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Risk-Based Compliance Management

Making it Work in Border Management Agencies

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**Border Management Modernization
Reference and Implementation Guide**

Risk-Based Compliance Management

Making it Work in Border Management Agencies

This Guide has been prepared by Professor David Widdowson, University of Canberra, on behalf of the International Trade Department of the World Bank and was supported by a grant from the Netherlands Government through the Bank Netherlands Partnership Program.

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About this Reference and Implementation Guide

The World Bank's publication *Border Management Modernization* (2011)¹ provides policymakers and reformers with a comprehensive 'whole of government' perspective on improving trade facilitation through better border management. In introducing the subject, it points to the fact that overly bureaucratic border clearance processes imposed by customs and other border agencies are considered to represent greater barriers to trade than the imposition of tariffs.

Recognizing that Customs is only one of several agencies involved in border processing, *Border Management Modernization* provides extensive information on a broad range of international developments and contemporary principles that are applicable to all aspects of border management, irrespective of which agency may have the relevant policy or administrative responsibility.

This Reference and Implementation Guide has been developed to supplement the information provided

in the World Bank publication. Specifically, it builds on the contents of Chapter 6 (Core border management disciplines: risk-based compliance management) and Chapter 11 (Reform instruments, tools, and best practice approaches) by providing:

- an introduction to the key issues associated with the practical implementation of a modern risk-based compliance management regime in border management agencies;
- a step-by-step method of establishing a compliance management approach in a border management agency;
- practical examples covering a range of border management activities to illustrate the methodology; and
- useful tips to help identify and rationalize or eliminate resource intensive, time consuming and ineffective regulatory processes.

¹ <http://issuu.com/world.bank.publications/docs/9780821385968>

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Roles and Responsibilities of Border Management Agencies

The practice of most governments is to assign aspects of regulatory responsibility at the border to a number of different agencies. Each of these agencies has its own specific mandate from government and, taken together, they cover issues as diverse as health, product safety, biosecurity, immigration controls, revenue collection and transport security. Nevertheless, the fundamental nature of the challenge that each agency confronts is the same, that is, to facilitate the legitimate movement of people and goods while, at the same time, maintaining the integrity of the border by ensuring compliance with relevant legal requirements.

Proper border management is critical to the cost-effectiveness of international trade transactions and the smooth flow of legitimate goods and people from the perspective of both the public and private sectors. And while some agencies may have particularly good procedures in place, the achieve-

ment of effective and efficient border management is ultimately a whole-of-government task, requiring the involvement of all government agencies with responsibilities at the border.

The following examples, while far from being exhaustive, highlight the breadth of agencies' roles and responsibilities at the border. These diverse aspects of border management will be used as examples and case studies throughout this Guide.

As we can see, the concept of risk is prevalent in all aspects of border management with particular government policies designed to mitigate a wide variety of risks to policy objectives, including the risks of:

- food-borne illness
- pests and diseases entering the country
- people entering or leaving a country illegally

Table 1. Border Agency Roles and Responsibilities

Food Safety

Food that is imported into a country is required to meet the relevant food standards of that country. Laws relating to imported food products are designed to ensure public health and safety by minimizing the potential risk of food-borne illness. Similarly, export controls ensure that the quality of a country's exported food meets relevant standards in order to meet the country's international obligations and protect the reputation of its food industry.

Food safety laws generally include provisions that enable an agency to inspect and analyze imported and exported food to ensure that the required standards are met. Generally, there is also a requirement for commercial traders of certain food products to obtain a permit or certificate prior to its importation or exportation.

Biosecurity – Plant Quarantine

Quarantine controls on imported and exported plants are designed to ensure that national and international standards of plant health are met. Import controls seek to minimize the risk of pests and diseases entering the country, while export controls seek to maintain a country's reputation in overseas markets and ensure ongoing access to such markets.

Laws relating to plant quarantine provide agencies with the authority to inspect, test and, if necessary, treat plants and plant products to ensure they meet relevant standards and do not pose a threat of pest or disease. In some countries, live plants may be held at quarantine stations until such time as they are deemed not to represent a pest or disease risk. It is also a common requirement for commercial traders of certain plants and plant products to obtain a permit or certificate prior to their importation or exportation.

(Continued on next page)

Table 1. Border Agency Roles and Responsibilities (Continued)**Biosecurity – Animal Quarantine**

Quarantine controls also apply to the import and export of animals. Import controls are essentially intended to minimize the risk of pests or diseases entering the country, while export controls are designed to ensure that the regulatory requirements of the importing country are met and, in the case of commercial transactions, to maintain a country's reputation in overseas markets.

Laws relating to animal quarantine provide agencies with the authority to inspect, test and treat animals to ensure they meet relevant standards and requirements, and to ensure their health and welfare. In many cases, animals that are imported into or exported from a country are placed in quarantine and may only be released once the agency has determined that they are free of disease. Generally, there is also a requirement to obtain a permit or certificate prior to importation or exportation.

Immigration

Immigration controls apply to people who enter or leave a country, except in circumstances where special arrangements apply, such as borders within the European Union. Such controls are designed to ensure that people who travel across a country's borders are authorized to do so, and to minimize the risk of people entering or leaving the country illegally. They are also designed to ensure that people who are allowed to enter a country conditionally meet the conditions under which they are admitted.

Immigration laws include provisions to enable relevant agencies to question, search, conduct identity checks, and detain people who intend to cross the country's border. In many cases, travelers who are non-citizens of a country are required to obtain an entry visa prior to or at the time of arrival in the country.

Intellectual Property

A broad range of border controls applies to internationally traded goods, including those relating to intellectual property. These are designed to prevent international trading in counterfeit and pirated goods, to provide protection to the owners of trademarks and copyright material, and to protect the community from potential risks (for example, counterfeit medicines).

Laws relating to the protection of intellectual property generally allow agencies to examine and seize commercially imported goods that are suspected of infringing intellectual property rights. Such controls would usually only take effect if the owner of the intellectual property has made a formal request to the agency to protect them from counterfeit, pirated or unauthorized importations.

Revenue Collection

Most countries impose import duties and/or other taxes and fees on imported goods. In some cases this may also apply to certain exported goods. Laws relating to revenue collection are designed to ensure that the correct amount of revenue is paid on the imported (or exported) goods, and to minimize the risk of government revenue leakage.

The powers that enable agencies to enforce revenue laws are extensive. Relevant provisions include such things as documentary and physical examination, detention, seizure, audit and investigation. International traders are required to provide evidence to help inform decisions about the amount of duties, other taxes and fees that are payable.

Transport Security

International transport is highly regulated, and regulatory measures have now been extended to secure the supply chain against acts of terrorism. Relevant regulatory controls are generally exercised at a country's borders and/or at the borders of its trading partners, particularly in relation to air and marine transport and cargo. Such laws are essentially designed to minimize the risk of terrorist attacks.

Laws relating to transport security provide agencies with wide-ranging powers to ensure that security standards are being properly observed and to verify the validity and integrity of shippers and other members of the international trading community.

Safety Standards

Safety standards apply to a wide range of products that are internationally traded. Their purpose is to protect consumers against injury, illness and death related to unsafe goods. Export controls are designed to ensure that the regulatory requirements of the importing country are met, and to maintain a country's reputation in overseas markets.

Relevant laws enable agencies to screen, examine and test goods to ensure that they meet product safety standards, and to ensure that their importation or exportation is not prohibited. Safety standards may not be restricted to unsafe design features, but may also apply to non-physical aspects of a product such as mandatory warnings, information and instructions.

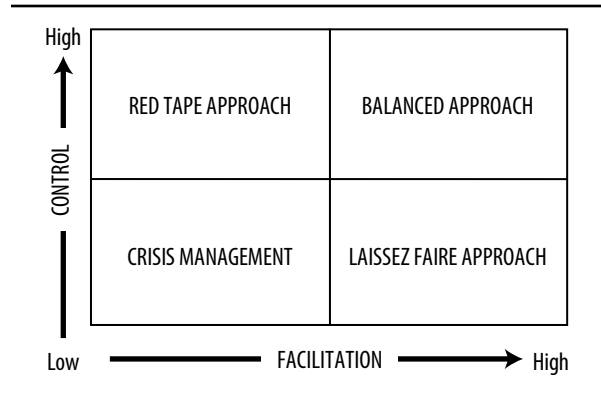
- government revenue leakage
- terrorist attacks.

