CHRISTIAN TEO & PARTNERS
(in association with Stephenson Harwood)

ART – BETWEEN A ROCK AND A HARD PLACE[1][2][3][4][5]

INTRODUCTION

The recently signed Agreement on Reciprocal Trade between Indonesia and the United States of America includes numerous provisions that have very significant implications for the local energy and mining industries (in addition to numerous other industries) as well as for foreign investors in those industries.

The preferential treatment, which the Agreement on Reciprocal Trade purports to offer U.S. investors in the local energy and mining industries, is inevitably going to create multiple dilemmas for the Government. These dilemmas include (i) possibly diluting/overturning long standing Indonesian industrial policies versus risking the imposition of punitive tariffs on Indonesian exports by the U.S. government and (ii) generating U.S. government goodwill towards Indonesia and increased U.S. investor interest in Indonesia versus alienating other foreign investors and their governments.

The Government now finds itself "caught between a rock and a hard place" when it comes to implementing or not implementing the Agreement on Reciprocal Trade. There are really no good or risk-free options here as far as the Government is concerned.

In this article, the writer will first review those particular provisions of the Agreement on Reciprocal Trade which are likely to have a material impact on the local energy and mining industries as well as on foreign investors in those industries. The writer will then turn to the subsidiary issues of (i) how foreign investors from countries other than the United States can be expected to react to these provisions and (ii) why the full implementation of these provisions would require a major rethink on the part of the Government as to a number of key industrial policies impacting the local energy and mining industries.

BACKGROUND

The Agreement on Reciprocal Trade (**ART**) was signed, on behalf of their respective countries/governments, by the President of Indonesia and the President of the United States of America on 19 February 2026.

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[5] An earlier version of this article appeared in the March - April 2026 issue of Coal Metal Asia Magazine.

ART represents the culmination of the Government's efforts to (i) avoid the application, to Indonesian exports to the United States, of the very high tariff rate of 32% announced by President Trump in April 2025 and (ii) obtain instead, for Indonesian exports to the United States, the highly concessional tariff rate of 19% as well as zero tariff exemptions in the case of some 1,819 products or "tariff lines". The tariff exempt products/tariff lines include several important Indonesian agricultural products such as palm oil, rubber, coffee and cocoa.

ART impacts all local industries of interest to the U.S. Government and to U.S. investors, not merely the local energy and mining industries.

Only one day after the signing of ART, the U.S. Supreme Court ruled against the legal basis that President Trump had relied upon in announcing the April 2025 tariffs. Many commentators have expressed the view that this ruling casts serious doubt on the continued relevance of ART. However, the situation remains unclear as President Trump has been quick to identify alternative legal bases that he can utilize and, indeed, has already utilized in order to progress his intended "overhaul" of the rest of the world's trade with the United States and the associated tariff rate regime.

ART has been the subject of much criticism in the popular press and elsewhere. Some critics have said that ART limits "*Indonesia's strategic autonomy*" and could "*potentially constrain the nation's free and active foreign policy doctrine*". Other countries, notably China, have suggested that ART may harm third parties, with the Chinese Foreign Ministry Spokesman being quoted as having said:

> "*China always advocates that economic and trade cooperation between countries be mutually beneficial.* ***Relevant cooperation should not target any third party or harm the interests of any third country***."

Regardless of the implications of the recent ruling by the U.S. Supreme Court and President Trump's "fallback" strategy, ART must still be ratified by both the U.S. Congress and by the Indonesian House of Representatives (**DPR**). Accordingly, it is always possible that ART will not be ratified or that the Government may find a way to renegotiate certain provisions of ART which have been the subject of particular criticism. There are also still unresolved legal claims that, in signing ART, the Government has violated Law No. 24 of 2000 re International Agreements.

Having regard to the foregoing, it will clearly be some considerable time before the actual legal significance or otherwise of ART can be finally resolved.

For the purpose of the rest of this article, however, it will be assumed that (i) ART is eventually ratified in substantially its current form and (ii) any formal legal challenges to the validity of ART are ultimately unsuccessful.

COMMENTARY

1. Overview of Relevant Provisions

The most relevant provisions of ART, to the extent of its implications for the local energy and mining industries as well as for foreign investors in those industries, are to be found in (i) Annex III – Specific Commitments, Section 2 – Non-Tariff Barriers and Related Matters and (ii) Annex IV – Purchase Commitments.

