

**RKC SENSITIZATION WORKSHOP – 16 MARCH 2015,
HOTEL DRUK, PHUENTSHOLING
[DRC & ADB]**



General Annex (GA)

- 1. General Principles**
 - (e.g. partnership with the trade)
- 2. Definitions**
- 3. Clearance and other Customs formalities**
 - (e.g. Juxtaposed border posts, standardized and simplified documents, pre-arrival processing, authorized persons, border agencies coordination,)
- 4. Duties and Taxes**
 - (e.g. de-minimis, deferred payment)
- 5. Security**
- 6. Customs control**
 - (e.g. risk management, audit-based controls, co-operation with the trade)
- 7. Application of IT**
 - (e.g. use of IT, consultation with trade when implementing IT)
- 8. Relationship between the Customs and third parties**
 - (e.g. Customs brokers , consultation process)
- 9. Information, decisions and rulings supplied by the Customs**
 - (e.g. Publication of information, advance rulings)
- 10. Appeals in Customs matters**

DOUANE



CHAPTER 6

CUSTOMS CONTROL

"Customs control means measures applied by the Customs to ensure compliance with Customs law"

CHAPTER 6 CUSTOMS CONTROL

6.1	All goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control.	Standard
6.2	Customs control shall be limited to that necessary to ensure compliance with the Customs law.	Standard
6.3	In the application of Customs control, the Customs shall use risk management.	Standard
6.4	The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.	Standard
6.5	The Customs shall adopt a compliance measurement strategy to support risk management.	Standard
6.6	Customs control systems shall include audit-based controls.	Standard
6.7	The Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.	Standard
6.8	The Customs shall seek to co-operate with the trade and seek to conclude Memoranda of Understanding to enhance Customs control.	Standard
6.9	The Customs shall use information technology and electronic commerce to the greatest possible extent to enhance Customs control.	Transitional Standard
6.10	The Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirements.	Standard

GENERAL ANNEX - CHAPTER 6

CUSTOMS CONTROL

- **Limited to that necessary to ensure compliance**
- **Use risk management**
- **Move from transaction-based to audit-based or mixed controls**
- **Apply compliance measurement / IT**
- **Evaluate trader's commercial system**
- **MOU's with trade and MAA's with other Customs**

Chapter 6: Customs Control

1. Scope of Customs Control

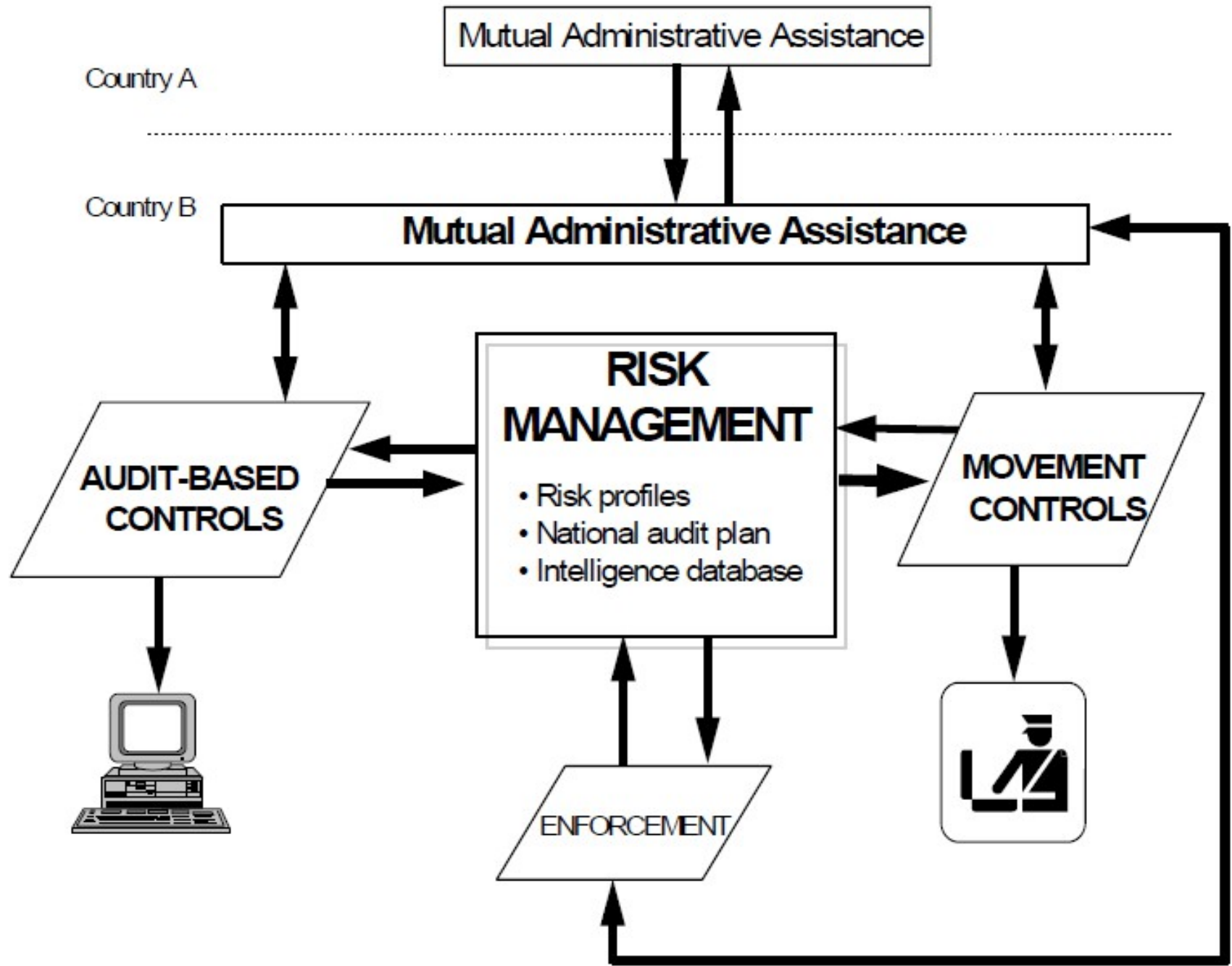
- **All goods, including means of transport, which enter or leave the Customs territory, shall be subject to Customs Control (6.1)**
- **Customs Control shall be limited to that necessary to ensure compliance with the Customs law (6.2)**