However, agencies with a responsibility at the border also have a mandate to provide an appropriate level of facilitation to traders and travelers and consequently, another risk they face is the risk of failing to provide the level of facilitation expected by their government. This highlights the need to regulate borders in a way that reduces the impact of interventionist strategies as much as possible. In other words, while maintaining cross-border control is non-negotiable, the way in which it is achieved should also ensure the provision of appropriate levels of facilitation.

Regrettably, border processes and procedures do not always reflect the risk or risks that agencies are required to mitigate, and that is the underlying concern which this Guide addresses.

The Facilitation-Control Matrix shown in Figure 1 provides a snapshot of the various ways in which border agencies manage their roles and responsibilities. Here the concepts of facilitation and control are shown as two distinct variables of a regulatory matrix—they are not mutually exclusive; they are equally important contributors to the achievement of an agency's objectives.

Figure 1. Facilitation-Control Matrix



Source: Widdowson (2003).

In the following sections we will identify strategies designed to achieve appropriate levels of both facilitation and regulatory control. In the Facilitation-Control Matrix, which is described in more detail in *Border Management Modernization*, this approach to compliance management is represented by the top right quadrant (high control, high facilitation). It is this 'balanced approach' that border agencies should be seeking to achieve as it brings the greatest possible benefits to both the agencies themselves and those they are required to regulate.

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What is Risk-Based Compliance Management?

As we saw in the previous Section, all agencies operating at the border have a fundamental responsibility to ensure compliance with particular regulatory requirements. However, the way in which this is achieved can be flexible. This is where the concept of risk management comes in.

Risk management is at the heart of border management efficiency and effectiveness and is the key to achieving the ‘balanced approach’ described in Figure 1. Non risk-based measures, on the other hand, can significantly reduce the efficiency of control measures and limit facilitation by adversely impacting compliant traders and travelers engaged in legitimate cross-border activities. To demonstrate this,

in this Section we will examine some fundamental differences between compliance management strategies that are risk-based and those that are not.

Although the following examples are specific to particular aspects of border management, they are in fact generic in nature and are applicable to most facets of regulatory activity, regardless of the policy that is being administered or the agency that is responsible for its administration.

From the examples in Table 2 we can see that risk management as a concept is nothing new; in fact, the vast majority of agencies already have in place some form of risk management procedures or guidelines,

Table 2. Compliance Management Examples – Risk-based and Non Risk-based

Non Risk-Based	Risk-Based
Those categories of goods that have the potential to breach copyright are routinely examined.	Government agencies work with the trading community to assist in the identification of potential IPR infringements.
Control programs to identify potential terrorist threats are limited to routine examination of transport company operations by government officials.	Government control programs include the ability for transport companies to voluntarily demonstrate compliance with agreed security and safety standards.
Imported food products are routinely inspected and analyzed to ensure they meet relevant regulatory requirements, regardless of who is importing the goods.	Importers of food products with a history of compliant behavior are subject to a reduced level of inspection and analysis.
Mandatory warnings on particular imported products are routinely verified at the time of importation prior to release.	Regular importers are allowed to complete product labeling requirements post importation and prior to sale in the domestic market.
Importers of plants are required to obtain a permit for their importation on a shipment-by-shipment basis.	Known importers of plants, and all importers of certain species, are able to obtain permits for their importation on a periodic basis.
Immigration regulations require all travelers to obtain a visa prior to arrival.	Passport holders from particular countries may obtain a visa on arrival, or may be exempted from visa requirements.
Regulatory control programs for exporters of animals are aimed at identifying potential non-compliers.	The focus of regulatory control programs for animal exporters includes the identification of both compliant and non-compliant traders.
Physical control over imported goods is maintained pending completion of all regulatory requirements, including revenue payment.	Importers may take delivery of their goods prior to completing regulatory requirements in situations where post importation conclusion of such requirements is possible.

either formal or informal. Indeed, no border agency is realistically ever going to check every single passenger, consignment, carrier, or crew member. Nor is it likely to have the resources to do so. Risk management, then, is also a technique that helps to facilitate the effective allocation of resources.

Through the use of a variety of risk management techniques, which vary considerably in their levels

of sophistication and effectiveness, border agencies worldwide seek to identify the risks associated with cross-border transactions and activities and to focus their resources where they are likely to achieve the best results. However, while risk management is practised in some form or another by agencies around the world, very few address risks in a systematic way. In the next Section we will examine a structured approach to managing border risks.

How Can Border-Related Risks be Managed?

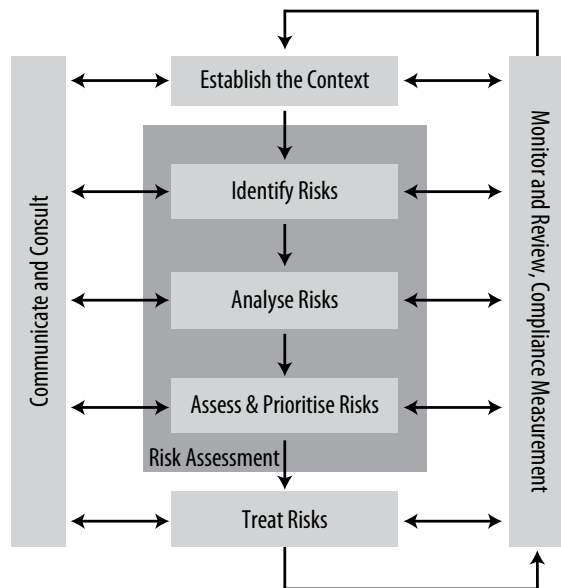
This Section introduces a framework that is of equal relevance to both public and private sector organizations.

The Risk Management Process Framework shown in Figure 2 provides a logical, structured, step-by-step approach to managing risk.

The Risk Management Process Framework is comprised of five core elements:

- Establishing the context
- Identifying risks
- Analyzing risks
- Assessing and prioritizing risks
- Treating risks.

Figure 2. Risk Management Process Framework



Source: Based on the original Australian and New Zealand Standard on Risk Management (AZ/NZS 4360: 2004) which now forms the basis of ISO 31000.

In this section we examine the first four of these elements, before examining the treatment of risk in Section 5.

As can be seen by the Monitor, Review, and Compliance Measurement loop in Figure 2, risk management is an iterative process. This is because risks are not static—they are continually changing—which is something we will explore further in a later section, as well as the need to communicate and consult with key stakeholders throughout the process.

Establishing the Context

When asked to provide a commentary on risk management, the first question that needs to be asked is always, ‘Risk to what?’. Answering this question is not always as simple as it sounds.

The most important consideration from a risk management perspective is to ensure that the relevant risk has been properly identified, to avoid the possibility of introducing extraneous variables into the subsequent risk management decision making process. As such, establishing the context is probably the most important step in the risk management cycle. Get this step wrong and the whole process fails because the context provides the foundation on which the remainder of the risk management process is based.

A risk, then, is anything that may have an adverse impact on an organization’s objectives. Consequently, the first step in managing border risks is to critically review and refine the particular agency’s objectives and to ensure that they are clearly identified. This then becomes the reference point for subsequent steps in the risk management process.

Turning to the list of examples outlined earlier, it is useful to recap some of the higher level government policy objectives relating to border management. These are identified in Table 3, together with some broad strategies that are designed to achieve the particular objectives.

In Table 3 the objectives and strategies are worded in a way which highlights the fundamental role of government policy and the overarching strategies to achieve the policy. Essentially, governments are seeking to protect their citizens' way of life, and administrators are required to manage the associated risks.

There is, however, something missing here—the objective of facilitating the movement of legitimate trade and travel which, as we have seen, is an in-

creasingly important consideration for all governments and agencies with responsibility for border management. Consequently, in each and every case we should add '... while facilitating the movement of legitimate trade and travel'.

