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INTRODUCTION

PURPOSE AND SCOPE

The purpose of this document is to provide CBSA employees and the general public policy guidance concerning the interpretation and application of section 107 of the *Customs Act*. Section 107 outlines how customs information may be used, to whom it may be disclosed and who may access it.

“**customs information**” means information of any kind and in any form that

- (a) relates to one or more persons and is obtained by, or on behalf of
 - (i) the Minister for the purposes of this Act or the *Customs Tariff*; or
 - (ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1;
- (b) is prepared from information described in paragraph (a).

These guidelines do not address the collection or retention of customs information.

Also, they do not address the provision or use of Advance Passenger Information and Passenger Name Record data. Please refer to [Memorandum D1-16-3](#), *Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Advance Passenger Information (API) and Passenger Name Record (PNR) Data*, for further information.

CBSA employees responsible for approving the disclosure of customs information should read this document in conjunction with other relevant policies and procedures, which are outlined in the “Policies and Guidelines” section below.

HOW TO USE THIS DOCUMENT

Readers are encouraged to familiarize themselves with these guidelines as a whole before referring to the section that is most relevant to their interest.

Note: Explanations and examples contained in each part of this document relate exclusively to that part. It should not be assumed that explanations or examples contained in one section apply to another section.

POLICIES AND GUIDELINES

The following policies and guidelines are relevant to the development of written collaborative arrangements between the CBSA and other participants, and various aspects governing the management of information. They include, but are not limited to, the following:



CBSA Policies

Policy and Guide for the Management and Development of Written Collaborative Arrangements (WCAs)

This document provides the framework for the development of letters of intent, letters of amendment, memoranda of understanding (MOU) and other arrangements between the Canada Border Services Agency (CBSA) and provinces, territories, other government departments (OGD) or agencies in Canada and with international partners. WCAs define the parameters of the relationship between the CBSA and other organizations to which it provides services and/or information. The purpose of this document is to ensure a consistent approach in developing WCAs with CBSA partners.

CBSA Information Management Policy

The purpose of this policy is to ensure the application of systematic controls to all information generated, received and transmitted meets the needs of the Agency's business programs and to improve the efficiency and effectiveness of these programs and operations, including the results they achieve.

Records Retention and Disposition – Policy

The purpose of this policy is to ensure that there is a consistent and cost-effective means for retaining and disposing of all Agency information holdings.

Safeguarding of Original Written Collaborative Arrangements – Policy

This policy outlines how signed original CBSA versions of arrangements, memoranda of understanding, delegation instruments and similar documents shall be preserved for the corporate memory of the Agency and be safeguarded from accidental loss or destruction.

CBSA Instruments

A Guide to the Transmission, Storage and Destruction of Protected and Classified Information

This document provides guidance on what information belongs to the protected category and classified category and the level of security within each of these categories the information should be accorded. The guide also provides instructions on the storage, transmission, destruction, and disposal of information.

Inventory of Written Collaborative Arrangements

This list contains summaries of existing WCAs between the CBSA and other federal, provincial, territorial and international partners. It is available online on the Agency's intranet site.

Policy on the Protection of Classified and Protected Information and Assets outside the Workplace

The objective of this policy is to reduce the risk of unauthorized access, disclosure or compromise of classified and/or protected information as well as the loss or theft of information and/or assets.

[Department of Foreign Affairs and International Trade \(DFAIT\) Policy on Tabling of Treaties in Parliament](#)

The objective of this policy is to ensure that all international arrangements are properly classified with respect to public international law, and if required, obtain Cabinet approval. Under this policy, all departments and agencies are responsible for consulting with the [Treaty Law section of DFAIT](#) prior to commencing any negotiations with international partners to ensure that the proper distinction is made between treaties and non-binding instruments.



Treasury Board of Canada Secretariat (TBS) Policies

TBS Policy on Information Management

The objective of this policy is to achieve efficient and effective information management to support program and service delivery; foster informed decision making; facilitate accountability, transparency, and collaboration; and preserve and ensure access to information and records for the benefit of present and future generations.

TBS Privacy and Data Protection Policies and Publications

http://www.tbs-sct.gc.ca/pubs_pol/gospubs/tbm_128/siglist-eng.asp

TBS Guidance on Preparing Information Sharing Agreements Involving Personal Information

This TBS guidance document focuses on providing advice for preparing federal Information Sharing Agreements that involve the sharing or exchanging of personal information.

<http://www.tbs-sct.gc.ca/atip-aiprp/isa-eer/isa-eer00-eng.asp>

STATUTES AND POLICIES THAT IMPACT THE DISCLOSURE OF CUSTOMS INFORMATION

Several federal statutes and policies impact how customs information and related records are to be disclosed and managed such as:

- The *Canadian Charter of Rights and Freedoms* (the Charter) was signed into law on April 17, 1982. It confers on Canadian citizens both political and civil rights. All Canadian legislation must be interpreted in light of the Charter and related jurisprudence. Several rulings of the Supreme Court of Canada have identified an individual's reasonable expectation of privacy as a fundamental right under the Charter and have issued rulings that impact how federal institutions collect and manage personal information. For example, they ruled that the disclosure of certain types of information may constitute unreasonable search and seizure, which is contrary to section 8 of the Charter.
- The *Access to Information Act* provides individuals with the right to access records under the control of federal institutions.
- The *Privacy Act* contains provisions relating to the collection, use, retention, and disposal of personal information. Any personal information collected for the administration or enforcement of the *Customs Act* may only be disclosed under section 107 of the *Customs Act*. The disclosure of such information is subject to the requirements, safeguards and protections set out in the *Privacy Act* and the *Library and Archives of Canada Act*, as well as Treasury Board policies and guidelines such as the *Directive on Privacy Practices* (April 2010), *Guidance on Preparing Information Sharing Agreements Involving Personal Information* (July 2010) and *Guidelines for Privacy Breaches* (2007). Questions about privacy protection obligations when disclosing under section 107 of the *Customs Act* are to be directed to the Access to Information and Privacy Division (ATIP Division). Please refer to Appendix B for information on how to contact the ATIP Division.



SEARCH AND SEIZURE: BIOGRAPHICAL CORE OF PERSONAL INFORMATION

In administering and enforcing the *Customs Act*, the CBSA collects a significant amount of information. Information lawfully collected for these purposes may include information about an individual in which the individual has a reasonable expectation of privacy. Where a person has a reasonable expectation of privacy in information, that person's right to be free from unreasonable search and seizure under section 8 of the *Canadian Charter of Rights and Freedoms* is engaged.

With respect to information about a person, section 8 specifically protects a person's reasonable expectation of privacy in their biographical core of personal information. This biographical core of personal information includes information about an individual's lifestyle or personal choices which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. It is reasonable to expect that information such as health records or personal financial information may fall within an individual's biographical core of personal information. It is also reasonable that information such as the importation of goods and the time and date a person entered Canada may not fall within an individual's biographical core of personal information.

Whether a person has a reasonable expectation of privacy in such information will be dependent on an assessment of the totality of the circumstances, including the state's proposed use or disclosure of the information. Specifically, section 8 will be engaged where a person's reasonable expectation of privacy outweighs the state's interest in a particular activity, such as regulatory compliance verification or law enforcement.

CBSA officials should consult the Information Sharing Unit prior to disclosing customs information that is likely to fall within an individual's biographical core of personal information. In such cases, consultation with Legal Services may be necessary to determine whether the Agency should advise the requestor to obtain a judicially authorized warrant or production order.



CONSIDERATIONS RELATED TO THE DISCLOSURE OF CUSTOMS INFORMATION

The following is a list of considerations that officials should bear in mind whenever they are considering whether or not to disclose customs information:

- Customs information may only be disclosed if a provision within section 107 of the *Customs Act* authorizes it. This means that officials are to carefully examine the purpose why a requestor needs the information, what statute **and** provision within the statute is being enforced, and how the information will ultimately be used. Once these facts are obtained, officials are to review section 107 to determine whether any particular provision authorizes disclosure.
- If an official is of the view that more than one provision may apply they are to consider, based on the facts of the case, which provision is the “best fit” to consider the request.
- Does the requestor need all the customs information sought? Care must be taken to ensure the disclosure of information be limited to the **minimum** amount a requestor absolutely requires to administer or enforce their program. The CBSA is not required to disclose all information sought if it deems that a requestor is asking for more information than is absolutely necessary.
- Additional care must be exercised when considering the disclosure of customs information related to the value or origin of goods. In cases where there is reason to suspect that customs information may have been obtained from a foreign source, the official should confirm that a proposed disclosure of customs information would not be contrary to an international obligation. This will require consultation with the appropriate Office of Primary Interest (OPI) for the written collaborative arrangement and/or with Legal Services. Examples of international agreements restricting the use or disclosure of customs information include:
 - The *General Agreement on Tariffs and Trade* (GATT) obligations contained in article 10 of the *Customs Valuation Agreement*, which restricts the subsequent disclosure of valuation information that was obtained for customs purposes. The fields in question on CBSA documents are: Total Value for Duty, Value for Duty (VFD) and Value for Currency Conversion (VCC); and
 - GATT obligations under article 3(i) of the *World Trade Organization Agreement on Rules of Origin*, which restricts the subsequent disclosure of origin information, obtained for customs purposes. The fields in question on CBSA documents relate to the Country of Origin (CO), Tariff Treatment (TT) and rate of Customs Duty (when it specifically can be deduced what tariff treatment was claimed by the importer).
- Officials must ensure that customs information is only disclosed to, or accessed by, individuals who are lawfully permitted to access it and have a specific “need to know” purpose.
- Officials must notify requestors in writing that customs information can only be used for the purpose for which it was provided and it should not be further disclosed to another party without the consent of the CBSA.
- Officials must ensure whenever possible that requests for customs information are made in writing.
- Officials must protect must protect against the unauthorized use or disclosure of customs information.
- Officials must thoroughly document disclosures as well as requests for customs information, whether the information is disclosed or not.
- Whenever the CBSA discloses customs information on an ongoing basis with another organization, the CBSA’s policy directs that the Agency enter into a written collaborative arrangement (WCA) with the recipient of the information.
- Officials must manage customs information in accordance with CBSA policies and procedures such as the *Information Management Policy*, the *Policy on the Protection of Classified and Protected Information and Assets outside the Workplace* and the *Policy and Guide for the Management and Development of Written Collaborative Arrangements*.



QUESTIONS TO ASK WHEN CONSIDERING THE DISCLOSURE OF CUSTOMS INFORMATION

What type of information is being requested?

- Officials are to first verify that the request is for “customs information”, i.e. information that is collected for the administration or enforcement of the *Customs Act* or *Customs Tariff*. Information may only be disclosed if it is “customs information”, as defined in section 107 of the *Customs Act*.

Does the CBSA have the authority to disclose the information?

- Does section 107 of the *Customs Act* contain a provision that authorizes an official to disclose customs information to the requestor for the purpose stated by the requestor? The purpose stated by the requestor must be specific, not vague. For example, a requestor’s justification that they need customs information for the purpose of conducting an examination is insufficient. CBSA officials are to probe further, as necessary, until they clearly understand the purpose of a request and how the customs information will be used. This will assist in determining whether section 107 can be applied.

Does the requestor have the authority to collect this information?

- Does an Act of Parliament or any other legislature (provincial/territorial) provide the requestor with the authority to collect this information? This can be determined by asking the requestor to provide the name of the statute they are administering or enforcing **and** the specific subsection or paragraph, subparagraph, clause or subclause within the statute that is being administered or enforced.

Would disclosure impact an ongoing investigation or other CBSA initiated activity?

- Section 107 of the *Customs Act* is prescriptive. It allows officials to exercise their discretion and elect not to comply with a request. A CBSA official may exercise this discretion if disclosure may compromise an ongoing investigation or other CBSA initiated activity.

Is the information required on an ongoing basis?

- When it becomes evident that a disclosure may lead to a series of similar disclosures to the same client, Agency policy is that the CBSA must consider entering into a written collaborative arrangement (WCA) with the recipient of the information.

Is the information sought available from another source or is in the public domain?

- When customs information is available in the public domain, requestors should be directed to it. For example, aggregate trade data is available on an Industry Canada Web page entitled “Trade Data Online.” Industry Canada also has a Web page entitled “Canadian Importers Database.”

Has the disclosure been properly documented / recorded?

- Requests for customs information must be recorded and retained for a minimum of two years, even if the CBSA does not grant the request. Requests must be recorded in applicable information systems or using Form E675 – Provision / Access and Use of Customs Information Report (section 107 of the *Customs Act*). Please note the Form E675 is for internal use only.



AUTHORITY TO DISCLOSE MATRICES

Subsections 107(4) to 107(9) contains matrices that identify which CBSA officials are authorized to disclose customs information. Subsection 107(12) identifies which officials are authorized to appeal an order to disclose customs information.

Only the officials identified in the matrices, or those at a higher level to that of the identified officials, are authorized to disclose customs information. It is conceivable other officials – aside from those identified in the matrices and their superiors – could lawfully disclose customs information under a specific provision due to the nature of their responsibilities. In situations where an official not identified in a matrix wishes to disclose customs information, they are required to explain why the use of the authorized official or their superior is not practical, seek the concurrence of the authorized official before disclosure, and inform the Information Sharing Unit of the Programs Branch accordingly.

EDITION NOTE

These policy guidelines replace information contained in former Memorandum D1-16-1, *Explanation of Section 107 of the Customs Act* (issued in December 2003), and Interim Memorandum D1-16-2, *Interim Administrative Guidelines for the Provision to others, Allowing access to others, and Use of Customs Information – Section 107 of the Customs Act* (issued on November 26, 2003).

To the extent that these policy guidelines are inconsistent with the *Customs Act*, the *Customs Act* will prevail.



CLAUSE BY CLAUSE ANALYSIS

107(1)

“CUSTOMS INFORMATION”

LEGISLATION

107. (1) The definitions in this subsection apply in this section.

“**customs information**” means information of any kind and in any form that

- (a) relates to one or more persons and is obtained by, or on behalf of
 - (i) the Minister for the purposes of this Act or the *Customs Tariff*; or
 - (ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1;
- (b) is prepared from information described in paragraph (a).

SUMMARY

1. “Customs information” is information that is collected by the Minister to administer or enforce the *Customs Act* or the *Customs Tariff*.
2. It is also information obtained by or on behalf of the Minister of National Revenue for purposes related to the collection of debts due to the federal government under Part V.1 – Collections – of the *Customs Act*.

CONSIDERATIONS

3. The Act under which information is collected determines what type of information it is, what can be done with it, and under what circumstances it may be disclosed. Information collected under the authority of any Act other than the *Customs Act* or the *Customs Tariff* does not meet the definition of customs information.
4. Customs information may contain “personal information”. Personal information is defined in section 3 of the *Privacy Act* as “information about an identifiable individual that is recorded in any form”. It includes, but is not limited to, race, origin, colour, religion, age or marital status of the individual, medical, criminal or employment history, financial information, identifying number, fingerprints, iris scans, etc. For example, when an individual declares the goods they are bringing into Canada, they are required to complete the E311 *Declaration Card*. An individual is required to report information such as their name, date of birth and citizenship, etc. on the E311 *Declaration Card*. This information would normally be considered “personal information”. However, because the information is required to be reported for the administration of the *Customs Act*, it is “customs information”.
5. Information that is collected under the *Customs Act* or *Customs Tariff*, that may or may not reveal the identity of a person, remains customs information.



6. CBSA programs that collect or direct the collection of customs information that contain elements of personal information must ensure their program conducts a Privacy Impact Assessment (PIA), in consultation with the Access to Information and Privacy (ATIP) Division, before launching their program.

The PIA is to be submitted by the CBSA program area to the Office of the Privacy Commissioner of Canada once it has been reviewed by the ATIP Division.

7. New CBSA programs that collect personal information must also create and register a Personal Information Bank (PIB), if one does not already exist, with the Treasury Board Secretariat of Canada (TBS) through the ATIP Division.
8. For more information about the policies and procedures that relate to the collection of personal information, PIAs and PIBs, contact the CBSA's Access to Information and Privacy Division.

EXAMPLES

9. Customs information includes the name, date of birth, citizenship, and home address of persons who complete the E311 *Declaration Card* because it is information the CBSA requires for administering the *Customs Act*.
10. Customs information also includes country of origin, value for duty, classification number, and tariff code, as reported in Form B3-3, *Canada Customs Coding Form*.



107(1)

“OFFICIAL”

LEGISLATION

“official” means a person who

- (a) is or was employed in the service of Her Majesty in right of Canada or of a province;
- (b) occupies or occupied a position of responsibility in the service of Her Majesty in right of Canada or of a province; or
- (c) is or was engaged by or on behalf of Her Majesty in right of Canada or of a province.

SUMMARY

1. An official can be an employee of the CBSA or they can be an employee of a province or of another federal department, agency, crown corporation, etc. This includes someone who once held such a position.

CONSIDERATIONS

2. An employee working for the federal government or a provincial government is considered an “official” as defined in subsection 107(1). This employee is an official performing the lawful duties and responsibilities enabled under any Act of Parliament or Act of a provincial legislature.
3. CBSA employees, including any other federal or provincial Public Service employees who meet the definition of “official”, who have access to customs information and are considering disclosing the information, have a duty to respect the relevant disclosure terms and conditions of section 107 or that official might be committing an offence under subsection 107(2) of the *Customs Act*.
4. Subsections 107(4), (5), (6), (8) and (9) of the *Customs Act* confers on officials the authority to disclose customs information. Subsections 107(6), (7) and (12) of the *Customs Act* confers on the Minister of Public Safety and Emergency Preparedness (who is also an official) certain powers, duties and functions which includes the disclosure of customs information. Specific CBSA officials have been delegated to exercise the Minister’s powers, duties and functions under subsections 107(6), (7) and (12) under the authority of the *Canada Border Services Agency Act*.
5. The terms and conditions of the most specific and relevant authority related to a proposed disclosure must be respected.

