

# Trade Compliance in Europe, Mexico and Brazil

## Legal Issues Council Original Equipment Suppliers Association

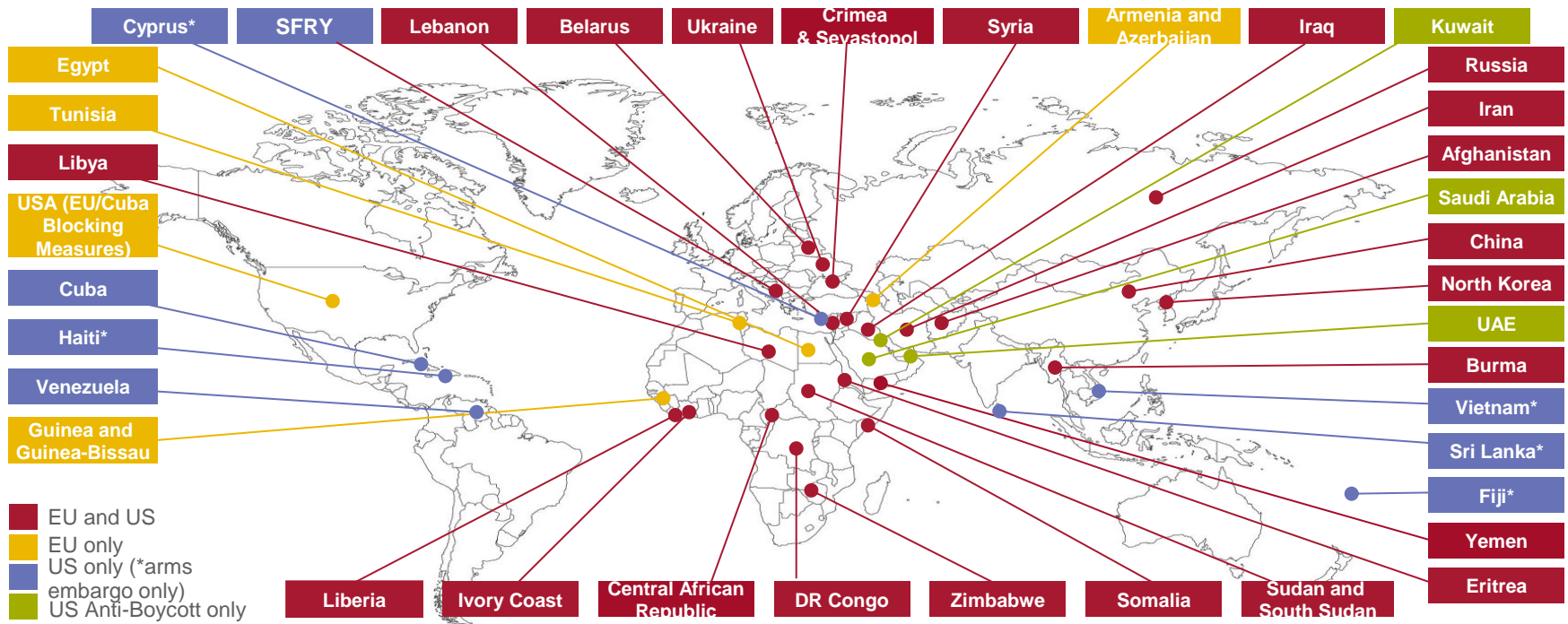
13 October 2015  
OESA Conference Center  
Supplies Association





# EU Sanctions Refresher

# EU and US sanctions targets



# Jurisdictional Issues | EU Scope



# EU Sanctions | Legal Basis

- Imposed per regime
- Follows UN sanctions but also goes beyond, either in whole (Syria) or in part (Iran)
- EU sanctions apply directly in all 28 EU Member States
- Decisions (applicable to Member States) and Regulations (applicable to private parties)
- Licensing, penalties and enforcement left to Member States

# Typical EU Sanctions Measures

- Designated person controls (asset freeze, travel ban)
- Investment ban
- Arms embargo
- Additional product controls (e.g., oil and gas equipment):  
sale, supply, transfer or export
- Controls on related services, technical assistance and financing
- Import controls
- Controls on transfer of funds (Iran)
- Anti-circumvention/facilitation measures

# Designated Persons Programmes and TI Rankings

Country	UN	EU	US	TI 2014 CPI Ranking (total 175 countries)
Afghanistan	■	■	■	172
Belarus		■	■	=119
Myanmar/Burma			■	=156
DR Congo	■	■	■	=154
Central African Republic	■	■	■	=150
Cuba			■	63
Egypt		■		=94
Eritrea	■	■		=166
Republic of Guinea		■		=145
Guinea-Bissau	■	■		=161
Iran	■	■	■	=136
Iraq	■	■	■	170
Ivory Coast	■	■	■	=115
Lebanon	■	■	■	=136
Liberia	■	■	■	=94
Libya	■	■	■	=166
North Korea	■	■	■	=174
Russia		■	■	=136
Somalia	■	■	■	=174
South Sudan	■	■	■	171
Sudan	■	■	■	173
Syria		■	■	=159
Tunisia		■		79
Ukraine (incl. Crimea and Sevastopol)		■	■	=142
Venezuela			■	=161
Yemen	■	■	■	=161
Zimbabwe		■	■	=156
Balkans and ICT of Yugoslavia			■	N/A
Al-Qaida and Terrorists	■	■	■	N/A