Of particular importance are those provisions of ART dealing with (i) local content and domestic processing requirements for industrial goods, (ii) onshoring of export proceeds, (iii) restrictions on foreign ownership (including foreign ownership of mining companies), (iv) critical minerals, (v) foreign-owned processing facilities and foreign owned industrial parks, (vi) small modular nuclear reactors (**SMNRs**) and (vii) promoting the sale of U.S. coal and other U.S. fossil fuel products (together, **Relevant ART Provisions**).

The wording of the Relevant ART Provisions is, as always, open to different interpretations and understandings as to their intended meaning. However, it is tolerably clear that the Relevant ART Provisions are intended, at least from the perspective of the U.S. Government, to (i) exempt U.S. companies/investors from compliance with some of the most controversial and onerous Indonesian legal, policy and regulatory requirements applicable to the local energy and mining industries, (ii) give U.S. companies/investors special access to Indonesia's critical minerals, (iii) impose stringent compliance obligations on non-U.S. investor owned (**i.e.**, other foreign investor owned) minerals processing facilities and industrial parks and (iv) ensure that U.S. companies/investors have the benefit of both a "head start" in developing SMNRs and Indonesia's assistance in developing the West Coast coal trade as well as a guaranteed buyer, in Indonesia, for their coal and other fossil fuel products.

In Parts 2.1 to 2.7 below, the writer will consider each of the Relevant ART Provisions in turn as they relate to the local energy and mining industries as well as to foreign investors in those industries. At least some of the Relevant ART Provisions also have important implications for other industries and for foreign investors in other industries but these matters are not the focus of this article.

2. Relevant Provisions in Detail

2.1 **Local Content and Domestic Processing Requirements (Annex III – Article 2.2):** ART provides that Indonesia shall with respect to "***industrial goods***":

> *"(a) **exempt** **U.S. companies and U.S. goods** from **local content requirements**; and*
>
> *(b) **remove** **forced [compulsory?] domestic** specification usage and **processing requirements**."*

Read literally, Article 2.2 of Annex III **may** mean that (i) U.S. companies and U.S. goods will no longer be subject to the local content (**TKDN**) requirements (**TKDN Requirements**) applicable to electricity infrastructure projects in general and to renewable energy projects in particular and (ii) domestic processing and refining requirements applicable to metal minerals and coal (as well as to numerous oil, natural gas, maritime, fisheries, plantations and forestry products) (**DP&R Requirements**) will be removed, **at least so long as the relevant goods/products qualify as "*industrial goods*"**. In this regard, it is not clear to the writer whether "*industrial goods*" includes "raw" natural resources commodities (**eg**, unprocessed metal minerals and coal) or only the end products of already completed industrial/manufacturing processes although the latter may be the more logical interpretation of "*industrial goods*" given that, elsewhere in ART, the term "*industrial*

commodities" is used – see Part 2.4 below. This lack of clarity is likely to be a source of future tension between the United States and Indonesia.

It is notable that the obligation imposed on Indonesia to "*remove forced [compulsory?]domestic processing requirements*" is **not** expressed to be confined to such requirements as they apply to U.S companies and to U.S. goods but, rather, is expressed as a general obligation to remove **all** "*forced [compulsory?]domestic processing requirements*".

If Article 2.2 of Annex III was to be fully implemented by Indonesia, this **could** mean that (i) U.S. companies are free to sell wholly American made solar panels and other renewable energy production and distribution components in Indonesia for use in connection with local electricity infrastructure projects and (ii) developers of local electricity infrastructure projects are not subject to any restrictions on buying/utilizing wholly American made solar panels and other renewable energy production and distribution components, including those restrictions in the TKDN Requirements set out in (i) Minister of Energy & Mineral Resources (**MoEMR**) Regulation No. 11 of 2024 re Utilization of Domestic Products for Development of Electricity Infrastructure, (ii) MoEMR Decree No. 191 of 2024 re Minimum TKDN Values for Combined Goods & Services within the Scope of Electricity Infrastructure Projects and (iii) Minister of Industrial Affairs Regulation No. 34 of 2024 re Procedures for Calculating TKDN Value of Solar Module Products.

