# JUDGMENT OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)
18 September 1995 *

In Case T-168/94,

**Blackspur DIY Ltd**, a company established under English law, having its registered office in Unsworth, Bury (United Kingdom),

**Steven Kellar, J. M. A. Glancy and Ronald Cohen**, Manchester (United Kingdom),

represented by Paul Lasok, Barrister, of the Bar of England and Wales, and Charles Khan, Solicitor, with an address for service in Luxembourg at the Chambers of Maria Dennewald, 12 Avenue de la Porte Neuve,

applicants,

v

**Council of the European Union**, represented by Jorge Monteiro, of its Legal Service, acting as Agent, assisted by Hans-Jürgen Rabe and Georg Berrisch, Rechtsanwälte, Hamburg and Brussels, with an address for service in Luxembourg at the

* Language of the case: English.

office of Bruno Eynard, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

**Commission of the European Communities**, represented by Eric White, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION under Article 178 and the second paragraph of Article 215 of the EEC Treaty for a declaration that the Council and the Commission are liable to compensate the applicants for the loss they claim to have suffered as a result of the acts and defaults of those institutions in connection with the imposition of an anti-dumping duty on imports of paint- and other brushes originating in the People's Republic of China,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(First Chamber, Extended Composition),

composed of: J. L. Cruz Vilaça, President, D. P. M. Barrington, H. Kirschner, A. Kalogeropoulos and V. Tiili, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 18 May 1995,

gives the following

## Judgment

### Facts and procedure

1 In 1986 the Commission, in response to a complaint lodged by the *Fédération Européenne de l'Industrie de la Brosserie et de la Pinceauterie* (the European Brushware Federation, hereafter 'the EBF'), opened an investigation on imports of certain kinds of brushes originating in China, pursuant to Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ 1984 L 201, p. 1), replaced by Council Regulation (EEC) No 2423/88 of 11 July 1988 (OJ 1988 L 209, p. 1) (hereafter 'the basic regulation'). The interested parties were informed of this by way of a Commission Notice published in the *Official Journal of the European Communities* on 30 April 1986 (OJ 1986 C 103, p. 2). Following an undertaking to limit exports given by the Chinese exporter concerned and accepted by the Council, the proceeding was closed, without the imposition of an anti-dumping duty, by Council Decision 87/104/EEC of 9 February 1987 accepting an undertaking given in connection with the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China, and terminating the investigation (OJ 1987 L 46, p. 45) (hereafter 'Decision 87/104').

2 That proceeding was reopened, however, following a fresh complaint lodged by the EBF in May 1988 relating to the failure to comply with the terms of the

undertaking given by the Chinese exporter. The interested parties were informed of this through the publication on 4 October 1988 of a notice announcing the reopening of an anti-dumping proceeding concerning imports into the Community of paint, distemper, varnish and similar brushes originating in the People's Republic of China (OJ 1988 C 257, p. 5). After finding that there had been a breach of that undertaking, the Commission imposed a provisional anti-dumping duty of 69% on the net price per piece of the products in question by way of Regulation (EEC) No 3052/88 of 29 September 1988 imposing a provisional anti-dumping duty on imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China (OJ 1988 L 272, p. 16) (hereafter 'Regulation No 3052/88'). By Decision 88/576/EEC of 14 November 1988 (OJ 1988 L 312, p. 33), the Council repealed Decision 87/104 and on 20 March 1989 imposed a definitive anti-dumping duty at a rate identical to that of the provisional duty by way of Regulation (EEC) No 725/89 imposing a definitive anti-dumping duty on imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China and definitively collecting the provisional anti-dumping duty on such imports (OJ 1989 L 79, p. 24) (hereafter 'Regulation No 725/89').

3 On 22 October 1991, the Court of Justice, to which a question had been referred by the Finanzgericht (Finance Court) Bremen for a preliminary ruling under Article 177 of the EEC Treaty, declared Regulation No 725/89 to be invalid on the ground that the normal value of the products concerned had not been determined in an appropriate and not unreasonable manner within the meaning of Article 2(5)(a) of the basic regulation (judgment of the Court of Justice in Case C-16/90 *Nölle* v *Hauptzollamt Bremen-Freihafen* [1991] ECR I-5163). In its judgment the Court took the view that Nölle, a German undertaking operating as an independent importer of brushes, had produced sufficient factors, during the anti-dumping proceeding, to 'raise doubts as to whether the choice of Sri Lanka as a reference country' for determining the normal value 'was appropriate and not unreasonable' and that the Commission and Council had not made 'a serious or sufficient attempt to determine whether Taiwan could be considered as an appropriate reference country', as Nölle had argued. Following that judgment, the Commission resumed the investigation and, by Decision 93/325/EEC of 18 May 1993 terminating the anti-dumping proceeding concerning imports of paint, distemper, varnish and similar brushes originating in the People's Republic of China (OJ 1993 L 127, p. 15), finally terminated the proceeding without imposing an anti-dumping duty.