# EU Embargoes, Product and Sector-Specific Controls

Country	Arms Embargo	Additional restrictions
Armenia	X (OSCE)	
Azerbaijan	X (OSCE)	
Belarus	X	Internal repression
Burma/Myanmar	X	Internal repression
Central African Republic	X	
China	X (Partial)	
Crimea & Sevastopol	~	Import ban and related services; investment ban; goods and technology for use in transport, telecommunications, energy and the prospection, exploration and production of oil, gas and mineral resources in Crimea and Sevastopol and related services; services related to tourism activities
DR Congo	X	
Eritrea	X	
Iran	X	Nuclear; dual-use; internal repression; oil/gas equipment; petrochemical equipment; graphite and metals; naval and shipbuilding equipment and services; ERP software; bank notes/coinage; insurance
Iraq	X	Cultural property
Ivory Coast	X	Internal repression
Lebanon	X	
Liberia	X	
Libya	X	Internal repression; restrictions regarding crude oil illicitly exported from Libya and vessels involved
North Korea	X	Nuclear; dual-use; luxury goods
Russia	X	Dual-use for military use/end-user; goods and technologies for the oil industry (for use in oil exploration and production in waters deeper than 150 metres, oil exploration and production in the offshore area north of the Arctic Circle, or projects that have the potential to produce oil from resources located in share formations by way of hydraulic fracturing) in Russia, its Exclusive Economic Zone and Continental Shelf) and related services; access to capital markets
Somalia	X	Power to inspect vessels in certain circumstances
South Sudan	X	
Sudan	X	
Syria	~	Oil/gas items; jet fuel and additives; telecommunications/information security items; electricity sector; insurance services; internal repression; luxury goods; gold, diamonds and precious metals
Zimbabwe	X	Internal repression





