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EXPORT BAN UPHELD BY CONSTITUTIONAL COURT[1][2][3][4][5]

INTRODUCTION

Indonesia's controversial ban on the export of unprocessed metal mineral products ("**Export Ban**") was recently upheld by the Constitutional Court.

The Constitutional Court decision, which was made public on 3 December 2014 ("**2014 CC Decision**"), is the outcome of just the latest attempt, by various interested parties, to have the Export Ban removed. The opposition of metal mineral producers and, more particularly, producers of bauxite and nickel, to the Export Ban has been consistently expressed since its introduction in 2012.

There is some confusion as to the relationship, if any, between the 2014 CC Decision and the earlier September 2012 decision of the Supreme Court which struck down the original regulatory formulation of the Export Ban ("**2012 SC Decision**"), only to have the then Government come up with a "workaround" which effectively left the Export Ban in place.

In this article, the writer will look at the 2014 CC Decision in detail and what it tells us about the continuing resource nationalist sentiment which has found favor at the Constitutional Court. The writer will also compare and contrast the 2012 SC Decision and the 2014 CC Decision in an endeavor to make clear the very different legal bases of the 2 decisions and why the 2012 SC Decision did not prevent the Government from continuing with the Export Ban, thereby making the 2014 Constitutional Court challenge necessary, for opponents of the Export Ban, to pursue.

BACKGROUND

The controversial nature of the Export Ban has ensured it has been under almost constant challenge since being first introduced as part of Minister of Energy & Mineral Resources Regulation No. 7 of 2012 re Adding Value to Mineral Products through Domestic Processing & Refining ("**MoEMRR 7/2012**"). These challenges have comprised both formal legal proceedings, in the nature of requests for judicial review, and informal lobbying of the Government by various mining industry groups including the Indonesian Nickel Miners' Association ("**INMA**") and the Association of Indonesian Mineral Business Owners ("**APEMINDO**") as well as holders of CoWs/IUPs for those metal minerals which stand to be most adversely affected by the Export Ban.

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Opponents of the Export Ban have never accepted the policy rationale for the same put forward by the Government; namely, the Export Ban is necessary to ensure that metal mineral producers take seriously their domestic processing and refining obligation pursuant to (i) Articles 102 and 103 of the 2009 Mining Law which impose the obligation on IUP/IUPK holders and, by cross reference to Article 169(b) of the 2009 Mining Law, on CoW holders ("**ML 2009 Articles 102 & 103**") and (ii) Articles 96 and 111 of Government Regulation No. 23 of 2010 re Minerals and Coal Mining Enterprise Activities ("**GR 23/2010**") ("**GR 23/2010 Articles 96 and 111**") . With the Export Ban in place, metal mineral producers are effectively limited to the domestic market for their unprocessed mineral products, which domestic market is never likely to be sufficient to absorb more than a relatively small percentage of unprocessed metal mineral production.

Although the Government showed, in January 2014, a degree of flexibility by allowing certain metal minerals only to continue to be exported in semi-processed or concentrate form until at least 2017, the Export Ban, to the extent it applies to wholly unprocessed and unrefined metal mineral products, has not been relaxed.

The Export Ban, along with compulsory local smelter construction for those producers allowed to, temporarily, continue exporting in semi-processed or concentrate form, has been the central element of the Government's push to make domestic processing and refining of metal minerals a reality.

Taken by surprise when the Export Ban was first introduced pursuant to MoEMRR 7/2012, opponents of the Export Ban have, from the beginning, questioned the legal basis for the Export Ban, pointing out that there is very little in the 2009 Mining Law and nothing at all in GR 23/2010 to suggest that the Indonesian parliament ("**DPR**") ever intended to introduce or authorize the Government to introduce the Export Ban as a means of encouraging/compelling compliance, by metal mineral producers, with the domestic processing and refining obligation.

The formal legal challenges to the Export Ban have highlighted the issue of to what extent the Government is imbued with power to take administrative steps to implement a law or government regulation passed by the DPR and, more particularly, to impose additional obligations or restrictions not specifically referred to in the underlying law or government regulation.

