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REVISED REGULATORY IMPACT ASSESSMENT (RIA) REPORT

TEA (TEA LEVY) REGULATIONS, 2024

FOR

THE TEA BOARD OF KENYA (TBK)

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AFA:	Agriculture and Food Authority
ARIPO:	African Regional Property Organization
ASTGS:	Agricultural Sector Transformation and Growth Strategy
AU:	African Union
BETA:	Bottom-Up Economic Transformation Agenda
CBA:	Cost-Benefit Analysis
CIDPs:	County Integrated Development Plans
COMESA:	Common Market for Eastern and Southern Africa
CS:	Cabinet Secretary
CTC:	Cut, Tear and Curl
CUF:	Common User Facility
EAC:	East African Community
EATTA:	East Africa Tea Trade Association
EPZ:	Export Processing Zone
ESG:	Environmental Social and Governance
FAO:	Food and Agriculture Organization
GAPs:	Good Agricultural Practices
GDP:	Gross Domestic Product
GoK:	Government of Kenya
ISU:	International System of Units
ITPAK:	Independent Tea Producers' Association of Kenya
JASSCOM:	Joint Agricultural Sector Consultation and Coordination Mechanism
KARLO:	Kenya Agriculture Livestock Research Organization
KCSAS:	Kenya Climate-Smart Agriculture Strategy
KEBS:	Kenya Bureau of Standards
KEPHIS:	Kenya Plant Health Inspectorate Service
KIPPRA:	Kenya Institute for Public Policy Research and Analysis

KTDA:	Kenya Tea Development Agency/Authority
KTGA:	Kenya Tea Growers Association
M& E:	Monitoring and Evaluation
MEL:	Monitoring, evaluation and Learning
MoALD:	Ministry of Agriculture and Livestock Development
MRL:	Maximum Residue Levels
MSMEs:	Micro, Small and Medium-sized Enterprises
MTP:	Medium Term Plan
NEMA:	National Environment Management Authority
NTZDC:	Nyayo Tea Zones Development Corporation
OECD:	Organization for Economic Cooperation and Development
P.A:	Per Annum
PCPB:	Pest Control Products Board
PFMA:	Public Finance Management Act
R&D:	Research and Development
RIA:	Regulatory Impact Assessment/Analysis
SCDA:	Special Crop Development Authority
SDA:	State Department for Agriculture
SDC:	State Department for Cooperatives
SDI:	State Department for Industry
SDIP:	State Department for Investments Promotion
SEZs:	Special Economic Zones
SMEs:	Small and Medium Enterprises
SWAG:	Sectoral Working Agriculture Groups
TBK:	Tea Board of Kenya
TF:	Tea Factory
TNT:	The National Treasury
TRF:	Tea Research Foundation
TRFK:	Tea Research Foundation of Kenya
TRI:	Tea Research Institute

TRIEA:	Tea Research Institute of East Africa
UAE:	United Arab Emirates
UK:	United Kingdom
UN:	United Nations
USA:	United States of America
WTO:	World Trade Organization

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EXECUTIVE SUMMARY

The Tea Board of Kenya (the "**TBK**" and "**the Board**" interchangeably) engaged the firm of Munyao, Muthama and Kashindi (MMK) Advocates to undertake a Regulatory Impact Assessment (RIA) of the Tea (Tea Levy) Regulations, 2024 to determine if the gains to be obtained from the regulations, would outweigh the costs imposed to the industry by the regulations as provided by sections 6 and 7 of the Statutory Instruments Act, 2013. The RIA sought to evaluate the impact and effects of the proposed regulations both on the public and private sectors to inform the choice of the most appropriate way to achieve the objectives of the proposed regulations by evaluating the major feasible alternatives of intended regulatory action and other practical non-regulatory options.

The RIA report provides a detailed appraisal of the potential impact of the proposed tea levy and includes a cost-benefit analysis. The proposed Regulations have been prepared in line with government guidelines, laws and regulations on the funding of regulatory bodies.

The approach to the assignment entailed a detailed desk review and synthesis of the Tea (Tea Levy) Regulations, 2024 against the Tea Act 2020, the Constitution of Kenya, 2010, Statutory Instruments Act, 2013 and other relevant laws and regulations. The Consultants also reviewed relevant literature including crops and agriculture policies, strategies and publications, Vision 2030, Tea value chain and economic analysis report and other key policy documents for qualitative analysis, quantitative analysis, comparative analysis, trend analysis of data from these documents, trend analysis of judicial decisions on regulatory impact assessment and public participation and national validation workshop to receive comments and validate the RIA report.

The RIA has examined the history of tea levy in the sector. It has stated the justifications for imposing a tea levy in the sector and analyzed the effects of the proposed levy on the private and public sectors. In addition, the RIA has examined the economic, social and environmental costs and benefits of the proposed levy and the viability of the alternative options. It has therefore concluded that if the proposed regulations are implemented, the levy will be used to grow and develop the sector through funding critical activities such as marketing and promotion, research, infrastructure development and supporting TBK to perform its regulatory function more effectively. These activities will enhance the competitiveness of Kenyan tea in the market and the sustainability of the tea sector.

The RIA recommends a further public participation phase before and during the national validation workshop to collect final public views and consider the comments on the proposed regulations before gazetting and implementing them in the country's tea industry.

INTRODUCTION AND BACKGROUND

1.1 Background Information

Tea plays an important role in Kenya's economy. It is among the leading foreign exchange earners for the country. It supports the livelihoods of over 7 million people directly and indirectly and accounts for about 2% of the Country's Gross Domestic Product (GDP). Tea cultivation, which is a rural-based economic activity, has led to the development of rural infrastructure such as roads, schools, telecommunication and other social amenities. Kenya produces an average of 500 million Kg of made tea annually, out of which 91% is exported and 9% is consumed in the local market.

The first tea plant was introduced into Kenya in 1903 in Limuru. Commercial cultivation of tea in Kenya began in 1924 and remained an exclusive preoccupation of the colonialists until 1956 when African growers were allowed to start planting tea. Tea is grown exclusively in the highlands of Kenya at altitudes of between 1500 meters to2300 meters above sea level. The tea sector has grown to produce the single largest export commodity and be a major foreign exchange earner for Kenya. The tea value chain is highly integrated both vertically and horizontally and has a wide range of processes and actors. The value chain actors include input suppliers, smallholder farmers, wage labourers, labour unions, transporters, factory processors, packers, brokers, traders, exporters and marketing agents, importers, regulators, standards organizations and consumers.

The tea industry makes an important contribution to the Kenyan economy. Tea is among the leading foreign exchange earners, contributing about 23% of total foreign exchange earnings. Over the last decade, tea production has grown at an average rate of 5% per annum from 432 million Kg to 570 million Kg. This is due to expansion in tea-planted areas, the introduction of high-yielding varieties, an improved Government fertilizer subsidy program and increased licensing of factory processing capacities. In the year 2023, total tea exports increased to 522.92 million Kgs from 450.33 million Kgs in 2022, earning the country Kshs. 180.57 billion up from 138.09 billion in the year 2022. The industry supports the livelihoods of about 834,000 smallholder tea farmers and about 6.5 million people directly and indirectly. (AFA - Tea Directorate, 2024; TBK, 2023)

The Kenyan tea industry is generally structured into two sub-sectors: the large estate and the smallholder sub-sectors. They are supported by institutions such as the Agriculture and Food Authority (AFA), which is a regulator, the East Africa Tea Trade Association (EATTA), which facilitates trade and the Tea Research Institute (KALRO-TRI), which provides research for development services (Figure 2). The small-holder tea sub-sector is managed by the Kenya Tea Development Agency (KTDA) while the large estates are private companies affiliated with the Kenya Tea Growers Association (KTGA). The Government established the Nyayo Tea Zones Development Corporation (NTZDC) to promote environmental conservation by planting tea around forests. All the major stakeholders in the tea value chain are actively involved in the formulation and implementation of regulatory and policy frameworks in the sector.

Kenyan tea is renowned worldwide for its quality and safety due to adherence to the industry standards; adherence to good agricultural practices (no pesticides or agrochemicals); good husbandry practices and selection of high-quality varieties. This is also attributed to skillful processing practices (no additives, preservatives or artificial colouring); continuous improvements due to investment in modern technology and Research and Development (R&D); commitment to Global and National Food Safety standards (ISO, HACCP, KS1927) as well as compliance with environmental and social market requirements (ETP, Fair Trade etc.). The tea is thus sought by many tea blenders and consumers worldwide (AFA - Tea Directorate, 2024).

Research in the tea industry has remained a critical area of focus to ensure continued development and competitiveness within the Kenyan tea industry. Tea research focuses on the development of improved cultivars, suitable technologies for the improvement of yield (quantity of green tea leaf/made tea per hectare) and quality of diversified tea products. The main research institution is the Tea Research Institute ("TRI" or the "Institute" interchangeably), which was established in July 2013 under the Kenya Agriculture Livestock Research Organisation (KALRO), taking over this mandate from its precursor, the Tea Research Foundation (TRF). Research in the tea sector takes place at all levels of the value chain. Tea research has recently been threatened by inadequate funding. For a while, 70 per cent of its operations were funded from the tea manufacturing levy and the Ad valorem levy, while the remaining 30 per cent was internally generated from research consultancies for tea estates, sale of seedlings and publications. However, the abolition of the tea levy in 2016, further constrained research and development activities in the tea sector (KIPPRA, 2017).

Despite its economic importance, tea remains one of the most taxed crops in the country. Up to 43 taxes are levied on tea from the point of production to the point of sale at the local shops (KTDA, 2023).

The remarkable growth of Kenya's tea industry has been attributed to the supportive role of TBK and the management of the smallholder sector by the KTDA. TBK is charged with facilitating research into all aspects of tea growing, manufacturing, and pest and disease control. It was funded through a tax (cess/levy) on tea based on the volume processed which was collected by the Board. TBK undertook research through the defunct Tea Research Institute of East Africa (TRIEA) and the Tea Research Foundation of Kenya (TRFK) and now through the TRI, which is TBK's technical arm, financed through the proceeds of the tea levy up to when the levy was scrapped by the Tea Taskforce in 2016. (STiR, 2018)

Tea is a rural-based enterprise which contributes directly to the objectives of the Agricultural Sector Transformation and Growth Strategy (ASTGS) 2019-2029 and the Government's Bottom-Up Economic Transformation Agenda (BETA) 2022-2027. It also supports the achievement of the Kenya Vision 2030 which is currently in the fourth Medium Term Plan (MTP IV: 2023-2027). Under the Government's BETA, tea has been identified as one of the crops to contribute towards growing agriculture sector exports and increased manufacturing under the Micro, Small and Medium-sized Enterprises (MSMEs) pillar. The industry will contribute to the achievement of the BETA goals through improved productivity, value addition, improved value-added exports of tea and foreign exchange earnings, agro-processing, job creation and income generation.

1.2 Regulatory Impact Assessment Process

Regulatory Impact Assessment (RIA) is a systemic approach to critically assess the positive and negative effects of proposed or existing regulatory and non-regulatory alternatives. It is an evidence-based approach to policymaking. RIA requirements apply to proposals for new and amending regulations and to policy proposals that may result in new or amended regulations (regulatory proposals). It is an instrument that authorizes the determination and consequences of introducing a new regulatory regime. The systematic use of RIA has been recognized as a key means to improve the efficiency, transparency and accountability of decision-making.

Over the last few decades, RIA has emerged as a key instrument to support evidence-based and coordinated policymaking. The systematic use of RIA is recognized as a key means to improve

the efficiency, transparency and accountability of decision-making. RIA typically also encourages several "good governance" features and contributes to a better business-enabling environment. Starting in the US and the UK in the 1980s, RIA gained popularity and traction in the second half of the 1990s. By 2015, all 34 members of the Organization for Economic Cooperation and Development (OECD) at the time reported to have "some form of RIA" in place.

RIA is a flexible tool that helps governments make better regulatory and other policy decisions based on information and empirical analysis about the potential consequences of government action. RIA aims to ensure that better policy options are chosen by establishing a systematic and consistent framework, including stakeholder consultation, for assessing the potential impacts of government action.

A systematic application of RIA, when embedded in the policy process, trains decision-makers to ask and answer targeted questions, at the beginning of the policy cycle, about the need for and goals of regulation, and the possible consequences of government action. The many methods used in RIA – including benefit-cost, cost-effectiveness, and least-cost tests, and partial tests such as administrative burden and small-business tests – are means of giving order to complex qualitative and quantitative information about the potential effects of regulatory measures.

