



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DEPARTMENT OF TRADE AND
INDUSTRY AND ITS BUREAU
OF PRODUCT STANDARDS,

G.R. No. 238263

Members:

Petitioners,

PERLAS-BERNABE, *Chairperson*
GESMUNDO,
LAZARO-JAVIER,
LOPEZ, and
ROSARIO, *JJ.*

-versus-

Promulgated:

NOV 16 2020

STEELASIA MANUFACTURING
CORPORATION,

Respondent.

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DECISION

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari* seeks to reverse and set aside the following dispositions of the Regional Trial Court (RTC)-Br. 142, Makati City in Civil Case No. R-MKT-16-00874-SC, entitled "*Steelasia Manufacturing Corporation v. Department of Trade and Industry, Bureau of Product Standards, and the Bureau of Customs.*"

1. Decision¹ dated November 10, 2017 declaring as *ultra vires*, hence, without force and effect the following Regulations of the Department of Trade and Industry (DTI): a) Department Order No. 5, Series of 2008 and its Implementing Rules and Regulations and b) DTI Department Administrative Order No. 15-01, Series of 2015; and
2. Order² dated March 23, 2018 denying reconsideration.

Antecedents

On June 24, 2016, respondent SteelAsia Manufacturing Corporation (Steelasia) sought to nullify through a petition for declaratory relief³ the following DTI Regulations:⁴

1. DTI Department Administrative Order No. 5, Series of 2008 (DAO No. 5);
2. Implementing Rules and Regulations (IRR) of DAO No. 5; and
3. DTI Department Administrative Order No. 15-01, Series of 2015 (DAO No. 15-01).

The following matrix shows the assailed provisions of these DTI Regulations:

| DAO No. 5 | IRR of DAO No. 5 | DAO No. 15-01 |
|--|--|---|
| 4.1.1.1 An importation without test report may be issued <u>conditional release</u> from BOC's custody by the BPS or DTI Regional/Provincial Office, upon importer's compliance with the BOC's requirements and any other requirements of the DTI. | 3.6 Release of Import Shipment from the Bureau of Customs shall be allowed only upon advice from BPS or from DTI/ Regional/ Provincial Office through a conditional release or issuance of ICC or Certificate of Exemption in case of an importation which is a PS Mark License Holder. | 1.4 For applications with no valid test report/s, ICC certificate shall be issued , however, inspection, inventory, sampling, and product testing shall be conducted prior to the release of ICC stickers. |

Claiming to be a local manufacturer of steel bars, Steelasia questioned

¹ *Rolo*, pp. 12-25.

² *Id.* at 10-11.

³ *Id.* at 139-165.

⁴ Steelasia also sought to nullify the Implementing Guidelines for the Mandatory Certification of Steel Bars Covered by Philippine National Standards (PNS) 49: 2002, but only insofar as it refers to DAO No. 5, its implementing rules, and DAO 15-01.

the DTI Regulations for being in conflict with Republic Act No. 4109⁵ (RA 4109) and violative of the equal protection clause.

Specifically, the DTI Regulations allowing the **conditional release** of imported merchandise from the Bureau of Customs (BOC) premises prior to compliance with the required testing, inspection, and clearance are purportedly in conflict with the command of RA 4109 that only those which have been tested, inspected, and certified may be released, thus:

Section 3. The Bureau shall have charge of the establishment of standards for, and inspection of, all agricultural, forest, mineral, fish, industrial and all other products of the Philippines for which no standards have as yet been fixed by law, executive order, rules and regulations; and the inspection and certification of the quality of commodities imported into the Philippines, to determine the country of origin of the articles which are the growth, raw materials, manufacture, process, or produce, and to determine if they satisfy the buyer's or importer's requirements or specifications for domestic consumption; x x x

x x x x

(d) Before any commodity imported into the Philippines is discharged and/or released by the Bureau of Customs, to inspect such commodity in order to sample and determine the country of origin where the articles are the growth, raw materials, manufacture, process or produce, and to certify that, the whole shipment satisfies local buyer's importer's requirements as to kind, class, grade, quality or standard which may be indicated on the corresponding customs or shipping papers or commercial documents: *Provided, However,* That imports which are not shown to be covered by, or do not conform to, buyer's or importer's requirements, shall be labelled or stamped conspicuously with the caption "do not conform to buyer's or importer's specifications": *Provided, further,* That imports of any article which are the growth, raw materials, manufacture, process or produce of countries wherein the Philippines has no trade agreement shall be confiscated and/or seized at the disposal of the government.

x x x x

Section 6. No customs export entry, import entry, declaration, release certificate, manifest, clearance, import permit, or permit to ship abroad and/or discharge shall be issued for any of the products within the purview of Section three of this Act and/or imported commodity, unless it is first inspected in accordance with provisions of sub-sections (b), (c), (d), and/or (e) of Section four of this Act. x x x x (Emphasis supplied)

Steelasia further claims that the DTI Regulations are violative of the equal protection clause for they allow the conditional release of merchandise

⁵ An Act to Convert the Division of Standards Under the Bureau of Commerce into a Bureau of Standards, to Provide for the Standardization and/or Inspection of Products and Imports of the Philippines and for Other Purposes.