Chapter 6: Customs Control

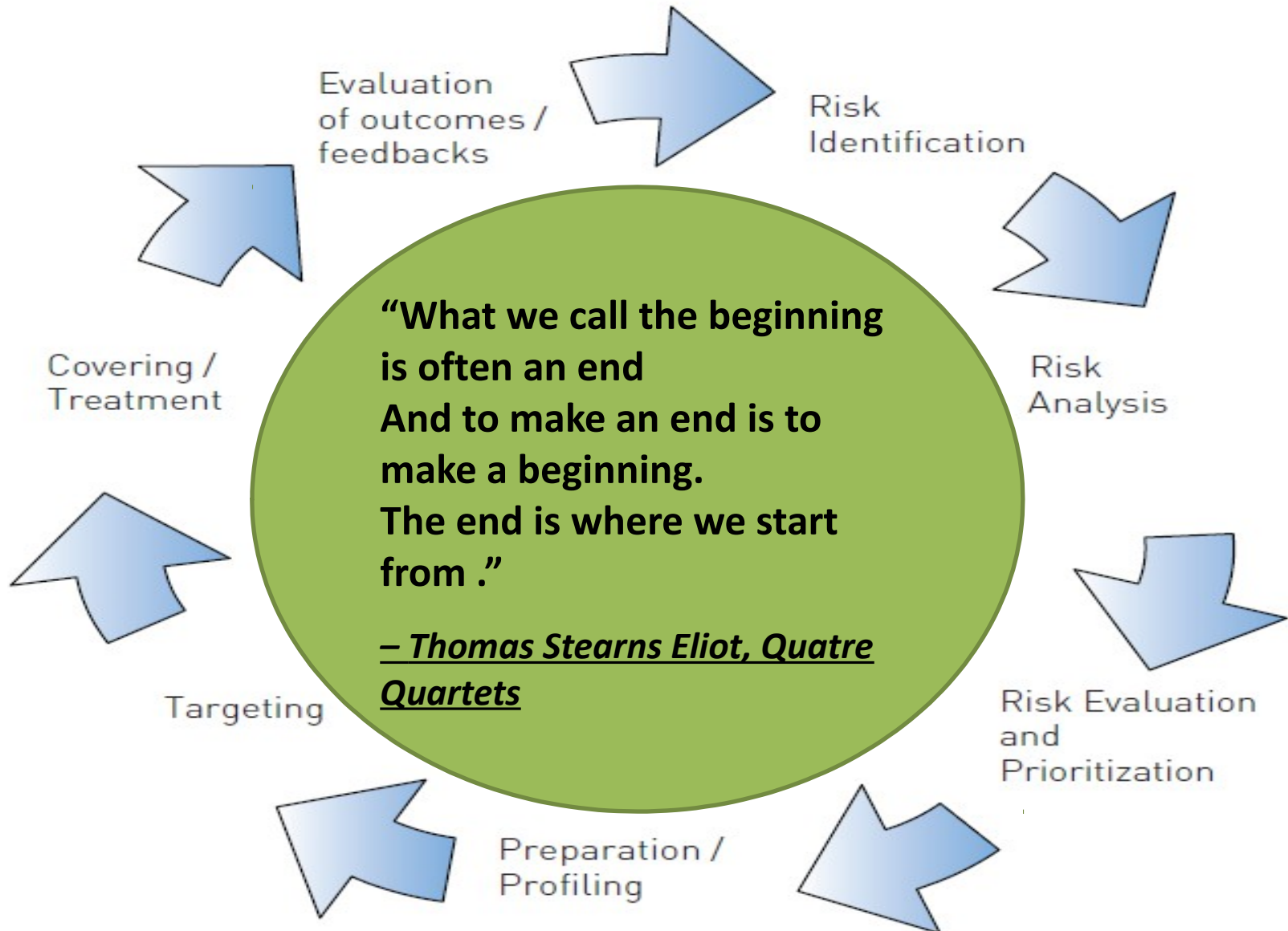
2. Risk Management

-
- **Customs shall use Risk Management (RM) in the application of Customs control (6.3)**
- **Customs shall use Risk Analysis to determine which goods or persons should be examined and the extend of examination (6.4)**





RISK ASSESSMENT



Conceptually, Customs clients can be divided into four broad based categories:

1. those who are voluntarily compliant;

2. those who are compliant;

3. those who are compliant;

4. those that deliberately do not comply.

1. Incentives and simplified procedures applied to those who are

compliant (low risk),

try to

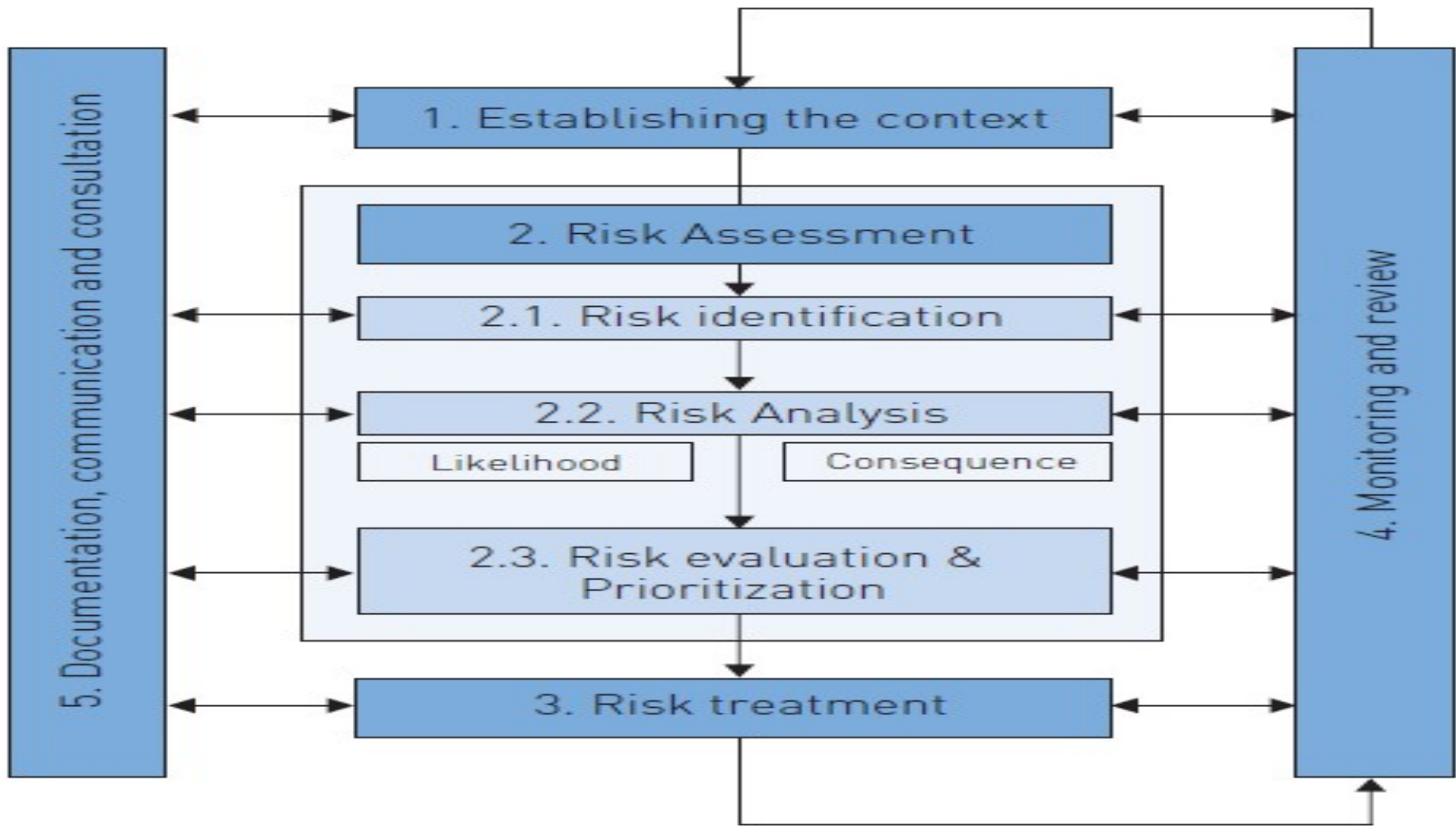
y to

, and

4. to those who are deliberately non-compliant (high risk).

The key in relation to risk-based compliance management is to actively “steer” the client population towards the low-risk category.

