Opinion

WEDNESDAY, JANUARY 2, 2019

NEED CHINA-US COOPERATION

Chinese president Xi Jinping

History has proved that cooperation is the best choice for both sides. I attach great importance to the development of China-US relations and am willing to work with President Trump...

RationalExpectations

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Fix govt policy, or NPAs will rise again

Telecom and power sectors' debt alone is ₹5 lakh crore, so sensible govt policy critical to ensure defaults don't rise in these sectors

IT IS TEMPTING to believe, like RBI, that the worst of the NPA crisis is behind us and that banks, especially PSU ones, are on the road to recovery. In its latest Financial Stability Report (FSR), RBI says that NPAs (as a percentage of bank loans), which rose from around 7.5% in March 2016 to as much as 11.5% in March 2018, fell to 10.8% in September 2018, and are likely to fall further to 10.3% by March 2019 and then to 10.2% in September 2019.

In a severe stress scenario, gross NPAs are projected to rise to 10.8% in September 2019, but how remote this possibility is, according to RBI, can be seen from the assumptions made. A severe stress situation is one where, for instance, GDP growth collapses to 5% in FY19 and then to 4.4% in FY20 while the fiscal deficit worsens to 5% (as compared to the budget target of 3.3%) and then to 5.4% in the same period.

Since it is unlikely India is going to be in such a high-stress situation, the overall message is one of comfort. While that is comforting, it is best to be cautious since, for one, RBI has got it terribly wrong in the past. In the June 2014 FSR, for instance, RBI's NPA projections for March 2015 were 4% as the baseline and 5% in a severe stress scenario! Mind you this is when, for several years, Credit Suisse's *House of Debt* series was talking of highly stressed corporate balance sheets; the August 2012 report, for instance, talked of how 10 stressed borrowers accounted for 13% of banking sector loans and their combined interest cover—ebit-to-debt—was just 1.5.

Even in the December 2015 FSR, RBI was projecting a 4.9% NPA level for March 2016 and a 5.2% level for September 2017 in the baseline scenario. The actual NPA levels, it turns out, was 7.6% in March 2016 and 10.2% in September 2017. That RBI should have got it so wrong (see graphic) is not surprising since the Credit Suisse report of October 2015 was talking of problem loans being as high as 16.6% of total loans even as the gross NPAs—as shown by RBI data—was a mere 4.5%.

It was only in June 2016 that the FSR started projecting somewhat more realistic numbers after the Asset Quality Review (AQR); as a result of the AQR, gross NPAs rose sharply to 7.6% of gross advances in March 2016, from 5.1% in September 2015. Even after this—stressed assets were seen at 11.5% of advances—RBI projected NPAs rising to just 8.5% in March 2017, and rising to 9.3% in a severe stress situation.

And, in December 2017, RBI projected September 2018 gross NPAs at 11.1%, going up to 12.1% of outstanding loans in a severe stress situation. In other words, it was only around a year ago, that RBI started to get it right on its estimation of NPAs.

While RBI's latest FSR—where current NPAs of 10.8% will fall to 10.3% in March 2019—looks more credible since the latest Credit Suisse reports also talk of stress levels declining a bit, it is still early days and a lot can still go wrong. For one, NPA levels are still very high, and when borrowers have weak financials, NPAs can very well start rising again. Even now, Credit Suisse data shows that the share of total debt that is held by companies that have an interest cover of less than one is still a high 42%, though this is lower than 43% in the previous quarter. Within this, while real estate debt is as high as ₹5 lakh crore, this has been growing at over 20% per year over the last five years. Since most real estate developers have weak balance sheets—thanks to falling sales growth and high inventory levels—the ideal way to contain this is to be careful about real estate loans; yet, as was made clear in the government-RBI standoff, one of the government's aim was to keep growing real estate debt.

In the case of telecom, where debt levels are around ₹3.25 lakh crore, Credit Suisse points out that all this debt is owed by companies with an interest cover of less than one. While firms like Bharti Airtel will try to ensure they don't default, there is just that much these firms can do to avoid default if the government doesn't move quickly on relieving their stress; though the stress has been building up for several years, there has been no concrete action so far on either lowering government levies or in lowering spectrum costs.