Readers interested in knowing more about the history of the Export Ban and the domestic processing and refining obligation are referred to the writer's earlier articles (i) "*Is The Export Ban Really Going to be Enforced in January 2014 After All?"*, December 2013 – January 2014 issue of Coal Asia Magazine, (ii*)* "*The Export Ban as Finally Introduced – A Grand Compromise with Much Residual Uncertainty"*, January – February 2014 issue of Coal Asia Magazine and (iii) "*The Unfinished Business of the Export Ban – Old and New Issues Frustrate the Grand Compromise"*, February - March 2014 issue of Coal Asia Magazine.

COMMENTARY

1. 2012 Supreme Court Challenge

1.1 **Overview**: The 2012 Supreme Court challenge, to the original form of the Export Ban, was brought by INMA which was seeking a declaration from the Supreme Court that various provisions of MoEMRR 7/2012, including Article 21 imposing the Export Ban ("**MoEMRR 7/2012 Article 21**"), were void.

1.2 **INMA's Argument**: INMA challenged MoEMRR 7/2012 Article 21 on the basis that MoEMRR 7/2012 was an implementing, ministerial regulation for GR 23/2010 which, in GR 23/2010 Articles 96 and 111 and for the first time, set out the domestic processing and refining obligation in some detail. INMA argued that, as no Export Ban was provided for in GR 23/2010 Articles 96 and 111, MoEMR lacked the authority to impose the Export Ban pursuant to a ministerial, implementing regulation and, as a minimum, another government regulation would be required in order to provide a proper legal basis for the Export Ban.

It is important to note that INMA sought to challenge specific provisions of a ministerial implementing regulation for GR 23/2010 rather than specific provisions of the 2009 Mining Law itself (**i.e.**, ML Articles 102 & 103). This might seem a wholly reasonable approach given the Export Ban was introduced pursuant to MoEMRR 7/2012 Article 21, in reliance upon GR 23/2010 Articles 96 and 111, and is not otherwise specifically referred to in ML Articles 102 & 103. Nevertheless, focusing the 2012 Supreme Court Challenge on MoEMRR 7/2012 Article 21 proved, in the long run, to be a major tactical error by INMA and its legal advisers.

1.3 **SC Decision**: The 2012 SC Decision was everything INMA could have hoped for as the Supreme Court ruled that MoEMRR 7/2012 Article 21 was invalid because, although MoEMRR 7/2012 Article 21 was expressed to be based on GR 23/2010 Articles 96 and 111, there was nothing in GR 23/2010 Articles 96 and 111 about an Export Ban.

The Supreme Court also found that MoEMRR 7/2012 Article 21 was inconsistent with Article 5(1), (2), (4) and (5) of the 2009 Mining Law which provides that further provision in respect of the "*prioritization of minerals and/or coal for domestic interest*" and "*control over production and export*" shall be made in the form of a "*government regulation*", not a ministerial regulation such as MoEMRR 7/2012.

1.4 **Government's Response**: Unfortunately for INMA and the other opponents of the Export Ban, the Government was able to substantially overcome the 2012 SC Decision by a quick "workaround" that involved (i) pointing to ML Articles 102 & 103 as an alternative and independent source of legal authority for the Export Ban in place of GR 23/2010 Articles 96 and 111 and (ii) slightly recasting the Export Ban so that the technical objections of the Supreme Court were met while still leaving the practical substance of the Export Ban in place.

The Government's "nimble-footed" response to the 2012 SC Decision made plain the inherent weakness of challenging an administrative device (**i.e.,** the Export Ban), introduced by a ministerial implementing regulation (**i.e.**, MoEMRR 7/2012), when the Government is able to

claim it separately derived authority for that administrative device from a law (**i.e.**, the 2009 Mining Law) that was not the subject of the legal challenge. Because a ministerial implementing regulation, unlike a law or a government regulation passed by the DPR, can always be amended, varied or withdrawn and/or a new implementing regulation issued by the ministry with responsibility for the industry area covered by the underlying law (**i.e.,** MoEMR in the case of the 2009 Mining Law and GR 23/2010), successfully challenging a ministerial implementing regulation, rather than the underlying law, is always prone to being rendered a short lived success only if the Government can still rely on the authority granted by the underlying law to achieve its intended purpose by a slightly different means.

