

14 April 2026

Committee Secretary
The Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Via email: legcon.sen@aph.gov.au

Dear Committee,

Re: Submission from Medicines Australia re the Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026

Medicines Australia welcomes the opportunity to provide a submission to this Inquiry. Medicines Australia represents the research based innovative pharmaceutical industry responsible for the discovery, invention, research and development of new innovative and specialised therapies. Our members comprise predominantly large multi-national pharmaceutical companies and a range of small and medium biotechnology companies, research companies and service providers to the sector. As the representative body of these pharmaceutical companies, this submission will focus on the unintended consequences to legitimate holders of brands, patents and trade marks in our sector

1. **Key concern is overbreadth of the strict liability offence:** The proposed Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026 10AB(1) criminalises importation where “there is a registered trade mark on the goods” (or similar/altered mark), on a strict liability basis, with defences framed as exceptions carrying an evidential burden (permission / authorisation). While the Explanatory Memorandum (EM) describes the policy as targeting “counterfeits”, the offence text is not limited to counterfeit/unauthorised goods on its face, creating risk of inadvertent capture of legitimate supply chains (including complex distribution and repackaging scenarios) unless permission evidence is immediately available.
2. **Infringement notice pathway increases practical compliance exposure:** Given Australian Border Force can issue infringement notices as an alternative to prosecution and ABF’s Infringement Notice Scheme (INS) settings are designed for quick administrative resolution. Suggest narrowing the offence element to unauthorised/counterfeit conduct (or to “infringing” goods) so lawful trade is clearly excluded in the statute, and/or better aligning the offence to the Notice of Objection sequencing described in the EM.

Options/Solutions to consider:

- Narrow the element from “registered trade mark on the goods” to goods where the mark is applied without the consent of the registered owner/authorised user (i.e., bake s 10AB(2) concept into the offence element).
- Require that the goods infringe a registered trade mark (or are “false trade marks” as defined) rather than merely “bear” a registered trade mark. (This would better reflect the EM’s “counterfeit” framing.)
- Add an express protection for lawful parallel imports / authorised supply chains (or cross-reference the *Trade Marks Act* regime) to avoid criminalisation by drafting mismatch.
- Provide a clearer statutory linkage to the Notice of Objection process if the intention is that infringement notices occur only after that process (the EM suggests sequencing, but the Bill text largely creates power without embedding the sequencing).
- Consider an implementation/transition safeguard (e.g., delayed commencement or safe harbour for in-transit shipments) given the application clause’s breadth.

If you have any questions about our submission, or if we can be of any further assistance, please contact me at [REDACTED] or the Chief Operations Officer

Yours sincerely

[REDACTED]

Elizabeth de Somer
Chief Executive Officer