

tralac Newsletter



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Developments to be monitored during 2019

We would like to welcome you to tralac's first newsletter for 2019. We hope that you have had a well-deserved break and that 2019 will bring interesting opportunities for us to engage with you.

In this first Newsletter of 2019, we provide a brief overview of recent trade-related as well as domestic developments in select countries, which have, already in this new year, featured prominently in the media.

We reflect on these developments and share our views as to why they merit further monitoring. There is a general theme in several of these developments – how (sometimes unexpectedly) national political developments impact on bigger regional and multilateral contexts. There is also a strong reminder that accountability, transparency and robust democratic institutions remain the harbingers of better governance.

1. Brexit

An extraordinary development took place in the House of Commons on 9 January 2019. Rebel Conservative Members of Parliament joined forces with the Labour opposition to force Prime Minister May to come up with a new Brexit plan (within 3 days) if she loses the vote on her Withdrawal Deal, scheduled for Tuesday, 15 January 2019.

Mrs. May lost by 11 votes. Dominic Grieve, the Conservative MP who led the rebellion and proposed an amendment to the standard procedure, said he was acting out of a sense of a “deepening crisis” over Brexit.¹

Mrs. May has been adamant that that it is either her deal or no deal. Now there may be additional scenarios on the table. If the Prime Minister is again defeated on 15 January, the Commons will have an opportunity to vote on alternatives – from a “managed no-deal”, another referendum, a “Norway option” or a different version of the current deal. Such a development will not be without its own uncertainties but could open the door for new talks with Brussels. Under the present plan, Brexit happens at 11 PM on 29 March 2019.

The Labour Party said it will table a motion of no confidence in the government if Mrs. May's deal is voted down next week. Parliament must then “take control of what happens next.” Delaying the date of Brexit beyond 29 March might be “inevitable”.

There is an important national dimension to this development. This week's developments would have been impossible had the Speaker (who allowed the Grieve amendment against strong opposition from some Conservative MPs) been more deferential to the Government, as is typical. As one commentator has written:

“The confrontation between MPs and ministers was caused by the convergence of the immensity of Brexit – which threatens to reshape the economy, politics and international standing of Britain in massive ways – and

the reality that May leads a deeply divided party and government in a hung parliament where there is no majority for anything without formal or informal cross-party alliances. In such circumstances, the old rules were always likely to buckle and bend; and they did so".²

Brexit requires disentanglement after 45 years of deep integration under EU rules. This is an extremely complicated and extensive process. How exactly does the UK re-invent itself? Parliament's Treasury Committee has warned that the UK government has failed to provide MPs with sufficient information to allow an informed decision on the Prime Minister's Brexit deal, further weakening Mrs. May's strategy.³

A "no-deal" Brexit would mean the severing of all preferential trade ties with the EU – and trading under WTO rules. This will cause major disruption and will have huge cost implications, as higher tariffs kick in and "frictionless" trade with the EU goes. According to the Confederation of British Industry (CBI), GDP may shrink by up to 8%, putting thousands of jobs at risk. For this reason, it is urging MPs to back the May deal, describing it as a "solution" businesses can work with as it delivers a transition period and avoids a "hugely damaging cliff edge". If parliament does not agree, it must immediately outline its plan to avert no deal and secure British jobs. There are just a few days left to do so.⁴

The UK is an important destination of African exports, presently happening under preferential arrangements of the EU and (for SACU and Mozambique) under the SADC Economic Partnership Agreement of 2016. New legal arrangements (such as the rolling-over of existing preferences and treaty obligations) must be put in place. This process is not yet completed. Further delays about Brexit create unnecessary uncertainty. In the case of a hard Brexit, the UK needs a WTO derogation to launch its own GSP arrangement.

2. American Politics and Trade Policies

American domestic politics is dominated by the controversy over the building of the US-Mexico wall and the shutdown of federal government services, which is now in its third week. The Democrats (who control the House of Representatives since the beginning of 2019) refuse to allocate the \$5 billion

demand by President Trump for this purpose. He has now threatened with an extraordinary measure; to declare a national emergency, and to use resources meant for national defence purposes. He also stunned America's allies at the end of 2018 when he unilaterally announced the withdrawal of American troops from Syria.