1.5 **No Constitutional Issue**: Because INMA did not challenge the constitutionality of MoEMRR 7/2012 Article 21 or GR 23/2010 Articles 96 and 111 and, indeed, the Supreme Court was not the appropriate forum for doing so, there is no material reference in the 2012 SC Decision to the 1945 Constitution or, more particularly, to Article 33(3) of the 1945 Constitution ("**C 1945 Article 33(3)**") which provides that:

"The land and water and the natural resources contained therein shall be controlled by the State and shall be used for the greatest prosperity of the people."

INMA's legal advisers may well have decided to bring their challenge to the Export Ban in the Supreme Court, rather than in the Constitutional Court, so as to avoid C 1945 Article 33(3) becoming the basis of judicial consideration of the Export Ban. In this regard, (i) it is the Constitutional Court, rather than the Supreme Court, which is vested with the authority to definitively interpret the 1945 Constitution and grant judicial review of laws while (ii) the Supreme Court may only grant judicial review of regulations. It is entirely possible that INMA's legal advisers were concerned that, if INMA's challenge to the Export Ban had been brought by INMA in the Constitutional Court and as a request for judicial review of ML Articles 102 & 103, C 1945 Article 33(3) would prove a major stumbling block for INMA. If this is correct, then INMA's legal advisers were proved right by the subsequent 2014 CC Decision. However, INMA paid a high price for this foresight in terms of the very short lived nature of the "victory", represented by the 2012 SC Decision, over MoEMRR 7/2012 Article 21 and the Export Ban.

2. The 2014 Constitutional Court Challenge

2.1 **Overview**: The 2014 Constitutional Court challenge to the Export Ban was brought by the Association of Indonesian Mineral Business Owners ("**APEMINDO**") and 9 other companies and cooperatives with mining business interests ("**2014 Applicants**").

The 2014 Constitutional Court challenge to the Export Ban was made necessary by the failure of the 2012 SC Decision to have its intended effect of bringing to an end the Export Ban and notwithstanding the 2012 SC Decision was actually in favor of INMA as the applicant in the 2012 Supreme Court challenge. Essentially then, the 2014 Constitutional Court challenge is to be seen as an attempt by the opponents of the Export Ban to overcome the practical weakness of the 2012 SC Decision and, finally, achieve what had been initially promised by the 2012 SC

Decision; namely, the end of the Export Ban. As such, the 2014 Constitutional Court challenge is the logical continuation of the 2012 Supreme Court challenge albeit in a different forum.

The 2014 Applicants brought their legal challenge to the Export Ban in the form of an application for judicial review of ML 2009 Articles 102 & 103 and in reliance upon Article 24C(1) of the 1945 Constitution which allows the Constitutional Court to hear cases, at the first and final level, regarding (among other things) disputes as to the authority of state institutions whose authorities are provided for in the 1945 Constitution.

2.2 **Lesson Learnt**: The 2014 Applicants and their legal advisers clearly understood and internalized the lesson to be derived from INMA's 2012 Supreme Court challenge; that is, how easy it is for the Government to overcome a legal challenge to a ministerial implementing regulation only. In this regard, the 2014 Applicants focused their challenge to the Export Ban on ML Articles 102 & 103 as the alternative claimed source of the Government's authority to impose and maintain the Export Ban. The 2014 Applicants and their legal advisers appreciated that, if they could get the Constitutional Court to decide ML Articles 102 & 103 provided no legal basis for the Export Ban, the only way that the Government could then continue with the Export Ban would be by either (i) finding another (and previously unidentified) source of legal authority for the Export Ban or (ii) getting the DPR to either amend the 2009 Mining Law or issue a new government regulation so as to specifically provide for an Export Ban or for the authority of the Government to impose an Export Ban as part of enforcing the domestic processing and refining obligation. The chances of either of these residual Government strategies working could not have been rated very high by the 2014 Applicants and their legal advisers.

The 2014 Applicants were seeking a declaration from the Constitutional Court that, to the extent the Government was now relying upon ML Articles 102 & 103 to provide a legal basis for the Export Ban, this was inconsistent with the 1945 Constitution and, more particularly, with Articles 22A, 27(2), 28(1) and 33(3) of the 1945 Constitution such that there was no legal basis for the Export Ban.