The final products of this systematic process of analysis are self-contained documents called RIAs (or Regulatory Impact Statements, RISs). The RIAs deal with substantive policy issues, are read and utilized by decision-makers, and are normally available for public scrutiny and subject to evaluation, but increasingly so in parallel with the drafting phase) of an independent oversight authority. Although methodologies vary across countries, a number of key elements are common. A RIA normally includes:

i. Problem definition and justification for regulatory action;
ii. Data, on which the analysis is based;
iii. Results of the consultation with affected parties and stakeholders;
iv. Identification of a number of feasible policy options;
v. Estimation and comparison of the different (qualitative and quantitative) impacts of each policy option; and
vi. Selection of a preferred option accompanied by a prospective analysis of its implementation and, more recently, providing basis for ex-post review.

There is no single RIA model. The institutional set-up for RIA depends on legal, political, economic and social conditions. However, good practices have been identified internationally and there are converging patterns of how RIA is institutionalized. The institutional framework for RIA often includes legal provisions which embed RIA in the policy formulation process and stipulate criteria about its scope of applicability. A governmental body is often tasked with the oversight of the quality of RIA documents and the RIA process.

A Regulatory Impact Analysis (RIA) is a broad tool now used in most developed countries and an increasing number of developing and transition countries to improve the understanding of the economic and social welfare impacts of regulation. It is widely recognized as an important mechanism, which can contribute to improving the business environment, and to promote regulatory efficiency and effectiveness. RIA allows policy makers to assess trade-offs, consider new ways to regulate, and identify the most suitable alternatives to regulation. In essence, RIA is a method of systematically and consistently examining the positive and negative impacts arising

from proposed government actions and communicating the information to decision-makers and other stakeholders.

RIA is an important factor in designing good-quality law as it helps to provide valid arguments supporting a planned regulation. The process is designed to improve the quality of regulation by ensuring that the decision-maker is fully informed when making regulatory instruments. The RIA process is designed to encourage careful consideration, at an early stage, of the fundamental question of whether regulatory action is required or whether policy objectives can be achieved by alternate or non-regulatory measures, with lower costs for business and the community. RIA may sometimes indicate that non-legislative measures are the best solution to a particular social and economic problem. Thus, RIA helps to avoid the production of redundant laws and reduces the bureaucratic burden on enterprises.

Kenyan courts have made decisions to underscore the importance of RIA in the development of regulations. In ***Kenya Association of Manufacturers & 2 others v Cabinet Secretary, Ministry of Environment and Natural Resources & 3 Others [2017] eKLR***, the court demonstrated that it is strictly incumbent on a regulation-making body to assess the impact of the propsoed Regulations on the stakeholders and that failure to conduct it has the potential of rendering a statutory instrument null and void if challenged on that basis.

Accordingly, Kenyan courts have underscored the need to strictly comply with the Statutory Instruments Act. First, the courts have found that an RIA must begin with consulting stakeholders as that is the only sure way of determining the regulatory impact on the stakeholders, whether individual or juridical persons. Secondly, as was addressed in ***British American Tobacco Ltd v Cabinet Secretary for the Ministry of Health & 4 others [2015] eKLR***, the mode of consultations is key, but this depends on the circumstances of each case as was held in the case of ***Republic v MOALF & Others Exparte Council of Governors and Harrison Munyi (as the Chairman of the New National Farmers' Association) [2016] eKLR*.**

Regarding the process that the assessment ought to take, the court *in* ***Okiya Omtatah Okoiti v Commissioner General, Kenya Revenue Authority & 2 others [2017] eKLR*** posited the chronology of the procedure as follows; consultation of stakeholders; regulatory impact assessment; preparation of an explanatory memorandum and tabling of the statutory instrument in the relevant house and consideration of the same by Committee of Delegated legislation. This is in line with the requirements of the Statutory Instruments Act.

1.3 Objective of the Assignment

The general objective of the assignment is to conduct a regulatory impact assessment for the proposed Tea (Tea Levy) Regulations, 2024 and prepare a regulatory impact statement for the same in accordance with sections 6, 7, 8 and 9 of the Statutory Instruments Act, 2013.

The Consultant shall evaluate the effects of the proposed draft Tea (Tea Levy) Regulations, 2024 both on the public and the private sectors to inform the choice of the most appropriate way to achieve the objectives of the proposed Regulations by evaluating the major feasible alternatives of the intended regulatory action and other practical non-regulatory options. The assignment shall also examine the benefits to be obtained from the proposed Regulations as well as the costs of imposing the proposed Regulations on the industry players.

The specific objectives of the assignment are to:

i. Assess the costs and benefits of the Regulations which include and are not limited to economic, environmental, and social impact, as well as administrative and compliance costs.
ii. Assess the effects of the draft Regulations on the public and private sectors as well as the rights and fundamental freedoms of the industry players.
iii. Prepare a Regulatory Impact Statement of the draft Regulations.
iv. Prepare an Explanatory Memorandum for the draft Regulations.
v. Prepare a notice on the Regulatory Impact Statement which will be published in the Kenya Gazette and other daily newspapers; and
vi. Prepare a draft Certificate of Compliance in accordance with section 7(4) of the Statutory Instruments Act.

1.4 Project Deliverables

The assignment resulted in the following deliverables: -

i. Inception report.
ii. Regulatory Impact Statement for the Proposed Regulations that include but are not limited to economic, social and environmental impacts as well as administrative and compliance costs.
iii. Draft Regulatory Impact Assessment report for the proposed Regulations.
iv. Final Regulatory Impact Assessment report for the proposed Regulations.
v. Explanatory Memoranda for the proposed Regulations.
vi. Notices on the Regulatory Impact Statements for publication.
vii. Certificate of Compliance for the proposed Regulations; and
viii. Presentation of draft regulatory impact statement and draft regulations to the national validation workshop for further comments.

1.5 Methodology and Approach

The approach to the assignment entailed an inception meeting, detailed desk review and synthesis of the draft Tea (Tea Levy) Regulations, 2024 against the provisions of the Constitution of Kenya 2010, Tea Act, 2020 and other relevant laws and regulations. The Consultant also reviewed relevant literature including crops and agriculture policies, strategies and publications, Vision 2030, Tea value chain and economic analysis reports and other key policy documents for qualitative analysis, quantitative analysis, comparative analysis, trend analysis of data from these documents, trend analysis of judicial decisions on regulatory impact assessment and public participation to validate secondary data obtained from the documents. The Consultant validated stakeholders' engagement through public participation forums where views and comments were received from the key stakeholders and members of the public. The Consultant presented the draft Regulatory Impact Statement and draft Regulations to a national validation workshop organized by the Ministry to collect further comments from key stakeholders. The Consultant prepared and submitted a final report together with accompanying documents to the Board after incorporating useful comments from the workshop.

1.6 Objectives of the Regulations (Scope and Purpose of the Regulations)

The Purpose of the Tea (Tea Levy) Regulations, 2024 is to provide for the manner of levying and collection of the tea levy in line with powers given to the Cabinet Secretary under Section 53 of the Tea Act, 2020.

2.0 ASSESSMENT OF THE NATURE AND EXTENT OF THE PROBLEM

2.1 The Nature of the Problem

The remarkable growth of Kenya's tea industry has over time been attributed to the supportive Government policies formulated after independence that focused on integrating small-scale growers into the mainstream of tea growing. The Board has played a supportive role in increasing production and productivity, improving the quality of tea, market promotion, and welfare measures for plantation workers. The TRI on the other hand has supported R&D. KTDA has ensured the efficient organization and management of the smallholder sector. Other organizations such as ETTA and KTGA have promoted the contribution of the multinational sector and large-scale growers.

Tea from Kenya however still faces the problems of high production cost, low-value addition, price fluctuations and climate change, leading to low earnings by tea growers. Potential interventions to these challenges include product diversification, value addition and novel marketing strategies.

Tea production in Kenya has increased exponentially over the last 10 years. To absorb this increasing production, there is a need for increased markets and diversification of the traditional Kenyan tea markets. This will require significant investment in promotion, marketing, and product development of Kenyan tea to avoid holding large stocks of unsold tea, which will directly affect all industry actors and tea production in the future.

Previously, up to 2016, research funding was mainly from tea levy. This source of funding was able to meet 70% of the total research budgetary requirement, while 30% was from TRI's internally generated revenue. The funding of tea research has contributed significantly and positively to making the Kenyan tea sector a successful industry. Currently, funding for tea research is from the exchequer and internally generated revenue by TRI from its own tea estate, sale of planting materials, analytical services, and consultancies. Unlike before, this funding is grossly inadequate, leading to the reduction in research activities. Further, the provision of subsidised research products and services such as multiplication and supply of quality tea planting materials, quality monitoring, technical services and capacity building has also been significantly affected (Moald, 2024).

The TBK, through the TRI, notwithstanding funding constraints, also needs to develop technologies and innovations on food and non-food value-added tea products, building the capacity of youth and women to process novel products. It should also create linkages to promote tea marketing and export diversification. The TRI, which is the only Centre of Excellence in training in tea science in Africa, should spearhead research activities leading to enhanced value addition, tea product diversification technologies and innovations. It should also avail climate-resilient tea cultivars producing multiple novel tea products; advise on policies on standardizations and licensing, and provide surveillance of exported and imported tea products for maximum residue levels (MRLS). It should further advise on climate adaptation and mitigation strategies, carry out market and consumer surveys nationally and internationally, increase the number of tea technological cottage facilities, carry out market tests with pilot products and ensure capacity building of all tea stakeholders. This will ensure continued transformation and development of Kenya's tea industry and maintain its competitive edge in the world market (KALRO,2023)

Over the years, the Board and the TRI and its predecessors have been funded by the industry through a tax collected by the Board. The abolishing of the *Ad Valorem* levy in 2016 meant that tea research predominantly relied on the government for funding which has remained limited. The government's failure to fully implement the Maputo Declaration that obliged African governments to invest 10% of their annual national budgets in agricultural development means that there is little money to support tea research. This is a serious threat to the sector's competitiveness especially in the face of challenges such as declining productivity and climate change, and to support the development of value addition technologies. (Kamanga, 2023)

Whereas Kenya is known to produce high-quality tea free from pesticides and other harmful chemicals, there have been serious concerns about the declining quality of Kenyan tea which is a big threat to the preference of Kenyan tea in the global tea market. This declining quality trend is predominately attributed to reduced surveillance and monitoring of the industry for quality and standards at all levels. It also poses a threat to the long-held high-quality reputation of Kenyan tea.

The TBK provides various essential and critical services necessary for the well-functioning of the Kenyan tea industry with no direct charges to the industry players. Government funding to TBK, as well as to other regulatory agencies, to facilitate the provision of its services, has been on a decline. The Treasury has therefore directed that such agencies charge for the services they provide in their respective sectors to finance their operations. This situation has affected the ability of TBK to effectively provide these essential services to the tea sector, which directly threatens the performance and further development of the sector.

Tea in Kenya is predominantly produced in high-altitude areas characterised by high rainfall and often with poor infrastructure. Since the abolition of the Agricultural Produce cess in 2014, there has been no framework for funding to maintain infrastructure in the tea-producing areas. This resulted in challenges in the collection and transportation of green leaf to the factories and other industry operations, often resulting in loss of quality of tea and sometimes total loss of the tea.

The absence of a specific levy on tea imports into the country exposes local tea to competition from unbridled imports of cheap and low-quality tea, including imports from neighbouring tea-producing countries. This may threaten the desired development of the local tea market, which currently accounts for only 7% of the tea produced in Kenya, and may distort local market tea demand and prices.

From the foregoing, it is evident that additional reliable funding is needed to support the critical pillars of Kenya's tea industry: R&D across the entire tea value chain, market development, and effective sector regulation. This will ensure Kenya remains a key player in the world's tea industry, and the tea levy would be key in realising this objective.

2.2 The Extent of the Problem

The tea industry continues to face challenges in R&D, production, manufacturing and trade, both on the domestic and international front. Though the industry has done comparatively well over the years, the environment is fast changing due to factors like climate change, land subdivisions to uneconomical sizes, competition from emerging tea-producing countries and the emergence of tea hubs such as the Dubai Tea Trade Centre. It is necessary to adopt innovative approaches to ensure that Kenya continues to consolidate the competitive advantage so far achieved and to keep its position as a leading player in the rapidly transforming global tea industry.

The critical importance of the roles of the Tea Board and its technical arm, the TRI, in the realization of this objective cannot be over-emphasized.

Whereas tea production in Kenya has continued to increase in the last decade to reach over 570.26 million Kgs in 2023, there is a need to develop markets for this increasing production continuously. Kenya's tea industry also faces major problems in trade and marketing, to expand or maintain visibility and the country's share in the global tea market.

