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Mastering Global Trade Compliance for Growth Through Export

Track 1 Session 3

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Abstract

It's not a small world after all, and the opportunities for business growth through export can be powerful. It is an opportunity to create a competitive differentiation and increase revenues. However, ensuring innovative, efficient and effective global trade compliance can be overwhelming without the right strategy and approach. In this session, a roadmap will be presented to develop a strong global trade compliance team and transform a “necessary evil” into a logical step toward profound international growth.

Agenda

- **Introduction**
- **Exports as a Strategic Growth Area**
- **Export Compliance Overview**
- **Supply Chain & Trade Compliance Similarities**
- **Competitive Advantage of Trade Compliance**
- **Building the Partnership**
- **Key Takeaways**
- **Conference Cloud**
- **Questions**

Introduction

- **New product launch in an emerging market country fails because:**
 - Export licenses were not in place
 - Import permits were not applied for
 - Customs rejects invoices because of missing country specific requirements
 - Broker can't make the declaration because the new product has not been classified
 - Landed cost exceeded profit margin
- **Why risk delays and additional costs because of poor preparation or oversight?**

Exports as a Strategic Growth Area

Exports as a Strategic Growth Area

• Export Statistics

- 83% increase of import values to BRICS Countries since 2009*
- 74% increase of import values to Developing Market Countries since 2009*
- Largest growth of imports between 2009 – 2011; impact from global recession, but poised to return to previous growth rates
- US Exports has increased exports 19% by value since 2010**

**International Trade Centre research based on UN COMTRADE statistics*

***UN International Merchandise Trade Statistics*

Exports as a Strategic Growth Area

- **Governments are focused on boosting exports**
 - Reflected in increased focus on completing regional and bilateral trade agreements
 - EU has said that completing all trade agreements currently in progress could bring 275 million euro, or an increase of 2.2% of GDP to the union
 - Ministries of Commerce and other government agencies are being developed to provide better support to companies who are looking to export
 - We even see this here in the US with President Obama's National Export Initiative

U.S. Export Reform

- **Increased government outreach promoting exports.**
- **Expanded trade-finance opportunities for small and medium-sized businesses.**
- **Export control system overhaul to simplify export procedures.**
- **Items that have been considered defense or military in nature solely due to form or fit (not function) and do not provide a military or intelligence advantage in and of themselves will be governed by U.S. Commerce Department – a more “business friendly” set of regulations than before.**

Export Compliance Overview

What is Export Compliance?

- **Jurisdiction**



U.S. Treasury Dept

- **Economic and Trade Sanctions**



- Enforces the International Traffic in Arms Regulations (ITAR).
- US Munitions List (USML): Items specifically designed, modified or adapted to perform a specialized military function.
- 5% of shipments do not require licenses.



Bureau of Industry and Security U.S. Department of Commerce

- Enforces the Export Administration Regulations (EAR).
- Commerce Control List (CCL): “Dual-use” items are products designed primarily for civilian use but having military application.
- **95% of shipments do not require licenses.**

What is Export Compliance?

- **Export Classification**

- Controls sensitive Commodities, Software and Technology.
- Assists in compiling national trade statistics.
- Identifies the proper export controls and requirements for Licenses or other Authorizations.

- **Customs classification (used on international invoice):**

- Used in determining admissibility and Duty exposure.
- Assists in compiling national trade statistics.
- Determines compliance with trade preference programs or other Governmental Entity requirements.

What is Export Classification?

- **Sanctions & Embargoes**

- The U.S. has varying levels of embargoes and sanctions against specific countries and entities.
- Restricted Party Screening will identify any designated individuals or entities
- Important to know and watch for any transactions involving those countries which have strict prohibitions and limited opportunity for authorizations:
- Currently: **Cuba, North Korea, Iran, Sudan, and Syria.**

What is Export Compliance?

- **Restricted Party Screening**

- Restricted parties are entities or individuals that are known violators of Global Trade Laws or those that have been otherwise designated as such for foreign policy or national security reasons.
- Doing business with a restricted party is either entirely prohibited or may only be conducted after a License or other Authorization is first obtained from the appropriate Governmental Entity.
- 50% or greater owners of entities on the Specially Designated Nationals List must be identified as they are restricted as well.

What is Export Compliance?

- **End User/End Use**

- Exporters have an obligation to not “self-blind” themselves to a transaction.
- End Use Risk related to nuclear, missile, or chemical / biological weapons activities.
- Diversion Risk related to the potential for a transaction to be diverted to an unauthorized location, or for an unauthorized purpose.

- **Red Flags**

- Prohibition 10: Proceeding with transactions with knowledge that a violation has occurred or is about to occur.
- (Knowledge Violation to Occur).

What is Export Compliance?

- **Export License Determination**

- A license might be required depending on:
 - Where the shipment is going?
 - What items are being shipped?
 - Who is receiving the items (the end user)?
 - What is the end use of the items?

What is Export Compliance?

- **Export Declaration**

- Parties to the transaction
- Item Description, Classification, Quantity, Weight
- License Number (if required)

- **Ensure the person filing the declaration or providing the Shippers Letter of Instructions has been trained on export compliance.**

What is Export Compliance?