4 In July 1988, that is to say, two months prior to the imposition of the provisional anti-dumping duty, Blackspur DIY Ltd (hereafter 'Blackspur'), a company incorporated in 1988 under the laws of England and Wales with capital of approximately £750 000 for the commercial purpose of selling and marketing tools for amateur home improvers (the 'do-it-yourself' market) placed its first order for the importation of brushes from China. This consignment was cleared through customs on 5 October 1988, but the United Kingdom customs authorities requested payment of the anti-dumping duty only 17 months later, that is to say on 5 March 1990. Blackspur was placed in receivership in August 1990 and subsequently went into liquidation.

5 It was against this background that Blackspur, along with its directors, shareholders and guarantors, Steven Kellar, J. M. A. Glancy and Ronald Cohen, brought the present action by application lodged at the Registry of the Court of Justice on 10 August 1993 under the second paragraph of Article 215 of the EEC Treaty for compensation in respect of the loss of profits and harm which they claim to have suffered by reason of the unlawful conduct of the Community in connection with the imposition of an anti-dumping duty.

6 Pursuant to Article 4 of Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), the Court of Justice, by order of 18 April 1994, referred the case to the Court of First Instance, where it was registered under case number T-168/94.

7 By decision of the Court of First Instance of 2 June 1994, the Judge-Rapporteur was assigned to the First Chamber, Extended Composition, to which the case was accordingly allocated. Following the Report of the Judge-Rapporteur, the Court of First Instance (First Chamber, Extended Composition) decided to open the oral procedure without any preparatory inquiry. However, the applicants were requested to reply to a number of written questions and produce certain

documents. The applicants complied with this request by the Court on 8 May 1995. The parties submitted oral argument and replied to the oral questions put by the Court during the hearing on 18 May 1995.

## Forms of order sought by the parties

8 The applicants claim that the Court of First Instance should:

(i) declare that the European Economic Community is liable to compensate the applicants for the loss suffered by them;

(ii) order the European Economic Community to pay to the applicants the sums claimed by them;

alternatively,

(iii) order the parties to:

(a) inform the Court of First Instance, within a reasonable time to be fixed by the Court from the date of judgment, of the amount of the damages fixed by them in agreement or, in the absence of agreement,

(b) submit to the Court of First Instance within the same period a statement of their views on the amount of the damages together with supporting figures, for the Court of First Instance either to decide the amount to be compensated or to entrust the same to independent experts to be appointed by the Court;

(iv) order the European Economic Community to pay to the applicants such sum as may be found to be due to them in accordance with the order made under (iii) above;

(v) order the European Economic Community to pay interest on the amount to be paid to the applicants at 9% or, alternatively, at a rate to be fixed by the Court;

(vi) order the European Economic Community to pay the costs of the action.

9 The Council contends that the Court of First Instance should:

(i) dismiss the application;

(ii) order the applicants to bear the costs of the proceedings.

10 The Commission claims that the Court of First Instance should:

(i) reject the application as inadmissible in whole or alternatively as regards the second, third and fourth applicants;

(ii) alternatively, reject the application as unfounded; and

(iii) order the applicants to pay the costs.

## Admissibility

*Pleas in law and arguments of the parties*

11 The Commission, like the Council, takes the view that the applicants have failed to adduce any evidence in support of their allegations regarding illegal acts and omissions on the part of the Community institutions and their alleged loss, and that they have failed to show any direct causal link between the alleged wrongful acts and the alleged damage. In view of the fact that causation is an element of law which must be adequately substantiated (judgment of the Court of First Instance in Case T-64/89 *Automec* v *Commission* [1990] ECR II-367), the requirements of Article 38(1)(c) of the Rules of Procedure of the Court of Justice concerning the admissibility of the application were accordingly not complied with in this case.