RISK MANAGEMENT PROCESS



Source: adapted from Revised Kyoto Convention General Annex Guideline 6 and ISO Standard 31000:2009 Risk management – Principles and guidelines

Establishing “Risk to What”

- What are the objectives in the context where the risk management process takes place?
- What is the operating environment?
- What capabilities and resources are available for managing risk?
- What criteria are used to assess risks and to determine if additional control is needed?
- What are the scope and limits of risk management?
- What are the expectations of stakeholders such as the government, affected communities, traders and other private sector groups? and
- What other details are known about the process or activity?

Risk Identification?

- What are the sources of risk?
- What risks could occur, why, and how?
- What controls may detect or prevent risks?
- What accountability mechanisms and controls—internal and external—are in place?
- What, and how much, research is needed about specific risks?
- How reliable is the information?

“identifies and records all potential risks by using a systematic process to identify what risks could arise, why, and how, thus forming the basis for further analysis.”

Risk Identification

Identifying:

- when,
- where,
- why,
- how and
- by whom

Subjective step, because thought is given to uncertain/unknown future events. However, if done by people familiar with the holistic business processes, supported by intelligence, then experience and knowledge can provide an objective view of the environment.

Risk Analysis?

- how *likely is an event to happen*; and
- what are the potential *consequences and their magnitude*.

Diagram 4. Example description and indicators for determining likelihood

Likelihood	Description	Indicators
High (Probable)	Likely to occur or more than a 20% chance of occurring	Has occurred in the last 12 months
Medium (Possible)	Could occur, but less than 20% chance of occurring	Has occurred between 1 year and 3 years ago Has occurred in another country within the last 2 years
Low (Remote)	Not likely to occur and less than 5% chance of occurring	Has not occurred in the last 3 years or more Has not occurred in another Member country in the last 2 years

Diagram 5. Example description and indicators for determining significance of consequences

Consequence / Impact	Description	Indicators
High (Serious)	If adverse risk occurs then there could be a severe community, economic or political crisis	Long-term ramifications for government or organization
Medium (Manageable)	An adverse risk occurring would obstruct workflows and harm community or business	Damage to ability to meet organizational goals and commitments to government, community and business
Low (Treatment within existing workflows)	An adverse risk would cause minor delays to service delivery	Adverse risk event can be absorbed within existing standard operating procedures

Risk evaluation and prioritization:

This step entails comparing the assessed risks against a pre-determined significance criterion.

Diagram 6. An example of a Risk Significance Matrix (3x3)

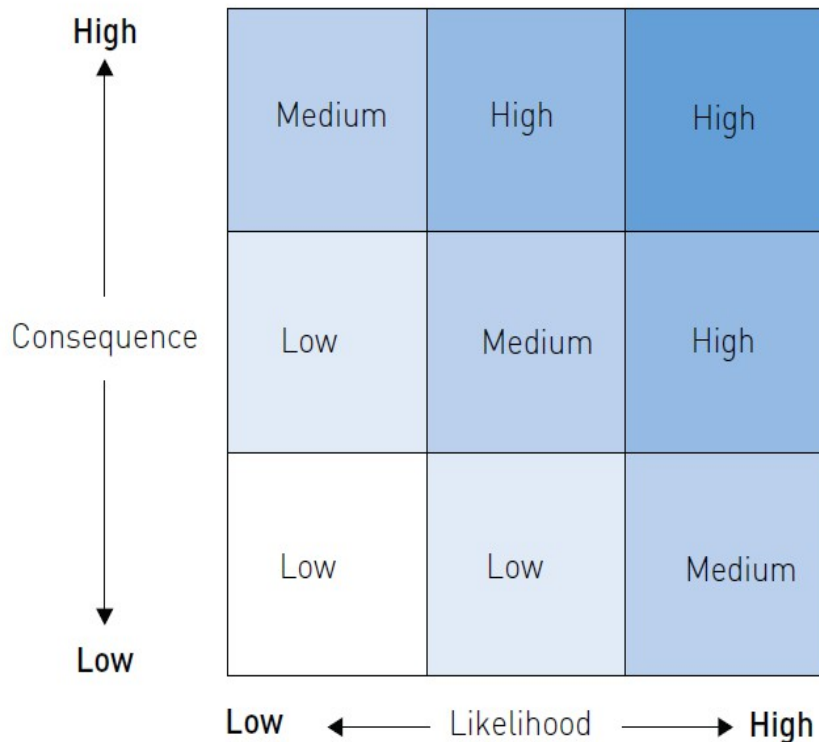
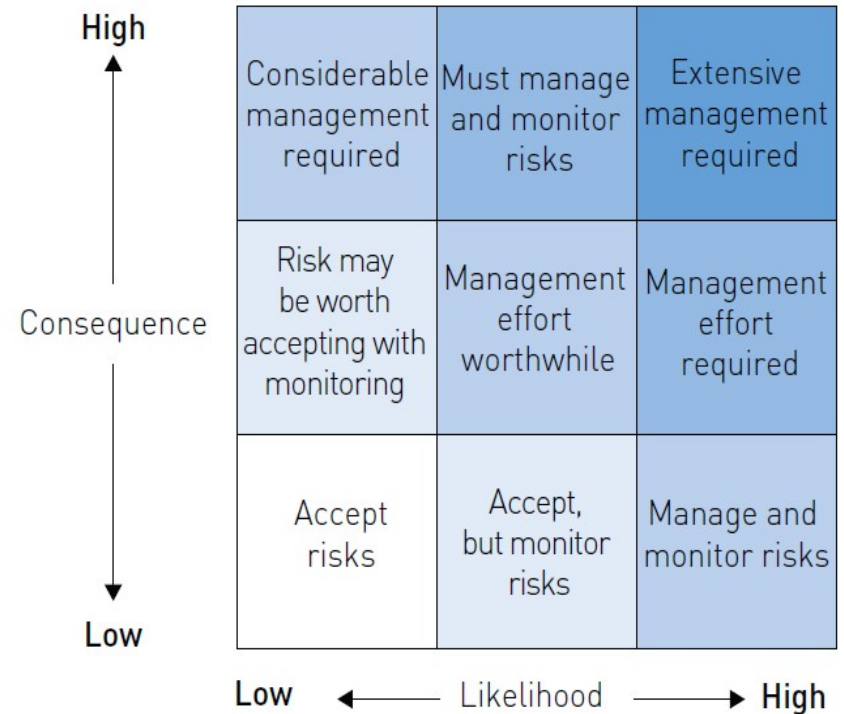


Diagram 7. An example of a Risk Significance Matrix with response criteria



Risk Preparation/Profiling

- More and more Customs administrations utilise electronic targeting systems to select consignments and passengers for Customs control.
- Risk profile development is based on information gathering, systematic charting and analysis of the information.

Risk Preparation/Profiling

Simple Profiling Example: Passengers

Information contained in seizure reports resulted in the following chart:

Age	Sex	Day of Week	Time of Seizure
25	M	Sunday	09:00
27	M	Sunday	08:30
41	M	Tuesday	09:15
23	F	Saturday	10:00
30	M	Monday	09:30
29	F	Sunday	08:15
26	M	Thursday	14:00

From this chart, it is possible to build a profile of what type of smuggler is operating at this border crossing. It is primarily a male, aged between 25 and 30 years who prefers attempting to bring contraband between 08:00 and 10:00 hours.

