

BRITISH AGGREGATES ASSOCIATION

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AGGREGATES ASSOCIATION TO APPEAL LEVY DECISION

The international law firm Herbert Smith have lodged an appeal on behalf of the British Aggregates Association at the European Court of Justice (ECJ) against a judgement by the Court of First Instance (CFI). The CFI decreed on 13 September that the UK Aggregates Levy (AGL) met the necessary legal tests for discriminatory taxation - a decision which represented a substantial departure from the existing case law of the ECJ, the EU's highest court.

British Aggregates Association director Robert Durward;

"The CFI decision sent out a clear signal about the scope which the Court felt should be made available to member states to impose environmental taxation. However, not only has the AGL actually caused additional environmental problems but the CFI decision is also fundamentally opposed to the ECJ on a number of counts."

Surprisingly, the CFI failed to hold the UK Government and EU Commission to account for their failure to give any coherent rationale for the levy. Even more surprisingly, the CFI then attempted to offer their own justification by explaining how the levy provided environmental benefit. What is not surprising however, was that the CFI were no more successful than either the UK Treasury or the EU in trying to explain a levy which has so manifestly failed to deliver any tangible environmental benefit.

For example, one of the CFI's arguments, in favour of the levy, was that it encouraged the use of one type of virgin aggregate to replace another type of virgin aggregate. While this is quite true as materials which are levy exempt such as slate and shale, now have a £1.60 per tonne market advantage, it is also quite illogical as their environmental impact is often much greater than aggregates which are taxed. The CFI decision contains a large amount of this type of flawed logic.

The main grounds of the BAA appeal are;

1. That the CFI's approach openly conflicts with clear principles set by the ECJ in previous environmental taxation cases.
2. That the CFI questions the fundamental principle of EC law that State aid is an objective concept whereby a measure is assessed on the basis of its effects only and not on the basis of the policy objectives it pursues.
3. That the CFI adopts an approach that leaves so much discretion to the Member States that it renders the State aid disciplines meaningless with regard to environmental levies.

The eventual outcome of this case could have serious implications for other UK industries.

Robert Durward;

"All the political parties are now trying to 'Outgreen' each other by thinking up new environmental taxes. However, if sensible checks and balances are to be swept aside in a mad dash for Green votes (and cash) then our markets will be skewed, our enterprises will suffer and our international competitiveness will be damaged."

ENDS:

Notes for editors:

1. British Aggregates Association is the trade body for independent quarry operators and represents 70 companies producing from over 100 sites.
2. The Aggregates Levy was introduced in April 2002 at a punitive rate of £1.60 per tonne.
3. No other EU country taxes aggregates in this manner.
4. 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.
5. 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
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. The CFI Press Release 74/06 and full judgement can be found on <http://curia.europa.eu/en/actu/communiqués/cp06/aff/cp060074en.pdf>
9. The BAA letter to CBI, Richard Lambert dated 23rd October can be found on <http://www.british-aggregates.co.uk/documentation/doc52.pdf>

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