12 In the alternative, the Commission asks that the application be also declared inadmissible in so far as it is brought by the second, third and fourth applicants in their capacity as shareholders, directors and guarantors of Blackspur. It argues that there is no causal link between the damage allegedly suffered by the latter and the allegedly illegal acts of the Community institutions since the directors of Blackspur have failed to adduce any evidence to establish that the losses which they have allegedly suffered in their capacity as creditors, guarantors and shareholders of Blackspur were the direct and natural consequence of the Community acts complained of.

13 The applicants take the view that, in so far as their application sets out the minimum factual and legal grounds necessary to enable the parties to the dispute to

adopt a position on the substance of the case and the Court of First Instance to exercise its powers, the requirements for the admissibility of an action have been satisfied in this case.

14 In reply to the Commission's argument that there is a manifest lack of any causal link between the acts and defaults complained of against the Community institutions and the losses allegedly suffered by the directors of Blackspur, the applicants contend that it can hardly be said that the negative effects which resulted for the directors of Blackspur from the loss of a significant portion of the company's commercial activities were unconnected in any way with the imposition of the anti-dumping duty subsequently declared invalid by the Court of Justice.

15 The applicants also state that the documents relating to the personal guarantees made to Blackspur by its directors and other documents relevant in this regard were not produced because the existence of those guarantees and the payments made under them are proved by the statement prepared by a firm of chartered accountants, attached to the application, and because the precise terms of those guarantees are not relevant to the various issues which form the subject-matter of the present dispute.

*Findings of the Court*

16 The Court takes the view that the issue of admissibility is closely linked in this case to that of the substance of the action and must be examined along with it.

## Substance

*Pleas in law and arguments of the parties*

— Fault

17 The applicants submit that the Commission and/or Council committed a series of faults which, considered individually or together, entail the non-contractual liability of the Community under the second paragraph of Article 215 of the Treaty both in respect of the defendant institutions' administrative activity and in respect of their legislative activity.

18 The applicants criticize the defendant institutions for having accepted the undertaking given by the Chinese exporter of the products in question on a false and/or illegal basis and for having taken unlawful measures as a result of the failure to honour that undertaking. The applicants also criticize the Commission, first, for having failed to inform them in good time that it was investigating a possible breach by the Chinese exporter of his undertaking and that it was in the process of introducing a provisional anti-dumping duty; second, for having failed to start a serious and timeous investigation following the complaint lodged by the EBF in May 1988 regarding the breach by the Chinese exporter of his undertaking; third, for having failed immediately to initiate the proceeding provided for under the basic regulation in the event of breach of undertakings by the exporters concerned; fourth, for having failed to observe an adequate period between the reopening of the proceeding and the imposition of the provisional anti-dumping duty; and, finally, for having provided competing undertakings belonging to the EBF with confidential information relating to the imposition of the provisional anti-dumping duty, as well as to its rate and the date on which it was to be brought into force.

19 The applicants further submit that the Community is also liable by reason of the fact that Regulation No 3052/88, which imposed a provisional anti-dumping duty on imports of brushes from China, along with the Commission proposal to impose

a definitive anti-dumping duty on those imports and Regulation No 725/89 imposing such a duty, was based on errors of fact and law regarding the determination of the normal value of the products in question and was adopted in the circumstances described above (paragraph 18). The same also applies with regard to the repeal, in the same circumstances, of Decision 87/104 accepting the undertaking of the Chinese exporter.

20 Finally, the applicants claim that the Community is also liable by reason of the alleged failure by the Community institutions to take the measures necessary to prevent the anti-dumping duty thus imposed from being circumvented by imports of cheap brushes from countries other than the People's Republic of China.

21 In the alternative, the applicants argue that, if the Community can incur liability in this case only if the acts and omissions for which the Community institutions are criticized constituted a serious breach of a superior rule of law for the protection of individuals, that condition is also satisfied. In particular, the acts and omissions for which the Community institutions are criticized (see paragraphs 18 and 19 above) amounted to breaches of the basic regulation, in particular Articles 4, 7(1) and (5), 11(1) and 12(1), breaches which ought to be regarded as manifestly serious in view of the fact that the Community institutions acted in full knowledge of the seriousness of the consequences which their action would have for the applicants.

22 The Council and Commission, in contrast, take the view that an examination of the conduct for which they are criticized does not reveal any illegality capable of entailing Community liability.

