



## BRITISH AGGREGATES ASSOCIATION

**Press Notice: 18th August 2006**

### **Date Announced for Aggregates Levy Judgement**

The European Court of First Instance (CFI) will announce its verdict on the British Aggregates Association's legal challenge to the Aggregates Levy in Brussels on Wednesday 13 September.

The judgement follows a hearing at the Court of First Instance in Luxembourg last December. The Association had appealed to the CFI on the grounds that the EU Commission's May 2002 decision to grant the levy state aid approval was unsafe. During the hearing lawyers acting for both the EU Commission and the UK Government, who had intervened in the case, struggled to provide any coherent justification for the levy, argued among themselves whether it was a direct or an indirect tax and admitted that the UK had exempted certain competing products for no better reason than, *"that was what they had decided to do."*

#### **British Aggregates Association Director Robert Durward comments:**

*"It has been a long wait since we first launched our case in April 2002 in the High Court in London. Although we lost on the day, everything we said at that time has subsequently been borne out. The levy is not only logically indefensible, it is also failing to deliver any tangible environmental benefit. The UK was already leading Europe in aggregates recycling and the use of alternatives, before this legislation was introduced."*

A large number of quarry companies have already lodged claims for repayment of levy paid to date. Claims made ahead of the judgement are precautionary as there is a three year cut off for obtaining refunds for tax wrongly collected. However in a recent Italian case, the judges further decreed that only companies that had actually lodged claims, ahead of a judgement being handed down, were eligible to seek recompense.

In addition to going it alone in its legal action against the levy, the British Aggregates Association has also commissioned additional legal opinion on what action individual companies should take if the challenge is successful. The levy costs the industry some £1.5m each working day and it is clear that there would be a great deal of confusion if the supporting legislation was judged to be flawed.

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Notes for editors:

1. The British Aggregates Association is the trade body for independent quarry operators and represents 70 companies producing from over 100 sites.
2. The British Aggregates Association's legal challenge against the Aggregates Levy (AGL) was heard at the EU Court of First Instance in Luxembourg on the 13th of December 2005.
3. The association asked the Court of First Instance to find that the original decision by the EU Commission in 2002 to grant State Aid Approval (for the exemptions) was unsafe. Any State Aid approval application which raises doubts about its compatibility with the common market must be subject to "Phase 2 proceedings." This allows any third party, who will be affected by the proposed State Aid, to make representations. If the CFI does find that Stage 2 proceedings should have been opened, then the Levy is de-facto illegal and the UK Government will be faced with some very difficult choices to remedy the situation.

In theory they could;

- a. make sufficient changes to the AGL to make it compatible with EC State Aid law; however, this would be virtually impossible.
  - b. abolish the AGL
  - c. replace the AGL with a new and straightforward tax which does not seek to protect specific industries such as slate, cement, china clay, industrial minerals and sand for glass manufacture. However, this would not remedy the existence of illegal exemptions for the past and all the previously exempted industries would have to repay the full amount of state aid they had received with interest. An alternative to such a course would be for HMG to repay tax paid by non-exempted companies which is now approaching £2bn.
4. Precautionary claims are needed because of a rule which prohibits the recovery of taxes paid more than three years ago. However it is thought that this rule should not apply to BAA members, due to their early legal challenge.
  5. Although HMG claims that the aggregates levy is an "indirect tax" it has a number of features which would make it difficult in practice for HMG to prove that quarries have "passed on" the burden of the AGL
  6. 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 now growing mountains of secondary aggregates appearing in quarries across the country
  7. The use of primary aggregates has not been reduced by the levy. In fact the only reason that the use of virgin aggregate has not actually increased has been the reduction in road building and repair.
  8. In 2002 the British Aggregates Association successfully argued that proposed changes to rules for estimating the weight of the moisture content of aggregate were unlawful. This concession has already saved the industry over £50million.

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