There is a limited product range, as Kenyan tea is mainly black CTC tea which is sold in bulk. This limits opportunities for value addition to Kenyan tea. There are other diversified tea products that if used, could fetch better returns. These products include purple tea, orthodox, Oolong, green tea, tea extracts, and white teas. Despite the potential for these specialty teas, there is still limited research and market intelligence on the products to match consumer tastes and preferences. About 99% of tea produced in Kenya and exported is black CTC whilst the country's production of specialty teas is in very small quantities.

The tea sector has limited value addition in tea due to factors such as limited research outputs on value-added products, tariff escalation in the destination markets, limited capacity for competitive packaging, difficulties in penetrating the retail sector in established markets, high cost of inputs and expensive packaging materials.

Despite being the leading exporter of tea in the world accounting for 25% of the Global tea export volume, Kenya's export earnings from tea are lower compared to its competitors such as Sri Lanka and China. For example, in 2022, Sri Lanka exported 247 million Kgs, which was 45% less in quantity terms than Kenya but recorded 5% more earnings at USD 1.245 Billion. Consequently, the average tea export price realized by Sri Lanka was higher at USD 5.04 per Kg compared to USD 2.60 for Kenyan tea exports- a price difference of USD 2.44 for export of every Kg by the two countries.

The precarious situation of the Kenyan tea industry export market is amplified when examined from the global lens of the tea industry. The Intergovernmental Group on Tea of the Food and Agriculture Organization (FAO) projects that by 2030, world black tea production will increase by 2.2 % annually against consumption growth of 1.8% per annum (p.a.) leaving a surplus of 0.07% leading to depressed prices. Over the same period, the world green tea output is projected to increase at a rate of 7.5 % annually with stable prices. These challenges, if not addressed, paint a gloomy picture of the future of the Kenyan tea industry. Therefore, to address the challenges facing the tea industry, it will be necessary to re-engineer the tea industry to focus more on product diversification and value addition while leveraging the crop's nutraceutical potential. Countries such as Sri Lanka, Japan and China have developed and are marketing a range of value-added tea products such as green tea, flavored tea, organic tea, instant tea, iced tea, ready-to-drink tea, tea fortified food products, tea liquors and wine, among many others. These interventions have led to an increased demand for high-quality and high-value teas with specific health benefits and new flavors, particularly in those countries (KARLO-TRI, 2022).

The Tea Industry Task Force Report 2016 also recommended expanding and developing the tea markets through a review of the tea value chain to maximize value for stakeholders. It further recommended that the Tea value chain be reviewed to determine the best way to establish value

for the various players, especially the tea farmers/producers, by making the industry more competitive, sustainable, and profitable (EATTA, 2018).

In recognition of these challenges, TBK has developed a concept note on a scheme to promote tea value addition. Through a proposed Common User Facility (CUF), tea value addition services and incentives will be accessible to multiple exporters at competitive rates provided under the framework of the Special Economic Zones (SEZs) in line with Vision 2030. This will promote diversification into orthodox tea manufacture and support increasing market access for tea value-added products by providing logistical and promotional support in new and emerging markets in Africa and the Middle East (TBK, 2023).

Further, Kenya's overreliance on few markets makes her prone to adverse impact in case of socio-political and economic turbulences in these markets. Kenyan tea also faces low market access for value-added products due to protectionist trade barriers in other markets and a lack of a visible brand identity. In 2023, the ten major export markets for Kenyan tea were Pakistan, Egypt, UK, UAE, Sudan, Russia, Yemen, Kazakhstan, Afghanistan and Poland which accounted for about 83.1 percent of the total export volume, while 16.9 percent was exported to 82 markets worldwide. Out of the 10 traditional markets, Kenyan tea has more dominance in six markets being Pakistan, Egypt, UK, Sudan, Yemen and Afghanistan.

The industry experiences cyclical price fluctuations due to demand and supply dynamics, as well as social, political and economic situations in these key markets. This creates anxiety in industry sustainability; and when there are price fluctuations, growers bear the negative impact.

Various market destinations for Kenyan tea have increasingly imposed different certification and quality standard requirements which impede access to certain niche markets and increase the cost of trade. There are also logistical challenges in accessing some markets. Other markets are not accessible due to tariff and non-tariff barriers. In addition, some of the teas imported into the country for blending purposes are of lesser quality and may not conform to international quality standards including MRLs. This may potentially lead to the contamination of the final blends which are exported as Kenyan tea.

While tea is a leading foreign exchange earner and the major single export commodity for the country, there is still insufficient resource support in the promotion of tea exports in international markets. (MoALF, 2023)

Just as for tea research, there is a need for further investment in Kenya's tea trading and marketing to not only sustain the current markets but also diversify in markets and products. The tea industry which stands to gain from such developments needs to support such investments in industry levies such as the proposed tea levy. (Kamanga, 2023)

Research in tea remains a critical concern for the continued development of the tea sector in the country in the face of certain challenges. These include the emerging effects of climate change and fast-evolving demographic changes with changing tastes and preferences. Thus, research into new tea products, production techniques, and alternative uses of tea and its derivatives will necessitate.

The tea research agenda in Kenya had, until June 2016, been receiving support directly from the tea industry, to meet TBK's mandates and be responsive to its stakeholders' research needs. Tea Cess mainly funded the former TRFK (currently TRI) operations before April 2012. The cess was collected by the then TBK (which later became AFA - Tea Directorate and presently reformed into TBK under the Tea Act 2020) based on the quantity of green leaf produced and the portion due to TRI remitted monthly. With the enactment of the Tea Act of 2011 and the regulations thereof, the funding regime changed from Tea cess to Tea *Ad valorem* Levy. TBK collected a Tea *Ad valorem* Levy of 1% of tea sales of which 40% was remitted to TRI monthly. Consequently, TRI started receiving *Ad valorem* Levy funds in April 2012. This was received until the revocation of regulations on 24th June 2016. Before its revocation in 2016, the industry managed to acquire modern equipment for research to address the prevailing challenges in the tea industry.

Since the revocation of levy, the Institute has been relying on internally generated revenue from the sale of green leaf, planting materials and publications, analytical services, and conducting trainings and consultancies. This constitutes about 27% of the Institute's annual budget and supports KALRO headquarters through salary transfers. Currently, nearly all research operations have stalled, except a few that are funded by agrochemical companies testing their products as well as externally funded postgraduate studies. The effort by the Government of Kenya (GoK) to comprehensively reform the tea industry through the enacted Tea Act 2020, through which TRI is expected to receive 20% of the levy is yet to be operationalized (KARLO, 2022).

As indicated above, the TBK continues to provide different services necessary in Kenyan tea with no direct charges to the industry players. Government funding TBK to facilitate the provision of these services has been on a decline. For instance, in the 2022/23 financial year, the Board received a total revenue of Kshs. 324.3 million from Government grants and internally generated resources. From this revenue, the Board applied Kshs. 385.6 million in its programmes thus having a deficit of Kshs. 61.3 million. This situation will affect the ability of TBK to effectively provide these essential services to the tea sector which directly threatens the performance and further development of the sector (TBK, 2023).

2.3 Justification for the Levy

Tea Act, 2020 (the Act) proposed the establishment of a Tea Levy be imposed by the Board at a rate of one percent of the auction value for teas sold through the auction and at a rate of one hundred percent of the value of the imported teas. The Act provides for a levy of 100% of the import value for all imported tea to control the importation of tea into the country. This will deter the unbridled importation of cheap but low-quality teas to compete with local tea and thus protect the local tea industry from distortions of local tea market demand and prices.

The Act specifies that the levy would be utilized as follows: fifty percent be applied by the Board for income or price stabilization for tea growers; the Board apply fifteen percent in the furtherance or exercise of any function or power of the Board; twenty percent shall be remitted directly to the Tea Research Foundation/Institute; the and fifteen percent shall be applied for infrastructure development in the tea sector on a pro-rata basis. Currently, regulation, development, promotion, research and infrastructure in the tea industry is grossly underfunded therefore necessitating the establishment of a sustainable funding mechanism for the industry that will be ploughed back into the sector. to support programmes geared towards regulating, developing, marketing and

promoting the tea industry. The funds will also go towards research and infrastructure to enhance its competitiveness and ensure its sustainability.

The tea industry in Kenya is an important contributor to the nation's economy. Tea exports contributed approximately 33% ($34.98 billion) to Kenya’s 2021 GDP, $106.04 billion. Tea, coffee, and spices accounted for almost a quarter ($160.5 billion) of Kenya’s total 2020 exports. Kenya is the third-largest exporter of tea globally, after China and Sri Lanka, and the largest exporter of black tea. Tea therefore contributes immensely to the socio-economic development of the country. It is not only the leading foreign exchange earner, amounting to 21% of the total foreign exchange earnings, but also contributes 2% of the GDP. It also supports 6.5 million Kenyans and contributes to rural development.

Most of the tea produced in Kenya supplies the international market. Kenyan tea was imported by 50 nations in 2020, a 16.28% increase from the 43 countries which imported Kenyan tea. (Bailey, 2023). Tea production in the country has increased exponentially in the last 10 years, to over 570.26 million Kgs in 2023. This growth necessitated the need for increased markets for Kenyan tea to absorb the increasing production. (TBK. 2023) Enhanced marketing and promotional activities require a sizeable budget which the levy will support to expand the international market for tea exporters.

Past tea industry task force reports (2007, 2014) have cited the overreliance on a few export markets and the export of mainly black tea as big threats to the future of Kenya’s tea industry. Over 75 percent of Kenya’s tea exports are destined for only five countries being Pakistan, Egypt, United Kingdom (UK), UAE and Yemen while the balance is shared among the other 87 countries. This situation poses an economic threat in that if any of the five countries were to discontinue the purchase of Kenyan tea for any reason, the country may be left holding large stocks of unsold tea. The TBK needs good funding to be visible in international beverage trade fairs as well as explore opportunities for joint ventures and bilateral trade arrangements to ring-fence the existing markets, explore alternative markets and increase Kenyan tea exports. Similarly, there is an urgent need to reduce overdependence on raw/black tea exports. Past taskforce reports have also recommended that producers diversify into high-value specialty teas aside from the traditional Cut, Tear and Curl (CTC) teas that are popular in markets like Russia, United Arab Emirates (UAE), United States of America (USA), Germany and Iran. This will further develop diversified markets for Kenyan tea which necessitates increased investment in tea and tea products, and technologies research (Kamanga, 2023). The enhanced marketing and promotion activities will require significant resources and can only be sustainably supported by levying tea exports and imports.

TBK also facilitates research into all aspects of tea growing, manufacturing, and pest and disease control. Tea Research has long been funded through a tax (cess/levy) on tea based on the volume processed collected by the Board. TBK undertook research through the defunct TRIEA and TRFK and now through the TRI which is TBK’s technical arm. The Board and the Research Institute were financed through the proceeds of the tea levy up to the abolition of this levy in 2016. Enhancing tea research is critical for the continued development of the tea sector especially because of climate change which necessitates enhanced research in drought and pest resilient tea varieties. Changing demographics, tastes and preferences in the tea market demand further aggressive research in new tea products, production techniques and alternative usage of tea and its derivatives. (TBK, 2023)

The Taskforce on the Tea Industry, in its report of April 2016, noted that many stakeholders raised serious concerns on the issue of taxes, levies and charges in the tea industry which was consistent with tea industry task force reports of 2007 and 2014. The report further noted that stakeholders believed that the *Ad Valorem* levy, which was being charged at 1% customs value, with 40% being applied for research, 10% for infrastructure and 50% to the Board/Tea Directorate, was unfavourable to Kenyan tea competitiveness. The stakeholders however acknowledged the importance of the levy in the development of the tea industry in Kenya and recommended that the levy be renamed Tea levy. They further recommended that the levy be reduced from 1% to 0.75% custom value and the levy be deployed at 50% to the Board and 50% as a direct subsidy for fertilizer to alleviate the cost of production and price while leaving the funding of research to the Government. (MoALF, 2016). However, this Government funding has been inadequate to support ongoing research and development initiatives in the tea sector which require substantial investment in research. They can only be sustainably financed by industry which will benefit from the technologies developed through levy.

For many years, Kenya has prided itself on producing high-quality teas free from pesticides and chemicals. However, serious concerns have recently emerged about the declining quality of Kenyan tea, increasing the need for enhanced monitoring and surveillance on leaf quality, transportation, manufacturing, and handling standards to reverse this trend. This will require additional resources for TBK to effectively execute these services in the Board's mandate to ensure Kenya's tea maintains its recognition as the world's leading quality tea.