EXAMPLES

6. The following are examples of employees who meet the definition of an “official” because they are employed by and occupy a position of responsibility in the federal or provincial government:
 - Border Services Officer
 - Senior Policy Analyst in the Information Sharing Unit at CBSA National Headquarters
 - Manager
 - Director
 - Provincial Tax Auditor



107(1)

“SPECIFIED PERSON”

LEGISLATION

“**specified person**” means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty in right of Canada to carry out the provisions of this Act, the *Customs Tariff* or the *Special Import Measures Act*. It includes a person who was formerly so employed or engaged or who formerly occupied such a position.

CONSIDERATIONS

1. The term “specified person” is used in paragraph 107(4)(f) and subsection 107(11) of the *Customs Act*. Both relate to the supervision, evaluation or discipline of individuals who are, or were, employed to administer or enforce the *Customs Act*, the *Customs Tariff*, the *Special Import Measures Act* (SIMA), or Part 2 – *Reporting of Currency and Monetary Instruments* – of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
2. The term “specified person” relates to CBSA employees, contractors, consultants, or casual employees who administer or enforce any of the legislation cited above as a core part of their responsibilities.
3. The Security and Professional Standards Directorate is responsible for conducting investigations of alleged cases of significant breaches of the *Customs Act*, the *Customs Tariff* or the *Special Import Measures Act* (SIMA) by a “specified person”. They have the authority to request customs information related to the specified person who is being investigated under paragraph 107(4)(f) of the *Customs Act*.

EXAMPLE

4. A CBSA official is alleged to have repeatedly contravened section 107 of the *Customs Act* by disclosing customs information to an external stakeholder that had no legislative authority to receive it. The complaint was filed by another CBSA official. The responsibilities of the official under investigation included the administration and enforcement of the *Customs Act*. That official is considered a “specified person”.



107(2)

RESTRICTIONS ON THE USE AND DISCLOSURE OF CUSTOMS INFORMATION

LEGISLATION

107(2) – Prohibition – provision or use of customs information

Except as authorized under this section, no person shall:

- (a) knowingly provide, or allow to be provided, to any person any customs information;
- (b) knowingly allow any person to have access to any customs information; or
- (c) knowingly use customs information.

SUMMARY

1. Customs information can only be used or disclosed for purposes identified in section 107 of the *Customs Act*.

CONSIDERATIONS

2. In order to disclose customs information to another institution, the CBSA must be authorized by section 107 and the recipient must be authorized by legislation to collect it.
3. No other instrument aside from section 107 of the *Customs Act* can be used to authorize the use or disclosure of customs information.
4. Access to custom information within the CBSA must be limited to persons who have a lawful reason to access and use it.
5. It is an offence for any person to knowingly use or disclosure customs information without lawful authority.
6. Before the CBSA discloses customs information, it must ensure the recipient is informed that the information can only be used for the purpose for which it was provided. If the recipient wishes to use the information for purposes other than for which it was provided, it must obtain the consent of the CBSA and the use must be authorized under section 107.
7. Officials are to document all requests for customs information as well as what was provided. Where nothing is provided, officials are to document their reason(s) for not complying with the request. The appropriate mediums to record this information are Form E675, *Provision/Access and Use of Customs Information Report (Section 107 of the Customs Act)* and applicable information systems.

EXAMPLE

8. Paragraph 107(9)(c) does not authorize an official to disclose customs information about a person to another person if the latter has not obtained and submitted the written consent of the person to whom the customs information relates.



107(3)(a)

AUTHORIZED USE OF CUSTOMS INFORMATION TO ADMINISTER AND ENFORCE THE CUSTOMS ACT, CUSTOMS TARIFF, EXCISE ACT, 2001, SPECIAL IMPORTS MEASURES ACT OR PART 2 OF THE PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT (PCMLTFA)

LEGISLATION

107(3) – Authorized use of customs information by an official

An official may use customs information

- (a) for the purposes of administering or enforcing this Act, the *Customs Tariff*, the *Excise Act, 2001*, the *Special Imports Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or for any purpose set out in subsection (4), (5) or (7);

SUMMARY

1. Paragraph 107(3)(a) allows officials to use customs information in order to administer and enforce *the Customs Act, the Customs Tariff, the Excise Act, 2001, the Special Imports Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* or for any purpose set out in subsection (4), (5) or (7) of the *Customs Act*.

CONSIDERATIONS

2. An official may use customs information for the administration or enforcement of the *Custom Act* including the provision of customs information to others provided that such provision is authorized by section 107 of the *Customs Act*.
3. The statutes listed above are administered by the CBSA either wholly or in part.
4. A person to whom customs information is disclosed may use it solely for the purpose for which it was provided.

EXAMPLE

5. When a company reports its imported goods by completing Form B3-3, *Canada Customs Coding Form*, that information is “customs information” because it is collected under the authority of the *Customs Act*. Paragraph 107(3)(a) enables the CBSA to use this information to administer and enforce:
 - the *Customs Act* to ensure the goods were properly reported, classified, and valued;
 - the *Customs Tariff* to ensure all duties or taxes payable are properly calculated; and
 - the *Special Import Measures Act* to investigate anti-dumping allegations.



107(3)(b)

AUTHORIZED USE OF CUSTOMS INFORMATION – *IMMIGRATION AND REFUGEE PROTECTION ACT*

LEGISLATION

107(3) – Authorized use of customs information by an official

An official may use customs information

- (b) for the purposes of exercising the powers or performing the duties and functions of the Minister of Public Safety and Emergency Preparedness under the *Immigration and Refugee Protection Act*, including establishing a person's identity or determining their inadmissibility;

SUMMARY

1. Paragraph 107(3)(b) permits a CBSA official to use customs information to exercise the powers, duties or functions of the Minister of Public Safety and Emergency Preparedness (the Minister) that is vested to the Minister under the *Immigration and Refugee Protection Act* (IRPA), including establishing a person's identity or determining their inadmissibility.

CONSIDERATION

2. Under subsection 4(2) of the IRPA, the responsibilities of the Minister includes examinations at ports of entry, arrest, detention and removal, and determinations under subsections 34(2), 35(2) and 37(2) of the IRPA.

EXAMPLE

3. A Border Services Officer administering or enforcing the IRPA may access and use customs information or customs seizure records to corroborate immigration examination information to determine a person's inadmissibility under the IRPA.



107(3)(c)

AUTHORIZED USE OF CUSTOMS INFORMATION TO ENFORCE VARIOUS ACTS

LEGISLATION

107(3) – Authorized use of customs information by an official

An official may use customs information

- (c) for the purposes of any Act or instrument made under it, or any part of such an Act or instrument, that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*.

SUMMARY

1. Paragraph 107(3)(c) allows officials such as the Minister, the President of the CBSA or an employee of the Agency to use customs information to enforce any Act or related instrument (such as a Regulation) that Cabinet or Parliament authorizes.
2. The statutes that may be enforced include the:
 - *Agriculture and Agri-Food Administrative Monetary Penalties Act*
 - *Canada Agricultural Products Act*
 - *Feeds Act*
 - *Fertilizers Act*
 - *Fish Inspection Act*
 - *Health of Animals Act*
 - *Meat Inspection Act*
 - *Plant Protection Act*
 - *Seeds Act*

CONSIDERATION

3. The mandate of the CBSA includes supporting the administration or enforcement of program legislation which covers the legislations cited in paragraph 2.

EXAMPLES

4. The CBSA may use customs information collected on importations of fertilizers into Canada to enforce paragraph 3(c) of the *Fertilizers Act*, which requires that fertilizers be packaged and labelled as prescribed.
5. The CBSA may use customs information collected on the importation of plants or plant products into Canada to enforce subsection 42(2) of the *Plant Protection Regulations*, which prohibit a person from importing a prohibited item into Canada.



107(4)(a)

PREPARATION FOR CRIMINAL PROCEEDINGS IN CANADA

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (a) will be used solely in or to prepare for criminal proceedings commenced under an Act of Parliament;

SUMMARY

1. Paragraph 107(4)(a) allows officials to disclose customs information to crown prosecutors, or other persons, for the purpose of being used in or to prepare solely for criminal proceedings commenced under a federal law.

CONSIDERATIONS

2. The CBSA occasionally receives requests from crown prosecutors or other persons for customs information which they require to use in or to prepare for criminal proceedings commenced under an Act of Parliament. As a discretionary authority to disclose information, paragraph 107(4)(a) allows the CBSA to provide or decline the provision of such information, except where the information is compelled by way of a court order, warrant, etc.
3. CBSA officials must verify a criminal proceeding has commenced under a federal law before giving further consideration to such requests.
4. Customs information may concern matters such as national security, ongoing investigations or biographical core of personal information. Each request for customs information under paragraph 107(4)(a) must be carefully assessed.
5. Officials are to contact the appropriate Office of Primary Interest (OPI) if requests are received for customs information that may impact a CBSA initiated activity such as a criminal investigation or compliance verification. The appropriate OPI is to be consulted and they will make the determination on whether or not to disclose. If OPIs have concerns about whether or not to comply, they are to consult with Legal Services for advice.
6. Customs information may be provided in writing or under oath in a court of law. When it is provided to a requestor in writing, customs information must be reviewed and approved by an authorized person prior to its release. In all instances, only relevant customs information may be provided in response to any request made under paragraph 107(4)(a).
7. With respect to requests for customs information for use in an investigation of an offence or a prosecution that seek information that tends to reveal details of a person's lifestyle or personal choices, i.e. information falling within an individual's biographical core of personal information, CBSA officials should consult the Information Sharing Unit prior to disclosure. Such consultation is required even where the information has been lawfully collected by the Agency for the purposes of administering or enforcing the *Customs Act* or the *Customs Tariff*. Where there is a substantial likelihood that a person's reasonable expectation of privacy in certain information may outweigh the state's interest in investigating or prosecuting an offence, the CBSA will advise the requesting body that it should obtain a warrant or production order to obtain the requested information.



EXAMPLE

8. The CBSA may disclose customs information to a crown prosecutor who is prosecuting an individual in a case related to fraud over \$5,000, which is an indictable offence under paragraph 380.(1)(a) of the *Criminal Code*, pursuant to paragraph 107(4)(a) of the *Customs Act* .

AUTHORITY TO DISCLOSE – 107(4)(a)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Regional Superintendent or Chief	
Region	Operations		Border Services Officer	Immediate Supervisor
Region	Operations		Intelligence Official	
Region	Operations	Criminal Investigations Division	Investigator	



107(4)(b)

PROVISION OF CUSTOMS INFORMATION RELATING TO TRADE MATTERS, TAX OR DUTY, MONEY LAUNDERING OR TERRORIST FINANCING

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (b) will be used solely in or to prepare for any legal proceedings relating to the administration or enforcement of an international agreement relating to trade, this Act, the *Customs Tariff*, the *Special Import Measures Act*, any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, before
 - (i) a court of record, including a court of record in a jurisdiction outside Canada,
 - (ii) an international organization, or
 - (iii) a dispute settlement panel or an appellate body created under an international agreement relating to trade;

SUMMARY

1. Paragraph 107(4)(b) allows officials to disclose customs information to a court of record, an international organization or a dispute settlement panel or an appellate body (a standing body of persons that hears appeals) created under an international agreement in order to administer or enforce an international agreement related to trade.

CONSIDERATIONS

2. Paragraph 107(4)(b) gives an official the authority to provide access to customs information to use in, or prepare for, any legal proceedings (civil or criminal) relating to the administration or enforcement of:
 - a. an international trade agreement, such as the *North American Free Trade Agreement (NAFTA)*, World Trade Organization (WTO) Agreements, the *Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*; or
 - b. the *Customs Act*, the *Customs Tariff*, the SIMA, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*; or
 - c. any federal or provincial legislation that provides for the imposition or collection of a tax or duty (which includes the statutes administered by the CRA or by the provinces).



3. Paragraph 107(4)(b) permits the disclosure of customs information in proceedings before the following institutions:
 - a. a court of record in Canada or a court of record in a jurisdiction outside Canada,
 - b. an international organization such as the United Nations, the World Customs Organization, or
 - c. a dispute settlement panel or an appellate body created under an international agreement relating to trade such as the World Trade Organization.
4. Care must be exercised by those considering releasing information to ensure it would not impact the international trade interests of Canadian firms. In particular, Border Services Officers must consult with their supervisors before considering the release of this information.

EXAMPLE

5. Paragraph 107(4)(b) would allow a CBSA official to disclose customs information, such as importer accounting documents, to an official in the Department of Finance Canada or the Department of Foreign Affairs and International Trade, for the purpose of preparing Canada's case before a NAFTA or World Trade Organization (WTO) dispute settlement panel or appellate body in respect of actions taken under the *Special Import Measures Act*.



AUTHORITY TO DISCLOSE – 107(4)(b)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director *	
National Headquarters	Programs	Border Programs Directorate	Any Director **	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director **	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager **	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Director, Trade **	
National Headquarters	Operations	Border Operations Directorate	Any Director **	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer**	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager **	
National Headquarters	Operations	International Region Directorate	Any Director **	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director **	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager**	
Region	Operations	Intelligence and Enforcement	Manager **	
Region	Operations	Criminal Investigations Division	Manager **	
Region	Operations		Border Services Officer **	Immediate Supervisor

LEGEND

- * For information relating to the administration or enforcement of the *Special Import Measures Act*.
- ** Excluding information relating to the administration or enforcement of the *Special Import Measures Act*.



107(4)(c)

PROVISION OF INFORMATION TO ADMINISTER OR ENFORCE THE *CUSTOMS ACT*, THE *CUSTOMS TARIFF*, THE *EXCISE ACT*, THE *EXPORT AND IMPORT PERMITS ACT*, IRPA, THE *SPECIAL IMPORT MEASURES ACT*, AND PART 2 OF THE PCMLTFA

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (c) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the *Customs Tariff*, the *Excise Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act*, the *Special Import Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* by an official of the Agency;

SUMMARY

1. Paragraph 107(4)(c) allows an official to disclose customs information to any person if the reason for disclosure is to enable an official to administer or enforce the *Customs Act*, the *Customs Tariff*, the *Excise Act*, the *Export and Import Permits Act*, the *Immigration and Refugee Protection Act* (IRPA), the *Special Import Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

CONSIDERATIONS

2. When an official is disclosing customs information under this provision, the official should only disclose the minimum information necessary to administer or enforce the relevant legislation.
3. Paragraph 107(4)(c) permits the disclosure of customs information to CBSA officials for the administration and enforcement of the *Immigration and Refugee Protection Act*. On the other hand, paragraph 107(5)(j) provides for the disclosure of customs information to Citizenship and Immigration Canada officials for the administration and enforcement of the IRPA.
4. Paragraph 107(4)(c) does not authorize a CBSA official to disclose information collected under Part 2 of the PCMLTFA to another CBSA official. For instance, PCMLTFA seizure data cannot be disclosed to a CBSA official pursuant to paragraph 107(4)(c); rather, the lawful authority to do so is subsection 36(4) of the PCMLTFA.

EXAMPLES

5. A CBSA official may disclose customs information to another CBSA official for the purpose of administering or enforcing Part 2 of the PCMLTFA. Travel history records may be provided to and used by another CBSA official to enforce section 12 of the PCMLTFA by assessing the veracity of an individual's declaration.
6. Customs information provided on the E311 *Declaration Card* relating to the date an individual left and returned to Canada may be used during examinations to determine the admissibility of a permanent resident by establishing whether residency requirements have been met.



7. The CBSA's Anti-Dumping and Countervailing Directorate is conducting an investigation, under subsection 31(1) of the *Special Import Measures Act*, concerning alleged injurious dumping and subsidizing of certain metal bar grating of carbon exported from the People's Republic of China. Under paragraph 107(4)(c), customs information related to businesses who imported this good may be provided to the Anti-Dumping and Countervailing Directorate to facilitate its investigation.

8. The CBSA is conducting an investigation against an individual for providing false information about an imported good under the *Customs Act*. In order to further its investigation, the CBSA wants to question a number of companies concerning certain transactions with the individual. Under paragraph 107(4)(c), a CBSA Investigator is permitted to disclose customs information to the companies for the purpose of collecting additional information to enforce the *Customs Act*.



AUTHORITY TO DISCLOSE – 107(4)(c)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	International and Partnerships Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Strategic Risk and Modernization Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager or Any Intelligence Official	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(4)(c.1)

PROVISION OF INFORMATION TO ENFORCE THE *AGRICULTURE AND AGRI-FOOD ADMINISTRATIVE MONETARY PENALTIES ACT*, THE *CANADA AGRICULTURAL PRODUCTS ACT*, THE *FEEDS ACT*, THE *FERTILIZERS ACT*, THE *FISH INSPECTION ACT*, THE *HEALTH OF ANIMALS ACT*, THE *MEAT INSPECTION ACT*, THE *PLANT PROTECTION ACT* AND THE *SEEDS ACT*

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (c.1) may reasonably be regarded as necessary solely for a purpose relating to the enforcement of the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act* by an official of the Agency;

SUMMARY

1. Paragraph 107(4)(c.1) allows officials to disclose customs information to any person if the reason for disclosure is to enable an official to enforce the *Agriculture and Agri-Food Administrative Monetary Penalties Act*, the *Canada Agricultural Products Act*, the *Feeds Act*, the *Fertilizers Act*, the *Fish Inspection Act*, the *Health of Animals Act*, the *Meat Inspection Act*, the *Plant Protection Act* and the *Seeds Act*.

