Form No: HCJD/C-121

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

C.M.A. No.28 of 2026

Bulleh Shah Packaging (Private) Limited and another

Versus

Anti-Dumping Appellate Tribunal and others

C.M.A. No.29 of 2026

National Tariff Commission

Versus

Khairullah Paper and Board Works (Private) Limited and others

APPELLANTS BY:	M/s Saad M. Hashmi, Saeed Hassan Khan and Rais Mahmood Ali, Advocates in C.M.A No. 28/2026.
	Mr. Waqas Amir, Advocate in C.M.A No. 29 of 2026.
RESPONDENTS BY:	Mr. Muhammad Ahsan Bhoon, Advocate for respondent Nos. 6, 7 & 8.
	Mr. Waqas Amir, Advocate for respondent No.2 in C.M.A No. 28/2026
	Mr. Shafqat Mehmood Chohan and Mr. Wasi Ullah khan Surrani, Advocates for respondent No.4 in C.M.A No. 28/2026.
	M/s Feisal Hussain Naqvi, Nasir Mehmood, Laiba Nadeem and Mr. Ahmed Abdul Rehman, Advocates for respondent No.3 in C.M.A No. 28/2026.
	Mr. Muhammad Shehzad Shaukat and Raza ur Rehman Asad, Advocate for respondent No.3 CMA No. 28/2026 and respondent No.1 in CMA No. 29/2026.
	Barrister Junaid Ahmed, Advocate for respondent No.3 in CMA No. 28/2026 and respondent No.2 in CMA No. 29/2026.
	Barrister Qasim Wadud and Barrister Shoaib Wyne for respondent No.5.
DATE OF HEARING:	24.09.2026

AYYAZ SHAUKAT, J:- This judgment shall dispose of C.M.A. No.28 of 2026 and C.M.A. No.29 of 2026, both filed under section 70(13) of the Anti-

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Dumping Duties Act, 2015 (**the "Act"**), against the judgment dated 04.05.2026 passed by the Anti-Dumping Appellate Tribunal (**the "Tribunal"**) in Appeal No.519 of 2022. By the impugned judgment, the Tribunal, by a majority of two to one, set aside the report dated 24.08.2022 issued by the National Tariff Commission (**the "Commission"**) upon conclusion of a sunset review, along with the consequential notice dated 25.08.2022, whereby anti-dumping duties on imports of Coated Bleached Paperboard from China had been continued for a further period of five years. C.M.A. No.28 of 2026 has been filed by two domestic producers of the product, whereas C.M.A. No.29 of 2026 has been filed by the Commission.

2. Briefly stated, the facts giving rise to these appeals are that appellant No.2 in C.M.A. No.28 of 2026, M/s Century Paper and Board Mills Limited, submitted an application to the Commission on 21.12.2015 seeking an investigation into dumped imports of Coated Bleached Paperboard (one side coated folding box board with white back) originating from China. Pursuant thereto, the Commission initiated an investigation on 08.02.2016 and made its preliminary determination on 28.02.2017. Subsequently, through its final determination notified in April 2018, the Commission imposed definitive anti-dumping duties ranging from 28.74% to 29.02% for a period of five years, with effect from 28.02.2017. On 23.11.2021, the Commission published a notice of impending expiry under section 58(2) of the Act. Thereafter, the two appellants, representing the domestic industry, submitted an application on 06.01.2022 seeking a sunset review. The Commission initiated the review on 25.02.2022, covering the period from 01.10.2018 to 30.09.2021. During the review proceedings, the Chinese exporters did not respond to the questionnaires issued by the Commission, which consequently proceeded on the basis of the best information available under section 32 of the Act. Upon conclusion of the review, the Commission issued its report dated 24.08.2022, determining that expiry of the existing duties would be likely to lead to recurrence of dumping and injury. Accordingly, through notice dated 25.08.2022, the Commission continued the anti-dumping duties for a further period of five years, with effect from 28.02.2022.

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3. Respondents No.3 and 4 in C.M.A. No.28 of 2026, namely M/s Khairullah Paper and Board Works (Private) Limited and M/s Pakistan Packages (Private) Limited, being importers of the product, challenged the aforesaid report and consequential notice before the Tribunal in September 2022. The appeal was heard on various dates between December 2022 and April 2026. During the proceedings, the appeal was adjourned *sine die* on two occasions at the request of learned counsel for the importers. The first adjournment was sought to enable the importers to approach the Commission for a review on change of circumstances under section 59 of the Act, whereas the second was sought to await the decision in C.M.A. No.26 of 2023, filed before this Court against the original final determination. The domestic industry raised no objection to either request. The importers were also permitted to file an amended memorandum of appeal. Upon conclusion of the proceedings, the Tribunal, by a majority of two to one, allowed the appeal through its judgment dated 04.05.2026 and set aside the Commission's report dated 24.08.2022 and consequential notice dated 25.08.2022. Hence, the present appeals.

Submissions of learned counsel for the parties

4. Mr. Saad Mumtaz Hashmi, learned ASC for the appellants in C.M.A. No.28 of 2026, contends that sub-sections (5) and (6) of section 70 of the Act are mandatory and require the Tribunal to decide an appeal "not later than forty-five days" and to hear it from day to day. He submits that, since the Tribunal pronounced its judgment after approximately three years and eight months, the judgment is a nullity. In support, he relies upon *Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427), Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328), Shaheen Merchant v. Federation of Pakistan/National Tariff Commission and others (2021 PTD 2126) and Zahid Hussain v. National Tariff Commission (2025 PTD 1532)*. Learned counsel acknowledges that *Commissioner Inland Revenue v. Sarwaq Traders (2022 SCMR 1333)* was recalled on review in *Commissioner Inland Revenue, Zone-III, RTO, Rawalpindi and others v. Messrs Sarwaq Traders, Rawalpindi and others (2025*

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SCMR 341), but maintains that the larger Bench in *Messrs WAK Limited Multan Road, Lahore and others v. Collector Central Excise and Sales Tax, Lahore and others (2025 SCMR 1280)* found the review judgment incorrect, rendering it per incuriam. He further argues, with reference to *Ahsan Ali and others v. District Judge and others (PLD 1969 SC 167)*, that the prescribed period cannot be extended by consent, as limitation cannot be waived. In the alternative, he seeks remand of the importers' appeal to the Tribunal for a fresh decision. On the merits, learned counsel submits that interference by the Tribunal was permissible only if the Commission's evaluation was both biased and lacking in objectivity. He maintains that, owing to the exporters' non-cooperation, the distinction between what is "probable" and what is merely "possible" was inapplicable to an assessment based on the best information available, as recognised by the Tribunal in Appeal No.510 of 2022. He further questions the majority's reliance upon the unadopted WTO panel report in Pakistan - Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (WT/DS538/R) (the "BOPP Report"), which remains under appeal, and upon the Tribunal's decision dated 25.09.2023 in Appeal No.544 of 2022, rendered after the Commission's report and presently under challenge before this Court. Relying upon *Shehla Zia v. WAPDA (PLD 1994 SC 693)* and *SGS v. Pakistan (2002 SCMR 1694)*, he submits that unincorporated treaties do not form part of municipal law. He also argues that sections 15 and 17 of the Act do not govern a sunset review; that the matter ought, at least, to have been remanded to the Commission under the proviso to section 70(7); that the importers lacked standing before the Tribunal; and that anti-dumping duty is not penal in character, as held in *Messrs Aimnaz (Pvt.) Limited v. Federation of Pakistan (2018 PTD 1966)*.

5. Mr. Waqas Amir, learned counsel for the Commission, supports the appellants' contentions and presses the Commission's independent appeal. He submits that a sunset review is inherently predictive and that the expression "recurrence" in section 58(3) of the Act necessarily contemplates a situation in which dumping and injury may have ceased during the operation of the duty. According to learned counsel, the majority of the Tribunal erroneously insisted

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upon proof of present dumping and injury, thereby treating the effectiveness of the existing duty as a reason for its discontinuation. He points out that dumped imports had not ceased altogether and continued to account for 11% of imports during the final year of review. He further refers to the increase in Chinese exports and production capacity and submits that Table-VII of the Commission's report demonstrated that, even without the anti-dumping duty, the landed cost of Chinese imports remained below the domestic selling price. He seeks to distinguish Appeal No.544 of 2022 on the ground that imports in that case had declined to zero, and the BOPP case on the ground that the exporters had cooperated with the investigating authority. Learned counsel characterises the findings recorded by the majority as an afterthought. Regarding the objection to the Commission's standing, he argues that section 70(13) does not restrict the right of appeal to an "aggrieved person" and that the Commission is expressly recognised as a statutory party under sub-sections (7), (10) and (11) of section 70. In support, he relies upon the judgment of the Hon'ble Federal Constitutional Court in *M/s DG Khan Cement Company Limited v. Federation of Pakistan (C.A. No.1243 of 2020)*, while seeking to distinguish *Wafaqi Mohtasib Secretariat, Islamabad v. SNGPL, Lahore (PLD 2020 SC 586)* and *A. Rahim Foods (Pvt.) Limited v. K&N's Foods (Pvt.) Limited (PLD 2023 SC 516)*.

6. Conversely, Mr. Feisal Hussain Naqvi, learned ASC for respondent No.3, contends that the period prescribed under section 70(5) of the Act is directory rather than mandatory. He argues that a litigant cannot be prejudiced by the failure of an adjudicatory forum to decide a matter within the prescribed period and that the statutory right of appeal cannot be extinguished on that account. Reliance is placed upon *A.J. Traders v. Collector of Customs (Adjudication), Islamabad (PLD 2022 SC 817)* and the review judgment in Sarwaq Traders. Learned counsel submits that WAK Limited affirmed the principle laid down in A.J. Traders and did not overrule the review judgment in Sarwaq Traders, whereas Super Asia and Javed Iqbal concerned original adjudicatory proceedings rather than appellate jurisdiction. He further maintains that the appellants participated in the proceedings before the Tribunal without raising any objection regarding delay and cannot subsequently challenge its jurisdiction on that

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ground, placing reliance upon *WAPDA v. Khanzada Muhammad Abdul Haque Khan Khattak and Co. (PLD 1990 SC 359)*. He also opposes remand, submitting that it would merely return the controversy to the same Tribunal. On the merits, learned counsel argues that the appeal before the Tribunal is a full statutory appeal before a specialised forum. He maintains that the standard adopted by the majority had already been recognised in adopted WTO Appellate Body reports long before the BOPP Report and is now reflected in rules 40 and 41 of the Anti-Dumping Duties Rules, 2022. Relying upon *Malik Asad Ali v. Federation of Pakistan (PLD 1998 SC 161)* and *Mir Muhammad Khan v. Haider (PLD 2020 SC 233)*, he submits that judicial decisions declare the existing law and that the subsequent date of the Tribunal's decision in Appeal No.544 of 2022 is consequently immaterial. He further contends that the Commission failed to determine normal value, included products outside the scope of the review in Table-V, and relied upon Chinese production capacity without examining domestic demand in China. According to learned counsel, the Commission's own tables disclosed no price undercutting, depression or suppression, while reflecting a substantial increase in the profitability of the domestic industry. He maintains that the principle of best information available governs the sources of evidence upon which the Commission may rely but does not dilute the standard governing its evaluation. Lastly, relying upon *Muhammad Saleem Bikiya v. Pakistan (2018 PTD 2026)*, he submits that anti-dumping duty is penal in character.

7. The written submissions filed on behalf of the importers by Barrister Junaid Ahmed, and by Mr. Qasim Wadud and Mr. Saad Shuaib Wyne, learned ASCs for respondent No.5, substantially support the foregoing contentions. Learned counsel submit that an appeal under section 70(13) of the Act is confined to questions of law and does not permit this Court to undertake a fresh appraisal of evidence already examined by the Commission and the Tribunal. In this regard, they rely upon *Sohail and Company v. Anti-Dumping Appellate Tribunal, Islamabad (2024 PTD 872)*, *Dawn Convertec SMC (Pvt.) Ltd. v. National Tariff Commission (2025 PTD 724)* and *M/s Hamdam Paper Products (Pvt.) Limited v. National Tariff Commission (F.A.O. No.40 of 2020, decided on 28.01.2025)*. They further submit that sub-sections (8) and (9) of section 70

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reproduce Article 17.6(i) of the Anti-Dumping Agreement and that confirmation of the Commission's determination is impermissible where any of the prescribed conditions remains unsatisfied. Regarding limitation, they contend that the forty-five-day period under section 70(5) is directory, referring to the interpretation adopted by this Court in Aimnaz (supra) concerning sections 36 and 39 of the Act. They argue that, if the provision were construed as mandatory, the same interpretation would necessarily extend to the ninety-day period prescribed for disposal of appeals by this Court. Learned counsel also seek to distinguish the authorities relied upon by the appellants on the ground that those cases concerned original adjudication under fiscal statutes. On the factual aspects, they maintain that the Commission relied exclusively upon import data obtained from Pakistan Revenue Automation (Private) Limited without verifying its reliability against independent sources, as allegedly required by section 32 read with the Schedule to the Act. They further point out that Pakistan's appeal against the BOPP Report has remained unheard because the WTO Appellate Body has lacked a quorum since 11.12.2019.