The domestic paralysis (reflecting Trump's personal agenda and campaign promises) may not be over soon. What are the consequences for matters such as the talks to end the US-China trade war? In December, Chinese President Xi Jinping and President Trump agreed on a 90-day truce. Bilateral discussions have just started but if no deal is reached by 1 March 2019, US tariffs on \$200 billion of Chinese goods are set to increase from 10% to 25%. This will affect the global economy and exports to China, including from the EU. There are already signs that China's economic growth is slowing and may not absorb the hoped-for imports.

In what format will a bilateral US-China deal be couched? How will compliance be monitored, and would it help to resolve the impasse in the WTO, where the US is claiming China is flouting multilateral rules? US Trade Representative Robert Lighthizer wants concerns about China's alleged theft of intellectual property and market-access barriers to also be addressed as part of the present talks with China, as well as structural reforms.⁵

These issues are not one-sided. President Trump is eager to strike a deal with China soon to boost US financial markets that have slumped on concerns over the trade war.⁶ The US economy will not escape the negative consequences of a drawn-out trade war with China.

Washington faces other challenges too. One of them is North Korea. After his recent visit to China, North Korean leader Kim Jong-un left with backing for a possible second summit with the US President. Mr Trump and Mr Kim first met last June, but progress over denuclearisation has since stalled. Pyongyang wants Washington to lift the sanctions the United Nations imposes on North Korea because of its nuclear and missile programmes.⁷

And then there is Africa, which has not figured

prominently on Mr Trump's radar. At the end of 2018, Washington announced its new Strategy for Africa. It has a strong anti-China flavour but contains elements of trade promotion and new trade deals. Implementation requires follow-up action and negotiations.

The world may not like the incumbent US President, but it cannot live without a *modus vivendi* with the United States.

3. South African Developments

South Africa is in the midst of a serious clean-up exercise. Strong action is needed to revive clean governance and boost the domestic economy. In May South Africans go to the polls to elect a new government. The African National Congress (ANC) celebrates its 107th birthday this year but faces challenges about its future. Some commentators fear that the ANC will continue to be hampered by its patronage politics.⁸ New political parties are being established to challenge the ANC's traditional leadership role.⁹

The Zondo Commission of enquiry into state capture started its hearings in August 2018. It has heard many startling accounts of corruption and outright theft of state resources. No one has yet faced criminal charges but a final report (due for later this year) must result in serious consequences. This will not happen before a new legislature is elected and President Ramaphosa has cemented his position as leader of the ANC and President of the country. Former President Zuma is facing criminal charges (involving an arms deal of some years ago) about fraud, racketeering, corruption, money laundering and tax evasion.

The Nugent Commission of Inquiry into Tax Administration and Governance in the South African Revenue Services (SARS) recently submitted its final report to President Ramaphosa. The Commission has made wide-ranging recommendations involving criminal prosecutions, the setting aside of contracts, the recovery of expenditure and that disgraced former Commissioner, Tom Moyane, foot his own legal bills.¹⁰

Corruption, state capture and inappropriate domestic policies are to blame for the fact that the South African economy is not doing well. Domestic reforms must

address many serious challenges involving the consequences of a highly unequal society. The ANC is pushing for legislation on the expropriation of land without compensation (which will certainly face court challenges) and on minimum wages. There are plans to fix a poor educational system. Unemployment figures are unacceptably high. State owned enterprises such as the national energy provider (Eskom) and South African Airways face massive debt burdens. Power cuts have again been implemented since December 2018.

South Africa is the regional economic power house. It is also dependent on African export markets.¹¹ The stability of the Southern African region depends on a healthy South African economy and requires sound policies to ensure joint industrial development and growth. All eyes are on President Ramaphosa (elected ANC leader one year ago) to find the necessary answers and to implement suitable policies. The new year will be a vital one for South Africa, and the May election, the most important since the country's first democratic election of 1994.

4. Elections Elsewhere

African elections (whether fair or not) do count. There will be several of them in 2019. Before mentioning some, a rather significant one, which took place a few months ago, should be mentioned. On November 21, 2017, 93-year-old Robert Mugabe bowed to mounting pressure and resigned in a letter to parliament, which was about to debate his impeachment. That brought his disastrous reign of 37 years in charge of Zimbabwe to an end.

The military seized power after he had fired Vice President Emmerson Mnangagwa, amid concerns Mugabe was positioning his wife to succeed him. Mnangagwa was elected the new President in August 2018 with 50.8% of the vote against the 44.3% of Nelson Chamisa, leader of the Movement for Democratic Change (MDC). The opposition alleged polling fraud and violence erupted. The MDC lodged a bid to overturn the election results, but the Constitutional Court dismissed the application for a lack of evidence.¹² Mnangagwa was inaugurated as President on August 26. The Zimbabwean economy remains in dire straits.