The foregoing is an elementary example, but it serves to show how a profile can aid in not only knowing who to look for (males between 25 and 30 years), but also when to look for them (between 08:00 and 10:00 hours).

Risk Preparation/Profiling

Box 5: Charting Risk Indicators at a Sea Port

Simple Profiling Example: Cargo:

Information contained in seizure reports resulted in the following chart:

Drug Type	Cargo Type	Concealment	Shipping Line
Heroin	Computers	Inside Computer	Green Seas
Hashish	Clothing	False Wall	Royal
Heroin	Televisions	Inside Television	Green Seas
Heroin	Televisions	Inside Television	Green Seas
Heroin	Computers	Inside Computer	Royal
Heroin	Computers	Inside Computer	Green Seas
Hashish	Paper Products	In Packaging	Royal

From this chart, it is possible to build a profile of what type of heroin smuggling methods are being used at this port. It is primarily hidden inside computers and televisions and arriving on vessels owned by Green Seas and Royal shipping companies.

The foregoing is also an elementary example, but it serves to show how a profile can aid in not only knowing who to look for, but also on what arriving vessels to look for them.

DEFINE THE LEVEL OF RISKS

- (a) Low risk (1-6) : No inspection
- (b) Medium risk (7-10): Case by case decision and/or documentary inspection
- (c) High risk (11 +): Physical inspection

Risk treatment

Risk treatment refers to the decisions or actions taken in response to identified risk. There are four generic types of responses that can be applied. These are the so-called “four t’s”:

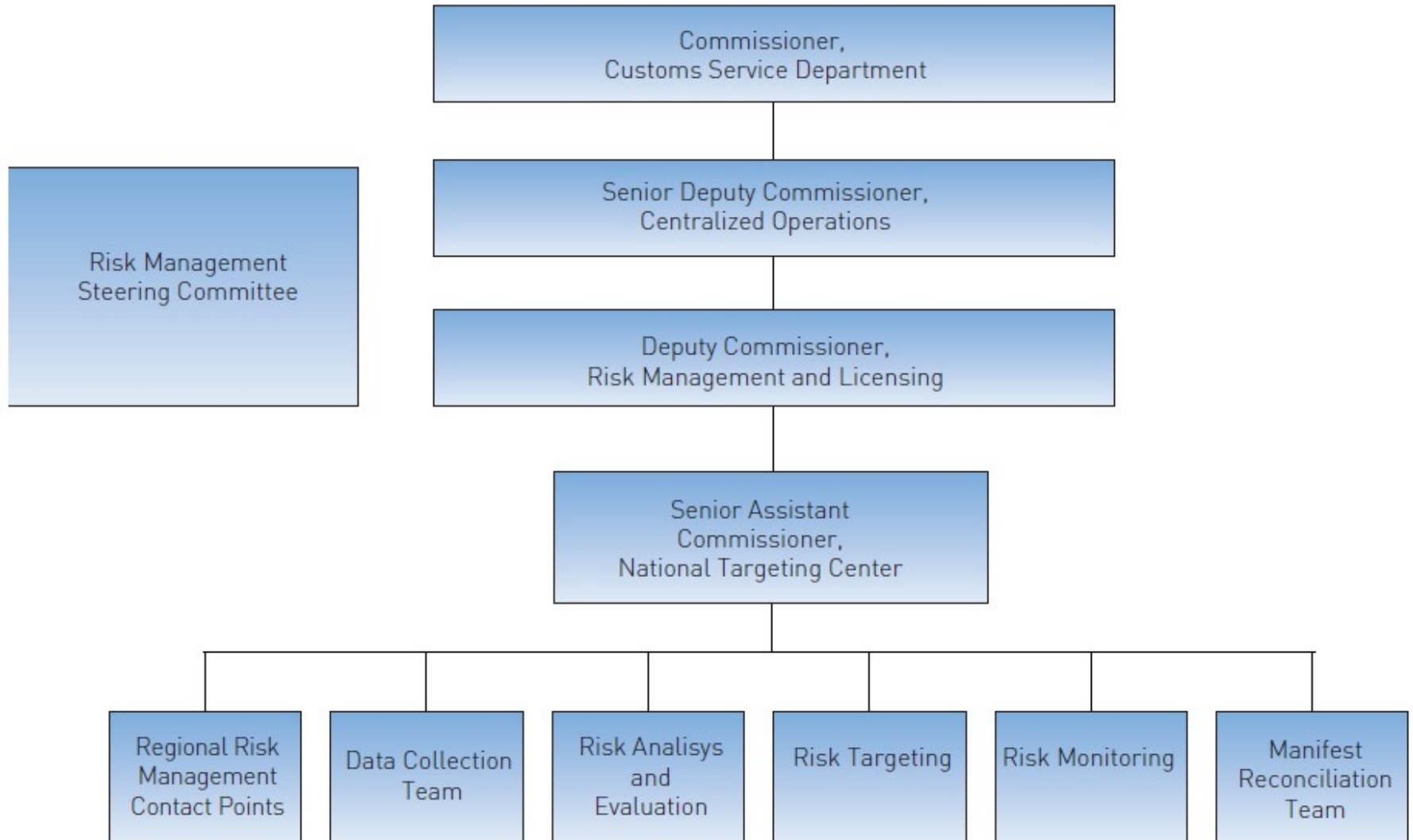
- Tolerate;
- Treat;
- Transfer; or
- Terminate.

Risk evaluation, prioritization & treatment:

	Objective	Risks	Likelihood	Consequence	Significance	Risk Owner	Treatment
1	Effective and efficient collection of revenue	1.1 Fraud	H	H	High	Head of Operations	Treat: A thorough mitigation strategy and plan needed
		1.2 Lack of staff competence	M	M	Medium	Head of Revenue Collection and International Trade	Tolerate once additional training to the staff is provided. Monitor continuously.
		1.3 Integrity	L	L	Low	Head of Administration	Tolerate: Monitor through SOPs
2	Community protection and security	2.1 Narcotics	H	M	High	Head of Community Protection and Security	Treat: A thorough mitigation strategy and plan needed
		2.2 Illegal importation of weapons and ammunition	L	M	Low	Head of Community Protection and Security	Tolerate: Monitor continuously through SOPs.
		2.3 IPR	M	L	Low	Head of Community Protection and Security	Tolerate after raising awareness among public. Monitor through SOPs
3	Trade facilitation	3.1 Ineffective procedures	L	H	Medium	Head of Revenue Collection and International Trade	Tolerate after a thorough review and alignment against international best practices.
		3.2 Lack of coordination with other agencies	H	H	High	Head of Operations	Treat: A thorough coordination and stakeholder engagement strategy and plan needed
		3.3 IT failure	L	H	Medium	Head of Administration	Transfer to a third party service provider. Create a contingency plan.