The remarkable growth of Kenya's tea industry as stated above has been attributed to the supportive role, effective coordination, research and regulation of the tea industry by TBK over the years. There is a need for continued adequate financing of regulation of the tea sector. Before the establishment of the *Ad Valorem* levy in 2012, TBK was being funded by a Manufacturing cess which was being levied at the rate of 0.46 cents of made tea. From 2012 to 2016, the TBK charged an *Ad Valorem* levy at the rate of 1% of the customs value of all teas exported to fund regulation, research and infrastructure in the tea industry. The termination of this levy in 2016 left the Board with a financing gap to effectively continue executing its mandate. There is also a need to reverse the decision to terminate this levy or to identify alternative sources of funding to support effective regulation of the sector. This will control the increasing unethical practices in the tea industry, including tea hawking and other practices that threaten the long-held reputation of the quality of Kenyan tea.

Since the abolishment of the Agricultural produce cess in 2014, there has been no framework for funding infrastructure in the tea sector. A levy that will be ploughed back into the tea industry's development to provide finances for maintaining infrastructure in tea-growing areas is needed. The Board may seek alternative sources to fund the development and maintenance of infrastructure in tea-growing zones to enhance efficiency and reduce losses in industry operations.

TBK currently provides critical services to the industry including clearance of tea exports and imports, monitoring compliance with laws, regulations and standards, inspections of tea factories and other tea industry stakeholders, and surveillance and promotion of Kenyan tea at no charges. The National Treasury has, over time, significantly scaled down the financing of regulatory institutions like TBK and directed such institutions to charge for services offered to finance their budgets. This situation has left the Board with budget deficits, and this affects the provision of essential services to the tea industry by the Board (TBK, 2024). The proposed tea levy can be

deployed to fund these services offered by the Board or the circumstances will require the Board to identify alternative sources of funds for this purpose.

The proposed levy on tea imports of 100% of the import value is crucial in controlling the importation of tea into the country. This will deter the unbridled importation of cheap and low-quality teas into the county and protect the local tea production.

Within the agricultural sector space in Kenya, the framework regulating the nuts and oil, and sugar sectors requires the imposition of a levy to fund the operations of the regulatory bodies. For instance, under the repealed Sugar Act of 2001 and the Sugar Cane Development Levy) Order of 2006, a levy of 7% was imposed on the gross amount payable for sugar cane delivered to mills which was known as the Sugar Development Levy. This levy was collected by millers as the agents of the board. The levy was used to support sector needs. In 2007, the Sugar (Imposition of Levy) Order expanded this to a 7% levy on both locally produced and imported sugar. Despite its initial success, the sugar development levy was abolished in 2016 due to mismanagement issues.

Currently, there is a Sugar Bill 2022 that is pending before the National Assembly which proposes to reintroduce a revised levy structure of 4% on domestic and 4% of the CIF value on imported sugar. The proposed apportionment of the levy is as below:

i. 15% for factory development t and rehabilitation
ii. 15% for research and training (allocated to the Kenya Sugar Research and Training Institute) – proposed by the Senate
iii. 40% for cane development and productivity enhancement
iv. 15% for infrastructural development and maintenance and shall be managed by the Kenya Rural Roads Authority of the catchment area of county roads and shall be allocated to county governments as a conditional grant on a pro-rata basis.
v. 10% for administration of the board
vi. 5% for furtherance and exercise of the functions of sugarcane farmers' organizations.

This apportionment reflects an attempt to address past management issues and revitalize the sugar sector.

Similarly, the nuts and oils sector operates under the Crops Act of 2013. The Crops (Nuts and Oil Crops) Regulations, 2020 impose a nuts and oils levy charged on each consignment. The imposed levies are:

i. export levies of 2% per FOB unit for raw products and 0.25% of FOB value for finished products
ii. import levies set at 4% for finished products and 2% for raw materials.

Other tea-producing countries such as Malawi, India and Sri Lanka charge a levy in the tea sector. For instance, in India, the levy is imposed at the rate of 25 paisa per kg of green leaf purchased by Bought Leaf Factories and estate factories while in Sri Lanka the levy is at three rupees and fifty cents per kg on every tea exporter. The levy collected is used to support activities in the sector such as improving production, research, marketing, promotion and overall development of the sector. In 2021, the Technical Working Committee on the design, development and implementation of the tea industry price stabilization framework carried out an intense review of the tea sector in Kenya. Among its recommendations was the need to emulate other countries'

initiatives on levy such as India and Sri Lanka to increase the value-addition of teas exported. (TBK, 2021)

The public finance management framework provides safeguards to ensure the levy collected is used in a transparent and accountable manner.

Overall, the levy will be important in supporting the further development of Kenya's tea industry and enhancing its competitiveness in the global tea market and sustainability of the sector.

2.4 Regulatory Context

Tea levy development trends in Kenya have been built within the development of the tea sector in Kenya. The first legal instrument to govern the production of tea in Kenya was enacted as the Tea Ordinance, 1934 (No. 46 of 1934). This Ordinance was revised by the Tea Ordinance, 1948 (No. 52 of 1948) which became effective on 15th August 1948. The objectives of the Tea Ordinance, 1948 were to provide for the control of the production of tea in the Colony. The institution of the Directorate of Agriculture was responsible for controlling the production of tea by issuing licenses and permits to farmers until 1950 when the TBK was established under the Tea Act (Cap 343) to regulate the industry.

Smallholder tea cultivation commenced under the Swynnerton Plan in 1954, with the first smallholder tea factory established in Ragati, Nyeri County, in 1957. In 1960, the Special Crop Development Authority (SCDA) was established to regulate the production of selected crops.

In 1964, SCDA was replaced by the establishment of the KTDA under the Agriculture Act (Cap 318) Section 91, Legal Notice No. 42. KTDA took over the management of smallholder tea from multinational tea companies. In 1999, the Government launched Sessional Paper No. 2 on the Privatization and Restructuring of the tea industry which brought major changes in the reforms of TBK and Privatization of KTDA which was then transformed into Kenya Tea Development Agency Ltd. As a result, the tea industry enhanced processing capacity with smallholder tea factories increasing from 45 in 1999 to 71 by 2023. There has been improved management of tea factories due to enhanced corporate governance and modalities to strengthen TBK to enable it to undertake its mandated role as the main regulatory body.

The privatization of the Kenya Tea Development Authority (KTDA) through the formation of Kenya Tea Development Agency Ltd (KTDA) in 2000 under the Companies Act (CAP 486) was also meant to achieve improvement in the management of the tea factories. This would be by allowing farmers to play a rightful role in decision-making and attaining adequate processing capacity to bridge the gap between takings of the smallholder and large estates at the farm level. In 2009, Kenya Tea Development Agency Ltd changed its name to Kenya Tea Development Agency (KTDA) Holdings Ltd.

Further reforms were instituted through the implementation of Task Force Report of 2007, for the TBK to be responsive to the needs of the Kenyan tea industry's stakeholders. It would also assist in overcoming the global challenge of climate change and increase the low returns from Kenya's popular and most consumed product of black CTC tea. This resulted in the amendment of the Tea Act in 2011 and the regulations thereof, which changed the funding for tea industry regulation, promotion, infrastructural development and research from Tea cess to Tea *Ad-valorem* Levy.

Before its revocation in 2016, the industry managed to acquire modern equipment for research to address the prevailing challenges in the tea industry.

In 2013, following agriculture sector legislative reforms which sought to harmonize numerous statutes governing agriculture, the Tea Act (CAP 343) was repealed, and the Agriculture and Food Authority (AFA) Act and Crops Act were enacted. Further, the KALRO Act was enacted to consolidate the former agricultural research institutions which included the TRI. This led to dissatisfaction among industry stakeholders regarding service delivery; inadequate regulation leading to poor compliance and conflicting roles between the AFA and the County Governments.

In 2014, the AFA was established under Section 3 of the AFA Act following the operationalization of the Crops Act 2013 which repealed the legislation establishing the TBK amongst other agricultural commodity state corporations.

In its 2016 report, the Presidential Task Force on Tea recommended scrapping the tea levy. This position denied the Board and, by extension, the TRI the much-needed resources to support the further development of the tea industry in Kenya.

Following the recommendation of the 2016 Taskforce report, the Government has been providing subsidised fertiliser to smallholder tea farmers on an annual basis to address the issue of low productivity and high fertiliser costs. This has improved the quantity of Greenleaf deliveries to the factories and assisted the smallholder tea farmers in raising their income from tea farming.

The Tea Act, 2020 was assented to on 23rd December 2020 and came into force on 11th January 2021, re-establishing the TBK with a mandate, among other duties, to monitor and license agencies involved in the buying and selling of tea (Moald, 2024).

The Tea Act, 2020 re-established the TBK as a body corporate responsible for the regulation, promotion and development of the tea industry. Reforms in the Tea Act, 2020 have generated a positive impact on the tea industry such as reversing the worrying decline in earnings, which had threatened the livelihoods of many tea farmers. In addition, the Tea Act, 2020 has inculcated good corporate governance practices in the management of tea industry institutions and reduced conflict of interest among the tea industry players. TBK has promoted accountability in the tea sector by promptly paying tea farmers and by giving them more power in the running of the tea factories (MoALD, 2024).

Section 5 of the Act provides for the Board's functions. These include developing, promoting, and regulating the tea industry; regulating the sale, import, and export of tea; and advising both the national and county governments on levies, fees, and import or export duties on tea.

The Act also empowers the Cabinet Secretary responsible for agriculture under section 53 (1) to impose a levy on tea exports and imports known as the tea levy. The levy shall be imposed by the Board at a rate of one percent of the auction value for teas sold through the auction. The levy on tea imports shall be charged at a rate of one hundred percent of the value of the imported teas.

Section 54 (5) of the Act further provides for the levy collected to be deployed to support research and administration in the tea industry and to be divided as follows:

- fifty percent shall be applied by the Board for income or price stabilization for tea growers.
- fifteen percent shall be applied by the Board in the furtherance or exercise of any function or power of the Board.
- twenty percent shall be remitted directly to the Tea Research Foundation; and
- fifteen percent shall be applied for infrastructure development in the tea sector on a pro-rata basis.

The Parliament, through a private member's motion in 2018, had approved the re-introduction of the tea levy to re-invigorate the development of the declining tea industry in Kenya despite opposition from some tea industry actors including producers and the EATTA. (Kamanga, 2023)

In addition, several counties have developed county tea Bills/Acts specific to their counties. For instance, in Mombasa County, a tea cess – local tax – was introduced in 2014 by the Mombasa County Government. It was, however, suspended in 2015 following a successful lawsuit. The decision was then reversed and the cess re-imposed. Within weeks, the county reached an agreement with a regional tea association to scrap it for goods entering the Mombasa port city. A similar deal was made with EATTA. In early 2018, the cess was back. (STiR 2018)

The proposed Tea (Tea Levy) Regulations, 2024 seek to operationalize the re-introduction of the tea levy in Kenya.

2.5 Current Policy and Legal Status

The tea industry plays an important role in the social-economic development of the Country. It is among the leading foreign exchange earners for the country and a source of regular income for over 600,000 tea growers. It directly and indirectly creates employment for over 6.5 million people along its value chain. The Tea Act, 2020 is the primary legislation guiding the regulation, promotion and development of the tea industry. There are, however, numerous other legislations and policies in the agricultural sector and in other related sectors that directly or indirectly affect the regulation, promotion and development of the tea industry. These include:

Kenya Constitution 2010: The Constitution of Kenya 2010 is the supreme law of the Land. It provides for national values and principles of good governance and the participation of the people of Kenya. Article 10 provides for the participation of the people in the enactment of any law. The national values and principles bind all state organs, state officers, public officers, and all persons whenever they, inter alia, apply the Constitution and enact any law.

Article 201 of the Constitution of Kenya provides for the principles of public finance, providing that a public finance system shall promote an equitable society, and in particular, the burden of taxation shall be shared fairly among others, and that public money shall be used prudently and responsibly. The levy is public money as defined under section 2 of the Public Finance Management Act (PFMA). Consequently, the Board should manage the levy prudently and responsibly. Further, the levy is a tax on the import and export of tea and the rate imposed should be fair to the traders, considering the effects the levy would have on the trade of tea.

Article 210 (1) provides for the imposition of any tax or fee. It states that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Section 53 of the Tea Act allows the Cabinet Secretary (CS) of the Ministry of Agriculture and Livestock Development (MoALD) to impose tea levy.

Tea Act No. 23 of 2020: This is the parent Act with the mandate of the regulation, development and promotion of the tea industry. Under section 2 of this Act, the term levy is defined as a levy that is imposed by the CS on tea exports and imports in accordance with Section 53 of the Act. Section 53 of the Act mandates the CS, by notice in the Gazette, to impose a fee on tea exports and imports known as the tea levy. The Board shall collect the levy at a rate not exceeding 1% of the auction value for teas sold through the auction at such times, not earlier than one after the date of publication of the notice, and in such manner as specified in the notice. The levy on tea imports will be charged at 100% of the value of the imported teas. The levy shall be levied and collected in the manner prescribed by the CS in regulations.