- **Other Documentation**

- Free Trade Agreement Certificates
 - NAFTA
 - GSP
 - US-Korea
- Manufacturer's Affidavits
- Certificates of Origin
- Import Permits

What is Export Compliance?

- **Anti-boycott**

- “Boycott” refers to a refusal to transact business with certain parties or requesting terms of agreements to ensure that a party will not do business with another party or country.
- Although the Commerce regulations apply on their face to all “unsanctioned foreign boycotts,” the Commerce Department is focused primarily on the boycott of Israel by Arab League and other countries.

What is Export Compliance?

- **Anti-boycott Examples:**
 - Prohibited Condition in a Purchase Order
 - “Goods must not be shipped on vessels/carriers included in the Israeli Boycott list.”
 - Prohibited Condition in a Contract
 - "The bill of lading shall bear a note that the vessel delivering the cargo is not on the "Black List" and does not call at Israeli ports.“
 - Reportable Boycott Condition in letter of credit:
 - "Certificate issued by the shipping company or its agent testifying that the carrying vessel is allowed to enter the Lebanese port...

Export Management and Compliance Program (EMCP)

- **Management Commitment**
- **Continuous Risk Assessment**
- **Formal Written Policies and Procedures**
- **Ongoing Compliance Training and Awareness**
- **Screening**

Export Management and Compliance Program (EMCP)

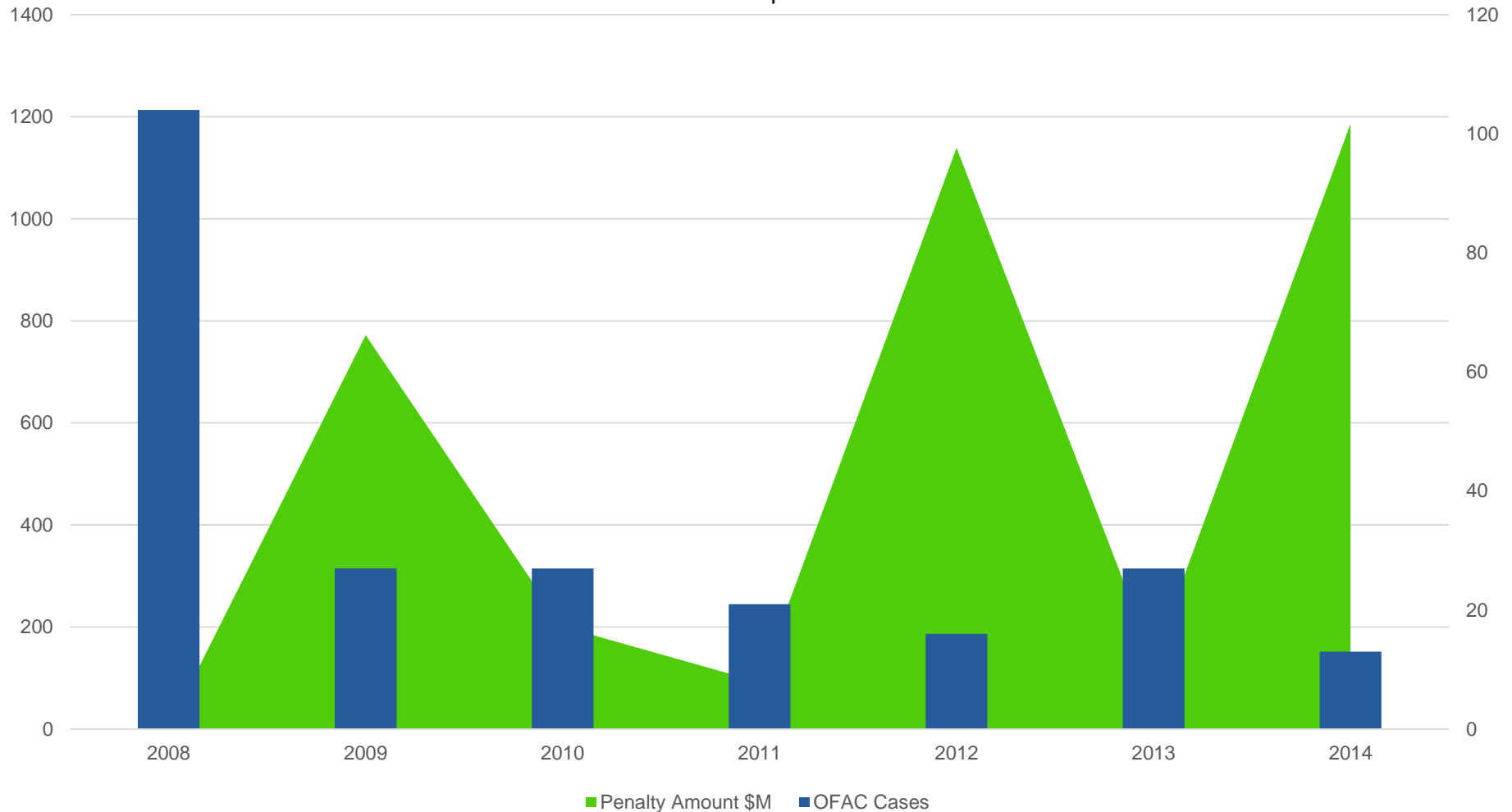
- **Recordkeeping**
- **Audits**
- **Program to handle compliance issues/violations**
- **Completing Corrective Actions in response to violations**