And while 35% of all steel debt is owed by firms that have an interest cover of less than one despite all the government protection, around 45% of power sector debt—of over ₹2 lakh crore—has an interest cover of less than one. In this case, too, while the government was leaning on RBI to change its norms to stop classification of these loans as NPAs, as this newspaper has pointed out earlier (*goo.gl/MkpoYn*), much of the problem lies in government policy; if this is not fixed at the earliest, and power loans are classified as NPAs, bank NPAs could soon start rising again.

Apart from the sectoral policies that the government needs to deliver on quickly if NPAs aren't to start rising again—and fast—there is the issue of weak PSU banks that have, at present, lending restrictions under RBI's Prompt and Corrective Action (PCA) policy. While the government wanted PCA norms to be relaxed so that these banks could start lending again—this was a big friction point with Urjit Patel before he resigned—as a recent Kotak report points out, the gross NPAs of PCA banks were 21% of their total lending in the second quarter of FY19 (that for IDBI Bank was a whopping 31.8%) as compared to 11.5% for the non-PCA PSU banks. So if the government is able to get new RBI Governor Shaktikanta Das to relax the PCA norms—RBI's latest *Trends and Progress* report suggests Das may not be in a hurry to relax these, but it is early days—that alone is likely to push NPA growth up.

Delayed recognition (NPAs as a % of total bank loans)

Baseline | Medium stress | Severe stress

Estimate made in: Dec 2014 (Mar 2015, Actual 4.6%); Dec 2015 (Mar 2016, Actual 7.6%; Mar 2017, Actual 9.6%); June 2016 (Mar 2017, Actual 9.6%); Dec 2017 (Mar 2018, Actual 11.6%); Dec 2018 (Mar 2019, Sept 2019)

Projections for period-ending

DesertingSENSE

Need to act against NRI men abandoning their wives in India, but is revoking their passports the best way to do this?

THE GOVERNMENT IS all set to bring an omnibus legislation that will prescribe punitive measures like a revocation of an NRI holder's Indian passport if he is found to have deserted his wife. There have been 4,300 cases of NRI men deserting their wives in India in the last three years. Under the proposed legislation, if an NRI husband deserts his wife and absconds, a court summon published in the MEA website will be deemed to have been searched. And, once the summon is entered as 'served', if person fails to appear in court on the given date, his passport can be cancelled and his property in India seized. The law will also make the registration of marriage mandatory within 15 working days.

The government has so far cancelled the passport of 33 non-resident Indians for abandoning their wives. The Passport Act contains provisions for cancellation of passport of a holder who has received summons for court appearance or has a warrant for his/her arrest under any law that prohibits departure from India. So, the new law will just formalise this for desertion of spouses by NRIs. The larger point, however, is that, while there needs to be strict action against such abandonment, cancelling passports encourages further law-breaking. To be sure, before 2011, passports were not impounded and there was little that the deserted wives could do. But, revoking passports means the person is likely to remain underground/illegally in a foreign nation in a bid to escape the law.

THE REAL MAINSTREAM

THE YEAR LAID DOWN THE GOVERNANCE BLUEPRINT FOR TACKLING SOME MAJOR ENVIRONMENTAL PROBLEMS. BUT THERE WAS AS MUCH NEWS TO CHEER AS TO WORRY ABOUT

The hits and misses of 2018

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THE YEAR 2018 was a mixed one for environmental issues. On the one hand, some major policies and programmes were announced. On the other hand, the state of the environment—especially air and water pollution—showed no signs of improvement. Here is my take on the top five hits and misses of 2018.

FIVE HITS

Bold statement on plastics: On World Environment Day, the Indian government pledged an "unprecedented" policy to ban all single-use plastics by 2022. The experience in Maharashtra shows that this policy can significantly reduce waste problems. Maharashtra banned all single-use plastics from June 2018. Six months down the line, urban bodies in the state have reported reduction in plastic waste by up to 40%.

Cleanliness is visible: There are rare times in the history of a nation when an issue captures the imagination of its people. This is such a time in India with regard to cleanliness. Indian cities are visibly clean and the credit for this must go to the Swachh Bharat Mission (SWM). In its four years of existence, SWM has made an impact on people's consciousness and "[t]here is a perceptible positive change in the mindset of the people towards Swachhata".

But it is now time to move beyond cleanliness to sustainable waste management, which would mean institutionalising segregation, recycling and reuse.