If (i) Article 2.2 of Annex III was to be fully implemented by Indonesia and (ii) "*industrial goods*" includes "raw" natural resources commodities, this **could** also mean that the long established DP&R Requirements, as set out in numerous laws, regulations and decrees, including the 4th Amendment to Law No. 4 of 2009 re Minerals & Coal Mining (**Mining Law**) which only came into effect on 19 March 2025 and has as one of its avowed purposes the strengthening of the DP&R Requirements in order to help facilitate the realization of Golden Indonesia 2045, must be removed. Even if "*industrial goods*" only includes the end products of already completed industrial/manufacturing processes, the future of the DP&R Requirements and the previously referenced laws and regulations seems highly questionable in light of other provisions of ART which are discussed in Part 2.4 below.

2.2 **Onshoring of Export Proceeds (Annex III – Article 2.27):** ART provides that:

> *"**Indonesia shall review the requirement for natural resource exporters to onshore export proceeds for any amount of time as it applies to U.S. investors**. **Within 12 months** of the date of entry into force of [ART], Indonesia shall permit the transfer of export proceeds for **natural resource investments freely and without delay, at a market rate of exchange, into and out of its territory as it relates to U.S. investors**."*

Read literally, Article 2.27 of Annex III **may** mean that "U.S. investors" (**i.e.**, U.S. shareholders in Indonesian companies producing and exporting natural resources products (including metal minerals, coal and oil & gas) will **no** longer be subject to any restrictions on their entitlement to receive natural resource export proceeds (**DHE**) and at the latest 12 months after the date on which ART comes into force (**i.e.**, 90 days after the date on which ART is ratified by both the U.S. Congress and the DPR). The wording of Article 2.27 is far from ideal given (i) DHE actually belongs to the Indonesian company selling the relevant natural resources product rather than to the U.S. investors/shareholders in that Indonesian company, (ii) the current requirements that, in most cases, DHE must be retained in

Indonesia for a minimum of twelve months (except for oil & gas exports which have a minimum six months onshore requirement) (**DHE Requirements**) apply to the Indonesian company generating the relevant DHE rather than to U.S. investors/shareholders in that Indonesian company and (iii) the right of the U.S. investors/shareholders in that Indonesian company is merely to a pro rata entitlement to any dividends declared by that Indonesian company. Nevertheless, the intention of Article 2.27 is tolerably clear, even if the highlighted wording issues are likely to be the subject of much argument between Indonesia and the United States going forward.

If Article 2.27 of Annex III was to be fully implemented by Indonesia, this **could** mean that, at the very least, a major exception to the applicability of the DHE Requirements would have to be created by the Government in the case of DHE generated by Indonesian companies with U.S. investors/shareholders. The most obvious beneficiary of this exception would likely be Freeport-McMoRan Inc (**FMX**) as the large minority U.S. investor in/shareholder of PT Freeport Indonesia, being Indonesia's largest copper producer and a major generator of DHE.

Self-evidently, Article 2.27 of Annex III is completely at odds with the late December 2025 announcement by the Government that the DHE Requirements would be tightened, yet again, in order to close various "loopholes" being utilized by some natural resources exporters for the purpose of circumventing the DHE Requirements (**New DHE Rules**). According to various reports in the popular media, the Government has not seen anything like the US$80 billion increase in Indonesia's foreign exchange reserves that it was expecting from the March 2025 amendments to Government Regulation No. 36 of 2023 re DHE from Natural Resource Business, Management and/or Processing Activities. The New DHE Rules only became effective on 1 January 2026. However, it is hard to see how the New DHE Rules can continue to apply, at least to Indonesian natural resources exporters with U.S. investors/shareholders.

2.3 **Restrictions on Foreign Ownership (Annex III – Article 2.28):** ART provides that:

> "***Indonesia shall allow foreign investment without ownership restrictions for U.S. investors in the mining sector (including any divestment requirements)****, fish processing, nature-based development projects, ecosystems services, resource efficiency solutions, publishing, delivery services, land transportation, broadcasting, and financial services."*

Read literally, Article 2.28 of Annex III **may** mean that U.S. investors in the local mining industry (**i.e.**, buyers of Indonesian companies holding mining business licenses (**IUPs**), special mining business licenses (I**UPKs**) or contracts of work/coal contracts of work (**CoWs/CCoWs**), the shares of which IUP/IUPK/CoW/CCoW holders are not listed on the Indonesia Stock Exchange) will **no** longer be subject to any foreign ownership limitation/restriction (**FO Limitation**) or to any requirement to divest/sell down, over time to local Indonesian parties, part of their shareholdings in Indonesian mining companies (**Divestiture Requirement**).

