

Aggies industry gets fresh hope of overturning levy

European Court of Justice sends Aggregates Levy case back to Court of First Instance

By Paul Thompson

A decision made by judges in the European Court of First Instance over the legality of the UK's Aggregates Levy should be reinvestigated, one of Europe's most senior judges has recommended.

Judges at the European Court of Justice in Luxembourg have recommended an appeal made by the British Aggregates Association against a judgement by the CFI on the tax be upheld.

Advocate General Paolo Mengozzi also called for the Court to re-examine the case.

In a report published last week he concluded that: "In view of the implications of setting aside the judgement under appeal, as proposed, I consider it appropriate that the Court refer the case back to the Court of First Instance."

The Advocate General supported several key aspects of the BAA's submission, including its argument that the CFI was wrong to conclude that the levy could be exempted from EU subsidy

rules because it was claimed to be an environmental tax, that the CFI had misconstrued the basis on which the decision to approve the tax had been taken, and that it had failed to carry out a comprehensive review of the legal basis of the original EC decision to approve the levy.

The move is the latest twist in the BAA's legal battle against the tax, which started in London's High Court in March 2002.

BAA director Robert Durward welcomed the recommendations and called on the Court of Justice to reverse the CFI decision.

He said: "We are very pleased. It is quite a damning opinion on several points.

"Obviously we are still in discussion with our lawyers over the finer points but we said at the time that some of the things that came out of the Court of First Instance

were bizarre and Advocate General Mengozzi has agreed.

"We have already waited over six years for justice and it is difficult to see any reason to prolong this masquerade any longer."

The opinions of the Advocate General are purely recommendations and are not binding on the Court and the outcome will not be fully determined until the Court's final judgement.

It's time someone scraps this unjust tax



ANALYSIS

PAUL THOMPSON

The long, hard, sometimes dirty battle against the aggregates tax could finally be moving into its end game.

The recommendations made last week to the European Court of Justice by Advocate General Mengozzi that the court refer the British Aggregate

Association's case back to the Court of First Instance is symptomatic of the entire levy.

It is another passing of a potato that has become so hot that no-one seems capable of taking the decision to scrap it.

It is an unworkable, unjust tax which benefits few and impinges on many.

On the eve of its implementation in April 2002 the Government was

not entirely sure what was taxable and what wasn't even as Treasury solicitors fought off the BAA's attempt to force a Judicial Review.

Now, some six years later, after being sifted through by the finest legal brains in Europe, its legality is still in question.

Someone, somewhere needs to say: "This is not working." The European Court of Justice seems as good a place as any.