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to international manufacturers and importers pending compliance with the testing, inspection, and clearance requirements while local manufacturers are not given the same privilege. This differential treatment does not rest on substantial distinctions and is not in any way germane to the purpose of the law.⁶

By *Comment*⁷ dated September 16, 2016, DTI, through the Office of the Solicitor General (OSG) essentially riposted:

The DTI Regulations allow the conditional physical release of the merchandise only for the purpose of moving them from the heavily congested BOC premises into a suitable, safe, secure and accredited warehouse or storage area where the merchandise shall be stored and continue to be within the control of DTI pending the required product testing and clearance. This provisional measure is compelled by the extremely limited space in the BOC premises, significant increase in the volume of clearance applications and test reports to be evaluated by the Bureau of Product Standards (BPS), consequent delays in shipment release, rise in storage costs, and business slowdown for both providers and consumers alike.⁸

To require the process of inspection and certification to be done prior to such conditional release is simply illogical. Precisely, it is the conditional release of the merchandise from the BOC premises into a suitable, safe, secure and accredited warehouse or sufficient storage space which paves the way for and makes possible the efficient, expeditious and thorough testing, inspection, and certification of the merchandise. More specific to the steel industry, conditional release is even *necessary* considering that the process of BPS testing, inspection and certification in the customs premises is highly impractical, if not impossible. For this would require the installation of highly specialized equipment and machinery in a laboratory which, at present, can only be done by the Metals Industry Research and Development Center (MIRDC) of the Department of Science and Technology (DOST) in Bicutan, Parañaque City, Metro Manila.⁹

The conditional release of merchandise for the aforesaid purpose **should not be confused with the final release of the merchandise to the market or in commerce.** It is this second type of release which definitely ought to be preceded by such testing, inspection, and certification. Surely, the process cannot be reversed.


The DTI Regulations do not violate the equal protection clause. There are substantial distinctions between imported commodities, on one hand, and locally manufactured goods, on the other. It is not true that imported commodities are given more leeway than local products. On the contrary, imported commodities undergo stricter procedures. For example, their

⁶ *Rollo*, pp. 158-162.

⁷ *Id.* at 352-380.

⁸ *Id.* at 371.

⁹ *Id.* at 373.



inspection and certification are done on per Bill of Lading/Airway Bill basis. Local products, on the other hand, enjoy a wider latitude on this score. Upon compliance with the specific Philippine Standards Quality and/or Safety Certification Marks, the license issued to a local manufacturer is valid for three (3) years subject only to a minimum annual surveillance audit.¹⁰

The Trial Court's Ruling

By Decision¹¹ dated November 10, 2017, the trial court declared DAO No. 5 and its Implementing Rules and Regulations, and DAO No. 15-01, *ultra vires* and with no force and effect. The court held that the inspection of imported merchandise must precede their release, not the other way around. This is to ensure that they comply with the applicable standards before they are sold and distributed in the market. Also, the fact that there is currently only one testing center for steel bars in the country does not justify the conditional release of imported merchandise prior to testing. The BPS, after all, is required by law to have its own facilities for product testing and analysis. DTI must rely on the effective implementation of its procedures rather than cut corners in violation of the law.

As for the alleged violation of the equal protection clause, the trial court said “[it] is not ready to pronounce that locally manufactured steel bars and those imported abroad must be similarly treated.”

The trial court thus disposed of the case, as follows:

WHEREFORE, the petition is GRANTED. The court declares Department of Trade and Industry Department Order No. 5, Series of 2008 & its Implementing Rules and Regulations, and Department of Trade and Industry Department Administrative Order No. 15-01, Series of 2015, *ultra vires* and of no force and effect.

The Department of Trade and Industry, Bureau of Product Standards, and the Bureau of Customs are enjoined to stringently implement Republic Act No. 4109.

SO ORDERED.

By Order¹² dated March 23, 2018, the trial court denied reconsideration.

The Present Appeal

Invoking the Court's appellate jurisdiction over pure questions of law, the DTI and the BPS, through the OSG¹³ now seek affirmative relief and pray

¹⁰ *Id.* at 378.

¹¹ Penned by Acting Presiding Judge Phoeve C. Meer; *id.* at 12-24.

¹² *Id.* at 91

¹³ Solicitor General Jose C. Calida, Assistant Solicitor General Ma. Antonie Edita C. Dizon, State Solicitor I Perfecto Adelfo C. Chua Cheng, and State Solicitor I John Dale A. Ballilan.