Self-evidently, Article 2.28 of Annex III is completely at odds with the FO Limitation currently applied by MoEMR in the case of a company holding an IUP/IUPK and converting its legal status to become that of a foreign investment company (**PMA**

Company) in connection with its acquisition by a foreign investor. The current FO Limitation is 49% for a Production Operation IUP/IUPK holder.

Article 2.28 of Annex III is, likewise, completely at odds with the currently applicable Divestiture Requirement, as set out in (a) Article 112(1) of the Mining Law and (b) Article 147 of Government Regulation (**GR**) No. 96 of 2021, dated 9 September 2021, re Implementation of Minerals and Coal Mining Business Activities as amended by (i) GR No. 25 of 2024, dated 30 May 2024 and (ii) GR No. 39 of 2025, dated 11 September 2025 (**GR 96/2021**). GR 96/2021 requires those IUP/IUPK holders, at the production operation stage and which are PMA Companies, to carry out a gradual divestment, starting not earlier than the 10th year of production operation, until such time as at least 51% of their issued shares are owned by the Central Government, Regional Governments, State-Owned Enterprises, Regional-Owned Enterprises and/or National Private Business Entities (**i.e.**, **non**-PMA Companies).

Similar FO Limitations and Divestiture Requirements are sought to be applied by MoEMR in the case of CoW/CCoW holders.

The wording of Article 2.28 of Annex III is not ideal from a clarity of meaning perspective as it leaves uncertain what is the position in respect of U.S. investors already holding shares in Indonesian mining companies. Are existing U.S. investors in Indonesian mining companies, which are already subject to the FO Limitation and the Divestiture Requirement, no longer subject to the same or is Article 2.28 only prospective in nature such that it only applies to future acquisitions of/investments in Indonesian mining companies by U.S. investors?

If Article 2.28 of Annex III was to be fully implemented by Indonesia, this **could** mean that, at the very least, a major exception to the applicability of the FO Limitation and the Divestiture Requirement would have to be created by the Government in the case of acquisitions of Indonesian mining companies by U.S. investors. To the extent that Article 2.28 is intended to have some retrospective operation, in addition to its more likely intended prospective operation only, the most obvious beneficiary of this exception would seem to be FMX as the large minority U.S. investor in/shareholder of PT Freeport Indonesia.

2.4 **Critical Minerals Partnership (Annex III – Paragraphs 1 to 4 of Article 6.1):** ART provides that:

> *"1. To strengthen supply chain connectivity between the Parties,* ***Indonesia shall remove restrictions on exports to the United States of industrial commodities, including critical minerals.***
>
> *2, Indonesia and the United States shall intensify their cooperative efforts to accelerate the secure supply of critical minerals, including rare earths.* ***Indonesia shall cooperate with U.S. companies on mining, processing, and downstream production of critical minerals based on commercial considerations****.*
>
> *3, To this end, Indonesia shall cooperate on the expedient development of its rare earth and critical minerals sector in partnership with U.S. companies to ensure secure and diversified supply chains.* ***Indonesia shall provide***

greater certainty for companies involved in critical mineral extraction, creating certainty for businesses to increase production capacity and supporting operational growth.

4, Indonesia and the United States commit to continued cooperation and engagement on critical mineral supply chains."

There are at least four interesting aspects of Paragraphs 1 to 4 of Article 6.1 of Annex III.

First, read literally Paragraph 1 of Article 6.1 **may** mean that Indonesia must remove export bans and other restrictions on exports of "*industrial commodities*", including "*critical minerals*", to the United States (**Export Ban**). The fact that it is expressly stated that the term "*industrial commodities*" includes "*critical minerals*" makes it almost impossible to avoid the conclusion that, wherever the term "*industrial commodities*" is used in ART, this is to be understood as including at least "*critical minerals*" as well as most probably all minerals and certainly all metal minerals. It is important to note the distinction between the use of the term "*industrial **commodities***" in Paragraph 1 of Article 6.1 and the use of the term "*industrial **goods***" as the heading of the subsection in which Article 2.2 of Annex III appears. See the commentary in Part 2.1 above.