8. Mr. Shafqat Mehmood Chohan, learned ASC, in the skeleton arguments and paper book filed on behalf of respondent No.5 and other importers, similarly contends that the time limits prescribed under section 70 of the Act are directory and that the authorities relied upon by the appellants concern original adjudication of tax liability. He further argues that the Commission, being a neutral investigating forum, cannot claim the status of an aggrieved person merely because its determination has been set aside. In support, he relies upon Wafaqi Mohtasib and A. Rahim Foods (supra). Referring to section 57 of the Act, learned counsel submits that an anti-dumping duty may remain in force only for so long as it is necessary to counteract dumping causing injury, and that termination is the ordinary statutory consequence while continuation constitutes an exception requiring justification. He maintains that, since the Act does not expressly prescribe the methodology for determining likelihood under section 58(3), guidance may properly be drawn from WTO jurisprudence interpreting Article 11.3 of the Anti-Dumping Agreement. In this regard, he relies upon United States - Anti-Dumping Duty on DRAMS from Korea (WT/DS99/R), United

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States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (WT/DS244/AB/R), United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (WT/DS268/AB/RW), and the BOPP Report. According to learned counsel, these authorities require the likelihood of continuation or recurrence of dumping and injury to be established as a probability rather than a mere possibility, upon positive evidence instead of assumption, and that this principle applies irrespective of the particular facts of a review. He further submits that section 32, read with paragraph 7 of the Schedule, obliged the Commission to verify the information relied upon against independent sources. He contends that the Commission recorded conclusions upon each of the four factors examined in its report without undertaking an objective evaluation of the supporting material. He also points out that the online information relied upon by the Commission was accessed on 11.02.2022, before initiation of the sunset review on 25.02.2022, and that the underlying publications were dated 30.01.2018, 16.03.2020 and 15.06.2020. Mr. Muhammad Ahsan Bhoon, learned ASC for respondents No.6 to 8, adopts the foregoing submissions.

9. In rebuttal, Mr. Saad Mumtaz Hashmi submits that the delay was caused by the importers themselves that a mere absence of objection to adjournments is not acquiescence, and that section 70(5) casts a duty on the Tribunal which the parties cannot enlarge.

10. I have heard learned counsel for the parties and have perused the record with their assistance.

PART I: PRELIMINARY QUESTIONS OF LAW

(i) Whether the time limit prescribed under section 70(5) of the Act for disposal of an appeal by the Tribunal is mandatory or directory?

11. The preliminary objection concerning the validity of the impugned judgment raises a question of considerable legal significance, as it directly concerns the jurisdiction of the Appellate Tribunal to pronounce its decision after the expiry of the period prescribed under section 70(5) of the Act. The determination of this question is fundamental to the adjudication of the present

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appeals. If the statutory period of forty-five days constitutes an absolute limitation upon the Tribunal's jurisdiction, any decision rendered thereafter would be without lawful authority, and the examination of the remaining questions would become unnecessary. It is, therefore, appropriate to address this objection at the outset. Admittedly, no such objection was raised before the Tribunal during the pendency of the proceedings. Nevertheless, the objection concerns the interpretation of a statutory provision and its effect upon the jurisdiction of a judicial forum. Being a pure question of law, capable of determination on the admitted record without requiring any further factual inquiry, it may be entertained even when raised for the first time in appeal. The relevant statutory framework is contained in sub-sections (5), (6) and (13) of section 70 of the Act, which provide as follows:

> *(5) Such an appeal shall be disposed of and the decision of the Appellate Tribunal pronounced, as expeditiously as possible as but [sic] not later than forty-five from the date of receipt of an appeal compliant with the requirements contained in this Act.*
>
> *(6) The Appellate Tribunal shall hear the appeal from day-to-day.*
>
> *(13) The decision of the Appellate Tribunal shall be appealable in the High Court. The High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal:*

It is undisputed that the Tribunal pronounced the impugned judgment considerably beyond the prescribed period of forty-five days. The controversy, therefore, is not whether the statutory timeframe was observed, but whether its non-observance deprived the Tribunal of jurisdiction and rendered its subsequent decision a nullity. For the reasons discussed hereinafter, I am of the considered view that the period prescribed under section 70(5) is directory in character and that its expiry does not extinguish the Tribunal's jurisdiction to determine an appeal otherwise lawfully instituted before it.

12. The distinction between mandatory and directory statutory provisions is well established in our jurisprudence. The controlling consideration is not merely the grammatical form of the provision or the use of imperative language, but the

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intention of the legislature, as gathered from the language employed, the purpose sought to be achieved, the statutory scheme as a whole, and the legal consequences that would follow from compliance or non-compliance. In *Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427)*, the Hon'ble Supreme Court explained the governing principle in the following terms:

> *"6. 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 same principle was reaffirmed in *Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal (2021 SCMR 328)*, wherein the Hon'ble Supreme Court observed that the intention of the legislature "is to be ascertained not only from the phraseology of the provision but also by considering its nature, its object, and the consequences which would follow from construing it one way or the other". The Court further explained that "a provision in a statute is mandatory if the omission to follow it renders the proceedings to which it relates illegal and void, while a provision is directory if its observance is not necessary to the validity of the proceeding." These pronouncements establish that the classification of a statutory requirement cannot be undertaken in isolation from its legislative context. The decisive inquiry is whether the legislature intended compliance with the prescribed requirement to constitute a condition essential to the validity of the proceedings, or whether the requirement was designed to regulate the manner and expedition with which an otherwise lawful jurisdiction is to be exercised.

13. Examined solely from the standpoint of its language, section 70(5) undoubtedly conveys a sense of imperative obligation. The legislature has employed the word "shall" and has further stipulated that an appeal is to be

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disposed of "not later than" the prescribed period. Such expressions ordinarily indicate that compliance is expected and that the statutory direction is not to be treated as optional. Indeed, in Javed Iqbal (supra), the Hon'ble Supreme Court observed that negative expressions may ordinarily impart a mandatory character to a provision, even in the absence of an expressly prescribed penalty for non-compliance. That proposition, however, does not conclude the present inquiry. The legal effect of a statutory timeframe depends equally upon the nature of the function to be performed and whether the prescribed period operates as a limitation upon the existence of jurisdiction or merely regulates its exercise. This distinction was expressly recognized in Javed Iqbal (supra), wherein the Hon'ble Supreme Court observed:

> *"6. ... According to Sutherland; where a public officer is directed by a statute to perform a duty within a specified time, the provision as to time are only directory. This general principle, however, does not apply where the phraseology of the provision, or the nature of the act to be performed, or the consequence of performing or failing to perform it within the prescribed timeframe is such that the prescription of timeframe is actually a limitation on the power of the public functionary. Or where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such a duty within the specified timeframe is mandatory."*

The distinction articulated in the foregoing passage is of particular relevance to the present controversy. Section 70(5) does not prescribe a period within which the Commission may initiate proceedings, impose anti-dumping duties, or otherwise create a liability against an affected person. Rather, it regulates the timeframe within which an appellate forum is required to determine a challenge to an existing determination of the Commission. The jurisdiction of the Tribunal is invoked by the institution of an appeal in accordance with the Act, and the prescribed period governs the performance of its adjudicatory function. The provision does not expressly declare that the Tribunal's jurisdiction shall cease upon the expiry of forty-five days. Nor does it make the continued existence of that jurisdiction conditional upon the appeal being decided within that period. This distinction also explains why the decisions in *Javed Iqbal, Super Asia and*

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Messrs WAK Limited Multan Road, Lahore and others v. Collector Central Excise and Sales Tax, Lahore and others (2025 SCMR 1280) cannot be applied mechanically to section 70(5). Those cases concerned statutory limitations upon the exercise of original powers affecting the rights or liabilities of individuals. In Javed Iqbal, the question related to the power to conclude disciplinary proceedings against a retired employee, whereas Super Asia and WAK Limited concerned the authority of revenue officials to make original adjudicatory orders within prescribed periods. In each instance, the timeframe was examined in relation to the State's power to determine or impose a liability. The present provision, by contrast, concerns the expeditious disposal of an appeal already pending before a duly constituted appellate forum. The distinction is substantive rather than merely procedural, because invalidating an original order made beyond a jurisdictional deadline protects the person against the belated exercise of State power, whereas invalidating an appellate decision solely on account of delay may deprive that very person of the statutory remedy provided against such power. The broader principle was recognized by the Hon'ble Supreme Court in *Dr. Habib ur Rahman v. West Pakistan Public Service Commission, Lahore and others (PLD 1973 SC 144)*, wherein the following passage from Maxwell on the Interpretation of Statutes (1962 Edition, page 369) was adopted:

> *"... where the prescriptions of a statute relate to the performance of a public duty, and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, yet not promote the essential aims of the Legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only ..."*

The Court also drew support from *Montreal Street Railway Company v. Normandin (AIR 1917 PC 142)*. The principle is directly relevant here. Although the parties may, through their conduct, contribute to the delay in appellate proceedings, the ultimate statutory responsibility to regulate the proceedings and pronounce the decision rests with the Tribunal. To invalidate its decision merely because that responsibility was not discharged within the prescribed period

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would expose the litigants to the consequences of a default over which they do not exercise exclusive control. Such an interpretation would neither advance the purpose of the appellate remedy nor secure the legislative objective of expeditious adjudication. A comparable approach has been adopted by the Supreme Court of India in *C. Bright v. District Collector and others ((2021) 2 SCC 392),* while interpreting the provisos to section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The statutory provision required the District Magistrate to decide an application by a secured creditor within thirty days, extendable to sixty days. Upon examining the nature of the statutory duty and the consequences of delay, the Court held that the prescribed timeframe was directory and observed:

> *"12. ... it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified."*

The Court further recognized that the secured creditor "has no control over the District Magistrate". The same consideration applies, with equal force, to litigants whose appeals await determination by a statutory tribunal. The principle emerging from these authorities is that a statutory direction requiring a public forum to perform an adjudicatory duty within a specified period must be construed with particular regard to whether the legislature intended delay to defeat the rights of those for whose benefit the forum was established. In the absence of a clear legislative intention to that effect, a provision intended to secure timely performance of a public duty ought not to be converted into an instrument for extinguishing the substantive rights of litigants.

14. The distinction between original adjudication and appellate adjudication has received express recognition from the Hon'ble Supreme Court in *A.J. Traders v. Collector of Customs (Adjudication), Islamabad (PLD 2022 SC 817)*. In that case, the Court examined section 194-B of the Customs Act, 1969, which required the Customs Appellate Tribunal to decide an appeal within sixty days or within such extended period as the Tribunal might determine. The question was

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whether an appellate decision pronounced beyond the statutory timeframe was rendered void merely by reason of such delay. The Hon'ble Supreme Court answered that question in the negative, holding in paragraph 8 that "it cannot be stated that an order belatedly passed on a taxpayer's appeal is a void order and/or a nullity". The distinction underlying that conclusion was explained in the following terms:

> *"9. ... Belatedly adjudicating a show cause notice is not the same as belatedly deciding an appeal preferred against a purported liability, because then the appellate authority's tardiness, whether intentional or otherwise, will frustrate the taxpayer's appeal, which is not the intention of the law, nor could it be as it would violate Articles 4 and 10A of the Constitution.*
>
> *10. ... The Legislature in prescribing a period within which an appeal should, or must, be decided obligates the appellate authority. Therefore, if there are any consequences in deciding an appeal beyond the prescribed period the same may only be visited upon the State functionaries, and not on an appellant taxpayer."*

The reasoning is particularly instructive because it identifies the essential difference between a statutory limitation imposed upon the creation of liability and a timeframe prescribed for the determination of an appeal against that liability. In the former situation, the expiry of the prescribed period may operate as a restriction upon the authority of the State to act. In the latter, the legislature has provided an appellate remedy for the protection of an aggrieved person, and the failure of the appellate forum to discharge its duty within time cannot ordinarily be construed as extinguishing that remedy. To hold otherwise would permit the failure of the adjudicatory machinery itself to defeat a substantive right which the legislature intended to secure. The same principle was subsequently affirmed by the Hon'ble Supreme Court in its review judgment in *Commissioner Inland Revenue, Zone-III, RTO, Rawalpindi and others v. Messrs Sarwaq Traders, Rawalpindi and others (2025 SCMR 341)*, while examining the provisos to section 45B(2) of the Sales Tax Act, 1990. The majority held that "lapse of the statutory timeframe will not affect the proceedings before the Commissioner (Appeals) who shall conclude the appeal in accordance with law by deciding the appeal on its merits." The significance of this

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pronouncement lies in its recognition that the statutory obligation of timely disposal remains enforceable without rendering the appellate proceedings invalid upon expiry of the prescribed period. A comparable consideration informed the decision of the Supreme Court of India in *Deputy Commissioner of Income Tax and another v. Pepsi Foods Limited ((2021) 7 SCC 413)*. The third proviso to section 254(2A) of the Income Tax Act, 1961 contemplated the vacation of a stay granted by the Income Tax Appellate Tribunal if the appeal remained undecided beyond three hundred and sixty-five days, even where the delay was not attributable to the assessee. The Court held that the provision, insofar as it operated against an assessee who had not occasioned the delay, was "manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned". It accordingly construed the provision so that the stay would lapse only where the delay was attributable to the assessee. Although that case concerned the continuation of interim protection rather than the validity of an appellate decision, the underlying principle is materially relevant: the failure of an appellate forum to act within the prescribed period ought not, without sufficient legislative justification, to prejudice a litigant who has not caused that failure. The decisions in A.J. Traders and Sarwaq Traders provide direct support for applying that principle to the present controversy.

15. The reliance placed by learned counsel for the appellants upon *Messrs WAK Limited Multan Road, Lahore and others v. Collector Central Excise and Sales Tax, Lahore and others (2025 SCMR 1280)* requires closer examination, particularly in view of the submission that the larger Bench had departed from the reasoning adopted in the review judgment in Sarwaq Traders. It is correct that the larger Bench reaffirmed the principle laid down in Super Asia concerning statutory time limits governing original adjudication. However, the judgment does not support the further proposition that the distinction between original and appellate adjudication has been displaced. On the contrary, while considering A.J. Traders, the larger Bench expressly observed in paragraph 30 that the decision was "unexceptionable in the facts and circumstances of that case, and the statutory provisions involved", because "it was concerned with the appellate jurisdiction of the Tribunal ... and not the adjudicatory (i.e., first instance)

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jurisdiction of the concerned officer. As correctly noted by the Court different considerations applied and were relevant in the exercise of appellate jurisdiction." Far from undermining the distinction upon which the present case turns, these observations recognise its continuing significance.