Although understanding and avoiding the strategic weakness in the 2012 Supreme Court challenge by (i) focusing on ML 2009 Articles 102 & 103 and (ii) finding a legal basis in the 1945 Constitution to challenge the Government's claimed alternative source of authority to impose the Export Ban, the 2014 Applicants and their legal advisers had to find a way to deal with C 1945 Article 33(3) and, in effect, make it a "weapon" for the 2014 Applicants to "attack" ML 2009 Articles 102 & 103 rather than allowing the Government to use C 1945 Article 33(3) as a "shield" in "defending" ML 2009 Articles 102 & 103 as the legitimate alternative source of its authority to impose the Export Ban. In this regard, the 2014 Applicants needed to convince the Constitutional Court to substantially modify the staunchly resource nationalist interpretation and application of C 1945 Article 33(3) reflected in its 13 November 2012 decision ordering the immediate dissolution of BPMigas ("**2012 BPMigas Decision**"). The 2012 BPMigas Decision showed that the Constitutional Court favored a very literal interpretation of C 1945 Article 33(3). In the 2012 BPMigas Decision, the Constitutional Court found that MoEMR, as the embodiment of the State, was not controlling and exploiting Indonesia's oil and gas resources for the greatest benefit of the people as required by C 1945

Article 33(3) but, rather, was just allowing BPMigas to act as a "gate keeper" for private domestic and foreign interests to exploit Indonesia's oil and gas resources. As such, BPMigas' role was inconsistent with C 1945 Article 33(3) and, therefore, BPMigas should be dissolved with immediate effect.

Article 27(2) of the 1945 Constitution ("**C 1945 Article 27(2)**") and C 1945 Article 33(3) were used very creatively by the 2014 Applicants, and with careful attention to the 2012 BPMigas Decision, in an endeavor to justify their position that there was no legal basis for the Export Ban.

2.3 Arguments of the 2014 Applicants

2.3.1 **Loss of Right to Work**: Article 27(2) of the 1945 Constitution provides that:

"*Every citizen shall have the right to work and to a living befitting human beings."*

The 2014 Applicants argued that the Export Ban was denying those Indonesian citizens, who worked in or relied upon the mining industry for a living and who were being adversely affected by the Export Ban, the right to work and the living befitting human beings guaranteed by C 1945 Article 27(2).

2.3.2 **Undermining of Peoples' Prosperity**: The 2014 Applicants also argued that, because the Export Ban was denying employment opportunities and a living to those Indonesian citizens, who previously worked in or relied upon the mining industry and were adversely affected by the Export Ban, the Export Ban was preventing Indonesia's mineral resources from being used for the greatest prosperity of the people as required by C 1945 Article 33(3).

This was a clever argument because, if accepted by the Constitutional Court, it effectively undermined what must always have been anticipated by the 2014 Applicants to be the Government's main constitutional argument in support of the Export Ban; namely, that the Export Ban was entirely consistent with the obligation C 1945 Article 33(3) imposed on the State to exercise "*control*' over "*the land and water and the natural resources contained therein*, which obligation had only 18 months previously been given a very broad interpretation and application in the 2012 BPMigas Decision.

In making this argument, focusing on that part only of C 1945 Article 33(3) which imposes an obligation on the State to ensure the greatest prosperity of the people from Indonesia's natural resources, the 2014 Applicants were, in essence, trying to work around the 2012 BPMigas Decision by encouraging the Constitutional Court to (i) split the first and second parts of C 1945 Article 33(3) and (ii) decide that it was the second part, with its emphasis on the "*greatest prosperity of the people*", that should be accorded more importance than the first part, with its emphasis on "*control by the State*", in evaluating the Export Ban. Also, implicit in this argument was that the reference, in C 1945 Article 33(3), to the "*greatest prosperity of the people*" should be understood as meaning (i) immediate or short term prosperity (**i.e.,** prosperity now) rather than long term prosperity (**i.e.,** prosperity at some unspecified time in the future) and (ii) the "*prosperity*" of those people only working in the mining industry rather

than the "*prosperity*" of all Indonesians.

2.4 Reasoning of the Constitutional Court

2.4.1 **Overview**: The Constitutional Court substantially rejected all the arguments of the 2014 Applicants and, thereby, confirmed its continuing support of a resource nationalist interpretation of C 1945 Article 33(3) as first articulated, by the Constitutional Court, in the 2012 BPMigas Decision.

2.4.2 **Rejection of C 1945 Article 27(2) Argument**: The Constitutional Court refused to accept the C 1945 Article 27(2) argument because it took the position that the Export Ban would not cause any loss of employment or denial of a living to workers in the mining industry if only mine owners showed the necessary commitment to carry out domestic processing and refining, either independently or in cooperation with other parties, as required by the 2009 Mining Law and GR 23/2010.