Penalties

- **IEEPA (Title 50 U.S. Code § 1705)**
 - EAR Civil Penalty – up to \$250,000 per violation or twice the amount of the transaction
 - ITAR Civil Penalty – up to \$500,000 per violation
 - Criminal Penalty – up to \$1,000,000 per violation, and up to 20 years in jail.
 - Contract debarment, forfeiture, and the loss of export privileges
- **U.S. Export Declaration Penalties**
 - Up to \$10,000 per offense
- **Focus on personal liability**

Penalty Trends

YTY Trending of OFAC Cases and Penalty Amounts
USD\$ M



Penalty Example

- **BNP Paribas, June 2014**
 - Criminal penalties of \$8.9 billion (with a 'B').
 - Processed billions of dollars of transactions through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban entities.

Penalty Examples

- **Epsilon Electronics, 2014**

- Civil penalty of \$4.1 million
- Shipped car audio and video equipment to a company that reexports most, if not all, of its products to Iran and has offices in Tehran, Iran, and Dubai, the U.A.E.
- Epsilon knew or had reason to know that such goods were intended specifically for supply, transshipment, or reexportation, directly or indirectly to Iran.
- Had received cautionary letter from OFAC in 2012 but continued to ship.

Penalty Examples

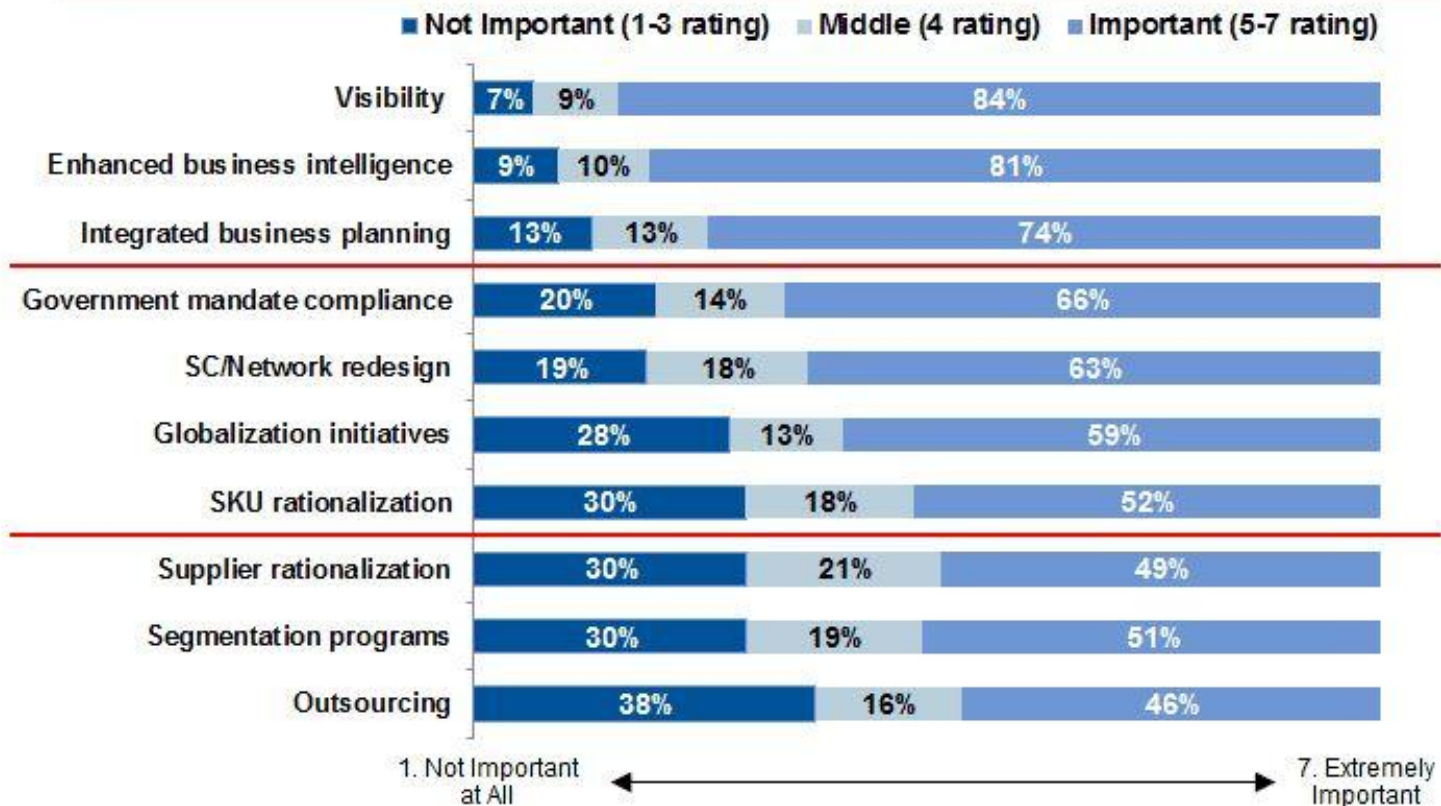
- **Amplifier Research, Jan 2013**

- Timothy Gormley, 52, of North Wales, PA, was sentenced to 42 months in prison.
- 50 unlicensed exports of national security sensitive items to China, India, Hong Kong, Taiwan, Thailand, Russia, Mexico, and other countries.
- He altered invoices and shipping documents to conceal the correct classification of amplifiers so that they would be shipped without the required licenses; listed false license numbers on export paperwork for defense article shipments; and lied to fellow employees about the status and existence of export licenses.
- “When Gormley admitted to the conduct, he explained it by saying he was “too busy” to obtain the licenses. Gormley claimed he was overwhelmed at work and that was his only excuse.”