Second, although there is no definition of "*critical minerals*" in ART, "*critical minerals*" **are commonly understood as referring to, among other minerals, some of Indonesia's most important metal mineral commodities, including bauxite, copper, manganese, nickel and tin**. Accordingly, Paragraph 1 of Article 6.1 can be quite readily interpreted as requiring Indonesia to remove the existing Export Ban on unprocessed metal minerals and otherwise not make the carrying out of full domestic processing and refining of metal minerals (**i.e.**, compliance with the DP&R Requirements) a precondition to the right to export the same. Accordingly, even if the reference to "*industrial goods*" in Article 2.1 of Annex III does not include "raw" mineral commodities, "raw" mineral commodities are most probably included within the ambit of "*industrial commodities*" as this term is used in Article 6.1(1) of Annex III. As such, it will be hard for Indonesia to justify any retention of the existing Export Ban on unprocessed metal minerals and coal if they are intended to be exported to the United States. Even if particular minerals do not qualify as "*critical minerals*", they are almost certainly still "*industrial **commodities***" and, therefore, in the case of intended exports to the United States, fall within the ambit of Paragraph 1 of Article 6.1.

Third, the subsidiary obligation that Indonesia is assuming; namely, to *"**provide greater certainty for companies** involved in critical mineral extraction",* can be read as an intended future constraint (albeit a very indirectly worded one) on the Government's persistent "bad habit" of often and unpredictably changing (sometimes in very material ways) the laws, policies and regulations relevant to the local mining industry (or at least to the local "*critical minerals*" industry) **after** large capital investments in production capacity have already been made.

Fourth, Paragraphs 1 to 4 of Article 6.1 together represent the "critical minerals partnership" that the United States has, for some time, been seeking with Indonesia.

2.5 **Foreign-Owned Processing Facilities and Foreign Owned Industrial Parks (Annex III - Paragraph 5 of Article 6.1):** ART provides that:

"5. Indonesia shall:

*(a) **implement restrictions on foreign-owned processing facilities' excess production** by ensuring that production conforms to Indonesia mining quotas; and*

*(b) **ensure that foreign-owned industrial parks and processing facilities are subject to the same** tax, environmental, labour, quota, and other legal requirements **as other companies and e**ntities."*

Paragraph 5 of Article 6.1 is to be read against the background of long running unfavourable press coverage about (i) the Morowali Industrial Park in Central Sulawesi, (ii) the alleged control of the Morowali Industrial Park by investors from the People's Republic of China (**PRC Investors**) and (iii) the claimed "special rules" that supposedly apply in/to activities in the Morowali Industrial Park and which are said to have resulted in PRC Investors not being subject, as a practical matter, to the same obligations in respect of the operation of airports, foreign labour hire/use and worker safety as apply to both domestic investors and other foreign investors elsewhere in Indonesia. Accordingly, it is hard to avoid the conclusion that Paragraph 5 of Article 6.1 is, in fact, a not very subtle attempt to target the Morowali Industrial Park and PRC Investors in an endeavour to "level the playing field" (at least as the United States sees it!!) when it comes to U.S. investors which may want to subsequently participate in the construction, ownership and operation of minerals processing facilities in Indonesia.

Although part of Article 6.1, which otherwise deals largely (but not exclusively) with "*critical minerals*", Paragraph 5 refers generally to *"foreign-owned processing facilities" and to "foreign owned industrial parks and processing facilities"*. Accordingly, Paragraph 5 should be understood as **not** being confined to just *"foreign-owned processing facilities" and to "foreign owned industrial parks and processing facilities"* processing critical minerals but, rather, to **all** foreign-owned processing facilities and to **all** foreign owned industrial parks. In this regard, a footnote to Paragraph 5 makes clear that the relevant "*excess production*" of "*foreign-owned processing facilities*" merely "***includes** processing facilities for nickel, cobalt, bauxite, copper, tin and manganese*."

2.6 **Small Modular Nuclear Reactors (Annex III – Article 6.5(b)):** ART provides that:

*"(b) **Indonesia shall partner with the United States and Japan** to work toward deploying small modular reactors using a modernized public-private partnership approach, starting with the front-end engineering and design work for the **project in West Kalimantan**."*

The writer understands that the reference in Article 6.5(b) of Annex III to "*Japan*" may be intended to indirectly refer to the Japanese company Hitachi and its SMNR technology.

It is hard to avoid the conclusion that Article 6.5(b) of Annex III is an extremely "blunt" attempt by the United States to oblige Indonesia to favor or at least give priority to a particular SMNR approach/concept/technology and to a particular site in West Kalimantan supported by the United States (albeit in cooperation with Japan) in preference to other alternative SMNR approaches/concepts/technologies and to other alternative sites currently

under consideration by the Government for Indonesia's much publicized first commercial nuclear power project.