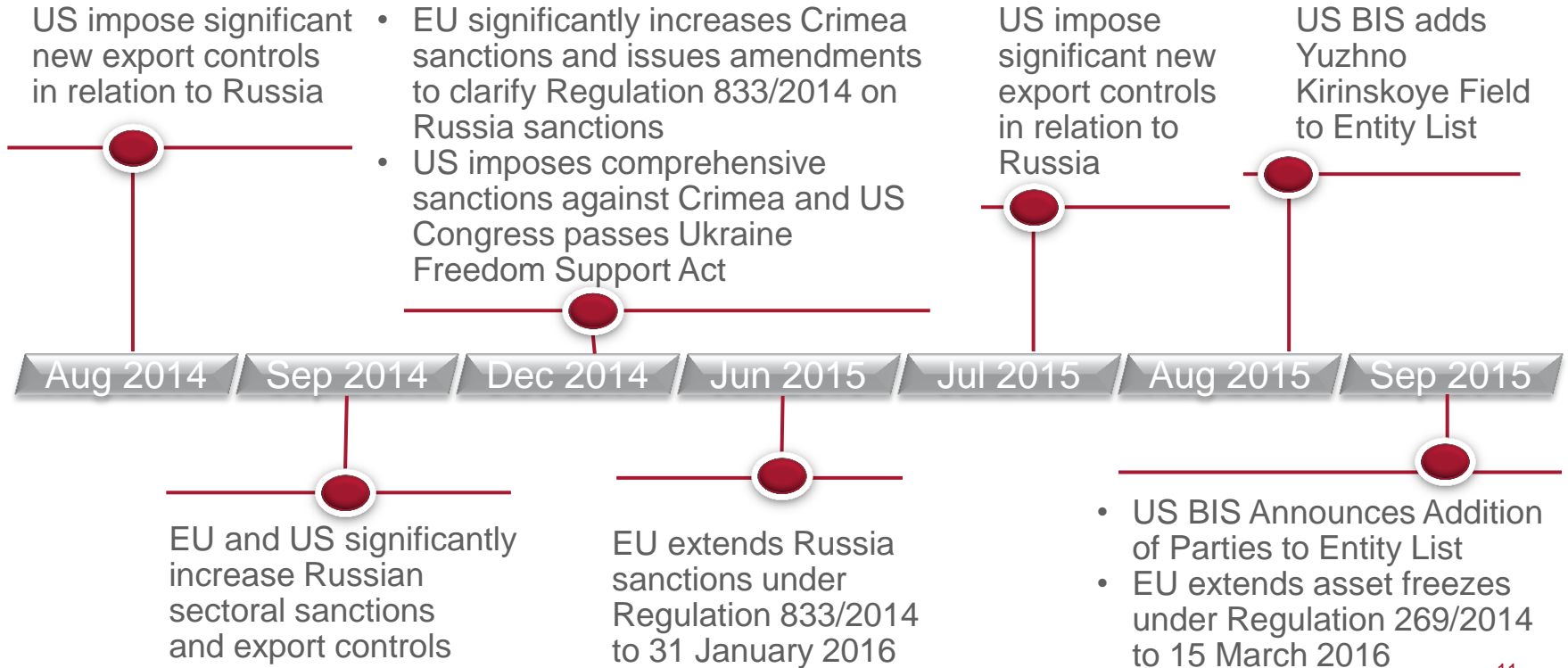
Russia

# Triggers and Escalation

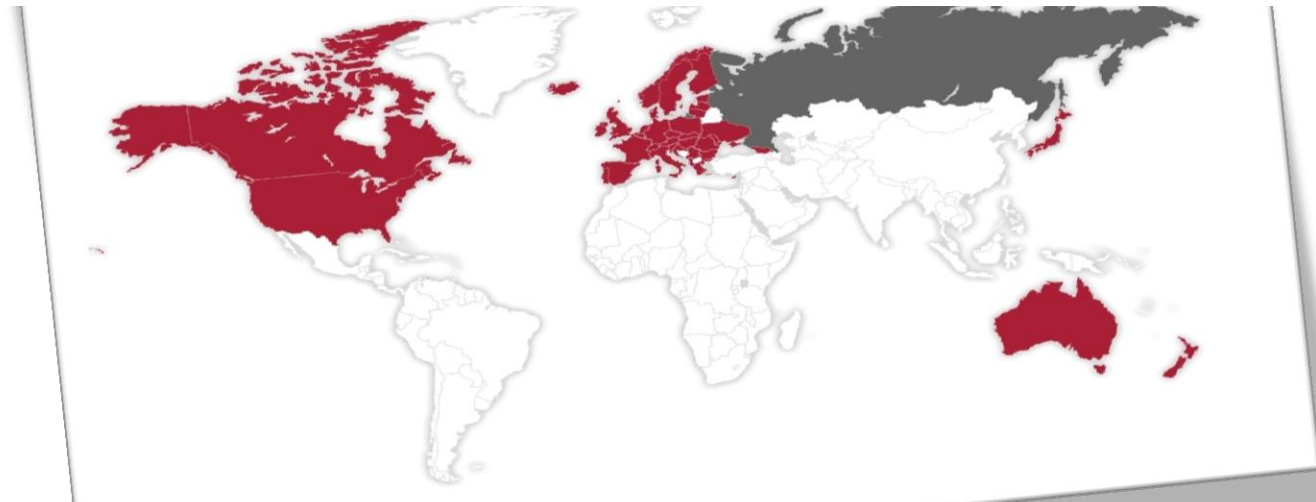


**Escalation from a designated person regime to significant sectoral measures over a very short time period**

# Further EU and US Russia Sanctions Developments



# Geographic Reach | Not just a US and EU issue...



Includes:

EU, US, Japan, Canada, New Zealand, Australia, Iceland, Moldova, Georgia, Norway, Switzerland, Liechtenstein, Albania, Montenegro and Ukraine.

# EU Restrictions | Russia / Ukraine

- Designated Party controls: 166 individuals and 37 entities
- Financial controls:
  - Dealings in certain financial instruments issued by, and provision of new debt/credit of >30 days maturity to, certain listed financial, oil and military parties (and related entities)
- Energy sector:
  - Prior licensing requirement for certain oil and gas items (Annex II); cannot be granted for deepwater, Arctic, shale oil projects
  - Also captures related services: technical assistance, brokering, financial assistance/financing
  - Prohibition on provision of drilling, well testing, logging and completion services, and supply of specialised floating vessels, regarding deepwater, Arctic, shale oil projects
- Export-related controls:
  - Any dual-use items to military end-user/end-use or to certain listed entities
  - Arms embargo
  - Related services
- Circumvention

# EU Restrictions | Crimea and Sevastopol

- Restrictions on investment in property/entities in Crimea or Sevastopol
- Restrictions on certain services in infrastructure in the following sectors: energy; prospection, exploration and production of oil/gas/mineral resources; transport; telecoms
- Prohibition on export/sale/transfer/supply to entity/for use in Crimea/Sevastopol of certain listed items related to these sectors (another Annex II, very broad) and related services
  - No prohibition if “no reasonable grounds to determine” for use in Crimea
  - Due diligence paramount
  - Consider contractual wording (beware position within Russia)
- Prohibition on import into the EU of “goods originating” in Crimea/Sevastopol (and related services)
- Ban on services relating to tourism activities
- Circumvention

# EU and US | A coordinated approach

<b>Restricted party controls</b>	<ul style="list-style-type: none"><li>• US SDNs: blocked</li><li>• EU DPs: broad restrictions</li></ul>
<b>Sectoral Sanctions</b>	<ul style="list-style-type: none"><li>• Not blocked; more targeted restrictions</li><li>• Finance: dealings in new debt/new equity</li><li>• Energy, Defence</li></ul>
<b>Export/product Controls</b>	<ul style="list-style-type: none"><li>• Russian Entity List parties; Russian Oil Industry End-uses / key equipment (EU Annex II)</li><li>• Military end-user/end-use and heightened dual-use controls; “High technology” items</li></ul>
<b>Crimea</b>	<ul style="list-style-type: none"><li>• US: complete embargo</li><li>• EU: extensive restrictions</li></ul>

# EU and US | Some key differences

## Restricted party controls

- US listings have a larger impact
- Ownership/control test (EU) vs. entity 50% or more owned by one or more SDNs (US)

## Sectoral Sanctions

- Similar targets/restrictions but notable exceptions (Gazprom, Lukoil, Novatek, only targeted specifically by US)
- US controls cover specific fields