As the actual loss of employment in the local mining industry, consequent upon the introduction of the Export Ban, is undeniable and was surely the subject of evidence submitted by the 2014 Applicants, the Constitutional Court's rejection of the C 1945 Article 27(2) argument may be difficult for many people to understand. It seems to the writer, however, the Constitutional Court was really saying that any loss of employment in the local mining industry, consequent upon the introduction of the Export Ban, was actually caused by the refusal of mine owners to carry out their domestic processing and refining obligation rather than by the Export Ban itself. In other words, if mine owners did carry out their domestic processing and refining obligation, the existence of the Export Ban would not be a problem or result in any loss of employment in the mining industry because mine owners would have processed and refined mineral products that they were free to export and that were not otherwise subject to the Export Ban.

2.4.3 **Rejection of C 1945 Article 33(3) Argument**: The Constitutional Court refused to accept the C 1945 Article 33(3) argument because it was not persuaded that C 1945 Article 33(3) could be legitimately read in any manner that did not give primary importance to the State discharging its obligation to exercise control over Indonesia's natural resources. In this regard, the Constitutional Court took the position that the State's obligation to exercise control over the country's natural resources meant that the State had the obligation to control the utilization of the country's natural resources so long only as this was done for the benefit of the people. The Constitutional Court was clearly of the view that preventing or limiting the export of unprocessed metal minerals, pursuant to the Export Ban, was a legitimate aspect of exercising "control" over Indonesia's natural resources and the utilization of those natural resources.

Also, by implication, the Constitutional Court interpreted "*the greatest prosperity of the people*" in a longer term and more holistic manner than that advocated by the 2014 Applicants. Essentially, the Constitutional Court interpreted (i) "*the greatest prosperity*" as referring to long term rather than the short term or immediate prosperity (**i.e.,** prosperity at some unspecified time in the future, rather than prosperity now, was acceptable and even if, in the short term, there was actually a negative impact on prosperity) and (ii) "*of the people*" as

referring to Indonesians as a whole (including future generations arguably) rather than to just those Indonesians currently working in or dependent upon the local mining industry.

This longer term and more holistic view of what was meant by *"the greatest prosperity of the people"* enabled the Constitutional Court to take the position that the use of the Export Ban, to encourage domestic processing and refining of mineral products, would be beneficial to Indonesians as whole and over the longer term even if, in the short to medium term, there were negative consequences for some Indonesians only who were currently working in or dependent upon the local mining industry. Assuming the 2014 Applicants submitted, for the consideration of the Constitutional Court, the generally damming assessments of the likely, long term economic benefits, to Indonesia, of insisting upon domestic processing and refining of most metal minerals, it must be assumed that the Constitutional Court (i) did not understand the economic benefit assessments submitted to it, (ii) understood but chose to ignore the economic benefit assessments submitted to it or (iii) most likely, took the view that it was up to the Government and not the Constitutional Court to assess the economic benefits or otherwise of domestic processing and refining.

The Constitutional Court indicated that, in determining whether or not any particular form of "control" of the country's natural resources was "*for the greatest prosperity of the people*", the appropriate "benchmarks" were whether or not the "control" in question:

(a) enabled the people to benefit from the country's natural resources;

(b) promoted the even distribution of the benefit from the country's natural resources;

(c) facilitated the participation of the people in determining what were the benefits to be derived from the country's natural resources and how these befits were to be distributed; and

(d) evidenced respect for the peoples' "right of heritage" in the use of the country's natural resources.

The writer finds it difficult to assign much clear or specific meaning to the "benchmarks" articulated by the Constitutional Court. However, the inherently socialist nature of these "benchmarks" is surely beyond dispute and must be regarded as generally in keeping with the apparent philosophy of Article 33 of the 1945 Constitution as a whole.

2.5 **Assessment**

The Constitutional Court's rejection of the 2014 Applicants' argument, in respect of C 1945 Article 33(3), may be seen as a reaffirmation of the reasoning underlying the 2012 BPMigas Decision albeit in the context of the Export Ban. It would seem that, despite a number of changes in the membership of the Constitutional Court since it handed down the 2012 BPMigas Decision, the Constitutional Court's position regarding C 1945 Article 33(3) has not changed.