The tea levy collected shall be apportioned as follows: 50% shall be applied by the TBK for income or price stabilization for tea growers; 15% shall be applied by the Board in furtherance or exercise of any function or power of the Board; 20% shall be remitted directly to the TRF; and 15% shall be applied for infrastructure development in the tea sector on a pro-rata basis. Additionally, failing to pay the levy is an offence.

The Act further establishes a Tea Fund under section 54. The Fund shall consist of monies from the tea levy, appropriated by the National Assembly, a source approved by the Board and grants and donations made to the Board.

Crops Act No. 16 of 2013: It is the principal legislation in the agricultural sector and was enacted to accelerate the growth and development of agriculture in general, enhance the productivity and incomes of farmers and the rural population, improve the investment climate and efficiency of agribusiness and develop crops as export crops that will augment the foreign exchange earnings of the country, through the promotion of the production, processing, marketing, and distribution of crops in suitable areas of the country.

Section 32 of the Act deals with the powers to impose a levy where it is the CS who can impose a levy with the approval of Parliament by a Gazette notice. The rates for the tea levy that were in place before the Act's implementation will remain in effect until the CS specifies otherwise. Any person who fails to pay a levy charged under this section shall have committed an offence. The draft Tea (Tea Levy) Regulations under Regulation 5 propose for the levy on imports and exports to be as provided in sections 53(2) and (3) of the Tea Act, 2020

Public Finance Management Act (PFMA) No. 18 of 2012: It is an Act of Parliament to ensure that public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution. The regulations established for a levy to be charged in tea export and import. The Tea Board of Kenya provided under regulation 2 of the draft Tea (Tea Levy) Regulations, is a national government entity within the definition under sections 2 of the Public Finance Management Act and section 4 of the Act. The Tea Board of Kenya will collect the tea levy on behalf of the national government. Based on the nature of the Regulations, that is the imposition of a levy, the Regulations require approval by the National Treasury before being published by the Office of the Attorney General. The Solicitor General, vide letter dated 4th June 2024, advised the Principal Secretary of the State Department for Agriculture to submit the revised Regulations to the National Treasury for their approval and guidance beforehand. Regulation 8 of the draft Tea (Tea Levy) Regulations mandates the TBK as the

collector of the levy. Consequently, certain provisions of the PFMA would apply to the draft Regulations.

The Public Finance Management (National Government) Regulations No. 34 of 2015: It ensures accountability, transparency and the effective, economic and efficient collection and utilization of public resources. The levy collected by the TBK falls within the meaning of public money under regulation 2 of the Public Finance Management (National Government) Regulations which refers to section 2 of the PFMA. Regulation 10 of the Public Finance Management (National Government) Regulations defines a government-owned enterprise as an organization which is financed wholly or substantially from sources that do not require annual appropriation by the National Assembly, or imposition of a tax, levy or another charge under the legislation. By virtue of the imposition of the Tea Levy, TBK is a government-owned entity. Regulation 66(2) of these Regulations requires the levy rate to be approved by the Treasury. This is complied with under section 53(4) of the Tea Act. This has not been provided for in the draft Tea (Tea Levy) Regulations. Regulation 207 of these Regulations provides for the establishment of a public fund. Section 54 of the Tea Act establishes a Fund managed by the Board that would consist of, among other things, money from the tea levy.

Trade Description Act (Cap 505) is an Act of Parliament to prohibit mis-descriptions of goods, services, accommodation and facilities provided during trade, prohibit false or misleading indications as to the price of goods and confer powers to require information or instructions relating to goods to be marked on or to accompany the goods or to be included in advertisements.

Weights and Measures Act (Cap 513) is an Act of Parliament to amend and consolidate the law relating to the use, manufacture and sale of weights and measures and to provide for the introduction of the International System of Units (ISU). This Act would apply to agriculture produce trading regarding their correct weights and labeling for efficient marketing.

Standards Act (Cap 496) – An Act of Parliament to promote the standardization of the specification of commodities, and to provide for the standardization of commodities and codes of practice; to establish a Kenya Bureau of Standards, to define its functions and provide for its management and control; and for matters incidental to, and connected with, the foregoing.

Pest Control Products Act Cap 346 of 1982 is an Act of Parliament to regulate the importation, exportation, manufacture, distribution and use of products used for the control of pests and of the organic function of plants and animals and for connected purposes.

County Governments Act No. 17 of 2012: The various County Integrated Development Plans (CIDPs) and country-specific legislation, policies and strategies: Individual County governments have developed different pieces of county-specific legislation, policies and strategies for the development of agricultural production and marketing in the individual counties. These instruments will affect the tea industry differently in the individual counties.

The Kenya Agricultural and Livestock Research Act, 2013 No. 17 of 2013 This is an Act of Parliament to provide for the establishment and functions of the Kenya Agricultural and Livestock

Research Organization; to provide for organs of the Organization; to provide for the coordination of agricultural research activities in Kenya, and for connected purposes.

Agriculture Sector Transformation and Growth Strategy (ASTGS), 2019 -2029: The central theme of the ASTGS (2019–2029) is food and nutrition security. The ASTGS seeks to improve food and nutrition security by transforming Kenya's agriculture sector into one that is vibrant, commercially oriented, and modern and has three anchors: increasing incomes of small-scale farmers, pastoralists, and fisherfolk; increasing agricultural output and value-added; and increasing household food resilience. The ASTGS identified 13 value chains with the highest potential for transformation that will be at the center of its identified nine implementation flagships. These value chains include crops such as potatoes, staples such as maize rice, and beans; fruits and vegetables; beef, poultry, sheep/goats, dairy, and camels among livestock; and fish. The ASTGS's inclusion of tea among its priority value chains indicates the critical role this crop has and the importance of the proper functioning of the tea industry in the agricultural development and transformation of the country. It notes that tea is one of Kenya's highest export earners making up to 60% of Kenya's crop production. The Strategy also recognizes that Kenya can adopt some strategies such as the "Buy Kenya" campaign and Small and Medium Enterprises (SMEs) knowledge and skills building. This can extend to branded tea in high tea-growing regions.

Kenya Vision 2030; Through its 5-year Medium Term Plans, this is a nationwide multi-sectorial national strategy that outlines the main policies, legal and institutional reforms as well as programs and projects that the Government plans to implement during the period 2008-2030 which aims to transform Kenya into a newly industrializing, middle-income country providing a high-quality life to all its citizens through three pillars: economic, social and political.

Agricultural Policy 2021: It was formulated in line with the relevant provisions of the Constitution and provides a clear roadmap to the realization of Vision 2030 agricultural goals and targets. It identifies current challenges in the agricultural sector and outlines suitable guidelines to address them. The Policy recognizes tea as a leading foreign exchange earner and its export value was Kshs. 104.1 billion in 2019, Kshs. 134.8 billion in 2018 and Kshs. 134.8 billion in 2017. It remained one of the key agricultural items in domestic exports in 2019. However, the value of tea exports declined by 18.2 per cent from Kshs. 138.8 billion in 2018 to Kshs. 113.6 billion in 2019.

Kenya Climate-Smart Agriculture Strategy 2017 – 2026: It is keen on addressing the gaps in policy implementation and actualization of policies. The broad objective of the Kenya Climate-Smart Agriculture Strategy (KCSAS) is to adapt to climate change and build resilience of agricultural systems while minimizing emissions for enhanced food and nutritional security and improved livelihoods. It recognizes the national issues on climate change and agriculture such as a temperature rise of 2° would lead to large areas of Kenya currently suited to growing tea becoming unsuitable. This would have an enormous impact on the tea industry which directly and indirectly employs three million Kenyans or about 8% of the population.

International and regional conventions and agreements: Kenya is also a signatory of various international policies that are employed by the international community to regulate trading or to reduce the volatility of different product markets. These include trade agreements, international arrangements or controls or limitations on activities on commodities markets, and regional and

bilateral policies that are employed by governments to regulate trade. These policies, among other things, may include export bans, variable export taxes or import tariffs. These regional and global policies, protocols and treaties including the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), African Union (AU), African Regional Property Organization (ARIPO), United Nations (UN) and the World Trade Organization (WTO) Agreement affect the performance of agriculture in the country through specific international requirements for trade, market access among others. The tea levy is imposed on both the importation and exportation of tea. This will have an impact on international trade in tea and will be subject to these trade agreements, international arrangements, regional and bilateral policies protocols and treaties.

Bottom-Up Economic Transformation Agenda (BETA): The Bottom-Up Economic Transformation Plan 2022-2027 is the manifesto of the Kenya Kwanza administration that will be implemented over the next five years. The agenda is built on five main pillars, the key pillars being economic diversification, industrialization and value addition. One of the major crop value chains is the tea value chain. The Plan recognizes the need to mobilize tea farmers into cooperatives, establish incubation centers for specialty tea diversification, develop export markets and products as well as implement a global marketing strategy among others. It also includes an implementation matrix with an indicative budget and department responsible. Some include the State Department for Cooperatives (SDC), State Department for Industry (SDI), State Department for Investments Promotion (SDIP), State Department for Agriculture (SDA), TBK, The National Treasury (TNT), KTDA, Independent Tea Factories, East Africa Tea Trade Association (EATTA) etc.

Government Circulars: Circulars from the National Treasury guide national government entities like TBK Board on issues such as fiscal consolidation and financial management. The National Treasury Circular No. 11 of 2022 under paragraph 8 acknowledges the challenge of shrinking national resources and economic shocks on the performance of state corporations. To mitigate these, the National Treasury mandated state corporations to prepare and implement measures that will allow for diversification and increase internally generated revenue. Further, the National Treasury Circular No. Circular No. 13 of 2023 under paragraph 8 requires state corporations to develop and implement measures that will enhance diversification and increase internally generated revenues. The rate of the levy imposed under regulation 5 of these draft Regulations would support the Tea Board of Kenya in complying with the directions from the National Treasury. The levy imposed is therefore required to enhance service delivery by the Board to its stakeholders. The Board performs important services such as marketing and promotion of Kenyan tea outside Kenya and such would require a sizeable budget.

3.0 EFFECTS OF PROPOSED REGULATIONS

This chapter examines the effects of the proposed regulations on the public and private sectors as well as on the fundamental rights and freedoms of individuals.

3.1 THE TEA (TEA LEVY) REGULATIONS, 2024

These Regulations have been developed by the Cabinet Secretary for Agriculture and Livestock Development in the exercise of the powers by sections 53 of the Tea Act, 2020.

Regulation 1 of these Regulations prescribes the citation of the regulations and provides for the Regulations to be effective thirty days from the date of their gazettement.

Regulation 2 contains the interpretation of the Regulations and specifies the meanings of terminologies employed in the Regulations.

Regulation 3 imposes a levy on tea exports and imports at the rate of one per cent of the auction value or customs value for direct sales in the case of tea exports and at the rate of one hundred per cent of the import value on each consignment of made tea in the case of tea imports.

This Regulation also provides for the levy to be levied on non-Kenyan tea from the tea auction and diverted into Kenya and on imports of any non-Kenyan teas from an export processing zone (EPZ) or special economic zone (SEZ) imported into Kenya

The purpose of the tea levy is to support industry programmes such as marketing, promotion, enhancing the quality of Kenyan tea, research and innovation, value addition and product diversification, and supplement infrastructure development in tea growing regions. Currently, these programmes are grossly underfunded by the exchequer, and the tea levy is meant to provide a sustainable model of funding in line with other leading tea-producing countries like Sri Lanka and India. For example, Sri Lanka charges a promotion levy at a rate of three point five rupees per kg while India charges a levy at the rate of twenty-five Paise. The Sri Lanka promotional levy is used to promote Ceylon tea in the global market, while the India levy is used for industry development.

Section 53 (5) of the Act provides for the apportionment of tea levy between tea research, regulation, stabilization fund and infrastructure. The proposal to apportion forty percent of the tea levy for research will go a long way in addressing the challenges facing the Tea Research Institute and by extension technological development of the Kenyan tea industry.

The introduction of the tea import levy will also help shield the local tea industry from undue competition from unbridled and cheap tea imports. Such imports may also distort local markets' tea demand and prices. The import levy will additionally protect the local tea market from the proliferation of processed value-added tea products, which may discourage innovation and value-added tea product development. This will create opportunities for the local production of tea.

The re-introduction of the tea levy is expected to increase revenue collection for the Board significantly. It will thus ensure continuous general development of the local tea industry including price stabilization for tea growers, funding of the Tea Research Foundation/Institute crop research work, tea sector infrastructure development, tea products development, diversification and value addition in the tea sector in Kenya.

