey assured that they do know the concept and scope of highly regulated goods; nevertheless, one of the most important challenges they face regarding the management of their goods under these criteria are: a) inconsistencies in terms of criteria as to whether it is a highly regulated merchandise and therefore the obligations derived from it; b) this type of merchandise has more requirements that must be met during its commercial process, which makes the operation more challenging and; c) changes are constantly being made to the classification criteria for merchandise considered as highly regulated or to the obligations derived from this type of merchandise, which can generate problems for the company.

For this reason, it is essential for companies to be aware of the concepts and scope of highly regulated goods, and it is also important that they periodically review whether their goods are susceptible to being classified under these standards and that they analyze the scope and obligations derived from them, since any failure or omission regarding this issue in the foreign trade operation may cause delays in the flow of goods (with the inherent increase in costs) or even the loss of the goods for not complying with the provisions of the regulations in force.

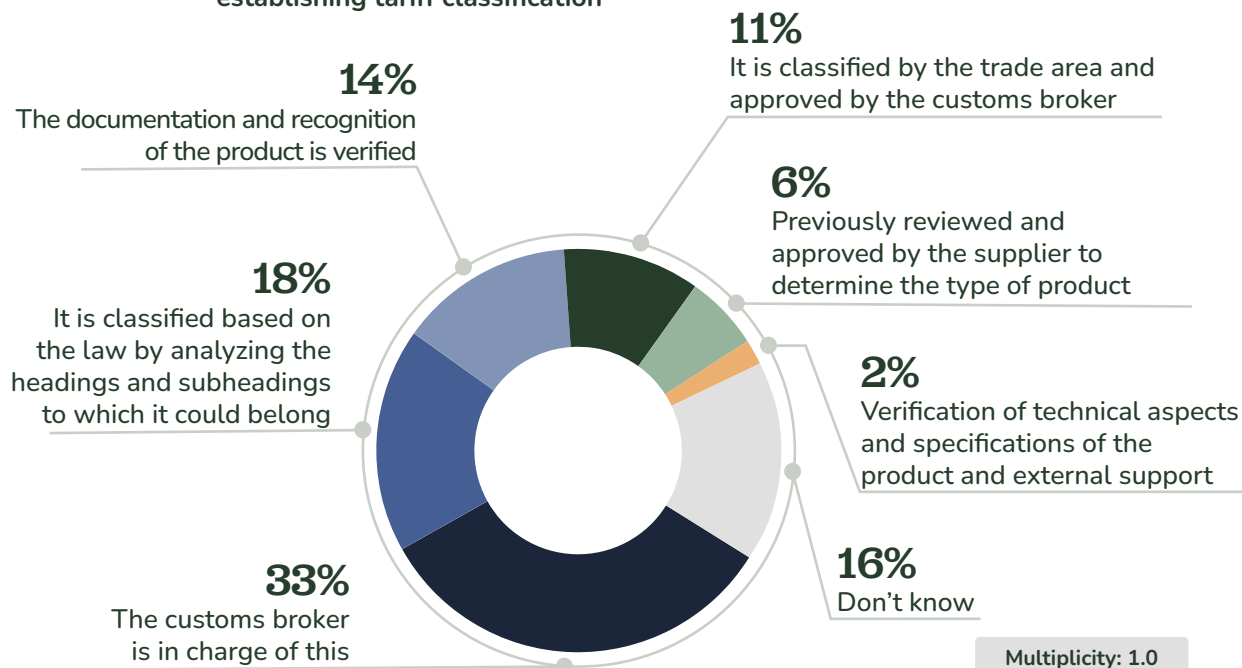
Do you have a procedure for analyzing and establishing tariff classification? What is the procedure for analyzing and establishing tariff classification? Does this procedure include the determination of non-tariff regulations and restrictions?

Do you have a procedure for the analysis and establishment of tariff classification?

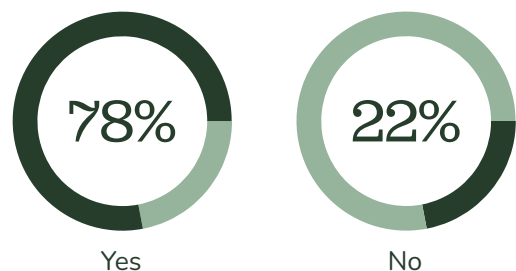


Base: Total respondents (108)

Procedure for analyzing and establishing tariff classification



Does the procedure include the assessment of non-tariff regulations and restrictions?



Base: Respondents who do have a procedure to analyze and establish the tariff classification (63)



These graphs are very significant in the sense that 42% of the companies interviewed do not have a procedure for the analysis and determination of tariff classification, which represents a high risk of contingencies for the company. Our recommendation is that these companies develop such a procedure to be able to correctly classify their goods and carry out the appropriate commercial procedures and comply with tariff obligations correctly.

Regarding the remaining 58%, who assured that they do have a procedure for the analysis and determination of the tariff classification, it is important to highlight that a significant part of these (33%) rely on their customs broker for this procedure and analysis, which may not be a good business practice, since it is the company who has the knowledge of the product, its origin, its materials, the use that will be given to it and other relevant details. We have been part of solving a significant number of contractual-commercial and tax problems between our clients and their customs brokers derived from an incorrect tariff classification.

Only 11% of these companies are carrying out the recommended procedure of determining tariff classification jointly with their customs broker to minimize the risk of misclassification.

These companies that assured that they have an established procedure for the analysis and determination of tariff classification are not contemplating other important aspects in their procedures such as the RRNAs, the information provided by the suppliers, the applicable trade agreements, etc.

Our recommendation is that all companies have a procedure for the analysis and determination of the tariff classification of their goods and that in this procedure they contemplate not only the information and knowledge of the details of their goods and what their customs agent could provide or suggest, but also include in their analysis the RRNAs, the applicable trade agreements, and the information provided by the supplier of the goods, and that together they determine the most appropriate tariff classification that optimizes the flow of goods and guarantees the company that it will not have problems for the entry of goods legally into our country.

Conclusions

1. Based on what we have observed in the last few years, we could anticipate that during 2023 there will continue to be a high verification trend in relation to the various foreign trade issues mentioned here.
2. Therefore, it is advisable to take preventive actions to reduce long audit processes that may turn into long-term litigation, among which are:
 - a. Perform preventive audits on operations of the last 5 years, with different approaches depending on the needs of the company.
 - b. Internal review of the documentation that proves the legal status of fixed assets.
 - c. Contact your area in charge of foreign trade issues and discuss your needs.
 - d. Increase horizontal communication within the company's areas in order to avoid different positions or considerations;
 - e. Establish specific or determined processes that allow them to avoid potential risks derived from their foreign trade operations.



Contact

Alberto Campos-Vargas – Partner
jacampos@sanchezdevanny.com

Juan Carlos Jiménez-Labora Mateos – Senior Associate
jclabora@sanchezdevanny.com

Eduardo Sotelo-Cauduro – Partner
esotelo@sanchezdevanny.com

María Luisa Mendoza-López – Senior Associate
mmendoza@sanchezdevanny.com

Location

Mexico City:

Av. Paseo de las Palmas #525 Piso 6
 Col. Lomas de Chapultepec, 11000
 Ciudad de México
 T. +52 (55) 5029 8500

Monterrey:

José Clemente Orozco #335 Piso 4
 Despacho 401 Col. Valle Oriente, 66269
 San Pedro Garza García N.L.
 T. +52 (81) 8153 3900

Querétaro:

Av. Antea #1090, Piso 2 Int 206
 Col. Jurica, 76100
 Querétaro, Qro.
 T. +52 (442) 296 6400



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