

British Aggregates Association

Press Release – Tuesday 23 December 2008

Aggregates Levy Judgment Holes Eco Tax Below Waterline

The European Court of Justice, (ECJ), has overturned the 13 September 2006 decision of the Court of First Instance, (CFI), that the 2002 Aggregates Levy, (AGL), imposed by the UK Government was lawful and did not constitute State Aid. The ECJ has sent the case back to the CFI for it to reconsider.

Extracts;

sectors that cause the same environmental damage must be treated the same: para 92:
"the need to take account of requirements relating to environmental protection, however legitimate, cannot justify the exclusion of selective measures, even specific ones such as environmental levies, from the scope of Article 87(1) EC".

the CFI needs to review the Commission's Decision (that the AGL does not constitute State aid) more thoroughly: para 115:

"as BAA has correctly submitted, by failing to carry out a comprehensive review of the Commission's assessment as to whether the AGL comes within the scope of Article 87(1) EC, the Court of First Instance committed an error of law which vitiates in its entirety the analysis of the substance of the contested decision".

BAA Director Robert Durward;

"It is noteworthy that the European Court of Justice has agreed with the BAA on every fundamental point. This makes it very unlikely that the Levy will survive in its present form."

The judgment was in line with the earlier opinion of Advocate General (AG) Mengozzi, of the European Court of Justice, who recommended that the CFI judgment - upholding the legality of the UK's Aggregates Levy under EU subsidy law - should be quashed.

In reaching his conclusion, the Advocate General criticised several aspects of the CFI's reasoning;

- He agreed with the BAA argument that the CFI was wrong to conclude that the AGL's purported environmental justification somehow exempted it from EU subsidy rules. The AG made it clear that governments do not have carte blanche to implement an unfair and illogical tax under the guise of environmental policy.
- He found that the CFI tried to paper over cracks in the original Decision – approving the AGL – and that they further misconstrued the basis on which that Decision was taken in a mistaken effort to justify its conclusion.
- Finally, and most significantly, the Advocate General found that the CFI failed to carry out a comprehensive review of the legal basis of the original EC Decision to approve the Levy. He went on to say that such an error impugned the very basis of the CFI's ruling and "could undermine the entire assessment of the merits of the [Commission's] decision."

Robert Durward;

"It would appear that the CFI will now have little option but to declare that the Levy, as it stands, constitutes illegal State Aid and must be modified or scrapped. However, for the Levy to comply with Article 87(1) EC it would have to be extended - retrospectively - to all currently exempt minerals such as coal, slate and china clay."

ENDS:

Notes for editors;

1. The British Aggregates Association (BAA) is the trade body for independent quarry operators and represents over 80 companies producing from over 100 sites.
2. The Aggregates Levy was introduced in April 2002 at £1.60 per tonne and increased to £1.95 per tonne from April 2008.
3. The text of the ECJ Judgment is [here](#) (click onto top link "Judgment" on BAA case file)
4. The text of AG Mengozzi's opinion is [here](#) (click onto "Opinion" link on BAA case file)
5. The Aggregates Levy raises around £600million each year for the Treasury
6. A number of quarry companies have registered a claim for repayment of levy they have already paid, to protect their position under the Three Year Rule.
7. No other EU country taxes aggregates in this manner. A recent European Environment Agency (EEA) report of June 2008 on the effectiveness of environmental taxation on aggregates has noted in conclusion 5 that "there was not any clear evidence in Italy or the United Kingdom to show that the objective of reducing environmental externalities had been achieved." [Read report](#)
8. The use of primary aggregates has not been reduced by the levy. Sales of virgin aggregates have increased by 8 million tonnes a year since the levy was introduced;— and Treasury extracted payment from an additional 20 million tonnes in 2007compared with 2003. [Read report](#)
9. In addition, the UK has a recycling rate four times greater than the EU average before the levy was introduced. [Read report](#)
10. Not only has the Levy failed to provide any tangible environmental gain, it has produced its own environmental problems. Levy exempt products are now being hauled longer distances and displacing locally sourced materials. This has greatly hampered the quarry industry's ability to deal with its own by-products and there are growing mountains of secondary aggregates appearing in quarries across the country.
11. The ECJ judgment may have implications for other "Eco Taxes."

Contacts;

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