16. The position concerning the review judgment in Sarwaq Traders is equally clear. The larger Bench observed in paragraph 34 that its findings "could be regarded as open for reconsideration", but expressly qualified that observation by stating that "the correctness or otherwise of the view that ultimately prevailed in that litigation is not the question before us." The legal consequence of this qualification cannot be overlooked. An observation that a particular judgment may warrant reconsideration is materially different from a determination that the judgment is incorrect or no longer represents the law. The larger Bench deliberately refrained from deciding that question. Its observations must, therefore, be understood within the limits expressly indicated in the judgment itself.

17. The distinction between a binding declaration of law and an observation not intended to determine the question under consideration is recognised in Article 189 of the Constitution. In *Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another (PLD 2010 SC 483)*, a fourteen-member Bench of the Hon'ble Supreme Court explained:

> *"... Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of this Article and is binding on all Courts in Pakistan. It cannot be treated as mere obiter [dictum]. Even obiter [dictum] of the Supreme Court, due to the high place which the Court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite expression of the Court's view on a legal principle, or the meaning of a law. ..."*

The observations in WAK Limited are undoubtedly entitled to the highest respect. They cannot, however, be treated as having overruled a decision whose correctness the larger Bench expressly declined to determine. The review judgment in Sarwaq Traders has not been set aside and continues to constitute

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binding precedent. It also cannot properly be characterised as having been rendered per incuriam, particularly when the Court expressly considered *Super Asia and Messrs Mujahid Soap and Chemical Industries (Pvt.) Ltd. v. Customs Appellate Tribunal, Bench-I, Islamabad (2019 SCMR 1735)*. In any event, the authority to revisit a judgment of the Hon'ble Supreme Court on that ground rests with the Supreme Court itself. In *Syed Shabbar Raza Rizvi and others v. Federation of Pakistan and others (2018 SCMR 514)*, the Hon'ble Supreme Court observed that "a judgment of this Court can be considered to be per incuriam but it is for the Judges to revisit any such judgment, if and when pointed out by any person during the course of hearing of any other case." It would, therefore, be inappropriate for this Court to disregard the review judgment upon an assertion that its reasoning is inconsistent with a subsequent observation which did not decide the question.

18. There is, moreover, an additional distinction arising from the statutory language. The larger Bench in WAK Limited also distinguished A.J. Traders on the ground that the relevant provision permitted the Tribunal itself to extend the period for deciding an appeal without prescribing an absolute limit upon that extension. Section 70(5) of the Act contains no corresponding power of extension. That difference must be acknowledged, but it does not necessarily establish that the expiry of forty-five days extinguishes the Tribunal's jurisdiction. Of particular relevance is the absence of the expression "in no case", which the larger Bench described as the "hard edge" of the provisions examined before it. The significance of this omission becomes apparent when section 70(5) is read alongside section 29 of the same Act. The latter requires the Commission to conclude an investigation "except in special circumstances … within twelve months, and in no case more than eighteen months, after its initiation". The legislature thus demonstrated, within the same statutory framework, its ability to prescribe an express outer limit upon the exercise of an investigating authority's powers. No corresponding expression was employed in relation to the appellate jurisdiction of the Tribunal.

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19. The absence of those words is not, by itself, determinative, nor can the lack of an express consequence invariably convert a statutory requirement into a directory provision. Nevertheless, when these features are considered together with the nature of appellate jurisdiction, the distinction expressly recognised in WAK Limited, and the consequences of invalidating an appellate decision solely on account of delay, they provide substantial support for a directory construction. The judgments relied upon by the appellants, therefore, do not compel the conclusion that the Tribunal became functus officio upon expiry of forty-five days. Rather, the governing authorities require the provision to be examined in the context of its legislative purpose and the overall scheme of the Act.

20. The legislative object underlying sub-sections (5) and (6) of section 70 provides a further, and particularly compelling, indication of their intended operation. An anti-dumping determination has immediate consequences for the commercial interests of the parties affected by it. Where the Commission imposes or continues an anti-dumping duty, importers remain subject to the resulting fiscal burden upon the importation of the investigated product. Conversely, where the Commission declines to impose or continue such a duty, the domestic industry may remain exposed to imports which it alleges are being dumped and are causing injury. The practical significance of prompt appellate review is heightened by section 70(16), which provides that "a determination of the Commission shall be given full force and effect during the pendency of any appeal of such determination." The statutory determination, therefore, continues to operate while its legality and factual foundation are under appellate examination.

21. It is against this background that the requirement of expeditious disposal must be understood. The legislature prescribed a short period of forty-five days and required hearings from day to day because prolonged appellate proceedings may perpetuate the consequences of a determination which is ultimately found to be unlawful or unjustified. The provision is intended to secure an effective and timely appellate remedy, not to restrict access to that remedy by making its continued existence dependent upon the speed with which the Tribunal performs

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its functions. This legislative purpose is also consistent with the international obligations which the Act seeks to implement. Article 13 of the Anti-Dumping Agreement provides:

> *"**Article 13***
>
> *Judicial Review*
>
> *Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question."*

The requirement of prompt and independent review embodied in Article 13 is reflected in section 70 of the Act. In particular, section 70(1)(iii) expressly permits an appeal against "any final determination pursuant to a review", thereby bringing sunset determinations within the appellate mechanism. The legislative objective is consequently twofold: to provide an independent forum capable of examining the Commission's determinations and to ensure that such examination is undertaken without avoidable delay. Neither objective would be advanced by holding that the Tribunal loses jurisdiction merely because it has failed to pronounce its decision within the prescribed period. Such a construction would transform a safeguard designed to protect the parties into a limitation capable of depriving them of the very protection for which it was enacted.

22. The consequences of the contrary interpretation illustrate the difficulty. If every appellate decision pronounced after forty-five days were void, the determination of the Commission would continue to operate under section 70(16) without an effective appellate determination, subject to the statutory limits governing the duration of the duty. An importer challenging an unlawful duty could thus remain burdened by that determination because the appellate forum failed to decide the appeal within time. Equally, the domestic industry could be deprived of an effective determination of its challenge where the Commission had declined to continue protective measures. In either situation, the statutory remedy would become vulnerable to the conduct or administrative limitations of

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the forum entrusted with its exercise. Such a consequence is difficult to reconcile with the purpose of section 70 or with the requirement of effective appellate review.

23. The structure of the Act reinforces this conclusion. Section 70(5) does not prescribe any consequence for failure to decide an appeal within forty-five days. It does not provide that the appeal shall stand allowed, dismissed or abated upon expiry of that period. Nor does it contemplate the automatic transfer of the proceedings to another forum or prescribe any alternative mechanism for their determination. If the period were treated as an absolute jurisdictional limitation, the Tribunal would cease to possess authority on the forty-sixth day, leaving the appeal neither determined nor capable of determination by that forum. The substantive right conferred upon "any interested party" under section 70(1) would consequently be defeated by the failure of the adjudicatory institution to comply with its own statutory obligation.

24. The circumstances of the present case demonstrate the practical implications of such an interpretation. The proceedings before the Tribunal were adjourned sine die on two occasions at the request of the importers, without objection from the domestic industry. If the expiry of forty-five days automatically extinguished jurisdiction, the conduct of the parties in seeking or consenting to adjournments could contribute to a situation in which the statutory appellate remedy became incapable of being exercised. The legislature cannot readily be presumed to have intended such a result without making express provision for it. The relevance of legislative intention and the consequences of non-compliance was explained by the Hon'ble Supreme Court in *Niaz Muhammad Khan v. Mian Fazal Raqib (PLD 1974 SC 134)* in the following terms:

> *"... It is the duty of the Courts to try to get at the real intention of the Legislature, by carefully attending to the whole scope of the statute to be construed. As a general rule however, a statute is understood to be directory when it contains matter merely of direction, but not when those directions are followed up by an express provision that, in default of following them, the [acts] shall be null and void. To put it differently, if the Act is directory, its disobedience does not entail any invalidity; if the Act is mandatory disobedience entails serious legal consequences*

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> *amounting to the invalidity of the act done in disobedience to the provision."*

No express provision in section 70(5), or elsewhere in the Act, declares that a decision pronounced after the prescribed period shall be void. Although the absence of such a consequence is not invariably conclusive, it assumes considerable importance when read with the nature of the right sought to be protected. The right of appeal is a substantive statutory right, and its significance has repeatedly been recognised by the superior courts. In *United Bank Limited and others v. Jamil Ahmed and others (2024 SCMR 164)*, the Hon'ble Supreme Court observed:

> *"9. It is a well settled exposition of law that a right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below. It is essentially a continuation of the original proceedings as a vested right of the litigant to avail the remedy of an appeal provided for appraisal and testing the soundness of the decisions and proceedings of the courts below. It is always explicated and elucidated that the right of appeal is not a mere matter of procedure but is a substantive right. ..."*

The principle assumes particular importance where the alleged defect arises not from the failure of a litigant to institute proceedings in accordance with law, but from the subsequent delay of the forum before which those proceedings are pending. The statutory right of appeal cannot ordinarily be construed as becoming ineffective merely because the institution responsible for its determination has failed to comply with a direction concerning the time of disposal.

25. When section 70(5) is examined against these principles, its purpose becomes sufficiently clear. It imposes a binding obligation upon the Tribunal to dispose of appeals expeditiously, but does not make the continued existence of appellate jurisdiction dependent upon compliance with the prescribed period. The provision regulates the performance of a public adjudicatory duty and is intended to secure the effective exercise of the appellate remedy. To construe it as extinguishing jurisdiction upon expiry of forty-five days would undermine the substantive right conferred by section 70(1), defeat the objective of prompt and

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independent review, and produce consequences which the statutory scheme does not contemplate. The appropriate response to unjustified delay is to secure compliance with the statutory obligation, including through appropriate judicial directions, as recognised in Shaheen Merchant (supra), rather than to invalidate the appellate proceedings themselves.

26. A further indication of the legislative intention is furnished by sub-section (13) of section 70 of the Act, which prescribes a corresponding timeframe for the disposal of appeals by this Court. The provision stipulates that the High Court "shall render a decision within ninety days of receiving an appeal". If the interpretation advanced by learned counsel for the appellants were accepted, the same reasoning would necessarily apply to the period prescribed for this Court. Consequently, upon the expiry of ninety days, this Court would stand divested of jurisdiction to determine an appeal otherwise competently instituted before it. Such an interpretation would produce the anomalous result that a litigant, having properly invoked the appellate jurisdiction of this Court, could be deprived of a decision on the merits merely because the appeal remained pending beyond the prescribed period. Nothing in the language or scheme of section 70 suggests that the legislature intended such a consequence. The use of comparable language in sub-sections (5) and (13), therefore, reinforces the conclusion that the prescribed periods are intended to secure expedition in adjudication rather than to impose an automatic limitation upon the jurisdiction of the respective appellate forums.

27. The distinction between an obligation to pronounce judgment within a specified period and the continued jurisdiction of the Court to pronounce it thereafter is well recognised in our jurisprudence. Order XX, rule 1(2) of the Code of Civil Procedure, 1908 requires a court to pronounce judgment within thirty days after the conclusion of the hearing. In *Juma Khan and others v. Mst. Bibi Zenaba and others (PLD 2002 SC 823)*, the High Court had pronounced judgment more than five months after hearing the matter. The Hon’ble Supreme Court considered whether such delay affected the validity of the judgment and held:

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> *"6. ... We may observe that once the arguments are concluded before a Court of law, it is expected that judgment must be announced within a reasonable period and without unnecessary delay. No doubt, Order XX, rule 1(2), C.P.C stipulates that the Court shall, after the case has been heard, pronounce judgment in open Court, either at once or on some future day not exceeding thirty days, for which due notice shall be given to the parties or their Advocates, the fact remains that provision on the face of it is directory in nature as it does not provide for consequences in case it is not strictly adhered to. In our view, it is in the nature of a guiding principle for the Courts to which C.P.C. is made applicable. ...*
>
> *7. ... We are firmly of the view that merely because of delay in pronouncement of judgment, decision itself is not vitiated."*

The principle emerging from this pronouncement is that a statutory direction requiring timely pronouncement of judgment does not necessarily operate as a condition upon the continued existence of judicial authority. The failure to observe the prescribed period may constitute a departure from the standard of expedition expected of the Court, but it does not, without more, invalidate the judgment subsequently pronounced.

28. The same approach has been adopted in the interpretation of constitutional provisions prescribing periods for judicial disposal. Article 199(4-B) of the Constitution, as it then stood, required a High Court to decide within six months a case in which an interim order had been granted. In *Zahur Textile Mills Ltd. v. Federation of Pakistan and others (PLD 1999 SC 880)*, the Hon'ble Supreme Court held that "the period of six months provided for disposal of every case under clause (4-B) is not mandatory in view of Article 254 of the Constitution". The Court nevertheless emphasised that "it is expected of every High Court that sincere efforts should be made to dispose of the cases covered by clause (4-B) of Article 199 within the above period of six months." Significantly, clause (4-A) of the same Article expressly provided that an interim order would cease to have effect after six months. The distinction between these provisions demonstrates that the legislature, or the Constitution itself, may attach an express legal consequence to the expiry of a prescribed period where such a result is intended. The absence of a corresponding consequence in a

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provision governing judicial disposal is, therefore, a relevant consideration in determining its character.

