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ABN 85 008 391 795
T: +61 2 6270 8000
info@acci.com.au
www.acci.com.au

Tanya Spisbah
Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Tanya,

Thank you for the opportunity to contribute to the Inquiry into the Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026.

The Australian Chamber of Commerce and Industry represents hundreds of thousands of businesses in every state and territory and across all industries. Ranging from small and medium enterprises to the largest companies, our network employs millions of people. ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

ACCI is supportive of measures to modernise the Australian border, facilitating the importation and export of legitimate trade and more effectively taking action to address counterfeit and illicit trade.

Effective intellectual property (IP) protection is important in ensuring trust, innovation and integrity in the marketplace, ensuring intellectual property rights holders' investments in innovation and brand value are recognised, that retailers of genuine products are able to engage in fair competition for sales of those products, and that consumers can have confidence that products are authentic, safe and of the quality expected of those brands.

ACCI's 2025 National Trade Survey demonstrates that Australian exporters value intellectual property as a key strength they possess in competing internationally, with proprietary intellectual property ranking second on a list of competitive strengths.

The present Bill seeks to more effectively enforce such rights through the establishment of a strict liability offence and by enabling Australian Border Force to issue Infringement Notices to deter non-compliance. This Bill supplements rather than replaces the existing IP enforcement mechanisms available to the rights holders directly through civil litigation brought by IP owners and for the Australian Border Force to seize imported goods that infringe intellectual property rights through the Notice of Objection scheme.

Canberra
Commerce house
Level 2
24 Brisbane Avenue
Barton ACT 2600
PO Box 6005



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Chamber of Commerce
and Industry**

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This additional enforcement option promises to provide a more effective enforcement option to combat importations of counterfeit goods, introducing deterrence that can operate independent of civil litigation that imposes significant costs on rights holders in enforcing their rights.

While imposing a strict liability offence which does not require a fault element to be established, we note that defences are available where honest and reasonable mistake of fact can be established. This reflects an appropriate burden sharing between the importer and regulator, in that it aligns the responsibility to provide evidence about the circumstances of the transaction to the importer as the entity best able to provide it.

It is understood that this new offence will be targeted to importations of commercial quantities of high risk consumer products.¹ In exercising its discretion in relation to issuing Infringement Notices, Australian Border Force will consider factors “such as first-time offences, genuine mistakes of fact, the quantity of goods and the type of goods”.²

ACCI is supportive of the Bill’s intent to provide more effective deterrence of counterfeit importations.

Following implementation, ACCI encourages the Australian Border Force to monitor these new arrangements on an ongoing basis to ensure that all stakeholders are provided clear guidance on their rights and obligations (including importers’ obligation to conduct due diligence), to ensure consistent application of the law and to avoid any unintended consequences arising from its implementation. This should include updates to the Australian Border Force’s Infringement Notice Scheme Guide, the Infringement Notice itself and wider public promotion.

Thank you for the opportunity to provide this input into the Committee’s deliberations.

Yours sincerely,


Chris Barnes
Head of Trade and International Affairs

Canberra
Commerce house
Level 2
24 Brisbane Avenue
Barton ACT 2600
PO Box 6005

¹ The Hon Julian Hill MP, Customs Legislation Amendment (False Trade Marks Infringement Notices) Bill 2026 - Second Reading Speech (25 March 2026), page 16
<https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/29149/0042/hansard_frag.pdf;fileType=application/pdf>.
<https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/29149/0042/hansard_frag.pdf;fileType=application/pdf>.

² Ibid.