KENYA CUSTOMS

“Organization of the risk management function”



REGULATORY PHILOSOPHY – COMPLIANCE CONTINUUM

CLIENT CATEGORIES – BEHAVIOURS AND MOTIVATION

SELF-REGULATION	ASSISTED SELF-REGULATION	DIRECTED REGULATION	ENFORCED REGULATION
<ul style="list-style-type: none"> • Informed self-assessment • Management is compliance oriented 	<ul style="list-style-type: none"> • Not yet compliant • Attempting compliance • Developing internal control systems 	<ul style="list-style-type: none"> • Resistance to compliance • Lack of compliance • Limited/poor system 	<ul style="list-style-type: none"> • Deliberate non-compliance • Criminal intent • Illegal activity

CUSTOMS AND BORDER PROTECTION OPERATIONAL RESPONSE

<ul style="list-style-type: none"> • Education and training • Maximum pre-arrival/departure clearance • Minimum real-time pre-clearance intervention • Some compliance verification: <ul style="list-style-type: none"> - x-ray - checks of documents and goods • Sanctions may be imposed 	<ul style="list-style-type: none"> • Education and training • Some real-time pre-clearance intervention • Some post-clearance checking • Some compliance verification: <ul style="list-style-type: none"> - x-ray - checks of documents and goods • Sanctions may be imposed 	<ul style="list-style-type: none"> • Pre and post-clearance intervention • Post-clearance comprehensive audit • Pre-clearance major examination • Sanctions may be imposed 	<ul style="list-style-type: none"> • Pre and post-clearance intervention • Comprehensive audit • Cargo searches (may be covert) • Surveillance • Investigation by multi disciplined items • Sanctions imposed
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RISK

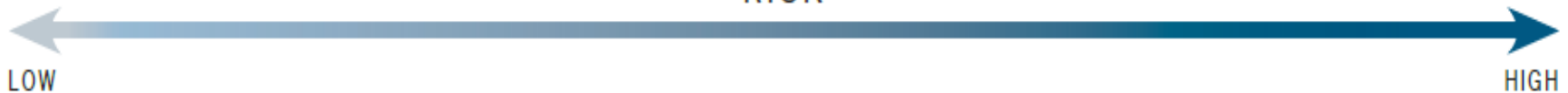
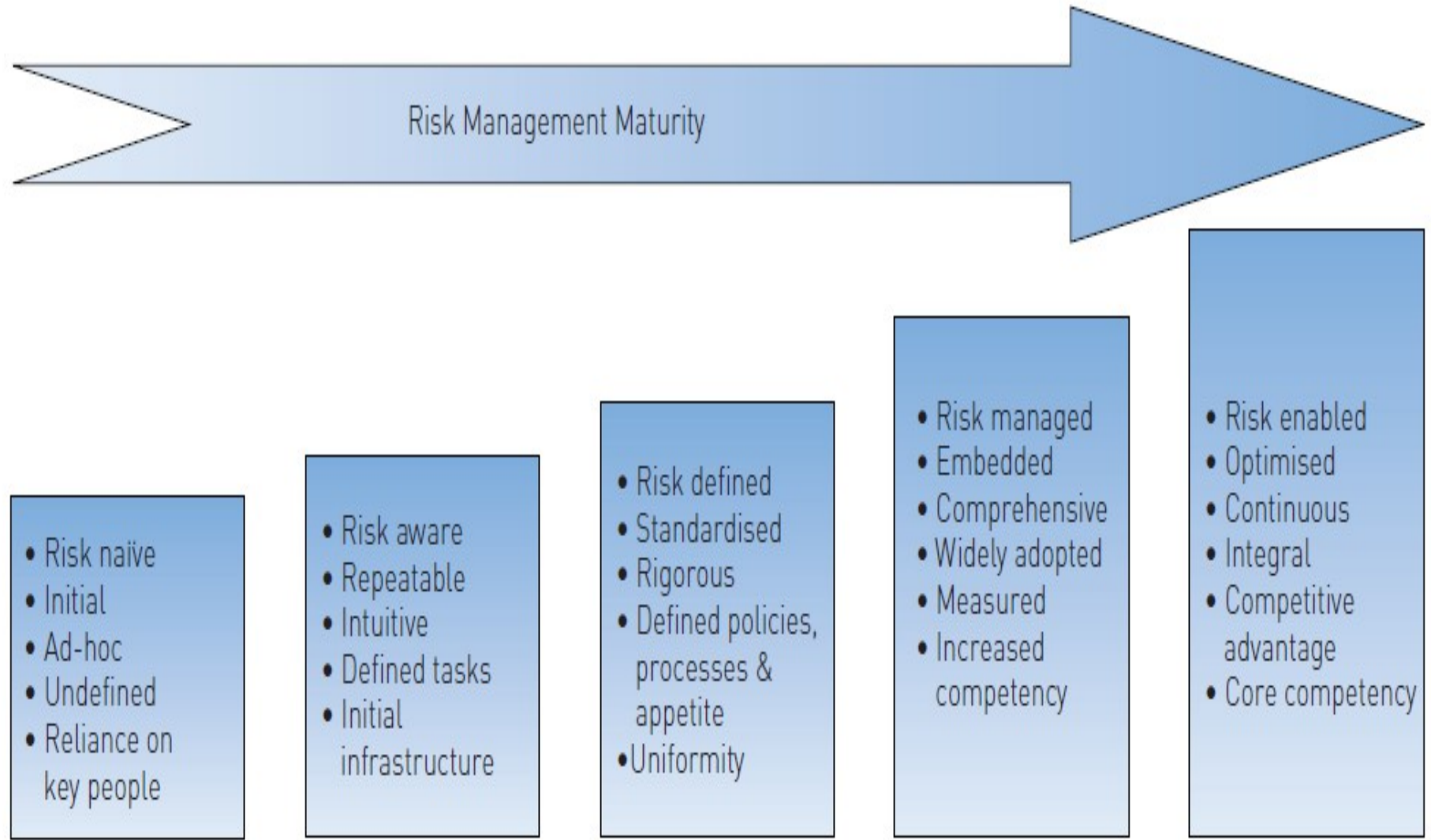
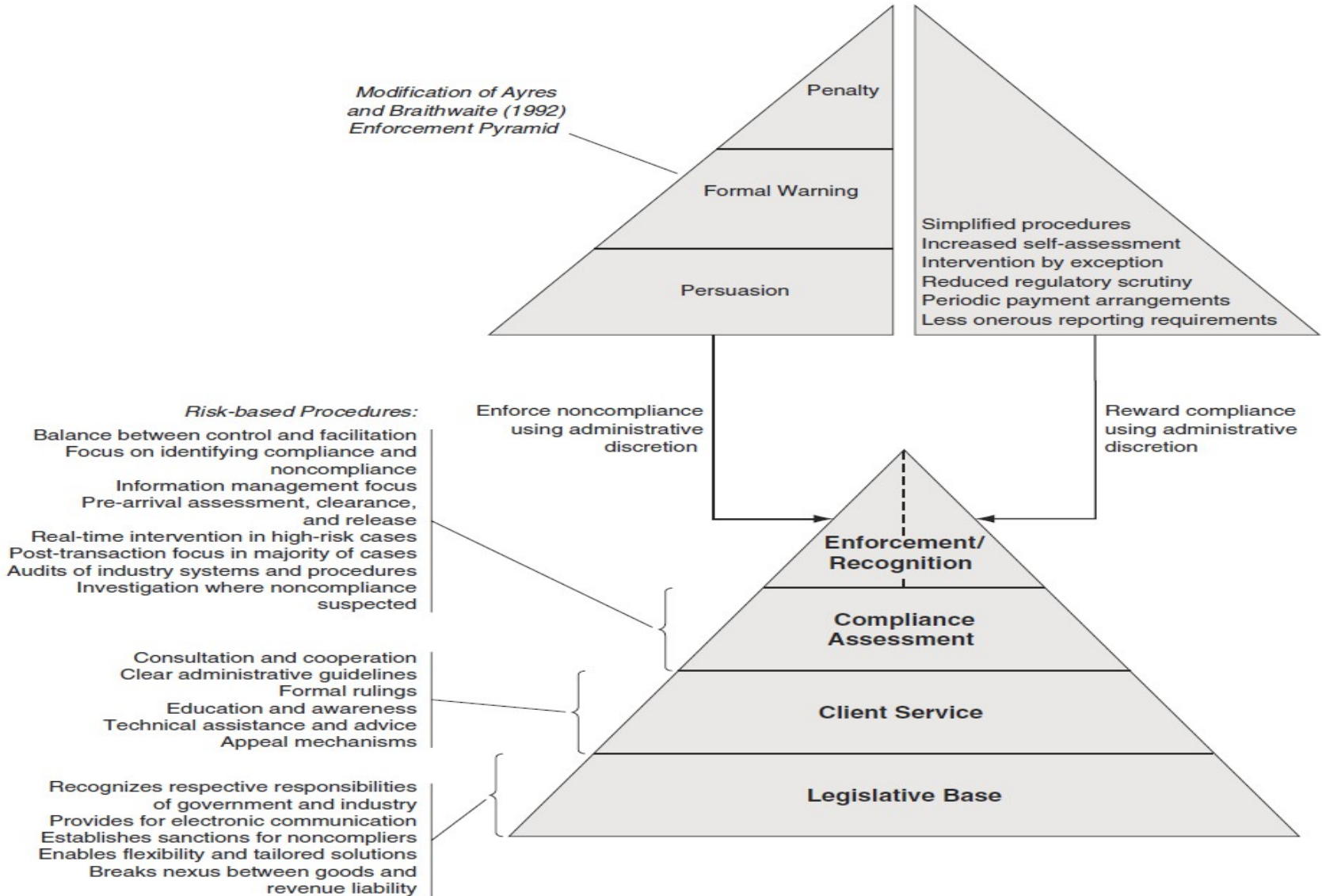