Supply Chain & Trade Compliance Similarities

Supply Chain Initiatives

Key SCM Initiatives Next Twelve Months

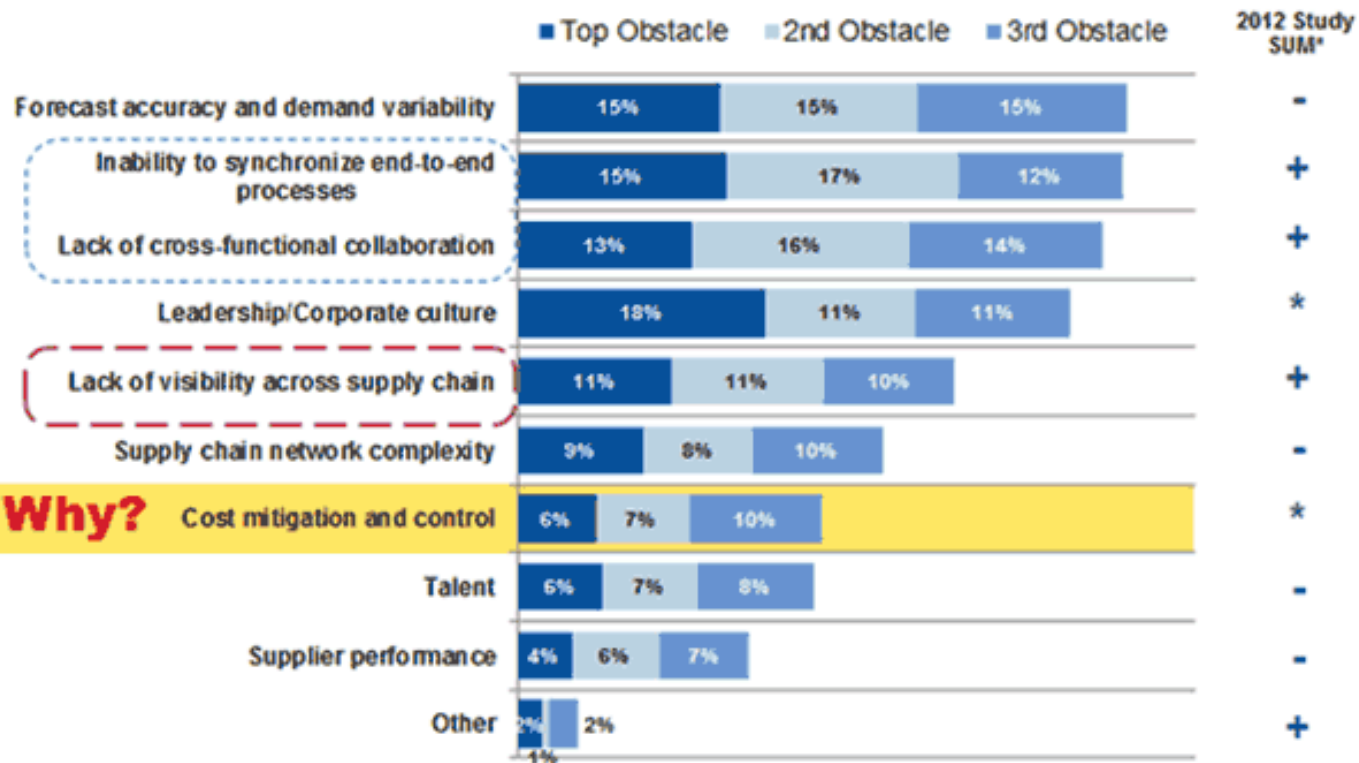


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Supply Chain Obstacles

Consider Your Supply Chain Obstacles



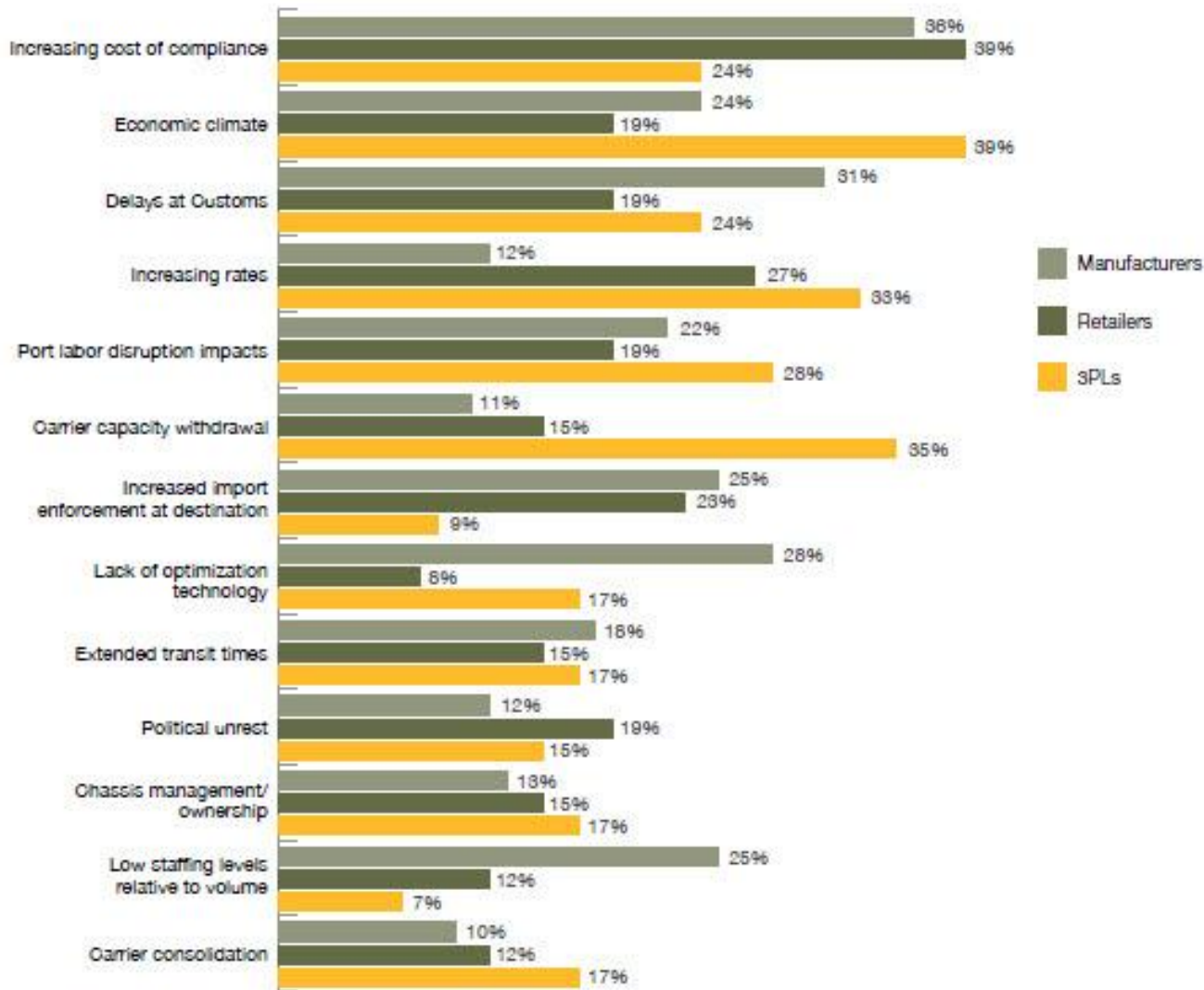
(-) Down Year Over Year, (+) Up Year Over Year, () New