CONSIDERATION

2. The mandate of the CBSA includes supporting the administration or enforcement of program legislation which covers the legislations cited in paragraph 1.
3. When an official is disclosing customs information under this provision, the official should only disclose the minimum information necessary to administer or enforce the relevant legislation.

EXAMPLE

4. The CBSA is conducting an investigation against an importer for providing false information under the *Meat Inspection Act*. In order to further its investigation, the CBSA wants to obtain certain information from a former employee of that importer. Under paragraph 107(4)(c.1), the CBSA is permitted to disclose customs information for the purpose of collecting additional information to enforce the *Meat Inspection Act*.



AUTHORITY TO DISCLOSE – 107(4)(c.1)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	International and Partnerships Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Strategic Risk and Modernization Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager or Any Intelligence Official	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(4)(c.2)

PROVISION OF INFORMATION TO AN OFFICIAL OR CLASS OF OFFICIALS OF THE CANADA REVENUE AGENCY RELATING TO THE ADMINISTRATION OR ENFORCEMENT OF PART V.1 – COLLECTIONS – OF THE *CUSTOMS ACT*

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (c.2) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of Part V.1 by an official or a class of officials of the Canada Revenue Agency designated by the Minister of National Revenue;

SUMMARY

1. Paragraph 107(4)(c.2) allows officials to disclose customs information exclusively to an official or class of officials of the Canada Revenue Agency (CRA) designated by the Minister of National Revenue to administer or enforce Part V.1 – Collections – of the *Customs Act*.

EXAMPLE

2. A tax collection official from the Canada Revenue Agency (CRA) is attempting to collect unpaid duties from an importer to enforce Part V.1 – Collections – of the *Customs Act*. The CRA official needs to send a notice of arrears by mail to the latest known address of the importer but does not have this information. Upon the request of the CRA official, the CBSA may provide the latest known address of the importer or its authorized representative from its records pursuant to paragraph 107(4)(c.2).



AUTHORITY TO DISCLOSE – 107(4)(c.2)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	International and Partnerships Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Strategic Risk and Modernization Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
National Headquarters	Comptrollership	Agency Comptroller Directorate	Finance Officer	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(4)(d)

AUTHORIZED USE BY THE ROYAL CANADIAN MOUNTED POLICE

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (d) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the *Excise Act*, the *Excise Act, 2001* or the *Export and Import Permits Act* by a member of the Royal Canadian Mounted Police;

SUMMARY

1. Paragraph 107(4)(d) authorizes an official to provide customs information to a member of the Royal Canadian Mounted Police (RCMP) if the information is reasonably regarded as necessary by the RCMP for the administration or enforcement of the *Customs Act*, the *Excise Act*, the *Excise Act, 2001*, or the *Export and Import Permits Act*.

CONSIDERATIONS

2. Customs information may be provided to a member of the RCMP for the purpose of administering or enforcing any of the statutes listed in paragraph 107(4)(d).
3. The official considering providing the information must assess whether the requestor has met the “reasonably regarded as necessary” threshold. In making such an assessment, the CBSA official may wish to consult other CBSA officials and/or the RCMP (to obtain additional information or to clarify existing information to better understand the intended use of the information).

EXAMPLE

4. A Canadian citizen is stopped while entering Canada from the United States along an unmanned border point and is interviewed by the RCMP (the RCMP has responsibility for enforcing the *Customs Act* along the unmanned borders between CBSA ports of entry). To facilitate its administration and enforcement of the *Customs Act*, the RCMP may require customs information such as traveller history. The CBSA may disclose such information under paragraph 107(4)(d) as long as it is satisfied the information is “reasonably regarded as necessary” by the RCMP.



AUTHORITY TO DISCLOSE – 107(4)(d)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Director	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Operations		Any Intelligence Official	Immediate supervisor
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Border Services Officer	Superintendent or Chief
Region	Operations		Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(4)(e)

PROTECTION OF LIFE, HEALTH, SAFETY, AND THE ENVIRONMENT IN CANADA OR ANOTHER COUNTRY

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (e) may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual or to the environment in Canada or any other country;

SUMMARY

1. Paragraph 107(4)(e) allows officials to disclose customs information in order to protect the life, health or safety of an individual or the environment in Canada or any other country.

CONSIDERATIONS

2. Under paragraph 107(4)(e), customs information may be provided proactively or in response to a request by another agency.
3. It is Agency policy that spontaneous disclosures are permissible in urgent circumstances where an official has reasonable grounds to believe that the life, health or safety of a person or the environment in Canada or in any other country is in imminent danger and the notification of his or her immediate Supervisor is not possible. Under this situation, customs information may only be provided to police or investigative agencies, including any appropriate official who is enabled to reasonably respond to these circumstances. Officials must inform their immediate Supervisor of the provision of customs information as soon as possible after its disclosure and document it.
4. In circumstances where the threat to the life, health or safety of a person or the environment in Canada or in any other country is not urgent, disclosure is permitted on a case-by-case basis. Officials must obtain the approval of their immediate Supervisor before they provide the customs information. Upon the approval of their immediate Supervisor, an official may provide customs information to other bodies, such as other government departments and foreign governments, in addition to police or investigative agencies, as necessary.
5. Only relevant customs information, which is lawfully under the control of the CBSA and the official, may be provided under paragraph 107(4)(e) of the *Customs Act*.
6. Paragraph 107(4)(e) may be used by a management representative designated by a CBSA Vice-President to table customs information related to a workplace incident or accident before the National Health and Safety Policy Committee.



EXAMPLES

7. An official may provide customs information about a missing child to the Royal Canadian Mounted Police (RCMP) if the official had reasonable grounds to believe the health and safety of the child was at imminent risk. The official could do so without the approval of his or her immediate supervisor, assuming the latter was not available at that time.
8. An official encounters a commercial vessel that arrives at a Canadian port flying a yellow quarantine flag (signifying infectious disease). The official may provide customs information to the local police or the RCMP, as well as local health authorities, without the approval of his or her immediate supervisor, assuming the latter was not accessible at that time.
9. Customs information may be provided to a foreign government about a shipment of contaminated food identified as having been imported into Canada from that country with the approval of an officer's immediate supervisor.
10. Customs information may be provided to federal or provincial authorities regarding an invasive alien species, where a document review of released cargo containers reveals a direct link between those released cargo containers and a cargo container discovered to be infested with emerald ash borer beetles during a customs examination, with the approval of an official's immediate Supervisor. However, if the latter is not available, the information may be spontaneously disclosed to provincial or federal authorities. The reasons would have to be documented and the official must inform their Supervisor at the earliest opportunity.



AUTHORITY TO DISCLOSE – 107(4)(e)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Senior Program Officer	Supervisor
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations		Border Services Officer (only in urgent circumstances)	Immediate Supervisor (if available)
Region	Operations		Senior Officer Trade Compliance	Immediate Supervisor



107(4)(f)

SUPERVISION, EVALUATION AND DISCIPLINE OF A “SPECIFIED PERSON”

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

- (f) will be used solely for a purpose relating to the supervision, evaluation or discipline of a specified person by Her Majesty in right of Canada in respect of a period during which the person was employed or engaged by, or occupied a position of responsibility in the service of, Her Majesty in right of Canada to administer or enforce this Act, the *Customs Tariff*, the *Special Import Measures Act*, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to the extent that the information is relevant for that purpose;

SUMMARY

1. Paragraph 107(4)(f) allows CBSA officials to disclose customs information solely for a purpose related to the supervision, evaluation, or discipline of a “specified person.”

CONSIDERATIONS

2. Under subsection 107(1) of the *Customs Act*, a “specified person” is defined as a person who is or was employed, engaged by, or occupied a position of responsibility in the federal government to administer or enforce the *Customs Act*, the *Customs Tariff*, the *Special Import Measures Act*, or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.
3. The *CBSA’s Code of Conduct* provides standards of conduct for all persons employed by the Agency. It is linked to the *Customs Act* because one of the standards of conduct is customs information may only be disclosed as authorized under section 107 of the *Customs Act* and in accordance with the direction provided by these policy guidelines.
4. The misuse, unauthorized provision, or allowing access to others of customs information by a specified person, whether that person is on duty or off duty, is a contravention of subsection 107(2) of the *Customs Act* and a specified person may be subject to further disciplinary action up to and including termination of employment.
5. The CBSA’s security program is responsible for verifying employee compliance with the legislation, regulations and policies that govern the access and use of information assets under the control of the CBSA.



EXAMPLE

6. A CBSA official knowingly shares their knowledge of an importer who was charged with a customs infraction under the *Customs Act* with a friend who was not authorized to receive the information. A colleague of the CBSA official is aware of the incident and reports it to her Manager. An investigation is being conducted by the CBSA’s Departmental Security Officer (DSO) for a purpose related to the discipline of the official. Under this provision, customs information related to the alleged offence may be provided to the DSO to facilitate the conduct of its investigation.

AUTHORITY TO DISCLOSE – 107(4)(f)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Comptrollership	Security and Professional Standards Directorate	Any Director	
National Headquarters	Comptrollership	Security and Professional Standards Analysis Section	Manager	
National Headquarters	Comptrollership	Personnel Security Screening Section	Manager	
National Headquarters	Comptrollership	Information Security	Senior Advisor	Manager
National Headquarters	Comptrollership	Professional Standards Investigations Section	Senior Investigator	Manager
National Headquarters	Human Resources		Any Director	
National Headquarters	Information, Science and Technology		Any Director	
National Headquarters	Operations	All Directorates (except the Enforcement and Intelligence Operations Directorate)	Any Director	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Programs		Any Director	
National Headquarters	Programs	Criminal Investigations Division	Manager	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Director	
Region	Operations	CBSA Program Area	Any Manager	
Region	Operations		Border Services Officer	Immediate Supervisor



107(4)(g)

DISCLOSURES THAT DO NOT DIRECTLY OR INDIRECTLY IDENTIFY A PERSON

LEGISLATION

107(4) – Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

(g) is reasonably regarded by the official to be information that does not directly or indirectly identify any person; or

SUMMARY

1. Paragraph 107(4)(g) allows officials to disclose customs information that does not identify a person, either directly or indirectly.

CONSIDERATIONS

2. Paragraph 107(4)(g) allows officials to disclose statistical information generated from customs information, provided the statistical or aggregate information does not directly or indirectly reveal the identity of the person to whom it relates. On the other hand, customs information that reveals information about an identifiable person or business cannot be disclosed under this authority.
3. Care must be taken when disclosing statistics, especially those that involve a small sample. When information from a small sample could be combined with other information to indirectly identify the person to whom it relates, an official is not to disclose this information.
4. The term “person”, as referenced in paragraph 107(4)(g), is defined in the *Customs Act* as including “an individual, a partnership, a corporation, a trust, the estate of a deceased individual, or a body that is a society, a union, a club, an association, a commission or other organization of any kind”. Therefore, any information being provided must be stringently reviewed to ensure it does not reveal the identity of any individual or entity.

EXAMPLES

5. Aggregate customs information may be provided to an enforcement body on the number of seizures made in a given year.
6. Aggregate traveller statistics may be disclosed by CBSA officials to bridge authorities, as such information would not identify a person directly or indirectly.



AUTHORITY TO DISCLOSE – 107(4)(g)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	All Directorates (except Pre-Border Programs)	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Manager	
National Headquarters	Programs	Criminal Investigations Division	Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Senior Program Officer	Supervisor
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Comptrollership	Agency Comptroller Directorate	Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Director	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Regional Chief of Operations	



107(4)(h)

NATIONAL SECURITY OR DEFENCE OF CANADA

LEGISLATION

107(4) - Authorized provision of information

An official may provide, allow to be provided or provide access to customs information if the information:

(h) is reasonably regarded by the official to be information relating to the national security or defence of Canada.

SUMMARY

1. Paragraph 107(4)(h) allows officials to disclose customs information to unspecified persons if it is reasonably regarded to be related to the national security or defence of Canada.

CONSIDERATIONS

2. It is the CBSA's policy that this authority may be used in urgent or non-urgent circumstances on a case-by-case basis, either proactively or in response to a request.
3. National security and defence of Canada threats include those related to: terrorism, proliferation of weapons of mass destruction, foreign espionage, natural disasters, critical infrastructure vulnerability (such as cyber-attacks), and pandemics (such as SARS or the H1N1 flu virus).
4. An official for the purposes of this section includes a Border Services Officer, an Intelligence Official, their immediate Supervisor and other "specified persons" within the CBSA.
5. The Border Services Officer and Intelligence Official may disclose customs information, with the approval of their immediate Supervisor, to the Royal Canadian Mounted Police (RCMP), the Canadian Security Intelligence Service (CSIS) and other federal departments, such as Citizenship and Immigration or the Department of National Defence, as well as appropriate law enforcement agencies.
6. Spontaneous disclosure by Border Services Officers, Intelligence Officials, or by Criminal Investigations (Regions), without the approval of an immediate Supervisor, is only permitted if an official has reasonable grounds to believe that an urgent threat to the national security or defence of Canada exists and his or her immediate Supervisor is not available to approve the disclosure. In this circumstance, customs information may only be provided to the RCMP, the CSIS, or appropriate law enforcement agencies. The official must inform his or her immediate Supervisor or Manager of the disclosure as soon as possible thereafter and document the incident.
7. Officials are advised to consider the person connected to the goods, the goods in question and any related documents, as well as information obtained from other sources, such as systems checks or lookouts, in determining whether there are reasonable grounds to believe a threat to national security exists.



8. Paragraph 107(4)(h) cannot be used to support the routine provision of intelligence information derived from customs information to CBSA partners or foreign governments. Disclosures pursuant to paragraph 107(4)(h) should be assessed on a case-by-case basis.

EXAMPLE

9. While conducting the examination of a traveller, a Border Services Officer (BSO) discovers training manuals for handling explosives and biological agents. System checks revealed that the goods were being imported for a person suspected of being involved in terrorist-related activities. The BSO also found a suspected “freeze-dried” virus during a personal search of the traveller who was travelling with false identification. Immigration secondary identified the individual as a known terrorist. Under the circumstance, paragraph 107(4)(h) may be used by the CBSA to alert the appropriate law enforcement agencies. With the approval of the BSO’s Supervisor, the BSO would contact an Intelligence Official who would then contact his or her RCMP or CSIS contact.



AUTHORITY TO DISCLOSE – 107(4)(h)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Director	
National Headquarters	Programs	Criminal Investigations Division Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Director, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Senior Program Officer	Supervisor
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Operations		Any Director	
National Headquarters	Operations		Intelligence Official*	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator**	
Region	Operations		Border Services Officer **	Immediate Supervisor

LEGEND

- * To officials of another federal department or agency in consultation with an immediate supervisor.
- ** Can be disclosed under certain conditions as noted above under spontaneous disclosure without the permission of an Immediate Supervisor.



107(5)(a)

INVESTIGATIONS AND PROSECUTIONS OF INDICTABLE OFFENCES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (a) a peace officer having jurisdiction to investigate an alleged offence under any Act of Parliament or of the legislature of a province subject to prosecution by indictment, the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged offence may be taken, if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes;

SUMMARY

1. Paragraph 107(5)(a) allows an official to disclose customs information to a peace officer, the Attorney General of Canada (federal prosecutors) or the Attorney General of a province (provincials prosecutors) to facilitate the investigation or prosecution of an indictable offence.

CONSIDERATIONS

2. Peace officers include only officers in Canada investigating an indictable offence under a federal or provincial law and excludes foreign officials.
3. The definition of “peace officer” is found in section 2 of the *Criminal Code* which is reproduced below.

“peace officer” includes

- (a) a mayor, warden, reeve, sheriff, deputy sheriff, sheriff’s officer and justice of the peace,
- (b) a member of the Correctional Service of Canada who is designated as a peace officer pursuant to Part I of the [Corrections and Conditional Release Act](#), and a warden, deputy warden, instructor, keeper, jailer, guard and any other officer or permanent employee of a prison other than a penitentiary as defined in Part I of the [Corrections and Conditional Release Act](#),
- (c) a police officer, police constable, bailiff, constable, or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process,
- (d) an officer within the meaning of the [Customs Act](#), the [Excise Act](#) or the [Excise Act, 2001](#), or a person having the powers of such an officer, when performing any duty in the administration of any of those Acts,
- (d.1) an officer authorized under subsection 138(1) of the [Immigration and Refugee Protection Act](#),



- (e) a person designated as a fishery guardian under the [Fisheries Act](#) when performing any duties or functions under that Act and a person designated as a fishery officer under the [Fisheries Act](#) when performing any duties or functions under that Act or the [Coastal Fisheries Protection Act](#),
- (f) the pilot in command of an aircraft
 - (i) registered in Canada under regulations made under the [Aeronautics Act](#), or
 - (ii) leased without crew and operated by a person who is qualified under regulations made under the [Aeronautics Act](#) to be registered as owner of an aircraft registered in Canada under those regulations, while the aircraft is in flight, and
- (g) officers and non-commissioned members of the Canadian Forces who are
 - (i) appointed for the purposes of section 156 of the [National Defence Act](#), or
 - (ii) employed on duties that the Governor in Council, in regulations made under the [National Defence Act](#) for the purposes of this paragraph, has prescribed to be of such a kind as to necessitate that the officers and non-commissioned members performing them have the powers of peace officers;

Please note that the *Criminal Code*'s definition of "peace officer" is a non-exhaustive list. Therefore, if a person makes a request under this authority and their position is not identified in the definition of "peace officer" in the *Criminal Code*, the onus is on the requestor to demonstrate that there is legislative authority substantiating the fact that their position provides that person with peace officer status within the meaning of the [Criminal Code](#).