Notwithstanding the above, Article 6.5(b) of Annex III clearly does **not** preclude the Government from working with multiple countries/parties on different SMNR projects and in different locations in Indonesia. That said, foreign promoters of alternative SMNR approaches/concepts/technologies and of alternative sites for Indonesia's first commercial nuclear power project are hardly likely to see Article 6.5(b) of Annex III in a positive light.

2.7 **Promoting US Coal (Annex III – Articles 6.4 and 6.5(a) and Annex IV – Part A.2):** ART provides that:

> "***Indonesia shall facilitate****, by granting all necessary government approvals, decrees, and authorizations to state-owned entities and the private sector,* ***the increase of purchases of U.S. energy; the development of a purchasing approach for U.S. crude oil; and the purchase of more U.S. refined petroleum and liquified petroleum gas (LPG), including through long-term contracts***." (Article 6.4 of Annex III)
>
> "***Indonesia shall provide investment to help develop a U.S. West Coast export corridor****, including developing export terminals,* ***to increase U.S. coal's competitiveness in the international market****." (Article 6.5(a) of Annex III)*
>
> *"****Indonesia shall support and facilitate increased imports of U.S. energy products [metallurgical coal – US$15 billion, LPG – US$3.5 billion, crude oil – US$4.5 billion and refined gasoline – US$7 billion]****, industrial commodities, manufactured goods (****eg****, metallurgical coal, autos and auto parts), and aerospace products."* (Part A.2 of Annex IV)

Self-evidently, Indonesia's ART commitments to provide investment to develop a U.S. West Coast coal corridor and to make huge purchases of U.S. coal, LPG, crude oil and refined gasoline (being all fossil fuel products) are completely inconsistent with its (i) 2016 ratification of the Paris Agreement entered into pursuant to the United Nations Framework Convention on Climate Change (**Paris Agreement**) and (ii) updated Nationally Determined Contribution under the Paris Agreement, including the 2021 commitment to achieve net zero greenhouse gas emissions (**GHG Emissions**) (**NZE**) by 2060 at the latest and with an interim 2030 target of a reduction in Indonesia's GHG Emissions of between 29% (without international assistance) and 41% (with international assistance), not to mention (iii) more recent statements by the President and the President's Special Envoy that Indonesia would phase out altogether the use of coal fired power plants (**PLTUs**) and achieve NZE within 15 years or perhaps even within 10 years. These particular ART commitments are, likewise, completely inconsistent with (i) the Road Map for Energy Transition that was finally issued on 15 April 2025 in the form of MoEMR Regulation No. 10 of 2025 Re Road Map for Energy Transition in the Electricity Sector (**Road Map**) and (ii) the rolling 10-year national electricity business plan (**RUPTL**) for the period 2025 to 2034 (**RUPTL 2025 – 2034**) issued in late May 2025. In retrospect, it was clearly extremely prescient for certain officials at Indonesia's state electricity company to, so the writer understands, sometimes informally and sarcastically refer to the Road Map/RUPTL 2025-2034 as the "*book of dreams*"!!!

3. **Indonesia's Treaty Obligations to Other Countries**

The preferential treatment of and the special concessions that ART contemplates Indonesia will provide to U.S. companies/investors, in connection with the local energy and mining industries, are exceptionally broad in their scope. This gives rise to an obvious issue for the Government in terms of its existing treaty obligations to various other countries and to foreign investors from those other countries.

Indonesia is party to Comprehensive Economic Partnership Agreements (**CEPAs**) with Australia, Canada and the European Union. Each of these CEPAs contains similar provisions which "guarantee" investors from these countries/regions so-called "most favoured nation treatment" (**MFNT**). More particularly, Article 14.5 of IA-CEPA (**i.e.**, the Australian investment/trade treaty with Indonesia) and Article 13.7 of IC-CEPA (the Canadian investment/trade treaty with Indonesia) provide that:

> *"1.* ***Each Party shall accord to investors of the other Party treatment no less favourable than it accords, in like circumstances****, to investors of a non-Party with respect to the* ***establishment****,* ***acquisition****, expansion, management,* ***conduct, operation*** *and sale or other disposition of an investment in its territory.*
>
> *2.* ***Each Party shall accord to a covered investment treatment no less favourable than it accords, in like circumstances****, to investments of investors of a non-Party with respect to the* ***establishment, acquisition****, expansion, management,* ***conduct, operation*** *and sale or other disposition of an investment in its territory."*

A somewhat less expansive MFNT provision is to be found in Article 8.9 of the only recently finalized/signed EU-I CEPA (**i.e.**, the European Union investment/trade treaty with Indonesia).