Voters in Nigeria are also headed for the ballot box in 2019. Experts predict a close race between incumbent President Muhammadu Buhari and his main challenger, Atiku Abubakar. The new President will face serious challenges in getting the national economy on a growth path. In March 2018 President Buhari cancelled his attendance of the Extraordinary African Union (AU) Summit where the African Continental African Free Trade Area (AfCFTA) was launched. The local business community had complained about insufficient consultations about the implications for Nigeria of the AfCFTA, which aims to liberalize intra-African trade. Nigeria has not yet indicated whether it will sign and ratify the AfCFTA Agreement. If it fails to do so, it will leave Africa's biggest economy outside the AfCFTA framework.

Senegal, which is regarded as a stable country, is preparing for presidential polls in 2019. The expectation is that President Macky Sall will be re-elected. Senegal's economy is doing well. There are positive signs: civil society groups in both Senegal and Nigeria are actively involved in the electioneering. Fourteen of the 15 presidents now heading governments in West Africa, with the exception of Togo, served no more than two terms.¹³

On 10 January, it was provisionally announced that opposition candidate Felix Tshisekedi has won the DRC's tightly-contested presidential election. First results put him ahead of another opposition candidate Martin Fayulu, and the ruling coalition's Emmanuel Shadary. If confirmed, Tshisekedi will be the first opposition challenger to win since the country gained independence from Belgium in 1960. The interim result can still be challenged. Tshisekedi had received 38.5% of the vote and had been provisionally declared the elected President.¹⁴ There have been allegations of vote-rigging and anti-riot police were deployed in the capital.

On 9 January, Madagascar's highest Court proclaimed former leader Andry Rajoelina winner of a hard-fought presidential election, rejecting his rival's accusations of fraud. Rajoelina won 55.66% of the votes versus 44.34% for Marc Ravalomanana. European Union observers said they did not witness any fraud. Madagascar is one of Africa's poorest nations and has

been beset by frequent political upheaval since becoming independent in 1960.

The following African elections are also due to be held in 2019:

- Guinean legislative election, 2019 (10 March)
- Guinea-Bissau general election, 2019 (March)
- Malagasy general election, 2019 (March)
- Algerian presidential election, 2019 (April)
- Malawian general election, 2019 (May)
- Botswanan general election, 2019 (October)
- Mozambican general election, 2019 (October)
- Tunisian parliamentary election, 2019 (October)
- Tunisian presidential election, 2019 (December)
- Namibian general election, 2019 (November)
- Beninese parliamentary election, 2019
- Chadian parliamentary election, 2019
- Mauritanian presidential election, 2019
- Mauritanian parliamentary election, 2019

In some places, change may come about less peacefully. There have (again) been reports of uprisings against the Sudanese dictator Omar al-Bashir. For years, the International Criminal Court¹⁵ has attempted to secure his arrest for genocide, war crimes and crimes against humanity, but he has several international backers.¹⁶

5. Who is interested in Africa and why... and what happens when loans must be repaid?

Africa has been the continent of European colonization, where cheap resources could be obtained to grow Europe's industries. It is now the recipient of large amounts of donor aid (mostly from Europe) and of Chinese influence and trade. This pattern may see changes in 2019. There are growing concerns about the extent of indebtedness to China and the consequences when defaulting on Chinese loans. China has also expanded its military presence into Africa.¹⁷

Washington's new *African Strategy*¹⁸ brings the message that Africa matters, but in several ways the message sounds familiar. President Trump's *Africa Strategy for Prosperity, Security, and Stability* will concentrate on states that *promote democratic ideals, support fiscal transparency, and undertake economic reforms. It will*

*advance sustainability and self-reliance in **certain** African states. Under the President's Strategy, the United States will continue to help our African allies build security forces to counter these threats and strengthen the rule of law.*

Africa is a big place. Poverty and security threats are unevenly distributed. The African audience will want to hear more about how America's African economic partners "*will thrive, prosper, and control their own destinies*".

This Strategy will have to identify priority areas, preferred outcomes and specific activities. A one-size-fits-all approach will not work. Security strategies tend to focus on hotspots. One of the core US aims in Africa is to counter ISIS, al-Qaida, and their affiliates.