29. The broader principle was also recognized by Shafiur Rahman, J. in *Reference No.1 of 1988 (PLD 1989 SC 75)*, wherein Article 254 of the Constitution was described as being "in accord with the general law and the principles governing the interpretation of legal or Constitutional documents." Although Article 254 directly concerns the performance of acts or functions within periods prescribed by the Constitution, the underlying principle of statutory construction is instructive. A direction requiring a judicial or public authority to act within a specified period must be distinguished from a provision expressly making the validity of the resulting act conditional upon compliance with that period. Applying that distinction to section 70, the obligation imposed upon this Court under sub-section (13) and upon the Tribunal under sub-section (5) is one of timely adjudication. Neither provision expressly stipulates that jurisdiction shall cease upon expiry of the prescribed period. The legislative scheme, therefore, supports the conclusion that non-compliance with the timeframe does not, by itself, render the subsequent decision invalid.

30. The interpretation adopted above also finds support in the decisions of this Court concerning other time-bound provisions of the Act. In *Messrs Aimnaz (Pvt.) Limited v. Federation of Pakistan (2018 PTD 1966)*, while examining sections 36 and 39 of the Act, this Court held that "where consequence is not provided regarding doing of something within the timeframe the same is directory and not mandatory". The principle was subsequently followed in *Sohail and Company v. Anti-Dumping Appellate Tribunal, Islamabad (2024 PTD 872)*. It is necessary, however, to recognise that the provisions considered in those cases employed the expression "normally", which does not appear in section 70(5). That distinction prevents the conclusions reached in those judgments from being applied without an independent examination of the language and purpose of the provision presently under consideration. Nevertheless, the decisions remain relevant insofar as they recognise the significance of legislative intention and the

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consequences attached to non-compliance within the statutory framework of the Act.

31. It must also be acknowledged that the absence of an expressly prescribed consequence is not invariably sufficient to establish that a statutory provision is directory. The larger Bench in WAK Limited (supra) made it clear that the question must be determined upon consideration of the language, object and nature of the statutory power. The conclusion reached in the present case does not rest merely upon the absence of a penalty or an express declaration of invalidity. It rests upon the combined effect of the nature of appellate jurisdiction, the substantive right of appeal conferred by section 70(1), the obligation of prompt review contemplated by the Act, and the consequences that would follow if the Tribunal's jurisdiction were treated as extinguished upon expiry of forty-five days. These considerations, taken together, distinguish section 70(5) from provisions which impose an absolute limitation upon the original exercise of statutory power.

32. Nor does the principle recognized in Javed Iqbal (supra), concerning the ordinarily mandatory character of negative statutory language, compel a contrary conclusion. The expression "not later than" undoubtedly imposes an imperative obligation upon the Tribunal to act within the prescribed period. The question, however, is whether that obligation also carries the additional consequence of extinguishing jurisdiction upon non-compliance. As already discussed, the nature of the function being performed is decisive in this regard. Where a statutory period limits the authority of a public functionary to initiate proceedings or create a liability against a citizen, considerations materially different from those governing the disposal of a pending appeal arise. In the latter situation, the object of the provision is to secure the timely determination of an existing controversy rather than to define the duration of the State's authority to impose liability.

33. The reliance placed upon *Zahid Hussain v. National Tariff Commission (2025 PTD 1532)* is also misplaced. That judgment concerned the requirement under section 58(3) of the Act that a sunset review be initiated before the expiry

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of the existing anti-dumping duty. The prescribed period in that provision operates as a condition upon the Commission's authority to continue a duty beyond its ordinary statutory duration. The question, therefore, concerned the existence and lawful exercise of the Commission's power to maintain a fiscal measure, rather than the timeframe within which an appellate forum was required to determine a challenge to such a measure. The distinction is material. A statutory requirement governing the initiation of proceedings for the continuation of a duty cannot be equated with a direction governing the disposal of an appeal already lawfully instituted. Accordingly, neither Zahid Hussain nor the other authorities relied upon by the appellants displace the conclusion that section 70(5), properly construed in its statutory context, is directory in character.

34. The judgment of the Lahore High Court in *Shaheen Merchant v. Federation of Pakistan/National Tariff Commission and others (2021 PTD 2126)* is also consistent with the conclusion reached above when examined in the context of the relief actually granted. Although the learned Court described the time-bound requirements of section 70 as mandatory, it expressly acknowledged in paragraph 18 that "no consequences of non-adherence or deviation from the prescribed period are provided". More importantly, notwithstanding the expiry of the statutory period, the Court directed the Tribunal to decide the pending appeal "within a period of two months". The nature of that direction is significant. Had the expiry of forty-five days operated to extinguish the Tribunal's jurisdiction, a direction requiring it to determine the appeal thereafter would have been legally incongruous. The relief granted thus proceeded upon the premise that the Tribunal retained authority to decide the appeal notwithstanding its failure to comply with the prescribed timeframe. The judgment, therefore, supports the enforceability of the statutory obligation through judicial directions rather than the invalidation of proceedings on account of delay.

35. It is necessary, however, to emphasise that construing section 70(5) as directory does not diminish the binding force of the obligation imposed upon the Tribunal. A directory provision is not an invitation to disregard the legislature's

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command, nor does it confer an unrestricted discretion to depart from the prescribed timeframe. Sub-sections (5) and (6) impose distinct but complementary duties: the former requires disposal of an appeal within forty-five days, while the latter requires that the appeal be heard from day to day. Their combined purpose is to ensure that disputes concerning anti-dumping determinations are resolved with the expedition demanded by their commercial and fiscal consequences. The Tribunal is, therefore, under a statutory obligation to organise and conduct its proceedings in a manner consistent with those requirements. Where compliance becomes impracticable for sufficient reasons, such reasons ought to be recorded so that the departure from the prescribed timeframe remains capable of judicial scrutiny.

36. The distinction between a directory timeframe and an obligation which may be disregarded at will has been recognised by the Hon'ble Supreme Court in *Pakistan Peoples Party Parliamentarians v. Federation of Pakistan (PLD 2022 SC 574)*. While examining Article 254 of the Constitution, the Court observed that the provision "is not a general 'escape', that allows the concerned constitutional authority to disregard, as it may please, the time limit set out in any constitutional provision. Rather, it is only intended to be a backstop, when said time limit cannot be adhered to for reasons that must be constitutionally justifiable." Although those observations were made in the context of constitutional time limits, the principle is equally relevant to the performance of statutory adjudicatory functions. The directory character of a timeframe concerns the legal consequences of its breach; it does not remove the duty to comply with it.

37. Viewed against this standard, the manner in which the present appeal remained pending before the Tribunal cannot be regarded as satisfactory. A statutory remedy designed to be concluded within forty-five days remained pending for more than three and a half years. The proceedings were twice adjourned sine die, notwithstanding the express requirement that appeals be heard from day to day. Even allowing for the requests made by the parties and the circumstances attending the proceedings, such prolonged delay is difficult to

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reconcile with the legislative expectation of prompt appellate determination. The statutory obligation required the Tribunal to maintain effective control over the progress of the appeal and to ensure that adjournments did not defeat the object of the prescribed procedure. The failure to achieve that standard deserves recognition, but the legal consequence of that failure must still be determined by reference to the Act.

38. For the foregoing reasons, I hold that the period prescribed under section 70(5) of the Act is directory and not jurisdictional in character. The expiry of forty-five days does not, by itself, divest the Tribunal of authority to decide an appeal otherwise competently instituted before it, nor does it render a decision subsequently pronounced void or without lawful authority. The corresponding requirement under section 70(6), directing that appeals be heard from day to day, remains a binding statutory obligation, the breach of which may justify appropriate judicial intervention to secure compliance but does not automatically invalidate the resulting decision. The Tribunal remains under a duty to adhere strictly to both provisions, and any departure must be justified by the circumstances of the case. The preliminary objection that the impugned judgment is a nullity merely because it was pronounced beyond the prescribed period is, accordingly, rejected.

39. There is another aspect of the matter which merits consideration. Although delay in the pronouncement of a judicial decision does not ordinarily affect its validity, circumstances may arise in which prolonged delay materially impairs the adjudicatory process itself. In such a case, the question is not merely whether the decision was pronounced beyond the prescribed period, but whether the delay has adversely affected the quality, fairness or reliability of the decision to such an extent that it cannot safely be sustained. The distinction is important because the invalidity, if any, would arise from the demonstrated effect of the delay upon the adjudication rather than from the mere passage of time.This principle was considered by the *Privy Council in Boodhoo and others v. Attorney General of Trinidad and Tobago ([2004] UKPC 17)*. In that case, a judge of the Court of Appeal of Trinidad and Tobago died approximately fourteen months after

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judgment had been reserved, and the appellants contended that the delay had infringed their constitutional rights. The Privy Council recognised that delay "may have so adversely affected the quality of the decision that it cannot be allowed to stand", particularly where the passage of time has impaired the judge's recollection of material matters. Such situations were described as "extreme cases, ordinarily associated with inordinately long periods of delay". The Privy Council nevertheless observed: "It being an appeal, the judge's decision did not depend on oral evidence or the recollection of witnesses' testimony".

40. The distinction drawn in that judgment is relevant to the present proceedings. Under section 70(8) of the Act, the Tribunal is required to assess the Commission's determination on the basis of the official record maintained by the Commission and the documents relied upon in reaching that determination. The appellate exercise is, therefore, principally concerned with the examination of an existing documentary record rather than the assessment of oral testimony dependent upon the recollection of witnesses. The material necessary for the Tribunal's determination remained available for examination notwithstanding the passage of time. More importantly, the appellants have not demonstrated, or even specifically alleged, that the delay impaired the Tribunal's ability to consider the record, distorted its appreciation of the material, or otherwise affected the fairness or reliability of its decision. Their objection is directed to the expiry of the statutory period itself, rather than to any identifiable prejudice caused to the adjudicatory process by that delay. In these circumstances, the exceptional principle recognised in Boodhoo affords no basis for invalidating the impugned judgment.

41. The conduct of the appellants during the proceedings before the Tribunal provides an additional consideration against accepting their objection, although the conclusion regarding the directory character of section 70(5) does not depend upon it. The record shows that the appeal was adjourned sine die on two occasions at the request of the importers, and that the domestic industry raised no objection to either adjournment. Thereafter, the appellants continued to participate in the proceedings and addressed arguments on the merits during

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2025 and 2026 without questioning the Tribunal's authority to decide the appeal on account of the expiry of the prescribed period. The objection was raised only after the Tribunal had pronounced a decision adverse to their interests.

42. It is, of course, a settled principle that consent, waiver or acquiescence cannot confer jurisdiction upon a forum where the law has withheld it. Had section 70(5) imposed an absolute limitation upon the Tribunal's jurisdiction, the participation of the parties could not have validated a decision pronounced after the prescribed period. That, however, is not the legal position emerging from the interpretation of the provision undertaken above. Once it is determined that the expiry of forty-five days does not extinguish jurisdiction, the conduct of a party in participating in the proceedings without objection becomes relevant to the contention that the resulting decision should nevertheless be treated as invalid solely because of delay.

43. In *WAPDA v. Khanzada Muhammad Abdul Haque Khan Khattak and Co. (PLD 1990 SC 359)*, the Hon’ble Supreme Court held that where parties, after expiry of the statutory period, "submit themselves to the jurisdiction of the arbitrator and take part in the proceedings enabling him to make an award, it cannot be said that the arbitrator acted without jurisdiction. In such a contingency, the principles of waiver and estoppel would apply with full force." Although that judgment concerned arbitral proceedings, the underlying consideration of fairness in the conduct of litigation provides a relevant analogy. A party which has participated in proceedings after expiry of a directory timeframe, without raising any objection and while permitting the forum to determine the controversy on its merits, cannot ordinarily rely upon that delay alone to contend that the resulting adverse decision is a nullity.

44. The reliance placed upon *Ahsan Ali and others v. District Judge and others (PLD 1969 SC 167)* does not alter this conclusion. That judgment, and the principle embodied in section 3 of the Limitation Act, 1908, concern the statutory limitation governing the institution of proceedings. Such limitation regulates the period within which a litigant must invoke a legal remedy and cannot ordinarily be enlarged merely by consent of the parties. The present controversy is

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materially different. It concerns the time prescribed for an appellate forum to decide proceedings which have already been validly instituted. The distinction between limitation upon the institution of proceedings and a timeframe governing their disposal is fundamental and cannot be overlooked. Accordingly, while the appellants were not precluded from raising a pure question of jurisdiction for the first time before this Court, their participation in the proceedings without objection provides no support for the proposition that the Tribunal's decision became invalid merely because it was pronounced after forty-five days. The statutory period being directory, the Tribunal retained jurisdiction to determine the appeal, and the objection founded upon delay cannot succeed.

(ii) <u>Whether the matter should be remanded or decided by this Court?</u>

45. The alternative submission advanced on behalf of the appellants, that the importers' appeal should be remanded to the Tribunal for fresh adjudication, is founded principally upon the contention that the impugned judgment is a nullity for having been pronounced beyond the period prescribed under section 70(5) of the Act. Since this Court has already concluded that the prescribed timeframe is directory and that its non-observance does not divest the Tribunal of jurisdiction, the very foundation of the prayer for remand ceases to exist. The Tribunal has already examined the controversy and rendered its decision on the merits. To remit the matter for reconsideration merely because the decision was pronounced beyond the statutory period would unnecessarily prolong the litigation and compel the parties to undergo a fresh appellate exercise without any corresponding legal justification. Such a course would also be inconsistent with the principle recognised in A.J. Traders (supra), that the consequences of delay attributable to an appellate forum should not be visited upon the litigants. Furthermore, the complete record of the Commission, together with the separate opinions of the learned Chairman and Members of the Tribunal, is available before this Court. The questions arising in these appeals can, therefore, be effectively determined on the existing record, within the permissible limits of appellate jurisdiction. The requirement under section 70(13) that this Court decide an appeal within ninety days also reinforces the legislative preference for

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expeditious adjudication. Accordingly, no useful purpose would be served by remanding the matter to the Tribunal, and the appeals shall be examined on their merits. The distinct contention that the Tribunal ought to have remanded the proceedings to the Commission under section 70(7) shall be considered separately in Part II of this judgment.