Renewables on tipping point: The year 2018 will be remembered as the tipping point for renewable energy. First, the share of renewables in total installed power capacity reached 20%. Second, in April-October 2018, the share of electricity produced from solar and wind combined touched the 10% threshold level. Third, for the first time the country added—during financial year 2018—twice as much renewable energy capacity as all conventional power (thermal and large hydropower) put together. The stage is now set for a much more ambitious target to decarbonise the electricity sector.

Cleaner fuels and vehicles: Two key developments of 2018 will enable the transition towards cleaner vehicles. The first was the launch of the National E-Mobility Programme, under which the government's existing fleet of petrol and diesel vehicles is being replaced by electric vehicles. The programme aims to increase the share of electric vehicles to 30% of all vehicles by 2030. Second, the pace of introduction of Bharat Stage VI (BSVI) fuel and vehicle standards was quickened. BSVI fuel was introduced in Delhi well in advance of the 2020 deadline, and the Supreme Court has not given the automobile industry any extra time to sell unsold older BSIV vehicles after BSVI standards takes effect on April 1, 2020.

Plan devised to clean air: Concern over air pollution reached a crescendo in 2018. In April, the environment ministry released a concept note on the National Clean Air Programme (NCAP). At the end of the year, the government has given a shape to the NCAP with an interim target to reduce air pollution by 20-30% by 2024—102 cities have been asked to submit city action plans. An institutional framework to implement and monitor NCAP has also been decided. Will all these add-up and make the air breathable? We should wait and watch how this programme unfolds in 2019.

FIVE MISSES

Forest policy missed the wood for the trees: The big picture of India's forests is this: First, the health of forests has declined significantly. Second, our dependence on imported wood has increased manifold. Third, under the Forest Rights Act (FRA), more and more forests are being handed over to the community for sustainable management. And, last, India has pledged to create an additional carbon sink of 2.5–3.0 billion tonnes of CO2 equivalent by 2030 in forests. Against this background, the government unveiled the draft National Forest Policy, 2018 (NFP-2018). But NFP-2018 failed to join the dots.

NFP-2018 has two main objectives: to bring back the private sector in forests—the existing policy has debarred it—and to reassert control of the Forest Department by undermining the FRA. Both these objectives will hit the livelihood of farmers and forest dwellers and will also not improve the health of our forests.

Failed attempt to manage toxins: India's pesticide regulation is in tatters—pesticides are sold over-the-counter and are misused and overused. Every year, thousands of people die due to accidental intake of highly toxic Class I pesticides, which are banned in several countries. There is a dire need to replace the 50-year-old Insecticides Act of 1968. But the draft Pesticides Management Bill, 2017, failed to reflect the requirements of the 21st century. The biggest problem is that the ministry of agriculture, the regulator of pesticides, also happens to be the promoter of pesticides. Until this conflict of interest is resolved, the management of pesticides will remain in limbo.

> In December 2015, the environment ministry notified stringent standards, and gave power plants two years to meet these standards. But when the deadline took effect in December 2017, power plants simply refused to comply

Bullied by power plants: The coal-based power sector is the biggest source of industrial pollution. So, in December 2015, the environment ministry notified stringent standards, and gave power plants two years to meet these standards. But when the deadline to meet the new standards took effect in December 2017, power plants simply refused to comply. What's more, the ministry of power chose to become the mouthpiece of the industry, and supported their demand for additional time. After "hectic" negotiations, the environment ministry extended the deadline by five years. This is the biggest letdown in the history of pollution regulation of the country.

Namami Gange will not meet its target: The ambitious Namami Gange Programme is floundering. A recent Central Pollution Control Board report shows that the Ganga was either clean or slightly polluted at only four out of the 41 locations during the pre-monsoon phase and at only one out of the 39 locations in post-monsoon period. Namami Gange has a target of building 130 sewerage treatment plants and constructing 5,000 km of sewerage network. So far, only 20% of the money has been spent. The government has also notified standards for minimum environmental flows (e-flows) in October 2018. But there is a question mark on whether these e-flows are sufficient to improve the water quality. Overall, the target of cleaning "80% of river Ganga by March 2019 and the whole river by March 2020" will not be met.