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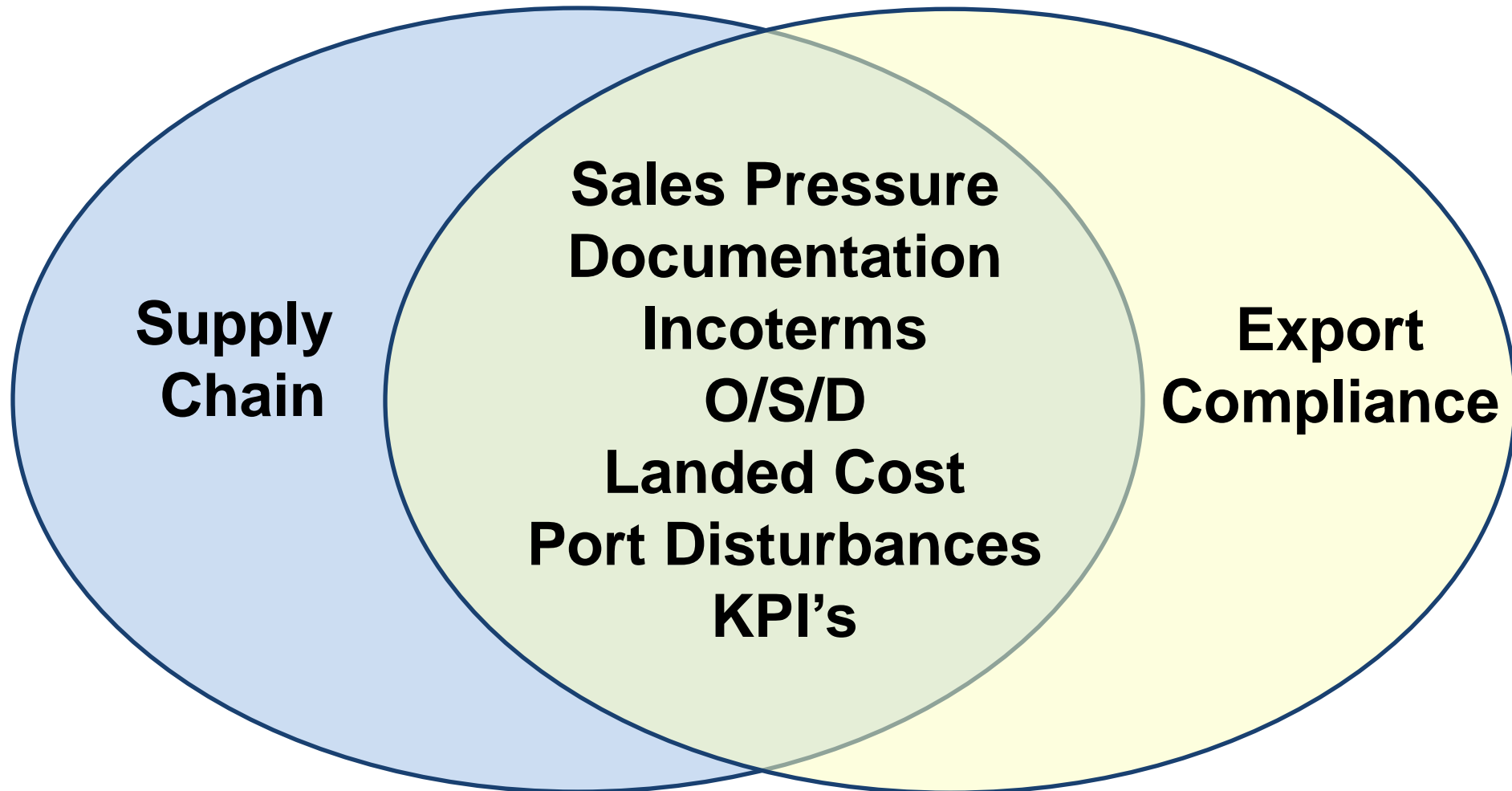
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Export Compliance Concerns

Figure 6: Top Export Concerns



Where do Export Compliance and Supply Chain Meet?



Competitive Advantage of Trade Compliance

Competitive Advantage

- **Duty & Tax Savings**

- Free Trade Agreements
- Drawback
- Shipping unassembled
- Bonded warehouse
- Free Trade Zones
- First Sale

Competitive Advantage

- **Non-tariff barriers – a proactive understanding where there might be:**
 - Long Customs clearance times
 - Special documentation requirements
 - Import permits required

Competitive Advantage

- **Knowing where loopholes exist:**
 - U.S. jurisdiction will apply to anything shipping through the U.S., regardless of origin.
 - General licenses for food, medical supplies to U.S. sanctioned / embargoed countries
- **Knowing how to avoid shipment diversion:**
 - Transshipment in certain countries
 - Routed Transactions
 - Red Flags
 - Diversion statements in PO's and contracts

Competitive Advantage

- **Supply Chain Security and Government-Industry Partnership Programs**
 - Trusted Trader
 - AEO (EU and others)
 - PIP (Canada)
 - STP (Singapore)
 - SAFE Framework
- **Mutual recognition**