(iii) <u>The scope of an appeal under section 70(13)</u>

46. Before examining the merits of the controversy, it is necessary to delineate the scope of appellate jurisdiction conferred upon this Court under section 70(13) of the Act. The provision stipulates that a decision of the Tribunal "shall be appealable in the High Court", without expressly specifying the grounds upon which such an appeal may be entertained. The nature and extent of this jurisdiction have, however, already been considered by this Court. In Sohail and Company v. Anti-Dumping Appellate Tribunal, Islamabad (2024 PTD 872), it was held that "the essential character of a second appeal under Section 100, C.P.C., is not altered. There is nothing to indicate that a wider jurisdiction has been conferred upon the High Court while hearing such an appeal." The same principle was subsequently followed in Dawn Convertec SMC (Pvt.) Ltd. v. National Tariff Commission (2025 PTD 724), wherein this Court observed that "it is not open to the parties to demand re-appraisal of the evidence by this Court." I respectfully agree with the interpretation adopted in these judgments. The jurisdiction exercised by this Court under section 70(13) is essentially supervisory in its appellate character and does not contemplate a fresh examination of the entire factual controversy. Interference is warranted where the Tribunal's decision is contrary to law, where it has failed to determine a material question of law, or where a substantial procedural irregularity or legal defect has materially affected the decision on the merits. Ordinarily, a ground not urged before the Tribunal cannot be introduced for the first time in a further appeal. An exception, however, exists in respect of a pure question of law, particularly one concerning jurisdiction, which can be determined upon the existing record without requiring further investigation into disputed facts.

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47. The submission that the findings of the Commission and the Tribunal are not concurrent, and that this circumstance permits a wider reappraisal of the evidence, is equally misconceived. The limitations governing a second appeal under section 100 of the Code of Civil Procedure, 1908 are not dependent upon whether the first appellate forum has affirmed or reversed the findings of the original authority. The relevant consideration is whether the appellate decision suffers from an error of law or a legally material defect warranting interference. Under the statutory scheme of the Act, the Commission is the investigating authority entrusted with establishing the relevant facts and making the initial determination, whereas the Tribunal is the specialized appellate forum empowered under section 70(8) and (9) to examine the propriety of those findings and the objectivity of their evaluation. This Court does not exercise the functions of either authority afresh. Its jurisdiction is confined to examining whether the Tribunal applied the correct legal principles, remained within the limits of its statutory powers, and reached its conclusions without material misreading or non-reading of the record. Where the Tribunal has properly exercised its jurisdiction and its conclusions are supported by a lawful assessment of the material, this Court cannot interfere merely because another interpretation of the same evidence may also be possible.

(iv) <u>The objections to standing</u>

48. Learned counsel for the importers has questioned the maintainability of C.M.A. No.29 of 2026 on the ground that the Commission, being the authority whose determination was examined by the Tribunal, cannot claim the status of an aggrieved person entitled to challenge the appellate decision. The objection requires consideration in the context of the language and scheme of section 70 of the Act. Sub-section (13) provides, in broad terms, that the decision of the Tribunal shall be appealable before the High Court. Unlike sub-section (1), which expressly confers the right of appeal before the Tribunal upon an "interested party", sub-section (13) does not restrict the right of further appeal to any specifically identified category of persons. This distinction in legislative language is significant. Nevertheless, the absence of an express restriction does not

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dispense with the requirement that the appellant must possess a legally recognisable interest in challenging the decision. The Commission's standing must, therefore, be examined with reference to its statutory functions and the effect of the impugned judgment upon the discharge of those functions.

49. The scheme of section 70 recognizes the Commission as a participant in the appellate proceedings. Sub-section (7) requires the Tribunal to afford the Commission and the appellant an opportunity of being heard, while sub-section (10) requires the appellate decision to contain the arguments advanced by both. Sub-section (11) further provides for communication of the decision to the respondents, including the Commission. The first proviso to section 70(13) also contemplates the Commission's participation before this Court by prohibiting the grant of an interim order against the conduct of an investigation without notice to the Commission and an opportunity of hearing. These provisions demonstrate that the legislature has accorded the Commission a distinct statutory position in proceedings concerning its determinations. In the present case, the Tribunal has annulled the Commission's report and the consequent continuation of anti-dumping duties. The impugned decision, therefore, directly affects the exercise of the statutory mandate entrusted to the Commission. Whether that effect is sufficient to confer standing must be considered in light of the distinction between an adjudicatory forum deciding a dispute between rival parties and a statutory authority exercising independent regulatory functions.

50. The judgments relied upon by learned counsel for the importers, namely *Wafaqi Mohtasib Secretariat, Islamabad v. SNGPL, Lahore (PLD 2020 SC 586)* and *A. Rahim Foods (Pvt.) Limited v. K&N's Foods (Pvt.) Limited (PLD 2023 SC 516),* do not, in my view, govern the present controversy. In Wafaqi Mohtasib, the Hon'ble Supreme Court held that the Ombudsman, being an independent forum entrusted with deciding complaints of maladministration, could not assume the position of a contesting party in proceedings arising from its own decisions. Similarly, in A. Rahim Foods, the Hon'ble Supreme Court examined the position of the Competition Commission of Pakistan and recognised that, although primarily a regulatory authority, it exercises quasi-judicial powers under clauses

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(a) and (d) of section 10(2) of the Competition Act, 2010 "while deciding upon the divergent claims and allegations of two competing undertakings". The Court consequently held that "an adjudicatory body deciding a matter in exercise of its quasi-judicial powers between two rival parties under a law cannot be treated as an aggrieved person if its decision is set aside or modified by a higher forum".

51. The scope of this principle was subsequently clarified by the Hon'ble Supreme Court in *Federal Public Service Commission v. Dr. Shumaila Naeem (PLD 2026 SC 1)*. The Court distinguished the position of the Federal Public Service Commission on the ground that the decision under challenge was "not a determination made in a quasi-judicial capacity … between contesting parties", and explained that A. Rahim Foods "pertains to quasi-judicial bodies seeking to defend their adjudicatory decisions". The governing distinction, therefore, lies in the character of the function performed by the statutory authority. Where an authority acts as an impartial adjudicator of a dispute between rival parties, it cannot ordinarily claim to be aggrieved merely because its decision has been reversed. Conversely, where the authority exercises an independent statutory mandate involving investigation, regulation or enforcement, the annulment of its action may directly affect the discharge of that mandate.

52. Applying this distinction, the Commission, while conducting a sunset review under section 58(3) of the Act, does not merely adjudicate a private dispute between the domestic industry and importers. Its functions are investigative and regulatory in character. The Commission is empowered to initiate a sunset review "on its own initiative", just as section 25 authorizes the initiation of an original investigation suo motu. It collects and evaluates relevant information, examines the likelihood of continuation or recurrence of dumping and injury, and determines whether the continuation of an anti-dumping duty is warranted in the public interest. Where exporters fail to cooperate, it may proceed on the basis of the best information available under the Act. The resulting determination is an exercise of statutory regulatory authority rather than the adjudication of a conventional lis between two competing parties.

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53. This distinction also finds support in Article 13 of the Anti-Dumping Agreement, reproduced in paragraph 16 above, which requires the reviewing tribunal to be independent of the authorities responsible for the determination or review under examination. The Agreement thus recognises a functional distinction between the investigating authority and the independent appellate forum. The observation in *M.I. Sanitary Store v. Federation of Pakistan (PLD 2014 Lahore 583)*, that the Commission "exercises a quasi-judicial function in deciding the rights of the parties", was made in the context of the lawful constitution of the Commission and not in relation to its standing to challenge an appellate decision. The mere fact that the Commission's determinations affect competing commercial interests does not necessarily transform it into an adjudicatory forum deciding a dispute between rival parties.

54. The principle concerning the standing of statutory authorities has also been considered by the Hon'ble Federal Constitutional Court in *D.G. Khan Cement Company Limited v. Federation of Pakistan (PLD 2026 FCC 168; 2026 PTD 625, paragraphs 119–120)*, wherein it was held that a public functionary entrusted with the administration of a statute may be directly aggrieved by a judgment which prevents the lawful discharge of that statutory mandate. Although the case concerned a revenue authority, the principle is relevant to the present controversy. Reference may also be made to *Designated Authority (Anti-Dumping Directorate) v. Haldor Topsoe A/S ((2000) 6 SCC 626)*, wherein the Supreme Court of India entertained and allowed an appeal by the Designated Authority against an appellate order setting aside its anti-dumping findings, although the question of standing was not specifically examined.

55. In the present case, the impugned judgment has annulled the Commission's determination and the continuation of anti-dumping duties made pursuant to its statutory powers. The Commission is, therefore, not seeking merely to defend a decision rendered as an impartial adjudicator between rival litigants; it seeks judicial examination of an order which directly affects the exercise of its regulatory mandate. In these circumstances, the objection to its standing cannot be sustained. Even otherwise, the domestic industry, being

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directly affected by the annulment of the duties, has independently challenged the same judgment in C.M.A. No.28 of 2026, and the substantive questions raised in both appeals are identical. Accordingly, C.M.A. No.29 of 2026 is held to be maintainable, and its grounds shall be considered together with those raised in the connected appeal.

56. The objection raised by the appellants regarding the standing of the importers before the Tribunal is equally without substance. Apart from the fact that no such objection was raised during the proceedings before the Tribunal, section 70(1) of the Act expressly confers the right of appeal upon any "interested party". The definition of that expression under section 2 includes an importer of the investigated product. Respondents No.3 and 4, being importers directly affected by the continuation of anti-dumping duties, therefore possessed the requisite statutory standing to challenge the Commission's determination. The objection is, accordingly, rejected.

PART II: <u>THE MERITS OF THE PRESENT APPEALS</u>

(i) The powers of the Tribunal

57. Having determined the preliminary objections concerning the maintainability of the appeals and the jurisdiction of the Tribunal, it is now appropriate to examine the merits of the controversy. The first question concerns the nature and extent of the appellate powers conferred upon the Tribunal under section 70 of the Act. Sub-section (7) empowers the Tribunal, after making such further inquiry as it considers necessary, to confirm, alter or annul the determination of the Commission. The exercise of these powers is, however, governed by the standards prescribed under sub-sections (8) and (9), which provide as follows:

> *"(8) After examining the appeal, the Appellate tribunal shall assess the facts related to the impugned determination of the Commission. The Appellate Tribunal shall determine whether the establishment of the facts of the Commission was proper and whether the commission's evaluation of those facts was unbiased and objective. The Appellate tribunal shall base this determination on the official record maintained by the*

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Commission or any other documents relied upon by the Commission in reaching the determination being appealed.

(9) Where the Appellate Tribunal determines that the Commission's establishment of the facts was proper and its evaluation was unbiased and objective, it shall confirm the appealed determination of the Commission provided that the Appellate Tribunal is satisfied that in reaching its determination, the Commission complied with the relevant provisions of this Act."

58. Learned counsel for the appellants has contended that the Tribunal could interfere with the Commission's determination only upon finding that its evaluation of the facts was both biased and lacking in objectivity. This interpretation, in my view, does not accord with the language or purpose of sub-sections (8) and (9) of section 70. The appellants' argument proceeds upon the assumption that the statutory requirements of an unbiased and objective evaluation constitute cumulative grounds of invalidity, so that the Tribunal must establish the simultaneous existence of both defects before interfering with a determination. The statutory scheme, however, adopts a different approach. Sub-section (9) prescribes the conditions upon which the Tribunal is required to confirm a determination, rather than the circumstances in which interference alone becomes permissible.

59. A plain reading of sub-section (9) demonstrates that confirmation is conditional upon the satisfaction of three distinct requirements: first, that the Commission properly established the relevant facts; second, that its evaluation of those facts was unbiased and objective; and third, that the determination was reached in compliance with the applicable provisions of the Act. These requirements are cumulative in the sense that each must be satisfied before the statutory obligation to confirm the determination arises. Consequently, where the establishment of facts is defective, or their evaluation lacks objectivity, or the Commission has failed to comply with a relevant statutory requirement, the Tribunal is not bound to confirm the determination and may exercise the powers conferred upon it under sub-section (7), subject to the nature and materiality of the defect identified.

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60. The words "unbiased" and "objective" describe related but distinct attributes of a lawful evaluation. An evaluation may be entirely free from personal prejudice or institutional bias and yet fail the requirement of objectivity because its conclusions are unsupported by the evidence, material circumstances have been overlooked, or the reasoning does not adequately connect the established facts with the ultimate determination. The use of the conjunction "and" does not mean that both bias and lack of objectivity must be affirmatively established before the Tribunal may interfere. Rather, it requires the Commission's evaluation to possess both qualities before confirmation becomes obligatory. In *Suo Motu Case No.8 of 2018 (PLD 2019 SC 201)*, the Hon'ble Supreme Court observed that "in common parlance 'and' is used in the conjunctive sense, while 'or' is employed in the disjunctive sense". Relying upon Maxwell, the Court further recognised that the expressions may be construed interchangeably only "to carry out the intention of the legislature". In the present case, no departure from the ordinary conjunctive meaning is necessary. The legislature has required an evaluation which is both unbiased and objective; the absence of either quality prevents the conditions for mandatory confirmation from being fully satisfied.