Using transport security as an example, the policy objective becomes:

- Protect the supply chain against acts of terrorism, **while facilitating the movement of legitimate trade and travel.**

The strategy must also be expanded accordingly:

- Minimize the risk of terrorist attacks by ensuring that international and national security standards are met, **in a way that facilitates the movement of legitimate trade and travel.**

Table 3. Government Policy Objectives

Issue	Key Government Objectives	Broad Strategies
Food Safety	<ul style="list-style-type: none"> • Protect public health and safety. • Protect the reputation of the country's food industry. 	<ul style="list-style-type: none"> • Minimize the potential risk of food-borne illness by ensuring that the quality of internationally traded food meets relevant standards.
Biosecurity – Plant Quarantine	<ul style="list-style-type: none"> • Protect the country from exotic pests and diseases. • Protect the country's reputation in overseas markets. 	<ul style="list-style-type: none"> • Minimize the risk of pests and diseases entering the country by ensuring that national and international standards of plant health are met.
Biosecurity – Animal Quarantine	<ul style="list-style-type: none"> • Protect the country from exotic pests and diseases. • Protect the country's reputation in overseas markets. 	<ul style="list-style-type: none"> • Minimize the risk of pests or diseases entering the country by ensuring that national and international standards of animal health are met.
Immigration	<ul style="list-style-type: none"> • Protect the government's right to determine who may enter, leave or remain in the country on a permanent or temporary basis. 	<ul style="list-style-type: none"> • Minimize the risk of people entering, leaving or remaining in the country illegally by ensuring that people who travel across or remain within a country's borders are authorized to do so.
Intellectual Property	<ul style="list-style-type: none"> • Protect the rights of owners of trademarks and copyright material. • Protect the community from potentially unsafe products (e.g. counterfeit medicines). 	<ul style="list-style-type: none"> • Minimize the risk of trade in counterfeit and pirated goods by ensuring that internationally traded goods do not infringe intellectual property rights, including trademarks and copyright.
Revenue Collection	<ul style="list-style-type: none"> • Protect the national revenue. 	<ul style="list-style-type: none"> • Minimize the risk of government revenue leakage by ensuring that the correct amount of revenue is paid on imported (or exported) goods.
Transport Security	<ul style="list-style-type: none"> • Protect the supply chain against acts of terrorism. 	<ul style="list-style-type: none"> • Minimize the risk of terrorist attacks by ensuring that international and national security standards are met.
Safety Standards	<ul style="list-style-type: none"> • Protect consumers against injury, illness and death related to unsafe goods. • Protect a country's reputation in overseas markets. 	<ul style="list-style-type: none"> • Minimize the risk of trade in unsafe goods by ensuring that internationally traded goods meet national and international safety standards.

Governments are seeking to protect their citizens' way of life, and administrators are required to manage the associated risks

Note that each strategy is in two parts: (1) minimizing risk to the achievement of a particular government objective; and (2) pursuing a specific course of action to achieve such minimization.

For the moment, however, we will restrict our focus to the identification of objectives. Later, we will examine strategies for identifying risks and treating risks (that is, pursuing a specific course of action to minimize risks). In the meantime, there are further considerations that must be taken into account in relation to the context in which the risks are to be managed.

Having established and clearly articulated the agency's objectives, it is important to consider relevant aspects of the agency's internal and external environment that may have an impact on the achievement of those objectives, since any decisions about risk must be made in the context of the environment in which they occur. For example, in Table 4, a number of environmental factors are listed that may impact on an agency's ability to ensure that standards of plant health are met.

Once we have a clear understanding of our objectives and an accurate picture of the environmental factors that may impact on those objectives, we are in a position to embark on the process of identifying risks.

Identifying Risks

The process of identifying potential risks essentially involves answering two questions:

- What could happen that may have an impact on the agency's objectives?
- How and why could it happen?

The first question helps to clarify the nature of potential risk while the second provides valuable information about potential causes. Using safety standards as an example, the issues identified in

Table 4. Environmental Factors

Internal Environment	External Environment
<ul style="list-style-type: none"> • Hours of operation at the border post. • The number and competencies of staff. • Staff responsibilities and accountabilities. • Administrative framework, including practices and procedures. • Agency infrastructure at the border including systems and technology. • Quality and timeliness of head office support. • Internal communication and reporting mechanisms. 	<ul style="list-style-type: none"> • Geographic setting. • General facilities and infrastructure at the border (both private and public). • The nature of international trade, transport and travel. • The volume of international trade and travel. • Treaties and international obligations. • Quality of government legislation and policy. • Interagency agreements and level of cooperation.

Table 5 may be relevant, depending on the particular circumstances.

The potential causes can be diverse. For this reason, it is important for a knowledgeable group of people to devote resources to the risk identification process, and indeed to other aspects of the risk management process.

To this point, we have used relatively high level examples, and while these can help our understanding of the process of managing risk, it is often not until more specific, operational examples are used that we fully appreciate the benefits of the process. The examples in Table 6 may assist.

Clearly there are many more potential risks to the achievement of these particular objectives. However, the above examples provide an insight into the types of issues that should be considered in the process of identifying risks. The above examples identify risks resulting from a range of potential weaknesses in regulatory controls, including:

- failure to detect and prevent the importation of high-risk goods;
- inadequate methods of dealing with goods that have already been imported;

Table 5. Identifying Safety Standard Risks

What can happen?	<ul style="list-style-type: none"> • Unsafe goods enter the domestic market.
How can it happen?	<ul style="list-style-type: none"> • The responsible agency relies on border referrals, but potentially non-compliant goods are not being referred to them by other border agencies. • Import regulations are inadequate, e.g. newly identified consumer hazards are not reflected in national legislation. • Importers have not been advised of the latest standards and/or procedures. • Importers seek to deliberately circumvent regulatory controls. • The agency's post-clearance audit regime is ineffective. • Agency staff do not possess the necessary knowledge and skills to identify non-compliant goods.

Table 6. Examples of Operational Risks

Objective:	Protect the country from the introduction of Bovine Spongiform Encephalopathy (BSE), commonly known as mad cow disease, which may lead to the deadly brain wasting disease in humans known as Creutzfeldt-Jacob disease.
What can happen and how can it happen?	BSE-infected cattle and beef products may be released into domestic consumption due to ineffective (or a lack of) controls to identify and prevent the importation of infected shipments.
Objective:	Protect the country from the introduction of Fire Blight, a destructive bacterial disease that affects apples and may lead to the decimation of the domestic industry.
What can happen and how can it happen?	Introduction of Fire Blight into the domestic economy as a result of inadequate methods of dealing with contaminated shipments that have been landed in the country.
Objective:	Protect the country from the introduction of Foot and Mouth Disease (FMD), a serious viral disease affecting cloven-hoofed animals such as cattle, sheep, pigs and goats.
What can happen and how can it happen?	Introduction of FMD into the country through contaminated footwear that is being carried in a passenger's baggage.
Objective:	Protect the country from visitors who pose a criminal risk.
What can happen and how can it happen?	Visitors with criminal records that preclude them from gaining entry into the country may use a false name and passport to gain entry.
Objective:	Protect the community from counterfeit medicines.
What can happen and how can it happen?	Counterfeit medicines with ingredients that are dangerous to a person's health may be released into domestic consumption undetected due to fake branding and packaging.
Objective:	Protect the national revenue against duty evasion.
What can happen and how can it happen?	Importers may pay the incorrect amount of duty on particular commodities due to a lack of clarity in the relevant revenue legislation.
Objective:	Protect the supply chain against acts of terrorism.
What can happen and how can it happen?	Terrorist groups may compromise a supply chain by introducing explosive devices into consignments that are being shipped by a reputable trader.
Objective:	Protect consumers against potentially dangerous electrical goods.
What can happen and how can it happen?	Sub-standard electrical fittings may be imported from countries with ineffective (or a lack of) regulatory controls over the manufacture and sale of such products.

- failure to prevent and detect criminal activity; and
- lack of legislative clarity.

Analyzing Risks

Having identified potential risks, the next step is to analyze those risks. In doing so, it is important to bear in mind that the concept of risk has two elements: the likelihood of something happening, and the consequences if it does in fact happen. We consciously or unconsciously make judgments about these elements in our everyday lives. For example, why do we drive to work when the consequences of having a serious accident are so high? The answer lies in the fact that we judge the likelihood of such an occurrence to be extremely low. On balance, we consider getting behind the wheel to be an acceptable risk.

This stage of the risk management process therefore involves analyzing the relationship between the likelihood of a risk occurring and the consequences if it does in fact occur. The combination of these factors provides us with an understanding of the overall level of risk, which then allows us to compare and prioritize the variety of risks that have been identified. The aim, then, is to determine the relative significance of each risk which, in turn, enables us to make informed decisions in later stages of the process.

Three basic methods can be used to analyze risk: quantitative; semi-quantitative; and qualitative. The method chosen will generally depend on the degree to which risks can be expressed in quantitative terms with a reasonable degree of accuracy. For example, revenue risks may be readily quantified, whereas immigration risks are more easily dealt with qualitatively. Not surprisingly, the most commonly adopted method in a border context is the qualitative approach, where managers use their experience, intuition, and judgment to make decisions.