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that the foregoing dispositions be reversed and set aside.¹⁴ The OSG reiterates its arguments before the trial court and brings to fore the power of the DTI Secretary to promulgate rules and regulations to implement the provisions of trade and industry laws for the protection of the consumers. One such law is Republic Act No. 7394 (RA 7394), the Consumer Act of the Philippines (1992) which decrees that consumer products may only be **distributed in commerce** after they shall have been tested, inspected, and certified in accordance with the DTI's quality and safety standards, thus:¹⁵

ARTICLE 14. Certification of Conformity to Consumer Product Standards. — The concerned department shall aim at having consumer product standards established for every consumer product so that consumer products shall be **distributed in commerce** only **after inspection and certification** of its quality and safety standards by the department. The manufacturer shall avail of the Philippine Standard Certification Mark which the department shall grant after determining the product's compliance with the relevant standard in accordance with the implementing rules and regulations. (Emphasis supplied in the petition)

DAO No. 5 is consistent on this point:

4.1.1.2 Pending the issuance of the Import Commodity Clearance, **no distribution, sale, use and/or transfer to any place other than the warehouse duly approved by the BPS/DTI Regional or Provincial Office, in whole or in part, shall be made by the importer or any person.** To ensure that no distribution, sale, use and/or transfer to any place other than the address specified in the Conditional Release, the importer shall allow the BPS or authorized DTI personnel or any BPS authorized inspection body/inspector conduct verification, inspection/inventory of the import shipment. (Emphasis supplied in the petition)

So is the Implementing Rules and Regulations of DAO No. 5:

4.1.1.6.1 If the results of laboratory test disclosed product **noncompliance**, the import shipment **shall be deemed non-compliant. BPS shall disapprove the ICC application** and the importer shall be advised about the denial within fifteen (15) days after the evaluation.

x x x x

4.1.1.6.4 If both test failed to conform to the requirements of the specific standards, the importer will be advised by BPS to **re-export the products** with the provisions of the Tariff and Customs Code **or be destroyed** by appropriate agency. **Only after reassessment and subsequent product compliance shall the importer be issued ICC and be allowed by BPS to market the product.**

and DAO No. 15-01, viz.:

¹⁴ *Rollo*, pp 29-73.

¹⁵ Republic Act No. 7394.

1.4 For applications with no valid test report/s, ICC certificate shall be issued, **however, inspection, inventory, sampling, and product testing shall be conducted prior to the release of ICC stickers.**

Verily, while these requirements of testing, inspection, and certification prior to release is RA 4109 (1964), this requirement must be reconciled with the provisions of the Consumer Act.¹⁶

Through its *Comment*¹⁷ dated November 14, 2018, Steelasia points out that the OSG has merely rehashed its argument on the substantial distinctions between local and imported goods. Steelasia nonetheless maintains that the DTI Regulations contradict the command of RA 4109 for testing, inspection, and certification to precede any form of release of merchandise. Also, the OSG cannot invoke RA 7394 to govern the importation of steel bars since that law applies only to consumer services and “consumer products” including but not limited to food, drugs, cosmetics etc. It is still RA 4109 which governs imported *non consumer products* such as **manufacturing materials** (steel bars included).

Further, the issuance of the DTI Regulations is defective for they were crafted by DTI alone, while Article 15 (c) decrees that regulations should be jointly promulgated with the Commissioner of Customs.¹⁸

Threshold Issues

First. Is a petition for declaratory relief proper to challenge the validity of the DTI Regulations?

Second. Are the DTI Regulations in conflict with RA 4109 and RA 7394, hence, should be invalidated?

Third. Are the DTI Regulations defective for having exclusively emanated from DTI, sans the involvement of the Commissioner of Customs?

Fourth. Are the DTI Regulations violative of the equal protection clause insofar as they apply only to imported merchandise but not to locally manufactured products?

¹⁶ *Rollo*, p. 42.

¹⁷ *Id.* at 212-274.

¹⁸ c) x x x and in accordance with such regulations as the department and the Commissioner of Customs shall jointly promulgate, such product may be released from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product.

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Ruling

A petition for declaratory relief is an improper remedy to assail the validity of the DTI Regulations

Section 1, Rule 63 of the Rules of Court states:

Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, **before breach or violation thereof** bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

*Municipality of Tupi v. Faustino*¹⁹ citing *Aquino v. Municipality of Aklan*²⁰ elucidates on the concept of declaratory relief, viz.:

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, **and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute,** deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.

A similar ruling was pronounced in *Ferrer v. Bautista*,²¹ *DOTR v. PPSA*,²² and most recently in *Bureau of Internal Revenue v. First E-Bank Tower Condominium Corp.*²³ As the Court invariably held in these cases, the party assailing the validity of a statute or administrative issuance may only do so via declaratory relief when there has yet been no breach of the rights involved. Otherwise, the party should invoke the expanded *certiorari* jurisdiction under Section 1 of Article VIII of the 1987 Constitution to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

¹⁹ G.R. No. 231896, August 20, 2019.

²⁰ 744 Phil. 497, 509-510 (2014).

²¹ 762 Phil. 232, 245 (2015).

²² G.R. No. 230107, July 24, 2018.

²³ G.R. Nos. 215801 & 218924, January 15, 2020.

Here, declaratory relief is unavailing since Steelasia claims that its constitutional right to equal protection had already been infringed when the DTI Regulations became effective. Thus, Steelasia should have invoked instead the *certiorari* powers of the courts to nullify the alleged *ultra vires* acts. On this ground alone, the petition should have already been dismissed outright.

But the petition should not end here. In *Diaz v. The Secretary of Finance*,²⁴ the Court held that it has ample power to waive technical requirements when the legal questions to be resolved are of great importance to the public. In that case, petitioners, through declaratory relief, opposed the imposition and collection of Value Added Tax on toll fees and sought to nullify BIR Revenue Memorandum Circular No. 63-2010 which laid the groundwork for its implementation. Considering that the issue had far-reaching implications as it would have affected more than half a million motorists who use the tollways daily, the Court treated the petition for declaratory relief as one for *certiorari* although it did not strictly comply with the requirements under Rule 65 of the Rules of Court.