Diagram 9. An example of a risk management maturity model

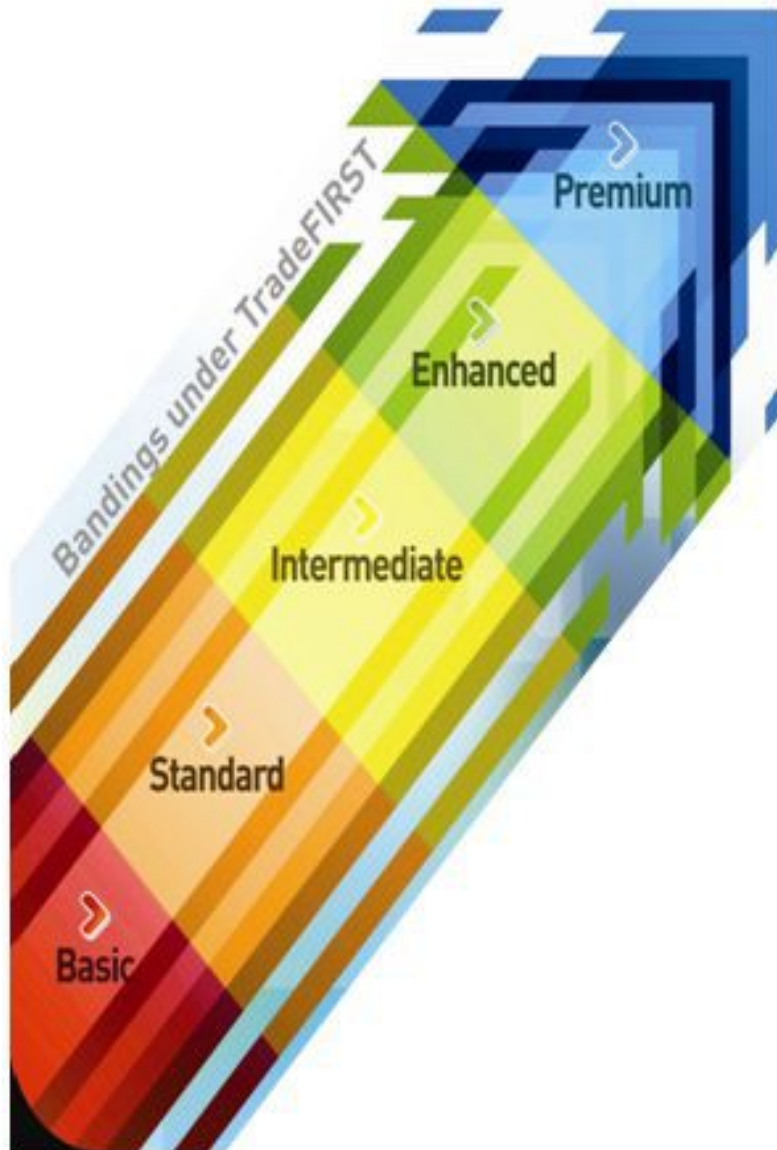


Risk-Based Compliance Management Model



Source: David Widdowson (2005). *Managing risk in the customs context*.