23 In particular, the defendant institutions argue that acceptance of the undertaking given by the Chinese exporter cannot be the cause of the damage allegedly suffered

by the applicants in so far as Blackspur had not yet been established at that date and/or the decision accepting that undertaking resulted from a different proceeding to that which led to the adoption of Regulation No 725/89, declared invalid by the Court of Justice. They point out that the measures taken by reason of the breach of the above undertaking were in no way illegal and they refuse to accept that they had any obligation whatever to inform Blackspur that an investigation had been opened following the breach of that undertaking. So far as concerns the alleged delay in reopening the proceeding, the defendant institutions take the view that a period of slightly less than five months, such as that which elapsed between the lodging of the EBF's complaint and the reopening of the proceeding, can in no way be regarded as excessive.

24 Furthermore, the Council and Commission contest the view that Article 10(6) of the basic regulation requires the Community institutions to allow a period of time to elapse between the reopening of an anti-dumping proceeding and the imposition of a provisional anti-dumping duty. With regard to the alleged disclosure by the Community institutions of confidential information on the imposition of a provisional anti-dumping duty to undertakings belonging to the EBF, the Council and Commission submit that the applicants have not produced any evidence to substantiate their allegations.

25 Turning to the alleged illegality of Regulation No 3052/88, the Community institutions argue that such illegality cannot be inferred from that of Regulation No 725/89 since those two measures resulted from separate proceedings. They also submit that the Community cannot incur non-contractual liability by reason of the adoption of Regulation No 725/89 since none of the conditions permitting the Community to be rendered liable by reason of the adoption of a legislative measure has been satisfied in this case. Finally, so far as concerns the alleged failure by the Community institutions to take measures to prevent circumvention of the anti-dumping duty imposed on brushes originating in China, the Council and the Commission point out that these allegations are unsupported by any evidence and that, in any event, no complaint was lodged to that effect.

— Damage

26 The applicants submit that the damage suffered by Blackspur corresponds to the profits which the company could have made by selling Chinese brushes if the Community institutions had not acted in the manner criticized, that is to say, £586 000.

27 With regard to the damage suffered by the directors of Blackspur, the applicants first seek compensation for the loss of their loan capital, in the sum of £555 855, made up as follows: Mr Kellar — £460 098; Mr Glancy — £86 026; and Mr Cohen — £9 731. Next, the applicants request that the directors of Blackspur also be compensated for the losses which they incurred by reason of the enforcement of the personal guarantees given to Blackspur's bank for the unrecovered amount of its indebtedness, that is to say, £542 898.69 plus interest and charges following the appointment of receivers. Finally, the applicants take the view that the directors of Blackspur should be compensated as shareholders of the company to the value of their equity in what could otherwise have been a successful company. On the basis of pre-tax profits, estimated for the year to August 1992 at £803 000, a tax rate of 33% and a profit/earnings ratio of 7, the applicants thus fix the value of Blackspur at £3 766 000. In support of their calculations, the applicants produce a statement prepared by a firm of chartered accountants.

28 The Commission disputes the applicants' entitlement to compensation, arguing that, according to the case-law of the Court of Justice, losses resulting from insolvency constitute losses which are too remote from the allegedly unlawful conduct of the Community institutions to qualify for compensation under the second paragraph of Article 215 of the Treaty (judgment of the Court of Justice in Joined Cases 64/76 and 113/76, 167/78 and 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others* v *Council* [1979] ECR 3091). Furthermore, even if it could be shown that

the imposition of the anti-dumping duty may have had an adverse effect on the activities of Blackspur, other factors would ultimately have forced Blackspur to cease trading.

29 With regard to the losses allegedly incurred by the directors of Blackspur, the Commission points out that these are losses arising from the inability of Blackspur to meet its debts. Such losses can only be an indirect consequence of the imposition of the anti-dumping duty in question.

30 The Commission also states that if the losses allegedly incurred by Blackspur were to be indemnified, its shareholders and guarantors would benefit from this to the extent to which they were entitled to the company's assets. If the claims of the second, third and fourth applicants were allowed, the same loss could thus be compensated more than once. Their claims for damages cannot therefore be allowed.

