

JUDGMENT OF THE COURT (First Chamber)  
16 September 1997 \*

In Case C-362/95 P,

**Blackspur DIY Ltd**, a company incorporated under the law of England and Wales, with its registered office at Unsworth, Bury (United Kingdom),

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

represented by K. P. E. Lasok QC, instructed by C. Khan, Solicitor, with an address for service in Luxembourg at the Chambers of M. Dennewald, 12 Avenue de la Porte Neuve,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber, Extended Composition) in Case T-168/94 *Blackspur and Others v Council and Commission* [1995] ECR II-2627, seeking to have that judgment set aside and the case remitted to the Court of First Instance,

the other parties to the proceedings being:

**Council of the European Union**, represented by Y. Crétien, Legal Adviser, acting as Agent, assisted by H.-J. Rabe and M. Berrisch, Rechtsanwälte, Hamburg, with an address for service in Luxembourg at the offices of B. Eynard, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

\* Language of the case: English.

and

**Commission of the European Communities**, represented by N. Khan, of its Legal Service, acting as Agent, assisted by H.-J. Rabe and M. Berrisch, with an address for service in Luxembourg at the offices of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

THE COURT (First Chamber),

composed of: L. Sevón, President of the Chamber, D. A. O. Edward and M. Wathelet (Rapporteur), Judges,

Advocate General: G. Tesauro,  
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the appellants, represented by K. P. E. Lasok, from the Council, represented by A. Tanca, Legal Adviser, acting as Agent, assisted by G. M. Berrisch, and from the Commission, represented by N. Khan, assisted by G. M. Berrisch, at the hearing on 24 April 1997,

after hearing the Opinion of the Advocate General at the sitting on 5 June 1997,

gives the following

**Judgment**

- 1 By application lodged at the Registry of the Court of Justice on 27 November 1995, Blackspur DIY Ltd ('Blackspur'), Steven Kellar, J. M. A. Glancy and Ronald

Cohen brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance in Case T-168/94 *Blackspur and Others v Council and Commission* [1995] ECR II-2627 ('the contested judgment') in which the Court of First Instance dismissed their applications under Article 178 and the second paragraph of Article 215 of the EEC Treaty for an order that the Council and the Commission 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.

- 2 According to the contested judgment, in July 1988, Blackspur, a company newly incorporated under the law of England and Wales with a capital of approximately UKL 750 000 and with the objects 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. That consignment was cleared through customs on 5 October 1988 (paragraph 4).
  
- 3 On 5 March 1990 the United Kingdom Customs authorities claimed from Blackspur a provisional anti-dumping duty of 69% on the net price per brush, pursuant to Commission 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) (paragraphs 2 and 4).
  
- 4 On 20 March 1989, by 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), the Council imposed a definitive anti-dumping duty at a rate identical to that of the provisional duty.

- 5 Blackspur was placed in receivership in August 1990 and subsequently went into liquidation.
  
- 6 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 Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ 1988 L 209, p. 1). In its judgment, the Court found that the German undertaking Nölle, an independent importer of brushes, had pointed to a sufficient number of factors during the anti-dumping proceeding to cast doubt on the appropriateness and reasonableness of choosing Sri Lanka as a reference country for determining the normal value, and that the Commission and Council had not made a serious or sufficient attempt to determine whether, as Nölle had argued, Taiwan could be considered as an appropriate reference country. 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 (paragraph 3).
  
- 7 In those circumstances, Blackspur and its directors, shareholders and guarantors, Steven Kellar, J. M. A. Glancy and Ronald Cohen, lodged an application at the Registry of the Court of Justice on 10 August 1993 under the second paragraph of Article 215 of the Treaty for compensation in respect of the loss of profits and the damage 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 (paragraph 5).
  
- 8 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.

## The contested judgment

- 9 In the contested judgment the Court of First Instance dismissed the action.
- 10 It noted at the outset that, according to settled case-law of the Court of Justice, 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 (paragraph 38).
- 11 Having pointed out that, according to the case-law of the Court of Justice, causation for the purposes of the second paragraph of Article 215 of the Treaty requires a direct causal link between the conduct of the institution concerned and the injury pleaded, and that the burden of proving it lay with the applicants (paragraph 40), the Court of First Instance found that, in this case, the appellants had failed to establish such a link (paragraph 53).
- 12 Concerning the damage suffered by Blackspur, the Court of First Instance held:

'41. In this case, the applicants submit that the damage suffered by the applicant Blackspur, which they estimate at UKL 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 ...

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 UKL 40 948.38, on which the provisional anti-dumping duty payable was in the region of UKL 18 116.83. Second, as is clear from the above letter from the chartered accountants, Blackspur had a turnover of UKL 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 (UKL 1 435 384) resulted from sales of brushes for a total value of UKL 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 UKL 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 UKL 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 UKL 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 UKL 750 000 ...'