## Export/product Controls

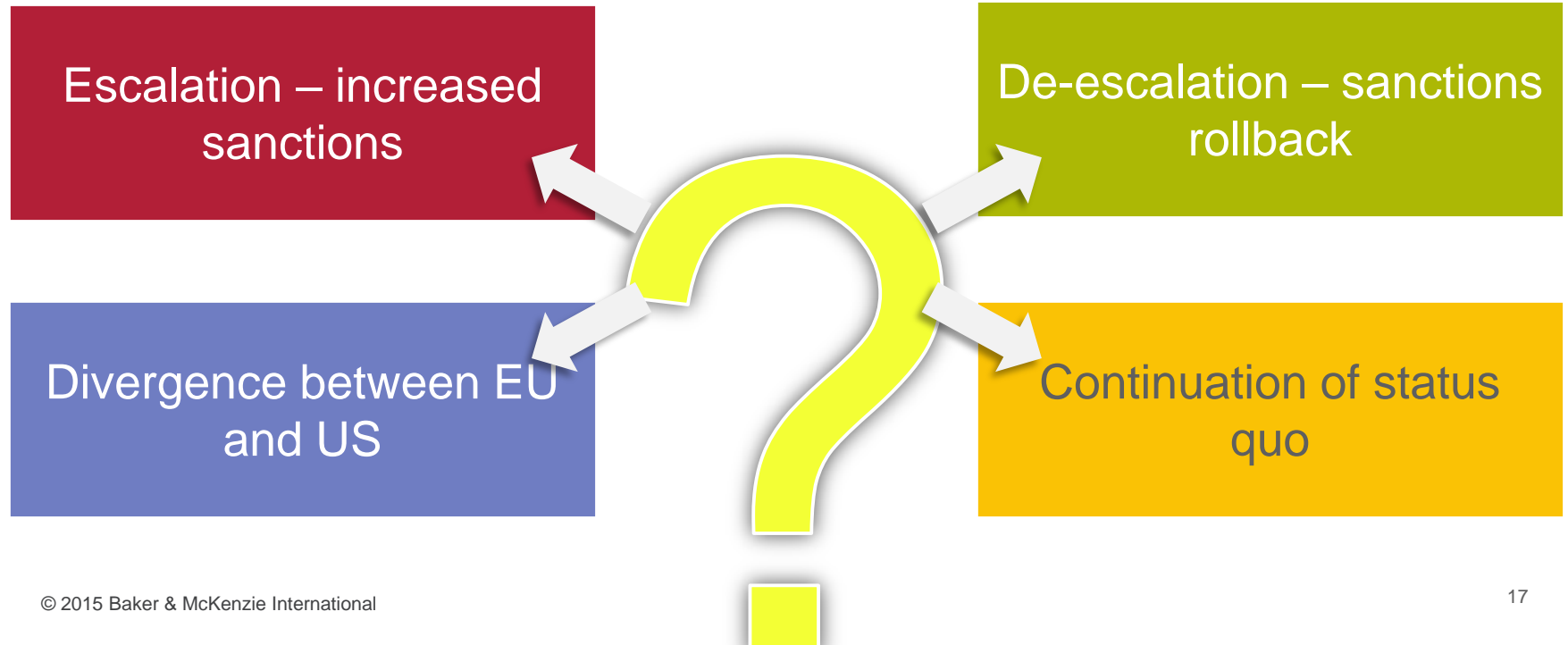
- EU controls related services
- EU introduced limited grand-fathering provisions
- US export controls apply extraterritorially
- Licensing requirements are stricter in the EU

## Controls regarding Crimea

- EU has not introduced comprehensive sanctions albeit restrictions are significant
- US introduced a comprehensive embargo



# Possible Scenarios Going Forward





# Iran and the Joint Comprehensive Plan of Action (“JCPOA”)

# JCPOA | Background

- **14 July 2015:** EU/E3+3 (China, France, Germany, Russia, the UK, the US, and the EU) and Iran announce agreement on a Joint Comprehensive Plan of Action (“JCPOA”)
- **Two years of negotiations on:**
  - Which sanctions to be removed
  - Sanctions roll back timeframe
  - Iranian commitments
  - Inspections, monitoring and verification
  - Repeal of measures at UN level