A 5x5 Risk Matrix, in which five definitions of likelihood and five definitions of consequence are used, is a useful tool for analyzing risk.² For practical purposes, the definitions used to define ‘likelihood’, ‘consequence’, and ‘risk level’ should reflect a particular agency’s requirements and operational

context. For the purposes of explanation, generic definitions are used in the following example. First, the definitions of likelihood:

- Almost Certain:** The event is expected to occur.
- Likely:** The event will probably occur.
- Possible:** The event may occur at some time.
- Unlikely:** The event is not expected to occur.
- Rare:** It is highly unlikely that the event will occur.

If the event was to occur, its consequence may be estimated by determining how the result of its occurrence would best be described:

- Severe:** The event will have an extreme impact on objectives.
- Major:** The event will have a major impact on objectives.
- Moderate:** The event will have a high impact on objectives.
- Minor:** The event will have a medium impact on objectives.
- Minimal:** The event will have a low or negligible impact on objectives.

Once the levels of likelihood and consequence have been assessed for each identified risk, the overall level of each risk can be determined using the Risk Matrix (Figure 3), and defined as follows:

- Extreme:** Highly likely to cause serious disruption or impact on objectives. Should be addressed as a matter of priority and urgency. Requires urgent, continuing management/operational attention.
- High:** Likely to cause serious disruption or impact on objectives. Should be addressed as a matter of some priority. Requires continuing management/operational attention.
- Medium:** Will possibly cause considerable disruption or impact on objectives. Requires some management/operational attention.

² While some agencies will find the 5x5 matrix to be particularly useful, some may prefer to use more or less complex matrices.

Figure 3. Risk Matrix

		LIKELIHOOD				
		Rare	Unlikely	Possible	Likely	Almost Certain
CONSEQUENCE	Severe	Medium	High	High	Extreme	Extreme
	Major	Low	Medium	High	High	Extreme
	Moderate	Low	Medium	Medium	High	High
	Minor	Very Low	Low	Medium	Medium	High
	Minimal	Very Low	Very Low	Low	Low	Medium

Low: May cause some disruption or impact on objectives. May require some management/operational attention.

Very Low: Unlikely to cause any disruption or impact on objectives. Requires little or no management/operational attention.

Using our previous example of product safety standards (see Table 5), one possible view in relation to the risk of unsafe goods entering the domestic market may be as follows:

This example suggests a need to address the following issues as a matter of priority:

- procedures to ensure that potentially non-compliant goods are being referred by other border agencies;

Cause	Likelihood	Consequence	Risk
Non referral of potentially unsafe goods	Possible	Major	High
Import regulations are inadequate	Unlikely	Major	Medium
Importers not advised of latest standards	Unlikely	Minor	Low
Importers deliberately circumvent controls	Likely	Major	High
Post-clearance audit regime is ineffective	Possible	Moderate	Medium
Staff knowledge and skills	Likely	Major	High

- strategies to prevent and detect deliberate attempts by the trading community to circumvent controls; and
- programs to improve staff knowledge and skills.

Controls may already exist to address some identified risks, in which case the likelihood of them occurring will decrease. It is important, however, to test the effectiveness of such controls to ensure that they are achieving their intended purpose, rather than accepting their effectiveness on face value.

Assessing and Prioritizing Risks

The purpose of this stage of the process is first, to determine whether an identified risk is acceptable or unacceptable, and second, to determine which of the unacceptable risks are in most need of an agency response.

Some people have great difficulty coming to terms with the fact that a risk could be considered to be ‘acceptable’. However, it is important to remember that agencies are generally unable to control all the risks that confront them, and they must therefore be selective in determining which risks they will accept, and which will be addressed through some form of resource allocation. There may be a number of reasons for a risk to be regarded as ‘acceptable’. For example:

- the threat posed by a potential risk may be considered to be so low that its treatment is not warranted in the context of available resources; or
- the cost of treating a potential risk may be so high that there is no option but to accept it; or

- the opportunity cost of accepting a potential risk may outweigh the threats posed by the risk.

For example, it may be determined that certain diseases may be introduced into the domestic economy as a result of bird migration. As there may be little that can be done to prevent such an occurrence, the focus should be on strategies aimed at minimizing the impact of the disease if it was to be introduced in this way. Similarly, not every potential terrorist target can be fully protected against the possibility of attack. As such, a more pragmatic strategy is to focus on impact minimization and business continuity in the event that such an attack was to take place.

Having determined which risks are to be managed, the next step is to identify which have the high-

est priority, recognizing the fact that controlling all risks may be beyond the agency's capabilities or resources. Generally speaking, the priority of a particular risk will depend on its rating within the risk matrix. However, it is not uncommon for risks to be rated equally, and if there are insufficient resources to address all risks, a decision must be made as to how the agency's limited resources should be deployed.

Finally, while those risks that are deemed to be unacceptable will be managed through a formal treatment plan, those that are considered acceptable should be monitored and reviewed periodically to ensure that the assumptions about their acceptability remain valid. These matters are dealt with in the following section.

Mitigating Identified Risks

In this section we examine ways of mitigating or ‘treating’ risks (the last of the core elements in the risk management framework).

Looking back at Table 3, we can see that strategies designed to ensure the achievement of government objectives are in two parts: (1) minimizing potential risks to the achievement of particular government objectives; and (2) pursuing a specific course of action to achieve such risk minimization. At this point, it is worth reminding ourselves that the particular course of action taken will determine the extent to which an agency’s management of the border is risk-based.

Using safety standards as an example, we have noted that a strategy to protect consumers against injury is to minimize the risk of trade in unsafe goods by ensuring that internationally traded goods meet national and international safety standards, in a way that facilitates the movement of legitimate trade and travel. One way of approaching this is to require all imported products to contain specific consumer warnings. However, as we saw from Table 2, there are a number of ways of doing this—some that are risk-based and which are designed to facilitate trade, and others that are not:

- Risk-based: regular importers are allowed to complete product labeling requirements post importation and prior to sale on the domestic market, and
- Non risk-based: mandatory warnings on particular imported products are routinely verified at the time of importation prior to release.

It could be argued that the routine verification of imports is in fact one way of mitigating the risk of trade in unsafe goods, and should therefore be considered to be a ‘risk-based’ response. While this is true, the resultant risk treatment fails to address the other important risk—that of failing to provide an

appropriate level of facilitation for legitimate trade. Consequently, while routine verifications at the border will no doubt help to reduce the likelihood of unsafe goods entering the domestic market, they are likely to also impede the flow of trade, including legitimate transactions.

So, how do we ensure that regulatory procedures are risk-based? An effective way of doing this is to develop a strategy which addresses the following five basic elements of compliance management:

- The agency’s legislative base;
- Client service;
- Compliance assessment;
- Compliance recognition; and
- Compliance enforcement.

The combination of these elements provides a structured approach to the management of compliance at the border, as illustrated in the Risk-based Compliance Management Pyramid shown in Figure 4.