While the qualification "*in like circumstances*" potentially offers the Government some room to argue otherwise, Australia, Canada and the European Union will almost certainly come under a lot of pressure, from their respective investors in Indonesia, to maintain that the MFNT provisions, in their respective investment/trade treaties with Indonesia, require Indonesia to accord to/give Australian, Canadian and European Union investors, in the local energy and mining industries, the same favourable treatment that ART obliges Indonesia to accord to/give U.S. investors in local energy and mining industries. More particularly, Australia, Canada and the European Union are likely to feel obliged to contend that those ART provisions, requiring Indonesia to remove or **not** impose on U.S. companies/investors any (i) TKDN Requirements, (ii) DP&R Requirements, (iii) FO Limitation, (iv) Divestiture Requirement, (v) DHE Requirements and (vi) Export Ban in respect of local energy and mining industry acquisitions or the conduct and operation of investments in the local energy and mining industries, constitute "treatment" of U.S. investors in the local energy and mining industries which is more favourable than that "treatment" currently offered to Australian, Canadian and European Union investors in the local energy and mining industries, which more favourable U.S. investor treatment must now be extended to Australian, Canadian and European Union investors in accordance with the MFNT provisions of their respective investment/trade treaties with Indonesia. The writer can only wonder whether the Government understood the potential implications of these MFNT provisions when it signed ART.

Investors and companies, from countries other than Australia, Canada and the European Union, are not likely to be satisfied to sit idly by and see U.S. investors, as well as very possibly Australian, Canadian and European Union investors, in the local energy and mining industries obtain hugely favourable treatment from Indonesia, in the form of relief from numerous onerous obligations and restrictions that otherwise apply to foreign investors in the local energy and mining industries, which hugely favourable treatment/relief is not available to them.

Extending to all foreign investors, regardless of their country of origin, the same preferential treatment that ART provides for U.S. investors might seem like an obvious and sensible solution to the Government's dilemma as to what to do about unhappy foreign investors from countries other than the United Sates, as well as possibly Australia, Canada and the European Union, in the aftermath of ART. However, this would require a complete "U-turn" by the Government with respect to some of Indonesia's most significant industrial policies of the last fifteen years, including those industrial policies that have resulted in the introduction of the (i) TKDN Requirements, (ii) DP&R Requirements, (iii) FO Limitation, (iv) Divestiture Requirement, (v) DHE Requirements and (vi) Export Ban (together, **Questionable Industrial Policies**).

4. Opportunity for Major Structural Reforms

ART does, of course, offer the Government a unique opportunity to reconsider the appropriateness of many of the Questionable Industrial Policies, with their far-reaching implications for foreign investor interest in the local energy and mining industries, which Questionable Industrial Policies the Government (as well as its predecessors) has/have pursued with such enthusiasm for many years. This is despite the fact that local energy and mining industry observers have repeatedly highlighted the limited prospects of these Questionable Industrial Policies ever doing much to promote the actual realization of the economic objectives and peoples' welfare benefits which are the supposed justification for the same.

If the Government was to take advantage of the opportunity offered by ART, this could result in the carrying out of at least some of the fundamental structural changes to the Indonesian economy that many economists would say are absolutely essential if Indonesia is ever to meaningfully increase economic growth by more than the 5% to 6% per annum that has been the country's standard economic performance for most of the last 20 years. Unfortunately, however, the writer sees little prospect of this happening. Simply put, too much political capital has been spent on justifying and promoting the claimed merits of the Questionable Industrial Policies for it to be realistic to expect that the current Government would regard it as being feasible, from a "political survival" perspective, to reconsider the basic premises underlying these Questionable Industrial Policies and now move in a fundamentally different direction.

Given the above, the more likely outcome is that, assuming ART is eventually ratified in substantially its current form, the Government will seek to find ways to avoid or at least delay fully implementing those provisions of ART that otherwise have the clear potential to "spell the end" of the Questionable Industrial Policies. Indeed, we are already seeing significant evidence of various Government officials denying the otherwise quite obvious intent of various provisions of ART. By way of example:

(a) The Deputy Minister of Investment & Down-streaming has "pushed back" against the idea that the DP&R Requirements will be removed as a result of the implementation of ART and despite the seemingly clear words of Article 6.1(1) (as well as possibly Article 2.2) of Annex III. In this regard, he was quoted by the ANTARA news agency on 26 February 2026 as having said:

> "*Those eyeing our mineral sector must invest in processing, as our law forbids exports of raw products. In short, securing access to minerals requires processing down-streaming and investment*."