TradeFIRST - The Five Bands, Singapore Customs

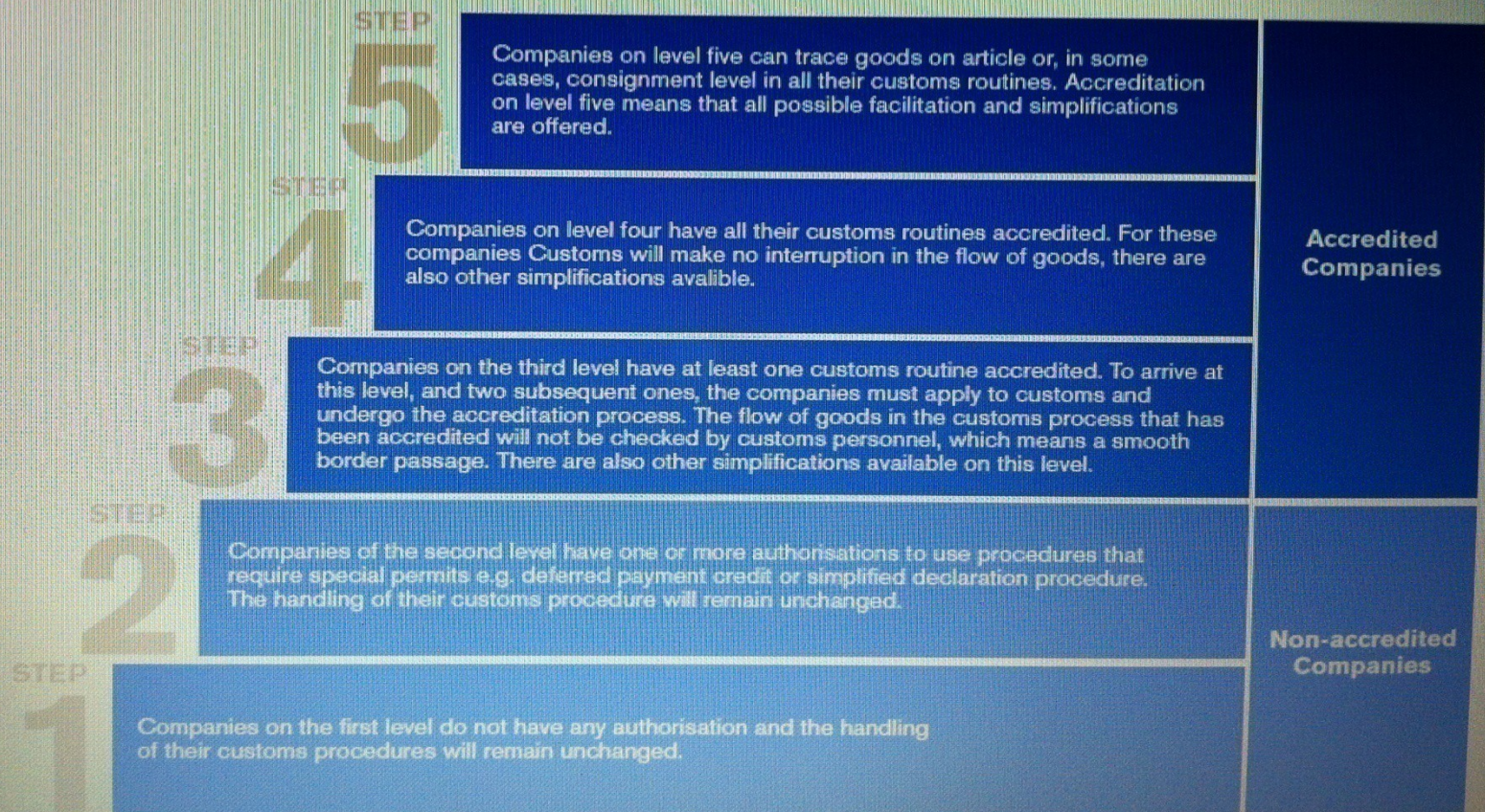


Source: Singapore Customs Media Release, 26 January 2011

PREMIUM
<ul style="list-style-type: none"> Waiver of Security Reduced Container Sealing Waiver of Factory Inspection Waiver of Post-Importation Documentation Checks Secure Trade Partnership (STP) Plus APEX License Consolidated Declaration Bonded Truck Scheme (BTS)
ENHANCED
<ul style="list-style-type: none"> Strategic Trade Scheme (STS) Tier 2 Strategic Trade Scheme (STS) Tier 3 Zero-GST Type III Warehouse Petroleum Licenses Air Store Bond (ASB) Duty Free Shop (DFS) Excise Factory Container Freight Warehouse (CFW) Company Declaration Scheme (CDS) Industrial Exemption Factory (IEF)
INTERMEDIATE
<ul style="list-style-type: none"> Zero-GST Type II Warehouse Secure Trade Partnership (STP)
STANDARD
<ul style="list-style-type: none"> Licensed Warehouse (LW) Scheme Zero-GST Type I Warehouse
BASIC (for all traders)
<ul style="list-style-type: none"> Waiver of Security Amount of \$2,000 and Below Free Trade Zone (FTZ) Temporary Import Scheme Inter-Gateway Haulage (IGH) / Inter-Gateway Barge (IGB) Cargo Agents Import Authorization (CAIA) Certificate of Origin (CO) TradeNet

STAIRWAY – Sweden Customs

Figure 7.1 The Swedish Customs' Stairway. All companies are included in Stairway but to reach steps 3–5 they must be accredited.



Gatekeepers Vs. RBCM

Requirements & Foundation	Gatekeepers Style (BCA)	Risk-Based Compliance Management Style
Legislative Framework	<ul style="list-style-type: none"> a) Legislative base provides for a ‘one size fits all’ approach to compliance management b) Onus for achieving regulatory compliance is placed solely on the trading community c) Sanctions for non-compliers 	<ul style="list-style-type: none"> a) Legislative base provides for flexibility and tailored solutions to enable relevant risk management and administrative strategies to be implemented b) Legislative base recognizes responsibilities for both government and the trading community in achieving regulatory compliance c) Sanctions for non-compliers
Administrative Framework	<ul style="list-style-type: none"> a) ‘One size fits all’ compliance strategy b) Control focus c) Enforcement focus d) Unilateral approach e) Focus on assessing the veracity of transactions f) Inflexible procedures g) Focus on real-time intervention and compliance assessment h) Lack of ineffective appeal mechanisms 	<ul style="list-style-type: none"> a) Strategy dependent on level of risk b) Balance between regulatory control and trade facilitation c) Dual enforcement–client service focus d) Consultative, cooperative approach e) Focus on assessing the integrity of trader transactions systems and procedures f) Administrative discretion g) Increased focus on post-transaction compliance assessment h) Effective appeal mechanisms
Risk Management Framework	<ul style="list-style-type: none"> a) Indiscriminate intervention or 100% check b) Physical control focus c) Focus on identifying non-compliance d) Post-arrival import clearance e) Physical control maintained pending revenue payment f) No special benefits for recognized compliers 	<ul style="list-style-type: none"> a) Focus on high-risk areas, with minimal intervention in low-risk areas b) Information management focus c) Focus on identifying both compliance and noncompliance d) Pre-arrival import clearance e) Breaks nexus between physical control and revenue liability f) Rewards <i>and incentives</i> for recognized compliers
	Enablers	
IT Framework	<ul style="list-style-type: none"> a) Legislative provisions provide the trading community with electronic as well as paper-based reporting, storage, and authentication options. Such provisions should enable regulators to rely on commercially generated data to the greatest extent possible. b) Appropriate communications and information technology infrastructure to provide for automated processing and clearance arrangements. Regulators should seek to achieve maximum integration with commercial systems. c) Consultative business process reengineering prior to automation. 	

Chapter 6: Customs Control

3. Audit Based Control (Post Clearance Audit)

- **Customs control systems shall include audit based control (6.6)**

4. Customs – Customs cooperation

- **Customs shall seek to cooperate with other Customs and to conclude Mutual Administrative Assistance agreement (6.7)**

