

Customs Trade and Transport Update

March 2012



Legislation keeps moving as Australia's Federal Parliament enters Autumn Sittings

Despite all the controversy regarding governing of the country in the last few weeks, the Federal Parliament has continued to work moving various Bills of interest through stages of the approval process. The next (Autumn) Sitting starting this week should see more movement on those Bills.

Movement on some Bills of interest to industry is summarised below:

Second Tranche of Anti Dumping Legislation

Readers will recall that in June 2011 the Federal Government announced significant reforms to Australia's Anti Dumping and Countervailing regime. While some of the reforms entailed administrative change (such as funding for additional staff in the Trade Remedies Division of Customs and a new compliance focus on those trying to circumvent measures) the others required legislative change.

The "first tranche" of amendments passed through Federal Parliament in November 2011. However the second tranche has only now passed through Federal Parliament and awaits Royal Assent and commencement.

The second tranche of reforms

- » Establish a new appeals process to replace the existing appeals mechanism established in the legislation;
- » Establish the International Trade Remedies Forum in legislation; and
- » Allow for multiple extensions to investigative timeframes of an investigation, review of measures, continuation inquiry or duty assessment to accommodate more complex matters or new information.

The Trade Remedies Forum will replace the existing Trade Measures Review Officer whose role and activities have been subject to close attention over the years including recent review by the Federal Court in an investigation where its actions and findings were endorsed. It will be interesting to see how the revised appeals and review process will work.

We will keep you informed of the likely commencement of the legislation and how it will impact on rights of affected parties.

The third tranche of legislation is also due to be introduced into this session of Parliament.

Reforms of IP Laws almost through

We have previously reported on significant amendments to Australia's Intellectual Property laws which were also the subject of discussion in our CBFA Member Forums towards the end of 2011. The reforms were subject to preliminary consultation and the issue of an exposure draft of the proposed legislation.

Following the consultation process, the reforms were included in the *Intellectual Property Laws Amendment (Raising the Bar) Bill 2011* which passed through the Senate on 27 February 2012. The Bill will now move to the House of Representatives where it is expected to pass through rapidly as the Bill has received bipartisan political support.

The reforms are extremely wide reaching. However the amendments of particular interest to those in industry relate to the enhanced rights to holders of Trade Marks and Copyright to protect against the importation of infringing items.

Some of the enhancements include:

- » Allowing Customs to release the details of exporters of the goods, in addition to the details of the importers;
- » Providing rights holders with access to the goods pending any hearing on the merits of the case (allowing better identification of whether the goods are infringing and their possible origin);
- » Requiring an importer to make a claim for return of the goods if the rights holder does not bring an action for infringement. In doing so, the importer must provide details on the shipment together with its address for service of legal proceedings. This would facilitate the ability of the rights holder to bring action at a later stage. It is also an improvement on the current system where the importer merely has the goods returned automatically if action is not brought based on importation.

Again, we will keep you informed of developments including the full passage of the Bill and its implementation.

Illegal Logging Bill

Of recent time, concern has been expressed as to the origin of much of the timber imported into Australia among fears that it has come from illegal sources but whose import could not be restrained by our legislative framework.

At the 2010 election the Federal Government committed 'to encourage the sourcing of timber products from sustainable forest practices and to seek to ban the sale of illegally logged timber products' through the following five measures:

- » Build capacity within regional governments to prevent illegal harvesting;
- » Develop and support certification schemes for timber and timber products sold in Australia;
- » Identify illegally logged timber and restrict its import into Australia;
- » Require disclosure at point of sale of species, country of origin and any certification; and
- » Argue that market-based incentives aimed at reducing emissions from deforestation and forest degradation should be included in a future international climate change agreement.

Importantly for industry will be the due diligence requirements will require importers to certify that timber has not been "illegally logged". There have been real concerns as to this requirement starting with the breadth of the definition through to the practical problems of certification through to the range of sanctions for breaches of the Bill. Many of those potentially



affected have pointed to the US experience where amendments to the *Lacey Act* led to a series of raids on the Gibson Guitar Company alleging it produced guitars produced with timber which had allegedly been illegally logged (which claims have been denied).

Concerns have been raised by timber exporting countries such as Canada, New Zealand and Papua New Guinea. Indonesia and Malaysia have been particularly strident in their concerns. Those importing timber products have also expressed reservations, including those who import products comprised of timber sourced from various places whose origins cannot be confirmed.

The proposed legislation is the subject of the *Illegal Logging Prohibition Bill 2011* ("**Bill**"). The Bill has already been the subject of industry consultation and an earlier Exposure Draft of the Bill and Explanatory Memorandum had been the subject of an Inquiry and Report by the Senate Rural Affairs and Transport Legislation Committee ("**Committee**"). Following further consultations a revised Bill was introduced in November 2011 which included a number of recommendations from the earlier Inquiry by the Committee.

Various reports suggest that this is the world's first broadly – based legislation to stop illegal logging.

The Explanatory Memorandum notes that the Bill would:

- » *"provide the Commonwealth with the authority to develop subordinate legislative instruments, including regulations, in order to restrict the import and sale of illegally logged timber;*
- » *establish offences that impose substantial criminal penalties on importers or domestic processors of raw logs in relation to importing illegally logged timber (clause 8), processing illegally logged raw logs (clause 15), importing illegally logged timber in regulated timber products (clause 9), importing regulated timber products without complying*

with the due diligence requirements (clause 12), processing raw logs without complying with the due diligence requirements (clause 17), importing regulated timber products without making a Customs declaration (clause 13);

- » *establish administrative sanctions and civil penalties for minor breaches of the Bill;*
- » *establish penalties including:*
 - *a maximum penalty of five years imprisonment, or 500 penalty units, or both for importing illegally logged timber, processing illegally logged raw logs, and importing illegally logged regulated timber products (equivalent to a maximum fine of \$55,000 for an individual and \$275,000 for a corporation or body corporate);*
 - *a maximum penalty of 300 penalty units for importing regulated timber products without complying with the due diligence requirements for importing these products, and processing raw logs without complying with the due diligence requirements for processing the raw logs (equivalent to \$33,000 for an individual and \$165,000 for a corporation or body corporate);"*

The Bill effects these outcomes the legislation itself in the Bill together with Regulations which are to be developed by consultation over time. The revised Bill was subject to a further inquiry by the Committee including submissions by interested parties and public hearings. The Report of the Committee was released late in February 2012 and while it contains significant details of the Bill and the submissions of interested parties the simple recommendation of the Committee that the Bill be passed in its current form. Whether it does, indeed, pass and it what form will depend on whether the Federal Government can secure sufficient support. The position of other Governments, especially the Indonesian and Malaysian Governments with whom we are negotiating Trade Agreements may also affect the outcome.

As always we will keep you informed of developments.

Contact us

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