Ignoring climate change at our own peril: The IPCC's Special Report on 1.5OC has made it clear that the world has about 15 years to avoid the worst impacts of climate change. Yet, the rulebook agreed on at the UN Climate Conference in Katowice, Poland, further dilutes the weak Paris Agreement. Countries are now on their own to mitigate, adapt as well as pay for the costs of climate impacts. India is already paying these costs, with the country suffering major climate disasters like the Kerala floods this year. But climate change adaptation is still not a top agenda for the government. The National Adaptation Fund remains inconsequential, with an annual budget of about ₹100 crore. Considering that only a miracle can keep the global temperature increase within 1.5OC, adaptation must become a top agenda for the country in 2019 and beyond.

Life's getting harder for central banks

The Fed and the ECB are retreating from the business of ensuring market calm

MOHAMED A EL-ERIAN
Bloomberg

FOR REASONS LARGELY outside its control, the Federal Reserve is now being widely blamed for fueling financial market instability and risking derailment of the US economy. This is quite a contrast from just a few month ago, when it was still being feted by many for its role as an active and effective repressor of financial market volatility. It is probably only a matter of time until the European Central Bank finds itself in a similar, perhaps tougher position. The reality is both central banks have entered a new, more uncertain phase that is likely to last for some time, requiring more skillful policy navigation and communication, and some operational changes.

Coming out of the 2008 global financial crisis, central banks went out of their way to boost asset prices as a means of supporting the economy. They suppressed volatility by driving down interest rates; buying huge amounts of debt securities and housing them securely on their balance sheets; and, when a bout of volatility occurred, being quick to reassure markets of their broad and consistent support. This unprecedented phase of central banking had its natural limits.

As detailed in my 2016 book, the benefits of buying time for the economy to heal came with costs and unintended consequences. Accordingly, when the conditions to normalise policy arose, the Fed pivoted by stopping its asset-purchase program, hiking interest rates nine times and slowly reducing its balance sheet. The ECB followed with a considerable lag. After tapering its asset-purchase program during the past few months, it will halt it at the end of this year and may start raising rates during the summer.

But what started out as a relatively smooth and orderly process has become more problematic—especially for the Fed, which is being accused of fueling financial volatility and risking the country's economic well-being.

Stock markets are experiencing wild intraday swings, while falling prices have delivered one of the worse Decembers ever for equities. With that, the measure of household consumer sentiment reported last week came in below consensus forecasts, at the same time that consumer confidence expectations also tumbled. Yet much of the volatility of recent weeks is due to factors outside the Fed's control. They include: A slower global expansion as both Europe and China struggle to implement of pro-growth policies; Other economic concerns, from the partial shutdown of the federal government to trade policy as markets wait to see which concessions China will offer the U.S. to end the trade war between the two countries; Asset prices that, for years, were decoupled from fundamentals amid ample and predictable liquidity; and The proliferation of passive investing, computer trading and exchange-traded funds, including some that promised liquidity in inherently less liquid asset classes, potentially amplifying the risk of contagion both on the way up and on the way down.

It is only a matter of time until the spotlight also shines on the ECB. Because its normalisation process is now focused on balance-sheet policy rather than the more visible interest-rate moves, it hasn't yet attracted the same attention as the Fed. Yet this process faces many more questions on account of the slow growth in the euro zone, some weaknesses in the region's banking system, pockets of excessive indebtedness and political gridlock that limits needed structural and fiscal reforms. Against that backdrop, the risk has risen that volatility could undermine the global economy, and that some investors may lose confidence in the orderly functioning of financial markets. Naturally, this is obscuring the benefits of a long-due transition to a less distorted financial regime that, otherwise, would have threatened much larger economic damage down the road.

There is no easy way out of this situation. Indeed, the spotlight will shine even more brightly on the Fed next year. This will become most apparent at the news conferences, now to be held after each Federal Open Market Committee meeting, where chairman Jerome Powell is asked to opine on inherently tricky and uncertain policy decisions, options and outlooks.

Whichever way you look at it, central banks will be exposed to more criticism from politicians, market participants and analysts. Having said that, there are a few things they could do. For example, in the case of the Fed, consideration could be given to the following steps, including in the context of the review of communications practices that Powell has already launched: Conveying more consistently and credibly that policy makers are sensitive to the risk of spillbacks from a weakening global economy and market disruptions; signaling the possibility that the automatic pilot governing its balance-sheet reduction is subject to review; and phasing out the blue dot plot that shows policy makers' individual expectations for future rate increase in favor of communications that portray the range of possible outcomes. This might be more along the lines of what the Bank of England does with its quarterly inflation report.

These steps will not take the Fed out of the firing line. Yet they can play a role in lowering the risks of a policy mistake or market accident.