5. Customs – Business cooperation

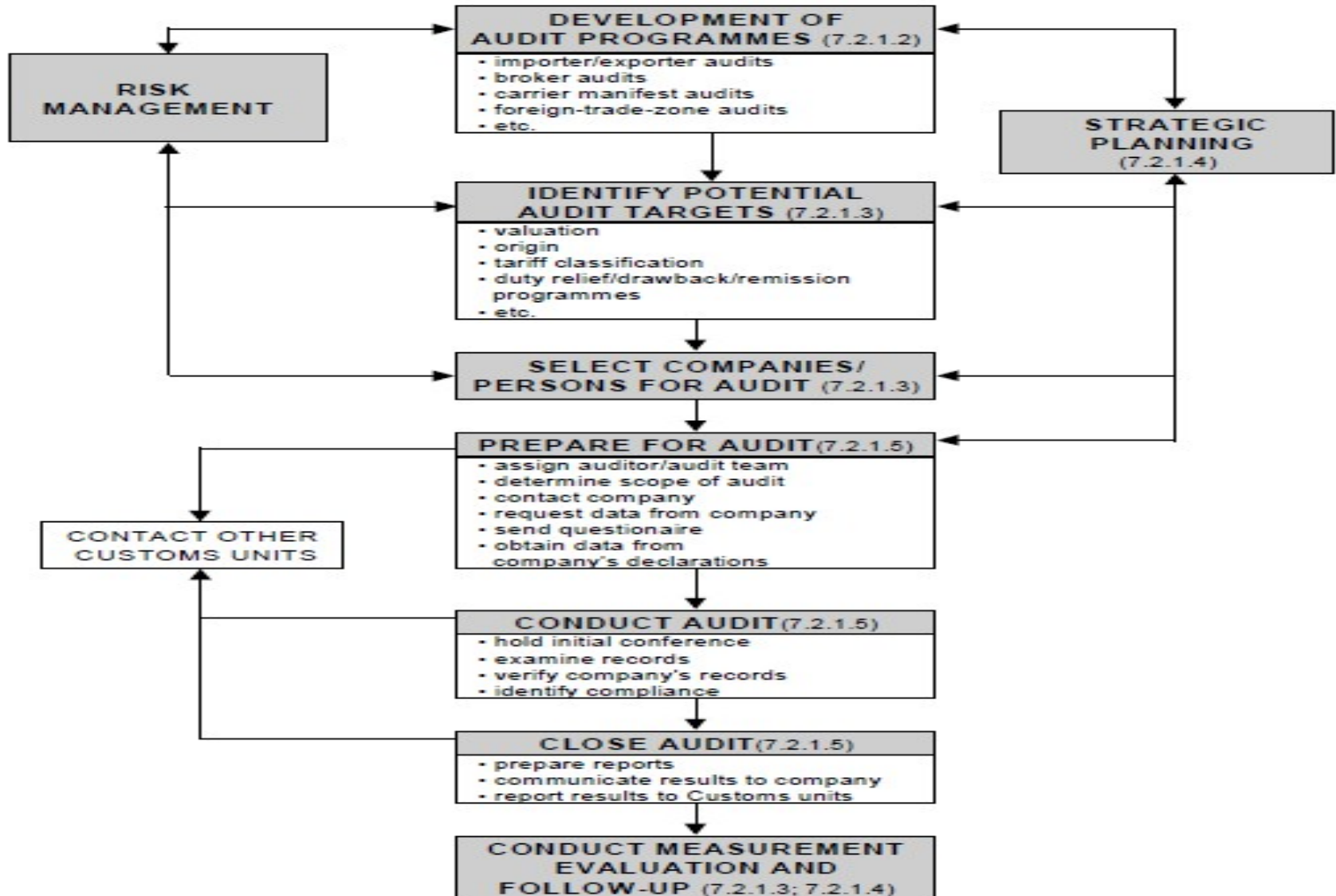
- **Customs shall seek to cooperate with the trade and to conclude MOU (6.8)**

6. Use of Information technology

- **Customs shall use IT and electronic commerce to the greatest possible extent (6.9)**
- **Customs shall evaluate traders' commercial systems where those systems have an impact on Customs operations to ensure compliance with Customs requirement (6.10)**

11.3. Low-Level Scenario of Post-Clearance Audit

(Source: RKC Guidelines)



Application of the principle of Customs controls will allow Customs administrations to :

- focus on high-risk areas and therefore ensure more effective use of available resources;

YEAR	Values in Billion Nu.
2010 - 2011	5.50/-
2011 - 2012	1.81/-
2012 - 2013	1.21/-

- increase ability to detect offences and non-compliant traders and travellers,
- offer compliant traders and travellers greater facilitation and
- expedite trade and travel.

Customs-Business Partnership

COMPLIANT TRADERS

NON-COMPLIANT



WCO Customs- Business Guidance

Keys for a successful Customs-Business Partnership:

- Strong political will and involvement of executive management for Customs and business

- Clarity in the roles and expectations from all parties:
 - ✓ Customs should not be seen as a repressive administration

- But above all there should be a **change in mindset and mutual respect:**
 - ✓ Operators should not be regarded as potential criminals

Customs and Trade should work in partnership to enhance economic growth and face new challenges

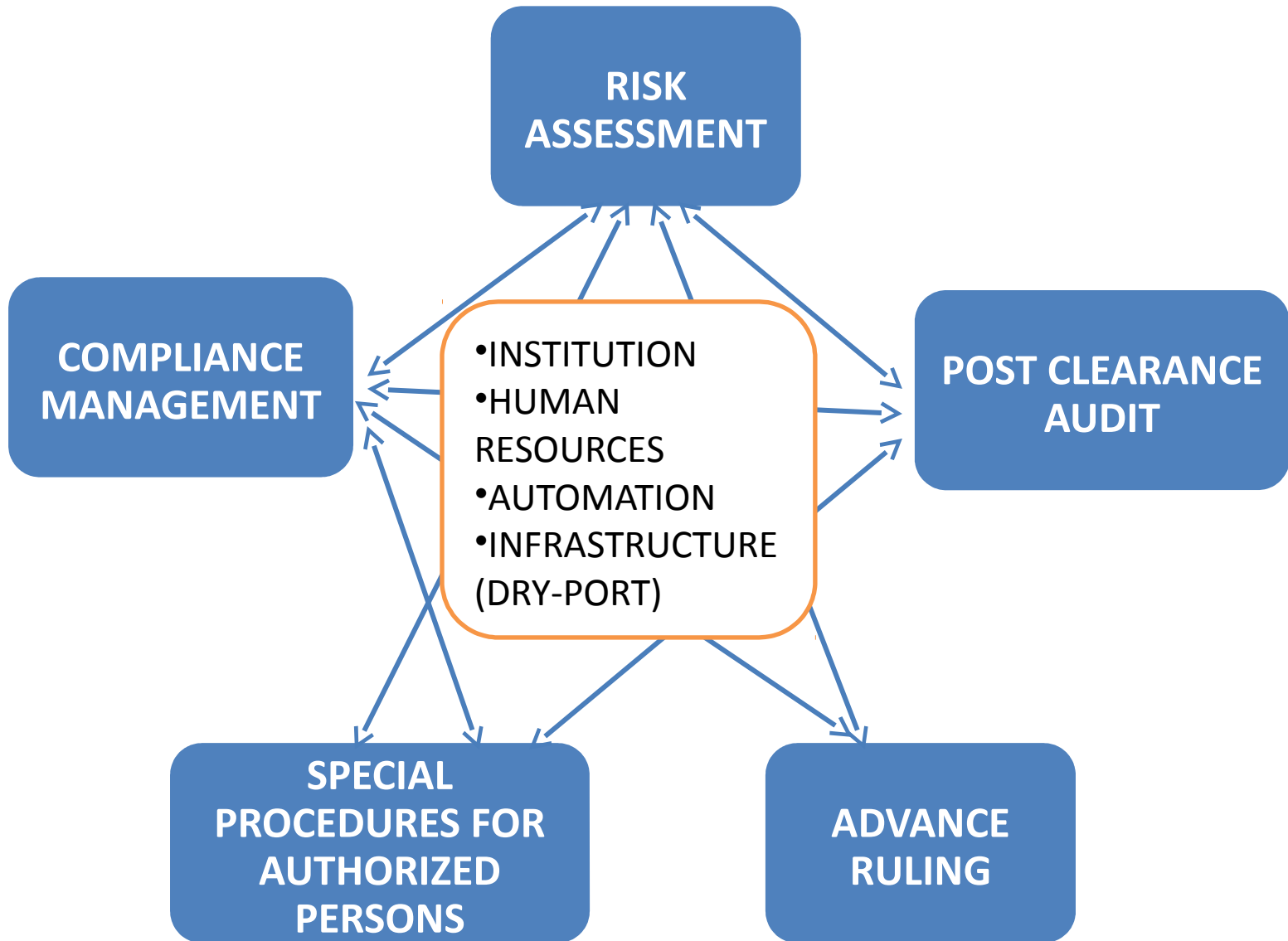


Lack of Public-Private Partnership

Team Work



HOLISTIC APPROACH





Thank you for your kind attention.

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