Similarly, the petition for declaratory relief filed here, though improper, must also be treated as a petition for *certiorari* for the Court to decide the case on the merits and lay the issues to rest. As in *Diaz*, the present case also poses far-reaching implications on public welfare. For importation affects not only private businesses involved in trade; it also impacts the national economy which stands to gain or lose significantly depending on the government policy which the Court would uphold. Too, the processes of the DTI would affect the end-users and consumers who will ultimately shoulder the real costs of inefficiency. For these reasons, the Court resolves to treat the petition below as a petition for *certiorari* and shall proceed to decide the case on the merits.

The DTI Regulations do not violate the command of RA 4109

The doctrine of *in pari materia* requires that statutes on the same subject be construed together because legislative enactments are supposed to form part of one uniform system. More, the legislature is supposed to have in mind the existing legislations in the passage of its acts. Thus, later statutes are deemed supplementary or complementary to earlier enactments.²⁵

Notably, RA 4109 is not the sole statute governing the testing, inspection, and certification requirements implemented by the DTI on imported goods. RA 7394 or the Consumer Act also covers the same requirement.

To recall, the text of RA 4109 reads:

Sec. 3. The Bureau shall have charge of the establishment of

²⁴ 669 Phil. 371, 383-384 (2011).

²⁵ *Co v. Civil Register of Manila*, 467 Phil. 904, 913 (2004).

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standards for, and inspection of, all x x x industrial and all other products of the Philippines for which no standards have as yet been fixed by law, executive order, rules and regulations; and the inspection and certification of the quality of commodities imported into the Philippines, to determine the country of origin of the articles which are the growth, raw materials, manufacture, process, or produce, **and to determine if they satisfy the buyer's or importer's requirements or specifications for domestic consumption;** and to prohibit the discharge and/or release of any article which are the growth, raw materials, manufacture, process, or produce of countries without trade relations with the Philippine government. Physical, biological and/or chemical tests or analyses necessary for the examination of products under the provisions of this Act may be undertaken in any branch of the Government having facilities for the purpose until such time as the Bureau may have its own facilities.

Sec. 4. Subject to the general supervision and control of the Secretary of Commerce and Industry, the Director of Standards **shall possess the general powers** conferred by law upon Bureau Chiefs, and the following specific powers and duties which he may perform personally or through his duly authorized representatives:

x x x x

(d) **Before any commodity imported into the Philippines is discharged and/or released by the Bureau of Customs, to inspect such commodity** in order to sample and determine the country of origin where the articles are the growth, raw materials, manufacture, process or produce, **and to certify** that, the whole shipment satisfies local buyer's importer's requirements as to kind, class, grade, quality or standard which may be indicated on the corresponding customs or shipping papers or commercial documents: provided, however, that imports which are not shown to be covered by, or do not conform to, buyer's or importer's requirements, shall be labelled or stamped conspicuously with the caption "do not conform to buyer's or importer's specifications": provided, further, that imports of any article which are the growth, raw materials, manufacture, process or produce of countries wherein the Philippines has no trade agreement shall be confiscated and/or seized at the disposal of the government.

On the other hand, Article 14 of RA 7394 states:

ARTICLE 14. Certification of Conformity to Consumer Product Standards. — The concerned department shall aim at having consumer product standards established for every consumer product so that **consumer products shall be distributed in commerce only after inspection and certification of its quality and safety standards by the department.** The manufacturer shall avail of the Philippine Standard Certification Mark which the department shall grant after determining the product's compliance with the relevant standard in accordance with the implementing rules and regulations.

Verily, there is no substantial difference between the **texts of RA 4109 and RA 7394** insofar as they **require prior testing, inspection, and certification of product quality and safety as conditions *sine qua non* to the release of imported merchandise to the market or in commerce.** This requirement is **intended to prevent substandard products from getting**



released to the market and eventually falling into the hands of innocent consumers regardless of the nature of the merchandise, whether they be consumer's products or services or otherwise. On this score, the distinction being raised by Steelasia as to the kind of imported products governed by RA 4109, on one hand, and those by RA 7394, on the other, has no bearing at all on the required testing, inspection, and certification of product quality and safety prior to the release of any kind of imported products to the market or in commerce. Both laws are in *pari materia* and ought to be applied together on **all** imported merchandise.