The re-introduction of the tea levy within the local tea industry will, however, impact the economic performance of all tea industry actors in the country. These include tea producers, tea processors

(primary tea factories and value-adding agents), marketers, traders and exporters. The levy will increase the cost of doing business and thus reducing returns and profits from industry investment. There are currently several taxes and levies charged either directly or indirectly within the Tea Industry, shouldered by the producers and other tea sector actors that considerably reduce their earnings (Ngumo2014).

The re-introduction of the tea levy may also increase the cost of tea for end consumers as industry actors will likely transfer additional costs in their businesses to the consumers. This may translate to shifts in tea consumption patterns in the country as consumers opt for more affordable tea brands or shift to alternative beverages, further diminishing the already constricted local tea market.

Within the global tea market, the introduction of these levies will make Kenyan tea more expensive in the world market, making it less competitive. This may result in the loss of the country's market share in the global market where Kenya's tea faces major competition from other leading tea exporters in the world.

Regulation 4 specifies the points of imposition of the levy to be the point of import or export for the import and export levies respectively. This may be viewed as increasing bureaucracy and increasing capital required for doing business by both tea importers and exporters.

Regulation 5 prescribes rates for the different levies imposed by these Regulations which are at the rate of one per centum of the auction value or customs value for direct sales for imports and at the rate of one hundred per centum of the import value on each consignment of made tea for exports. Regulations 3(3) and (4) also provide for a rate of one hundred percent of the auction value for teas sold through the auction for tea diverted into Kenya and for the teas imported into Kenya from an EPZ or SEZ.

The proposed levy is important for the sustainability of the tea industry and to support key industry pillars such as marketing, promotion, enhancing the quality of Kenyan tea, research and innovation, value addition and product diversification, and supplement infrastructure development in tea-growing regions.

The high prescribed levy rates, especially for teas imported into the country, will likely be viewed as too prohibitive for business for actors in the specialty teas and other value-added tea products not available in the country. It will sharply increase the costs of such tea products in the country as well as likely reduce their availability in the local market.

On the flip side, however, such a situation will present opportunities for innovative investors to invest in the local production of such specialty teas and other value-added tea products. This will not only increase local and foreign exchange earnings for the local tea industry but also generate employment and business opportunities for these products' value chains.

Regulation 6 specifies the timelines for payment of levies prescribed in these Regulations to the Board, which is at the time when the tea exporter is declaring the export with the Board for tea exports and at the time when the tea importer is declaring the import with the Board for tea imports.

Regulation 8 provides for the levy to be collected by the Board or an agent duly authorized by the Board to collect the Levy on its behalf. This Regulation provides for alternative agencies for the collection of the levy, which will reduce bureaucracy and time delays for tea importers, exporters, and other tea levy-paying agents when remitting their due levies.

Regulation 9 obliges tea exporters or importers to declare to the Board at the time of import or export, the value of exports or imports indicating the applicable levy using the Forms set out in the Schedule. It further provides for the Board or its authorized agent to verify the tea export or import documentation to authenticate the export or import declaration. This Regulation will ensure that all levy due is collected and will enhance accurate documentation of trade in the Kenyan tea industry, which will inform policy review and decision-making in this important sector of the Kenyan economy in the future.

This Regulation further proclaims an offence for any tea exporter or importer who fails to declare or provides false information on their tea export and import consignments or any other information required by the Board. It prescribes that such actors are liable on conviction to the penalty provided under Section 71 of the Act.

Regulation 10 requires a tea exporter or importer to pay the applicable levy and provide the Board or its authorized agent with proof of payment of the tea levy payable. It further provides for the Board or its authorised agent to issue a receipt to such a tea exporter or importer upon confirmation of payment of the applicable tea levy. This will promote transparency in the collection of the levy and eliminate subjective decisions that may be discriminative to some players in the tea export and import trade.

Regulation 11 requires that where the tea levy is paid to an authorized agent, the authorized agent is to remit the levy amount collected to the Board not later than the 30th day of the following month. This will allow the Board to better plan on the utilization of the amount collected for the intended purpose in the development of the local tea industry. It will also avoid situations where significant amounts of levies collected are held by such agents and thus remain unavailable for use by the Board.

Regulation 12 obliges the Board upon verification of tea exports or imports documentation and payment of the applicable levy to issue a permit to an exporter or importer who is compliant with the provisions of the Act and any regulations made there under. This Regulation also mandates the Board to cancel the export or import permit if an exporter or importer contravenes the provisions of the Act and any regulations made thereunder. This provision will promote fair trade practices in the tea industry by ensuring compliance with all the rules and regulations in this sector. It will also shut out any rogue players from the sector to the benefit of all stakeholders in the industry.

Regulation 13 provides for exemption from the tea levy for value-added tea exports and Kenyan tea value added in an EPZ or SEZ for local consumption. The tea levy applies to imports and exports only and all local tea retailers are not liable to pay the tea levy. This Regulation will promote the development of value-added tea products for export including the establishment of tea value addition facilities in the country and other business opportunities within the value-added tea value chain. These will contribute to increased tea export earnings from increased exports of high-value-added teas in the global market, the creation of jobs in the local tea sector and increased contribution of the tea industry to the socio-economic development of the country.

A study by the Kenya Institute for Public Policy Research and Analysis (KIPPRA) has shown that the low level of value addition in Kenyan tea results in an estimated loss of USD 12 per kilogram of tea. As a result, despite Kenya being the leading exporter of tea in terms of volumes, the country receives low earnings compared to other exporting countries due to low-value addition. For

instance, in 2013, Kenya exported 131 metric tonnes more than Sri Lanka, but it earned USD 0.3 billion less (KIPPRA, 2017).

Regulation 14 mandates the Board to recover any amount of the levy which is due and remains unpaid as a civil debt due to it from the person by whom it is payable. The Regulation further provides that any levy that remains unpaid for over thirty days should attract interest at the prevailing Central bank rate, from the time the levy becomes due until it is fully paid. This will serve to deter delays in the payment of the levy due and allow for the prompt collection of all levies due, allowing the Board to deploy all such monies for the intended use to the benefit of the tea industry.

This regulation further provides for mechanisms for utilization of the levy in order to provide for a framework for income and price stabilization, effective public participation on Board programmes and a framework to ring fence infrastructure funds and specifies such infrastructure to mean facilities, systems and equipment that support regulation, development and promotion of tea by tea growing counties and includes construction and maintenance of feeder roads and county roads within the tea catchment areas; .
Regulation 15 outlines the mechanism for the utilization of Tea levy. It provides a comprehensive framework for income and price stabilization. The 15% allocated for infrastructure development shall be remitted to the county. However, a framework for the joint administration of the levy between the counties and tea factories shall be established to ensure coordinated implementation.

This regulation also specifies infrastructure to mean facilities, systems, and equipment that support the regulation, development, and promotion of tea by tea-growing counties. This includes the construction and maintenance of feeder roads and county roads within the tea catchment areas.
The income and price stabilization fund is meant to cushion tea growers from adverse fluctuations in global tea prices and against effects of adverse weather.

The levy will be administered through the Integrated Management Information System (IMIS), which is in line with the government's digital platforms that provide real-time levy monitoring.
This regulation will stabilise tea incomes for growers by cushioning them against global tea price fluctuations and the effects of adverse weather conditions. It will also address the perennial challenge of underfunding in tea research, thereby enabling tea growers to improve their production with new research recommendations continuously and compliment infrastructure development and maintenance in tea growing areas, reducing the cost of green leaf collection and loss of quality due to delayed tea deliveries to the factories.

3.2 Affected Groups

The regulations will affect all actors within the tea industry value chain. These include:

i. National Government.
ii. County Governments.
iii. Government agencies – including TBK, TRI, Kenya Plant Health Inspectorate Service (KEPHIS), AFA, Pest Control Products Board (PCPB), KARLO, Kenya Bureau of Standards (KEBS) and National Environment Management Authority (NEMA).
iv. Small scale tea growers.
v. Large scale tea growers.

vi. Independent tea producers
vii. Tea industry associations/Organizations (KTDA, KTGA, EATTA, Independent Tea Producers' Association of Kenya (ITPAK), Purple and Specialty Tea Association of Kenya (PSTAK)
viii. Kenyan tea buyers.
ix. Tea processors/Factories.
x. Tea traders.
xi. Tea Brokerage firms.
xii. Tea Management agencies.
xiii. Tea auction organizers.
xiv. Tea value addition agencies.
xv. Tea Wholesalers/retailers (supermarkets, retail outlets).
xvi. Tea end consumers.
xvii. Tea Exporters.
xviii. Tea Importers.
xix. Tea councils and associations abroad such as German Council.
xx. Financial and Micro- Financial organization.
xxi. Tea industry auxiliary service providers.
xxii. Academia and research organizations.
xxiii. Agricultural advisory services providers.

3.3 Effects on the Public Sector

Section 20 (1) (a) of the Tea Act, 2020, provides for the Tea Board of Kenya's role in licensing and charging levies within the sector on behalf of the National Government.

The anticipated effects of the proposed Regulations on the public sector will be:

i. The increase in revenue generated through the proposed levy by the industry will be invested back into the tea sector to support research. This will improve production and value addition, as well as promote trade and marketing development for Kenyan tea. The income from tea will rise, thereby increasing producers' and other tea stakeholders' returns.
ii. Increased investment in research, tea product development, market diversification and development supported by the increased revenue generated will support increased production, improved tea quality and sales volumes. This will result in increased foreign exchange earnings and thus an improved balance of payments for the Country.
iii. Increased marketing investment will allow for penetration of new markets for Kenyan tea and thus diversify the current traditional markets. Consequently, it will reduce Kenyan tea price fluctuations, securing and increasing foreign exchange earnings.
iv. With increased investment in branding and value addition of tea, Kenya will position herself as a source of high-end branded, value-added and specialty teas which attract premium prices This will in turn increase returns to the local tea producers, manufacturers and other tea value chain actors
v. Value-addition and production of branded and specialty teas will create jobs and business opportunities along the value addition and production of branded and specialty teas value chains.

vi. Levy on tea imports will discourage the importation of tea and therefore protect the Kenyan tea industry from the proliferation of unbridled and cheap tea imports, including teas from the neigbouring tea-producing countries.
vii. Improved infrastructure through improved maintenance of the dilapidated infrastructure in tea-growing regions will complement infrastructure development by other public agencies infrastructure in tea-growing areas.
viii. Increased revenue from the levy will enable the Board to better undertake its statutory and regulatory role in the industry including regulation of the industry and market development for Kenya's tea. This will reduce the Boards' dependency on the National Treasury for funding to perform its regulatory functions in the sector.
ix. The levy will ensure enhanced provision of services in the tea sector including clearance of tea exports, and imports, monitoring compliance with laws, regulations and standards, inspections of tea factories and other industry players, and promoting and developing Kenyan tea on the global stage.
x. Funding from the levy will enable TBK to undertake capacity-building programmes to achieve standard products in the sector through the production and manufacturing processes.
xi. The introduction of these levies may slightly affect the prices of Kenyan tea in the global market when the levy paid may be passed on to the final consumer of tea products.

3.4 Effects on the Private Sector

Private sector actors are critical stakeholders in the tea industry. They include- small scale tea growers, medium scale tea growers, large scale tea growers, tea industry associations/organizations (KTDA, KTGA, EATTA), independent tea producers (ITPs), Purple and Specialty Tea Association of Kenya (PSTAK), Kenyan tea buyers and exporters, tea importers, tea processors/factories, tea traders/dealers, tea brokerage firms, tea marketing agencies, tea management agencies, tea auction organizers, tea packers, tea councils and associations abroad such as the German Council, tea wholesalers/retailers (supermarkets, retail outlets) end tea consumers, financial and micro- financial organizations, tea industry auxiliary service providers, academia and research organizations among others.

These private sector actors are the principal drivers of the economy in this field.

