MAYER | BROWN

Q4 2019

@ESG Snapshot

Key Themes

- A recent UN report highlights the "gap" between emissions reduction pledges and the overall aim of the Paris Agreement. A US think tank has suggested how the United States might achieve a path to carbon neutrality, while US regulators continue to act despite the United States starting the withdrawal from the Paris Agreement.
- Credit agencies, banks, investors and regulators continue to analyze ESG risks and opportunities as the global proliferation of interest in ESG continues.
- ESG stewardship pressure mounts, with a significant action being brought against ExxonMobil.
- NGOs/civil society are putting pressure on banks (e.g., RBS) to improve their ESG performance.
- Green finance and voluntary ESG-related initiatives continue to thrive.

Climate

UN says drastic action is only way to avoid worst effects of climate change

A report from the United Nations says that only rapid, unprecedented cuts in greenhouse gas emissions offer the only hope of averting an ever-intensifying cascade of consequences. The report says that the past year has brought devastating hurricanes, relentless wildfires and crippling heat waves, prompting millions of protesters to take to the streets to demand more attention to a problem that seems increasingly urgent. Global temperatures are on pace to rise as much as 3.9 degrees Celsius by the end of the century, according to the "emissions gap" report, which assesses the difference between the world's current path and the changes needed to meet the goals of the 2015 Paris Agreement. *The Washington Post*, November 26, 2019. Click here for full article

Report on getting to zero for US emissions

The Center for Climate and Energy Solutions (C2ES) recently released a comprehensive new agenda outlining a path to carbon neutrality by 2050, developed with input from leading companies across major economic sectors. As part of its core elements, it recommends the creation of a national climate bank and the expansion of state and local networks of green banks.

These recommendations are consistent with the growing consensus that any climate package needs to include low-cost, long-term financing for clean energy projects. In short, Congress should include a "carrot" to go alongside the "stick" represented by regulatory measures. The report contains a wealth of sector-by-sector information as well. *Coalition for Green Capital*, November 14, 2019. Click here for full article

Commodity Futures Trading commission (CFTC) climate-related subcommittee

FAs reported by *Moody's Analytics*, the CFTC has announced members of a new Climate-Related Market Risk Subcommittee of the Market Risk Advisory Committee (MRAC). The subcommittee was established to provide a report that will identify and examine climate-related financial and market risks. Among others, the subcommittee will work on issues related disclosures, reporting and stress-testing of climate risks. The subcommittee comprises experts from the financial markets, the banking and insurance sectors, the agricultural and energy markets, data and intelligence service providers, from the environmental and sustainability public-interest sector, and academic disciplines. *Moody's*, November 14, 2019.
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ExxonMobil faces trial over allegations of misleading investors on climate crisis

ExxonMobil is undergoing a trial in New York City, accused of misleading investors over the business risks caused by regulations aimed at addressing the climate crisis. It has been taken to court by New York's attorney general. The case essentially revolves around investor fraud. At issue, is that in 2010 Exxon told the public it had assigned a price to carbon to account for how government regulation would affect its business. However, it privately used a much lower figure, allowing it to make carbon-heavy investments such as in the tar sands of Alberta, Canada, that would appear much less profitable otherwise. The lawsuit alleges Exxon ran a "longstanding fraudulent scheme". An Exxon spokesman said that it properly applies two different metrics – a "proxy cost", intended to reflect the impact of all climate policies on global demand, and a greenhouse gas cost which relates to actual levies placed on fossil fuel projects in a certain jurisdiction. *The Guardian*, 22 October 2019.
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Climate change will cost even more than we think

According to recent academic reports, the true costs of climate change has been grossly underestimated by economists, suggesting that world leaders understand neither the magnitude of the risks to lives and livelihoods nor the urgency of action. How and why this has occurred is explained in a recent report by scientists and economists at the London School of Economics and Political Science, the Potsdam Institute for Climate Impact Research and the Earth Institute at Columbia University. Reasons include underestimation of the rate of climate change, incorrect assumptions, an inability to quantify matters like the value of biodiversity or the costs of ocean acidification and difficulties modelling cascade effects / feedback loops. *NY Times*, 23 October 2019.
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Investors get lost in oil majors' carbon accounting practices