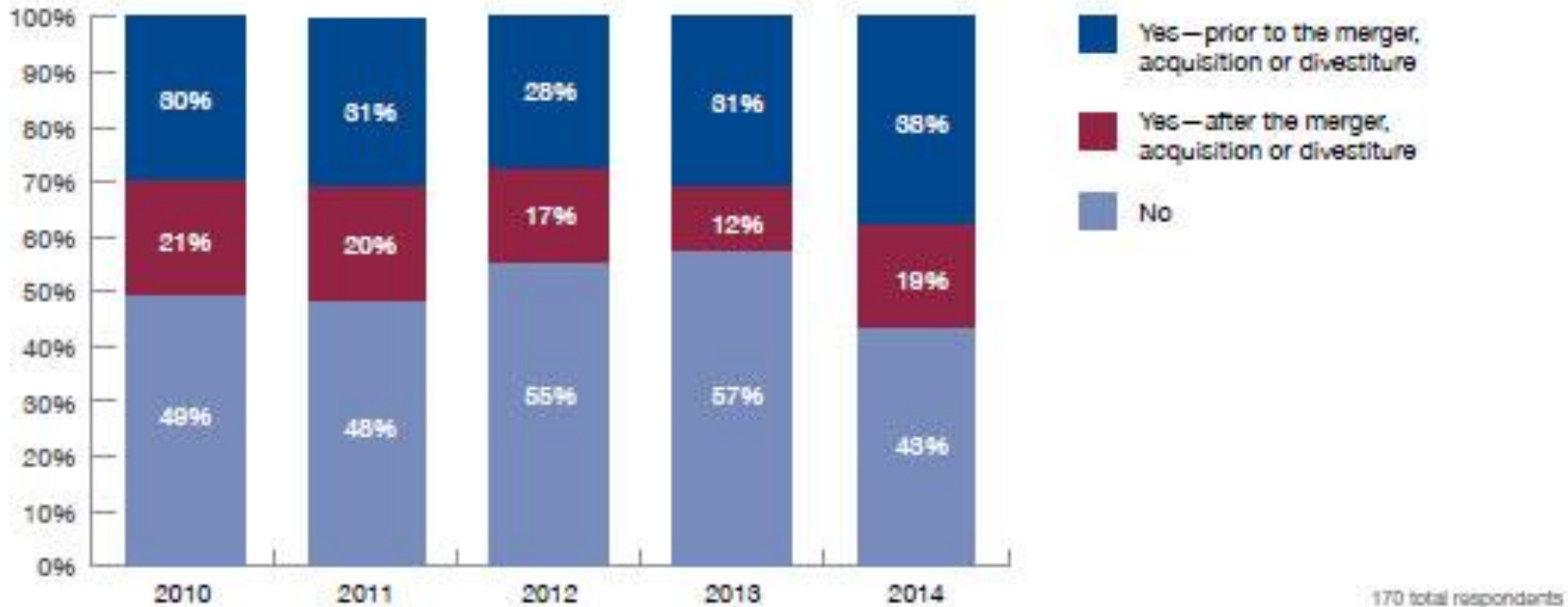
Competitive Advantage

- **Supply Chain Security and Government-Industry Partnership Program Benefits:**
 - End to end supply chain visibility
 - Reduced loss
 - Increased supply chain velocity

