

5 May 2009

## Customs, Trade & Transport Ealert

# Alcopops appeal denied in the Federal Court

We have previously reported on the Federal Court case in which Suntory had instituted proceedings to stop the Commonwealth (in the ATO) stop collecting excise duty on Alcopops at high rates based on the Tariff Proposals of May 2008.

Our most recent report referred to the fact that the ATO had sought an Order to stay the proceedings until 13 May 2009 which would, in fact, leave the measures in place until the Proposals had expired, validating legislation had been passed or new Proposals introduced. That Order had been granted by the Federal Court leaving the measures in the Proposals to continue until 13 May 2009, which may have made the ultimate proceedings of academic interest alone.

Suntory had sought leave to appeal the decision.

In a hearing which took place yesterday (4 May 2009), the Full Federal Court granted Suntory the right to appeal. However, after lengthy argument the Court rejected the appeal. This leaves the "stay" Order in place for the time being, meaning that the Federal Government can continue to collect the higher rates of customs duty and excise on Alcopops. Of course, Suntory can seek leave to appeal to the High Court which it may seek to do given that many of the arguments before the Full Federal Court took place on constitutional issues.

Reasons for the decision have been reserved and further information will be provided as those reasons are released.

For further information please contact Andrew Hudson.

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