According to senior fund managers, wide variations in the way oil companies report their efforts to reduce carbon emissions make it difficult to assess the risk of holding their shares as the world shifts away from fossil fuels. This confusion has led to a growing realization that some companies' profits will shrink faster than others as governments prioritize low-carbon energy to meet the U.N.-backed Paris Agreement's goal of cutting emissions to "net zero" by the end of the century. A variety of third-party ESG verifier companies are emerging with varying ways of measuring ESG metrics. A central issue is how oil majors deal with the emissions caused by the products they sell, such as gasoline or kerosene, which are known as Scope 3 emissions. Further, the majority of climate-related targets are based on intensity measures, which means absolute emissions can rise with growing production, even if the headline intensity metric falls. *Reuters*, 9 October 2019.
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Coal plant development on the decline in Southeast Asia

According to a new report from Global Energy Monitor, not only is the building of coal plants in decline in Southeast Asia, but the number of plants in the pre-construction stage also continues to fall, declining by 52% between mid-2015 and mid-2019. The report anticipates that most of the 53,510 megawatts of power plant capacity in pre-construction is more likely to be cancelled than be built. Although Indonesia stands out this year as Southeast Asia's only big supporter of new coal, a fall in coal prices may prompt a significant move away from coal. *EcoBusiness*, October 2019
Click here for full article

Sustainable Finance

With New Equator Principles, Banks Fail to Act on Climate or Indigenous Rights

According to international tracking organization *BankTrack*, while the Equator banks agreed on a new set of Equator Principles, these did not contain meaningful improvements and completely fail to meet the challenges of protecting indigenous peoples' rights and combating climate change. The Equator Principles Association has opted for continuing with 'business as usual' with a text which only tweaks the current principles and fixes none of the concerns that led to the demand for a revision two years ago. *BankTrack*, November 21, 2019.
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Rating agencies boost ESG risk analysis

As reported in *Reuters*, credit-rating agencies are increasing their efforts to identify ESG risks for leveraged companies as investor interest in sustainable investments surges amid competition from independent ESG ratings firms. Sustainability risks have long been incorporated in traditional credit ratings, but agencies are now flagging relevant ESG risks for leveraged borrowers and capitalizing on their access to information about privately owned companies, unlike independent ESG ratings firms, which tend to take information from public sources. For example, Fitch Ratings launched its ESG approach for corporate and leveraged credits in January and shows relevant E, S or G risks that can impact credit quality in a separate section of its credit reports. S&P Global Ratings has developed a separate ESG Evaluation product that takes a broader look at such risks, in addition to publishing reports that include relevant ESG risks for some sectors and companies, including some leveraged firms. Reuters, November 18, 2019.
Click here for full article

African Development Bank decides not to fund Kenya coal project

As reported in *Reuters*, the African Development Bank published an environmental and social impact assessment in May for the Lamu project, which was planned near a UNESCO World Heritage Site but which was halted by a local environmental tribunal. The project to build a 1,050-megawatt plant in eastern Kenya was backed by Kenyan and Chinese investors. The AfDB president told Reuters that the bank took environmental concerns seriously and was focusing on renewable energy, adding that coal projects risked becoming "stranded assets" on the AfDB's balance sheet. *Reuters*, November 13, 2019. Click here for full article

Philippines Central Bank's ESG regulations to be issued in phases

According to Business Mirror, the Bangko Sentral ng Pilipinas plans to issue regulations for the environmental and social governance (ESG) of banks in "phases". Phase 1 is "high-level principles and broad expectations on the integration of ESG and sustainability principles in the corporate and risk-governance frameworks, as well as in the business strategies and operations of banks." Phase 2 is "granular expectations in managing climate change and other environment-related risks in relation to credit, market, liquidity, and operational risks". Phase 3 is "potential regulatory incentives." *Business Mirror*, November 22, 2019. [Click here for full article]

McKinsey: Five ways that ESG creates value

From a report from *McKinsey & Company*: 1) A strong ESG proposition helps companies tap new markets and expand into existing ones. 2) ESG can also reduce costs substantially. 3) A stronger external-value proposition can enable companies to achieve greater strategic freedom, easing regulatory pressure. 4) A strong ESG proposition can help companies attract and retain quality employees, enhance employee motivation by instilling a sense of purpose and increase productivity overall. 5) A strong ESG proposition can enhance investment returns by allocating capital to more promising and more sustainable opportunities (for example, renewables, waste reduction and scrubbers). *McKinsey,* November 2019. [Click here for full article]