Building the Partnership

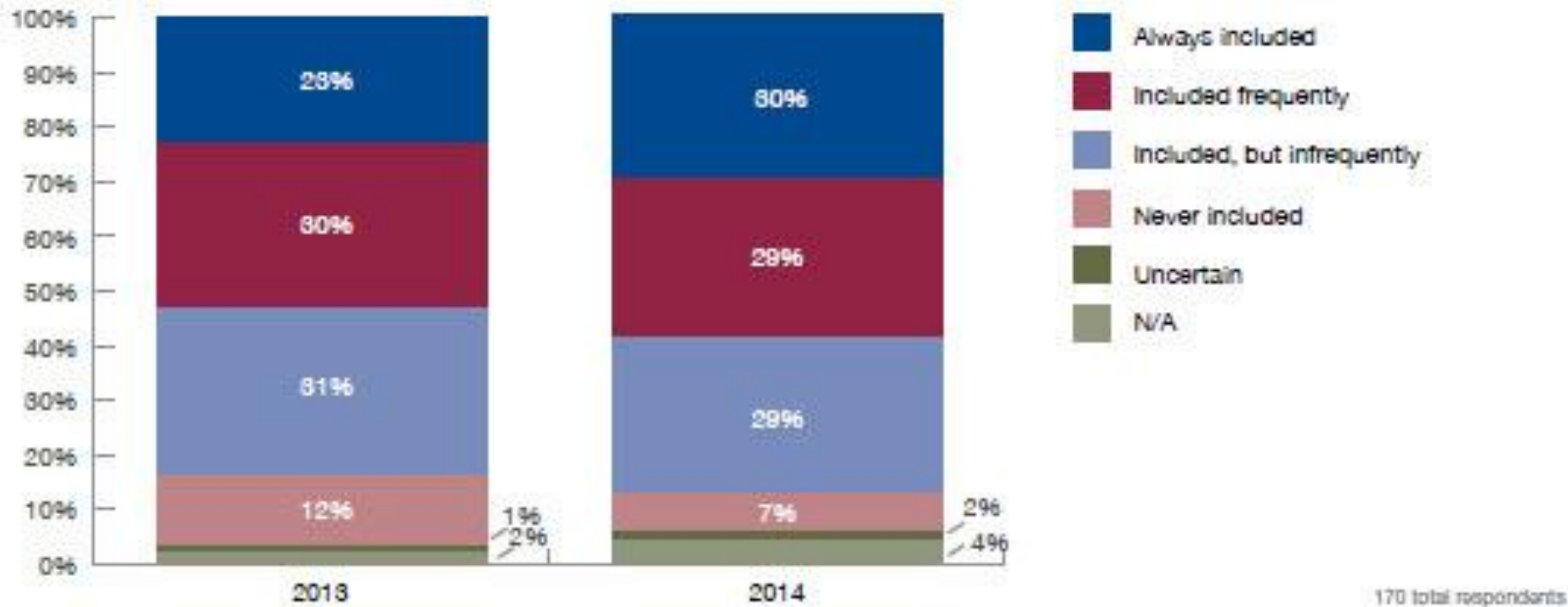
Partnering with Export Compliance

Figure 10: Inclusion in Strategic Discussions



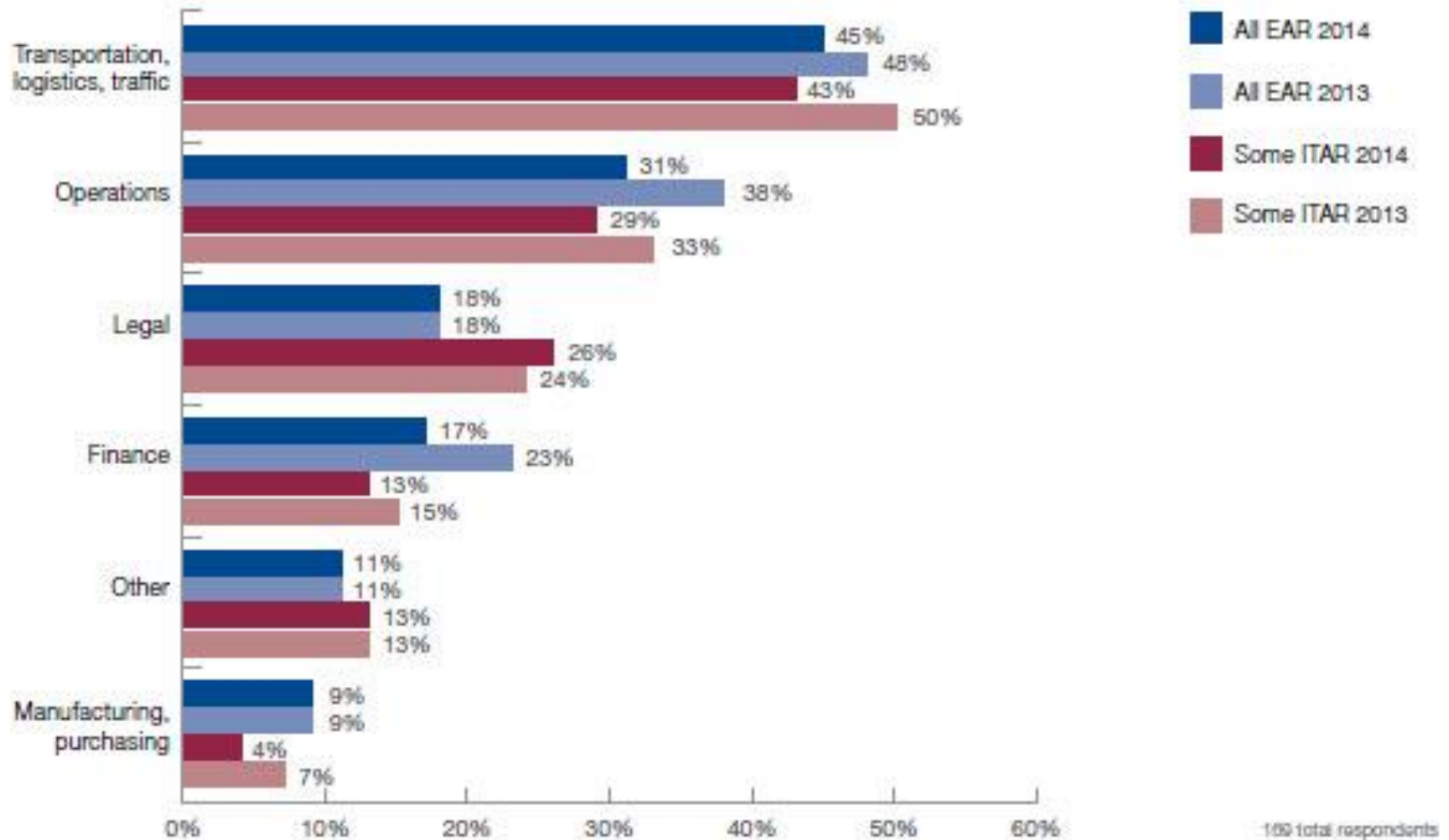
Partnering with Export Compliance

Figure 11: Inclusion in New Market Discussions



Building the Team

Figure 7: Export Operations and Compliance Report To



Building the Team

- **Developing a Trade Council**
 - R&D, Manufacturing
 - Supply Chain
 - Legal
 - Finance
 - Sales, Business Development, Marketing
 - Order Management / Customer Support
- **Regular meetings / communications to keep focus on risk management and metrics**
- **Ensure resources stay focused on priorities**

Key Takeaways

- **Partner – share plans and strategies with the export compliance department**
- **Be informed – know what trade compliance risks exist in light of supply chain expansion or market development strategy**
- **Be responsive – establish a risk management infrastructure to be able to make a change in your supply chain practices if compliance informs you about a change to requirements.**
- **Automate – work with trade compliance to determine ways to automate regulatory changes or new requirements, where it makes sense.**

Conference Cloud

Additional Resources

- **Export Resources**

- [Export Administration Regulations](#)
- [International Traffic in Arms Regulations](#)
- [Office of Foreign Assets Control](#)
- [American Shipper Benchmark Study](#)
- [Supply Chain Digest's Top Supply Chain Initiatives for 2014](#)
- [Nunn Wolfowitz Report](#)



Questions



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