

23 October 2006

Confederation of British Industry  
Centre Point  
103 New Oxford Street  
LONDON WC1A 1DU

Attn: Richard Lambert  
Director-General

**Implications of the European Court Decision on the Aggregates Levy  
and the Potential Impact on Future UK Environmental Taxation.**

Dear Mr Lambert,

The British Aggregates Association represents the interests of the SME sector of the aggregates industry with some eighty companies including associates. We are members of the CBI and the CPA as are several of our own members.

I write to alert you to potentially serious issues which could arise as a result of legal action by our association. I understand that our Secretary Peter Huxtable has recently spoken to Michael Roberts about this.

The BAA have been at the forefront of a campaign against the imposition of the Aggregates Levy, AGL, and we mounted a legal challenge in 2001. Our case was first heard in London at the High Court in 2002. At that time our main complaint was that the AGL was so discriminatory in nature that it required State Aid Approval from the EU. To cut a long story short, Mr Justice Moses did not agree and found against us. However, it later transpired that the Treasury were in fact in deep discussion with the EU on this point and the EU gave the UK State Aid Approval immediately thereafter. We challenged this by appeal to the EU Court of First Instance in Luxembourg who, despite strong evidence and case law in our favour, ruled against us on 13 September 2006. We have until mid-November to lodge a final appeal to the European Court of Justice.

The Levy has now been in force since 1 April 2002 and has proved to be as commercially and environmentally damaging as we predicted. A view now shared by all in the industry and not just our members, I might add.

Due to the CFI decision, the financial burdens and problems arising from this flawed piece of legislation are now likely to be visited on other industries. Our lawyers advise us that, if this decision is not successfully challenged, then the net result will be to remove previous constraints which prevented blatant misuse of state aid by EU member states. In short, anything that can be termed an environmental or ECO tax, now matter how loose the rationale, can now discriminate against companies with a similar environmental footprint without the possibility of any legal remedy through the courts.

I think it would be extremely wise for the CBI to seek legal opinion as to the possible implications of the CFI decision for its membership. Informed opinion suggests that the CFI were intent on providing new case law to reduce the number of challenges to member states' taxation. However it is incumbent upon trade associations such as ours to campaign for a level playing and ensure that UK Plc retains its international competitiveness. For example the UK is still the only EU country to tax aggregates at the extraordinary level of £1.60 per tonne. Even Northern Ireland, which as far as I know remains within the UK, only has to pay £0.32p per tonne.

We must also be aware that this decision has come at a time when all of the three main political parties are trying to 'out green' each other with new forms of environmental taxation. The AGL itself is a ridiculously complex and discriminatory instrument which I will not bore you with any further. Suffice it to say that we will only have the one opportunity to appeal this, failing that we will be lumbered with some highly suspect and extremely damaging case law and at a time when new ECO taxes will be in big demand.

I hope that you agree that this matter warrants careful consideration and I look forward to your response.

Yours sincerely,

Robert Durward  
Director  
The British Aggregates Association

List of reference material;

Court of First Instance press release 74/06 and full judgement  
<http://curia.europa.eu/en/actu/communiqués/cp06/aff/cp060074en.pdf>.

BAA press releases and commentary  
<http://www.british-aggregates.co.uk/news/press.html>