ESG gains a foothold in Middle East

According to the website *Chief Investment Officer* (CIO), the CFA Institute and Principles for Responsible Investment (PRI) interviewed 1,100 financial professionals and conducted 23 workshops in 17 major markets around the world to understand best practices for the integration of Environmental, Social and Governance factors into investment analysis. The application of ESG is regionally idiosyncratic. Even the differences between western European countries are stark. Integration of environmental, social and governance factors into investment analysis is in its infancy in the Middle East. The critical element to understand about the integration of ESG in the Middle East is that it is subordinate to Islamic finance, in which capital is raised and invested in accordance with shariah law. While this is a complicating factor in many ways, Islamic finance and ESG investing are complementary too. Both promote being a good steward to society and to the environment. *Chief Investment Officer*, November 4, 2019. [Click here for full article]

South East Asia investors jump on the sustainability bandwagon

As reported by Japanese news service *Nikkei*, global investment focusing on ESG issues topped $30 trillion in 2018, and Asian companies are eager to claim their share. "Between 2016 and 2019, almost $13.7 billion was raised in 'impact' and ESG investing across 51 funds or so,[and] Asia-focused funds represented half of the amount raised." Asian Stock Exchanges have also taken note with 10 of them (in Singapore, Thailand, Indonesia, Malaysia, India, the Philippines, Vietnam and Hong Kong) now requiring listed companies to report on ESG matters. *Nikkei Asian Review,* November 2019. [Click here for full article]

Strong ESG offering preferred by Chinese investors

FleishmanHillard released a report, "The Future of Asset Management in China," offering insights to global asset managers assessing opportunities in China. The report features analysis drawn from a survey of mainland Chinese investors' attitudes and behavior, plus an overview of the latest industry trends. The key findings of the report show that when selecting a fund manager, mainland Chinese investors put particular emphasis on brand credibility, performance and multichannel communications. ESG capabilities also are a requirement for the majority. *Cision, PR Newswire,* October 28, 2019. [Click here for full article]

New US$2 Billion Investments Program to Support Growth of Green Finance in Singapore

According to English language Asian news network, CAN, the Monetary Authority of Singapore (MAS) announced a US$2 billion green investments program (GIP) to invest in public market investment strategies that have a strong green focus. As part of the program, MAS said it will place funds with asset managers who are committed to deepening their green investment activities and capabilities — the first of this being the Bank for International Settlements' Green Bond Investment Pool in respect of which MAS indicated that it will place $100 million. Channel News Asia, November 11, 2019. [Click here for full article]

Asia Development Bank to Promote and Green Finance for Sustainable Infrastructure

According to its own press release, the *Asian Development Bank (ADB)* and Singapore's Infrastructure Asia have signed a cooperation agreement to help governments in Southeast Asia adopt innovative and green finance approaches to identify and develop bankable and sustainable infrastructure projects in the region. The agreement will allow ADB and Infrastructure Asia to help state-owned enterprises, as well as regional and municipal governments in Southeast Asia, improve their institutional, financial, and governance capacities for developing innovative and green infrastructure programs and projects. *Asian Development Bank*, October 2, 2019. Click here for full article

New guidelines force pension funds to reveal shareholder voting records

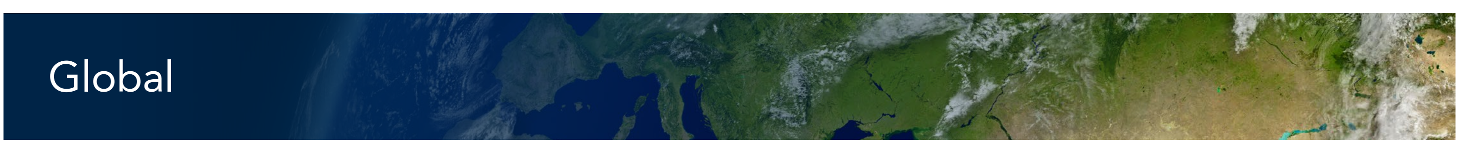
The Financial Reporting Council's new stewardship code will require pension funds and asset managers to disclose their shareholder voting records on ESG issues. The new guidelines will come into force in January. The revamped stewardship code means firms will have to publish annual reports showing they have taken ESG issues into account when investing and engaging with companies. Signatories will have to prove they took appropriate action in the preceding 12 months by publishing their full shareholder voting records. They will also have to explain the rationale behind their voting decisions and outline how they are responding to systemic risks such as the climate emergency. *The Guardian, 24 October 2019.* Click here for full article