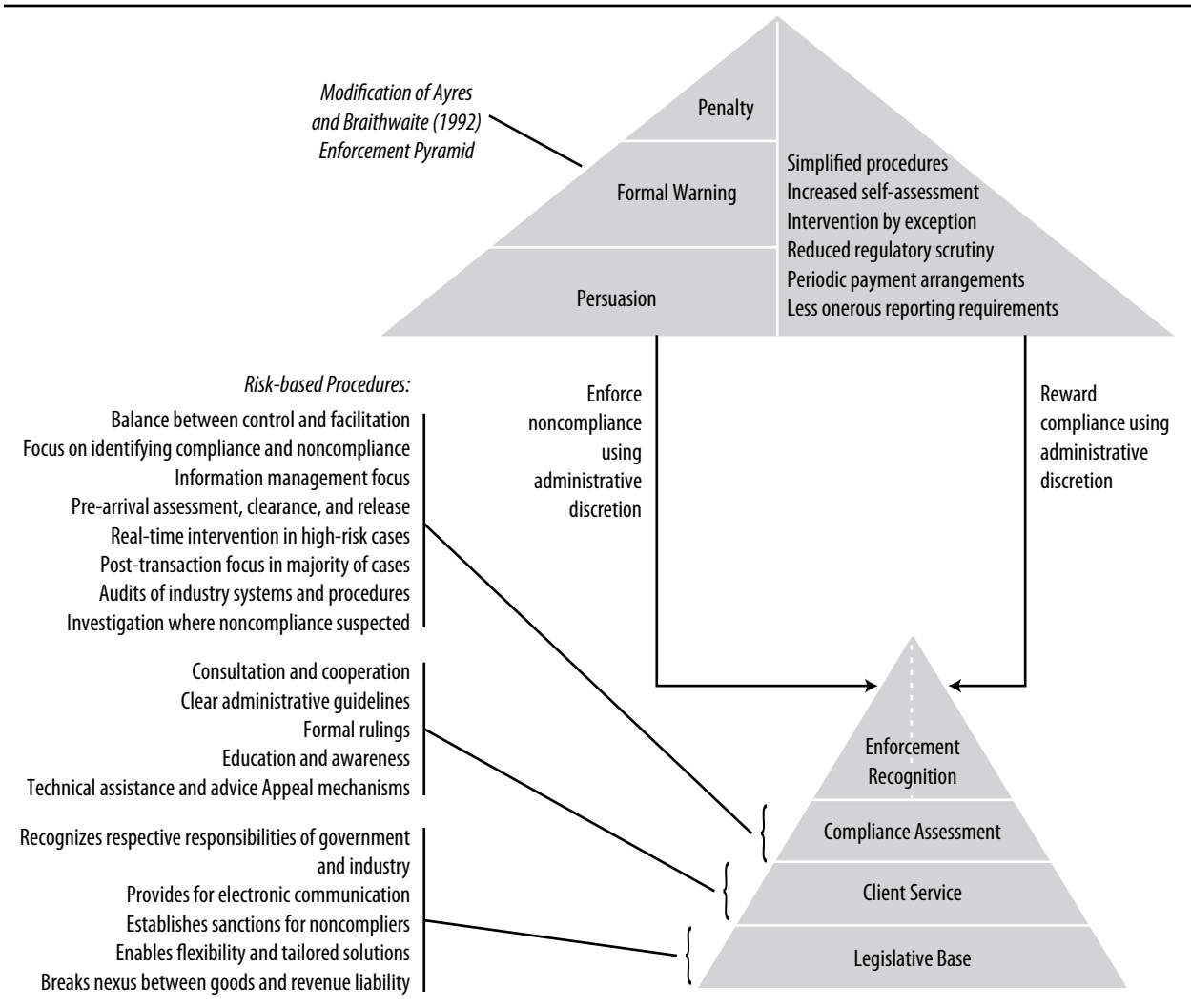
Legislative Base

The fundamental charter of all government agencies is to ensure compliance with the law. Consequently, the foundation of any effective border management regime must be represented by sound national legislation that provides the necessary basis in law for the range of compliance management strategies that a border agency may wish to adopt.

We discussed a number of these strategies in Section 2 in the context of agencies’ roles and responsibilities. For example, we noted that:

- Food safety agencies are able to inspect and analyze imported and exported food to ensure that the required standards are met, and that commercial traders of certain food products are

Figure 4. Risk-based Compliance Management Ppyramid



Source: Widdowson (2003); see also *Border Management Modernization* 2011, Figure 6.3, p. 108.

- often required to obtain a permit or certificate prior to its importation or exportation.
- Biosecurity agencies are authorized to inspect, test and if necessary treat plants and plant products to ensure they meet relevant standards and do not pose a threat of pest or disease, and that live plants may be held at quarantine stations until such time as they are deemed not to represent a pest or disease risk.
- Immigration agencies have the right to question, search, conduct identity checks, and detain people who intend to cross the country's border, and that non-citizens may be required to obtain entry visas.

- Transport security agencies have wide-ranging powers to ensure that security standards are being properly observed and to verify the validity and integrity of shippers and other members of the international trading community.

All relevant powers that give rise to an agency's rights and responsibilities must be clearly provided for in the relevant legislation. For example:

- The Singapore Customs Act provides customs officers with a range of powers including the power to issue search warrants; enter and search premises; conduct a search without a

warrant under certain circumstances; access, inspect and check the operation of computers and other apparatus; search vessels and aircraft; stop and examine any vehicle for certain purposes; open packages and examine goods; search persons arriving in Singapore; etc.

- The Canadian Quarantine Act provides quarantine and environmental health officers with a range of inspection powers in relation to communicable diseases, including the power to stop a conveyance and direct that it be moved to a place where an inspection can be carried out; enter and inspect the conveyance or any place where the conveyance has been; open and examine any cargo, container, baggage, package or other thing; conduct tests and take samples; etc.
- The Uganda Citizenship and Immigration Control Act provides immigration officers with the power to search any ship, aircraft, train or vehicle without a search warrant; interrogate a person who he or she reasonably believes is about to enter or leave the country, is a prohibited immigrant or is able to give any information regarding any regulatory infringement; require a person who intends to enter the country to make and sign a declaration and to undergo a medical examination by a Government medical practitioner; etc.

Similarly, the rights and responsibilities of the international trading community and traveling public should also be spelled out in national legislation. For example:

- The South African Immigration Act provides that travelers should only enter or depart the country through an official port of entry; that they should be in possession of a valid passport; that citizens will be admitted provided they identify themselves as such; that a foreigner's passport must be valid for not less than 30 days after the expiry of the intended stay; etc.
- India's Import Procedures for Livestock Products specify that all livestock products are to be imported with a valid sanitary import permit through seaports or airports where Animal Quarantine and Certification Services Stations are situated; etc.
- Japan's export legislation requires exporters to declare to Customs the nature of the goods as

well as the quantity, value and other particulars; to provide invoices and other supporting documents as required by law (for example, permits, approvals, or licenses); to bring goods for export into a designated Customs area or a specially permitted place for storage; etc.

Client Service

A transparent and predictable legal framework also helps to ensure that those who are the subject of regulation know what the rules are. If they don't know what the rules are, how can they be expected to comply? And while ignorance of the law may be no excuse, a poorly constructed, unpublicized or ambiguous regulatory framework can often explain instances of non-compliance.

It is therefore important to provide clear information and meaningful advice to those who are being regulated. This aspect of compliance management is generally referred to as client service, and includes activities (risk treatments) such as:

- Consultation and cooperation;
- Clear administrative guidelines;
- Formal rulings;
- Education and awareness;
- Technical assistance and advice; and
- Appeal mechanisms.

Client service activities such as these are designed to provide members of the public with the means to achieve certainty and clarity, to identify their rights and responsibilities, and to assess their liabilities and entitlements. In risk management terminology they represent risk mitigation strategies (or risk treatments) for those identified risks that relate to a lack of knowledge, understanding, clarity or certainty on the part of the regulated community.

Such strategies provide an effective means of mitigating the following types of risk which we identified earlier. For example, the New Zealand Customs Service publishes a series of fact sheets, available on the internet,³ which explain the regulatory require-

³ <http://www.customs.govt.nz>

ments relating to a variety of international transactions, such as its Advice on Private Motor Vehicle Imports⁴ which explains the regulatory requirements for private importers, including immigrants, bringing a vehicle to New Zealand.

Similarly, the Swedish Board of Agriculture provides extensive information on import and export requirements on its website,⁵ as do many other agencies, such as Citizenship and Immigration Canada,⁶ the Japanese Animal Quarantine Service,⁷ the Thai Department of Livestock Development,⁸ the South African Department of Agriculture, Forestry and Fisheries⁹ and the US Food and Drug Administration.¹⁰

Formal rulings are designed to provide the international trading community with increased certainty and clarity, and take various forms. For example, the Canada Border Services Agency publishes advance rulings in relation to tariff classification of goods, and traders and manufacturers may obtain advance rulings from the customs administrations of Canada, Mexico and the United States in relation to the treatment of goods under NAFTA. In fact advance rulings on matters such as tariff classification, valuation and preferential treatment are now a common feature of Free Trade Agreements.¹¹

The various client service risk mitigation strategies are designed to ensure that regulatory requirements are properly understood by the regulated community. However, while some non-compliers may genuinely make ‘honest mistakes’, others will deliberately attempt to circumvent the law, in which case enforcement strategies are required as client service strategies will prove ineffective. Enforcement strategies are addressed later in this section.

Compliance Assessment

Compliance assessment strategies serve two essential purposes. First, they provide a means of identifying compliant and non-compliant behavior. Second, where non-compliant behavior is identified, they help to identify why such behavior is occurring—this comes back to the issue of ‘honest mistakes’ vs deliberate non-compliance.