- 13 As regards the damage which the other appellants claim to have suffered in their capacity as directors of Blackspur, through loss of their capital contributions to the



company, and also in their capacity as guarantors, through being called upon to honour personal guarantees given to it, and in their capacity as shareholders, through the loss in value of their holdings, the Court of First Instance held, at paragraph 52 of the contested judgment:

'... since, as [the Court] 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 [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, paragraph 21).'

### The appeal

- 14 In support of their appeal, the appellants put forward a number of pleas in law, essentially concerning, first, the nature of the damage taken into account in assessing the causal link, secondly, the assessment of the evidence for the existence of that link and, thirdly, the dismissal of the directors' claims for compensation.
- 15 The Council and the Commission request the Court of Justice to declare the appeal inadmissible, or, in the alternative, to dismiss it as unfounded. Should the Court nevertheless hold the appeal to be well founded, they consider that no purpose would be served by referring the matter back to the Court of First Instance, since the facts are already sufficiently well established to enable the Court to give judgment.

## Findings of the Court

- 16 Before examining the appellants' pleas, it should be noted that, in accordance with Article 168a of the EC Treaty and the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal may rely only on grounds relating to the infringement of rules of law by the Court of First Instance, to the exclusion of any appraisal of the facts (judgment in Case C-283/90 P *Vidrányi v Commission* [1991] ECR I-4339, paragraph 12; order in Case C-19/95 P *San Marco v Commission* [1996] ECR I-4435, paragraphs 39 and 40).

### *The nature of the damage taken into account in assessing the causal link*

- 17 In their first plea, the appellants submit that the Court of First Instance failed to understand the exact measure of the damage suffered by Blackspur and the other appellants in this case, with the result that it failed to adopt the correct approach in law to the question of the causal link between that damage and the conduct complained of on the part of the institutions concerned.
- 18 In particular, the appellants submit that paragraph 41 of the judgment is vitiated by an error of law in that the Court of First Instance there attributed to them the claim that sales of Chinese brushes represented half of Blackspur's turnover, whereas in fact they had asserted that those sales were to represent about one half of Blackspur's projected turnover. Furthermore, in the same paragraph, the Court of First Instance also attributed to the appellants the claim that profits amounting to UKL 586 000 were lost because Blackspur was placed in receivership, whereas, in fact, the appellants argued that that loss resulted from the fact that, because of the imposition of the contested anti-dumping duty, Blackspur had been deprived of a substantial part of its business from November 1989 to June 1990, that is, before it was placed in receivership.

- 19 The Court notes at the outset that the Court of First Instance dismissed the appellants' claim for compensation on the ground that they had not established a causal link between the allegedly unlawful conduct of the Community institutions and the damage claimed.
- 20 In that connection, the Court of First Instance correctly restated the appellants' description of the alleged damage, since it found, at paragraph 26 of the judgment, that that damage corresponded to 'the profits which [Blackspur] could have made by selling Chinese brushes if the Community institutions had not acted in the manner criticized, that is to say UKL 586 000'.
- 21 Moreover, at paragraph 48 of the contested judgment, the Court of First Instance found that the appellants had not adduced any evidence to explain how, as they alleged, the poor financial results previously referred to were due to the discontinuance of sales of Chinese brushes. The Court of First Instance noted in the same paragraph that, on the contrary, the loss of the commercial outlet represented by the sale of such brushes did not in any way prevent Blackspur from continuing with its commercial activities until August 1990, when the receivership proceedings were instituted. From a reading of the documents supplied by the appellants, the Court of First Instance concluded, at paragraph 47 of its judgment, that turnover for the period from July 1988 to August 1989 alone amounted to UKL 1 435 384, of which 40.44% resulted from sales of brushes, and that, for the subsequent period (from 1 September 1989 to 31 July 1990), turnover increased by some 30%, despite a sharp diminution in the percentage representing sales of brushes, from 40.44% to 3.01%.
- 22 In the absence of any other conclusive evidence, the Court of First Instance was justified in finding, at paragraph 48 of the contested judgment, that the appellants had not proved a causal link between, on the one hand, the cessation of sales of brushes originating in China, following the imposition of an anti-dumping duty on those brushes, and, on the other hand, the alleged loss of profits leading to the company's liquidation.