- 4. Paragraph 107(5)(a) has tests and conditions that must be satisfied before an official can lawfully provide customs information to a peace officer or the Attorney General of Canada or of a province:

Requests by Peace Officers

The following four part test and two conditions must be satisfied. The test is:

- i) There must be an alleged offence under an Act of Parliament or the legislature of a Province that may be prosecuted by way of indictment;
- ii) The person receiving the information must be a "peace officer" within the meaning of section 2 of the *Criminal Code*;
- iii) The "peace officer" receiving the information must have the jurisdiction to investigate the alleged offence; and
- iv) The disclosing official must believe on reasonable grounds that the information relates to the alleged offence;

The conditions are:

- i) The information will be used in the investigation of the alleged offence, and
- ii) The information will be used solely for those purposes.

Requests by the Attorney General of Canada or of a Province

The following four part test and two conditions must be satisfied. The test is:

- i) There must be an alleged offence under an Act of Parliament or the legislature of a Province that may be prosecuted by way of indictment;
- ii) The person receiving the information must be a representative of the Attorney General of Canada or the Attorney General of a Province;
- iii) The Attorney General's office receiving the information must have the jurisdiction to prosecute the alleged offence; and



iv) The disclosing official must believe on reasonable grounds that the information relates to the alleged offence;

The conditions are:

- i) The information will be used in the prosecution of the alleged offence, and
- ii) The information will be used solely for those purposes.

5. Prior to disclosing customs information, the appropriate Office of Primary Interest must be contacted to ensure the disclosure will not jeopardize an ongoing investigation or CBSA initiated action. If it is determined customs information may be released, the official authorizing the disclosure must inform the recipient in writing that it can only be used for the purpose for which it was provided. No secondary use is permitted without the consent of the CBSA.
6. With respect to requests for customs information for use in the investigation of an offence or a prosecution, that may reveal details of a person's lifestyle or personal choices, i.e. information falling within an individual's biographical core of personal information, CBSA officials should consult the Information Sharing Unit prior to disclosure. Such consultation is required even where the information has been lawfully collected by the Agency for the purposes of administering or enforcing the *Customs Act* or the *Customs Tariff*. Where there is a substantial likelihood that a person's reasonable expectation of privacy in certain information may outweigh the state's interest in investigating or prosecuting an offence, the CBSA will advise the requesting body that it should obtain a warrant or production order to obtain the requested information.
7. Spontaneous disclosure is allowed under paragraph 107(5)(a).
8. All requests for customs information must be thoroughly documented.

EXAMPLE

9. The RCMP is investigating the sale of counterfeit items in Canada. During the course of its investigation, it has identified individuals who appear to be involved in the importation of counterfeit items. At that point, they approach the CBSA and ask for information related to the importation of goods by those individuals during a specific time period. Under paragraph 107(5)(a), the CBSA may provide this information to the RCMP.



AUTHORITY TO DISCLOSE – 107(5)(a)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs		Investigator	Immediate Supervisor
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer**	Any Director
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any EIOD official	Manager
National Headquarters	Operations		Intelligence Official *	
Region	Operations	CBSA Program Area	Any Director **	
Region	Operations		Chief of Intelligence and Enforcement **	
Region	Operations		Regional Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager

LEGEND

- * To officials of another federal department or agency.
- ** Must consider judicial warrant or court order.



107(5)(b)

PERSONS LEGALLY ENTITLED TO CUSTOMS INFORMATION

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (b) a person that is otherwise legally entitled to the information by reason of an Act of Parliament, solely for the purposes for which that person is entitled to the information;

SUMMARY

1. Paragraph 107(5)(b) allows officials to disclose customs information to a person that is legally entitled to the information through an Act of Parliament.

CONSIDERATIONS

2. An Act of Parliament relates to federal legislation only.
3. Under paragraph 107(5)(b), the CBSA cannot provide customs information to another federal Public Service institution strictly because the latter has a mandate similar to that of the CBSA.
4. A CBSA official must verify the requesting institution or requestor is entitled to the information by an Act of Parliament. In addition, the CBSA must communicate to the requestor that the information can only be used for the purpose for which it was provided.
5. Where customs information is provided on an ongoing basis to another federal government department or agency, it is the policy of the CBSA to establish a written collaborative arrangement (WCA) with the other government department or agency. The WCA outlines the parameters and processes governing the disclosure of customs information.

EXAMPLES

6. The CBSA may provide customs information to Statistics Canada, under section 25 of the *Statistics Act*, which authorizes the Chief Statistician of Statistics Canada to receive returns of imports and exports into and from Canada and details of the means of transportation from the Minister of Public Safety and Emergency Preparedness.
7. The CBSA may provide customs information to Industry Canada, under subsection 16(1) of the *Department of Industry Act*, which authorizes the Minister of Industry to be given copies of invoices and other information collected under the *Customs Act* on goods imported into Canada and exported from Canada for the purpose of carrying out duties and functions of the Minister of Industry under paragraph 6(b) of that Act.
8. The CBSA may provide customs information to the Privacy Commissioner of Canada, under paragraph 34(1)(b) of the *Privacy Act*, which permits the Privacy Commissioner of Canada to examine or obtain copies of or extracts from books or other records found in any premises for the purposes of conducting an investigation.



9. The CBSA may provide customs information to the Information Commissioner of Canada, under paragraph 36(1)(f) of the *Access to Information Act*, which permits the Information Commissioner of Canada to examine or obtain copies of or extracts from books or other records found in any premises for the purposes of conducting an investigation.

AUTHORITY TO DISCLOSE – 107(5)(b)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Director, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Intelligence Officials	Immediate Supervisor
National Headquarters	Operations	International Region Directorate	Any Director	
Region	Operations	CBSA Program Area	Any Manager	
Region	Operations		Regional Chief of Operations	



107(5)(c)(i), (ii) and (iii)

PROVISION OF INFORMATION FOR PURPOSES RELATED TO PROHIBITED, CONTROLLED OR REGULATED GOODS, COMMISSION OF AN OFFENCE RELATED TO IMPORTED OR EXPORTED GOODS AND GOODS THAT MAY BE EVIDENCE OF AN OFFENCE UNDER A FEDERAL ACT OR POLICY

LEGISLATION

107(5) – Provision of information to certain persons –

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (c) an official solely for the purposes of developing, administering or enforcing an Act of Parliament or developing or implementing a policy related to an Act of Parliament if the information relates to
 - (i) goods, the importation, exportation or in-transit movement of which is or may be prohibited, controlled or regulated under that Act,
 - (ii) a person who that official has reasonable grounds to believe may have committed an offence under that Act in respect of goods imported or exported by that person, or
 - (iii) goods that may be evidence of an offence under that Act;

SUMMARY

1. Subparagraph 107(5)(c)(i) allows officials to disclose customs information to an official for the purpose of developing, administering or enforcing an Act of Parliament or developing or implementing related policy dealing with the importation, exportation and in-transit movement of prohibited, controlled or regulated goods.
2. Subparagraph 107(5)(c)(ii) allows officials to disclose customs information to an official for the purpose of developing, administering or enforcing an Act of Parliament or developing or implementing related policy if the information relates to a person whom the requestor has reasonable grounds to believe may have committed an offence concerning goods the person imported or exported under that Act.
3. Subparagraph 107(5)(c)(iii) allows officials to disclose customs information to an official for the purpose of developing, administering or enforcing an Act of Parliament or developing or implementing related policy if the information relates to goods that may be evidence of an offence under that Act.

CONSIDERATIONS

4. Subparagraphs 107(5)(c)(i), (ii), and (iii) are meant to be read and interpreted as a whole.

Subparagraph 107(5)(c)(i)

5. Goods that are imported, exported or in-transit may be prohibited, controlled or regulated under a federal Act. This provision applies if another federal department or agency requests customs information in order to: (a) assess whether



an individual or company who has imported a good has complied with the legislative requirements related to the importation of that good under the Act the other government department or agency is enforcing, or (b) develop policies or further legislation related to that good.

6. The CBSA does not need to administer or enforce a specific Act at the border to disclose customs information to other government departments or agencies for purposes of that Act, as long as the conditions outlined in subparagraph 107(5)(c)(i) are met.
7. Disclosure is usually governed by a written collaborative arrangement (WCA) between the CBSA and another federal department or agency. However, it is not necessary for a WCA to be in place to exercise this provision as long as the conditions outlined in subparagraph 107(5)(c)(i) are met.
8. Spontaneous disclosure of customs information to support the enforcement or administration of other federal Acts may occur, with the approval of an immediate Supervisor.

Subparagraph 107(5)(c)(ii)

9. The recipient or requestor of the information must demonstrate to the CBSA official considering the request that they have reasonable grounds to believe a person may have committed an offence under a federal Act they are administering or enforcing in respect of goods imported or exported.
10. Under urgent circumstances, spontaneous disclosures may occur with the prior approval of a Supervisor or someone above that level providing the terms of the authority are met.

Subparagraph 107(5)(c)(iii)

11. The information provided must relate to goods that may be evidence of an offence under a federal Act.

EXAMPLES

Subparagraph 107(5)(c)(i)

12. Subparagraph 107(5)(c)(i) would allow customs information related to the importation of a prescription drug that is controlled under the *Food and Drugs Act* (FDA) and Regulations, that is reported on the Form B3-3, *Canada Customs Coding Form*, to be disclosed to Health Canada so that it can enforce the FDA and associated Regulations.
13. Customs information may be disclosed regarding the importation of certain fuels and substances that may be subject to controls or regulation by Environment Canada for the purpose of enforcing the *Canadian Environmental Protection Act* and associated Regulations.

Subparagraph 107(5)(c)(ii)

14. While conducting an examination of a person's luggage, a Border Services Officer discovers opium that was not reported. Under the Schedule to the *Narcotic Control Regulations* (NCR), opium is a controlled substance and may be imported only by dealers with the appropriate license from the Minister of Health. The discovery constitutes reasonable grounds to believe the person may have committed an offence under the *Controlled Drugs and Substances Act*. The CBSA may disclose this information to Health Canada or the RCMP on its own initiative



Subparagraph 107(5)(c)(iii)

15. Subsection 10(1) of the *Tobacco Act* requires that no person shall import for sale in Canada cigarettes except in a package that contains at least 20 cigarettes. While conducting a search of a commercial passenger bus, a Border Services Officer finds a large suitcase full of “10 cigarette packs”. The goods were not declared. The CBSA may proactively disclose to Health Canada (HC) customs information relating to the imported cigarettes because the discovery may be evidence of an offence under the *Tobacco Act*.

AUTHORITY TO DISCLOSE – 107(5)(c)(i)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Manager	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Manager	
National Headquarters	Operations	Border Operations Directorate	Intelligence Analyst	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Corporate Affairs	Recourse Directorate	Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations		Manager of Operations	
Region	Operations		Regional Commercial Analyst	Immediate Supervisor
Region	Operations		Border Services Officer	Immediate Supervisor or above Supervisor



AUTHORITY TO DISCLOSE – 107(5)(c)(ii)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Manager	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Manager	
National Headquarters	Operations	Border Operations Directorate	Intelligence Analyst	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Corporate Affairs	Recourse Directorate	Manager	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Chief of Operations	
Region	Operations		Regional Commercial Analyst	Immediate Supervisor
Region	Operations		Border Services Officer	Immediate Supervisor or above Supervisor



AUTHORITY TO DISCLOSE – 107(5)(c)(iii)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director	
National Headquarters	Programs	Border Programs Directorate	Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Manager	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Manager	
National Headquarters	Operations	Border Operations Directorate	Intelligence Analyst	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Corporate Affairs	Recourse Directorate	Manager	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations		Chief of Operations	
Region	Operations		Regional Commercial Analyst	Immediate Supervisor
Region	Operations		Border Services Officer	Immediate Supervisor or above Supervisor



107(5)(d)

ADMINISTRATION OR ENFORCEMENT OF PROVINCIAL TAXES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (d) an official, solely for the purpose of administering or enforcing an Act of the legislature of a province, if the information relates to goods that are subject to import, in-transit or export controls, or taxation upon importation into the province under that Act;

SUMMARY

1. Paragraph 107(5)(d) allows an official to disclose customs information to another official in order to administer or enforce a provincial Act if the information relates to goods that are subject to taxation upon importation into the province or import, in-transit and export controls.

CONSIDERATIONS

2. The CBSA official must be satisfied that the information relates to goods that are subject to import, in transit or export controls or taxation upon importation into the province under a provincial Act.
3. The CBSA official must also be satisfied the information will be used solely for the purpose of administering or enforcing that provincial law.
4. Additional care must be exercised when considering the disclosure of customs information related to the value or origin of goods. In cases where there is reason to suspect that the customs information may have been obtained from a foreign source, the official should confirm that a proposed disclosure of customs information would not be contrary to an international obligation. Please refer to the section entitled “Considerations Related to the Disclosure of Customs Information” for additional information.

EXAMPLES

5. This authority may be used to disclose information to provincial officials for game export permits, sales tax collection purposes or to support provincial regulatory and licensing regimes, subject to the terms of the relevant legislation and any written collaborative arrangements with the province.
6. Information from CBSA documents such as the Form B15, *Casual Goods Accounting Document*, may be provided to a provincial official for the purpose of collecting provincial sales tax on goods imported into the province.
7. Customs information may be provided to provincial conservation authorities regarding the exportation of wildlife from that province where provincial game export permits are required by provincial law. The provision of customs information under authority of this paragraph will ordinarily be made pursuant to a written collaborative arrangement between the province and the CBSA.



AUTHORITY TO DISCLOSE – 107(5)(d)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Manager	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Manager	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Manager	
National Headquarters	Comptrollership	Agency Comptroller Directorate	Director, Manager, or Finance Officer	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(5)(e)

ADMINISTRATION OR ENFORCEMENT OF THE GOODS AND SERVICES TAX BY PROVINCES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (e) an official of a participating province, as defined in subsection 123(1) of the *Excise Tax Act*, or an official of the province of Quebec, if the information relates to the administration or enforcement of Part IX of that Act in that province, solely for that purpose;

SUMMARY

1. Paragraph 107(5)(e) allows officials to disclose customs information to an official of a participating province, or to an official of the province of Quebec, to administer or enforce Part IX – Goods and Services Tax – of the *Excise Tax Act* (ETA).

CONSIDERATIONS

2. The recipient provincial government official must be from the Province of Quebec or of a participating province, as listed in Schedule VIII – Participating Provinces and Applicable Tax Rates – of the *Excise Tax Act*.
3. The participating provinces, pursuant to Schedule VIII of the *Excise Tax Act*, are:
 - British Columbia,
 - New Brunswick,
 - Newfoundland and Labrador
 - Newfoundland offshore area,
 - Nova Scotia
 - Nova Scotia offshore area, and
 - Ontario.
4. The harmonized sales tax (HST) replaced the federal goods and services tax (GST) and the provincial sales tax (PST) in some provinces.
5. Under the authority of paragraph 107(5)(e), customs information may be provided to officials of a province participating in the HST scheme or to the Province of Quebec, provided the information relates to the administration or enforcement of Part IX of the *Excise Tax Act* in that province, but solely for that purpose.



EXAMPLE

6. Information from CBSA documents such as Form B3-3, *Canada Customs Coding Form*, or Form B-2, *Canada Customs – Adjustment Request*, may be provided to an official from the Nova Scotia Department of Finance for the purpose of enforcing Part IX of the ETA on goods imported into its province.

AUTHORITY TO DISCLOSE – 107(5)(e)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Director	
National Headquarters	Programs	Criminal Investigations Division Enforcement and Intelligence Directorate	Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Director, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Director	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Comptrollership	Agency Comptrollers Directorate	Director, Manager, or Finance Officer	
National Headquarters	Corporate Affairs	Recourse Directorate	Manager	
Region	Operations	Trade Services	Manager	
Region	Operations	Intelligence and Enforcement	Manager	
Region	Operations	Criminal Investigations Division	Manager	



107(5)(f)

DEVELOPMENT OR EVALUATION OF FISCAL OR TRADE POLICY OR REMISSION ORDER

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (f) an official solely for the purpose of the formulation or evaluation of fiscal or trade policy or the development of a remission order under an Act of Parliament;

SUMMARY

1. Paragraph 107(5)(f) allows officials to disclose customs information to an official in order to facilitate the development or evaluation of fiscal or trade policy or to develop a remission order.

CONSIDERATIONS

2. The CBSA official must ensure that the information will be used by the recipient solely for the purpose of the formulation or evaluation of fiscal or trade policy, or the development of a remission order under a federal Act of Parliament.
3. Generally the required customs information is requested by a limited number of officials working in the Department of Finance Canada or the Department of Foreign Affairs and International Trade. Occasional requests related to trade policy or the development of remission orders are made by Industry Canada or another department or agency.
4. Officials considering the request should inquire why the information cannot be obtained from Statistics Canada or other public sources, as appropriate.

EXAMPLE

5. This provision would allow for reports and customs documents containing import data and importer information to be provided to the Department of Finance Canada for use in developing a new statute, regulation or policy related to country of origin marking.