China seems to have a very strategic approach in its dealings with the continent, compared to the West. It practices a policy of non-interference in "sovereign affairs".¹⁹ China's primary motivations look pragmatic: to increase investments, get access to raw materials to fuel China's own economy, and to advance China's global political influence. They also target the opportunities in the emerging market economies in Africa.

Mining is a primary focus of China's investments but they extend throughout many sectors, from infrastructure to food processing and clothing and textiles. China's investments in the undeveloped infrastructure of African nations are particularly strong, encompassing key areas such as utilities, telecommunications, ports and transportation. Many Chinese firms investing in Africa are state-owned. This gives them a competitive edge when they are bidding for contracts in Africa and can obtain subsidies from the Chinese government.

The stakes in Africa are high due to the continent's rich abundance in raw materials. Africa is estimated to have 90% of the world supply of platinum and cobalt, half of the world's gold, two-thirds of manganese and 35% of the world's uranium. It also accounts for nearly 75% of the world's coltan, an important mineral used in electronic devices.²⁰

Against this background, it comes as no surprise that bigger global concerns will result in a keener look (by

the US, the EU, India and Japan) at China's influence in Africa. The other side of the coin is about Africa's needs and concerns. How do individual African governments cope with their growing dependence on Chinese support and what degree of freedom do they retain to promote national interests? These questions may require clearer answers in the course of 2019. We may also hear less about BRICS, now that Brazil has elected the conservative Jair Bolsonaro as its new President.²¹

6. Implementing Phase I of the African Continental Free Trade Area

All indications are that the AfCFTA will enter into force by the end of January 2019, or soon thereafter. According to the African Union's Commissioner for Trade and Industry, 6 more ratifications are required for the required threshold (22 ratifications) to be reached.²² Phase I results (liberalising trade in goods and services and complying with the Protocol on Dispute Settlement) must then be implemented.

What happens when a trade agreement enters into force? Goods and services move across borders at preferential rates and under new market access conditions. Not all the conditions are in place as far as the AfCFTA is concerned. Tariff schedules, rules of origin and sector commitments for services are still being negotiated. They take time to finalize because they are about sensitive national concerns, as the Nigerian decision not to attend the launching ceremony of the AfCFTA demonstrates. Domestic firms are worried about the consequences, for Nigeria, of liberalizing intra-African trade and insist on more consultations.

New domestic arrangements in the State Parties of the AfCFTA (only they are bound by the new obligations) are also required; national tariff books and laws must, for example, be updated. These technical matters go to the heart of what is really at stake: The actual obligations with which governments must comply and which private parties can invoke. Results and benefits are about outcomes.

But how significant will the contribution of the first State Parties be to the boosting of intra-African trade? Currently most intra-Africa trade takes place within existing regional economic communities; the

International Monetary Fund (IMF) calculated that more than 50% of total intra-Africa trade takes place within the Southern African Customs Union (SACU).²³ South Africa is the driver of intra-SACU trade – and two of the smaller member states, Botswana and Namibia feature among its top *global* trading partners, demonstrating the depth of trade integration in this sub-region of the continent. It is notable that the existing regional economic communities and trading arrangements on the continent will continue to trade according to their trade regimes, the AfCFTA tariff negotiations will not reach to extend their existing liberalisation.

There should be a strategy for managing expectations generated by the hype around the AfCFTA. This requires a plan and a road map for when the AfCFTA has formally entered into force. Several things must then happen simultaneously: Outstanding negotiations must be completed, national arrangements and continental institutions must be established and be staffed, monitoring of compliance begins, and Phase II negotiations kick off.

In the debates about the establishment of the AfCFTA it is often said that the participating States must “*pool their sovereignty*”. The “pooling” of sovereignty cannot happen without institutions. They must be designed to be effective and independent since they will play a major role to make sure this will be a rules-based trade arrangement.

Important aspects will not change. Trade with the rest of the world will remain a priority for African nations. The AfCFTA will, in addition, be implemented alongside multilateral as well as existing regional arrangements. Article 19(2) of the AfCFTA Agreement provides that the Regional Economic Communities (RECs) will remain operational. Future practice around the AfCFTA requires modes of interaction with existing trade and integration arrangements. The multilateral Trade Facilitation Agreement entered into force in early 2017 and provides the best option for improving actual conditions at intra-African border posts.

