JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 3910 of 2023

Zahid Hussain, Sole Proprietor of Trade International and another
Vs.
National Tariff Commission, Government of Pakistan, etc.

PETITIONERS BY:	Barrister Yousaf Khosa, Barrister Omair Saleem Malik and Barrister Momin Khan Taufiq, Advocates in W.P No. 3910/2023, 1757/2024 and 1758/2024
	Mr. Feisal Hussain Naqvi, ASC, Mr. Ahmad Abdul Rehman and Mr. Nasir Mehmood, Advocates in W.P No. 3945/2023
	M/s Basil Nabi Malik, Asad Ladha and Muhammad Shakeel Mughal, Advocates in W.P No. 4455/2023
	Mr. Nazma Perveen Malik and Mr. Ashiq Hussain Tarar, Advocates in W.P No. 1444, 2384, 2533, 2681, 3221 and 3714 of 2024
	Mr. Abdul Moiz Jaferii, Advocate in W.P No. 697/2024
RESPONDENTS BY:	Mr. Waqas Amir and Mr. Abu Azfar Naeem, Advocates for NTC.
	Mr. Fahad Khan Tareen, Assistant Attorney General.
	M/s Saif Ullah Khan, Saeed Hasan Khan, Rais Mehmood Ali and Ayman Asahad, Advocates for Bulleh Shah Packaging (Pvt.) Ltd.
	Dr. Farhat Zafar and Sheikh Anwar-ul-Haq, Advocates for respondent Nos. 2 and 3 in W.P No. 697/2024.
	Ch. Muhammad Nawaz, Legal Advisor, FBR for respondent No.3 in W.P No. 3945/2023
DATE OF HEARING:	06.05.2025.

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BABAR SATTAR, J.- This judgment will dispose of the aforementioned petition as well as the petitions listed in Annexure-A as all of them involve the legality of notice of

initiation of sunset review issued by the National Tariff Commission **("NTC")** dated 02.11.2023.

2. Learned counsels for the petitioners, including Mr. Faisal Hussain Naqvi, Barrister Yusuf Khosa, Mr. Abdul Moiz Jaferii and Mr. Basil Nabi Malik, amongst others, made detailed arguments and also filed their written submissions which form part of the record in the instant matter. They cited relevant case law, which is also mentioned in the written submissions as part of the grounds for challenge. In order not to burden this judgment, this Court will not list their arguments in detail and will only outline their contentions in a summary fashion.

3. It was submitted that the final determination was dated 30.03.2018 and was to expire after a period of five years on 29.03.2023, pursuant to section 58(1) of the Anti-Dumping Duties Act, 2015 **("ADD Act")**. A notice under section 58(2) of the ADD Act with regard to the date of expiry of the duty had to be issued at least ninety days prior to the expiration of the Anti-Dumping Duty **("ADD").** Such notice of expiry was issued on 28.12.2022. A notice for initiation of sunset review for purposes of section 58(3) of the ADD Act could only have been issued prior to 29.03.2023 (i.e. within a five-year period from the imposition of the ADD), which was not done. The period of review mentioned in the impugned notice was also from 01.07.2020 to 30.06.2023, which was not the same period for which ADD had been imposed by virtue of the final determination dated 30.03.2018. Thus, under the garb of sunset review, NTC was essentially undertaking a fresh investigation, which it could undertake, but not within the scope of provisions of section 58(3) of the ADD Act. It was submitted that after the

expiry of the five-year period of ADD's validity, NTC, for purposes of the ADD imposed through final determination dated 30.03.2018, had become functus officio and was vested with no authority under provisions of the ADD Act to initiate a sunset review and order the continuation of the ADD that stood expired on 29.03.2023. A mandatory precondition for initiating sunset review was that such review must be initiated prior to the expiry of the ADD. Where the sunset review was not so initiated and the ADD stood expired, no sunset review could subsequently be issued to bring back to life an expired ADD. It was submitted that a writ petition against the sunset review notice was maintainable as there was no appeal provided against such notice in terms of section 70(1) of the ADD Act, and in ***M/s Hana Clothings v. National Tariff Commission*** **(Appeal No. 518 of 2022)** by order dated 21.03.2023, the Anti-Dumping Appellate Tribunal declared that an appeal against initiation of sunset review was not maintainable. It was submitted that ADD could not be applied retrospectively to concluded contracts through exercise of authority in terms of section 58(3) of the ADD Act. And the Lahore High Court in ***M/s Z.A Corporation v. Federation of Pakistan*** **(Writ Petition No. 80288 of 2023)**, by judgment dated 11.11.2024, had already declared the impugned sunset review notice to be devoid of legal authority. It was submitted that for purposes of interpreting the scope of section 58(3) of the ADD Act, the decisions rendered as part of the dispute resolution mechanism of the WTO needed to be taken into account. Section 58(3) of the ADD Act was pari materia to Article 11.3 of the Anti-Dumping Agreement of WTO. And WTO precedents clearly established that the requirement to