AUTHORITY TO DISCLOSE – 107(5)(f)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director*	
National Headquarters	Programs	Other Directorates (except Post-Border Programs)	Any Director **	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager**	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Director, Trade**	
National Headquarters	Operations	Border Operations Directorate	Any Manager**	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor**	Any Director**
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager**	
National Headquarters	Operations	International Region Directorate	Any Manager**	
National Headquarters	Comptrollership	Agency Comptrollers Directorate	Director, Manager, or Finance Officer**	
National Headquarters	Corporate Affairs	Recourse Directorate	Manager**	
Region	Operations	CBSA Program Area	Any Director **	

LEGEND

- * For information relating to the administration or enforcement of the *Special Import Measures Act*.
- ** Excluding information relating to the administration or enforcement of the *Special Import Measures Act*.



107(5)(g)

DEBT OWED TO THE CROWN

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (g) an official solely for the purpose of setting off, against any sum of money that may be due to or payable by Her Majesty in right of Canada, a debt due to
 - (i) Her Majesty in right of Canada, or
 - (ii) Her Majesty in right of a province on account of taxes payable to the province if an agreement exists between Canada and the province under which Canada is authorized to collect taxes on behalf of the province;

SUMMARY

1. Paragraphs 107(5)(g)(i) and (ii) allow for the disclosure of customs information to an official in order to set off a debt owed to the federal or provincial Crown. In the case of the latter, a Tax Collection Agreement must exist that authorizes the federal government to collect taxes on behalf of the province.

CONSIDERATION

2. The federal government has a Tax Collection Agreement with every province except Quebec.

EXAMPLES

3. If an individual owes a debt to the federal Crown under the *Income Tax Act* and the federal Crown is liable to pay the individual a drawback for an imported good, the Canada Revenue Agency is permitted to obtain this information from the CBSA to enable it to offset and apply the refund from the drawback to the debt it is owed by the individual pursuant to subparagraph 107(5)(g)(i).
4. If an individual owes a debt to the Saskatchewan Ministry of Finance under the province's *Income Tax Act* and the CBSA is liable to pay the individual a refund for duties paid on an imported good, the Saskatchewan Ministry of Finance is permitted to obtain this information from the CBSA to enable it to offset and apply the refund to the debt it is owed by the individual pursuant to subparagraph 107(5)(g)(ii).



AUTHORITY TO DISCLOSE – 107(5)(g)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	All Directorates	Any Director	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Director	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Manager	
Region	Operations	CBSA Program Area	Any Director	



107(5)(g.1)

PROVISION OF CUSTOMS INFORMATION TO THE CANADA REVENUE AGENCY

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (g.1) an official of the Canada Revenue Agency solely for a purpose relating to the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act* or the *Income Tax Act*;

SUMMARY

1. Under paragraph 107(5)(g.1), customs information may be provided to an official of the Canada Revenue Agency (CRA) for purposes related to the administration or enforcement of the *Canada Pension Plan*, the *Employment Insurance Act*, the *Excise Act*, the *Excise Act, 2001*, the *Excise Tax Act* or the *Income Tax Act*.

CONSIDERATION

2. The CBSA has a comprehensive information exchange Memorandum of Understanding with the CRA that provides for the disclosure of customs information to the CRA for purposes related to the administration and enforcement of the statutes listed in paragraph 107(5)(g.1).

EXAMPLE

3. The CRA makes a request for customs information relating to a specific importer for the purpose of verifying the importer's compliance with the *Income Tax Act*. The CBSA is permitted to provide this information under paragraph 107(5)(g.1).



AUTHORITY TO DISCLOSE – 107(5)(g.1)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	All Directorates	Any Director	
National Headquarters	Programs	Criminal Investigations Division	Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Director	
Region	Operations	CBSA Program Area	Any Manager	



107(5)(h)

SPECIAL IMPORT MEASURES ACT PROCEEDINGS

LEGISLATION

107(5) Provision of information to certain persons – An official may provide, allow to be provided or provide access to customs information to the following persons:

- (h) counsel, as defined in subsection 84(4) of the *Special Import Measures Act*, in accordance with subsection 84(3) of that Act and subject to subsection 84(3.1) of that Act, except that the word “information” in those subsections is to be read as a reference to the words “customs information;”

SUMMARY

1. Paragraph 107(5)(h) allows officials to disclose customs information to counsel in accordance with subsection 84(3) and subsection 84(3.1) of the *Special Import Measures Act* (SIMA) in order to facilitate SIMA proceedings.
2. The definition of “counsel” under subsection 84(4) of the SIMA includes “*any person, other than a director, servant or employee of the party, who acts in the proceedings on behalf of the party*”.

CONSIDERATIONS

3. The following is to be considered regarding the exercise of this authority and they are all linked to the *Special Import Measures Act*:
 - customs information can only be provided to counsel as that term is defined in subsection 84(3) of the SIMA,
 - disclosure to counsel is in accordance with subsection 84(3) of the SIMA, and
 - disclosure is subject to the limitation outlined in subsection 84(3.1) of the SIMA.
4. Disclosure to counsel under subsection 84(3) of the SIMA

Subsection 84(3) – *Disclosure to counsel* of the SIMA states

Notwithstanding subsection (1), information to which that subsection applies that has been provided to the President in any proceedings under this Act shall, on written request and on payment of the prescribed fee, be disclosed by the President, in the manner and at the time specified by the President, to counsel for any party to those proceedings or to other proceedings under this Act arising out of those proceedings for use, notwithstanding any other Act or law, by that counsel only in those proceedings, subject to any conditions that the President considers reasonably necessary or desirable to ensure that the information will not, without the written consent of the person who submitted it to the President, be disclosed to any person by counsel in any manner that is calculated or likely to make it available to any party to the proceedings or other proceedings, including a party who is represented by that counsel; or any business competitor or rival of any person to whose business or affairs the information relates.



Subsection 84(3) states the President of the CBSA is required to provide customs information received under any SIMA proceedings to counsel for SIMA proceedings, upon written request and payment of a fee. The President has the authority to prescribe certain conditions to ensure the customs information provided will not be disclosed to other parties or business competitors without the written consent of the person who submitted the information to the President.

5. Disclosure Limitation under subsection 84(3.1) of the SIMA

Subsection 84(3.1) – *Limitation* of the SIMA states

The President may not disclose information under subsection (3) if the President is satisfied that the disclosure might result in material harm to the business or affairs of the person who designated the information as confidential under paragraph 85(1)(a).

The President may choose not to disclose customs information if the incumbent believes it might harm the business or affairs of the person who provided the information and designated it as confidential.

EXAMPLE

6. A Canadian manufacturer is participating in an investigation being conducted by the CBSA’s Anti-Dumping and Countervailing Directorate under the *Special Import Measures Act*. The manufacturer’s legal counsel has requested disclosure of an exhibit consisting of customs information relating to the current proceeding. The CBSA may comply with this request pursuant to paragraph 107(5)(h) of the *Customs Act*, subject to the conditions set out in that provision.

AUTHORITY TO DISCLOSE – 107(5)(h)

Location	Branch	May Disclose...	
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Director General



107(5)(i)

PROVISION OF INFORMATION TO HUMAN RESOURCES AND SKILLS DEVELOPMENT CANADA

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (i) an official of the Department of Human Resources and Skills Development solely for the purpose of administering or enforcing the *Employment Insurance Act*, if the information relates to the movement of people into and out of Canada;

SUMMARY

1. Paragraph 107(5)(i) allows for the disclosure of customs information that relates to the movement of people into or out of Canada to an official from the Department of Human Resources and Skills Development Canada (HRSDC) in order to administer or enforce the *Employment Insurance Act*.

CONSIDERATIONS

2. Paragraph 107(5)(i) would allow for the provision of customs information related to travellers coming into or leaving Canada to HRSDC for purposes linked to the verification of employment insurance entitlements.
3. There is a Memorandum of Understanding (MOU) that provides for the disclosure of customs information to Human Resources and Skills Development Canada whereby certain information from the E311 *Declaration Card* is provided by the CBSA to HRSDC to enable the latter to administer and enforce the *Employment Insurance Act*.

EXAMPLE

4. Customs information from the E311 *Declaration Card* relating to the date an individual left Canada and the CBSA's record of when they re-entered Canada may be provided to HRSDC under this authority for purposes related to the administration or enforcement of the *Employment Insurance Act*.



AUTHORITY TO DISCLOSE – 107(5)(i)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Director	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Director	
National Headquarters	Programs	Criminal Investigations Division	Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Director	
Region	Operations	Criminal Investigations Division	Manager	
Region	Operations	Intelligence and Enforcement	Manager	



107(5)(j)

PROVISION OF INFORMATION TO CIC FOR IRPA PURPOSES

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (j) an official of the Department of Citizenship and Immigration solely for the purpose of administering or enforcing the *Immigration and Refugee Protection Act*, if the information relates to the movement of people into and out of Canada;

SUMMARY

1. Paragraph 107(5)(j) allows an official to provide customs information to a Citizenship and Immigration Canada (CIC) official, as long as the information relates to the movement of people into and out of Canada and CIC requests the information to administer or enforce the *Immigration and Refugee Protection Act*.

CONSIDERATIONS

2. Customs information that relates to the movement of people into or out of Canada is captured, for example, on the *E311 Declaration Card*.
3. Border Services Officers may use this authority to spontaneously disclose customs information related to travellers to officials of CIC under the general direction of a Supervisor.

EXAMPLE

4. A Citizenship and Immigration Canada (CIC) Visa Office in Vienna, Austria makes a request for customs information relating to an individual who has applied to immigrate to Canada. The CIC Visa Office requests this information to administer the *Immigration and Refugee Protection Act*. The CBSA is permitted to disclose the requested information under paragraph 107(5)(j).



AUTHORITY TO DISCLOSE – 107(5)(j)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Manager	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Operations	Border Operations Directorate	Any Manager	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Manager	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations		Border Services Officer	Immediate Supervisor
Region	Operations		Regional Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(5)(j.1)

PROVISION OF INFORMATION TO THE CANADIAN FOOD INSPECTION AGENCY

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (j.1) an official of the Canadian Food Inspection Agency for the purpose of administering or enforcing any Act referred to in section 11 of the *Canadian Food Inspection Agency Act* if the information relates to the import, export or in-transit movement of goods into or out of Canada;

SUMMARY

1. This provision permits the CBSA to provide customs information to the Canadian Food Inspection Agency (CFIA) as long as the information relates to the import, export or in-transit movement of goods into or out of Canada and it is needed by the CFIA to administer or enforce any of the Acts listed in section 11 of the *Canadian Food Inspection Agency Act*.

CONSIDERATIONS

2. The Acts listed in section 11 of the *Canadian Food Inspection Agency Act* are:
 - *Agriculture and Agri-Food Administrative Monetary Penalties Act*,
 - *Canada Agricultural Products Act*,
 - *Consumer Packaging and Labelling Act*,
 - *Feeds Act*,
 - *Fertilizers Act*,
 - *Fish Inspection Act*,
 - *Food and Drugs Act*,
 - *Health of Animals Act*,
 - *Meat Inspection Act*,
 - *Plant Breeders' Rights Act*, and
 - *Plant Protection Act and Seeds Act*.

EXAMPLE

3. The CBSA may disclose customs information related to importers of a particular food to the CFIA for the purpose of enabling the CFIA to administer or enforce paragraph 6(1)(a) – *Importation and interprovincial movement of food*, or paragraph 6(3)(a) – *Labelling, etc., of food that is imported or moved interprovincially*, of the *Food and Drugs Act*.



AUTHORITY TO DISCLOSE – 107(5)(j.1)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Border Programs Directorate	Any Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Manager	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Manager, Trade	
National Headquarters	Operations	Border Operations Directorate	Any Manager	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Advisor	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager	
National Headquarters	Operations	International Region Directorate	Any Manager	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
National Headquarters	Corporate Affairs	Recourse Directorate, Appeals Division	Any Official	
Region	Operations		Border Services Officer	Immediate Supervisor
Region	Operations		Regional Intelligence Official	Immediate Supervisor
Region	Operations	Criminal Investigations Division	Investigator	Manager



107(5)(k)

PROVISION OF INFORMATION TO THE FINTRAC

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (k) an official of the Financial Transactions and Reports Analysis Centre of Canada solely for the purpose of administering or enforcing the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*;

SUMMARY

1. This provision permits a CBSA official to disclose customs information collected under the authority of the *Customs Act* or the *Customs Tariff* to an official of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) for the purpose of administering or enforcing the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA).

CONSIDERATIONS

2. Information collected under the *Customs Act* such as information gathered from a secondary customs examination, associated personal search records and information from a Border Services Officer's notes pertaining to the exam may be disclosed to FINTRAC under paragraph 107(5)(k) for a purpose relating to the administration or enforcement of the PCMLTFA.
3. Information collected for the purpose of administering or enforcing the *Customs Act* or the *Customs Tariff* may be disclosed to FINTRAC under paragraph 107(5)(k) of the *Customs Act*. Officials should note that the CBSA also administers the Cross Border Currency Reporting (CBCR) program under Part 2 – *Reporting of Currency and Monetary Instruments* – of the PCMLTFA. In doing so, the CBSA collects the information provided on the currency reporting forms under the authority of Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This information is not collected under the *Customs Act*.
4. Information collected for purposes of Part 2 of the PCMLTFA may only be used or disclosed in accordance with sections 36, 37, 38 and 38.1 of the PCMLTFA.

EXAMPLE

5. At an airport Port of Entry, a CBSA detector dog indicates that a person may be in possession of a controlled substance. Based on the detector dog information and additional routine questioning, a Border Services Officer (BSO) performs a frisk of the person's outer clothing. In doing so, the BSO notices that the person appears to be wearing a body-pack in order to conceal the suspected controlled substance. The BSO then performs a personal search of the person under section 98 of the *Customs Act*. The personal search reveals that the person is "body-packing" \$9,900 in Canadian dollars in unreported currency. As this information was collected using *Customs Act* powers, the information may be disclosed to FINTRAC under paragraph 107(5)(k) of the *Customs Act*.



AUTHORITY TO DISCLOSE – 107(5)(k)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Criminal Investigations Division	Any Manager	
National Headquarters	Programs	Pre-Border Programs Directorate	Manager	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Intelligence Official	Manager
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Corporate Affairs	Recourse Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate Litigation, External Recourse and Complaints Division	Manager	
Regions	Operations		Any Intelligence Official	Immediate Supervisor
Regions	Operations	Criminal Investigations Division	Investigator	Manager



107(5)(l)

ENTITLEMENTS, LIABILITIES OR OBLIGATIONS UNDER THE *CUSTOMS ACT* OR *CUSTOMS TARIFF*

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (l) a person solely for the purpose of determining any entitlement, liability or obligation of the person under this Act or the *Customs Tariff* including the person's entitlement to any refund, relief, drawback or abatement under those Acts;

SUMMARY

1. Under this provision, customs information may be provided to a person if it is going to be used to determine any entitlement, liability or obligation of the person under the *Customs Act* (CA) or the *Customs Tariff* (CT), including their entitlement to any refund, drawback or abatement.

CONSIDERATIONS

2. Importers or their brokers periodically file information on goods that may result in the payment of more taxes or duties than they are liable for. This provision allows an authorized broker to gain access to the importer's customs information to determine whether the appropriate amounts of duties and taxes were paid on imported goods and to file an adjustment to obtain a refund or correct an improper reporting of imported goods.
3. Examples of entitlements include a person's entitlement to any refund, relief, drawback or abatement under the CA or the CT.

EXAMPLE

4. An importer files a request for a summary of all customs information reported on the Form B3-3, *Canada Customs Coding Form*, for the period from June 1, 2009, to June 30, 2010. The importer believes some goods were incorrectly classified and wishes to correct this. The CBSA is permitted to disclose the information under paragraph 107(5)(l).



AUTHORITY TO DISCLOSE – 107(5)(l)

Location	Branch	May Disclose...	
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director
National Headquarters	Programs	Border Programs Directorate	Any Manager
National Headquarters	Programs	Pre-Border Programs Directorate	Any Manager
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Manager
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Manager, Trade
National Headquarters	Corporate Affairs	Recourse Directorate	Any Official
Region	Operations	Trade Services	Any Chief



107(5)(m)

SUBPOENAS OR WARRANTS ISSUED IN CANADA

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (m) any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record in Canada;

SUMMARY

1. Customs information may be provided to any person, if the information is required to comply with a subpoena, warrant, or court order issued by a court of record in Canada.

CONSIDERATIONS

2. This provision provides the authority for the Agency to disclose information in order to comply with a warrant or subpoena. The subpoena, warrant or court order may order the disclosure of customs information to third parties.
3. The subpoena, warrant or order must be delivered to the CBSA for review. Once delivered, it must be handled expeditiously. This requires immediate consultation with a Supervisor and Legal Services.
4. Subpoenas are often issued in civil cases where the CBSA may not be a party.
5. Appropriate CBSA program areas are to be consulted when the customs information in question relates to the *Special Import Measures Act*, Advance Passenger Information/Passenger Name Record, or the origin or valuation of goods.
6. There may be reasons the CBSA may choose not to comply with a court order if doing so will put a confidential source at risk, compromise an investigation or the information may involve the CBSA in contractual disputes or in family law matters. If the Minister of Public Safety and Emergency Preparedness (the Minister) elects not to comply, the Minister may appeal to the Court of Appeal of the Province or the Federal Court of Appeal in which the subpoena or warrant was made pursuant to subsection 107(12) of the *Customs Act*. Subsections 107(12) to (14) provides a framework for the appeal of court orders.
7. With respect to requests for customs information for use in an investigation of an offence or a prosecution that seek information that tends to reveal details of a person's lifestyle or personal choices, i.e. information falling within an individual's biographical core of personal information, CBSA officials should consult the Information Sharing Unit prior to disclosure. Such consultation is required even where the information has been lawfully collected by the Agency for the purposes of administering or enforcing the *Customs Act* or the *Customs Tariff*. Where there is a substantial likelihood that a person's reasonable expectation of privacy in certain information may outweigh the state's interest in investigating or prosecuting an offence, the CBSA will advise the requesting body that it should obtain a warrant or production order to obtain the requested information.