The proposed Regulations will potentially affect the private sector in the following ways

i. The funding from the levy will enable the government to achieve its targets under BETA of increased earnings of smallholder farmers from the current earnings of Kshs.59 per kg of green leaf to Kshs. 90 per kg by 2027. And increase of volume of Value-Added tea exports from the current 20 million to 235 million by 2027 as well as increase foreign exchange earnings from tea from 180 billion to over 360 billion by 2027. This target may be achieved through constant marketing and promotional activities including establishing tea hubs and supporting MSMEs in the country.
ii. It will enhance the marketing and promotional activities of Kenyan tea because of the increased funding which will enable the government to establish and maintain a common user packaging facility. The facility will enable all traders to package their tea in a less costly manner compared to traders establishing individual packaging facilities.

iii. The funding from the levy will enable the government to establish warehouses in their market destinations to minimize the cost of transport and logistics in some of the international markets.
iv. The board has improved its provision of services in the tea sector, including clearing tea exports and imports, monitoring compliance of tea factories and other industry players with the law and tea standards, and promoting Kenyan tea on the global stage.
v. Expansion of Kenya's traditional and development of alternative tea markets thus according to Kenyan tea exporters, increased options to market their products. It will also guarantee a market for increasing tea produced and ensuring producers tea prices stability.
vi. Access to tea research findings and recommendations, innovations and technology developments to support increased tea production, value addition and tea product development and diversification. This will lead to increased returns to the tea sector actors.
vii. Reversing the declining quality of Kenyan tea through enhanced monitoring and surveillance of leaf quality, transportation, manufacturing and handling standards. This will maintain the Kenyan tea preference in the world market and thus increase the demand.
viii. Enhanced regulation of the sector will eliminate unfair trade practices including the over-exploitation of smallholder tea producers by tea brokers/middlemen and actions that adulterate the quality of Kenyan tea.
ix. Improved infrastructure through improved maintenance of the dilapidated infrastructure in tea-growing areas. This will reduce quality and green leaf losses during transportation and processing, and logistical challenges in tea processes.
x. The high prescribed levy rates for teas imported into the country will create investment opportunities for branded, specialty teas and other value-added tea products in the country to serve the current and increasing demand for these tea products.
xi. Tea producers and other industry actors access new research developments including technologies and access to alternative markets that address their identified challenges and needs to better their businesses in the tea industry.
xii. Tea industry actors will benefit from expanded and diversified tea markets for their produce/products. They will therefore benefit from a better volume of offtake, price stability and better prices, and thus better returns from their investments.
xiii. Levy on tea imports will discourage the importation of tea and therefore protect the Kenyan tea industry actors from the proliferation of cheap and unbridled tea imports including teas from the neighboring tea-producing countries.
xiv. Funding from the levy will enable TBK to undertake capacity building programmes to achieve standard products in the sector through the production and manufacturing processes.
xv. The introduction of the levy may slightly affect the prices of Kenyan tea in the local and global markets when the levy paid may be transferred to the end consumer of tea products.
xvi. The processes of complying with import or export declaration and payment of the levy may be viewed as time-consuming and costly. However, TBK has digitized its services to enhance efficiency and effectiveness in the process.

3.5. Effects on Fundamental Rights and Freedoms

The proposed regulations may affect the fundamental rights and freedoms of individuals and players in the following ways.

Article 46 of the Constitution provides for consumer rights and in particular, that consumers have the right to goods and services of reasonable quality, and to information necessary for them to gain full benefit from goods and services for the protection of their health, safety and economic interests and to compensation for loss or injury arising from defects in goods or services. The draft regulations promote this right in several ways. Regulations 12(1) and (2) provide that the Board shall verify tea exports and import documentation and payment of the applicable levy before issuing a permit. The Board shall not issue a permit to an exporter or importer unless that person has paid the levy and complied with the Tea Act and any regulations thereunder. One of the functions of the Board under section 5 of the Tea Act is to promote best practices and standards in the production, processing, marketing, grading, storage, collection, transportation and warehousing of tea which impacts consumers.

Article 47 of the Constitution guarantees the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair. The Regulations enhance this right by, for instance, providing points when the levy shall be paid as per Regulations 4 (1) and (2). Regulation 6 further stipulates the time when the levy shall be due_which is at the time of declaring the tea export or the import with the Board. Failure to pay the levy within the set timelines attracts sanctions in line with Regulation 15 of the draft Regulations. The Board can also recover the unpaid levy as a civil debt where the importer or exporter is in default as provided for under Regulation 14 (1).

Article 31 of the Constitution provides for the right to privacy. This right may be affected by the draft regulations. Regulation 9(1) provides that a tea exporter or importer should declare to the Board at the time of export or import the value of exports or imports using Forms TBK/TL/1 and TBK/TL/2 respectively. These forms include personal data. The Board should ensure that it establishes strong data protection mechanisms to protect personal data in line with the Data Protection Act (Cap 411C) and the respective regulations. The Board should limit access to the filled forms to only required individuals within the Board to mitigate the risk of data mining.

Article 35 of the Constitution provides for access to information. The Board shall publish the amounts of money collected from the levy in its annual reports. The annual reports are available on the Board’s website where exporters and importers can access them. This provides the public with adequate information on the levy.

the right to equality and freedom from discrimination. The draft Regulations enhance this by not discriminating against any person in relation to payment of the levy. The levy applies to all importers or exporters of tea into and from Kenya without bias based on the grounds listed in Article 27(4) of the Constitution. Those exempted from paying the levy are clearly listed under Regulation 13 of the draft Regulations and they fall within the confines of those operating under an EPZ or SEZ. The exemption aims to promote the tea trade in Kenya.

4.0 REGULATORY AND NON-REGULATORY OPTIONS

This chapter highlights other regulatory and non-regulatory options that could be adopted to achieve the same intended objectives of the Tea (Tea Levy) Regulations 2024 in Kenya. Alternatives to rule-based regulation are more flexible than a rule-based approach because they may not require setting the rules out in legislation, which then takes more time and effort to develop and change.

4.1 Option 1: Maintaining the Status Quo

Before considering new interventions, it is important to consider whether the problem could be resolved by making changes to practices within the existing regulatory framework, thus maintaining the status quo. Examples of this are:

i. Making use of existing laws, regulations and/or guidelines
ii. Simplifying or clarifying existing regulations.
iii. Improving compliance and enforcement of existing regulations; or
iv. Making legal remedies more accessible or cheaper.

The Tea Levy was in existence in Kenya until 2016 when it was revoked by Legal Notice 104 of 2016. Currently, there are no existing regulations or guidelines that can be relied on through any alternative implementation approaches to guide the re-introduction and implementation of the tea levy which is an industry levy meant to be invested. This is to support the further development of the tea industry. Maintaining the status quo, therefore, would leave the tea industry with a dire need for additional investment in crop research, product and technology developments, market development and diversification. This will leave the industry facing the threat of not being competitive enough in the world market and thus at risk of declining performance. Poor performance of this industry would be a threat to the stability of the national economy and to the livelihoods of millions of Kenyans who depend on this important economic crop.

4.2 Option 2: Passing the Regulations

The Government can achieve its policy objectives by using taxpayer's money or through a range of non-spending interventions, including regulation. The purpose of these Regulations is to introduce the tea levy that will generate revenue to be ploughed back into the industry to support critical services necessary for further development of the industry in the country. These Regulations seek to generate additional revenue from the industry to support enhanced crop research, tea products and technology developments, market development and diversification to ensure the sustainability and competitiveness of the Kenyan tea industry in the global arena.

Regulations may, however, create costs for businesses and the public sectors and may, if overused, poorly designed or poorly implemented stifle competitiveness and growth.

Adoption and operationalization of the proposed Regulations will translate to:

i. Improved services by the Board in the tea sector including clearance of tea exports, and imports, monitoring inspections of tea factories and other industry players, and promotion and development of Kenyan tea on the global stage.
ii. Increased tea research and development and thus improved production, quality and value addition including in the branded and specialty teas niche. This will increase industry actors' incomes and foreign exchange earnings for the country.

iii. Better regulation of the sector to eliminate unfair trade practices in the sector including the over-exploitation of smallholder tea producers by middlemen, and practices that contribute to the loss of quality of the world-known tea.
iv. Enhanced monitoring and surveillance of leaf quality, transportation, manufacturing and handling standards to reverse the declining quality of Kenyan tea.
v. Expanded and diversified markets guarantee industry actors reliable markets for increasing production and tea price stability.
vi. Value addition and production of branded and specialty teas will create business opportunities along the value chains.
vii. Levy on tea imports will discourage the importation of tea and therefore protect the Kenyan tea industry from the proliferation of cheap and unbridled tea.
viii. Increased revenue from the levy will enable the Board to better undertake its role in the industry including provision of various critical services, regulation of the industry and market development for Kenyan tea.
ix. The prescribed levy rates for teas imported into the country will create investment opportunities for branded, specialty teas and other value-added tea products in the country.
x. Tea producers and other industry actors will get access to new research developments including technologies that address their identified challenges and needs to better their businesses.
xi. Tea industry actors will benefit from an expanded and diversified tea market for their produce and products. They will therefore benefit from a better volume of offtake, price stability and better prices, and thus better returns from their investments.
xii. Branding and value addition of Kenyan tea and local production of specialty teas which attract premium prices, increasing returns to the local tea producers, manufacturers and other tea value chain actors.
xiii. Increased revenue from the levy will reduce the Board's dependency on the National Treasury for funding.

The Regulations are thus important for the continued growth and sustainable development of the tea industry in Kenya and the agriculture sector in the country in general and to the national economy.

4.3 Option 3: Other Practical Options

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, any existing policies can be improved, without further regulation, using techniques such as behavioral insight or changing enforcement practices to improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure.

Alternatives to regulation include:

i. **No new intervention/do nothing**: This may include making use of existing laws (or none) and regulations; simplifying or clarifying existing laws and regulations; improving enforcement of existing laws and regulations or making legal remedies more

accessible or cheaper. As discussed in section 4.1 above, the status quo in the sector is likely to remain since currently, there is no framework for a Tea Levy in the country.

ii. **Information and education:** Information and education can be used to empower the tea industry actors including producers, processors, manufacturers, importers and exporters, other tea industry actors and stakeholders to make their own decisions, improving choices for the mutual benefit of all. However, there are potential risks associated with this, since information and education can take time to make an impact. Access to information on research, technologies and market information in the country is still a big challenge and has remained very limited in the sector. The ability to use the little available information varies among the industry actors, the tea producers and other stakeholders. Besides, the available information may not reach all equally. It may also not be straightforward to assess how people will react or change their behavior in response to industry information available. The use of information and education, however, will increase costs for the government and businesses that will be providing the information and education required.

iii. **Incentive/market-based structures:** The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers etc. as initiatives to realize the desired objectives. These initiatives, however, are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures. This is unlike in the diverse tea industry with many actors at the different nodes of the tea value chain driven by very different objectives. Further, often these sorts of systems need their own regulation to establish the framework and may have additional costs to the government and are unlikely to be effective in the tea industry as it is currently structured.

4.4 Alternatives models of regulation:

i. **Self-regulation**.

Self-regulation entails industry players developing a framework to self-regulate a sector. This could be done using codes of conduct or practice, customer charters, standards or accreditation. In many cases, rules and codes of conduct or practice will be formulated by the industry representatives or organizations under their own initiative. In the absence of well-developed and all-inclusive industry organizations as in the Kenyan tea industry, self-regulation currently cannot be effectively possible. Article 209 of the Constitution mandates the national government to impose levies in a particular sector. Self-regulation will therefore not be applicable in these circumstances.

ii. **Co-regulation.**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop and operationalize a code of practice whose enforcement would be by the industry or a

professional organization and accredited by the government. In the absence of well-developed and all-inclusive industry organizations as in the tea industry, effective co-regulation may not be possible currently in the country.

5.0 COST-BENEFIT ANALYSIS (CBA)

This chapter analyses the economic, environmental and social impacts as well as the administrative and compliance costs of adopting the proposed Regulations. It also assesses and quantifies the return on investments of the proposed Regulations; and how the impact of the proposed Regulations is likely to be distributed between the public and private sectors.

5.1 Economic Impacts of the Proposed Regulations

The economic impacts of the proposed regulations are outlined below.

5.1.1 Economic benefits

The anticipated **economic benefits** of the proposed Regulations are: -

i. Improved production, quality and value addition of Kenyan tea, thus increasing income from tea. This will lead to increased producers' and other tea stakeholders returns.
ii. Increased tea exports and sales volumes resulting in increased foreign exchange earnings and thus improved balance of payments for the country.
iii. Expansion into new markets for Kenyan tea, diversifying from over-reliance on the current traditional markets. This will thereby reduce tea price fluctuations, assuring producers of stable tea prices and reliable markets.
iv. Promotion of research, innovation and investment in branded, specialty teas and other value-added tea products in the country.
v. Increased production of value-added tea branded and specialty teas which attract premium prices. This will increase returns to the local tea producers, manufacturers and other tea value chain actors
vi. Creation of jobs and business opportunities in tea value addition and production of branded and specialty teas.
vii. Tea producers and other industry actors will access new research developments including technologies and access to alternative markets to better their businesses.
viii. Better services to the industry by the Board including regulation of the industry and market development for Kenyan tea, leading to a better business environment.
ix. Elimination of unfair trade practices in the sector such as exploitation of smallholder producers by middlemen and quality-reducing practices.
x. Improved infrastructure in tea-growing areas through ploughing back part of the levy collected to maintain infrastructure.
xi. Levy on tea imports will discourage the importation of tea into Kenya, protecting the local tea industry from the proliferation of unbridled and cheap imports. This will avoid frequent local market tea demand and enhance tea price stability.
xii. Increased revenue from the levy, ranging from Kshs. 1.38 billion from tea exports and Kshs. 40 million from imports, will enable the Board to better undertake its role in the industry. It will also reduce the Boards' dependency on the National Treasury for funding. (TBK, 2023).
xiii. The funding from the levy will enable the government to achieve its targets under BETA of increased earnings of smallholder farmers from the current earnings of Kshs.59 per kg of green leaf to Kshs. 90 per kg by 2027. And increase of volume of Value-Added tea exports from the current 20 million to 235 million by 2027 as well as increase foreign exchange earnings from tea from 180 billion to over 360 billion by

2027. This target may be achieved through constant marketing and promotional activities including establishing tea hubs and supporting MSMEs in the country.

xiv. It will enhance the marketing and promotional activities of Kenyan tea because of the increased funding which will enable the government to establish and maintain a common user packaging facility. The facility will enable all traders to package their tea in a less costly manner compared to traders establishing individual packaging facilities.

xv. The funding from the levy will enable the government to establish warehouses in their market destinations to minimize the cost of transport and logistics in some of the international markets.