initiate a sunset review prior to expiry of the ADD was a mandatory condition for such review. It was also argued that the continuation of ADD in exercise of authority under sunset review was not automatic and even an interim order during the pendency of sunset review for purposes of section 58(3) of the ADD Act had to be a reasoned order in terms of section 24A of the General Clauses Act, 1897.

4. Mr. Waqas Amir, learned counsel for NTC, submitted that the timeframe for initiation of sunset review under section 58(3) was directory and not mandatory. The sunset review could not be initiated prior to the expiry of ADD as NTC had become dysfunctional. The domestic industry had filed an appropriate application requesting the initiation of a sunset review within time, which was duly acknowledged. However, a notice of initiation of sunset review could not be issued as NTC was not duly constituted at the relevant time. Once NTC was properly constituted by the Federal Government, the sunset review notice was issued without delay. It was submitted that the timeframe mentioned for initiating sunset review in section 58(3) of the ADD Act ought to be treated as directory as the sunset review may or may not lead to imposition of ADD. As the purpose of the sunset review was to protect domestic industry, in the event that the timeframe mentioned in section 58(3) of the ADD Act was found to be mandatory, the domestic industry would suffer as its review application would not be adjudicated for no fault of its own. In this context purposive interpretation of section 58(3) of the ADD Act was required to be undertaken. The learned counsel for NTC cited various judgments of the Supreme Court enumerating relevant principles of statutory interpretation.

5. Mr. Saif Ullah Khan, Advocate on behalf of Bhulley Shah Packaging (Pvt.) Limited also furnished arguments that overlapped with the arguments of the learned counsel for NTC. The crux of his submissions also was that Bhulley Shah (Pvt.) Limited, on behalf of the domestic industry, had filed an application in terms of section 58(3) of the ADD Act within the period prescribed therein and as a consequence of NTC being dysfunctional, the remedy afforded to the domestic industry by the statute ought not to be frustrated.

6. The issue requiring adjudication in the instant matter is fairly straightforward:

> Whether a sunset review can be initiated after the date of expiry of the ADD in terms of section 58(3) of the ADD Act and whether the condition prescribed in section 58(3) to initiate a review prior to expiry of the ADD is directory or mandatory?

7. Section 58 of the ADD Act states the following:

> ***58. Review of anti-dumping duty.*** *(1) Any definitive anti-dumping duty imposed under this Act shall be terminated on a date not later than five years from the date of its imposition or from the date of the most recent review under section 59, if such review has covered both dumping and injury.*
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> *(2) The Commission shall, not later than ninety days preceding the date of expiry of a definitive anti-dumping duty, publish a notice of impending expiry of such anti-dumping duty in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.*
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> *(3) A definitive anti-dumping duty shall not expire if the Commission determines, in a review initiated before the date of expiry on its own initiative or upon a duly substantiated request made by or on behalf of domestic industry within forty-five days from public notice of impending termination of the definitive anti-dumping duty concerned, that the expiry of such*

anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury and such anti-dumping duty shall remain in force pending the outcome of such a review.

8. We will need to decipher the legislative intent manifest in section 58 of the ADD Act. Section 58(1) of the ADD Act provides that the ADD imposed under provisions of the ADD Act terminates at the expiry of five years from the date of its imposition, unless it terminates earlier by virtue of a review undertaken by NTC in terms of section 59 of the ADD Act. The exception to the five-year expiry period of the ADD is provided in section 58(3) of the ADD Act, which provides the conditions to be satisfied for the ADD to be extended beyond the period of five years, in terms of a review that has come to be known as sunset review (under the jurisprudence in relation to Article VI of the General Agreement on Tariffs and Trade, 1994 (GATT), to give effect to Pakistan's obligations under which the ADD Act was promulgated). In view of the plain language of section 58(3) of the ADD Act, the conditions mentioned therein can be identified as follows:

1. A review of the ADD, by the NTC on its own initiative or upon a request by the domestic industry, is to be initiated ***before*** the date of expiry of the ADD;

2. NTC ***determines*** that the ***expiry*** of the ADD would be likely to lead to continuation or recurrence of dumping; and

3. NTC ***determines*** that the ***expiry*** of the ADD would be ***likely*** to lead to injury.

Section 58(3) of the ADD Act further provides that the ADD under review, *"shall remain in force pending the outcome of such a review."*

9. The first condition highlighted above regulates the prescribed time period for initiation of the sunset review. The two conditions that follow relate to the substantive determinations to be made by NTC in order to extend the imposition of the ADD beyond the five-year period prescribed in section 58(1) of the ADD Act. The last sentence of section 58(3) of the ADD Act is an enabling provision, providing that the ADD is to remain in force pending the sunset review.

10. Learned counsels for the NTC and Domestic Industry have argued that the condition prescribed with regard to timing of the initiation of sunset review is directory and the review initiated after the expiry of the ADD, by virtue of NTC being dysfunctional at the time of expiry of the ADD, cannot be treated as void for failure to comply with a directory condition. Learned counsels for the petitioners have argued to the contrary that initiation of sunset review must be prior to the expiry of the ADD and the initiation of sunset review in question was after expiry of the ADD, which is not contested as a matter of fact, is void for being in breach of the mandatory precondition re timing.

11. There are provisions in various laws that prescribe a time period for asserting rights or taking action and law in relation to how such periods of limitation for asserting legal rights are to be understood is fairly well settled. The question of condonation of delay on account of initiation of action beyond the period of limitation came before the Supreme Court in ***Province of East Pakistan vs. Abdul Hamid Darr*** **(1970 SCMR 558)**. The Supreme Court while interpreting what constituted sufficient cause for purposes of an application under section 5 of the Limitation Act, 1908, noted that each case had to be considered

on its own facts, but "*this much is certain that where by lapse of time a valuable right has accrued to the other side, it should not be lightly taken away.*" More recently in ***Khushi Muhammad vs. Mst. Fazal Bibi (PLD 2016 SC 872)***, the body of case law on the question of condonation of delay was considered by the Supreme Court and the propositions settled in such regard were summarized. It was held that, "*The law of limitation is a statute of repose, designed to quieten title and to bar stale and waterlogged disputes and is to be strictly complied with. Statutes of limitation by their very nature are strict and inflexible. The act does not confer a right; it only regulates the rights of the parties. Such a regulatory enactment cannot be allowed to extinguish vested rights or curtail remedies, unless all the conditions for extinguishment of rights and curtailment of remedies are fully complied with in letter and spirit. There is no scope in limitation law for any equitable or ethical construction to get over them. Justice, equity and good conscience do not override the law of limitation...*" It was further held that, "*It can be rightly stated that the plea of limitation cannot be deemed as an unjust or discreditable defence. There is nothing morally wrong and there is no disparagement to the party pleading it. It is not a mere technical plea as it is based on sound public policy and no one should be deprived of the right he has gained by the law. It is indeed often a righteous defence. The court has to only see if the defence is good in law and not if it is moral or conscientious.*" The Supreme Court, while summarizing the principles with regard to condonation of delay, cited with approval the law laid down in ***Abdul Hamid Darr*** reproduced above. It went on to reiterate that, "*as per the rule of casus*

omissus, the courts are not entitled to read words into an Act of Parliament unless clear reasons for it are found within the four corners of the Act itself."

12. Before us is not a question of condonation of delay in terms of section 5 of the Limitation Act, 1908. However, to the extent that section 58(1) of the ADD Act prescribes a period for expiry of ADD and section 58(3) is in the nature of an exception to the rule stated in section 58(1), the principles enumerated in relation to the permissibility of pursuing remedies beyond the statutorily prescribed time period become relevant.