8. The provision of customs information under this authority is broader than criminal matters and can include court orders from family court or lawsuits or orders from other courts of record in Canada such as the Canadian International Trade Tribunal.
9. A court of record includes, but is not limited to, family courts, municipal courts, or a Tribunal at the Immigration and Refugee Board of Canada (IRB) such as the Immigration Appeal Division.

EXAMPLES

10. A police force wishes to obtain biographical core of personal information on an individual whom they are investigating for drug trafficking. They intend to use the information in a criminal proceeding against the individual and have secured a court order. A copy of the court order was submitted with the police force’s information request. Legal Services reviewed the court order and determined it was valid. The CBSA may comply with the request and disclose the information sought under paragraph 107(5)(m).
11. The Immigration Appeal Division of the IRB orders the disclosure of customs information for their use for the purpose of administering the IRPA pursuant to their "court of record" authority derived from the *Inquiries Act* and the application of section 165 and subsection 174(2) of the IRPA. The CBSA may comply with the order under this authority.

AUTHORITY TO DISCLOSE – 107(5)(m)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	All Directorates (except Post-Border Programs)	Any Director General	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Director	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	CBSA Program Area	Any Chief or Manager	
Region	Operations		Border Services Officer	Immediate Supervisor



107(5)(n)

SUBPOENAS AND WARRANTS ISSUED FROM OUTSIDE OF CANADA

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (m) any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record outside of Canada, solely for the purposes of criminal proceedings;

SUMMARY

1. This authority permits the CBSA to disclose customs information pursuant to a subpoena, warrant or an order by a foreign court of record where the information is to be used solely for the purposes of a criminal proceeding.

CONSIDERATIONS

2. Subpoenas from foreign jurisdictions are to be discussed with Legal Services without delay.
3. These requests are routed through a Mutual Legal Assistance Treaty (MLAT). The procedure is the requesting body submits the MLAT request to the International Assistance Group within the Department of Justice Canada. The latter will then contact the Legal Services Unit (LSU) within the CBSA to coordinate the response. The LSU will contact the appropriate CBSA program area at National Headquarters for documents or records.
4. This authority is permissive and the CBSA may choose not to respond to a court order if it is of the view, for example, that the foreign criminal court did not respect due process or if compliance may be outweighed by privacy considerations.
5. With respect to requests for customs information for use in an investigation of an offence or a prosecution that seek information that tends to reveal details of a person's lifestyle or personal choices, i.e. information falling within an individual's biographical core of personal information, CBSA officials should consult the Information Sharing Unit prior to disclosure. Such consultation is required even where the information has been lawfully collected by the Agency for the purposes of administering or enforcing the *Customs Act* or the *Customs Tariff*. Where there is a substantial likelihood that a person's reasonable expectation of privacy in certain information may outweigh the state's interest in investigating or prosecuting an offence, the CBSA will advise the requesting body that it should obtain a warrant or production order to obtain the requested information.

EXAMPLE

6. A criminal trial is being held in the United States and counsel requires customs information relating to the dates an individual entered and left Canada in addition to biographical core of personal information about the individual, i.e. details of their banking records and criminal history. The U.S. counsel obtains a subpoena and presents it to the CBSA in support of its request. The CBSA, in consultation with Legal Services, will review the request to determine whether to disclose the information sought under paragraph 107(5)(n).



AUTHORITY TO DISCLOSE – 107(5)(n)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Director General	
National Headquarters	Programs	Border Programs Directorate	Director General	
National Headquarters	Programs	Pre-Border Programs Directorate	Director General	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager	
National Headquarters	Operations	Border Operations Directorate	Any Director	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Director	
National Headquarters	Operations	International Region Directorate	Any Director	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Manager	
Region	Operations	CBSA Program Area	Any Chief or Manager	
Region	Operations		Border Services Officer	Immediate Supervisor



107(5)(o)

CREATION OF REGULATIONS VIA ORDER-IN-COUNCIL

LEGISLATION

107(5) – Provision of information to certain persons

An official may provide, allow to be provided or provide access to customs information to the following persons:

- (o) prescribed persons or classes of persons, in prescribed circumstances for prescribed purposes, solely for those purposes.

CONSIDERATIONS

1. Paragraph 107(5)(o) provides for the creation of regulations to authorize the use or disclosure of customs information in circumstances not contemplated when section 107 came into force or when revisions to section 107 were announced.
2. Proposed regulations cannot be used to create additional authority where Parliament has already outlined an authority. For example, as there are specific authorities to share information with Citizenship and Immigration Canada, a regulation could not be used to create additional authority; rather, Parliament would have to amend the existing, specific authorities.

EXAMPLE

3. No regulations have been created to date. Proposals for the creation of regulations will be assessed on a case-by-case basis.



AUTHORITY TO DISCLOSE – 107(5)(o)

Location	Branch	May Disclose...	
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Director General
National Headquarters	Programs	Border Programs Directorate	Director General
National Headquarters	Programs	Pre-Border Programs Directorate	Director General
National Headquarters	Programs	Enforcement and Intelligence Directorate	Director General
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Director General
National Headquarters	Operations	Border Operations Directorate	Director General
National Headquarters	Operations	National Border Operations Centre	Director General
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Director General
National Headquarters	Operations	International Region Directorate	Director General
National Headquarters	Corporate Affairs	Recourse Directorate	Director General



107(6) and 107(7)

PROVISION OF INFORMATION BY MINISTER AND NOTIFICATION OF PRIVACY COMMISSIONER

LEGISLATION

107(6) – Provision of customs information by Minister

The Minister may provide, allow to be provided or provide access to customs information to any person if

- (a) the information may not otherwise be provided, allowed to be provided or provided access to under this section and in the Minister's opinion, the public interest in providing the information clearly outweighs any invasion of privacy, or any material financial loss or prejudice to the competitive position of the person to whom the information relates, that could result from the provision of the information; or
- (b) in the Minister's opinion, providing the information would clearly benefit the individual to whom the information relates.

107(7) – Notification of Privacy Commissioner

If customs information provided under subsection (6) is personal information within the meaning of section 3 of the *Privacy Act*, the Minister must notify, in writing, the Privacy Commissioner appointed under section 53 of that Act of any provision of personal information under that subsection before its provision if reasonably practicable or, in any other case, without delay after the provision.

The Privacy Commissioner may, if the Privacy Commissioner considers it appropriate, notify the individual to whom the information relates of the provision of the information.

SUMMARY

1. Paragraphs 107(6)(a) and (b) provide the Minister of Public Safety and Emergency Preparedness (the Minister) with the authority to disclose customs information to anyone if it is deemed to be in the public's interest or would benefit the individual to whom it relates.
2. If the proposed disclosure of customs information under paragraphs 107(6)(a) or (b) would be personal information within the meaning of the *Privacy Act*, the Minister must notify the Privacy Commissioner of Canada prior to the disclosure or, if that is not possible, immediately thereafter in writing pursuant to subsection 107(7).

CONSIDERATIONS

3. The Minister's discretionary authority to disclose customs information under subsection 107(6) will be exercised on a case-by-case basis. The Minister must be satisfied no other provision exists within the framework of section 107 to permit the disclosure of customs information **and** the facts and circumstances supporting disclosure are extraordinary such that the public's interest in disclosing the information would clearly outweigh any invasion of privacy, or any material financial loss or prejudice to the competitive position of the person to whom the information relates, that could result from the provision of the information, or providing the information would clearly benefit the individual to whom it relates.



4. Subsection 107(6) should not be used to circumvent the restrictions of existing provisions of section 107 of the *Customs Act*.
5. After receiving notification from the Minister regarding the proposed disclosure of customs information that includes personal information, the Privacy Commissioner of Canada may, under subsection 107(7), notify the individual to whom the information relates. The Privacy Commissioner has the authority under subsection 34(1) of the *Privacy Act* to initiate an investigation of the proposed disclosure.
6. Section 3 of the *Privacy Act* defines personal information as “information about an identifiable individual that is recorded in any form”. Personal information includes, but is not limited to, information relating to the race, national or ethnic origin, colour, religion, age or marital status of an individual; information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved; any identifying number assigned to the individual; the address, fingerprints or blood type, personal opinions or views of the individual; correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence.

**AUTHORITY TO DISCLOSE – 107(6)/
AUTHORITY TO NOTIFY PRIVACY COMMISSIONER – 107(7)**

*** The matrix applies to subsections 107(6) and 107(7)**

Location	Branch / Office	May Disclose...
National Headquarters	President’s Office	President
National Headquarters	Executive Vice-President’s Office	Executive Vice-President
National Headquarters	Comptrollership	Vice-President
National Headquarters	Corporate Affairs	Vice-President
National Headquarters	Human Resources	Vice-President
National Headquarters	Information, Science and Technology	Vice-President
National Headquarters	Operations	Vice-President
National Headquarters	Programs	Vice-President



107(8)

PROVIDING CUSTOMS INFORMATION TO OTHER GOVERNMENTS

LEGISLATION

107(8) – Providing customs information to other governments

Customs information may be provided by any person to an official or any other person employed by or representing the government of a foreign state, an international organization established by the governments of states, a community of states, or an institution of any such government or organization, in accordance with an international convention, agreement or other written arrangement between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement.

SUMMARY

1. This provision permits the CBSA to provide customs information to a foreign official of any of the entities listed in subsection 107(8) as long as it is in accordance with an international convention, agreement or other written arrangement between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement. The written collaborative arrangement could be an information sharing Memorandum of Understanding, a Customs Mutual Assistance Agreement, or other related instrument.

CONSIDERATIONS

2. Subsection 107(8) permits the CBSA to provide customs information to foreign participants as long as it is in accordance with the terms and conditions of an international convention, agreement, or other written collaborative arrangement between the Government of Canada or an institution of the Government of Canada and the following participants:
 - the government of a foreign state;
 - an international organization established by the government of states;
 - a community of states; or
 - an institution of any such government or organization.
3. The written collaborative arrangement does not have to deal exclusively with the exchange of customs information, but it must allow for the disclosure or exchange of customs information.

EXAMPLES

4. The CBSA has written collaborative arrangements with the United States Customs and Border Protection for purposes related to combating customs fraud, the collection and remittance of NEXUS fees and the sharing of information regarding the Enhanced Driver's License and Enhanced Identification Card.
5. Canada has a Customs Mutual Assistance Agreement (CMAA) with the United Kingdom of Great Britain and Northern Ireland. The CMAA allows for the exchange of customs information, intelligence, and documents that assists each country in the prevention and investigation of customs offenses.



6. The U.S. government is investigating a company that is importing large machinery equipment into the United States via Canada. Assistance from the CBSA’s Criminal Investigation Unit at Headquarters substantiated the company was importing the machinery as one piece of equipment into Canada and then disassembling the equipment into two parts and exporting it to the United States as pieces of equipment therefore using a different tariff classification and avoiding paying duties at the time of import to the United States. Under the Canada–U.S. CMAA, the CBSA may disclose this customs information to the United States pursuant to subsection 107(8).

AUTHORITY TO DISCLOSE – 107(8)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director *	
National Headquarters	Programs	Border Programs Directorate	Any Director **	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Director **	
National Headquarters	Programs	Enforcement and Intelligence Directorate	Manager**	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Manager, Trade**	
National Headquarters	Operations	Border Operations Directorate	Any Director **	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Office**	Any Director**
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager **	
National Headquarters	Operations	International Region Directorate	Any Director **	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Director **	
Region	Operations	CBSA Program Area	Any Manager **	

LEGEND

- * For information relating to the administration or enforcement of the *Special Import Measures Act*
- ** Excluding information relating to the administration or enforcement of the *Special Import Measures Act*



107(9)

DISCLOSURE OF CUSTOMS INFORMATION TO CERTAIN PERSONS

LEGISLATION

107(9) – Disclosure of customs information to certain persons

An official may provide, allow to be provided or provide access to customs information relating to a particular person:

- (a) to that particular person;
- (b) to a person authorized to transact business under this Act or the *Customs Tariff* as that particular person's agent, at the request of the particular person and on receipt of such fee, if any, as is prescribed; and
- (c) with the consent of that particular person, to any other person.

SUMMARY

1. Bearing in mind that the definition of “person” under the *Customs Act* includes, but is not limited to, an individual or a business, subsection 107(9) lists three ways an official is authorized to provide access to customs information to an individual or business:
 - a. to the person himself/herself;
 - b. to that person's authorized agent or representative; or
 - c. with the consent of the person, to another person.

CONSIDERATIONS

2. Under paragraph 107(9)(a), a CBSA official may disclose customs information directly to the individual to whom the information relates as long as the individual has satisfied the official of their identity.
3. The disclosure of customs information to a person's authorized representative under paragraph 107(9)(b), or another person under paragraph 107(9)(c), requires that the individual provide consent to both parties. This consent should be written in most cases; however, in some circumstances the CBSA is prepared to consider disclosure if an individual is physically present with their authorized representative or other person and has provided their verbal consent. For documentation purposes, written consent is always preferable.



4. Although the CBSA does not have a prescribed consent form, an individual who chooses to provide written consent to an authorized representative or another person to gain access to their customs information should provide the following information in their letter of consent:
 - a. Information about the individual providing consent
 - i. Their first name and surname (or company name).
 - ii. Residential / business address.
 - iii. Home and / or business telephone number.
 - iv. Client identifier (e.g. Business Number, Importer/Exporter Account Number, Carrier Code, Warehouse Operator Locator Code, Account Security Number, etc.)
 - b. Information about the authorized representative receiving consent under 107(9)(b)
 - i. Their first name and surname (or company name).
 - ii. Business address.
 - iii. Business telephone number.
 - iv. Client identifier (e.g. Business Number, Importer/Exporter Account Number, Carrier Code, Warehouse Operator Locator Code, Account Security Number, etc.)
 - c. Information about the “other person” (other than an authorized representative) receiving consent under 107(9)(c)
 - i. Their first name and surname.
 - ii. Home address.
 - iii. Residential telephone number.
 - iv. Business telephone number.
 - d. Nature of customs information to be disclosed
 - i. The person giving consent is to provide a specific description of the customs information to be disclosed to the authorized representative or another person.
 - ii. The person giving consent is to provide a beginning date and an end date that relates to the period of disclosure.
 - e. Signature of person providing consent
 - i. The person providing consent is to sign the letter and provide the authorized representative or other person with the original version of the letter.
5. It is acceptable for the authorized representative or another person to submit a photocopy of the letter of consent to the CBSA with its request. If the CBSA has reason to question the authenticity of the letter of consent, it may ask the authorized representative or other person to submit the original signed letter of consent. If a letter of consent is found to be missing pertinent information, the CBSA will ask the requestor to obtain the missing information and re-submit the letter with its request.
6. Officials listed in the Authority to Disclose matrix below, including Border Services Officers, under the direction of an immediate Supervisor, may disclose customs information that relates to an individual or corporation to another person or their authorized representative, other than sensitive information related to an on-going investigation or CBSA initiated action such as an intelligence or targeting activity against the individual or corporation.
7. Where a member of the public requests access to customs information about a particular traveller or importer, that information cannot be disclosed without the written consent of the traveller or importer, about whom the information relates, pursuant to paragraph 107(9)(c) of the *Customs Act*. In the absence of such consent, the requestor should be informed of the reason why their request was declined and advised, as an alternative, they may



make a request under the *Access to Information Act* or the *Privacy Act*, whichever is applicable. Requests under both statutes are reviewed by the CBSA's Access to Information and Privacy (ATIP) Division, Corporate Secretariat Directorate. The ATIP Division will determine if the information requested can be disclosed under the *Access to Information Act* or the *Privacy Act*. The impacted CBSA program area will provide the ATIP Division with assistance in determining what information is available and may be provided.

EXAMPLES

8. An importer is interesting in obtaining customs information related to all goods her company imported between January 1, 2008, and December 31, 2009. She is the sole owner of the company. In her written request, she has satisfied the CBSA of her identity. The CBSA may comply with her request under paragraph 107(9)(a) of the *Customs Act*.
9. Robert is the authorized customs broker for TML Fine Foods (TML). He is interested in obtaining customs information on all items imported by TML from April 1, 2009, to March 30, 2010. He needs to file an adjustment and wants to make sure he has the most current information. As part of his request, he included a letter of consent from one of the owners of TML that confirmed he is the authorized representative for the company. The CBSA may consider his request and disclose the information sought under paragraph 107(9)(b) of the *Customs Act*.
10. Jean-Guy is interested in obtaining customs information on all new vehicles imported by RF Motors from February 1, 2009, to January 31, 2010. In order to gain access to this information, he needs to obtain the written consent of RF Motors. Once this consent is secured and filed with his request, the CBSA may consider disclosure of the information sought under paragraph 107(9)(c) of the *Customs Act*.
11. A Member of Parliament (MP) contacts the CBSA to assist a constituent in resolving a complaint. The MP will need to submit a letter of written consent from the constituent authorizing the MP to gain access to his or her customs information before the CBSA can consider the request pursuant to paragraph 107(9)(c).