(b) The Spokesperson for the Coordinating Minister for the Economy has promised that the Government will not relax the Export Ban on less than fully processed and refined metal minerals (at least to the extent that they are critical minerals) as a result of the implementation of ART and despite the seemingly clear words of Article 6.1(1) of Annex III. In this regard, he was quoted in a 23 February 2026 Tempo Magazine article as having said:

> "*Indonesia will not open the export of critical mineral raw materials to the United States*."

(c) MoEMR has denied that ART entitles the United States and U.S. investors to any special advantage over other countries and their investors in investing in and developing Indonesia's critical minerals despite the seemingly clear words of Article 6.1(1) to (4) of Annex III. In this regard, he was quoted in a 20 February 2026 Reuters news item as have said:

> *"Indonesia will provide equal opportunities [only] to the United States and other countries on investment related to critical minerals."*

While the above statements are entirely understandable from a domestic political perspective, the relevant Government officials have clearly not even begun to address how these statements can be reconciled with the seemingly clear words of Annex III. The writer can only wonder whether these officials were ever consulted by the Government before it agreed to the inclusion of the relevant provisions of Annex III.

This type of early endeavour, on the part of Government officials, to avoid giving full effect to Annex III of ART is most definitely not going to be well received by President Trump. Indeed, it almost seems as though President Trump had Indonesia, as well as its Deputy Minister of Investment & Down-streaming, Coordinating Minister for the Economy and MoEMR, very much in mind when he said on Truth Social that:

> "*Any country that wants to "play games" with the ridiculous Supreme Court decision, especially those that have "Ripped Off" the USA for years and even decades, will be hit with a much higher Tariff, and worse, than they just recently agreed to. BUYER BEWARE!!!*"

Who knew that, in addition to all his other extraordinary attributes, President Trump was clairvoyant as well, at least that is when it comes to Indonesia and certain of its Government officials???!!!

SUMMARY & CONCLUSIONS

As ART makes all too clear, Indonesia has had to pay a very high price for the concessional tariff treatment it has obtained from the United States. However, this was always to be expected given the mercantilist and transactional nature of President Trump.

Assuming that ART is ultimately ratified in substantially its current form, it is inevitable the Government will find itself "between a rock and a hard place" in trying to reconcile ART with long standing Questionable Industrial Policies impacting the local energy and mining industries while, at the same time, not alienating U.S. investors as well as foreign investors from other countries.

The undoubted opportunity that ART offers the Government to pursue meaningful and far-reaching structural reform of the Indonesian economy, including doing away with most or all of the Questionable Industrial Policies, is not likely to be taken advantage of for "political survival" reasons.

ART and its implications for foreign investors in the local energy and mining industries will almost certainly be a "hot" topic of discussion for a long time to come.

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This article was written by Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood. Christian Teo & Partners is a Jakarta based, Indonesian law firm and a leader in Indonesian energy, infrastructure and mining law and regulatory practice. Christian Teo & Partners operates in close association with international law firm Stephenson Harwood which has eight offices across Asia, Europe, and the Middle East: Athens, Dubai, Hong Kong, London, Paris, Seoul, Shanghai and Singapore.

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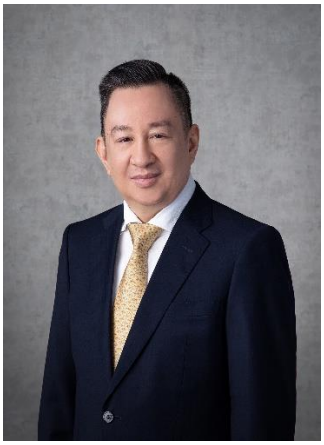

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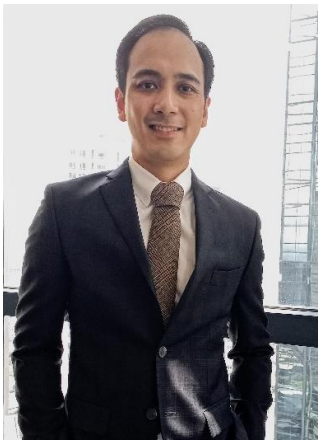

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