This brings us back to the comparative matrix of the assailed DTI Regulations. Note that ICC stands for Import Commodity Clearance, *viz.*:

| DAO No. 5 | DAO No. 5 IRR | DAO No. 15-01 |
|--|--|--|
| <p>4.1.1.1 An importation without test report may be issued conditional release from BOC's custody by the BPS or DTI Regional/Provincial Office, upon importer's compliance with the BOC's requirements and any other requirements of the DTI.</p> <p>4.1.1.2 <u>Pending the issuance of the Import Commodity Clearance, no distribution, sale, use and/or transfer to any place other than the warehouse duly approved by the BPS/DTI Regional or Provincial Office, in whole or in part, shall be made by the importer or any person. To ensure that no distribution, sale, use and/or transfer to any place other than the address specified in the Conditional Release, the importer shall allow the BPS or authorized DTI personnel or any BPS</u></p> | <p>3.6 Release of Import Shipment from the Bureau of Customs shall be allowed only upon advice from BPS or from DTI/ Regional/ Provincial Office through a conditional release or issuance of ICC or Certificate of Exemption in case of an importation which is a PS Mark License Holder.</p> <p>xxxx</p> <p>4.1.1.6.1 If the results of laboratory test disclosed product <u>nonecompliance</u>, the import shipment shall be deemed non-compliant. BPS shall disapprove the ICC application and the importer shall be advised about the denial within fifteen (15) days after the evaluation.</p> <p>xxxx</p> <p>4.1.1.6.4 If both test failed to conform to the requirements of the specific standards, the importer will be advised by BPS to <u>re-export the products</u> with the provisions of the Tariff and Customs Code or be destroyed by appropriate agency. <u>Only after reassessment and subsequent product compliance shall the importer be issued ICC and</u></p> | <p>1.4 For applications with no valid test report/s, ICC certificate shall be issued, however, inspection, inventory, sampling, and product testing shall be conducted <u>prior to the release of ICC stickers.</u></p> |

| | | |
|---|---|--|
| authorized inspection body/inspector conduct verification, inspection/inventory of the import shipment. | <u>be allowed by BPS to market the product.</u> | |
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An implementing rule or regulation is a valid exercise of subordinate legislation if it complies with the following parameters:

[T]he "delegation of legislative power to various specialized administrative agencies is allowed in the face of increasing complexity of modern life." In *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*:

Given the volume and variety of interactions involving the members of today's society, it is doubtful if the legislature can promulgate laws dealing with the minutiae aspects of everyday life. Hence, the need to delegate to administrative bodies, as the principal agencies tasked to execute laws with respect to their specialized fields, the authority to promulgate rules and regulations to implement a given statute and effectuate its policies.

For a valid exercise of delegation, this Court enumerated the following requisites:

All that is required for the valid exercise of this power of subordinate legislation is that **the regulation must be germane to the objects and purposes of the law**; and that **the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law**. Under the **first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it**. The **second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot**.

Simply put, what are needed for a valid delegation are: (1) the **completeness of the statute making the delegation**; and (2) the **presence of a sufficient standard**.

To determine completeness, all of the terms and provisions of the law must leave nothing to the delegate except to implement it. "What only can be delegated is not the discretion to determine what the law shall be but the discretion to determine how the law shall be enforced."

More relevant here, however, is the presence of a sufficient standard under the law. Enforcement of a delegated power may only be effected in conformity with a **sufficient standard**, which is used **"to map out the boundaries of the delegate's authority and thus 'prevent the delegation from running riot.'" The law must contain the limitations or guidelines to determine the scope of authority of the delegate.**²⁶ (Emphasis supplied)

²⁶ *Kilusang Mayo Uno v. Aquino III*, G.R. No. 210500, April 2, 2019. citations omitted.

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The rule-making power of the DTI is found in Section 2 of EO No. 293 (1993):

SECTION 2. Implementing rules and regulations. — The Minister may promulgate rules and regulations to implement the provision and intent of "trade and industry laws." This power shall extend to the implementation of the objectives, policies, international agreements, international grants, and the approved plans, projects, and activities of the Ministry.

The standards relevant to the present case are found in Section 14 of RA 7394 and Section 4(d) of RA 4109 (1967) as above-quoted.

Here, not only are the aforementioned provisions **complete** in their respective terms, but each of them also contains sufficient **standards** for the DTI to determine **how the ICC requirement shall be processed**, including the **preparatory steps for the discharge this particular duty** such as where the imported products shall be stored in the meantime. While this is not expressly stated in the statutes, this is **necessarily implied** from the **principal mandate** given to the DTI for the issuance or non-issuance of the ICC. The DTI does not have to do anything except implement the provisions based on the standards and limitations provided by the statutory provisions, the **details of such implementation** being left of necessity to the DTI to determine.

The present challenge focuses on Section 4.1.1.1 of DAO No. 5 allowing **conditional release** from BOC's custody of imported goods that have yet to be tested, inspected, and certified provided the importer shall have already complied with the BOC's requirements and any other requirements of the DTI. To emphasize, it is a **mere preparatory step** to the **principal mandate** for the ICC issuance or denial, a portion of the **detail in the implementation** of Section 15 of RA 7394 and Section 4(d) of RA 4109. The purpose is to provide swift and effective solutions to the very real problems of delays in shipment release, port congestion, and storage costs brought about by the increasing importations *vis-a-vis* the rapidly developing global industry.

As aptly argued by the OSG, **conditional release** does **not** pertain to the **release of imported goods to the market or in commerce**, but only to its **physical transfer or movement from the BOC premises to a suitable, secure, safe, and accredited warehouse or storage space pending compliance with the requisite testing, inspection, and certification**. These procedures shall no longer be performed within the congested BOC premises but in the testing center or laboratory using samples from the materials that are safely secured in the storage facility pending clearance of all the necessary approvals.