AUTHORITY TO DISCLOSE – 107(9)

Location	Branch	May Disclose...		With Approval of...
National Headquarters	Programs	Anti-Dumping and Countervailing Directorate	Any Director *	
National Headquarters	Programs	Border Programs Directorate	Any Director**	
National Headquarters	Programs	Pre-Border Programs Directorate	Any Officer **	Immediate Supervisor
National Headquarters	Programs	Enforcement and Intelligence Directorate	Any Director**	
National Headquarters	Programs	Trade Programs and CBSA Assessment and Revenue Management Directorate	Any Director, Trade	
National Headquarters	Information, Science and Technology	Science and Engineering Directorate	Any Director**	
National Headquarters	Operations	Border Operations Directorate	Any Director**	
National Headquarters	Operations	National Border Operations Centre	Any Senior Program Officer**	Any Director
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Any Manager**	
National Headquarters	Operations	International Region Directorate	Any Director**	
National Headquarters	Comptrollership	Agency Comptroller Directorate	Director** Manager** or Finance Officer**	
National Headquarters	Corporate Affairs	Recourse Directorate	Any Official**	
Region	Operations		Border Services Officer**	Immediate Supervisor
Region	Operations		Trade Services Officer	Immediate Supervisor or Manager

LEGEND

- * For information relating to the administration or enforcement of the *Special Import Measures Act*
- ** Excluding information relating to the administration or enforcement of the *Special Import Measures Act*



107(10)

EVIDENCE

LEGISLATION

107(10) - Evidence

Despite any other Act of Parliament or other law, no official may be required, in connection with any legal proceedings, to give or produce evidence relating to any customs information

SUMMARY

1. Under subsection 107(10), a CBSA official is not compelled to give or produce evidence relating to any customs information despite any other Act of Parliament or other law or any legal proceedings.

CONSIDERATIONS

2. While several subsections and paragraphs of section 107 allow for the provision of customs information for, or relating to, certain legal proceedings (paragraphs 107(4)(a), 107(4)(b), 107(4)(f), 107(5)(h), 107(5)(m), 107(5)(n), and section 11), and also to the police for some investigative purposes [see paragraph 107(5)(a)], subsection 107(10) provides that, despite any other Act of Parliament or other law, no official may be required to give or produce evidence relating to customs information in connection with any legal proceeding.
3. This clarifies that section 107 of the *Customs Act* will have priority over other legislation when considering or processing requests for customs information. Court Orders cannot be ignored on the basis of subsection 107(10). Occasionally, a court may order the disclosure of customs information that, in the view of the CBSA, is either inappropriate or not something that the law permits. Subsections 107(12), (13) and (14) provide an appeal process to be followed in such cases that could stay or amend the order.
4. While subsection 107(10) protects officials from being compelled to disclose customs information, officials are instructed to immediately consult with their supervisor or manager and Legal Services whenever a court order to produce or disclose customs information is served on the CBSA.
5. This authority will be exercised on a case-by-case basis.

EXAMPLE

6. Health Canada has commenced legal proceedings against a company for selling a prohibited drug in contravention of the *Food and Drugs Act*. They filed a request for customs information relating to all importations of the drug by the company covering a three year period. Although the CBSA has the authority under subparagraph 107(5)(c)(i) to comply with the request, it has the discretionary authority not to disclose the requested information under subsection 107(10).



107(11)

MEASURES TO PROTECT CUSTOMS INFORMATION

LEGISLATION

107(11) – Measures to protect customs information

The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of a specified person may order any measure that is necessary to ensure that customs information is not used or provided to any person for any purpose not relating to that proceeding, including:

- (a) holding a hearing in camera;
- (b) banning the publication of the information;
- (c) concealing the identity of the person to whom the information relates; and
- (d) sealing the records of the proceeding.

SUMMARY

1. Subsection 107(11) provides that the person presiding at a legal proceeding relating to the supervision, evaluation, or discipline of a specified person may order any measure that is necessary to ensure that customs information is not used or provided for any purpose not relating to that proceeding including:
 - (a) holding a hearing in camera;
 - (b) banning the publication of the customs information;
 - (c) concealing the identity of the person to whom the customs information relates; and
 - (d) sealing the records of the proceeding.

CONSIDERATIONS

2. These protective measures may be appropriate, for example, when customs information about persons other than the specified person is considered for disclosure in a legal proceeding.
3. The decision as to whether a legal proceeding will be held regarding a specified person's supervision, evaluation or disciplinary hearing will be determined by the Security and Professional Standards Directorate in consultation with Legal Services and appropriate Offices of Primary Interests.

EXAMPLE

4. The person presiding at a legal proceeding concerning the disciplining of a CBSA employee for importing stolen car parts is considering disclosing the name of the importer who is the recipient of the stolen goods. Under subsection 107(11), the person presiding at the proceeding may choose to hold the hearing in camera to protect the identity of the importer.



107(12) to 107(14)

APPEAL FROM ORDER TO DISCLOSE CUSTOMS INFORMATION, DISPOSITION OF APPEAL, AND STAY

LEGISLATION

107(12) – Appeal from order to disclose customs information

An order or direction that is made in the course of or in connection with any legal proceeding and that requires an official to give or produce evidence relating to customs information may, by notice served on all interested parties, be immediately appealed by the Minister or the Minister of National Revenue, as the case may be, or by the person against whom the order or direction is made:

- (a) to the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada;
- (b) to the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

107(13) – Disposition of appeal

The court to which the appeal is taken may allow the appeal and quash the order or direction appealed from or may dismiss the appeal. The rules of practice and procedure from time to time governing appeals to the courts apply, with any modifications that the circumstances require, in respect of the appeal.

107(14) – Stay

An appeal stays the operation of the order or direction appealed from until judgment in the appeal is pronounced.

SUMMARY

1. Occasionally, a court may order the disclosure of customs information that, in the view of the CBSA, is either inappropriate or not something that the law permits. Subsections 107(12), (13) and (14) provide an appeal process to be followed in such cases that could stay or amend the order.

CONSIDERATIONS

2. The CBSA may choose to appeal an order if it could potentially harm an ongoing investigation or trade interests or if it is unable to practically produce the requested customs information.
3. Section 107(14) allows for a stay of a court order until a judgement in an appeal is pronounced.



EXAMPLE

- The CBSA receives a court order from a provincial court to produce customs information relating to an individual for a divorce proceeding. Upon consulting internally with various stakeholders, it was found there was an existing CBSA initiated activity against the individual and disclosure of his/her customs information pursuant to the court order would compromise the investigation. The Minister may elect to appeal the court order through the authority of subsection 107(12).

AUTHORITY TO APPEAL ORDER TO DISCLOSE CUSTOMS INFORMATION – 107(12)

Location	Branch	May Appeal...	
National Headquarters	Operations	Enforcement and Intelligence Operations Directorate	Director General
National Headquarters	Operations	Intelligence Operations and Analysis Division Enforcement and Intelligence Operations Directorate	Director
National Headquarters	Operations	Counter-Proliferation Section Intelligence Operations and Analysis Division Enforcement and Intelligence Operations Directorate	Manager
National Headquarters	Programs	Enforcement and Intelligence Directorate	Director General
National Headquarters	Corporate Affairs	Recourse Directorate	Director General, Director and Manager
Regions	Operations		Any Regional Director General



107(15)

REGULATIONS

LEGISLATION

107(15) – Regulations

The Governor in Council may make regulations prescribing the circumstances in which fees may be charged for providing or providing access to customs information or making or certifying copies of information and the amount of any such fees.

SUMMARY

1. Under the authority of subsection 107(15), Cabinet may make regulations prescribing the circumstances in which fees may be charged for providing customs information or making copies of information and the amount of any such fees.

EXAMPLE

2. The Governor in Council exercised this provision to create the *Regulations prescribing the circumstances in which fees may be charged for making or certifying copies of documents pursuant to section 108 of the Customs Act and the amount of such fees (Fees for Documents Regulations)*. It became effective on October 16, 1986. At that time, section 108 of the *Customs Act* was the authority to disclose customs information. It was replaced by section 107.

RELATED

Fees for Records Regulations (SOR/86-1028)
Memorandum D1-3-1, *Fees for Information and Records*.



160(1)

GENERAL OFFENCE AND PUNISHMENT

LEGISLATION

General offence and punishment

- 160.(1)** Every person who contravenes section 11, 12, 13, 15 or 16, subsection 20(1), section 31 or 40, subsection 43(2), 95(1) or (3), 103(3) or 107(2), or section 153, 155, 156 or 159.1, or commits an offence under section 159 or knowingly contravenes an order referred to in subsection 107(11):
- (a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment; or
 - (b) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment.

SUMMARY

1. There are a range of monetary and/or imprisonment penalties for any person who discloses or uses customs information that is not authorized by section 107 of the *Customs Act*, depending on the severity of the contravention which may lead to a summary or indictable conviction.

CONSIDERATION

2. The Security and Professional Standards Directorate will lead the investigation of these cases and have the authority to access customs information relating to the alleged offence(s) committed by the individual or individuals under review. Aside from the monetary and/or imprisonment penalties prescribed in subsection 160.(1), CBSA officials may be subject to additional disciplinary measures if convicted.

EXAMPLE

3. Each situation will be treated on a case-by-case basis.



APPENDIX A

TERMINOLOGY

Access

- The opportunity to obtain information or view records held by a government institution.

Administer

- To interpret and apply the provisions of an Act or Regulation and make a recommendation to an Office of Primary Interest.

Classes of persons

- A group of individuals who perform similar functions and/or have similar authorities within an organization and have been formally designated as such by their organization.

Customs information

- This is information of any kind and in any form that:
 - (a) relates to one or more persons and is obtained by or on behalf of:
 - (i) the Minister of Public Safety and Emergency Preparedness for the purposes of the administration of the *Customs Act* or the *Customs Tariff*; or
 - (ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1 of the *Customs Act*;
 - (b) is prepared from information described in paragraph (a).

If information is collected for the purpose of administering or enforcing the *Customs Act* or the *Customs Tariff*, that information is considered “customs information.”

Defence of Canada [paragraph 107(4)(h)]

- Relates to efforts to safeguard the national security or defence of Canada (related to the definition of National Security).

Disclose

- To provide or release information in any form (hard copy, electronic, video).

Enforce

- This is the *final act or action* of carrying out the provisions of an Act or Regulation, such as physically deporting or detaining an individual or referring them for a secondary examination, levying a monetary penalty, or reassessing their B3 return, etc. For example, a CBSA official asks Legal Services for advice on whether a requestor should obtain a court order or subpoena relating to the disclosure of biographical core of personal information. Legal Services recommends the requestor obtain a subpoena. The CBSA official who is the recipient of the advice has the discretion to accept or reject the recommendation from Legal Services. The official decides to accept the recommendation and asks the requestor to obtain a subpoena. The official’s action is considered an enforcement action.

Federal Government Institution

- According to the definition of government institution in section 3 of the *Privacy Act*, “government institution” means any department of ministry of state of the Government of Canada, or any body or office, listed in the schedule, and any parent Crown corporation, and any wholly owned subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*.



APPENDIX A (cont'd)

TERMINOLOGY

Imminent Threat

- This is a credible event or action with fatal repercussions that is likely to happen very soon (within 24 hours) and warrants an immediate response and mitigation. It is linked to paragraphs 107(4)(e) and (h) of the *Customs Act*.

Information

- This means data held in any form, such as hardcopies (paper), electronic databases, video recordings, audio recordings, and electronic files on storage devices such as disks or memory sticks.

Investigative Agency or Body

- This is a government agency or body granted the designation of an “Investigative Body” under paragraph 8(2)(e) of the *Privacy Act* and listed in [Schedule II, III or IV of the Privacy Regulations](#), or under paragraph 16(1)(a) of the [Access to Information Act](#) and listed in *Schedule I of the Access to Information Regulations*.

National Security [paragraph 107(4)(h)]

- National security threats are those that imperil the safety or security of Canadians or its government. It is related to threats such as terrorism, the proliferation of weapons of mass destruction, foreign espionage, natural disasters, critical infrastructure vulnerability (such as cyber-attacks), and pandemics (such as SARS or the H1N1 flu virus).

Peace Officer

- This is any public sector employee or agent whose position is authorized by federal or provincial law to have duties and responsibilities of a peace officer. A non-exhaustive list of “peace officers” can be found in section 2 of the *Criminal Code*. The list includes police officers, a warden, justice of the peace, a member of the *Correctional Service of Canada* who is designated as a peace officer pursuant to Part I of the *Corrections and Conditional Release Act*, an officer within the meaning of the *Customs Act*, the *Excise Act* or the *Excise Act, 2001*, or a person having the powers of such an officer, when performing any duty in the administration of any of those Acts, and an officer authorized under subsection 138(1) of the *Immigration and Refugee Protection Act*.

Person

- This means an individual, a partnership, a corporation, a trust, the estate of a deceased individual or a body that is a society, a union, a club, an association, a commission or other organization of any kind in accordance with section 2.(1) of the *Customs Act*. Throughout these policy guidelines, the term “person” is used as it is defined in subsection 2.(1) of the *Customs Act*.

Personal Information

- Under the *Privacy Act*, section 3, personal information refers to information about an identifiable individual that is recorded in any form including:
 - (a) information relating to the race, national or ethnic origin, colour, religion, age or marital status of the individual,
 - (b) information relating to the education or the medical, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
 - (c) any identifying number, symbol or other particular assigned to the individual,
 - (d) the address, fingerprints or blood type of the individual,



APPENDIX A (cont'd)

TERMINOLOGY

- (e) the personal opinions or views of the individual except where they are about another individual or about a proposal for a grant, an award or a prize to be made to another individual by a government institution or a part of a government institution specified in the regulations,
- (f) correspondence sent to a government institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to such correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual,
- (h) the views or opinions of another individual about a proposal for a grant, an award or a prize to be made to the individual by an institution or a part of an institution referred to in paragraph (e), but excluding the name of the other individual where it appears with the views or opinions of the other individual, and
- (i) the name of the individual where it appears with other personal information relating to the individual or where the disclosure of the name itself would reveal information about the individual.

Personal information does **not** include:

- (j) information about an individual who is or was an officer or employee of a government institution that relates to the position or functions of the individual including,
 - (i) the fact that the individual is or was an officer or employee of the government institution,
 - (ii) the title, business address and telephone number of the individual,
 - (iii) the classification, salary range and responsibilities of the position held by the individual,
 - (iv) the name of the individual on a document prepared by the individual in the course of employment, and
 - (v) the personal opinions or views of the individual given in the course of employment,
- (k) information about an individual who is or was performing services under contract for a government institution that relates to the services performed, including the terms of the contract, the name of the individual and the opinions or views of the individual given in the course of the performance of those services,
- (l) information relating to any discretionary benefit of a financial nature, including the granting of a licence or permit, conferred on an individual, including the name of the individual and the exact nature of the benefit, and
- (m) information about an individual who has been dead for more than twenty years;

Police

- Any body officially designated as a police force such as the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP), the Sûreté du Québec, and municipal/county police detachments.

Privacy Impact Assessment (PIA)

- A PIA refers to a comprehensive questionnaire established by the Treasury Board of Canada Secretariat (TBS) to assist Government of Canada institutions in identifying the privacy risks associated with program and service delivery initiatives that involve the collection, use or disclosure of personal information. A PIA helps institutions to ensure that appropriate steps are taken to mitigate any privacy-related risks prior to the commencement of an information collection program or activity.



APPENDIX A (cont'd)

TERMINOLOGY

Proactive / Spontaneous disclosure

- This refers to the proactive disclosure of customs or personal information. It is a highly discretionary authority that is exercised on a case-by-case basis depending on the facts of each situation. Urgent and imminent situations that threaten the life, health or safety of an individual, the national security or defence of Canada or the environment in Canada or any other country are examples where this authority *may* be applied.

Provide

- This refers to releasing or giving information to an institution or individual or making it available to them. The terms disclose and provide are used interchangeably in these policy guidelines.

Specified Person

- This refers to a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty in right of Canada to carry out the provisions of the *Customs Act*, the *Customs Tariff* or the *Special Import Measures Act* or Part 2 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. It includes a person who was formerly so employed or engaged or who formerly occupied such a position.

Third Party Information

- This is information regarding a person (or persons) who is not the primary person of interest in an enquiry, but whose name and other personal or customs information is included in the primary person's file or documentation.

Written Collaborative Arrangement (WCA)

- This is a written arrangement between two or more participants that outlines the terms and conditions under which customs or personal information may be shared in both directions. By way of contrast, an "information collection arrangement" is one in which one participant is disclosing information while the other is collecting it. A WCA can be a Memorandum of Understanding, Statement of Mutual Understanding, Letter of Understanding, Letter of Intent, Letter of Amendment, or an international treaty or convention ratified by Canada. For the most part, WCAs are non-legally binding instruments. However, some are legally binding such as Customs Mutual Assistance Agreements (CMAAs), Mutual Legal Assistance Treaties (MLATs) or trade agreements such as the *General Agreement on Tariffs and Trade (GATT)*. Since the title of the instrument does not determine whether it is legally binding or not, consultation with Legal Services or legal experts in the Department of Foreign Affairs is recommended.