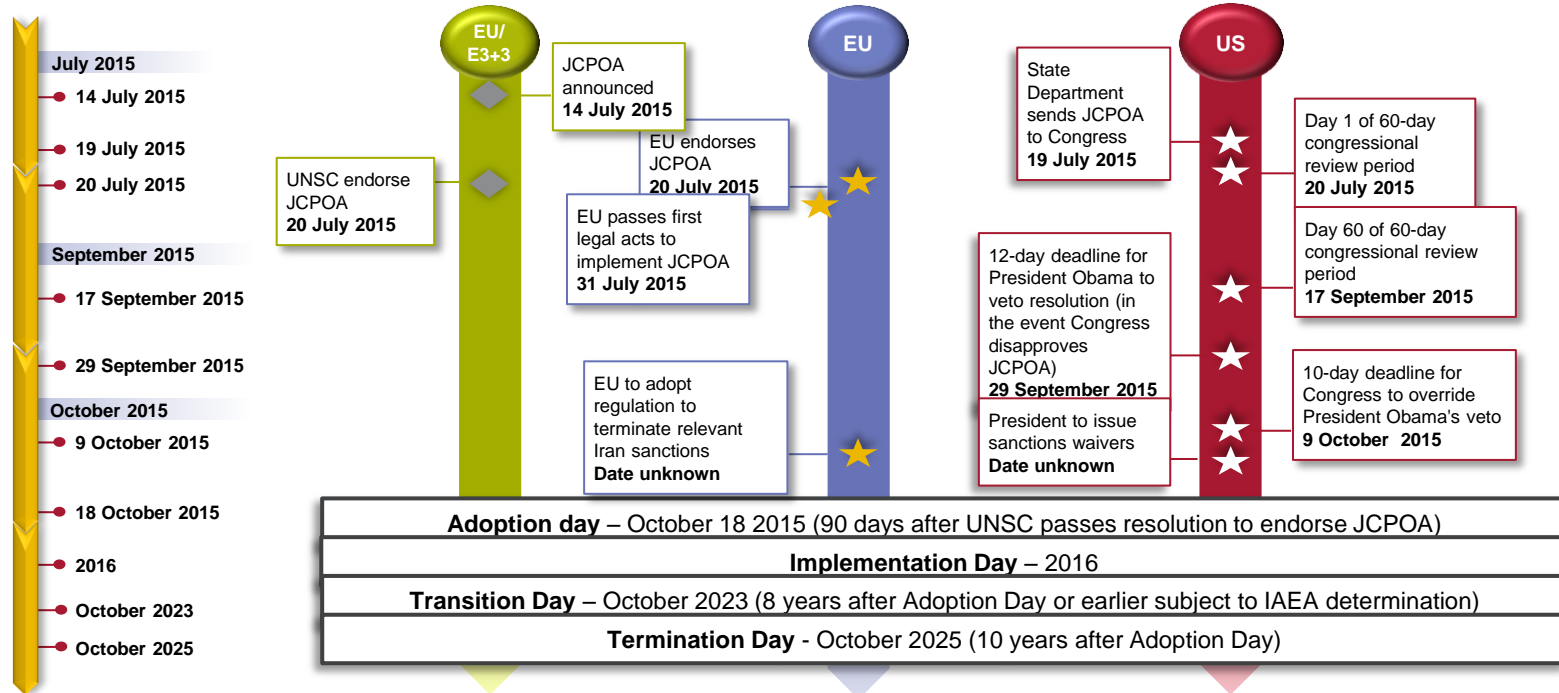


# JCPOA | Overview of Sanctions Relief

- Comprehensive lifting of all nuclear-related UNSC sanctions and multilateral and EU/US national sanctions
- Sanctions relief only commences once IAEA verifies Iran has implemented its commitments under the JCPOA (2016)
- Various stages of sanctions relief over course of next 8 years
- If Iran violates the JCPOA, there is a 65-day process under which UN, EU and US sanctions could “snap back”
- Pre-existing JPOA Temporary Sanctions Relief still applicable



# JCPOA | Timeline for Sanctions Relief





# UN Sanctions Relief

# UN Sanctions Relief | Overview

1. Lifting of all UNSC resolutions relating to Iran's nuclear programme
2. UN sanctions relief will principally relate to:
  - Removal of all UN nuclear-related sanctions
    - E.g., prohibition on supply of nuclear-related materials and technology; prohibition of related financial services
  - Delisting of certain parties related to Iran's nuclear programme
3. UNSC resolution maintains restrictions in relation to:
  - Sale of arms to or from Iran (5 years)
  - Development of ballistic missile technologies (8 years)



# EU Sanctions Relief



# EU Sanctions Relief | Key Points

1. Adoption Day 18 October – 90 Days after UNSC endorsement of JCPOA
2. Main EU sanctions relief will not take effect until Implementation Day in 2016
3. This applies for oil/gas, petrochemical, shipping and financial services sectors
4. Some sanctions to remain in force until Transition Day in 2023 in arms, nuclear and metals sectors
5. Delisting of designated persons split between Implementation and Transition Day
6. Existing JPOA sanctions relief remains applicable
7. Whole deal subject to satisfactory IAEA inspections being completed



# US Sanctions Relief

# US Sanctions Relief | Key Points

1. Temporary JPOA sanctions relief remains through Implementation Day
2. US sanctions relief under the JCPOA will be limited principally to:
  - Extraterritorial (secondary) sanctions applicable to **non-US persons** not subject to US jurisdiction
  - Delisting of certain parties from nuclear/WMD sanctions
  - New licences authorising certain transactions



# EU Customs Developments

# EU Customs Developments | Overview

1. Overhaul of EU customs legislation with implementation of Union Customs Code (UCC) from 1 May 2016
2. Reduction in countries benefiting from preference on import into the EU under the Generalised System of Preferences (GSP) - focus on those countries most in need
3. Proliferation of bilateral/ multilateral Free Trade Agreement (FTA) negotiations

BRAZIL

# The Brazilian Market at a Glance

- About 7,943 Dealers;
- 5.161.000 cars sold in 2014;
- 376,000 direct jobs;
- The sector generates an annual revenue of R\$237.8 billion corresponding to 5.7% of the Brazilian GNP.

Source: Fenabrave – National Federation of Vehicle Distribution

# Programs & Regulations

- Law No. 6,729/79 (“Lei Ferrari”) as amended by Decree No. 8132/90
  - Regulates the commercial distribution between manufacturers and dealers of land vehicles.
- Law No. 12,715/12 (“Inovar-Auto Program”)
  - Program developed by the Brazilian Government to foster industry competitiveness by encouraging manufacturers to produce more efficient, safer, and technology-advanced vehicles while investing in Brazil
  - Valid until December 31, 2017.



## Lei Ferrari

- Mandatory (part of the Brazilian Public Policy);
- Intends to ensure economic balance and legal certainty between manufacturers and dealers;
- requires written agreement and determines minimum conditions;
- restricts dealers' area of operation for active sales;
- uniformizes treatment of dealers under the same network;
- imposes indemnification to manufacturers resulting from the termination of dealership agreements.

# Lei Ferrari

- Vehicles covered by Lei Ferrari:
  - Cars, trucks, buses, tractors for agricultural use, motorbikes and similar vehicles.
- Peculiarities
  - Dealer is free to determine the sales price to consumer;
  - Dealer may only sell vehicles from other makes if they are used;
  - Distribution implies the dealer's exclusivity within a predefined area;
  - Manufacturer may sell directly to: (i) Public Administration or (ii) Diplomatic Corp, under certain conditions;
  - Indemnification for all investments.

# Inovar-Auto Program

- Main Goals
  - Stimulate investments in R&D (innovation);
  - Increase the amount spent in engineering, basic industrial technology and improvement of suppliers;
  - Manufacturing of safer and fuel efficient vehicles in Brazil.
- Beneficiaries
  - Companies that manufacture and trade vehicles in Brazil;
  - Companies that present an investment project for installation of an industrial plant for manufacturing vehicles not yet produced within the country.
- Benefits
  - Granting of IPI credit of up to 30 percentage points.
- Requirements for Qualification
  - Regular payment of federal taxes; and
  - Commitment to achieve minimum levels of energy efficiency.