7. Multilateral Developments

The World Trade Organisation is not in good shape. The fact that the US and China are conducting bilateral negotiations to end their trade war outside WTO

parameters is only one of the indicators. A new generation of disputes need to be settled and the multilateral system may be found wanting. They are about the extent that “national security interests” can be invoked for restricting imports. Citing national security at the WTO used to be unthinkable, but this can now change quite dramatically, with unpredictable consequences. National security grounds have been invoked in disputes between Russia and Ukraine and between Qatar and its neighbours. Now the US is using the same argument to justify its higher steel and aluminium tariffs.

And it cannot be assumed that the WTO will for much longer be able to provide for the settlement of disputes in terms of the Dispute Settlement Understanding (DSU). The American refusal to agree to new judicial appointments means the DSU system is set to be paralyzed from December 2019, and disputes filed now are likely to end up in legal limbo.

This comes against the background of a warning by the World Bank that the impact of the US-China trade war could make a global recession by 2020 more likely.²⁴

Globalization needs multilateral solutions, in whatever form they can be generated. The WTO served the world well and provided certainty and predictability. If it needs to be strengthened in order to cope with new types of challenges, this task deserves to top international agendas in 2019.

We wish you all the best for 2019 and look forward to engaging on what promises to be an interesting and challenging agenda for international trade and broader economic governance.

The **tralac** team

[1] BBC News: [Brexit](#).

[2] Martin Kettle: [This was the great political power struggle of our times – and ministers lost](#). The Guardian, 9 January 2019.

[3] [Parliament Lacks Facts For Key Brexit Vote, Committee Warns](#). Law360, 9 January 2019.

[4] [Brexit plan B debate will last only 90 minutes, says No 10](#);

No-deal Brexit would put thousands of UK jobs at risk, CBI to warn. The Guardian, 10 January 2019.

[5] Stock markets are looking up as US-China trade war risk ebbs. BizNews, 9 January 2019.

[6] US Emphasizes Close Oversight In China Trade Talks. Law360, 9 January 2019.

[7] Kim Jong-un leaves China with 'backing for second Trump summit. BBC News, 10 January 2019.

[8] Natasha Marrian: An overwhelming poll win may not help Ramaphosa all that much. Business Day, 11 January 2019.

[9] Former cabinet spokesperson Mzwanele Manyi has been unveiled as the new policy chief of the pro-Jacob Zuma party, the African Transformation Movement (ATM). See [Times LIVE](#), 9 January 2019.

[10] Nugent Commission final report recommends criminal prosecution and far reaching changes to restore SARS. Daily Maverick, 14 December 2018.

[11] See details of South Africa's trade with the rest of Africa and prevailing tariffs on the [tralac website](#).

[12] Zimbabwe: The year since Mugabe's ousting. Mail & Guardian, 18 November 2018.

[13] According to Dr. Sophia Moestrup, Deputy Director for Central and West Africa at the National Democratic Institute (NDI). See [Mail & Guardian](#), 2 January 2019.

[14] Opposition candidate wins DRC election. Legalbrief, 10 January 2019.

[15] Al Bashir tainted ANC now wants SA's exit from International Criminal Court. BizNews, 12 October 2015.

[16] Zuma govt let al-Bashir escape, but now Sudan may take him down. BizNews, 10 January 2019.

[17] Simon Barber: China and Russia have spurred US interest in Africa. BusinessLIVE, 11 Jan 2019.

[18] China is challenging the U.S. in the Horn of Africa – and Washington is silent. The Washington Post, 27 September 2018.

[19] China in Africa: a complex relationship. Afronline, 6 July 2010.

[20] The 3 Reasons Why Chinese Invest in Africa. Investopedia. 14 October 2018.

[21] Brazil's Love Affair With Diplomacy Is Dead. Foreign Policy, 9 January 2019.

[22] Amb. Albert Muchanga: Tweet. See also tralac's [AfCFTA Ratification Barometer](#).

[23] Africa Comes Together. IMF Finance & Development, September 2018.

[24] World Bank issues stark warning on US-China trade war impact. Business Report, 10 January 2019.

About tralac

Trade Law Centre (tralac) is a public benefit organisation based in the Western Cape region of South Africa. We develop technical expertise and capacity in trade governance across Africa.

We are committed to the principles of rules-based governance at the national, regional and international levels. We believe that better governance and strong institutions are essential elements for inclusive and sustainable growth.

tralac's activities are anchored on three pillars:

- I. inform stakeholders through quality, accessible analysis and information provision;
- II. capacitate individuals and institutions through partnerships that focus on capacity in institutions; and
- III. empower, especially marginalised stakeholders to participate more effectively in trade policy and governance debates and processes.



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Perspectives on Africa's trade and integration