

Softwood Lumber Products Export Charge Notice

SWLN-004

October 2007

Security Requirements for Non-Resident Persons and Persons Without a Permanent Establishment in Canada

This notice explains the conditions under which non-resident persons and persons without a permanent establishment in Canada who export softwood lumber products are required to provide and maintain security with the Canada Revenue Agency (CRA) under the provisions of the *Softwood Lumber Products Export Charge Act, 2006* (the Act). It also explains the types of security acceptable to the CRA and the amount of security that is required to be posted. All references to dollar values are in Canadian currency.

Security requirements

Persons who intend to export softwood lumber products from Canada to the United States must be registered under the Act.

The following persons applying for registration are required to provide and maintain security in an amount and in a form satisfactory to the CRA:

- non-resident persons, and
- resident persons who do not have a permanent establishment in Canada.

This security is required to ensure that these persons pay all amounts payable by them under the Act. Resident individuals who intend to export softwood lumber products subject to the export charge to the United States for their personal use will not be required to post security; they will, however, be required to register with the CRA and remit the export charge. They will also be required to obtain an export permit from the Department of Foreign Affairs and International Trade (www.dfait-maeci.gc.ca/trade/eicb/general/general-en.asp).

Security, as a condition of registration, will be required at the time of registration.

Meaning of permanent establishment

Under the Act, the term “permanent establishment” in respect of an applicant means a fixed place of business of the applicant, including a place of management, a branch, an office, a factory, or a workshop, or any timberland.



Canada Revenue
Agency

Agence du revenu
du Canada

La version française du présent document est intitulée
*Exigences de garantie que doivent respecter les personnes
non résidentes et les personnes n'ayant pas d'établissement
stable au Canada.*

Canada

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Meaning of deemed resident

A non-resident person may be deemed to be a resident of Canada where certain conditions are met. For the purposes of the Act, a person is deemed to be resident in Canada at any time:

- in the case of a corporation, if the corporation is incorporated or continued in Canada and not continued elsewhere;
- in the case of a partnership or an association, or a branch of one of them, if the member, or a majority of the members, having management and control of it is, or are, resident in Canada at that time;
- in the case of a union, if it is carrying on activities as such in Canada and has a local union or branch in Canada at that time; and
- in the case of an individual, if the individual is deemed under any of paragraphs 250(1)(b) to (f) of the *Income Tax Act* to be resident in Canada at that time.

Deemed residents will be required to post and maintain security unless they have a permanent establishment in Canada.

Amount of security required

The amount of security that must be provided is set at a minimum of \$5,000 and a maximum of \$2 million.

The initial amount of security required is based on 50% of the **estimated** export charge for the 12-month period following registration, plus outstanding amounts of the charge levied on duty deposit refunds, rounded to the nearest \$1,000, but will not be less than \$5,000. Applicants are responsible for estimating the charge amounts and calculating the amount of security required. The calculation and the security must accompany their registration application.

Example — Calculation of security amount

Export charges estimated for 12-month period:	\$6,250
Outstanding duty deposit refund amount:	<u>\$3,000</u>
	Total: \$9,250
50% of total amount	= \$4,625
Security amount	= \$5,000 (minimum security amount)

After the initial 12-month period following registration, the amount of security required is calculated at 50% of the registrant's actual export charge paid plus any outstanding charge amounts owing on duty deposit refunds for the previous 12-month period.

The amount of security provided by a registrant will be reviewed annually by the CRA. If the review of a registrant's export charge for a 12-month period shows that the amount of security provided is inadequate, the CRA will require that the amount of security be increased.

Where, at any time throughout the year, a CRA review of the level of security determines that the estimate for the previous 12 months is not representative of the export charge liability, the CRA will require an increase in the security amount. This action may occur where the exporter's shipments to the United States increase significantly, or where there is an increase in the rate of the export charge.

If, at any time, a decrease in the total amount of security is warranted, the registrant may request, in writing, that the excess amount of security be returned. The excess amount of security will not be returned unless it exceeds the \$2,000 or \$5,000 threshold as stated below. Security will not be returned if the amount being requested would result in the security amount being less than the minimum \$5,000.

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Adjustments are not required for insignificant changes (amounts indicated below) to the amount of security. The registrant need not increase the amount of security if:

- the amount of security required is \$25,000 or less and the additional amount of security does not exceed \$2,000, or
- the amount of security required exceeds \$25,000 and the additional amount of security does not exceed \$5,000.