- 23 In those circumstances, the plea alleging erroneous attribution to the applicants, in paragraph 41 of the judgment, of the assertion that half of Blackspur's turnover consisted in sales of Chinese brushes cannot affect the result. Even assuming it to be established, that plea relates to supplementary grounds set out in the contested judgment for the sake of completeness and cannot call into question the finding on which the Court of First Instance based its dismissal of the claim for compensation, namely that the appellants had not adduced any evidence to establish a causal link between the financial losses, estimated by the appellants at UKL 586 000, and the cessation of sales of brushes originating in China (see, in particular, the judgment in Case C-137/95 P *SPO and Others v Commission* [1996] ECR I-1611, paragraph 47).
- 24 As regards the second assertion alleged to have been erroneously attributed to the appellants, to the effect that the loss of profits of UKL 586 000 was due to Blackspur's being placed in receivership, it is sufficient to observe that, at the end of paragraph 48 of its judgment, the Court of First Instance pointed out, in order to reject that assertion, the position of the appellants as now set out before this Court, namely that the economic loss was a cause of the company's liquidation and not a consequence of it.
- 25 The first plea must therefore be dismissed as unfounded.

*The assessment of the evidence as to the existence of a causal link*

- 26 In their second plea, the appellants argue that, in assessing the evidence as to the existence of a causal link, the Court of First Instance infringed the right to a fair trial and the rights of the defence. They reiterate that the Court of First Instance also incorrectly approached the question of the causal link because it did not properly understand the claim for damages.

- 27 In the first part of their second plea, the appellants maintain that, without giving reasons, the Court of First Instance took no account of relevant evidence, *in casu* the information contained in Annex 1 to the application and in Annex 26 to the reply, and based itself on a single document, namely the chartered accountants' letter concerning Blackspur's financial results for the periods 1988-1989 and 1989-1990, referred to in paragraph 44 of the contested judgment. That letter was drafted, according to the appellants, specifically in response to a request by the Court of First Instance for information regarding Blackspur's turnover, and not for the purpose of examining the question of the causal link. The appellants add that the Court of First Instance ought to have ordered measures of inquiry.
- 28 In that regard, it is sufficient to point out that paragraph 27 of the contested judgment refers to the report contained in Annex 1 to the application, which was produced by the appellants in support of the evaluation of the damage claimed, as being taken into account in the assessment of the causal link. Moreover, paragraph 45 of the judgment refers to Annex 22 to the reply and paragraph 46 refers to the 'documents in the case'. That being so, the appellants cannot validly maintain that, in analysing the causal link, the Court of First Instance took only one piece of evidence into consideration, namely the letter from the firm of chartered accountants referred to in paragraph 44.
- 29 In any event, as the Court of Justice has repeatedly held, it is for the Court of First Instance alone to assess the value which should be attached to the items of evidence adduced before it (judgment in Case C-136/92 P *Commission v Brazzelli Lualdi* [1994] ECR I-1981, paragraph 66; order in *San Marco v Commission*, cited above, paragraph 40). That appraisal does not, therefore, save where the sense of the evidence has been distorted, constitute a point of law which is subject, as such, to review by the Court of Justice (judgment in Case C-53/92 P *Hilti v Commission* [1994] ECR I-667, paragraph 42).
- 30 In this case, it has not been established that the Court of First Instance distorted the sense of the evidence by deducing from the chartered accountants' letter, referred to in paragraph 44 of the contested judgment, information not apparent from it. That document, prepared by the appellants themselves, contains figures concerning Blackspur's economic position, and in particular its turnover and the

percentage represented by sales of brushes. The fact that the document was produced in response to a question by the Court of First Instance concerning Blackspur's turnover did not prevent that Court from having recourse to its content in considering the question of the existence of a causal link or from finding that the document did not contain any conclusive evidence in that respect.

31 Moreover, it is first and foremost for the party seeking to establish the Community's liability to adduce conclusive proof as to the existence or extent of the damage he alleges and to establish the causal link between that damage and the conduct complained of on the part of the Community institutions (see, in particular, the judgment in Case 26/74 *Roquette Frères v Commission* [1976] ECR 677, paragraphs 22 and 23).

32 In this case, the Court of First Instance found, at paragraph 48 of the contested judgment, that the applicants had not adduced sufficient evidence to prove 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. In any event, as the Advocate General points out at paragraph 26 of his Opinion, the documents before this Court do not show that the appellants formulated sufficiently clear and precise requests for measures of inquiry.

33 It follows that the appellants' arguments seeking to challenge the assessment by the Court of First Instance of certain items of evidence produced to it are inadmissible and must therefore be rejected, since the appellants have neither established, nor even argued, that that Court distorted the sense of those items of evidence.