It is not true that **the conditional release of the merchandise from the BOC premises to a suitable, safe, and secure accredited warehouse or storage space effectively skips the requirements of testing, inspection, and**

clearance under RA 4109. On the contrary, it paves the way for an efficient, convenient, and expeditious process of testing, inspection, and certification of the merchandise. It thus ensures that only those imported goods that have passed the DTI's standard of safety and quality are released to the market for sale, disposition, or distribution to consumer.

Insofar as the steel industry is concerned, conditional release is imperative since doing the BPS inspection and certification right inside the customs premises is highly impractical, if not impossible primarily due to its limited space. Not only that. Since the prescribed procedure requires the installation of highly specialized equipment and machinery in a laboratory, at present, it can only be done by the lone testing center for steel bars in the country, the MIRDC of the DOST inside its laboratory in Bicutan.²⁷

To be sure, **Steelasia itself does not deny that the DTI's policy of allowing the conditional release of imported merchandise was impelled by considerations of convenience and efficiency.** It does not deny either that the BOC premises are highly congested. Nor does it deny that there is only one testing facility (MIRDC) servicing all demands for testing, inspection, and certification of steel bars and that conducting an actual and thorough testing in the congested BOC premises is extremely difficult as it even affects the quality of the testing process. Notably, the trial court opined that it is the government's duty to provide a testing facility within the BOC area itself. But for this facility to get constructed, the government has to reckon with several factors such as the availability of funds, space, manpower, among others. Meantime, the government has to deal with the fact that there is but a single testing center available in the country which, much as it wants to, cannot do the testing and inspection on all shipments inside the BOC premises all at the same time.

The assailed DTI Regulations thus puts context to the conditional release of merchandise, *viz* :

5.1 Upon issuance of Conditional Release, the importer shall allow BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector **to secure the warehouse where the subject shipment are stored in order to ensure that the same is intact prior to the approval/denial of the Import Commodity Clearance being applied for.**

5.2 In case the warehouse contains only the subject shipment, the BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector **shall padlock the warehouse in a manner that only the said authorized personnel shall have access thereon and with the knowledge of the importer.**

5.3 In case the warehouse contains products/materials other than the subject shipment, the subject shipment shall be **securely sealed in an appropriate manner** by the BPS or authorized DTI Regional/Provincial personnel or any BPS authorized inspection body/inspector. **The importer**

²⁷ Rollo, p. 373.



shall ensure that the sealed shipment shall not be altered/moved/transferred without the knowledge of BPS or DTI Regional/Provincial Office.

5.4 The BPS or DTI Regional Office may institute **any other measures to prevent any further action that undermine the purpose of these provisions.**²⁸

6. PRODUCT IDENTIFICATION AND TRACEABILITY

6.1 To establish product identification and traceability of the shipment, importers are required to declare and submit the list of batch/serial numbers of each individual product of the lot/batch being imported. It shall likewise be one of the bases for the issuance of the ICC.

6.2 Importers shall ensure that the imported products are properly labeled as to the product identification and traceability of the production lot/batch.

(Emphases supplied)

x x x x

Based thereon, the warehouse or storage area where the imported items are physically transferred will be padlocked, limiting access thereto to authorized personnel only. Also, the shipment shall be sealed prior to testing, inspection, and certification for the purpose of ensuring against any alteration, movement, or transfer thereof without the knowledge of BPS or DTI. Finally, the BPS and the DTI are authorized to institute additional measures to maintain the integrity of this process.

Clearly, while the imported goods may have been released from the **physical** custody of the BOC to an accredited warehouse, their security and integrity are nevertheless preserved. Similar to the judicial concept of *custodia legis* over items in litigation, the DTI retains control over the imported commodities to ensure that substandard materials are not altered, sold, transferred, or used at any given time prior to compliance with the requirements of testing, inspection and certification. Consequently, it cannot be said that the assailed issuances are arbitrary or contrary to the intent and spirit of the law.

Whether this rule is wise or unwise, the Court does not delve into the policy behind the rule.²⁹ It is enough that Executive Order No. 293 has validly delegated the power to promulgate rules to the DTI and the standards and limitations are set forth in Section 15 of RA 7394 and Section 4(d) of RA 4109. It is within the scope of the DTI's power to determine the preparatory process for the ICC requirement whose requirements are clearly laid out in the law.

²⁸ *Id.* at 369-370.

²⁹ *Garcia v. Drilon*, 712 Phil. 44 (2013).

There is no requirement for the DTI Regulations to be jointly promulgated with the Commissioner of Customs

Steelasia, nevertheless, argues that the DTI Regulations are defective, crafted as they were by DTI alone. This supposedly violates Article 15(c) of RA 7394 which decrees that regulations should be jointly promulgated "with the Commissioner of Customs."

We are not convinced.