In arriving at the 2014 CC Decision, the Constitutional Court may have also seen a serious risk that it could be drawn into the debate over the merits or otherwise of domestic processing and refining if it struck down the Export Ban. To this end, upholding the Export Ban and leaving it up to the Government to find other ways to deal with the problems created by the Export Ban might be viewed as a sensible approach for the Constitutional Court to take as it seeks to re-establish its credibility and independence in the wake of recent scandals.

3. The Outlook for the Export Ban

Now that the Export Ban has been upheld by the Constitutional Court, it remains to be seen whether or not this brings an end to the legal challenges and results in a grudging acceptance that the Export Ban is here to stay. It may well be, however, that even if the formal legal challenges to the Export Ban are now at an end, the focus of metal minerals producers and their industry associations will simply shift to ever more intensive, "behind the scenes" lobbying of the Government to build greater flexibility into and otherwise dilute the Export Ban in different ways.

Certainly, the 2014 CC Decision has made it tolerably clear that, if anything is to be done about the Export Ban and assuming the current Government may not be as ideologically committed to the Export Ban as was the previous Government, it is the current Government which is going to have to take full responsibility for dealing with the Export Ban and mitigating the harsh consequences of the Export Ban for certain groups of metal mineral producers and their workers. The Constitutional Court is not going to oblige the current Government by declaring the Export Ban unconstitutional in the sense of being beyond the authority and power of the Government to impose having regard to ML 2009 Articles 102 & 103. To the extent the current Government may find the Export Ban a burden and an indirect hindrance to the realization of other policy objectives such as infrastructure development, it would have been a very neat solution to the problem of the Export Ban if the Constitutional Court had struck down the Export Ban, providing (as it would) much needed cover for the current Government to make domestic processing and refining less of an immediate priority while, at the same time, enabling the current Government to take the official position that it has always supported the Export Ban as an administrative device for making domestic processing and refining a reality as soon as possible. In handing down the 2014 CC Decision, the Constitutional Court has certainly done the current Government no favors in this regard.

SUMMARY AND CONCLUSIONS

The 2014 Constitutional Court challenge to the Export Ban was made necessary by the failure of the 2012 SC Decision to have its intended effect of bringing to an end the Export Ban.

Unfortunately for the opponents of the Export Ban, the former Government's loss in the 2012 Supreme Court challenge and quick recovery have been followed by a "win" for the current Government in the 2014 Constitutional Court challenge. Depending upon the current Government's real attitude to domestic processing and refining, however, the 2014 CC Decision may be less of a true "win" and more of a lost "golden opportunity" to shift responsibility, to the Constitutional Court, for making a change, in the priority to be accorded to making domestic processing and refining, a reality. In handing

down the 2014 CC Decision, the Constitutional Court has neatly sidestepped this responsibility.

The 2014 CC Decision cannot be regarded as surprising or unexpected as it reflects the same literal and robust interpretation, by the Constitutional Court, of C 1945 Article 33(3) that was the basis for the 2012 BPMigas Decision. The 2014 CC Decision is likely to be of long lasting significance unless the Constitutional Court radically changes its thinking about the proper interpretation of C 1945 Article 33(3).

In bringing their 2014 Constitutional Court challenge to the Export Ban, the 2014 Applicants clearly understood and internalized the lesson to be learnt from the short lived victory of INMA, in the form of the 2012 SC Decision, that challenges to mere ministerial, implementing regulations are too easily overcome and in quick order by the Government. At the end of the day, however, this was not sufficient to enable the 2014 Applicants to mount a more effective legal challenge to the Export Ban by focusing on ML 2009 Articles 102 & 103 as the Government's claimed alternative source of authority for the Export Ban.

The 2014 CC Decision represents an important win for supporters of domestic processing and refining of metal minerals as the Export Ban is a critical element of the strategy for obliging metal mineral producers to carry out domestic processing and refining.

If there is to be any change of the Export Ban, the current Government will now have to address and deal with the same directly as further legal challenges seem unlikely. The behind the scenes lobbying of various mining industry groups will, no doubt, continue but the Export Ban is undoubtedly proving far more resilient than most, if not all, of these groups had anticipated when they first tasted victory, albeit very much fleeting victory only, in the 2012 SC Decision.

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