13. Let us next consider the approach of superior courts to dealing with timelines prescribed to take certain actions within fiscal statutes. In ***Messrs Super Asia Muhammad Din Sons (Pvt.) Ltd. vs. Collector of Sales Tax, Gujranwala*** **(2008 PTD 60)**, the question before the Lahore High Court was whether the period prescribed for completing an assessment after issuance of a show cause notice under provisions of the Sales Tax Act, 1990, was directory or mandatory. The Lahore High Court relied on the law laid down by the Supreme Court in ***Nagina Silk Mill, Lyallpur vs. The Income Tax Officer*** **(PLD 1963 SC 322)**, wherein it was held that, *"it is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair existing contracts, that the rule in question prevails [i.e. courts must lean against giving a statute retrospective operation]… Even if two interpretations are equally possible, the one that saves vested rights would be adopted in the interest of justice, specially where we are dealing with a taxing statute."* The Lahore High Court in ***Super Asia Muhammad Din Sons*** went on to hold that, *"it is settled law*

that where inaction on the part of a public functionary within the prescribed time is likely to affect the rights of a citizen, the prescription of time is deemed directory. However, where a public functionary is empowered to create liability against a citizen only within the prescribed time, it is mandatory. The acceptance of contention of the revenue in that regard will make a provision of law redundant and nugatory. Redundancy or superfluity of an act of Parliament and a provision of law cannot be readily accepted. All the more so when the prescribed limit is beneficial for the citizen and restricts the executive power to touch the pocket of a taxpayer, thereby creating certainty that after its expiry, even if there was a good case for creation of liability, he will not be dragged in." The law laid down in ***Super Asia Muhammad Din Sons*** was upheld by the Supreme Court in ***Collector of Sales Tax vs. Super Asia Muhammad Din Sons*** **(2017 SCMR 1427).** In doing so, the Supreme Court held that, "*The ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. While the use of the word 'shall' is not the sole factor which determines the mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal consequences in case of non-compliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. It is the duty of the court to garner the real intent of the legislature as expressed in the law itself."* The Supreme Court further reiterated that, "*when a statute requires that a thing should be done in a particular manner or form, it has to be done in such manner. But if such provision is directory, the act done in*

breach thereof would not be void, even though non-compliance may entail penal consequences. However, non-compliance of a mandatory provision would invalidate such act." The Supreme Court affirmed the view of the Lahore High Court that the period prescribed for passing an order under section 36 of the Sales Tax Act was mandatory.

14. The Supreme Court once again considered whether the period prescribed in section 179(3) of the Customs Act, 1969, for passing an order was mandatory. While relying on the law laid down in ***Super Asia Muhammad Din Sons*** **(2017 SCMR 1427)**, it was held in ***Messrs Mujahid Soap and Chemical Industries (Pvt.) Ltd. Vs. Customs Appellate Tribunal, Bench-I, Islamabad and others*** ***(2019 SCMR 1735)*** that the prescribed period was mandatory and any decision issued beyond such period was invalid.

15. In ascertaining the legislative intent underlying section 58 of the ADD Act, it is imperative to note that the preamble of the Act provides that it has been enacted *"to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Implementation thereof…"*

16. The object and purpose of the ADD Act was considered by the Sindh High Court in ***Muhammad Saleem Bikiya vs. Pakistan through Secretary Ministry of Commerce and another*** ***(2018 PTD 2026)*** and it was observed that*, "as is clear from the preambles of both the ADD Act and the predecessor Ordinance, they were enacted to give effect in the municipal law to Pakistan's obligations under the World Trade*

Organization treaties which have set up the principal system of international trade, the WTO system. In particular, the legislation gives municipal effect to Article VI of the General Agreement on Tariffs and Trade, (GATT) 1994 and the Agreement on Implementation of Article VI… The WTO system was the culmination of several years and rounds of multi-lateral negotiations known as the Uruguay Round. The member states of the WTO entered into a whole series of agreements relating to different aspects of international trade, which have been given effect in our municipal law either by various statutes relatable to specific agreements (as is the case at hand) or by extensive amendments in existing legislation… An important aspect of the WTO system is an elaborate dispute resolution mechanism." One of the primary questions before the Sindh High Court was the nature of levy imposed under provisions of the ADD Act. The Sindh High Court held that *"in its essence, it imposes a condition on the import of goods into the country, namely that they will not be brought into Pakistan at a price (i.e., the export price) lower than the normal price. If there is a violation of this condition, and the further condition of injury to domestic industry is also established, then a penalty, i.e., the anti-dumping duty will have to be paid."* It was in these terms that the Sindh High Court found that the ADD was in the nature of penalty for breach of requirements of import as prescribed in the ADD Act.