34 The first part of the second plea must therefore be dismissed.

35 In the second part of their second plea, the appellants criticize the Court of First Instance for having misunderstood their claim for damages. In the first place, according to the appellants, the Court of First Instance mentioned, at paragraph 46 of the contested judgment, an alleged assertion by Blackspur that imports of brushes from China represented, for the period prior to the imposition of the anti-dumping duty, half of its turnover, and then went on to hold that this assertion was unsubstantiated by any evidence. Second, they claim that, at paragraph 47, the Court of First Instance wrongly attributed to them the assertion that the actual imposition of the anti-dumping duty prevented Blackspur from finding alternative sources of supply, which consequently forced it to withdraw from the market for sales of cheap brushes, and then went on to hold, in the light of the figures for actual sales of brushes between 1 July 1988 and 31 August 1989, that that assertion was inaccurate.

36 The appellants maintain that their real argument before the Court of First Instance was that Blackspur, a company established in 1988 and whose first financial results were poor, was liable to be particularly affected by the disruption to trade which could result from the imposition of an anti-dumping duty on a product line which, according to its operating plan, should have represented approximately one half of its turnover. The continuation of its business, and consequently the increase in its turnover, following the imposition of the anti-dumping duty, as a result of, in particular, the search for alternative (that is to say, non-Chinese) sources of supply, or by the sale of certain stocks of paint brushes, reflect the efforts by Blackspur to survive the consequences of the imposition of the anti-dumping duty, but in no way allows the inference that the appellants have not suffered harm consisting in the loss of market share as a result of the imposition of the anti-dumping duty. Furthermore, it was for the Council and the Commission to prove that the circumstances were such that the appellants could and should have taken particular steps to avoid the damage complained of, or that the steps actually taken by the appellants either worsened the position or were so inadequate that the appellants were at least in part responsible for the eventual loss.

37 In that regard, this Court observes that in paragraph 26 of the contested judgment the Court of First Instance stated that, according to the appellants, '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, UKL 586 000'. Furthermore, in paragraphs 34 and 35 of the contested judgment it is stated:

'34. The applicants submit that it was because of the imposition of the provisional anti-dumping duty in the circumstances described above ... 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.'

38 It follows from the above that the Court of First Instance properly understood the position of the applicants as set out in paragraph 36 of this judgment.

39 Moreover, as is already clear from paragraph 23 above, the description of the appellants' argument which appears in paragraphs 41 and 46 of the contested judgment, even assuming that it were in fact erroneous and could not be redressed by reading paragraph 35 of that same judgment to which paragraph 41 refers, is irrelevant to the reasoning, set out in paragraphs 47 and 48 of the contested judgment, on which the Court of First Instance based its decision.

40 The second part of the second plea must therefore be dismissed as unfounded.



*The dismissal of the directors' claims for compensation*

- 41 In their third plea, the appellants maintain that paragraph 52 of the contested judgment is vitiated by an error of law inasmuch as the Court of First Instance failed to give reasons for its conclusion that the directors' claims for compensation should be dismissed in their entirety. They criticize the Court of First Instance for not having taken into account in that regard the information supplied by the appellants on this matter during the proceedings, for having reversed the burden of proof and for having distorted the sense of paragraph 21 of the judgment in *Dumortier Frères*, cited above, to which it referred.
- 42 In that respect, as has already been found, in order to reach the conclusion that a direct causal link had not been established between Blackspur's liquidation and the conduct complained of on the part of the institutions, the Court of First Instance undertook an assessment of the facts which cannot be questioned before the Court of Justice. In the absence of a duly established causal link between, on the one hand, the alleged loss of profits and the liquidation of Blackspur and, on the other hand, the conduct complained of on the part of the Community institutions, the Court of First Instance was entitled to hold that such a link had also not been established as between the damage suffered by the directors, guarantors or associates and that same conduct.
- 43 In those circumstances, it is irrelevant that the Court of First Instance also held, referring to paragraph 21 of the judgment in *Dumortier Frères*, cited above, that losses caused by the institution of insolvency proceedings amount to indirect and remote damage. Since this point of the reasoning was not necessary to the result, the criticisms to which it is subject cannot lead to annulment of the contested judgment and cannot therefore affect the result (see the order in *SPO and Others v Commission*, cited above, paragraph 47).
- 44 The third plea must therefore be dismissed as inadmissible.
- 45 It follows from all the foregoing considerations that the applicants' pleas in support of their appeal are in part inadmissible and for the rest unfounded. The appeal must therefore be dismissed.

## Costs

- 46 Under Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs. Since the appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the appeal;
2. Orders Blackspur DIY Ltd, Steven Kellar, J. M. A. Glancy and Ronald Cohen to bear their own costs and to pay those of the Council and the Commission.

Sevón

Edward

Wathelet

Delivered in open court in Luxembourg on 16 September 1997.

R. Grass

L. Sevón

Registrar

President of the First Chamber