For one, Steelasia takes Article 15(c) of RA 7394 out of context. A full reproduction of the provision is apropos:

ARTICLE 15. Imported Products. — a) Any consumer product offered for importation into the customs of the Philippine territory shall be refused admission if such product:

- 1) fails to comply with an applicable consumer product quality and safety standard or rule;
- 2) is or has been determined to be injurious, unsafe and dangerous;
- 3) is substandard; or
- 4) has material defect.

b) Samples of consumer products being imported into the Philippines in a quantity necessary for purposes of determining the existence of any of the above causes for non-admission may be obtained by the concerned department or agency without charge from the owner or consignee thereof. The owner or consignee of the imported consumer product under examination shall be afforded an opportunity to a hearing with respect to the importation of such products into the Philippines. If it appears from examination of such samples or otherwise that an imported consumer product does not conform to the consumer product safety rule or its injurious, unsafe and dangerous, is substandard or has a material defect, such product shall be refused admission unless the owner or the consignee thereof manifests under bond that none of the above ground for non-admission exists or that measures have been taken to cure them before they are sold, distributed or offered for sale to the general public.

Any consumer product, the sale or use of which has been banned or withdrawn in the country of manufacture, shall not be imported into the country.

c) If it appears that any consumer product which may not be admitted pursuant to paragraph (a) of this Article can be so modified that it can already be accepted, the concerned department may defer final determination as to the admission of such product for a period not exceeding ten (10) days, and in accordance with such regulations as the department and the Commissioner of Customs shall jointly promulgate, such product may be released from customs custody under bond for the purpose of permitting the owner or consignee an opportunity to so modify such product. (Emphasis supplied)

11

Verily, Article 15(c) of RA 7394 covers situations wherein the imported goods have already undergone testing and failed the mandatory product standards. In such a case, the goods may still be released for a maximum of ten (10) days for the limited purpose of alteration or modification to make them compliant. This is the only instance where the joint promulgation of rules by the DTI and the BOC is required under Article 15. It does not contemplate scenarios wherein imported goods are simply moved to a warehouse or storage area before they are sent to testing facilities.

As stated, the law requires the DTI and the BOC to jointly promulgate rules only in cases where the alteration or modification of the imported goods may be allowed. And rightly so since the integrity of the imported goods would no longer be preserved in such cases. To repeat, as with any other property in *custodia legis*, imported goods pending clearance may not be altered or modified without the imprimatur and compliance with rules of the agency having custody over them.

At any rate, joint promulgation of rules does not require that the parties signify their concurrence in the same document. For instance, the BOC issued CMC 99-2017³⁰ dated July 7, 2017 specifying the documents to be submitted to facilitate the physical release of imported cement pending compliance with the required testing, inspection and certification. This is in response to DTI DAO No. 17-05, s. 2017 on the guidelines for the mandatory certification of cement products.

More, the BOC itself even relies on issuances from other departments as regards the release of imported goods and commodities. For instance, the BOC released a User's Guide to the Bureau of Customs Regulated Imports List dated February 12, 2015³¹ providing notes and guidelines on regulated imports and information on their procedures and permits, *viz.*:

B.

x x x x

4. Some products are regulated by more than one agency. (In compiling the Regulated Imports List, products for which an Authority to Release Imported Goods (ATRIG) issued by the Bureau of Internal Revenue is required are considered regulated imports, and the Bureau of Internal Revenue is considered a regulating agency). **If a particular import requires a permit or permits from more than one agency, that will be shown in the columns for Regulating Agency 2 (column H) and Regulating Agency 3 (column K).**

5. In some cases, a product can be regulated by either of two agencies depending not on what the product is, but what it will be used for. An example of this is "Food Supplements- for Humans or Animals." In cases such as this, an explanation of what is required to

³⁰ Available at https://customs.gov.ph/wp-content/uploads/2017/07/CMC_99-2017-DTI-New-Policy-in-Processing-Import-Commodity-Clearance.pdf, last accessed on November 10, 2020, 9:00PM.

³¹ Available at <http://www.customs.gov.ph/wp-content/uploads/2015/02/Users-Guide-to-Bureau-of-Customs-Regulated-Imports-List-2015-02-12-2.pdf>, last accessed September 3, 2020, 11:50am.

be presented for Customs clearance is shown in the column Notes (column N).

6. In general, whether a product is regulated depends on what it is. In some cases, however, the specific rules which determine whether a product can be imported or whether the product is a regulated import depend on who is importing the product or for what purpose the product will be used. x x x

(Emphases supplied)

It is, therefore, not inconceivable that there already exists a separate issuance of the BOC governing the importation of reinforcement steel bars. And in accordance with 4.1.1.1 of DAO No. 5, conditional release is allowed upon **“compliance with the BOC’s requirements and any other requirements of the DTI.”**

In fine, the trial court gravely erred when it peremptorily nullified the DTI Regulations due to their alleged inconsistency with RA 4109. As stated, there is no inconsistency to speak of. The “release” of imported goods to the market or in commerce under RA 4109 and RA 7394 is not the same as the conditional physical release and transfer of the goods from the BOC premises to a suitable, secure, safe, and accredited warehouse or storage space accessible only to authorized DTI persons.

The DTI Regulations do not violate the Equal Protection Clause

Steelasia asserts that the DTI regulations violate the equal protection clause for favoring imported steel bars with the conditional release procedures under DAO No. 5 while the locally manufactured counterparts have to strictly comply with the same standards outlined in DAO No. 4.

We are not persuaded.