Increases to the security amount should be rounded to the nearest \$1,000.

Where applicants fail to provide security with their application for registration, the CRA will not grant the registration request. Similarly, where a registrant fails to maintain security in an acceptable form or amount, the CRA may cancel the registration to export softwood lumber products to the United States.

Form of security

Security, in Canadian funds, may be in the form of cash, certified cheque, money order, or bond. Bonds must be in an approved form. A sample of an approved surety bond, *Bond for a Non-Resident Person or a Person Without a Permanent Establishment in Canada*, is provided in Appendix A to this notice.

Bonds acceptable to the CRA as security posted by non-resident persons and resident persons who do not have a permanent establishment in Canada include:

- a transferable Government of Canada bond that is accompanied by a valid Government of Canada Y76 transfer form;
- a bond issued by a company that holds a certificate of registry to carry on the fidelity or surety class of insurance business in Canada, and that is approved by the President of the Treasury Board as a company whose bonds can be accepted by the Government of Canada;
- a bond issued by a member of the Canadian Payments Association as provided for in section 4 of the *Canadian Payments Association Act*;
- a bond issued by a corporation that accepts deposits insured by the Canada Deposit Insurance Corporation or the Régie de l'assurance-dépôts du Québec to the maximum permitted by the statutes under which those institutions were established;
- a bond issued by a credit union as defined in subsection 137(6) of the *Income Tax Act*; and
- a bond issued by a corporation that accepts deposits from the public, if repayment of the deposits is guaranteed by the Government of Canada or by a Canadian provincial government.

The listing of acceptable bonding companies for providing bonds as security can be found on the Treasury Board Secretariat Web site at the following address:

www.tbs-sct.gc.ca/pubs_pol/dcgpubs/Contracting/contractingpol_1_e.html.

Government of Canada bonds will be accepted at market value or face value, whichever is less, at the time of receipt when used for security purposes. Canada Savings Bonds are **not** acceptable as security because they are not transferable.

Where an amount payable under the Act is outstanding, the CRA may recover this amount from the security, or any part of the security, that was provided if, after due notification, payment is not received within a reasonable period of time. Where the outstanding debt exceeds the amount of security posted, action may be taken under the collection provisions of the Act.

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Endorsements or riders

An endorsement or rider to a surety bond must be signed and sealed by the principal and by the duly authorized officials of the Surety, and must be in a form acceptable to the CRA. A sample of an acceptable form of endorsement to a surety bond, *Endorsement to Bond for a Non-Resident Person or a Person Without a Permanent Establishment in Canada*, is provided in Appendix B to this notice.

Cancellation of bond

To cancel a surety bond that has been posted with the CRA, the Surety must provide 60 days notice in writing of the cancellation. The notice must be sent by **certified or registered mail** to:

Director
Surrey Tax Centre
Canada Revenue Agency
9755 King George Highway
Surrey BC V3T 5E1

An applicant who is required to provide and maintain security must, where necessary, provide replacement security to ensure continuous coverage. Failure to maintain security may result in the cancellation of the person's registration to export softwood lumber products to the United States.

A notice of claim by the CRA for a security bond can be given to the Surety for a period of up to five years following the date of termination of the bond.

For more information about registration under the *Softwood Lumber Products Export Charge Act, 2006*, please call one of the following toll-free numbers:

1-800-935-0313 (for service in English)
1-800-935-0340 (for service in French)

For technical enquiries about the *Softwood Lumber Products Export Charge Act, 2006*, please call 1-866-330-3304.

Security Requirements for Non-Resident Persons and Persons Without a Permanent Establishment in Canada

Appendix A — Sample

**Bond
for a
Non-Resident Person or a Person without a Permanent Establishment in Canada**

*Subsection 22(5) of the *Softwood Lumber Products Export Charge Act, 2006**

Bond No. _____ Amount C\$ _____

We, _____ of _____, hereafter called the Principal, and _____ in the Province of _____, hereinafter called the Surety, are jointly and severally bound unto Her Majesty the Queen in right of Canada, Her heirs, and successors, as represented by the Minister of National Revenue of Canada, hereinafter called the Obligee, in the sum of _____ Canadian dollars (C\$ _____), to be paid to the said Obligee, for which payment well and faithfully to be made we jointly and severally bind ourselves and our respective heirs, executors, administrators, successors and assigns firmly by this bond, sealed with our respective seals and dated the _____ day of _____ in the year _____.