LETTERS TO THE EDITOR

Women's wall an assertion of rights

It was heart-warming that *Vanitha Mathil* or Women's Wall in Kerala was a grand success and struck a mortifying blow to forces hostile to the idea of change. The 620 kilometre-long Wall constructed by a few million women will go down in history as a laudable initiative that has advanced the cause of gender justice. The Women's Wall was an assertion of their rights and a refutation of the false assumption of their uncleanliness during menstruation. It was a valorous resistance against the blatant attempts by Hindu Right wing groups to reintroduce and restore a hierarchical social order. It assumed added significance in that it was organised in the context of the row over the entry of women in the 10-50 age group into Sabarimala temple. Hindu Right's selective obeisance to the apex court's verdicts springs from its pursuit of politics of convenience. It was significant that lower caste women made up the overwhelming majority of the Women's Wall and exposed the caste fault lines in the state and sought to annihilate them. Interestingly, upper caste organisations owing allegiance to Hindutva ideology organised *Ayyappa jyothi* to counter the campaign for gender equality represented by the Women's Wall. BJP's mouthpiece *Janmabhumi* stooped so low as to carry a cartoon asking Chief Minister Pinarayi Vijayan to return to his community's traditional occupation of 'coconut palm climbing'. It was befitting that the Wall extended up to a statue of Ayyankali, a social revolutionary who stood and strove for the annihilation of caste.

— G David Milton, Maruthancode

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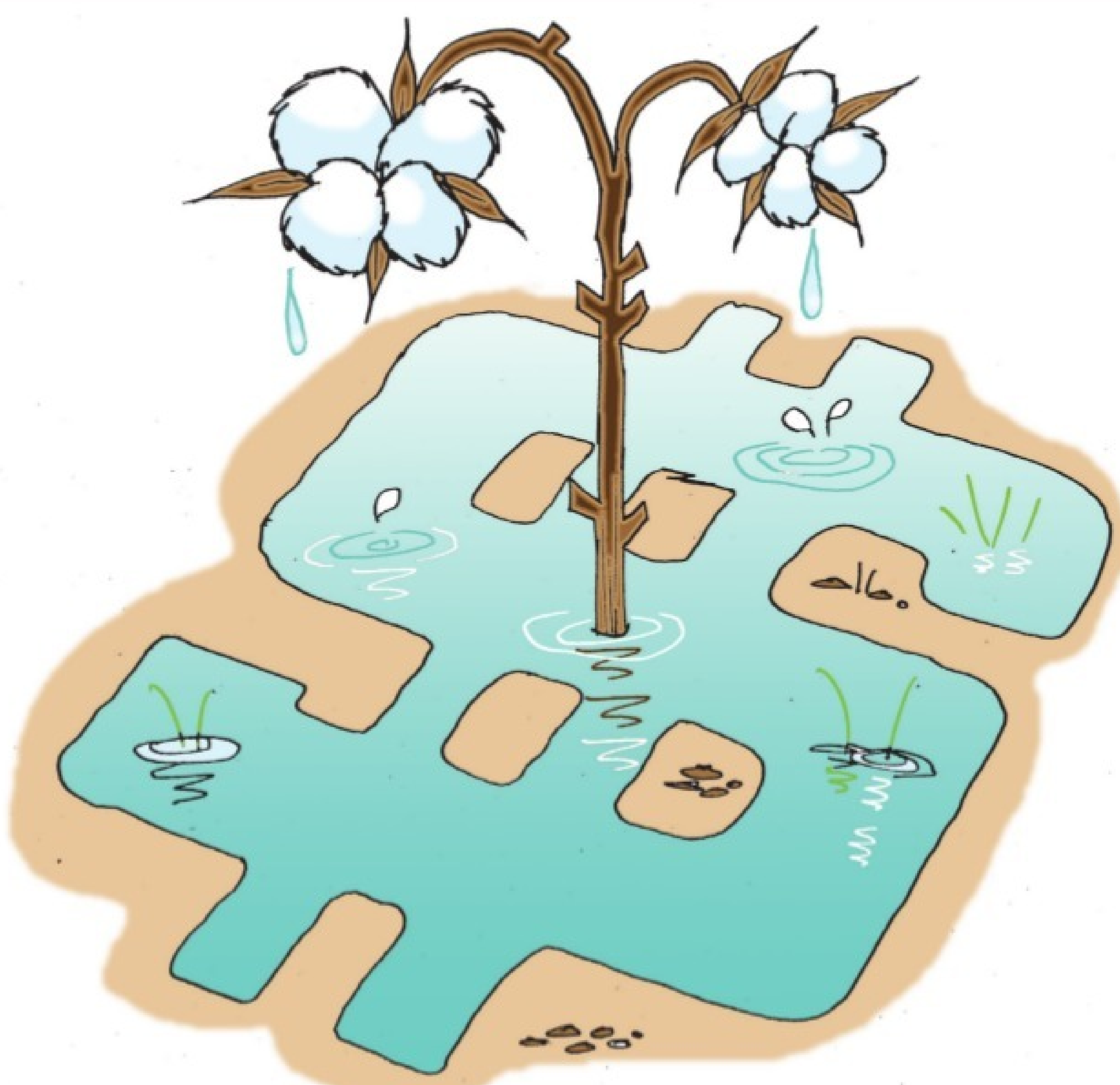