Methods of detecting compliant and non-compliant behavior include activities such as:

- Data screening and verification;
- Documentary examination;
- Physical intervention (inspections, tests, verification checks, sampling, analysis, etc.);
- Audit; and
- Investigation.

The various methods of compliance assessment should be implemented in a way which provides legitimate trade and travel with an appropriate level of facilitation. For example, physical intervention should only occur when there is a legitimate risk-based reason to do so.

‘Intervention by exception’ is a term used to describe a regulatory compliance strategy that is based on the principles of risk management. It implies regulatory intervention when there is a legitimate need for it, that is, intervention based on identified risk.

While many agencies now espouse a policy of intervention by exception, there is routinely a lack of congruence between organizational policy and operational practice. For example, in one East Asian country a particular border agency ritually opens each and every express consignment but does not apply the same level of scrutiny to sea cargo. This reason for this approach is unfortunately clear—agencies often examine what is easy to examine regardless of the potential risk posed.

Furthermore, it is frequently observed that the number of ‘high-risk transactions’ tends to be directly proportional to the resources available to conduct

⁴ New Zealand Customs Service Fact Sheet No. 29 Advice on Private Motor Vehicle Imports, October 2010.

⁵ <http://www.jordbruksverket.se/swedishboardofagriculture>

⁶ <http://www.cic.gc.ca/english/index.asp>

⁷ http://www.maff.go.jp/aqs/english/animal/im_index.htm

⁸ <http://www.dld.go.th/webenglish/move1.html>

⁹ <http://www.nda.agric.za/>

¹⁰ <http://www.fda.gov>

¹¹ For example, the Thailand-Australia Free Trade Agreement and the US-Singapore Free Trade Agreement.

the examinations. For example, during the recent global economic crisis, inspection rates in many countries rose in spite of much reduced trade volumes. It is doubtful that the level of risk had changed dramatically during that period. Rather, lower volumes simply meant more staff were available to conduct examinations.

Underlying Control Regimes

Where compliance assessment results in the identification of non-compliance resulting from genuine errors, the most appropriate methods of reducing the likelihood of future non-compliance include:

- the maintenance of a basic control regime; and
- various forms of client service (see above).

On the other hand, methods of reducing the likelihood of non-compliance resulting from deliberate non-compliance include:

- the maintenance of a basic control regime; and
- various compliance enforcement strategies (see below).

What then constitutes a basic control regime? Essentially, this refers to the legislative, documentary and physical processes that are in place to enable agencies to perform their duties. For example, when a truck crosses a border, it is required to do so at a specified location and certain formalities must be completed before the driver, the truck and its cargo are authorized to proceed. Similarly, a traveler arriving at an airport is not free to exit via the nearest gate but must follow clearly defined physical and documentary procedures before being authorized to leave the airport. In the absence of such requirements, it would be impossible to exercise any semblance of regulatory control.

Pre- and Post-clearance Compliance Assessment

Compliance assessment can take place prior to clearance of goods by the border agency, or after the event, that is, post-clearance.

As the name implies, pre-arrival clearance is a process that allows a trader to submit information to a government agency prior to the arrival of the goods at the border and advance processing by the border agency. In the event of there being no regulatory concerns, this may lead to immediate release of the goods once they arrive at the border. Pre-arrival clearance is particularly important for certain types of goods that are highly perishable or in some other way require prompt handling upon arrival.

Pre-arrival clearance does not imply a lessening of regulatory controls. Rather, it allows such controls to be exercised in a timeframe which minimizes regulatory intervention by reducing the likelihood of processing delays.

The most common form of post-clearance compliance assessment is the audit. Audits can take a variety of forms—from random audits, for verifying compliance with regulatory requirements, to planned or leverage exercises targeting individuals or industry sectors. They rely on a legislative base that provides trained officials with powers to enter premises and inspect goods and documents (physically or electronically) in relation to border transactions.

Pre-arrival Profiling and Targeting

A risk profile consists of a set of risk indicators that may relate to the type, value or origin of goods, instances of third country transit or transshipment, mode of transportation, method of payment, etc.

Risk profiles are developed from data and intelligence obtained by border and other law enforcement agencies, including information obtained from previous instances of non-compliance.

Border agencies may establish cargo and/or passenger analysis units to develop and refine risk profiles on an ongoing basis.

When such profiles can be applied to information obtained by the border agency at an early point in the movement of the goods or person to the destination country, an assessment of the risk posed by the goods or person can be made at an earlier point in time, and an intervention strategy devised accordingly. The use of pre-arrival information therefore provides a benefit to both government and business, which leads to more efficient border clearance processes.

Border Agencies Working Closely Together to Target Risks for More Effective Border Control

New Zealand's recently opened Integrated Targeting and Operations Centre (ITOC) has enhanced the government's ability to protect the safety and security of all citizens by bringing together key border agencies including Customs, Quarantine, Immigration and Transport to improve the targeting of border risks presented by specific goods, people or craft, and to respond to risks more effectively and efficiently with better coordinated border agency operational activity.

The ITOC is a 24-hour, seven-day a-week multi-agency facility with 60 well-trained staff to support the command, planning, and coordination of border operations. It has two core functions:

- **Targeting** (Risk rule sets, profiles, assessments, recommendations, information and intelligence, prioritizing operational response); and
- **Coordinating Operations** (Border domain awareness, operational activity support, operational command).

The ITOC works under a command and control structure—*control* (what needs to be done) is centralized and *operational execution* (how it will be done) is decentralized. Responsibility for operational outcomes remains with the specific workgroup or border agency through standing management structures.

Source: "Integrated Targeting and Operations Centre" brochure – New Zealand Customs Service (2011)

Such audits provide border agencies with a clear picture of the transactions in question and an indication of the overall compliance rate within a business or industry sector. They also highlight or confirm areas of risk where additional compliance or enforcement activity may be required, thereby completing the risk management loop by producing data that can be fed back into the risk management process (including the updating of risk profiles).

A number of different audit approaches are available to border agencies. These include desk audits, transaction-based audits and system-based audits. The specific type of audit will depend on the nature of the potential risk identified by the agency in selecting an individual or company for an assessment of compliance. The different types of audit are

discussed in chapter 6 of the *Border Management Modernization* publication.

A key feature of audit activity is its purpose. It is, quite simply, designed to identify whether the regulated party is compliant or not—it should not be approached with the sole intention of detecting errors in the regulatory dealings of a business or individual. Used correctly, it can provide the agency with valuable information about both compliant and non-compliant behavior—see the information box 'Benefits of identifying low risks'.

Compliance Recognition

For those businesses or individuals that are considered to represent a relatively low risk, the level of regulatory scrutiny may be reduced, with greater reliance being placed on a self-assessment of their obligations. This approach recognizes that, in terms of regulatory compliance management, one size does not necessarily fit all.

Benefits of Identifying Low Risks

Businesses and individuals with a good record of compliance require a lower level of scrutiny than those with a history of poor compliance, or those about which little is known. This concept is integral to a number of 'trusted trader' programs which promote a range of benefits for certain businesses by virtue of their low risk status. These programs reflect sound principles of risk management by identifying low risk members of the international trading community, thereby reducing the size of the 'risk pie', and in turn aiding the deployment of resources towards potentially high-risk operators.

Their level of compliance is generally assessed by way of an audit which is intended to assess the degree to which a company is complying with the relevant regulatory requirements and not, as some assume, simply to detect errors in a company's regulatory dealings. The important point here is that such an assessment, regardless of the result, assists in determining where future compliance resources should be directed.

A corollary to this is that an auditor's finding of compliance is equally as good a 'result' as a finding of non-compliance. This is often overlooked, as regulatory auditors generally base their effectiveness on identified instances of non-compliance.

Applying a lower level of scrutiny to those with a good record of compliance has two specific benefits. First, it serves to facilitate legitimate trade and travel, and second, it enables agencies to direct their resources to those businesses and individuals that are likely to pose a higher risk, that is, those with a history of poor compliance and those about which little is known.

Compliance recognition is something which is often overlooked. Border agencies generally focus solely on applying sanctions to identified instances of non-compliance rather than adopting both a carrot and stick approach—the traditional approach to compliance management being all stick and no carrot.

Compliance recognition strategies are reflective of what is often described as a compliance improvement approach, the principal focus of which is the achievement of future compliance and ensuring that an appropriate balance exists between incentives for compliance and sanctions for non-compliance.