WHEREAS THE PRINCIPAL, a person not resident in Canada or a person without a permanent establishment in Canada, has applied to be, or is required to be, registered under section 22 of the *Softwood Lumber Products Export Charge Act, 2006*, and whereas the Principal is required to give and to maintain security for the payment of the charges and all other amounts payable by the person under that Act.

NOW, the condition of the above written obligation is such that if the Principal shall keep adequate books and records as required by section 48 of the Act, shall file true returns as required by the Act, shall pay any charge, net charge, penalty or interest that the Principal is or may become liable to pay under the Act, whether that charge, net charge, penalty or interest became payable before or after the cancellation of this bond, then this bond shall be void and of no effect; otherwise, it shall remain in full force and effect.

PROVIDED THAT, if the Surety shall at any time give sixty days' notice in writing to the Director, Surrey Tax Centre, Canada Revenue Agency at 9755 King George Highway, Surrey, BC V3T 5E1, by certified or registered mail, of its intention to terminate this obligation, then this obligation and all liability of the Surety hereunder shall cease so far as concerns any act or omission on the part of the Principal subsequent to the termination of the obligation hereby undertaken, but otherwise shall remain in full force and effect in respect of any act or omission on the part of the Principal from the date hereof to the date of such termination.

NOTICE of any claim hereunder shall be given to the Surety within five years following the date of termination of this bond.

IN WITNESS WHEREOF, the Principal has hereunto set his/her signature and seal (if the Principal is an individual) or has sealed this bond with its corporate seal, attested to by the signature of its duly authorized official (if the Principal is a corporation), and the Surety has sealed this bond with its corporate seal, attested to by the signature of its duly authorized official on the day and year written above.

Signed, sealed and delivered in the presence of

Witness

Address of Surety (bonding company):

Principal (individual) **seal**

Principal's corporate **seal**

President (or authorized official of Principal)

Surety's corporate **seal**

Contact person

Telephone number

Duly authorized official and title

Security Requirements for Non-Resident Persons and Persons Without a Permanent Establishment in Canada

Appendix B — Sample

**Endorsement to Bond
for a
Non-Resident Person or a Person without a Permanent Establishment in Canada**

Subsection 22(5) of the *Softwood Lumber Products Export Charge Act, 2006*

ENDORSEMENT NO. _____, dated the _____ day of _____, in the year _____, to the bond No. _____ under subsection 22(5) of the *Softwood Lumber Products Export Charge Act, 2006*, hereinafter called the "Bond," executed by _____ as Principal, and _____ as Surety.

WHEREAS on the _____ day of _____, in the year _____, _____ as Principal, and _____ as Surety, executed the Bond, in compliance with subsection 22(5) of the *Softwood Lumber Products Export Charge Act, 2006*, in favour of Her Majesty the Queen, Her heirs and successors in the sum of _____ Canadian dollars (C\$ _____).

AND WHEREAS the Bond was previously amended by endorsement no. _____ effective the _____ day of _____, in the year _____, to change the sum of the Bond from _____ Canadian dollars (C\$ _____) to _____ Canadian dollars (C\$ _____).

NOW THEREFORE, this indenture witnesseth as follows:

1. The sum of the Bond as amended by the endorsement no. _____ is hereby changed from _____ Canadian dollars (C\$ _____) to _____ Canadian dollars (C\$ _____).
2. This amendment to the Bond shall apply only in respect of the charges and all other amounts for which the Principal becomes liable to pay pursuant to the *Softwood Lumber Products Export Charge Act, 2006* after the date hereof and in respect of any default under the Bond committed after the date hereof, and otherwise the said Bond shall have force and effect as though this amendment had not been made thereto.

IN WITNESS WHEREOF the Principal has hereunto set his/her signature and seal (if the Principal is an individual) or has sealed this endorsement with its corporate seal, attested to by the signature of its duly authorized official (if the Principal is a corporation), and the Surety has sealed this endorsement with its corporate seal, attested to by the signature of its duly authorized official on the day and year written above.

Signed, sealed and delivered in the presence of

Witness

Address of Surety (bonding company):

Contact person

Telephone number

Principal (individual) **seal**

Principal's corporate **seal**

President (or authorized official of Principal)

Surety's corporate **seal**

Duly authorized official and title