MEXICO

# Maquiladoras / IMMEX Recent Legislative and Administrative Changes

# Maquiladoras / IMMEX

- The decision to tax temporary importations (VAT) is perhaps the single most relevant change in the history of maquiladoras.
- The mitigation provisions to avoid disbursement (tax credit) represents a sophisticated and challenging environment for maquiladoras.
  - ✓ *Imposes additional reporting and additional maintenance compliance obligations.*

# Maquiladoras / IMMEX

- VAT on temporary importations has been the last of a series of decisions that have increased the volume of administrative burden.
- Historical decisions include:
  - ✓ *Inventory control system (Annex 24)*
  - ✓ *Income Tax (PE)*
  - ✓ *Duties (inventory and M&E)*
  - ✓ *VAT and Tax Credit (Annex 31)*

# Maquiladoras / IMMEX

- The VAT Certification (tax credit) was not created solely on the basis of timely returns of imports.
  - ✓ Tax authorities used the certification to improve compliance by maquiladoras.
  - ✓ Inhibits maquiladoras to challenge tax liabilities.
  - ✓ Forces diligence in the filing of VAT refunds.
  - ✓ Mechanism to enforce compliance of other taxpayers (i.e. suppliers).



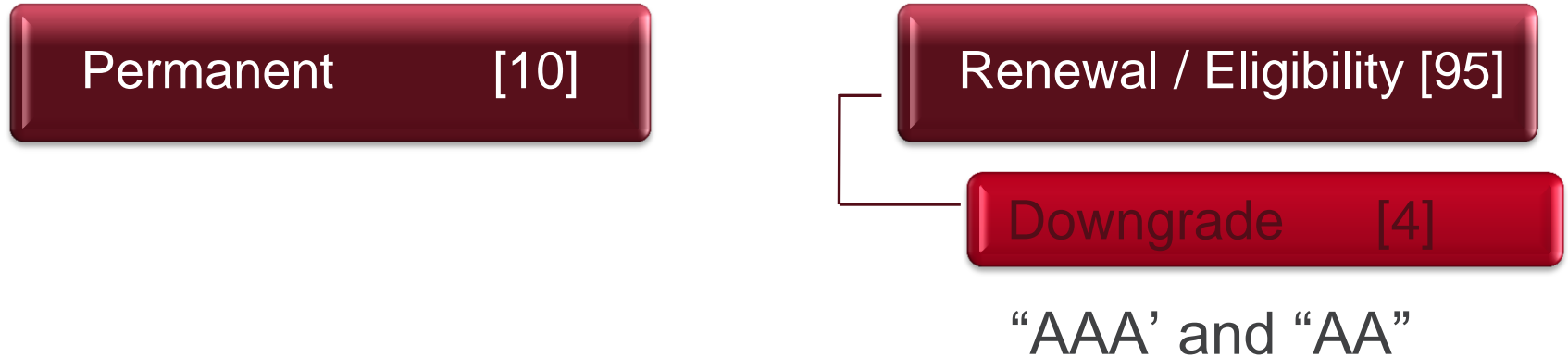
# Maquiladoras / IMMEX

- The VAT Certification brings benefits, other than the tax credit.
  - ✓ Expedited VAT refund (depending on category).
  - ✓ Expedited registration in specific sectors of the importers' registry (textile, apparel and footwear).
  - ✓ **No immediate suspension in the Importers' Registry.**
  - ✓ Access to invitation letter procedure prior an audit.

# Maintenance of VAT Certification

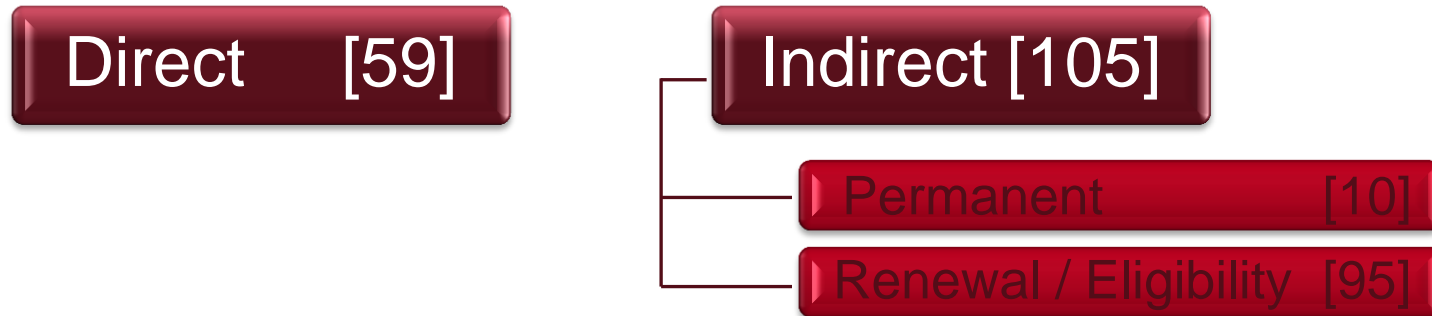
# Maintenance of VAT Certification

- Compliance with multiple obligations, grouped by;