17. The manner in which the WTO dispute resolution system works and how municipal law enacted to give effect to agreements under the WTO system is to be interpreted was considered by the Sindh High Court in ***Sadia Jabbar vs.***

Federation of Pakistan and others ***(PTCL 2014 CL 537)*** where the following was held:

> *"If it is clear that a statute or statutory provision embodies a WTO agreement, and especially where the statutory language essentially reproduces or closely follows the text of the agreement, then the interpretation should invariably be that which is consistent with the agreement and obligations thereunder. In other words, the threshold for concluding that a meaning consistent with the WTO agreement was intended must be regarded as higher than would be the situation in the general case. To the maximum extent possible, the relevant provision should be understood and applied in its WTO context… Parliament is presumed to know and keep in mind the country's international treaty obligations, and the consequences that could flow from any non-compliance with such obligations. The court should, therefore, to the maximum extent possible, avoid an interpretation that conflicts with the WTO agreement concerned, and thereby has the potential of exposing Pakistan to the possibility of retaliatory measures being adopted by other member states under the WTO system.*

It was further explained in **Sadia Jabbar** that, *"the WTO provides for a detailed formal mechanism for dispute resolution, to which any member state can resort if it is of the view that another member state is not fulfilling its WTO obligations. This mechanism is contained in a separate agreement known as the "Understanding on Rules and Procedures governing the Settlement of Disputes" (generally referred to as the "Dispute Settlement Understanding" or "DSU")… The DSU provides for an adjudicatory mechanism by which binding rulings can be made by "panels" and, on appeal, by appellate bodies…Thus, the WTO system has a lot of bite in it, and member states must be, and generally are, careful to ensure that they are compliant with their obligations under its various agreements."*

18. WTO also issues a WTO Analytical Index, which is an article-by-article guide to the interpretation and application of WTO agreements. The Dispute Resolution Reports (referred to as DS Reports) in relation to Article 11 of the Anti-Dumping Agreement summarize panel reports issued while interpreting and applying Article 11.3 of the Anti-Dumping Agreement on which is based section 58 of the ADD Act. For our purposes, of relevance is Sub Articles 11.3 of the WTO Anti-Dumping Agreement, which is *pari materia* to section 58(1) and 58(3) of the ADD Act and is reproduced below for convenience:

> *11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.*

19. The DS report on Article 11 as part of the WTO Analytical Index notes that Article 11.3 lays down a mandatory rule in the following terms:

> *26. The Appellate Body in US – Corrosion-Resistant Steel Sunset Review considered that Article 11.3 lays down a mandatory rule with an exception and thus imposes a temporal limitation on the imposition of anti-dumping duties:*
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> > *"Specifically, Members are required to terminate an anti-dumping duty within five years of its imposition 'unless' the following conditions are satisfied: first, that a review be initiated before the expiry of five years from the date of the imposition of the duty; second, that in the review the authorities determine that the expiry of the duty*

would be likely to lead to continuation or recurrence of dumping; and third, that in the review the authorities determine that the expiry of the duty would be likely to lead to continuation or recurrence of injury. If any one of these conditions is not satisfied, the duty must be terminated."

27. The Appellate Body in US – Oil Country Tubular Goods Sunset Reviews also viewed the continuation of an anti-dumping duty as "an exception to the otherwise mandated expiry of the duty after five years".

28. In addition to interpreting the text of Article 11.1 (as outlined above), the Panel in Pakistan – BOPP Film (UAE) set out its interpretation of Article 11.3. In the light of the ordinary meaning of the terms "determine", "review", and "likely", the Panel considered that a Member may not rely solely on assumption or speculation when conducting a likelihood analysis during a sunset proceeding:

"Together, these terms indicate that a Member may not rely solely on assumption or speculation when conducting a likelihood analysis during a sunset proceeding but must, instead, conduct its examination on the basis of positive evidence so as to arrive at a reasoned determination, resting on a sufficient factual basis, that dumping and injury are 'likely' – i.e. probable and not merely possible – to continue or recur."