31 With regard to the extent of the damage, the Commission submits that, with regard to Blackspur, the applicants have failed to adduce any evidence to show that the company could have sold the imported brushes and secured a 40% gross profit margin. It points out that speculative and uncertain profits cannot be taken into account for the purpose of calculating damages (judgment of the Court of Justice in Joined Cases 5/66, 7/66 and 13/66 to 24/66 *Kampffmeyer and Others* v *Commission* [1967] ECR 245). Finally, according to the Commission, the applicants would in any event have to deduct from their claim in damages the amounts which they could have secured by importing brushes from other countries or carrying out other activities (judgment of the Court of Justice in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061).

32 The Council contests the probative value of the statement prepared by the firm of chartered accountants and submitted by the applicants on the ground that it is based merely on information supplied by the management of Blackspur. Together

with the Commission, the Council submits that the applicants have failed to explain the basis underlying the calculation of a profit margin of 40% and the calculation of Blackspur's commercial value.

33 The applicants reply that the principle established by the Court of Justice in its judgment in the *Dumortier Frères* case, cited above, does not apply to the present case on the ground that the damage suffered by the applicants is a sufficiently direct consequence of the conduct of the defendant institutions that is the subject of complaint. So far as concerns the estimates contained in the statement prepared by the firm of chartered accountants which they have produced, the applicants request the Court of First Instance to order any preparatory inquiry which might be necessary to determine their accuracy.

— The causal link

34 The applicants submit that it was because of the imposition of the provisional anti-dumping duty in the circumstances described above (see paragraphs 18 and 19) that Blackspur was finally driven from the market, since the development of sales in its other product lines was not sufficient to compensate for the losses incurred in the sector of paint-brushes originating in China or to prevent its bank from deciding in August 1990, in view of the weakness of Blackspur's business, to appoint receivers to wind up the company.

35 In particular, the applicants consider that in so far as Blackspur's business plan assumed a 40% gross profit margin on sales of brushes from China, the imposition of an anti-dumping duty of 69% could not but make it impossible to sell those brushes at a profit. According to the applicants, the onus was therefore on the defendant institutions to prove that there was some other reason which resulted in the losses incurred by Blackspur.

36 The Council points out that Blackspur in fact imported only one consignment of brushes from China, which was cleared through customs on 5 October 1988. The Council refers in particular to a letter sent by the third applicant to a Member of the European Parliament, from which it emerges that Blackspur had decided to import brushes from China in order to offset its trade surplus with its Chinese partners. The Council accordingly draws the conclusion that Blackspur was never really involved in the importation of brushes from China and highlights the fact that the applicants have not explained what Blackspur did in the period between October 1988 and August 1990.

37 In conclusion, the Council asks why Blackspur did not seek to replace imports of brushes from China with imports of cheap brushes from other countries in the same way as its competitors, and concludes that there is no causal link between Blackspur's poor results and the imposition of the provisional anti-dumping duty.

*Findings of the Court*

38 The Court notes at the outset that, according to settled case-law, the Community's non-contractual liability under the second paragraph of Article 215 of the Treaty is dependent on the coincidence of a series of conditions as regards the unlawfulness of the acts alleged against the Community institutions, the fact of damage and the existence of a causal link between the conduct of the institution concerned and the damage complained of (see the judgments of the Court of Justice in Case C-308/87 *Grifoni* v *EAEC* [1990] ECR I-1203, paragraph 6, in Joined Cases C-258/90 and C-259/90 *Pesquerias De Bermeo and Naviera Laida* v *Commission* [1992] ECR I-2901, paragraph 42, and in Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 19).

39 The Court takes the view that in this case it is necessary to begin its examination by considering whether there is a causal link between the allegedly unlawful conduct of the Community institutions and the damage pleaded by the applicants.

40 The Court notes in this regard that, according to the case-law of the Court of Justice, there is a causal link for the purposes of the second paragraph of Article 215 of the Treaty where there is a direct causal link between the fault committed by the institution concerned and the injury pleaded, the burden of proof of which rests on the applicants (see the judgments of the Court of Justice in Joined Cases 9/60 and 12/60 *Vloeberghs* v *High Authority* [1961] ECR 197, in Case 18/60 *Worms* v *High Authority* [1962] ECR 195, at 206, in Case 36/62 *Aciéries du Temple* v *High Authority* [1963] ECR 289, at 296, in Joined Cases 241/78, 242/78 and 245/78 to 250/78 *DGV and Others* v *Council and Commission* [1979] ECR 3017, at 3040 et seq., in Joined Cases C-363/88 and C-364/88 *Finsider and Others* v *Commission* [1992] ECR I-359, paragraph 25, and in Case C-220/91 P *Commission* v *Stahlwerke Peine-Salzgitter* [1993] ECR I-2393).