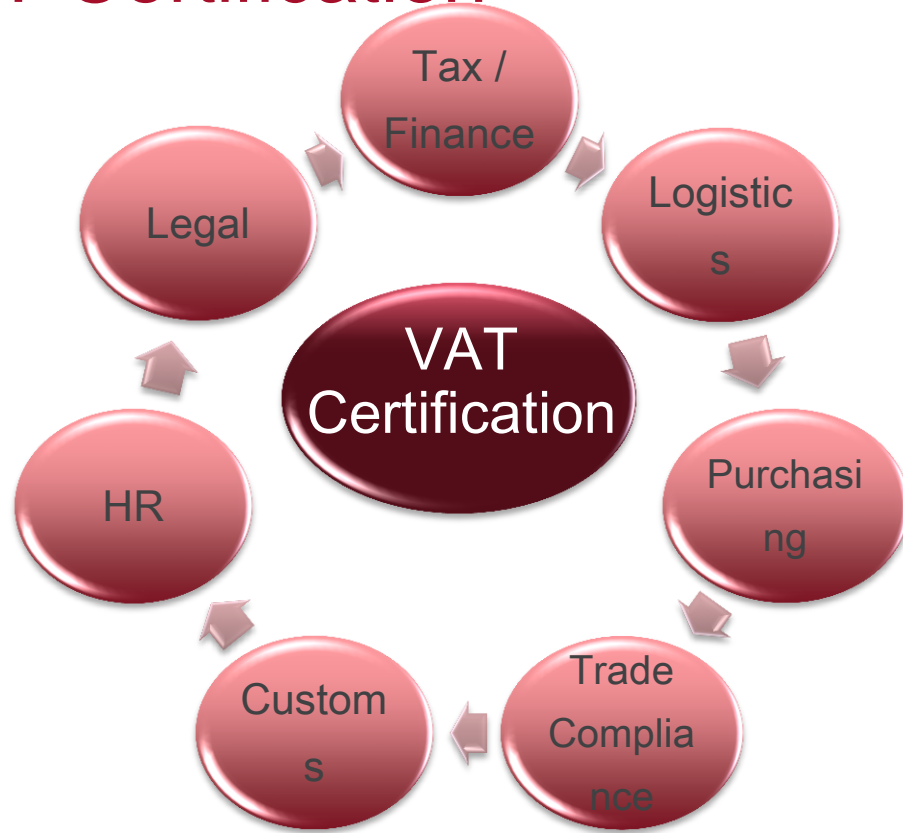
# Maintenance of VAT Certification

- Avoid causes of cancellation.
  - ✓ Cancellation grounds may be classified in;



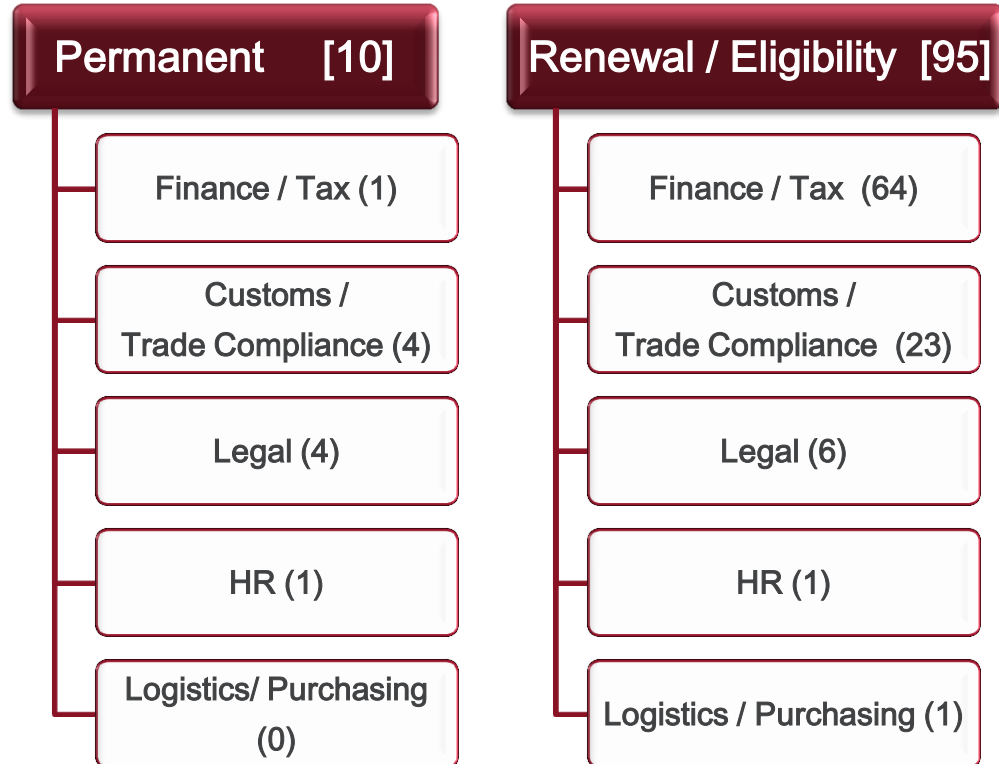
# Maintenance of VAT Certification

- Requires the active participation of several departments within the organization.



# Maintenance of VAT Certification

- Overview of obligations.



Risks and Areas of Focus

# Highlights

Timely return of goods  
- *Evaluate options*

Positive opinion of suppliers (70% of vendors)

No VAT refund denials in excess of MXP 5 Million or  
20% of approved refunds.