The WTO dispute resolution panel in *Pakistan-BOPP Film (UAE)* in para. 7.546 noted that, *"Article 11.3 requires the authority to ascertain whether there is a relationship (or nexus between the expiry of a duty, on the one hand, and continuation or recurrence of dumping and injury on the other, such that the formal 'would be likely to lead to' the latter."*

20. The DS reports reproduced above reflect that within the WTO dispute resolution system, the requirements prescribed in Article 11.3 are treated as being of a mandatory nature and constitute a precondition for imposition of anti-dumping duties through a sunset review. Apart from the DS reports cited above,

in a dispute between the European Communities (i.e., European Union) and China (referred to as *EC-Fasteners (China)*), the Appellate Body gave its report on 15.11.2011 (also cited with approval by the Sindh High Court in ***Muhammad Saleem Bikiya vs. Pakistan through Secretary Ministry of Commerce and another*** **(2018 PTD 2026)**), in which it was held that, *"the auxiliary verb "shall" is commonly used in legal texts to express a mandatory rule… Had the drafters of Article 6.10 wanted to avoid formulating an obligation to determine individual dumping margins, they would have used terms such as "it is desirable" or "in principle" instead of "shall"."*

21. While considering the manner of exercise of authority in terms of Article 11.3, it was held by the Appellate Body in *U.S.-Corrosion-Resistant Steel Sunset Review* that the likelihood determination for purposes of sunset review is a prospective determination wherein *"the authorities must undertake a forward-looking analysis and seek to resolve the issue of what would be likely to occur if the duty were terminated."* It was held that, *"in an original anti-dumping investigation, investigation authorities must determine whether dumping exists during the period of investigation. In contrast, in a sunset review of an anti-dumping duty, investigating authorities must determine whether the expiry of the duty that was imposed at the conclusion of an original investigation would be likely to lead to continuation or recurrence of dumping."* While explaining the distinction between an original investigation and a sunset review, it was observed by the Appellate Body in *U.S. Oil Country Tubular Goods Sunset Review* (as noted in the panel report *EU-Cost Adjustment Methodologies II (Russia)*, Para. 7.381) that, *"we are of the view*

that the fundamental requirement of Article 3.1 that an injury determination be based on positive evidence and an objective examination would be equally relevant to likelihood determinations under Article 11.3. It seems to us that factors such as the volume, price effects and the impact on the domestic industry of dumped imports take into account the conditions of competition may be relevant to varying degrees in a likelihood-of-injury determination. An investigation authority may also in its own judgment consider other factors contained in Article 3 when making a likelihood-of-injury determination. But the necessity of conducting such an analysis in a given case results from the requirement imposed by Article 11.3 - not Article 3 - that a likelihood-of-injury determination rest on a 'sufficient factual basis' that allows the agency to draw 'reasoned and adequate conclusions'." It was further held that the language *"in Article 11.3 makes it clear that it envisages a process combining both investigatory and adjudicatory aspects"* and that *"an investigating authority must have a sufficient factual basis to allow it to draw reasoned and adequate conclusions concerning the likelihood of such continuation or recurrence."*

22. In view of the DS Reports cited above, it is evident that within the WTO jurisprudence, the requirements mentioned in Article 11.3, including that a review of ADD be initiated before the expiry of five years from the date of its imposition, are treated as mandatory conditions. The second matter to be noted is that most critical for purposes of a sunset review is the nexus between expiry of a duty and the recurrence of dumping and injury. The third matter that is relevant for our purposes is that while there is a distinction between the original investigation

undertaken for purposes of imposition of the ADD and the sunset review undertaken to determine the likelihood of recurrence of dumping and injury, the factors to be considered for purposes of the former remain relevant for purposes of the latter. And the determination to be made as part of the sunset review is an investigative and adjudicatory exercise, which is to be based on positive evidence and objective examination of the existing facts.

23. What emerges from the above discussion is that the relevant trigger for purposes of a sunset review is the impending expiry of ADD. It is in the context of the approaching expiry of ADD that a forward-looking analysis and prospective determination is to be made as to whether the expiry will result in continuation or recurrence of dumping and injury. To state the obvious, such prospective or forward-looking analysis cannot take place once the ADD stands expired upon completion of its five-year term.