APPENDIX B

WHERE TO DIRECT REQUESTS FOR CUSTOMS INFORMATION

REQUESTOR	WHERE TO DIRECT THE REQUEST
General requests for statistical trade data and requests from the public for customs-related transaction data	International Trade Division, Statistics Canada 120 Parkdale Avenue Ottawa, Ontario K1A 0T6 1-800-263-1136 – General enquires
Requests from importers, exporters, or their authorized representatives for customs-related transaction data.	<p>If related to a CBSA audit or enquiry concerning the importer/exporter:</p> <p>CBSA Regional Office</p> <p>If requesting a FIRM report of the importer’s account: Trade Services Trade Compliance Division CBSA 2588 27th Street NE Calgary, Alberta T1Y 7G1</p>
Requests from other federal government departments and agencies for customs information.	<p>If related to national data: Post-Border Operations Division, Border Operations Directorate, Operations Branch</p> <p>If related to regional data: Regional Director General</p> <p>If related to an on-going investigation by other government institutions and there is a written collaborative arrangement with the other government department or agency: Directors or Managers of Criminal Investigations and Intelligence in the Region</p>
Requests for customs information from provincial governments.	<p>If related to collection of PST or GST/HST by the CBSA pursuant to a written collaborative arrangement with the province: Border Programs Directorate, Programs Branch</p> <p>If related to value for duty, origin or tariff classification of goods: Border Programs Directorate, Programs Branch</p> <p>If related to an on-going investigation pursuant to provincial legislation and there is a written collaborative arrangement with the provincial</p>



REQUESTOR	WHERE TO DIRECT THE REQUEST
	<p>government: Directors or Managers of Criminal Investigations and Intelligence in the Region</p> <p>Other requests: Strategic Risk and Modernization Directorate, Programs Branch or the Regional Director General, in consultation, as required, with the Programs Branch, for customs information held locally and pursuant to an established program</p>
Requests for customs information related to Form E311 or traveller’s history files	Director General, Enforcement and Intelligence Operations Directorate, Operations Branch
Requests for prescribed information related to Advance Passenger Information (API) and Passenger Name Record (PNR) databases.*	Director General, Enforcement and Intelligence Operations Directorate, Operations Branch
Requests for customs information for a SIMA proceeding.	Director General, Anti-Dumping and Countervailing Directorate, Programs Branch
Requests for customs information from another program area within the CBSA.	Strategic Risk and Modernization Directorate, Programs Branch
Requests from investigative agencies, intelligence agencies or police.	<p>Enforcement and Intelligence Operations Directorate, Operations Branch (if related to drugs or other contraband matters)</p> <p>Enforcement and Intelligence Directorate, Programs Branch (if related to fraud or other smuggling matters related to CBSA Investigations)</p> <p>Regional Director General or a named Delegate (if customs information is held in a regional office)</p> <p>Regional Criminal Investigations Division (if related to an ongoing investigation)</p>
Requests from foreign governments that do not fall under the authority of an international trade agreement or CBSA written collaborative arrangement.	Strategic Risk and Modernization Directorate, Programs Branch
Requests from foreign governments that fall under the authority of an international trade agreement or CBSA written	Specific Program Area within a Headquarters Branch Enforcement and Intelligence Operations Directorate, Operations Branch (if related to drugs or other contraband matters)



REQUESTOR	WHERE TO DIRECT THE REQUEST
collaborative arrangement.	Enforcement and Intelligence Directorate, Programs Branch
Requests under the <i>Access to Information Act</i> or the <i>Privacy Act</i>	Attention: Access to Information and Privacy Coordinator Canada Border Services Agency 410 Laurier Avenue West, 10th Floor Ottawa, Ontario K1A 0L8 Telephone: 613-960-1414 Facsimile: 613-957-6408

LEGEND

- * Please refer to Appendix B – Reference Guide to Approving Disclosures of API/PNR of Memorandum **D1-16-3**, *Administrative Guidelines for the Provision to Others, Allowing Access to Others and Use of Advance Passenger Information (API) and Passenger Name Record (PNR) Data* for further information.



APPENDIX C

LEGISLATION

Section 107 of the *Customs Act*

This version of section 107 is current to October 2, 2012. Please refer to the *Customs Act* on the [Department of Justice Canada Web site](#) for the most up-to-date version.

Definitions

107. (1) The definitions in this subsection apply in this section.

“**customs information**” means information of any kind and in any form that

(a) relates to one or more persons and is obtained by or on behalf of

(i) the Minister for the purposes of this Act or the [Customs Tariff](#), or

(ii) the Minister of National Revenue for the purposes of the collection of debts due to Her Majesty under Part V.1;

(b) is prepared from information described in paragraph (a).

“**official**” means a person who

(a) is or was employed in the service of Her Majesty in right of Canada or of a province;

(b) occupies or occupied a position of responsibility in the service of Her Majesty in right of Canada or of a province; or

(c) is or was engaged by or on behalf of Her Majesty in right of Canada or of a province.

“**specified person**” means a person who is employed in the service of, who occupies a position of responsibility in the service of, or who is engaged by or on behalf of, Her Majesty in right of Canada to carry out the provisions of this Act, the [Customs Tariff](#) or the [Special Import Measures Act](#). It includes a person who was formerly so employed or engaged or who formerly occupied such a position.

Prohibition — provision or use of customs information

(2) Except as authorized under this section, no person shall

(a) knowingly provide, or allow to be provided, to any person any customs information;

(b) knowingly allow any person to have access to any customs information; or

(c) knowingly use customs information.



APPENDIX C (cont'd)

LEGISLATION

Section 107 of the *Customs Act*

Authorized use of customs information by official

(3) An official may use customs information

(a) for the purposes of administering or enforcing this Act, the [Customs Tariff](#), the [Excise Act, 2001](#), the [Special Imports Measures Act](#) or Part 2 of the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) or for any purpose set out in subsection (4), (5) or (7);

(b) for the purposes of exercising the powers or performing the duties and functions of the Minister of Public Safety and Emergency Preparedness under the [Immigration and Refugee Protection Act](#), including establishing a person's identity or determining their inadmissibility; or

(c) for the purposes of any Act or instrument made under it, or any part of such an Act or instrument, that the Governor in Council or Parliament authorizes the Minister, the Agency, the President or an employee of the Agency to enforce, including the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), the [Canada Agricultural Products Act](#), the [Feeds Act](#), the [Fertilizers Act](#), the [Fish Inspection Act](#), the [Health of Animals Act](#), the [Meat Inspection Act](#), the [Plant Protection Act](#) and the [Seeds Act](#).

Authorized provision of information

(4) An official may provide, allow to be provided or provide access to customs information if the information

(a) will be used solely in or to prepare for criminal proceedings commenced under an Act of Parliament;

(b) will be used solely in or to prepare for any legal proceedings relating to the administration or enforcement of an international agreement relating to trade, this Act, the [Customs Tariff](#), the [Special Import Measures Act](#), any other Act of Parliament or law of a province that provides for the imposition or collection of a tax or duty or Part 2 of the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#), before

(i) a court of record, including a court of record in a jurisdiction outside Canada,

(ii) an international organization, or

(iii) a dispute settlement panel or an appellate body created under an international agreement relating to trade;

(c) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the [Customs Tariff](#), the [Excise Act](#), the [Excise Act, 2001](#), the [Excise Tax Act](#), the [Export and Import Permits Act](#), the [Immigration and Refugee Protection Act](#), the [Special Import Measures Act](#) or Part 2 of the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) by an official of the Agency;

(c.1) may reasonably be regarded as necessary solely for a purpose relating to the enforcement of the [Agriculture and Agri-Food Administrative Monetary Penalties Act](#), the [Canada Agricultural Products Act](#), the [Feeds Act](#), the [Fertilizers Act](#), the [Fish Inspection Act](#), the [Health of Animals Act](#), the [Meat Inspection Act](#), the [Plant Protection Act](#) and the [Seeds Act](#) by an official of the Agency;



APPENDIX C (cont'd)

LEGISLATION

Section 107 of the *Customs Act*

(c.2) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of Part V.1 by an official or a class of officials of the Canada Revenue Agency designated by the Minister of National Revenue;

(d) may reasonably be regarded as necessary solely for a purpose relating to the administration or enforcement of this Act, the [Excise Act](#), the [Excise Act, 2001](#) or the [Export and Import Permits Act](#) by a member of the Royal Canadian Mounted Police;

(e) may reasonably be regarded as necessary solely for a purpose relating to the life, health or safety of an individual or to the environment in Canada or any other country;

(f) will be used solely for a purpose relating to the supervision, evaluation or discipline of a specified person by Her Majesty in right of Canada in respect of a period during which the person was employed or engaged by, or occupied a position of responsibility in the service of, Her Majesty in right of Canada to administer or enforce this Act, the [Customs Tariff](#), the [Special Import Measures Act](#) or Part 2 of the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#) to the extent that the information is relevant for that purpose;

(g) is reasonably regarded by the official to be information that does not directly or indirectly identify any person; or

(h) is reasonably regarded by the official to be information relating to the national security or defence of Canada.

Provision of information to certain persons

(5) An official may provide, allow to be provided or provide access to customs information to the following persons:

(a) a peace officer having jurisdiction to investigate an alleged offence under any Act of Parliament or of the legislature of a province subject to prosecution by indictment, the Attorney General of Canada and the Attorney General of the province in which proceedings in respect of the alleged offence may be taken, if that official believes on reasonable grounds that the information relates to the alleged offence and will be used in the investigation or prosecution of the alleged offence, solely for those purposes;

(b) a person that is otherwise legally entitled to the information by reason of an Act of Parliament, solely for the purposes for which that person is entitled to the information;

(c) an official solely for the purposes of developing, administering or enforcing an Act of Parliament or developing or implementing a policy related to an Act of Parliament if the information relates to

(i) goods, the importation, exportation or in-transit movement of which is or may be prohibited, controlled or regulated under that Act,

(ii) a person who that official has reasonable grounds to believe may have committed an offence under that Act in respect of goods imported or exported by that person, or

(iii) goods that may be evidence of an offence under that Act;



APPENDIX C (cont'd)

LEGISLATION

Section 107 of the *Customs Act*

(d) an official, solely for the purpose of administering or enforcing an Act of the legislature of a province, if the information relates to goods that are subject to import, in-transit or export controls or taxation upon importation into the province under that Act;

(e) an official of a participating province, as defined in subsection 123(1) of the [Excise Tax Act](#), or an official of the province of Quebec, if the information relates to the administration or enforcement of Part IX of that Act in that province, solely for that purpose;

(f) an official solely for the purpose of the formulation or evaluation of fiscal or trade policy or the development of a remission order under an Act of Parliament;

(g) an official solely for the purpose of setting off, against any sum of money that may be due to or payable by Her Majesty in right of Canada, a debt due to

(i) Her Majesty in right of Canada, or

(ii) Her Majesty in right of a province on account of taxes payable to the province if an agreement exists

between Canada and the province under which Canada is authorized to collect taxes on behalf of the province;

(g.1) an official of the Canada Revenue Agency solely for a purpose relating to the administration or enforcement of the [Canada Pension Plan](#), the [Employment Insurance Act](#), the [Excise Act](#), the [Excise Act, 2001](#), the [Excise Tax Act](#) or the [Income Tax Act](#);

(h) counsel, as defined in subsection 84(4) of the [Special Import Measures Act](#), in accordance with subsection 84(3) of that Act and subject to subsection 84(3.1) of that Act, except that the word “information” in those subsections is to be read as a reference to the words “customs information”;

(i) an official of the Department of Human Resources and Skills Development solely for the purpose of administering or enforcing the [Employment Insurance Act](#), if the information relates to the movement of people into and out of Canada;

(j) an official of the Department of Citizenship and Immigration solely for the purpose of administering or enforcing the [Immigration and Refugee Protection Act](#), if the information relates to the movement of people into and out of Canada;

(j.1) an official of the Canadian Food Inspection Agency for the purpose of administering or enforcing any Act referred to in section 11 of the [Canadian Food Inspection Agency Act](#) if the information relates to the import, export or in-transit movement of goods into or out of Canada;

(k) an official of the Financial Transactions and Reports Analysis Centre of Canada solely for the purpose of administering or enforcing the [Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#);

(l) a person solely for the purpose of determining any entitlement, liability or obligation of the person under this Act or the [Customs Tariff](#) including the person’s entitlement to any refund, relief, drawback or abatement under those Acts;



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(m) any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record in Canada;

(n) any person, if the information is required to comply with a subpoena or warrant issued or an order made by a court of record outside of Canada, solely for the purposes of criminal proceedings; and

(o) prescribed persons or classes of persons, in prescribed circumstances for prescribed purposes, solely for those purposes.

Provision of customs information by Minister

(6) The Minister may provide, allow to be provided or provide access to customs information to any person if

(a) the information may not otherwise be provided, allowed to be provided or provided access to under this section and, in the Minister's opinion, the public interest in providing the information clearly outweighs any invasion of privacy, or any material financial loss or prejudice to the competitive position of the person to whom the information relates, that could result from the provision of the information; or

(b) in the Minister's opinion, providing the information would clearly benefit the individual to whom the information relates.

Notification of Privacy Commissioner

(7) If customs information provided under subsection (6) is personal information within the meaning of section 3 of the [Privacy Act](#), the Minister must notify, in writing, the Privacy Commissioner appointed under section 53 of that Act of any provision of personal information under that subsection before its provision if reasonably practicable or, in any other case, without delay after the provision. The Privacy Commissioner may, if the Privacy Commissioner considers it appropriate, notify the individual to whom the information relates of the provision of the information.

Providing customs information to other governments

(8) Customs information may be provided by any person to an official or any other person employed by or representing the government of a foreign state, an international organization established by the governments of states, a community of states, or an institution of any such government or organization, in accordance with an international convention, agreement or other written arrangement between the Government of Canada or an institution of the Government of Canada and the government of the foreign state, the organization, the community or the institution, solely for the purposes set out in that arrangement.

Disclosure of customs information to certain persons

(9) An official may provide, allow to be provided or provide access to customs information relating to a particular person

(a) to that particular person;



APPENDIX C (cont'd)

LEGISLATION

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(b) to a person authorized to transact business under this Act or the [Customs Tariff](#) as that particular person's agent, at the request of the particular person and on receipt of such fee, if any, as is prescribed; and

(c) with the consent of that particular person, to any other person.

Evidence

(10) Despite any other Act of Parliament or other law, no official may be required, in connection with any legal proceedings, to give or produce evidence relating to any customs information.

Measures to protect customs information

(11) The person presiding at a legal proceeding relating to the supervision, evaluation or discipline of a specified person may order any measure that is necessary to ensure that customs information is not used or provided to any person for any purpose not relating to that proceeding, including

(a) holding a hearing *in camera*;

(b) banning the publication of the information;

(c) concealing the identity of the person to whom the information relates; and

(d) sealing the records of the proceeding.

Appeal from order to disclose customs information

(12) An order or direction that is made in the course of or in connection with any legal proceeding and that requires an official to give or produce evidence relating to customs information may, by notice served on all interested parties, be immediately appealed by the Minister or the Minister of National Revenue, as the case may be, or by the person against whom the order or direction is made

(a) to the court of appeal of the province in which the order or direction is made, in the case of an order or direction made by a court or other tribunal established under the laws of the province, whether or not that court or tribunal is exercising a jurisdiction conferred by the laws of Canada; or

(b) to the Federal Court of Appeal, in the case of an order or direction made by a court or other tribunal established under the laws of Canada.

Disposition of appeal

(13) The court to which the appeal is taken may allow the appeal and quash the order or direction appealed from or may dismiss the appeal. The rules of practice and procedure from time to time governing appeals to the courts apply, with any modifications that the circumstances require, in respect of the appeal.

Stay

(14) An appeal stays the operation of the order or direction appealed from until judgment in the appeal is pronounced.



Regulations

(15) The Governor in Council may make regulations prescribing the circumstances in which fees may be charged for providing or providing access to customs information or making or certifying copies of information and the amount of any such fees.



APPENDIX D

LEGISLATION

Section 160 of the *Customs Act*

This version of section 160 is current to October 2, 2012. Please refer to the *Customs Act* on the [Department of Justice Canada Web site](#) for the most up-to-date version.

General offence and punishment

160. (1) Every person who contravenes section 11, 12, 13, 15 or 16, subsection 20(1), section 31 or 40, subsection 43(2), 95(1) or (3), 103(3) or 107(2) or section 153, 155, 156 or 159.1 or commits an offence under section 159 or knowingly contravenes an order referred to in subsection 107(11)

(a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment; or

(b) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment.



APPENDIX E

Links to Legislation

[Access to Information Act](#)
[Agriculture and Agri-Food Administrative Monetary Penalties Act](#)
[Canada Agricultural Products Act](#)
[Canada Border Services Agency Act](#)
[Canadian Charter of Rights and Freedoms](#)
[Canadian Food Inspection Agency Act](#)
[Consumer Packaging and Labelling Act](#)
[Customs Act](#)
[Customs Tariff](#)
[Feeds Act](#)
[Fertilizers Act](#)
[Fish Inspection Act](#)
[Food and Drugs Act](#)
[Health of Animals Act](#)
[Immigration and Refugee Protection Act](#)
[Income Tax Act](#)
[Meat Inspection Act](#)
[Plant Breeders' Rights Act](#)
[Plant Protection Act](#)
[Privacy Act](#)
[Proceeds of Crime \(Money Laundering\) and Terrorist Financing Act](#)
[Seeds Act](#)
[Special Import Measures Act](#)



REFERENCES

ISSUING OFFICE – Information Sharing Unit Integrated Policy Division Strategic Risk and Modernization Directorate	HEADQUARTERS FILE –
LEGISLATIVE REFERENCE – Section 107, <i>Customs Act</i>	OTHER REFERENCES – www.cbsa-asfc.gc.ca

Services provided by the Canada Border Services Agency are available in both official languages.

This Policy is issued under the authority of the President of the Canada Border Services Agency.