Several different forms of compliance recognition are available to border agencies, including the use of simplified procedures, an increased reliance on self-assessment, reduced regulatory scrutiny, periodic payment arrangements and less onerous reporting requirements. Examples include the ‘known shipper’ schemes operated by transport security agencies, the customs ‘trusted trader’ programs and ‘registered traveler’ programs.

Known Shipper Schemes

‘Known shipper’, or ‘known consignor’ programs are being introduced in a number of countries, including the United States,¹² South Africa¹³ and member states of the EU.¹⁴ These programs, which are operated by agencies responsible for transport security, waive the requirement for routine security checks of cargo that is being carried on passenger flights in cases where the shipper/consignor is considered to have adequate security controls in place over its consignments. Consequently, the fact that certain shippers can demonstrate their compliance with predetermined security requirements (and are therefore deemed to present a relatively low security risk) is formally recognized by the agency in a way which reduces their level of regulatory scrutiny.

A business seeking recognition as a known shipper/known consignor will generally be required to:

- demonstrate that it has developed and is implementing a risk-based operational security program
- agree to ongoing compliance with specified regulatory requirements
- demonstrate the ongoing effectiveness of its security-related controls
- undertake to provide its personnel with the necessary knowledge, skills and competencies to effectively meet their security obligations.

Trusted Trader Programs

‘Trusted trader’, ‘gold card’, ‘accredited client’ and similar customs programs have been in existence for many years. Examples of such programs include those that have been implemented in Thailand,¹⁵ Abu Dhabi¹⁶ and Jordan.¹⁷

The principal international convention on customs matters, the Revised Kyoto Convention,¹⁸ includes provisions to establish mutually beneficial partnerships between customs agencies and the private sector, and to introduce initiatives to recognize highly compliant traders. Low-risk companies are permitted to operate under less onerous regulatory requirements and may anticipate little in the way of regulatory intervention. Other benefits for compliant companies may include greater reliance on their self-assessed liabilities and entitlements, release of goods on minimum documentation, less onerous reporting requirements, reduced processing fees, periodic payment arrangements and simplified procedures.

This concept has been expanded in recent years to not only include compliance with general customs

¹² <http://www.tsa.gov/>

¹³ <http://www.caa.co.za/>

¹⁴ For example, the UK known consignor program, <http://www.dft.gov.uk/>

¹⁵ <http://internet1.customs.go.th/>

¹⁶ <http://www.auhcustoms.gov.ae/en/index.aspx>

¹⁷ <http://www.customs.gov.jo/>

¹⁸ The revised International Convention on the Simplification and Harmonization of Customs Procedures, which entered into force in 2006.

requirements but also compliance with supply chain security standards. Companies that meet these criteria are commonly referred to as ‘Authorized Economic Operators’ (AEO), and bilateral arrangements exist whereby AEO status is mutually recognized between trading partners. Examples include the mutual recognition arrangements that have been established between Canada and Japan, Korea and Singapore, and New Zealand and the United States.¹⁹

Registered Traveler Programs

Similar risk-based programs are being considered in the context of security screening of air passengers whereby passengers that are considered to represent a low security risk may be subjected to less onerous screening requirements²⁰ prior to boarding their flight.

Compliance Enforcement

As previously noted, in the process of assessing levels of compliance, border agencies will encounter two situations—compliance and non-compliance. And while some non-compliers may genuinely make ‘honest mistakes’, others will be found to be involved in blatant fraud or other intentional illegalities.

For those that are found to be at the high end of the non-compliance spectrum, that is, those who are intent on breaking or circumventing the law, client service strategies will prove ineffective and some form of sanction will be necessary. Compliance enforcement strategies may include formal warnings, administrative penalties, name and shame lists, license suspension or revocation, criminal prosecution, fines and imprisonment.

Monitoring and Reviewing Risks

Risks are not static—circumstances and risks change over time. As a consequence, a risk that has previously been deemed to be acceptable may for any number of reasons be regarded subsequently as an unacceptable risk and require some form of treatment strategy. Similarly, the ongoing relevance of risk treatments may change. That is why the Risk

Border Intervention vs Post-border Control

While post-border controls help to facilitate trade and travel, in certain circumstances it is essential for an agency to intervene at the border, that is, at the time of importation or exportation, or even prior to that point where it is feasible to do so.

So, when is border intervention necessary and when is post-border control appropriate? The answer to this question lies in the nature of the risk that is being managed.

For example, risk to the revenue can generally be managed post-border for regular traders, as any short-paid duties and taxes may be readily recovered after the event (particularly if some form of security bond is in place). However, for first-time importers and those about whom little is known, it will be more appropriate to finalize duty and tax assessments before releasing the consignment.

Similarly, if the potential risk relates to the importation of prohibited goods, or the risk of pests and diseases entering the country, or terrorism, for example, immediate intervention will generally be the appropriate course of action, as the likelihood of mitigating such risks ‘after the event’ is minimal.

Management Process Framework shown at Figure 2 is an iterative model which incorporates a requirement for ongoing monitoring and review.

For example, in the context of analyzing risks, we noted that an agency may already have controls in place that serve to address some of the identified risks. However, as part of the monitoring and review process, it is important to test the current effectiveness of such controls to ensure that they continue to achieve their intended purpose. This will help to determine whether the controls are sufficient to address the identified risks or whether they need to be strengthened or supplemented in some way. Alternatively, existing controls may be found to be excessive, thereby consuming resources that may be better allocated to an alternative source of risk.

¹⁹ A compendium of all such programs can be found at http://www.wcoomd.org/home_research_research-series.htm

²⁰ Research into this type of program has been undertaken by the Reason Foundation, see <http://reason.org/>

It is also worth noting that compliance assessment strategies themselves provide agencies with a useful means of identifying new and emerging risks, and should therefore be regarded as extremely useful tools when monitoring and reviewing risks and the effectiveness of existing risk treatments. In this context, entities that are considered to represent a

high risk, and transactions or entities for which no risk assessment has been undertaken, would be more likely to be selected for higher levels of regulatory intervention and scrutiny. This will result in a new or revised assessment of compliance that may indicate a higher or lower level of risk than was previously determined.

Enablers and Impediments

In this section we examine some additional regulatory, organizational and administrative issues that may have an impact on an agency's implementation and ongoing sustainability of a risk-based compliance management regime. This includes the range of reform instruments, tools, and best practice guides that are available to support the implementation process.

Communication

Effective communication and consultation with stakeholders will encourage the sharing of information, expertise and ideas by those who are likely to be affected by new policies and procedures. It will also assist in bringing a wider variety of perspectives to the risk management process which, in turn, will help in assessing the likely impact of particular proposals, highlighting potential implementation difficulties and identifying the most appropriate approaches for implementation and enforcement.

Two particularly important groups of stakeholders are private sector interests and other government agencies.

- It is important to have a good understanding of the interests of the private sector and to communicate regularly with those elements of that sector that may be impacted by particular aspects of the initiatives and their implementation. It is therefore important to actively engage the business community and to take its views into consideration.
- The need to engage other government agencies, including agencies with border management responsibilities, is addressed in some detail throughout *Border Management Modernization*, in the context of collaborative border management. Unless agencies coordinate their activities and collectively address the

spectrum of border management policies, processes and practices, the effectiveness of any risk-based compliance management program will be weakened significantly. The issue of collaborative border management is further discussed below.

Organizational Issues

An agency's organizational capacity to effectively manage compliance (risk-based or otherwise) is critical to its ability to effectively carry out its role and responsibilities. When discussing the identification of risk, we noted the need for businesses and individuals to understand their rights and responsibilities, and have access to information that allows them to act with certainty and clarity in their dealings with border agencies. There is also a need to ensure that agency personnel have the necessary skills, knowledge and competencies to effectively and efficiently perform their duties. Indeed, weaknesses in these areas may well be identified as potential risks to the achievement of an agency's objectives, and relevant capacity building initiatives would then emerge as appropriate risk treatments.

Other organizational issues that may impact on the achievement of objectives include political support, responsibilities and accountabilities, processes and procedures, financial and other resources, infrastructure and technology.

Importantly, the management of risk should not be isolated from other aspects of an agency's management processes, but should form an integral element of the organization's management framework. It is therefore important to integrate risk management into the agency's everyday management practices, particularly the strategic planning process. This issue is discussed in more detail in *Border Management Modernization*.