Green bond issuance hits new global record in green finance

According to Climate Bonds Initiative, an organization that promotes investment in low carbon projects and assets, progressive green bond and loan issuance hit an all-time high global issuance of USD202.2bn. Green bonds closing from Terna Energy, EUR150m (USD167m) (the first green bond issued from Greece), and a mix of green bonds and loans from Singapore, Japan, Sweden and China, were among the deals pushing the total past the USD200bn mark. Progressive issuance for 2019 reached USD100bn in late June. In the last week of August it tipped over USD150bn & late September passed the 2018 total of USD173bn. *Climate Bonds Initiative, 21 October 2019.* Click here for the full article.

Green Freight Asia Voluntary Certification Program

By 2050, Asia's road freight, is projected to climb by 269% per cent compared to 2015. With delivery trucks already having a disproportionate impact on the environment and human health, governments, companies and organisations are increasingly promoting "green freight", which aims to cut the per-kilometre pollutant and greenhouse gas emissions from freight transport and reduce the travel needed to meet the demand for freight services. Green Freight Asia (a non-profit organisation comprised of Asian road freight companies that promote freight efficiency and reductions in transport-related emissions) has created a voluntary certification programme called the GFA Label to recognise players in the freight industry, including shippers and carriers, who have committed to green freight practices. *EcoBusiness, October 2019.* Click here for full article



Global

US: ESG Disclosure Simplification Act Passes Committee, But Will Fail

As reported in the *Green Building* newsletter on September 20, 2019, the Financial Services Committee in the U.S. House of Representatives passed H.R. 4329, the ESG Disclosure Simplification Act of 2019. The bill would require all public companies to disclose "environmental, social, and governance metrics" as material information about the company. Although there is little if any chance that the bill will become law given the current politics in Washington, DC, the bill's passage in the House Committee highlights that issues of ESG disclosures continue to be pressing. *Green Building, 13 October 2019.* Click here for full article

Green, social and sustainability bond markets set for record year in Asia

According to data compiled by *Dealogic*, in 2019 the proportion of social & sustainability bonds had significantly jumped to 18 issues with a deal value of US$8.6 billion, representing 31% of issuances compared to 2016 only one bond was issued with a deal value of

US$500 million, representing 6% of the number of green, social and sustainability bond issuances from Asia-Pacific that year. South Korea accounted for the majority of the sustainability bonds, with 12 issuances totalling US$4.7 billion. *The Asset ESG Forum, October 2019.* Click here for full article

Global Reporting Initiative sets up in Asia

According to *Regulation Asia*, the Global Reporting Initiative (GRI), an organization that helps businesses and governments understand and communicate their impact on critical sustainability issues, has opened an office in Singapore to Promote Sustainability Reporting in ASEAN. The hub is designed to help companies identify and manage their ESG impacts, in a region where sustainability reporting is relatively new. The new regional hub will serve Singapore, Malaysia, Indonesia, Philippines, Thailand, Vietnam, Cambodia, Laos, Myanmar, and Brunei Darussalam, supporting companies with relevant services and training, and helping them to identify, manage and report their most material ESG impacts. *Regulation Asia, September 2019.* Click here for the full article.