61. This interpretation does not, however, authorise the Tribunal to substitute its own assessment for that of the Commission merely because another conclusion might reasonably be drawn from the same material. The Commission remains the statutory investigating authority, while the Tribunal exercises a defined appellate function. Sub-section (8) expressly confines the Tribunal's factual assessment to the official record maintained by the Commission and the documents upon which the Commission relied. The Tribunal must examine whether the facts were properly established and whether the evaluation was reasoned, unbiased and objective. It is not empowered to undertake an entirely fresh investigation or to overturn a determination merely because it would have assigned different weight to competing considerations.

62. This distinction is also reflected in Article 17.6(i) of the Anti-Dumping Agreement, upon which sub-sections (8) and (9) are substantially modelled. That

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provision expressly recognises that where the establishment of facts was proper and their evaluation was unbiased and objective, "even though the panel might have reached a different conclusion, the evaluation shall not be overturned." The statutory standard thus maintains a balance between respect for the specialised functions of the investigating authority and the necessity of effective appellate scrutiny. The Tribunal is required neither to defer unquestioningly to the Commission nor to replace its findings with its own preferred assessment. Its responsibility is to determine whether the Commission's conclusions are supported by a proper establishment and objective evaluation of the relevant facts. In the present case, the majority of the Tribunal proceeded upon the latter inquiry and concluded that the Commission's evaluation lacked the requisite objectivity. Whether that conclusion is legally sustainable must be examined in light of the governing standard and the material forming part of the Commission's record.

63. The interpretation adopted above is consistent with the approach of the WTO Appellate Body to Article 17.6(i) of the Anti-Dumping Agreement. In United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (WT/DS184/AB/R), the Appellate Body observed that the provision "in effect defines when investigating authorities can be considered to have acted inconsistently with the Anti-Dumping Agreement". It further explained in paragraph 56 that the reviewing panel must examine whether the investigating authority properly established the relevant facts and evaluated them in an unbiased and objective manner. Where those standards have not been satisfied, the panel is required to find the establishment or evaluation of facts inconsistent with the Agreement.The nature and intensity of such review were further explained in United States - Investigation of the International Trade Commission in Softwood Lumber from Canada (Recourse to Article 21.5 of the DSU by Canada) (WT/DS277/AB/RW), wherein the Appellate Body observed:

> *"93. ... It is well established that a panel must neither conduct a de novo review nor simply defer to the conclusions of the national authority. A panel's examination of those conclusions must be critical and searching, and be based on the information contained in the record and the*

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> *explanations given by the authority in its published report. A panel must examine whether, in the light of the evidence on the record, the conclusions reached by the investigating authority are reasoned and adequate. ... The panel's scrutiny should test whether the reasoning of the authority is coherent and internally consistent. The panel must undertake an in-depth examination of whether the explanations given disclose how the investigating authority treated the facts and evidence in the record and whether there was positive evidence before it to support the inferences made and conclusions reached by it. The panel must examine whether the explanations provided demonstrate that the investigating authority took proper account of the complexities of the data before it, and that it explained why it rejected or discounted alternative explanations and interpretations of the record evidence. ..."*

The foregoing observations provide useful guidance in understanding the standard of review embodied in section 70(8) and (9). The Tribunal is not required to conduct a de novo inquiry, nor may it accept the Commission's conclusions merely because they have been reached by a specialised investigating authority. Its scrutiny must be sufficiently rigorous to ascertain whether the Commission has considered the relevant evidence, addressed material considerations and furnished an intelligible explanation connecting the established facts with its ultimate findings. The requirement of objectivity is not satisfied by the mere reproduction of statistical information or the recording of conclusions. The reasoning must demonstrate how the available material supports the inference drawn, particularly where the determination involves an assessment of future economic consequences.

64. At the same time, the Tribunal must remain conscious of the limits of its appellate function. Where the Commission has properly established the facts, considered the relevant material and arrived at a reasoned conclusion reasonably supported by that material, the Tribunal cannot interfere merely because another conclusion may also be plausible. The balance between effective scrutiny and appropriate deference to specialised investigating authorities has also been examined by Steven P. Croley and John H. Jackson in "WTO Dispute Procedures, Standard of Review, and Deference to National Governments" ((1996) 90 American Journal of International Law 193). In my view, section 70 reflects the

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same balance by requiring meaningful examination of the Commission's reasoning while preserving its primary responsibility for investigation and factual determination.

65. The further contention that the Tribunal, instead of annulling the Commission's determination, ought to have remanded the matter for reconsideration is also without merit. Section 70(7) expressly empowers the Tribunal to confirm, alter or annul a determination, and its proviso contemplates further action by the Commission where such action is required to give effect to the Tribunal's decision. The provision does not, however, make remand an inevitable consequence of every finding of illegality or deficiency in the Commission's determination. Whether remand is appropriate must depend upon the nature of the defect identified, the relief granted and the necessity of further proceedings for implementing the appellate decision.

66. In the present case, the majority of the Tribunal annulled the continuation of anti-dumping duties upon finding that the Commission's determination regarding the likelihood of recurrence of dumping and injury was not supported by an adequate objective evaluation of the evidence. The annulment was, therefore, a substantive exercise of the appellate power expressly conferred by section 70(7). A remand could not be justified merely on the ground that the Commission might, upon reconsideration, arrive at a different or more adequately reasoned conclusion. The particular nature of a sunset review must also be kept in view. Such a review involves a forward-looking determination made in anticipation of the expiry of an existing duty, and its statutory purpose is closely connected with that point in time. As explained by this Court in Zahid Hussain (supra), the likelihood assessment must be undertaken in the context of the approaching expiry of the duty. In the present case, that point had already passed in February 2022. In these circumstances, and having regard to the basis upon which the majority annulled the determination, no sufficient legal ground has been established for holding that the Tribunal was bound to remit the matter to the Commission. The objection is, accordingly, rejected.

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(ii) <u>The standard governing a sunset determination</u>

67. The next question concerns the legal standard governing the continuation of anti-dumping duties following a sunset review under section 58(3) of the Act. The statutory scheme makes it clear that an anti-dumping duty is not intended to operate indefinitely. Section 57 provides that such duty "shall remain in force only as long as and to the extent necessary to counteract dumping, which is causing injury." Section 58(1) further requires the termination of a definitive duty not later than five years from its imposition. An exception is provided under section 58(3), which permits continuation where the Commission determines that expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury. The combined effect of these provisions is that expiry after five years is the ordinary statutory consequence, while continuation is permissible only upon a determination satisfying the conditions expressly prescribed by law.

68. The expression "likely" is central to this inquiry. It requires more than the identification of a possibility that dumping or injury may recur. The Commission must determine, upon an objective evaluation of relevant evidence, that such recurrence is probable. Both elements of the statutory test, namely dumping and injury, must be addressed. A finding concerning the likelihood of dumping, without a corresponding examination of the likelihood of injury, would not satisfy the requirements of section 58(3). Equally, the mere fact that duties were previously imposed cannot, without further examination, justify their continuation. The Commission must establish why their expiry would probably result in the continuation or recurrence of the circumstances which originally warranted their imposition.

69. The requirement of a demonstrable evidentiary foundation is also reflected in the interpretation of Article 11.3 of the Anti-Dumping Agreement. In United States - Anti-Dumping Duty on DRAMS from Korea (WT/DS99/R), the WTO panel explained:

> *"6.42 ... We note that the necessity of the measure is a function of certain objective conditions being in place, i.e. whether circumstances*

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> *require continued imposition of the anti-dumping duty. That being so, such continued imposition must, in our view, be essentially dependent on, and therefore assignable to, a foundation of positive evidence that circumstances demand it. In other words, the need for the continued imposition of the duty must be demonstrable on the basis of the evidence adduced."*

The five-year termination requirement introduced through Article 11.3 during the Uruguay Round was intended to impose a meaningful discipline upon the duration of anti-dumping measures. Its practical significance is reflected in the empirical study undertaken by Olivier Cadot, Jaime de Melo and Bolormaa Tumurchudur, entitled "Anti- Dumping Sunset Reviews: The Uneven Reach of WTO Disciplines", CEPR Discussion Paper No.6502, 2007. The study, examining revocations between 1979 and 2005, found that the five-year cycle of revocation became apparent following the WTO Agreement, with the marginal propensity to revoke measures at five years "jumping from 0-2% to 45%". Although such empirical material does not determine the meaning of the Act, it illustrates the importance of treating the sunset mechanism as a substantive statutory safeguard rather than a procedural formality. Section 58 must, therefore, be applied in a manner which gives meaningful effect to the legislative requirement that continuation of a duty be justified by a fresh, evidence-based assessment of its necessity.

70. The meaning of the expression "likely" in section 58(3) is further illuminated by the interpretation of the corresponding language in Article 11.3 of the Anti-Dumping Agreement. In United States - Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan (WT/DS244/AB/R), the WTO Appellate Body observed:

> *"111. ... authorities conducting a sunset review must act with an appropriate degree of diligence and arrive at a reasoned conclusion on the basis of information gathered as part of a process of reconsideration and examination. In view of the use of the word 'likely' in Article 11.3, an affirmative likelihood determination may be made only if the evidence demonstrates that dumping would be probable if the duty were terminated -and not simply if the evidence suggests that such a result might be possible or plausible."*

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The Appellate Body further observed in paragraph 113 that "authorities must conduct a rigorous examination in a sunset review before the exception (namely, the continuation of the duty) can apply." Subsequent reports, including those arising from the United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina dispute, have consistently emphasised that a likelihood determination must rest upon positive evidence and a sufficient factual foundation rather than assumption or conjecture. The expression "positive evidence" was explained in United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (supra) as requiring evidence "that the evidence must be of an affirmative, objective and verifiable character, and that it must be credible."

71. A similar interpretation has been adopted by the courts of the United States. In *Usinor Industeel, S.A. v. United States (Slip Op. 02-39, decided on 29.04.2002*), the United States Court of International Trade held that the word "likely" bears its ordinary meaning of probable and is "nowhere defined as merely 'possible'". The matter was remanded for determination of "whether injury is likely, not just possible". These authorities are persuasive because they recognise the essential distinction between a prediction supported by objective evidence and a speculative assessment of what might occur upon the withdrawal of an existing measure.

72. The standard, however, is not dependent upon the direct application of foreign law. It arises from the language of section 58(3) itself. A determination that dumping and injury are "likely" to continue or recur necessarily requires a reasoned assessment that such consequences are probable. The predictive character of a sunset review does not dispense with the requirement of evidence; rather, it requires the Commission to draw a rational inference about future events from facts objectively established at the time of review. The conclusion need not possess mathematical certainty, but it must be supported by material capable of reasonably sustaining the prediction.

73. This Court recognized the same principle in Zahid Hussain (supra), observing that a sunset review involves an investigative and adjudicatory

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exercise founded upon positive evidence and an objective examination of existing facts. Rules 40 and 41 of the Anti-Dumping Duties Rules, 2022, although subsequently introduced and not applicable to the present review, reflect a similar approach. Significantly, both the majority and minority opinions of the Tribunal proceeded upon the requirement of a reasoned likelihood determination, and learned counsel for the Commission did not suggest that section 58(3) prescribed a different standard. The controversy, therefore, concerns the application of that standard to the Commission's determination rather than its existence.

74. The competing submissions regarding whether anti-dumping duty is penal in character, with reference to Aimnaz and Muhammad Saleem Bikiya (supra), do not require resolution for present purposes. Whether characterized as a protective fiscal measure or otherwise, its continuation remains governed by the express requirements of section 58(3). Those requirements cannot be relaxed or enlarged merely by reference to the legal character attributed to the duty.

75. The objection raised by learned counsel for the appellants regarding reliance upon WTO jurisprudence must be considered in the context of the legislative purpose of the Act. Its preamble expressly declares that the legislation 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". Section 58(3) substantially incorporates Article 11.3 of the Anti-Dumping Agreement, while sub-sections (8) and (9) of section 70 reflect the standard of review contained in Article 17.6(i). The present case, therefore, does not concern the direct enforcement of an unincorporated international treaty. Rather, it concerns the interpretation of domestic statutory provisions enacted to give effect to international obligations. In such circumstances, the interpretation placed upon corresponding treaty provisions by WTO panels and the Appellate Body may legitimately be considered as an aid to statutory construction. Such interpretations are not binding upon domestic courts, but may

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carry considerable persuasive weight, particularly where the statutory language closely follows the Agreement.

76. The principle that domestic legislation should, so far as its language permits, be interpreted consistently with international obligations has long been recognized in Pakistan. In *Hanover Fire Insurance Company v. Muralidhar Banechand (PLD 1958 SC 138)*, the Hon'ble Supreme Court adopted the following passage from Maxwell on the Interpretation of Statutes (Tenth Edition, page 148):

> *"Under the same general presumption that the legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and applied, as far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law. ... But if the statute is unambiguous, its provisions must be followed, even if they are contrary to international law."*

The application of this principle to legislation incorporating WTO obligations was specifically examined by the Sindh High Court in *Sadia Jabbar v. Federation of Pakistan and others (2018 PTD 1746)*. Speaking through Munib Akhtar, J., the learned Division Bench observed:

> *"10. ... 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 inconsistent 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. ..."*

The same Court, while examining the present legislation in *Muhammad Saleem Bikiya v. Pakistan (2018 PTD 2026)*, observed that "a comparison of the ADD Act and the AD Agreement shows that the former seeks to faithfully give effect to the latter." The Court also recognised the relevance of the WTO dispute settlement mechanism in understanding the obligations embodied in the Agreement. Similarly, in *Commissioner Inland Revenue, Zone-IV, Karachi v. Messrs A.P. Moller Maersk and another (2024 SCMR 741)*, the Hon'ble Supreme Court, while

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considering the interpretation of tax treaties given effect in Pakistan, held that their provisions should be "interpreted in a common and workable manner, taking into account international tax language, legal decisions of other countries, model treaties, along with their commentaries, ... and scholarly academic works where appropriate." Although that judgment arose in the context of international taxation, the underlying principle is equally applicable where Parliament has deliberately adopted language derived from an international agreement.