24. In India, sunset review is provided in terms of section 9-A(5) of the Customs Tariff Act, 1975. The question of interpretation of such provision came before Indian Supreme Court in ***Union of India vs. Kumho Petrochemicals Company Ltd.*** **(2017) 8 SCC 307** in an appeal against a decision of the High Court where writ petitions were allowed while holding that the order of continuation of anti-dumping duties made after the expiry of the duty period was bad in law. The Indian Supreme Court held that, *"From the scheme of section 9-A(5) of the Act it becomes clear that though the notification for anti-dumping duty is valid for a maximum period of five years, the said period can be extended further with the issuance of fresh notification. For this purpose, it is necessary to*

initiate the review exercise before the expiry of the original notification, which review is commonly known as 'sunset review'… the High Court has held that once the earlier notification by which anti-dumping duty was extended by five years i.e. up to January 01, 2014, expired, the Central Government was not empowered to issue any notification after the said date, namely, on January 23, 2014, inasmuch as there was no notification in existence the period whereof could be extended." The Indian Supreme Court concluded that, *"two things which follow from the reading of the section 9-A(5) of the Act are that not only the continuation of duty is not automatic, such a duty during the period of review has to be imposed before the expiry of the period of five years, which is the life of the notification imposing anti-dumping duty."*

25. The impugned sunset review notification dated 26.10.2023, was also challenged before the Lahore High Court in ***Messers Z.A. Corporation vs. Federation of Pakistan*** **(Writ Petition No. 80288 of 2023)**. The Lahore High Court by judgment dated 11.11.2024, set aside the impugned order holding that, *"if the legislature has provided a period within which certain act has to be undertaken, it cannot be extended by this court or by any other authority which would be tantamount to circumventing the intention and purpose of the law. This court cannot read into section 58 what has been specifically ousted from its ambit. Section 58 does not envisage a contingency such as the one pleaded as a defence by the Commission and its tenor must be complied without any deviation."* It was accordingly held that NTC being dysfunctional was not a basis for reading into section 58(3) of the ADD Act, which required that the sunset

review must be initiated prior to the expiry of the five-year period of validity of the ADD.

26. As has been discussed above, the object and purpose of the ADD Act was to give effect to the WTO's Anti-Dumping Agreement for purposes of implementation of Article VI of the GATT. As has been explained in **Sadia Jabbar**, given that the ADD Act was enacted to implement Pakistan's international obligations under a WTO Agreement, its provisions are to be understood and applied in a manner consistent with the understanding of related provisions of the Anti-Dumping Agreement under WTO's jurisprudence. As a matter of Pakistani law, it is a settled principle that where by virtue of afflux of time, a certain benefit accrues to a party, including the certainty that a penalty can no longer be imposed on such party by virtue of expiry of related period of limitation, such accrued benefit cannot be lightly taken away by means of any interpretive tool. Relevant case law of the Supreme Court has also been cited earlier in this judgment holding that where a statute requires a thing to be done in a certain way, it must be done such.

27. In terms of our own jurisprudence as well as WTO's jurisprudence in relation to Article 11 of the Anti-Dumping Agreement, the use of the word 'shall' is treated as manifestation of a mandatory condition. Section 58(1) of the ADD Act uses such mandatory language while providing that ADD shall stand terminated upon expiry of five years since its imposition. Section 58(3) of the ADD Act provides an exception to such termination, with the first necessary precondition being that a sunset review be initiated before the date of expiry of the ADD in question. Such sunset review can be initiated by NTC on

its own initiative or on an application filed by or on behalf of the domestic industry within 45 days of public notice of impending termination of the ADD. In terms of the language used in section 58(3) of the ADD Act, the intent as decipherable from the plain words used is that such sunset review, which can extend the life of the ADD in question beyond the mandatory period of five years, must be initiated within the timeframe prescribed i.e. prior to expiry of the five-year period since the imposition of the ADD.

28. A purposive interpretation of section 58(3) also leads to a similar conclusion. As highlighted above, by reproducing dicta from DS Reports interpreting and applying Article 11 of the Anti-Dumping Agreement, the purpose of a sunset review is to make a prospective or forward-looking determination with regard to the effect of expiry of the ADD and consider whether such expiry would be likely to trigger a continuation or recurrence of dumping and injury. Where the ADD already stands expired, there is no occasion to undertake a forward-looking or prospective analysis, as after such expiry what was required to be determined prospectively would simply be a determination of fact. In other words, the object of the sunset review is to allow a continuation of the ADD as an exception to the rule that the ADD expires upon completion of five years since its imposition. Where the ADD stands expired for any reason, including that NTC was dysfunctional at the relevant time, the statutory window provided for undertaking a sunset review shuts down and such window cannot be reopened by virtue of reading into the requirements prescribed in section 58(3) of the ADD. This Court is in agreement with the findings of the Indian Supreme Court in

Kumho Petrochemicals Company that once the notification imposing the ADD stands expired, there is nothing in the field that can be extended in exercise of authority for purposes of a sunset review.