Singapore's Quadria Capital Management introduces first sustainability improvement capital call facility

According to *Deal Street Asia,* Quadria Capital Management, a PE firm focusing on the healthcare sector in developing Asia, has secured a US$65 million three-year revolving facility from ING, through which it will have its borrowings' interest rate pegged to its sustainability performance. The revolving facility is the first of its kind in the global fund finance industry. *Deal Street Asia, October 2019.* Click here for full article

Latin American issuers face steep learning curve on ESG loans

According to *Reuters*, Latin American banks and corporations face a steep learning curve as they turn to stainable lending as a viable financing tool. As tackling climate change becomes a vital priority in the region, so does aligning ESG strategies with borrowing needs. Issuers are seeking advice from banks on green and sustainable financings as lenders also educate themselves on the opportunities and challenges ahead. *Reuters, 29 October 2019.* Click here for full article

Indonesia Fines palm oil firm US$18.5 million over forest fires in 2015

A court in Indonesia has ordered palm oil company PT Arjuna Utama Sawit to pay the equivalent of US$18.6 million in fines and damages for fires on its land in Borneo in 2015. According to the report by Mongabay, a non-profit conservation new service, Indonesia has won judgments totalling US$223 million against nine companies in forest fire cases since 2015 however, only one has paid. *EcoBusiness, October 2019.* Click here for full article

Market Information

Nordea on the climate and environment megatrend

In a Q&A with *Responsible Investor*, Henning Padberg and Thomas Sørensen, Managers of Nordea's Global Climate and Environment Strategy, discuss climate change, resource scarcity and the challenges they pose and their impact on the global economy. *Responsible Investor*, November 27, 2019. Click here for full article

Speech by chair of the supervisory board of the ECB on sustainable finance

In a Speech at the Retail Banking Conference of European Savings Bank Group, in Brussels entitled "Creating sustainable financial structures by putting citizens first", Andrea Enria, Chair of the European Central Bank (ECB), covers a wide range of topics related to climate change risk sustainable finance. European Central Bank, November 21, 2019. Click here for full article

Partial IPO of Saudi Aramco will be drastically scaled back

According to international CSO *BankTrack*, Saudi Arabia has announced that the long-heralded partial IPO of its national oil company, Saudi Aramco, will be drastically scaled back. The banks that were about to go on the road to sell shares to investors in Asia, Europe and North America have been told to cancel these plans as the shares will now only be formally marketed to investors in Saudi Arabia and allied Gulf states. A coalition of environmental groups — Rainforest Action Network, BankTrack, Earthworks, Friends of the Earth US, Global Witness, Indigenous Environmental Network, Oil Change International, ShareAction, Sierra Club, and 350.org — had warned banks to stay away from selling shares in the world's largest corporate emitter of carbon dioxide. *BankTrack*, November 20, 2019. [Click here for full article]

Banks warned by environmental groups over Saudi Aramco

NGOs have warned that banks linked to Saudi Aramco's $2tn (£1.6tn) market float are undermining global efforts to tackle the climate crisis by supporting the listing of the world's biggest oil producer. In a letter to bank chief executives, including the bosses of HSBC and Goldman Sachs, 10 environmental groups warned that the listing would hinder the battle against greenhouse gas emissions and human rights abuses. *The Guardian, 17 October 2019.* [Click here for full article]

Civil society groups call on new CEO to make RBS banking sector 'climate leader'

According to the newsletter *Friends of the Earth Scotland*, 31 civil society groups from around the world have sent an open letter to the newly appointed CEO of the Royal Bank of Scotland (RBS), calling on her to turn the lender into a climate change leader by formally ending the bank's financial support for the coal, oil and gas sectors. The groups lay out the case for making RBS the "first major bank to formally end its financing for fossil fuels." The groups refer to the latest NGO analysis which shows that RBS financing of fossil fuel companies is now negligible, putting the state-owned bank in prime position to show real climate leadership by definitively ending its support for the sector. *Friends of the Earth Scotland, 27 September 2019.* [Click here for full article]

NAB, ANZ and Westpac shareholder resolutions calling for reductions in exposure to coal, oil and gas

According to international tracking organization *BankTrack*, Market Forces (an Australian NGO) has lodged shareholder resolutions with NAB, ANZ and Westpac, calling on them to reduce their exposure to coal, oil and gas in line with the climate goals of the Paris Agreement. The resolutions come after the major banks have continued to lend heavily to the fossil fuel sector, with exposures to coal mining and oil and gas extraction increasing alarmingly recently. The resolutions ask for the banks to set targets to reduce exposure to fossil fuels in line with the Paris Agreement and will be voted on at the banks' annual general meetings in December. Commonwealth Bank did not receive a resolution after it produced an update to its environmental policy this year, committing to (i) continue to reduce its thermal coal mining and coal-fired power generation exposures with a view to exiting the sector by 2030, subject to Australia having a secure energy platform and (ii) only providing banking and financing activity to new oil, gas or metallurgical coal mining projects if they are in line with the goals of the Paris Agreement. *BankTrack, 10 October 2019.* [Click here for full article]