International Instruments

International instruments represent a valuable source of policy advice and technical information that can assist agencies to implement and maintain an effective approach to risk-based compliance management. These range from legally binding requirements, such as those incorporated in World Trade Organization (WTO) agreements, through to recommended best practices and guidelines. They include:

- Conventions that have a legally binding force on contracting parties, such as WTO agreements and the International Maritime Organization's (IMO) Convention on the Facilitation of International Maritime Traffic.
- Recommendations, such as those published by the United Nations Economic Commission for Europe (UNECE), that have no legally binding force, the purpose of which is to provide practical means of attaining harmonization and uniformity of international practice.
- Guidelines, also nonbinding, whose purpose is to provide information on particular technical matters, such as the World Customs Organization's (WCO) Time Release Study and the World Bank's Trade and Transport Facilitation Audit guidelines.
- Compilations, whose purpose is to provide case studies and best practices on particular technical matters, such as the United Nations Centre for Trade Facilitation and Electronic Business's (UN/CEFACT) Case Studies on Implementing a Single Window.

As international instruments are generally agreed and ratified at the political level, they can be a persuasive driver of change and an effective tool in managing potential interagency conflicts over ownership and leadership of border-related responsibilities. A compendium of useful instruments, including those published in *Border Management Modernization*, is provided in the attached Annex.

Collaboration

Agencies that seek to implement risk-based compliance management strategies in isolation may create tangible improvements at the agency level. Howev-

er, in order to achieve an optimal national solution, alignment and collaboration among all border agencies are essential. A true interagency approach will enable the development of a single access point for the border clearance process (a single window) rather than an individual agency approach that, while improving individual processes, will still require the trading community to deal with multiple points of access to meet all regulatory requirements.

Border clearance processes that involve uncoordinated checks and approvals from a range of regulatory authorities can result in unnecessary delays, lost commercial opportunities and increased costs for the international trading community. Furthermore, compliance management efforts may also be significantly weakened through a failure to share data and intelligence which could otherwise lead to

Collaborative Border Management: Cambodia

Prior to 2008, eleven Cambodian government agencies were actively involved in the clearance of international consignments, the five principal agencies being Customs, Health, Agriculture, Industry and Camcontrol. Clearance activities were characterized by ineffective controls; overlap and duplication; routine checks; independent agency procedures with no inter-agency coordination; and no evidence of a risk-based approach to compliance management. The resultant costs, delays and regulatory complexity severely impeded trade and investment.

In an effort to redress this situation, the Cambodian Government has embarked on a significant reform process which centers on the design and implementation of a risk-based system of cargo inspection across all government agencies with border management responsibilities. Key elements of the revised strategy include coordinated agency activities including joint inspection arrangements; intervention based on identified risk; and active facilitation of legitimate, low-risk consignments.

Achievements to date include the passage of enabling legislative amendments; the establishment of agency risk management units; development and implementation of new operational procedures; the conclusion of inter-agency service level agreements (under which one agency undertakes certain activities on behalf of another agency); joint agency development of risks and selectivity criteria; introduction of a multi-agency use IT system (which incorporates the agreed risk profiles); and extensive training across all relevant agencies.

more complete and accurate risk profiles of particular consignments, businesses or individuals.

Forms of interagency collaboration vary widely in scope and include activities such as increased data sharing, harmonization of data requirements and coding, delegation of authority, joint operational activities and the use of a single window for border clearance processes. Interagency collaboration may also enable the sharing of data and intelligence upon which risk-based decisions are made.

An extension of this concept is cross-border harmonization which recognizes that the export process in one country relates directly to the import process in another country and, with increased integration of trade supply chains, opportunities exist to create efficiencies through harmonization that can treat both the import and export procedures as part of the same clearance process. Further information on this issue can be found in *Border Management Modernization*.

In this section we briefly examine some specific techniques that will help to facilitate the implementation and maintenance of risk-based compliance management. In particular, we consider ways of assessing an agency's current approach to compliance management, its existing capabilities and reform priorities.

Introducing a risk-based approach to compliance management is not an insignificant task, and agencies are likely to experience some resistance to change as they seek to progress its implementation. Consequently, it will be necessary to maintain effective communication and consultation throughout the process in order to obtain the support and commitment of key stakeholders.

At the outset, it will be necessary to draw a comparison between the way in which your agency currently operates and the principles and procedures that are discussed in this Reference and Implementation Guide. The purpose of the exercise is to iden-

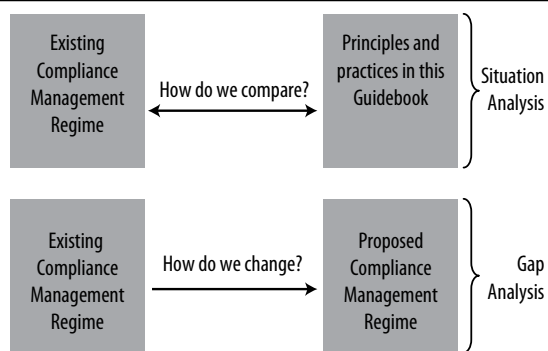
tify those aspects of risk-based compliance management that are already being applied by the agency and those which need to be addressed. This is referred to as a *situation analysis*.

The next step is to determine what the future compliance management strategy should look like and to identify the steps that are necessary to achieve the desired end-state. This is referred to as a *gap analysis*.

Both the situation analysis and the gap analysis will take time and effort to complete. It is important that agencies apply sufficient resources to these tasks, and equally important that a knowledgeable and experienced group is identified to progress them. Ideally, personnel who are technically proficient across the broad range of agency responsibilities should be asked to study this Guidebook from the perspective of their particular areas of expertise and to draw comparisons with current practice and procedure. Technical experts cannot, however, be expected to work without guidance. It is therefore also desirable that there be a management team in place to supervise and coordinate their activities.

One way in which risk-based compliance management may be introduced into the organization is to adopt a phased approach by identifying certain aspects of the agency's proposed regime that may be introduced in the short term and at relatively low cost. For example, the existing regulatory framework may allow for some risk-based processes to be introduced without the need for legislative reform. Similarly, some risk-based activities may initially be introduced manually in advance of the acquisition of specific ICT solutions.

Figure 5. Situation and Gap Analysis



Source: Based on the original Australian and New Zealand Standard on Risk Management (AZ/NZS 4360: 2004) which now forms the basis of ISO 31000.

Lack of Technology is Not a Barrier to Managing Risk

Sri Lanka Customs identified the potential benefits to both government and industry of pre-arrival screening and clearance of air express consignments. It was determined that the most efficient method of introducing pre-screening was through the introduction of an automated clearance system. However, implementation of the desired automated solution was not scheduled for some time.

Regardless, the agency determined that implementation of pre-clearance procedures may proceed prior to the installation of its automated systems through the implementation of revised manual processes and procedures. This consisted of a combination of manual documentary assessment, selective examination, and the establishment of x-ray facilities to address the potential risk of misdescription.

Consolidated manifests were manually submitted to Customs prior to aircraft arrival, together with advance copies of air waybills and invoices. These were manually screened by customs to identify potentially high-risk shipments (based on intelligence, emerging trends, the previous compliance record of consignees and consignors, and so on). Any consignments that were considered to be high risk were identified for further examination upon arrival, together with certain dutiable and restricted goods that were held pending formal clearance. All other consignments (that is, low-risk shipments) were available for delivery on arrival.

Source: De Wolf & Sokol (2004)

- De Wolf, Luc & Sokol, Jose B. 2004. *Customs Modernization Handbook*. Washington, DC: The World Bank.
- ISO 2009. *ISO 31000:2009 Risk management – Principles and guidelines*, Geneva: International Organization for Standardization.
- McLinden, Gerard; Fanta, Enrique; Widdowson, David and Doyle, Tom. 2010. *Border Management Modernization*, Washington, DC: The World Bank.
- Polner, Mariya. 2011. *WCO Research Paper No. 14: Compendium of Authorized Economic Operator Programmes 2011 edition*, Brussels: World Customs Organization.
- WCO (World Customs Organization). 2011. *WCO Customs Risk Management Compendium*, Brussels: WCO.
- Widdowson, David. 2003. *Intervention by Exception: A Study of the use of Risk Management by Customs Authorities in the International Trading Environment*, doctoral thesis, Canberra: University of Canberra.
- Widdowson, David. 2010. *Risk Management: key enablers*, WCO News No. 62:25–27, June 2010.



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