Illustration: ROHNIT PHORE

SACHIN KUMAR SHARMA & PARKHI VATS

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COTTON SUBSIDIES

The US hypocrisy on cotton subsidies

The US's counter-notification against India's cotton subsidies is a thinly-veiled attempt at diverting attention away from its own market-distorting practices in this sector, and shifting the blame to other countries. India should expose the hypocrisy of the US on cotton subsidy, and must continue to demand, at the WTO, steep reduction in trade-distorting support provided to farmers in developed countries

TRADE AND WORLD Trade Organisation (WTO) discussions thrive on perception. Recent actions by the US seek to portray India as flouting WTO rules and distorting the global market by providing huge subsidies to cotton. Left unchallenged, the hypocrisy of the US narrative on cotton could sway WTO members, particularly the cotton-producing African countries.

So, what is the fracas on India's cotton subsidies all about? Shorn of legalese, the US has made a counter-notification at the WTO, alleging that India's subsidies to cotton have breached the limit of 10% of the value of cotton production, as stipulated in the WTO's Agreement on Agriculture.

The US contends that, during 2010-16, India's market price support to cotton was 53% to 81% of the value of the annual production. On the other hand, in its notifications, India has claimed that the market price support has rarely exceeded 1.4% of the value of production during 2010-16.

What explains the reality behind these sharply divergent statistics? The explanation lies in three variables used in calculating the domestic support for each product under the WTO's Agreement on Agriculture.

■ First, which currency to use in calculating the domestic support?

■ Second, what is the production eligible to benefit from the minimum price support?

■ Third, how many units of raw cotton are required for producing one unit of lint cotton?

While India has calculated the domestic support to cotton in terms of US dollars, the US insists that the calculations should be done in Indian rupee. Contrary to what the US insists, the methodology for calculating domestic support under the Agreement on Agriculture is not prescriptive. It provides a country the flexibility to choose the currency for calculating its domestic support.

The issue of "eligible production" is more complicated. India takes the volume of cotton procured at the minimum support price to be the eligible production. The US has argued that it should be the total production of cotton. The US bases its arguments on the findings in a WTO dispute involving domestic support provided by South Korea to beef. However, the US contention is negated by the reality that the findings in a WTO dispute are specific to the facts of the case under consideration. What was relevant in the South Korea beef dispute may not necessarily apply in other situations, including India's minimum support price scheme.

On the point of conversion rate, the US contends that this figure is close to 3, while India has used a conversion rate of 2.35. The US appears to have ignored some key elements such as wastage, ginning and pressing cost, etc, that go into the calculation of the conversion rate.

In addition, what about the US's own subsidies to cotton? Historically, the US has provided extremely high subsidies to its cotton farmers, who are typically rich and also constitute a powerful political lobby. For instance, in 2001, the product-specific support to the American cotton farmers was as high as 74% of the value of cotton production in that year. The high cotton subsidies not only depressed the global prices, but also devastated the economies of some African countries—such as Chad and Mali—which are overwhelmingly dependent on cotton for their overall development.

The cost of production of cotton lint is much higher in the US ($1.88 per kg in 2015-16) than in India ($0.71 per kg in 2015-16). The US exports 80% of its cotton production and tops the list of the cotton-exporting countries, while India exported only about 16% of its cotton output in 2018.