In *Biraogo v. The Philippine Truth Commission*,³² the Court summarized the concept of equal protection, thus:

“According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.” It **“requires public bodies and institutions to treat similarly situated individuals in a similar manner.”** “The purpose of the equal protection clause is to secure every person within a state’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state’s duly constituted authorities.” **“In other words, the concept of equal justice under the law requires the state to govern impartially, and it may not draw distinctions between individuals**

³² 651 Phil. 374, 458-459 (2010).

solely on differences that are irrelevant to a legitimate governmental objective."

x x x x

x x x What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. (Emphases supplied, citations omitted)

Here, there exists a valid classification between local producers and importers even though they produce the same goods and commodities.

First, there are substantial distinctions between locally produced merchandise, on one hand, and imported merchandise, on the other. For one, the former is easily accessible and available to the regulatory body for inspection and compliance whereas the latter is not. In fact, DTI can only rely on documents issued by the importers' foreign counterparts. For another, local manufacturers can access and closely monitor local channels of distribution more easily, while importers have to go through the tedious importation process before they could do so.

Second, the differences in testing procedures and guidelines are germane to the purpose of RA 4109 and RA 7394 in protecting consumer interest and trade and industry as a whole. To recall, these statutes essentially prevent substandard goods from being distributed to the market and eventually used or consumed by consumers. The different procedures recognize and address the different logistical needs and concerns of local manufacturers and importers alike.

On one hand, locally manufactured goods are more accessible and can more easily be regulated throughout the manufacturing process until the inspection and certification of the final product. On the other hand, imported goods are allowed to be conditionally released, not for immediate distribution, but only for temporary storage pending inspection and certification with the necessary safeguards in effect. Without this flexibility of conditional release, docks and BOC facilities at importation points would easily clog and impede trade and industry in general. The existing safeguards also prevent the possibility of loosely granting certifications if only to clear the docks and facilities. Indeed, these differences are germane to the purpose of protecting trade and industry:

Third, the DTI Regulations contemplate both current and future importations of commodities. In fact, the inspection and certification procedures under DAO No. 5 are on per shipment per Bill of Lading basis. Also, the assailed regulations take future amendments of the guidelines into consideration in view of the rapid developments in trade and industry.

Fourth, DAO No. 4 covers local and foreign companies manufacturing in the Philippines, while DAO No. 5 applies to all importers of commodities without distinction or limited application to specific companies or producers. Hence, they apply equally to all members of the same class.

The classification between locally-manufactured and imported is therefore not arbitrary.

Indeed, the DTI Regulations are vital cogs to a grand scheme of administrative machinery without which the bureaucracy might be hampered if not stalled. The growing complexities of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law have come to fore, calling for the need to exercise the vested discretion in administrative agencies and departments, and the promulgation of rules and regulations calculated to promote public interest, which the DTI here has validly so exercised within its delegated rule-making power.³³

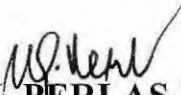
ACCORDINGLY, the petition is **GRANTED**. The Decision dated November 10, 2017, and Order dated March 23, 2018, of the Regional Trial Court, Branch 142, Makati City are **REVERSED** and **SET ASIDE**. Department of Trade and Industry Department Administrative Order No. 5, Series of 2008 and its Implementing Rules and Regulations, and DTI Department Administrative Order No. 15-01, Series of 2015 are not *ultra vires*, nor illegal or unconstitutional.

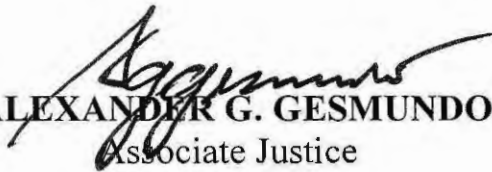
SO ORDERED.

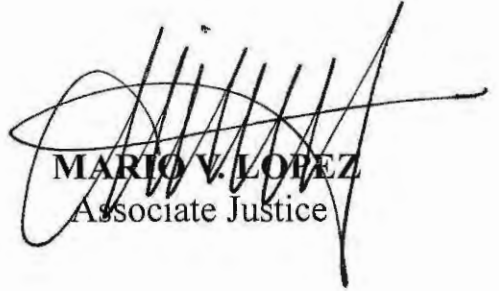

AMY C. LAZARO-JAVIER
Associate Justice

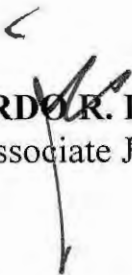
³³ *Calalang v. Williams*, 70 Phil. 726, 732-734 (1940).

WE CONCUR:


ESTELA M. PERLAS-BERNABE
 Senior Associate Justice
 Chairperson

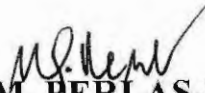

ALEXANDER G. GESMUNDO
 Associate Justice


MARIO V. LOPEZ
 Associate Justice


RICARDO R. ROSARIO
 Associate Justice

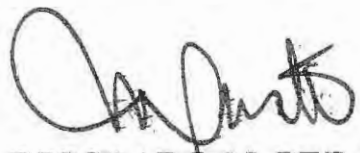
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division


ESTELA M. PERLAS-BERNABE
 Senior Associate Justice
 Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the above Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


DIOSDADO M. PERALTA
 Chief Justice

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