77. The reliance placed upon *SGS v. Pakistan (2002 SCMR 1694)* is, therefore, distinguishable. In that case, the treaty had not been "incorporated through legislation into the laws of the Country", and the Hon'ble Supreme Court consequently declined to recognise its provisions as directly enforceable rights under municipal law. The present Act stands on a different footing, having been expressly enacted to implement the Anti-Dumping Agreement. Accordingly, while the interpretation of domestic law remains the responsibility of this Court, relevant WTO jurisprudence may properly be consulted to understand the meaning and application of statutory provisions which reproduce or substantially embody the Agreement.

78. This approach is also consistent with the jurisprudence of other jurisdictions administering anti-dumping legislation enacted in pursuance of international trade obligations. In *National Corn Growers Association v. Canada (Import Tribunal) ([1990] 2 SCR 1324)*, the Supreme Court of Canada considered the interpretation of the Special Import Measures Act in the context of Canada's obligations under the GATT. Gonthier, J., speaking for the majority, observed:

> *"... In interpreting legislation which has been enacted with a view towards implementing international obligations, as is the case here, it is reasonable for a tribunal to examine the domestic law in the context of the relevant agreement to clarify any uncertainty. Indeed where the text of the domestic law lends itself to it, one should also strive to expound an interpretation which is consonant with the relevant international obligations. Second, and more specifically, it is reasonable to make reference to an international agreement at the very outset of the inquiry*

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to determine if there is any ambiguity, even latent, in the domestic legislation. ..."

A similar principle was recognised by the Court of Justice of the European Union in *Petrotub SA and Republica SA v. Council of the European Union (Case C-76/00 P, decided on 09.01.2003)*. The Court observed in paragraph 57 that legislation adopted to implement the Anti-Dumping Agreement "must, so far as possible, be interpreted in a manner that is consistent with international law, in particular where its provisions are intended specifically to give effect to an international agreement". Applying that principle, the Court annulled the regulation insofar as it concerned the appellants because the explanation required under Article 2.4.2 of the Agreement had not been furnished, notwithstanding the absence of an express corresponding requirement in the domestic regulation.

79. These decisions reinforce the proposition that international agreements may provide legitimate interpretative guidance where domestic legislation has been enacted to implement their provisions. They do not, however, authorise a court to disregard clear statutory language or to substitute international jurisprudence for the law enacted by Parliament. In the present case, the relevant WTO interpretations are consistent with the language and purpose of sections 58 and 70 of the Act and may, therefore, properly inform their construction.

80. The objection concerning the Tribunal's reliance upon the WTO panel report in Pakistan - Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates (WT/DS538/R), referred to as the BOPP Report, and its earlier decision in Appeal No.544 of 2022, is equally unpersuasive. In the first place, the majority did not rely upon those decisions as establishing a new legal standard. The requirement that a sunset determination be supported by positive evidence demonstrating the probability, rather than the mere possibility, of recurrence had already been recognised in adopted WTO Appellate Body reports. The distinction sought to be drawn on the basis of the different factual circumstances of those cases does not, therefore, affect the applicability of the underlying legal principle. Nevertheless, the BOPP Report

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remains an appealed and unadopted panel report, and its reasoning can be considered only for its persuasive value, without attributing to it any binding legal effect.

81. Secondly, the Commission itself had previously taken action with reference to the recommendations contained in the BOPP Report. By notice dated 16.07.2021, issued more than a year before the determination presently under challenge, the Commission terminated the anti-dumping duties on BOPP Film, stating:

> *"To implement the recommendation of WTO Panel regarding original investigation and first sunset review, the Commission has decided to terminate antidumping duties imposed on imports of BOPP Film originating in/and or exported from the Exporting Countries."*

This circumstance does not make the panel report binding upon the Commission, nor does it prevent the Commission from questioning its legal reasoning in subsequent proceedings. It does, however, demonstrate that the report was not treated by the Commission itself as wholly irrelevant to the administration of the Act. The proper inquiry remains whether the reasoning relied upon by the Tribunal is persuasive and consistent with the applicable statutory provisions.

82. Thirdly, the fact that Appeal No.544 of 2022 was decided on 25.09.2023, after the Commission's determination dated 24.08.2022, does not render its legal reasoning irrelevant. The principles applied in that decision were derived from WTO Appellate Body reports issued in 2004 and 2007, which predated the present sunset review. Moreover, judicial interpretation ordinarily declares the meaning of an existing legal provision rather than creating a new rule merely from the date of the judgment. As explained by the Hon’ble Supreme Court in Malik Asad Ali v. Federation of Pakistan (PLD 1998 SC 161), by interpreting the law, the Courts only declare the true meaning of the law which already existed. Therefore, to that extent the law declared by the Court is applicable from the date the law is enacted. In any event, the majority of the Tribunal did not rest its decision exclusively upon either the BOPP Report or Appeal No.544 of 2022. It independently examined the Commission's determination and recorded its

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findings with reference to the material available in the present review. The objection to reliance upon those authorities, therefore, does not establish any error of law warranting interference.

(iii) <u>Non-cooperation and the best information available</u>

83. The principal justification advanced by the Commission for its reliance upon secondary information is that the Chinese exporters did not cooperate in the sunset review. While such non-cooperation undoubtedly entitled the Commission to resort to the best information available, it did not relieve it of the obligation to make a reasoned determination under section 58(3) of the Act. Section 32, read with the Schedule to the Act, permits reliance upon secondary sources where interested parties fail to provide the requisite information. Paragraph 7 of the Schedule, however, expressly requires such information to be treated with "special circumspection" and, where practicable, verified against independent sources "such as published price lists, official import statistics and customs returns". These provisions regulate the sources and reliability of the information upon which the Commission may act; they do not dilute the substantive requirement of establishing the likelihood of continuation or recurrence of dumping and injury. With respect, insofar as Appeal No.510 of 2022 suggests otherwise, it does not correctly state the law. The same contention was considered and rejected by the Tribunal in Appeal No.544 of 2022 in the following terms:

> *"The plea of the respondents that they were restrained in their analysis due to non-cooperation of the exporters does not hold much ground as there are many sources from where the statistics of import/export and their prices are available."*

The record of the present review demonstrates that alternative sources were available. The Commission obtained export statistics from the website of the International Trade Centre and information concerning Chinese production capacity from news reports published on various websites. In the BOPP sunset review, it had similarly relied upon Trade Map statistics and information available on producers' websites. Furthermore, during the hearing held on 18.05.2022, the

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importers specifically requested verification of the product-specific RISI (Fastmarkets) data directly from its source, notwithstanding that the domestic industry had itself relied upon that source in its application. The exporters' non-cooperation did not prevent the Commission from examining the available information concerning Chinese demand, export prices or production capacity, or from assessing its reliability.

84. The corresponding provisions of the Anti-Dumping Agreement were examined by the WTO Appellate Body in Mexico - Definitive Anti-Dumping Measures on Beef and Rice (WT/DS295/AB/R), wherein it observed:

> *"289. With respect to the facts that an agency may use when faced with missing information, the agency's discretion is not unlimited. First, the facts to be employed are expected to be the 'best information available'. In this respect, we agree with the Panel's explanation: The use of the term 'best information' means that information has to be not simply correct or useful per se, but the most fitting or 'most appropriate' information available in the case at hand. ... Secondly, when culling necessary information from secondary sources, the agency should ascertain for itself the reliability and accuracy of such information by checking it, where practicable, against information contained in other independent sources at its disposal, including material submitted by interested parties. Such an active approach is compelled by the obligation to treat data obtained from secondary sources 'with special circumspection'."*

The importers' request for verification of the RISI data called for precisely such an examination. Non-cooperation may enlarge the range of information upon which the Commission can rely, but it does not dispense with the obligation to assess that information critically and establish a sufficient evidentiary foundation for its conclusions. The Commission was, therefore, required to demonstrate that its determination satisfied section 58(3), notwithstanding the absence of cooperation from the exporters.

(iv) <u>The findings on likely dumping</u>

85. The Commission examined four factors in assessing the likelihood of continuation or recurrence of dumping: first, whether Chinese exporters had discontinued or continued exports to Pakistan; second, whether they had

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developed alternative export markets; third, changes in their production capacity, output and inventories; and fourth, the trade-remedy measures imposed by other countries. The majority of the Tribunal concluded that the Commission's analysis of these factors did not provide an adequate evidentiary basis for its determination. Having examined the relevant findings in the light of the statutory standard discussed above, I find no error of law in that conclusion, for the reasons which follow.

86. The first factor concerned the decline in imports from China following the imposition of anti-dumping duties. Table-IV of the Commission's report recorded that imports had decreased from 57,625 metric tonnes, representing 99.6% of total imports during the original period of investigation, to 1,405 metric tonnes, representing 11% during the final year of the review. On the basis of this reduction, the Commission concluded in paragraph 24.3:

> *"24.3 Substantial reduction in the volume of dumped imports of Coated Bleached Paperboard from China was due to imposition of anti-dumping duties. In case antidumping duties are terminated on dumped import of Coated Bleached Paperboard from China, there is likelihood that the exporters/producers will again start dumping into Pakistan."*

The difficulty with this reasoning is that it proceeds directly from the reduction in import volumes to the probability of renewed dumping without explaining the evidentiary connection between the two. The Commission assumed that the decline resulted from the duties and that their withdrawal would necessarily lead to the resumption of dumped imports. Yet the report contains no corresponding analysis of export prices or normal value capable of supporting that inference. Although imports from China had not ceased altogether, the Commission did not examine whether the prices of the consignments which continued to enter Pakistan indicated dumping, nor did it compare those prices with the normal value established during the original investigation or any other relevant benchmark.

87. A similar deficiency was identified by the WTO panel in the BOPP dispute, which observed that a reduction in imports following the imposition of duties "suggests that it is possible that the opposite could happen upon removal of the

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duties", but does not, without further reasoning, establish that such a consequence is likely. The panel described the Commission's finding as "essentially conclusory". Likewise, in Appeal No.544 of 2022, the Tribunal held that a likelihood determination made "merely on the basis of exports quantities is, therefore, based on incomplete information."

88. This does not mean that a substantial reduction in imports is irrelevant to a sunset review. Import volumes and dumping margins may constitute important indicators of future conduct. Nor does section 58(3) invariably require the calculation of a fresh dumping margin. Nevertheless, where the Commission relies principally upon the decline in import volumes, it must explain why that decline, considered alongside the available market and pricing information, makes renewed dumping probable upon termination of the duty. Paragraph 24.3 provides no such explanation. The majority of the Tribunal was, therefore, justified in finding the Commission's reasoning insufficient on this aspect.

89. The same principle was examined by the WTO Appellate Body in United States - Anti-Dumping Measures on Oil Country Tubular Goods from Mexico (WT/DS282/AB/R), where a significant decline in imports following the imposition of duties had been treated as indicating that dumping would recur upon revocation. The Appellate Body rejected the use of such a presumption as the sole basis for a likelihood determination and observed:

> *"199. ... A respondent party may have the responsibility to introduce relevant evidence in its favour, but the investigating authority also has a duty to seek information to ensure that its determination rests on a sufficient evidentiary foundation. An affirmative determination cannot rest merely on a presumption ... that the cessation of dumping or of imports was due solely to the anti-dumping duty order.*
>
> *200. ... A company's strategy and ability to increase or decrease its exports to particular markets depend on a variety of market conditions, such as, in particular, the opportunities available in different markets and the competitive conditions in the market place. Therefore, unless all relevant factors are taken into account, there may not be an objective evaluation in such cases of the causes of the variations in import volumes in the importing Member's market."*

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The reasoning contained in paragraph 24.3 of the Commission's report suffers from substantially the same deficiency. The submission that the Tribunal effectively penalised the anti-dumping duty for having achieved its intended purpose does not answer the objection. The effectiveness of a duty in reducing imports may support its continued necessity, but it does not conclusively establish that necessity. A reduction in imports may equally reflect changes in export opportunities, domestic demand in the exporting country or other market conditions. The Commission was required to examine those possibilities before concluding that termination would probably result in renewed dumping. The remaining factors were intended to address precisely these considerations, but, as discussed below, their evaluation also disclosed material deficiencies.

90. The second factor concerned the development of alternative export markets by Chinese producers. For this purpose, the Commission relied upon Table-V, compiled from Trade Map statistics, showing Chinese exports of paperboard to different destinations. A footnote to that table expressly acknowledged that the figures included "two-sided coated bleached Paperboard/clay coated bleached paperboard", although both products had been excluded from the scope of the review under paragraph 14.1 of the same report. The Commission neither segregated the figures relating to the investigated product nor explained why the combined statistics could nevertheless provide a reliable basis for assessing its export trends.

91. A further difficulty arises from the substantial inconsistency between Tables IV and V. Whereas Table-IV recorded a decline in imports into Pakistan from China from 57,625 metric tonnes to 1,405 metric tonnes, Table-V showed Chinese exports to Pakistan decreasing from 68,736 metric tonnes to 42,515 metric tonnes. The divergence was material and required explanation, particularly because the latter table included products falling outside the scope of the review. No reconciliation of these figures was undertaken.