Between 1995 and 2017, the US provided subsidy to cotton farmers worth $38 billion through several programmes, with the top 10% of the recipients guzzling 82% of the total amount of subsidy. To make matters worse, the US dumped its highly-subsidised cotton in the international market, thereby crowding out millions of poor farmers of developing countries from the international market and undermining their livelihoods.

It is no surprise, then, that in 2003, the African countries were up in arms against the US cotton subsidies. Some observers contend that the Cancun Ministerial Meeting of the WTO in 2003 collapsed because the US found it politically inconvenient to even discuss this issue. However, given the economic devastation that the US subsidies had wrecked upon the African cotton producers, this issue unleashed strong emotions among many countries at the WTO.

In addition, during the Hong Kong Ministerial Meeting of the WTO held in 2005, the US was compelled to agree to cut its cotton subsidies "specifically, ambitiously and expeditiously." However, the US dug its heels in, and 13 years have passed without any significant real reduction in the US cotton subsidies.

Here it is also relevant to mention that the rules under the Agreement on Agriculture are rigged heavily in the favour of developed countries, such as the US. While the rules constrain India to limit its cotton subsidies to 10% of its value of cotton production, the US is not constrained by any such limit. The limit on the US is for its total subsidies to all agricultural products, without getting fettered by limits on subsidies to individual products. As the limit on the total agricultural subsidies is very high for the US, effectively the US can concentrate its subsidies in just a handful of products and still continue to remain within the WTO rules.

In conclusion, the US's counter-notification against India's cotton subsidies is a thinly-veiled attempt at diverting attention away from its own market-distorting practices in this sector, and shifting the blame to other countries. The Indian government, therefore, should expose the hypocrisy of the US on cotton subsidy, and must continue to demand, at the WTO, steep reduction in trade-distorting support provided to the farmers in developed countries.

TRAI'S TARIFF ORDER

Make your own monthly TV bill

KINJAL KIRIT SHAH

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We are moving towards a system that provides cable TV subscribers their right to choose channels at a lower cost

DIGITISATION OF CABLE television distribution networks has resulted in improved capacity and quality of signals of television networks. However, concerns such as lack of choice for subscribers, and non-transparency in channel pricing and in the flow of subscription revenues across the value chain, continue to prevail. The Tariff Order by the Telecom Regulatory Authority of India (TRAI) aims to address these concerns.

The TRAI's Tariff Order covers the following:

■ The broadcasters have been mandated to declare the monthly maximum retail price (MRP) for each pay channel and whether a channel is a free-to-air (FTA) or a pay channel. The MRP is uniform across all delivery platform operators;

■ Bouquets cannot have any FTA channels and shall not contain any pay channel with monthly MRP greater than ₹19. In addition, bouquets cannot have standard definition (SD) and high definition (HD) versions of the same channels;

■ All distribution platform operators (DPOs) have to provide a basic pack of 100 FTA channels for a maximum network capacity fee (monthly rental) of ₹130. Additional channels beyond this will be charged in slabs of 25 SD channels at a monthly rental of ₹20;

■ The carriage fee is capped at ₹0.20 and ₹0.40 per subscriber per channel per month for SD and HD channels, respectively. This reduces as the penetration of the channel increases in its relevant market.

> TRAI's Tariff Order to change the TV distribution industry structure from B2B to B2C will lead to greater transparency across the value chain and bring parity among all distribution platforms

The Tariff Order has, therefore, changed the structure of the broadcasting industry to B2C (sell *à la carte* to consumers directly) from B2B (sell a bouquet of channels to the DPOs). This will create a system that will lead to greater transparency among the broadcasters, the DPOs and the subscribers.

This system, in fact, provides the subscribers their right to choose channels. This is unlike the current scenario, where most of the deals between the broadcasters and the DPOs are on a fixed fee basis, leading to extra channels being pushed to the customers irrespective of their choice.

Furthermore, it is agnostic to the nature of delivery platforms, thereby bringing parity among the DPOs—both multi-system operators (MSOs) and direct-to-home (DTH) operators. The need for negotiations on content costs, which was earlier a norm for dealing with large broadcasters, thus goes away, leading to more transparent pricing. The ability of the broadcasters to preserve their profitability through strategic pricing of channels and the creation of a bouquet of channels, therefore, assumes greater significance. In addition, it will determine the incremental average revenue per user (ARPU) earned by a DPO (over and above the network capacity fee). Quality of service, distribution reach, packaging of add-on pay channels as well as value-add services will now become crucial differentiators among the DPOs.