41 In this case, the applicants submit that the damage suffered by the applicant Blackspur, which they estimate at £586 000, lies in the loss of the profits which the company could have made by selling Chinese brushes, which represented half of its turnover, if it had not been placed in receivership by reason of the allegedly wrongful conduct of the Community institutions and, in particular, by reason of the imposition of an anti-dumping duty at a rate in excess of that of the profit margin which it achieved on those sales (see paragraph 35 above).

42 The Court cannot accept the applicants' contentions that the sales of cheap brushes from China represented half of Blackspur's turnover and that the loss of this commercial outlet was the principal cause of the poor financial results which it recorded and which led to its liquidation.

43 The Court first points out in this regard that, in reply to its request that they produce balance sheets for Blackspur for the years 1988/1989 and 1989/1990, in order to establish whether those contentions were well founded, the applicants stated that

'the relevant documentation concerning Blackspur's turnover is not in the possession of any of the applicants'. The Court takes the view that, while the directors and associates of Blackspur may possibly be in a position to argue that they are no longer in possession of the relevant documents concerning Blackspur's turnover for the years in question, in view of the appointment of receivers and the institution of liquidation proceedings, the same cannot apply with regard to the applicant Blackspur. The Court notes that, in a letter of 25 March 1993, the firm handling the company's liquidation consented to Blackspur's lawyers introducing the present action on its behalf as liquidator of the company. In this event, it cannot be accepted that the liquidator of the applicant Blackspur was not in a position to produce the documents concerning Blackspur's financial position, and it is not for the Court to substitute itself for Blackspur by ordering production of such evidence.

44 However, the Court finds that the applicants have, on the other hand, produced a letter concerning Blackspur's financial results for the periods 1988/1989 and 1989/1990, drawn up by a firm of chartered accountants and addressed to the second applicant, Mr Kellar, a director of Blackspur. While the Court accepts that this document may be regarded as a true reflection of Blackspur's financial position over the periods in question, such as it would result from a properly drawn-up balance sheet, it is necessary to consider whether the applicants' contentions regarding the cause of the damage allegedly suffered by Blackspur are adequately supported by the contents of that document.

45 First, so far as concerns the contention that the sales of brushes imported from China accounted for half of Blackspur's turnover, the Court finds that it follows from Annex 22 to the reply, which is a summary of Blackspur's position regarding its imports from China, that between July 1988, when it was set up, and August 1990, when the proceedings which were to lead to its liquidation were instituted, Blackspur imported only one consignment of brushes from China, in July 1988, for a total value of £40 948.38, on which the provisional anti-dumping duty payable

was in the region of £18 116.83. Second, as is clear from the above letter from the chartered accountants, Blackspur had a turnover of £1 435 384 over the period from 1 July 1988 to 31 August 1989.

46 It is thus clear from the documents in the case that Blackspur was not engaged in importing brushes from China prior to the imposition of the contested anti-dumping duty and that Blackspur's assertion that imports of brushes from China accounted for half of its turnover during the period prior to the imposition of the anti-dumping duty is uncorroborated by any evidence. In those circumstances, it cannot be accepted that the alleged loss of the commercial outlet represented by the sales of brushes from China was the principal cause of the poor financial results that led to Blackspur's being wound up.

47 However, even if this assertion by Blackspur were to be accepted for the purposes of the Court's reasoning, the Court holds that, as is apparent from the above letter from the firm of chartered accountants, 40.44% of Blackspur's turnover for the period from 1 July 1988 to 31 August 1989 (£1 435 384) resulted from sales of brushes for a total value of £580 503. The Court notes that this finding is at odds with the applicants' assertion that it was because of the imposition of the anti-dumping duty that Blackspur was unable to find alternative sources of supply and was for that reason obliged to withdraw from the market for sales of cheap brushes. It is also apparent from the above letter that, although the percentage representing sales of brushes fell during the subsequent period (from 1 September 1989 to 31 July 1990) from 40.44% to 3.01%, Blackspur's turnover, in contrast, increased significantly, by some 30%, to £1 864 016.