Pay tax assessments at all times  
*Challenge after payment*



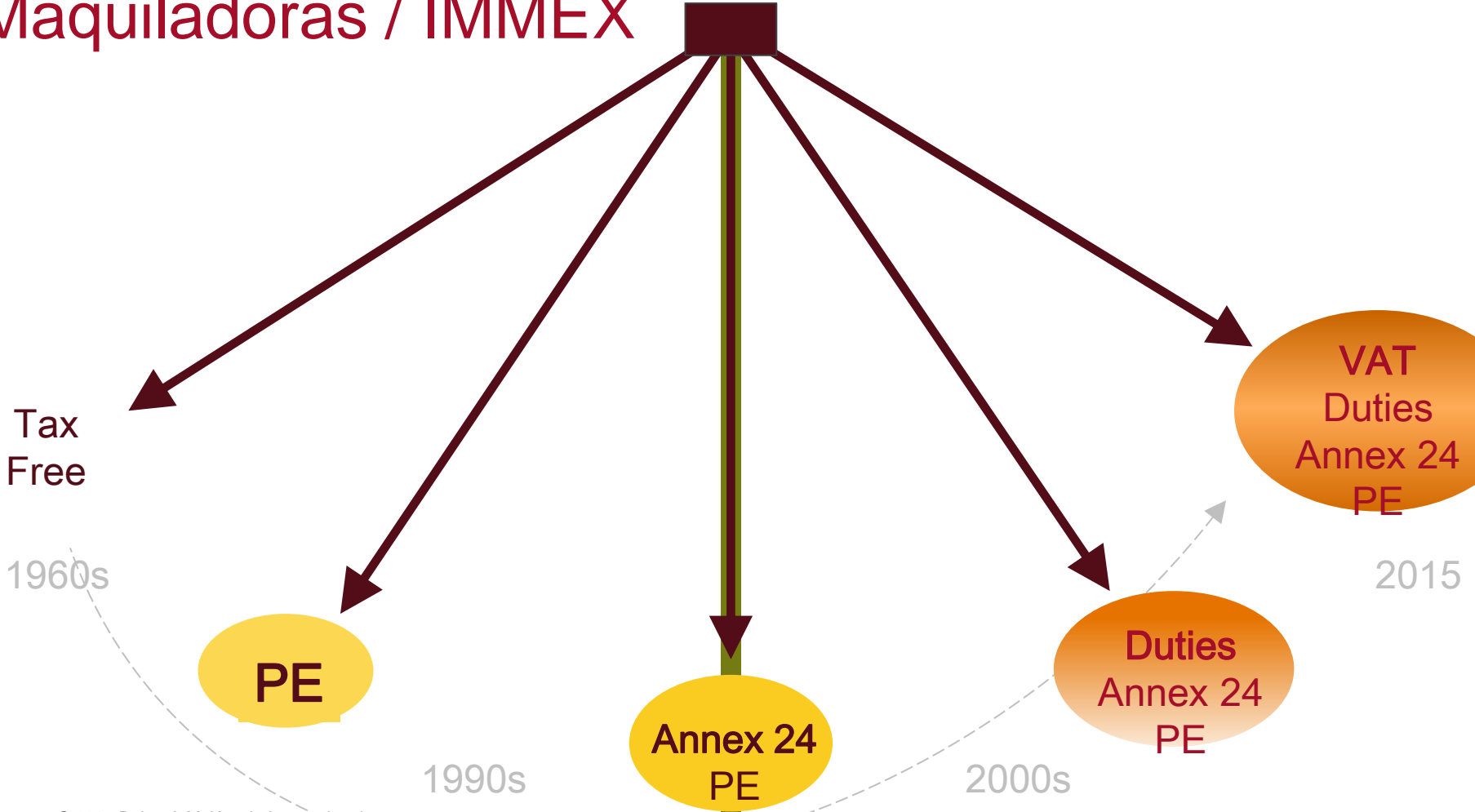
# Highlights

Updated electronic tax mailbox.

Temporary imports in authorized locations.

Timely filing of discharges report (Annex 31).

# Maquiladoras / IMMEX



## Estado de cuenta global de Créditos

Cargos				
Detalle de cargos	Valor comercial	Crédito IVA	Crédito IEPS	Crédito total
+ Importación virtual (V1)	\$700,305,338	\$113,285,385	\$0	\$113,285,385
+ Importación temporal, immex (in)	\$822,483,201	\$135,963,886	\$0	\$135,963,886
+ Importacion temporal de bienes de activo fijo, IMMEX (AF)	\$6,121,882	\$991,834	\$0	\$991,834
+ Exportacion temporal para reparacion o sustitucion, IMMEX, RFE (BO)	\$69,222	\$12,825	\$0	\$12,825
<b>Total cargos</b>	<b>\$1,528,979,643</b>	<b>\$250,253,930</b>	<b>\$0</b>	<b>\$250,253,930</b>

Confirm information of tax credit in pedimentos

Abonos				
Detalle de abonos	Valor Comercial	Crédito IVA	Crédito IEPS	Crédito total
- Retorno de mercancías, IMMEX (RT)	\$482,924,959	\$78,064,713	\$0	\$78,064,713
- Transferencia, exportacion virtual (V1)	\$379,641,642	\$62,030,765	\$0	\$62,030,765
- Cambio de regimen de insumos o de mercancia exportada temporalmente (F4)	\$151	\$24	\$0	\$24
<b>Total abonos</b>	<b>\$862,566,753</b>	<b>\$140,095,502</b>	<b>\$0</b>	<b>\$140,095,502</b>
<b>Saldo pendiente de descargo (Crédito)</b>	<b>\$ 666,412,890</b>	<b>\$ 110,158,428</b>	<b>\$ 0</b>	<b>\$ 110,158,428</b>

Source of information for the credit account.

Thank you!

**Legal Issues Council  
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