While this is more time-consuming and may lead to challenges as the subscribers migrate from their current arrangements to the new ones, once the same is sorted out, the Tariff Order will be beneficial to the subscribers in terms of lowering the cost of viewership. However, as the subscribers opt on *à la carte* basis, new channels or the not so well-established ones may be the biggest losers, and it may lead to more consolidation in the industry.

'FREE' BANKING SERVICES

The chapter isn't entirely closed

Not resolving the issue of GST on 'free' banking services could lead to a substantial increase in the cost of banking services to customers

VIDUSHI GUPTA

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RECENTLY, 'FREE' SERVICES provided by banks have been under the tax scanner. According to reports, tax authorities have issued notices to banks demanding payment of tax on free services such as ATM withdrawals and issuance of chequebook to customers who maintain a minimum account balance. Tax authorities, reportedly, take the view that this minimum balance amounts to consideration in lieu of the aforementioned services. The services are, therefore, not 'free' and are leviable to tax.

Bankers have told *FE* ('More GST pain soon: Banks may tax ATM usage, issue of cheque books, additional credit cards'; *https://goo.gl/aYDk51*) that unless the issue is clarified and notices are retracted, banks are prepared to recover GST (goods and services tax) on such supplies from their customers. Against this backdrop, I analyse the GST law, with an aim to highlight the complexities of this claim.

The cryptic FAQs

Let us start with the frequently asked questions issued by the Central Board of Indirect Taxes and Customs (CBIC) that are said to have clarified the position under the GST regime and brought respite to banks and their customers.

The 32-page FAQs effectively reiterate that supplies made without consideration, between non-related parties, would not be taxed. I believe they are unhelpful for taxpayers and potential taxpayers as they leave crucial questions unanswered. Since notices allege that the services in question are supplies in exchange for consideration paid in the form of a minimum bank balance, the taxability of free services is not the dispute. Instead, the moot question is whether these services are free at all? Or does the maintenance of a minimum balance qualify as consideration? Perhaps the uncertainty would have been addressed if the CBIC had used the FAQs to clear the scope and meaning of the term 'consideration'.

Interpreting 'consideration'

Given the lack of jurisprudence on the issue, 'consideration' can be interpreted to offer strong arguments both for and against the levy of tax on these services.

Consideration is a mandatory prerequisite for charging GST on transactions between unrelated parties. The term has been defined as payment made 'in respect of, in response to, or for the inducement of supply' of services. In my view, the use of this phrase demonstrates the requirement of a nexus between the supply of service and the consideration.

Given that only the account holders who undertake to maintain a minimum account balance are eligible to the 'free' services in question, on one hand there is merit to the argument that the two are intrinsically-linked.

However, on the other hand, if banks are able to show that services such as issuance of chequebooks and ATM withdrawals remain uninterrupted—despite the customers' failure to maintain a minimum balance—a strong case could be made against the absence of a causal link between the service and the alleged consideration.

Further, to shed some light on the legislative intent behind the definition, a reference may be made to its proviso that excludes 'deposits made in respect of supply' from its scope. Typically, deposits are characterised as temporary in nature, where the amount in question changes hands without there being a sense of permanency to this exchange.

An analogy can be drawn between deposits and the minimum balance maintained by account holders. Similar to deposits, the amount maintained in bank accounts continues to belong to the account holder. Therefore, it could be argued that the legislature intended for consideration to be a permanent flow, in exchange for the supply, from one person to another.

On the contrary, going by a strict, literal interpretation of the proviso, an alternate interpretation is also possible. It seems that the exception allowed to deposits is specifically limited to those given in respect of a supply. Therefore, there may be merit in the contention that the legislature only intended to carve an exception for deposits made in addition to the primary consideration for a supply. In the case of 'free' services offered by banks, one could argue that in the absence of a main supply, the minimum balance maintained by account holders cannot be equated with deposits under the proviso to the definition of consideration.

Based on this analysis, I believe the provisions lead to a genuine concern for the industry and its customers. The issue has various layers of complexities and requires a clarification after a careful, detailed analysis. Given that both sides of the dispute have strong arguments in their favour, the government's failure to put to rest this issue could cause serious ramifications, including a long-drawn litigation and a substantial increase in the cost of banking services to customers.