29. Learned counsel for NTC had laid much emphasis on the fact that an original investigation is different from a sunset review and that in the event that a sunset review is disallowed the domestic industry would be prejudiced as the domestic industry had filed an appropriate application within the prescribed statutory period prior to the expiry of the ADD. The argument is misconceived for two reasons. One, in the context of exercise of public authority within a prescribed statutory period, the period prescribed is treated as a mandatory timeframe for exercise of public authority where the consequence would be that of creating a liability for a citizen. As ADD is a penalty, any extension of ADD would create a liability for the petitioners and not for the domestic industry. And to the extent that a sunset review was to be initiated, such review could only be initiated within the period prescribed in section 58(3) (i.e. prior to the expiry of the ADD) and not thereafter. Treating such condition as directory would be to wrestle away a right that has accrued to the petitioners i.e. that they will no longer be subjected to a penalty that stands expired in terms of section 58(1) of the ADD. And two, while considerations of equity cannot be taken into account while interpreting statutory time limits, as has been held in the case law cited earlier in this judgment, bringing back to life an ADD months after its expiry would not serve public interest either. Such construction of Section 58(3) would have the effect of retrospectively imposing a penalty in relation to

import contracts that may have been executed in view of the fact that the ADD, previously in place, stood expired. Doing so would interfere with the legal certainty within which contracts are to be concluded and fall foul of the rule laid down by the Supreme Court in ***Al-Samrez Enterprises vs. Federation of Pakistan*** **(1986 SCMR 1917)**.

30. Finally, it appears that NTC is under a mistaken assumption that making a determination for purposes of a sunset review is in the nature of a summary process, that short circuits the investigative process and enables NTC to impose a duty without considering the factors required to be considered for purposes of an initial investigation. Such understanding is misconceived as is evident from WTO DS Reports cited above explaining that a sunset review determination requires exercise of investigative and adjudicatory authority, which must be based on an objective examination of positive evidence. To the extent that the domestic industry believes or NTC comes to a conclusion that dumping and injury in relation to the relevant product are continuing, there is nothing preventing NTC from initiating an appropriate investigation. However, with the automatic expiry of ADD upon completion of five years since its imposition, the object of undertaking a sunset review no longer exists as has already been explained above. The purpose of a sunset review is to prevent dumping and injury where that is the likely effect of expiry of the ADD. However, once the ADD stands expired and remains expired for a few months, a sunset review no longer remains a useful tool and cannot be employed thereafter.

31. For the aforementioned reasons, the petitions are **allowed.** Consequently, the impugned sunset review notice

dated 02.11.2023, having been issued in relation to the ADD that stood expired on 30.03.2023, is declared to have been issued without lawful authority and is accordingly set-aside.

(BABAR SATTAR)
JUDGE

Announced in the open Court on **13.06.2025.**

JUDGE

Approved for reporting

Saeed

ANNEXURE-A

Sr. No.	Case No.	Parties Name
1.	W.P No. 3945 of 2023	Dawn Convertee (Private) Limited vs. Federation of Pakistan and others
2.	W.P No. 4455 of 2023	Amina Ashraf vs. National Tariff Commission
3.	W.P No. 697 of 2024	Karachi Iron & Steel Merchants Association, etc. vs. Federation of Pakistan, etc.
4.	W.P No. 1444 of 2024	M/s Ahmad Enterprises and another vs. The Federation of Pakistan, etc.
5.	W.P No. 1757 of 2024	M/s Madiha International (Pvt.) Ltd., etc. vs. National Tariff Commission and another.
6.	W.P No. 1758 of 2024	All Pakistan Paper Merchants Association and another vs. National Tariff Commission, etc.
7.	W.P No. 2384 of 2024	M/s MashAllah Fare Deal (SMC Pvt.) Ltd., etc. vs. The Federation of Pakistan, etc.
8.	W.P No. 2533 of 2024	M/s Highseen Industries Pvt. Ltd. vs. The Federation of Pakistan, etc.
9.	W.P No. 2681 of 2024	M/s Perfect Craft (SMC Pvt.) Ltd. vs. The Federation of Pakistan, etc.
10.	W.P No. 3221 of 2024	Ahsan Mukhtar vs. The Federation of Pakistan, etc.
11.	W.P No. 3714 of 2024	M/s Rhino Pre-Engineered Building (Pvt.) Ltd. vs. The Federation of Pakistan, etc.