92. The inference drawn from Table-V is also difficult to sustain. In paragraph 25.2, the Commission observed that Chinese exports to the world had increased by approximately 1.7% and concluded that this "indicates that China has not

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developed any new markets, therefore, there is likelihood that dumped imports of Coated Bleached Paperboard from China would increase if anti-dumping duties are terminated." Yet the same table reflected substantial increases in exports to Viet Nam, the United Arab Emirates, Bangladesh and Korea. The Commission did not explain how those increases were consistent with its conclusion that alternative markets had not been developed. More importantly, it did not establish why the available export trends made a diversion of dumped exports to Pakistan probable upon termination of the duties.

93. The requirement that an investigating authority's reasoning be "coherent and internally consistent", as recognised in Softwood Lumber (supra), assumes particular importance where a determination depends upon statistical evidence. The unexplained inclusion of excluded products, the material divergence between the two tables and the absence of a reasoned connection between the export figures and the predicted recurrence of dumping undermine the objectivity of the Commission's evaluation. The majority of the Tribunal, therefore, committed no legal error in declining to accept this factor as sufficient support for the likelihood determination.

94. The third factor concerned the existence of an exportable surplus in China. This aspect disclosed a material deficiency in the Commission's analysis, particularly because paragraph 26.1 of its report expressly acknowledged:

> *"26.1 The data for international production and demand is not available, ..."*

An exportable surplus ordinarily represents production exceeding domestic demand. An increase in production capacity, without an assessment of domestic consumption, does not necessarily establish that surplus production is available for export. Nevertheless, the Commission relied principally upon information concerning capacity expansion, without examining the corresponding demand for the investigated product in China.

95. The material relied upon was itself of limited probative value. The footnotes to paragraph 26.3 reveal that the relevant websites were accessed on

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11.02.2022, before initiation of the sunset review on 25.02.2022, while the underlying publications were dated 2018 and 2020. At least one publication concerned machinery for containerboard, a product outside the scope of the review. Furthermore, the EUWID report concerning the expansion plans of APP China expressly recorded that "some other Chinese companies ... reportedly massively reduced their export volumes during the 2017 demand and price boom in China", and that the expansion project "still was in very early stages". These documents formed part of the material relied upon by the Commission and were, therefore, available for examination by the Tribunal under section 70(8).

96. The significance of these matters lies in the relationship between production capacity, domestic demand and export availability. The material itself indicated that increased domestic demand could substantially affect Chinese export volumes, yet the Commission undertook no corresponding examination of that factor. Its further conclusion in paragraph 26.4 that "the inventories of Coated Bleached Paperboard of China has increased and it has exportable surplus to dump in Pakistan" was unsupported by any identified inventory data. Although learned counsel for the importers subsequently produced market reports concerning Chinese demand, those reports were not before the Commission and have not been relied upon in reaching the present conclusion. The deficiency arises from the Commission's own record. In the absence of a reasoned assessment of domestic demand, inventories and the relevance of the capacity figures, the finding concerning an exportable surplus lacked an adequate evidentiary foundation.

97. The fourth factor concerned trade-remedy measures imposed by other countries. In paragraph 27 of its report, the Commission expressly recorded that "No country has imposed any trade remedy measures on Coated Bleached Paperboard from China during the POR." Having identified this factor as relevant to its likelihood assessment, the Commission was required to explain its significance, particularly because the recorded fact did not affirmatively support the continuation of duties. No such explanation was furnished.

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98. The absence of trade-remedy measures in other jurisdictions does not, by itself, establish that dumping into Pakistan is unlikely. To that extent, the observation of the learned Chairman of the Tribunal was correct, and the majority's treatment of this factor may have been expressed too broadly. Nevertheless, an objective evaluation requires the investigating authority to consider material circumstances which may qualify or weaken its proposed conclusion. As recognised by the WTO panel in the BOPP dispute, evidence inconsistent with an investigating authority's findings cannot simply be disregarded without explanation. The Commission's failure to address the implications of its own finding under this factor constituted a further deficiency in the reasoning supporting its likelihood determination.

99. The requirement of objectivity under section 70(8) is not satisfied merely because an investigating authority has collected information and recorded findings upon the factors selected for examination. The evaluation must demonstrate that the relevant evidence has been considered fairly and that the conclusions drawn are reasonably supported by it. In Hot-Rolled Steel (supra), the WTO Appellate Body explained that an objective examination "requires that the domestic industry, and the effects of dumped imports, be investigated in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation." Similarly, in Softwood Lumber (supra), it emphasised the obligation to explain "why it rejected or discounted alternative explanations and interpretations of the record evidence".

100. These principles require an investigating authority to consider not only material supporting the continuation of a duty but also evidence reasonably capable of supporting a different conclusion. Where material inconsistencies remain unexplained, relevant market conditions are not examined, or contrary evidence is passed over without discussion, the resulting assessment cannot readily be characterised as objective. The Commission was not required to accept every alternative explanation advanced by the interested parties. It was, however, required to demonstrate that such explanations had been considered and to provide intelligible reasons for rejecting them. That requirement assumes

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particular importance in a sunset review, where the ultimate determination concerns the probability of future events rather than the mere existence of historical circumstances.

101. The majority of the Tribunal concluded that the Commission's finding concerning the likelihood of renewed dumping rested upon assumptions regarding the consequences of terminating the duty, export statistics which included products outside the scope of the review, and production-capacity information unaccompanied by any meaningful assessment of domestic demand or inventories. These conclusions were drawn from the Commission's report and the documents upon which it had relied. The appellants have not demonstrated that the majority introduced extraneous material, materially misread the record, or disregarded evidence capable of altering its conclusions.

102. The contention that the majority's findings were an afterthought is, therefore, without substance. Section 70(8) expressly required the Tribunal to examine whether the Commission had properly established the facts and evaluated them in an unbiased and objective manner. In undertaking that examination, the majority remained within the limits of its statutory jurisdiction. Its conclusions were supported by identifiable deficiencies in the Commission's reasoning and were accompanied by reasons addressing the relevant factors. The objection founded upon section 24-A of the General Clauses Act, 1897 is consequently without merit.

103. I am, therefore, satisfied that no error of law has been established in the majority's conclusion concerning the likelihood of continuation or recurrence of dumping. Since section 58(3) requires an affirmative determination concerning the likelihood of both dumping and injury, the failure to establish the former would itself be sufficient to sustain the impugned judgment. Nevertheless, as the parties have also addressed the findings concerning likely injury, it is appropriate to examine that aspect independently.

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(v) <u>The findings on likely injury</u>

104. The findings concerning the likelihood of injury lead to the same conclusion. Learned counsel for the appellants contends that the majority of the Tribunal erroneously applied sections 15 and 17 of the Act to a sunset review, although those provisions principally govern the determination of injury in an original investigation. The distinction is well founded to the extent that a sunset review does not require the Commission to establish the existence of present injury afresh. Nor does the absence of present injury necessarily justify termination of an existing anti-dumping duty, since the very purpose of that duty may have been to prevent such injury. The learned Chairman of the Tribunal correctly recognised this distinction. However, the objection overlooks the approach adopted by the Commission itself. In its notice dated 25.08.2022, the Commission expressly stated that the "factors and indices listed in Sections 15 and 17 of the Act for injury analysis have been analyzed". Having chosen to rely upon those factors in assessing the likelihood of future injury, the Commission was required to evaluate them objectively and explain how they supported its conclusion. The Tribunal was, therefore, entitled to examine whether that analysis satisfied the requirements of section 58(3). Although an isolated observation in the majority opinion may suggest that the existence of present price undercutting was treated as a prerequisite, the opinion, read as a whole, rests upon a different and legally sustainable ground: that the Commission predicted the recurrence of price undercutting, depression and suppression without adequately explaining why those consequences were probable on the basis of the available evidence.

105. The distinction between an original injury determination and a likelihood-of-injury assessment in a sunset review was examined by the WTO Appellate Body in United States - Sunset Reviews of Anti-Dumping Measures on Oil Country Tubular Goods from Argentina (WT/DS268/AB/R). The Appellate Body held that investigating authorities "are not mandated to follow the provisions of Article 3 when making a likelihood-of-injury determination". It nevertheless explained:

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> *"284. This is not to say, however, that in a sunset review determination, an investigating authority is never required to examine any of the factors listed in the paragraphs of Article 3. Certain of the analyses mandated by Article 3 and necessarily relevant in an original investigation may prove to be probative, or possibly even required, in order for an investigating authority in a sunset review to arrive at a 'reasoned conclusion'. In this respect, 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. ..."*

Sections 15 and 17 of the Act substantially reflect the principles contained in Article 3 of the Anti-Dumping Agreement. Accordingly, although the Commission is not required to repeat the entire exercise undertaken during an original investigation, the requirement of positive evidence and an objective evaluation remains applicable to the factors upon which it chooses to rely. The essential question is whether the available material reasonably supports the prediction that injury would continue or recur upon termination of the duty. The Tribunal was, therefore, acting within its statutory jurisdiction in examining the adequacy of the Commission's reasoning against that standard.

106. The majority's conclusion finds substantial support in the Commission's own record. Table-VII disclosed that, with the anti-dumping duty in force, there was no price undercutting. Even without the duty, the margin of undercutting had declined from 14.8% during the original period of investigation to 2.3% in the final year of the review. The Commission also recorded the absence of price depression and price suppression. At the same time, the principal indicators of the domestic industry's performance reflected considerable improvement. Its share of the domestic market had increased to 83.66%, while the share of dumped imports had declined to 1.44%. Capacity utilisation had risen from 65.61% to 83.75%, and return on investment had increased from 2.06% to 23.92%. Production, sales and cash flow had also improved, while the industry's financial performance had changed from a net loss to substantial profitability.

107. These improvements did not, by themselves, establish that injury would be unlikely to recur. They were nevertheless material circumstances requiring

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examination before an affirmative likelihood determination could properly be made. The Commission was required to explain why, notwithstanding the industry's improved position and the substantially reduced margin of potential price undercutting, termination of the duty would probably result in renewed injury. Its report did not provide an adequate explanation connecting the recorded indicators with that prediction. Instead, it proceeded substantially upon the assumption that the favourable developments observed during the operation of the duty would reverse upon its withdrawal.

108. A comparable deficiency was identified by the WTO panel in the BOPP dispute, which observed:

> *"7.608 ... the NTC appears to have assumed that, because dumped imports had decreased and the market share of the domestic industry had increased following the introduction of the anti-dumping duties, the opposite would happen upon removal of the duties. We therefore find that the NTC did not provide a reasoned and adequate explanation of why these developments were likely to occur, and not just possible."*

The same distinction is material here. A sunset review necessarily involves a prediction concerning future circumstances, and the Commission is not required to demonstrate that injury already exists. It must, however, identify a sufficient factual foundation for concluding that injury is likely to recur. The majority of the Tribunal found that the Commission had not adequately discharged that obligation. Having regard to the contents of Table-VII and the reasoning accompanying the determination, that conclusion was reasonably open to the majority on the record before it.

109. The submissions advanced by Mr. Waqas Amir, particularly with reference to Table-VII, essentially invite this Court to adopt a different appreciation of the same evidence. Learned counsel maintains that the landed cost of Chinese imports, calculated without the anti-dumping duty, remained below the domestic industry's selling price and that the resulting margin of 2.3% was sufficient to establish the likelihood of renewed price undercutting. The learned Chairman of the Tribunal accepted that interpretation, whereas the majority considered the evidence insufficient to sustain the Commission's prediction. The difference

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between these conclusions concerns the probative value of the material and the inference reasonably to be drawn from it.

110. Whether a potential undercutting margin of 2.3%, viewed alongside the domestic industry's market share of 83.66% and its improved economic indicators, establishes the probability of future injury is principally a question involving the evaluation of evidence. The statutory responsibility for examining that evaluation was entrusted to the Tribunal under section 70(8). As already discussed, the appellate jurisdiction of this Court under section 70(13) does not extend to substituting its own assessment merely because another conclusion may also be reasonably possible. The appellants were required to demonstrate a material error of law, misreading or non-reading of the record, or a failure to apply the governing statutory standard. No such defect has been established. The majority examined the relevant material, identified deficiencies in the Commission's reasoning and furnished reasons for its conclusion. The fact that the learned Chairman reached a different conclusion upon the same evidence does not, without more, justify interference. Accordingly, the challenge to the majority's findings concerning the likelihood of injury also fails.

111. For the reasons recorded above, I am satisfied that the appellants have failed to establish any legal infirmity in the impugned judgment warranting interference in the exercise of appellate jurisdiction under section 70(13) of the Act. The Tribunal was competent to decide the appeal notwithstanding the expiry of the period prescribed under section 70(5), and the majority acted within the limits of its statutory powers in examining whether the Commission had properly established the relevant facts and evaluated them in an unbiased and objective manner. Its conclusions concerning the likelihood of recurrence of dumping and injury are supported by the deficiencies identified in the Commission's determination and do not disclose any material error of law. Consequently, **C.M.A. No.28 of 2026** and **C.M.A. No.29 of 2026** are **dismissed**, and the judgment dated 04.05.2026 passed by the Anti-Dumping Appellate Tribunal in Appeal No.519 of 2022 is maintained. There shall be no order as to costs.

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112. Before parting with the judgment, it is necessary to reiterate that the periods prescribed under sub-sections (5) and (6) of section 70 are intended to ensure the expeditious determination of disputes having significant commercial and fiscal consequences. Although non-compliance does not, by itself, invalidate the proceedings, the Tribunal remains under a statutory obligation to observe those requirements in letter and spirit. Where exceptional circumstances prevent disposal within the prescribed period, the reasons for such delay ought to be recorded, and every reasonable effort should be made to conclude the proceedings without further unnecessary adjournment. The Registrar shall transmit a copy of this judgment to the Chairman of the Tribunal for information and appropriate compliance with the statutory requirements governing the timely disposal of appeals.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on **16.11.2026.**

JUDGE

Approved for reporting.

Saeed

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