Sustainable investors match the performance of regular investors

There is a common perception among investors that putting money into companies that promote sustainability on issues like climate change or corporate governance is "the right thing to do." In the International Monetary Fund's October 2019 Global Financial Stability Report, researchers found the performance of "sustainable" funds is comparable to that of conventional equity funds. *CNBC, 10 October 2019.* [Click here for full article]

Human Rights

Norwegian sovereign wealth fund sells shares in G4S due to human rights violations

As reported by *The Guardian*, Norway's sovereign wealth fund has blacklisted shares in British security company G4S because of the risk of human rights violations against its workforce in Qatar and the United Arab Emirates. Norway's Council of Ethics, which monitors investments in the country's £860bn Government Pension Fund Global (GPFG), said there was an "unacceptable risk of the company contributing to systematic human rights violations." Up to 30,000 staff, mostly working in security and construction, could be affected. *The Guardian*, November 14, 2019. Click here for full article

New organization for Economic Co-Operation and Development (OECD) guidance

An OECD report, "Due Diligence for Responsible Corporate Lending and Securities Underwriting," provides a common global framework for financial institutions to identify, respond to and publicly communicate on environmental and social risks associated with their clients. It was developed in close consultation with leading global banks, civil society and trade unions, and approved by 48 governments. The report helps banks and other financial institutions implement the due diligence recommendations of the OECD Guidelines for Multinational Enterprises in the context of their corporate lending and underwriting activities. OECD, October 29, 2019. Click here for full article

European Development Banks linked to abuses in palm oil industry

A report by NGO Human Rights Watch examines the responsibility of four European development banks for abusive practices on oil palm plantations in the Democratic Republic of Congo. These banks — BIO from Belgium, CDC Group from the United Kingdom, DEG from Germany and FMO from the Netherlands – are among the 10 largest bilateral development financial institutions in the world, controlling billions of dollars in investments across more than 2,000 projects in developing countries. Human Rights Watch found that the banks have failed to ensure that the palm oil companies they finance in the Congo are respecting the basic rights of the people who work and live on or near "Company" plantations. *Human Rights Watch*, November 25, 2019. Click here for full article

Credit Suisse makes a step towards indigenous rights

According to international tracking organization *BankTrack*, in April 2017, the Society for Threatened Peoples (STP) filed a complaint against the Swiss bank Credit Suisse (CS) with the Swiss National Contact Point for the OECD Guidelines for Multinational Enterprises. This was triggered by the fact that, at the time, CS was maintaining key business relations with the firms that built the Dakota Access Pipeline (DAPL) in the USA. Credit Suisse has resolved to incorporate the protection of indigenous communities' rights into its internal guidelines on project financing. *BankTrack*, 16 October 2019. Click here for full article

CalPERS Drops Listed Prison Companies

According to *Institutional Investor* magazine, the California Public Employees' Retirement System (CalPERS) has divested from two publicly traded prison companies, CoreCivic and Geo Group. CalPERS came under scrutiny back in June when Educators for Migrant Justice, a non-profit group seeking to end family separation, started pressuring the pension fund to divest. The divestment is described as a huge blow to private prison companies and as showing that these issues are material to a company's performance. Human rights abuses can affect a company's bottom line. CalPERS insists that the move was not a divestment but rather an investment decision. *Institutional Investor, 20 October 2019.* Click here for full article

EU call for mandatory human rights due diligence of cocoa supply chain

Speaking at the World Cocoa Foundation (WCF) meeting, European Union Vice President Heidi Huatala recognised the value of voluntary initiatives but called for mandatory measures that would place the onus on companies to identify and prevent human rights risks in their supply chain. Such measures would have as their aim assurances that companies' supply chains did not include illegally produced cocoa or cocoa not produced in accordance with social and environmental norms. *Confectionarynews, 24 October 2019.* Click here for full article