48 It follows from the foregoing that, even if it could have had the effect of reducing the turnover achieved on Chinese brushes during the financial year 1989/1990, the alleged loss of the commercial outlet represented by the sale of such brushes did

not in fact in any way prevent Blackspur from continuing with its commercial activities and even considerably increasing its turnover during the financial year 1989/1990, the period immediately preceding the institution of the proceedings which led to its liquidation. The Court finds that the above letter from the firm of chartered accountants does not contain any reference, indication or explanation of such kind as to enable the Court to determine the extent to which Blackspur's financial results during the financial year 1988/1989 were, as it claims, influenced by the loss of the market in cheap brushes, or why the turnover achieved by Blackspur during the years 1988/1989 and 1989/1990 was not sufficient to enable it to give effect to the commercial plan approved by its bank and thus avoid the bank's calling in the receivers. Consequently, in the absence of any other evidence adduced by the applicants as to the causes of the poor financial results allegedly recorded by Blackspur and as to the precise reasons for the institution in August 1990, at the request of its bank, of proceedings which led to the company's liquidation, it cannot be accepted that Blackspur's liquidation was attributable to poor financial results occasioned by the discontinuance of its sales of Chinese brushes, depriving it of profits estimated by the applicants to be £586 000, following the imposition of an anti-dumping duty on those brushes, and, even less so, to the allegedly unlawful conduct of the defendant institutions in connection with the imposition of that duty.

49 Finally, it cannot in any event be seriously argued that there is a direct causal link between the customs duties of £18 116.83 owed in respect of the anti-dumping duty applied to the consignment of brushes which Blackspur imported from China in July 1988, and the company's liquidation, since the applicants did not, during the proceedings before the Court, provide any credible explanation as to how a debt of a small amount could have led to the winding-up, by court order, of a company established with capital contributions of approximately £750 000 (see paragraph 4 above).

50 For that reason, the Court takes the view that the liquidation of Blackspur and the damage which may have resulted from this cannot be linked causally to the imposition of an anti-dumping duty on brushes originating in China or to the various

unlawful acts which, according to the applicants, were committed by the defendant institutions in connection with the anti-dumping proceeding in question. Consequently, in the manifest absence of a causal link demonstrated by the applicants between the damage alleged and the ostensibly unlawful conduct of the Community institutions, the application for compensation brought by Blackspur must be dismissed, without its being necessary to rule on its admissibility or on the question whether the other conditions necessary for the Community to incur non-contractual liability have been satisfied in this case.

51 Next, it is necessary to address the claim for compensation in respect of the damage which the other applicants claim to have suffered as directors of Blackspur by reason of the loss on liquidation of the capital which they had introduced into the company in their capacity as guarantors, in so far as, following its liquidation, they were obliged to honour the personal guarantees which they had given to their company for the unrecovered amount of its debt, as well as in their capacity as shareholders of Blackspur, by reason of the loss in value of their share-capital holdings in a company that could have been successful.

52 On this matter the Court takes the view that since, as it has just found, it has not been established that the liquidation of Blackspur is directly attributable to the allegedly wrongful conduct of the defendant institutions, there can also be no direct causal link between the damage which the above applicants claim to have suffered and the wrongful conduct of which the Community institutions stand accused. It must also be added that, as is also clear from the case-law of the Court of Justice, losses caused by the institution of insolvency proceedings amount to indirect and remote damage of such a kind that the Community cannot be under an obligation to make good every consequence which may flow from it (judgment in *Dumortier Frères and Others* v *Council*, cited above, paragraph 21).

53 Consequently, in the absence of any adequate demonstration of a direct causal link between the conduct for which the applicants criticize the defendant institutions and the alleged damage, the claim for compensation brought by the second, third

and fourth applicants in their capacity as directors, shareholders and guarantors of Blackspur must also be dismissed, also without its being necessary (see paragraph 50 above) to examine whether their application is admissible or whether the other conditions necessary for the Community to incur non-contractual liability, that is to say unlawful conduct on the part of the Community institutions and actual damage, have been satisfied in this case.

54 It follows from the foregoing that the application must be dismissed in its entirety.

## Costs

55 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay their own costs as well as those of the Council and Commission, both of whom have applied for costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

hereby:

**1. Dismisses the application;**

**2. Orders the applicants to pay the costs jointly and severally.**

Cruz Vilaça Barrington Kirschner

Kalogeropoulos Tiili

Delivered in open court in Luxembourg on 18 September 1995.

H. Jung J. L. Cruz Vilaça

Registrar President