5.1.2 Economic Costs

The anticipated **economic costs** of the proposed Regulations are: -

i. The introduction of the levy may slightly affect the prices of Kenyan tea in the local and global markets when the levy paid may be transferred to the end consumer of tea products.

ii. The levy may slightly increase the cost of doing business for all actors in the tea industry.

iii. The process of complying with import or export declaration and payment of the levy may be viewed as time-consuming and costly. However, TBK has digitized its services to enhance efficiency and effectiveness in the process.

iv. Gazettement of the Tea Levy Regulations will require public participation with an estimated budget of Kshs. 8.5 million. In addition, implementation of the Regulations will require the employment of additional staff to administer the levy at a budget of Kshs. 7.8 million annually (TBK, 2023).

v. Implementation of the levy on exports will cost tea exporters approximately 1.38 billion shillings. On the other hand, a levy on imports will cost tea importers approximately Kshs. 40 million (TBK, 2023).

5.2 Social Impacts of the Proposed Regulations

The Regulations are expected to have the following social impacts.

5.2.1 Social benefits

The anticipated **social benefits** of the proposed Regulations are:

i. A well-regulated tea industry will create sustainable employment opportunities, especially for the rural youth in tea production, processing, manufacturing, trade and marketing, thereby improving standards of living among the local community.

ii. Increased production and marketing of quality tea(s) will translate to increased incomes for households in the tea value chain and thus increased households' disposable incomes to meet their daily needs.

iii. Reduced tide of rural-urban migration in search of employment opportunities by creating attractive paying alternatives in the rural areas.

iv. Improved infrastructure in rural areas with the development of modern or additional tea processing, manufacturing and marketing facilities in these areas.

v. Improved income distribution among the farm families and the communities thus reducing inequalities. This is due to the increased production and participation in the industry by smallholder tea growers, traders, agents, and dealers.
vi. Improved education levels and reduced illiteracy in society due to improved incomes and thus improved social well-being of the rural communities.
vii. The levy collected will assist TBK in developing strategies and building capacity in the sector to comply with Environmental Social and Governance (ESG) principles and implement climate change programs in the sector. This will enhance the sustainability of the sector.
viii. The funding from the levy will enable TBK to create awareness and empower locals on their rights to eradicate social ills in the tea-growing zones.

5.2.2 Social Costs

The anticipated **social costs** of the proposed Regulations are:

i. Consumer prices for tea products may increase slightly as the levy is transferred to the end consumers thereby reducing tea consumption.
ii. Attractive tea prices from expanded markets and the marketing of value-added tea products may encourage increased hawking and theft of tea. The middlemen may want to benefit from quick earnings as has been witnessed in other lucrative cash crop value chains in the country.

5.3 Environmental Impacts of the Proposed Regulations

The proposed Regulations are expected to have the following environmental impacts.

5.3.1 Environmental benefits

The anticipated **environmental benefits** of the proposed Regulations are:

i. Research, breeding and promoting of more climate-resilient tea cultivars and cultivars suitable for different agro-zones and regions of the country will enable the expansion of tea production in marginal tea growing zones.
ii. Reduced soil degradation due to improved crop cover from the increased land area under tea production.
iii. Improved land utilization especially in otherwise idle, underutilized, low-potential and marginal tea growing areas.
iv. The levy collected will assist TBK in developing strategies and building capacity in the sector to comply with ESG principles and implement climate change programs in the sector. This will enhance the environmental sustainability of the sector.

5.3.2 Environmental costs

The anticipated **environmental costs** of the proposed Regulations are:

i. Environmental degradation resulting from the installation of new/additional tea processing, manufacturing and marketing and rural roads infrastructure.

ii. Increased soil degradation due to the opening of new areas or expansion of land for tea production.

However, with proper and effective implementation of these regulations, these negative environmental impacts can be significantly mitigated, and impacts reduced.

5.4 Quantification of the Benefits

Before the revocation of the Tea Levy Regulations in 2016, revenue generated from the levy was deployed primarily to support tea industry development, research and development through the TRI and its predecessors. The revenue was also aimed at supporting the execution of the functions of TBK which include developing, regulating and promoting the tea sector. The tea levy was not the only source of revenue for these two institutions. It is, however, indisputable that the scraping of the levy in 2016 has diminished the capacity of these institutions to carry out their respective roles in the sector. The TRI was the most affected since, according to various Institute reports, it depended on the tea levy to finance up to 70% of its research budget.

The potential benefits from increased investment in tea crop agronomic and technologies research and development by TRI, and from more effective sector development and promotion initiatives and regulation can be used to elaborate the anticipated gains from the re-introduction and operationalization of the tea levy on selected parameters. These parameters are outlined below.

i. Green leaf production

- Improved technologies, including improved cultivars, have increased tea yields in Kenya over the last 50 years from an average of 1,500 kg to 3,300 kg of made tea per hectare per year on the large estates. The smallholder production systems yield have increased from an average of 600 kg to 2,300 kg of made tea per hectare per year.

  This represents a **120%** and **283%** increase for large estates and smallholder producers respectively attributable to investment in research in tea (Source: TRI, 2022).

- Over 1000 improved clones, with a broad genetic base, have been developed by TRI for adaptation to adverse biotic and abiotic factors. Out of these, 58 cultivars have been selected for their consistent superiority in tea yields and quality under different agroecological and socio-economic conditions. 22 of these cultivars can yield between 5,000 kg and 8,000 kg of made tea per hectare per year.

- Further investment in research and commercialization of these cultivars has the potential to increase tea production by up to **247%** and **142%** for smallholder producers and large estates respectively (Source: TRI, 2022).

ii. Value addition benefits

The funds collected from the levy will assist the sector in supporting the value-addition of the tea products. This will increase foreign exchange earnings from the exports derived from value-added tea.

The table below represents an average of the prices of value-added tea in Sri Lanka, China and Kenya for 2022.

Base year: 2022

Country	Tea exports (Mil. Kgs)	Ave. Price USD/Kg	Total earnings (USD Billion)	Comparative prices to Kenya
Sri Lanka	247	5.04	1.245	94.5%
China	375	5.55	2.082	95%
Kenya	540	2.60	1.182	0

(Source MoALD, 2024)

- From the above data:
  - A Kilo of export tea from Sri Lanka and China earned 94.5% and 95% respectively more compared to that from Kenya.
  - The main reason for lower earnings from tea exports by Kenya compared to Sri Lanka and China, is selling in bulk as opposed to value-added form.
  - 99% of Kenyan tea is exported in bulk form (60 kg Packages) while 1% is value added mostly in blended form and packages of less than 3 Kgs made of instant tea, iced teas and tea extracts. (Source MoALD, 2024)
- The country can capture greater value by diversifying its tea products offering beyond black CTC tea to include specialty teas such as green and purple tea. Increasing the output of specialty teas by 20% annually has the potential to yield an additional Kshs. 18 billion for the industry, the bulk of which will go to the producers and processors (Source EATTA, 2018).
- Challenges of value addition and market diversification in the Kenyan tea industry include:
  - Limited research outputs on value-added products.
  - Tariff escalation in the destination markets.
  - Limited capacity for competitive packaging.
  - Difficulties in penetrating the retail sector in established markets; and
  - High cost of inputs as well as expensive packaging materials, equipment and machinery.

The challenges can be addressed through additional investments in research in tea, product development and targeted promotion (Source MoALD, 2024).

iii. Anticipated costs and additional revenues of the proposed regulations

Some of the anticipated costs and additional revenues of the proposed regulations are outlined below:

- *Cost of administering/collecting the levy*
  - Gazettement of the tea levy regulations will require public participation with a budget of Kshs. 4.5 million.
  - Additional staff to administer the levy with a budget of Kshs. 7.8 million annually.
- *Cost to exporters/importers*
  - Implementation of the levy on exports will cost tea exporters approximately Kshs. 1.38 billion p.a.
  - Implementation of the levy on imports will cost tea importers approximately Kshs. 40 million p.a.
- *Additional revenue to be ploughed back for industry development*

- Kshs. 1.38 billion from levy on tea exports and Kshs. 40 million from tea imports p.a. (Source: TBK, 2023). The total revenue of 1.42 billion will be shared in accordance with the apportionment of the levy under section 53 (5) of the Tea Act. This means the revenue shall be distributed as follows:

    a) Price stabilization fund (50%) - 710 million.
    b) TBK regulatory function fund (15%) – 213 million.
    c) Research fund to TRI (20%) – 284 million.
    d) Infrastructure development fund to county governments (15%) - 213 million.

5.5 Costs- Benefits Analysis Assumptions

From the above discussions, it is quite clear that the expected economic, social, and environmental benefits from the implementation of the proposed Regulations heavily outweigh the corresponding costs. The analysis of the cost and benefits of implementation of the draft Regulations is, however, based on the following assumptions: -

i. Implementation of the Regulations will be undertaken in a holistic manner where all provisions of the Regulations will be implemented.
ii. The country's and tea-producing counties' development strategies, and political and policy environment will continue to prioritize and support the development of the tea value chain.
iii. The climatic conditions will remain favorable for tea production.
iv. Tea sector value chain actors and all other auxiliary industries actors will respond rationally to the implementation of the proposed Regulations and voluntarily comply with the proposed Regulations.
v. The additional revenue generated from the various fees and levies will be used for the further development of the tea sector.

5.6 Administration and Compliance Costs

The RIA noted that resources would be required for the operationalization of the Regulations. These will include human resources, operation costs for monitoring, surveillance of leaf quality, inspections and enforcement of tea research, promotion and marketing of Kenyan tea as well as for awareness creation on the Regulations to all the tea sector and industry players.

Before the gazettement of the Regulations, TBK will be required to undertake public consultation exercises at an estimated budget of Kshs. 4.5 million. In addition, implementation of the regulations will require TBK to employ additional staff to administer the levy at a budget of Kshs. 7.8 million annually (TBK, 2023).

It is also assumed that additional resources will go to the implementation of the wider national agricultural, industrialization and trade policies which support tea production, manufacturing, value addition and tea products development, tea research and development, provision of agricultural and processing advisory services and support to tea sector actors for strengthening knowledge transfer and technology distribution among the producers and capacity building of industry actors.

5.7 Assessment of Return on Investment (Benefit)

Passing and operationalization of the proposed Regulations will be critical in facilitating sustainable development of the Kenyan tea sector for the benefit of the tea producers and all other stakeholders within the sector in the country.

There is a need to continuously enhance the promotion of Kenyan tea in tandem with the increasing production of tea, which over the last 10 years has been increasing at an average rate of 5% per annum. This will ensure the market for all tea produced in Kenya. Effective promotion and marketing strategies will ensure growth in Kenya's traditional tea markets, as well as develop alternative markets and markets for value-added tea products.

The Regulations also seek to promote tea research and development using high-quality tea varieties and improve farmers' access to quality planning materials. This, coupled with the adoption of good agricultural practices (GAPs) and other key technologies in tea production, will increase tea production and the productivity of green leaf. It will also improve the quality of the produce while reducing the high post-harvest and quality losses. This will result in increased volumes of quality green leaf available for the market, meaning increased earnings for the industry actors and increased foreign exchange earnings for the country.

The Regulations will ensure the restoration of high-quality standards of tea which Kenya is well known for but has been on a decline in recent years. This will be through enhanced monitoring and surveillance of leaf quality, transportation, manufacturing and handling standards and discouraging unbridled and cheap importation of tea. It will result in protecting the local tea industry from undue competition and facilitate and support the development of an efficient and well-regulated tea sector in the country.

The Regulations, when implemented, will involve tea industry players in funding the future developments of the industry which is more sustainable as opposed to waiting for Government funding which has been on a decline. It will in the long-term support Kenya's agricultural development and manufacturing pillars development as envisioned in Vision 2030, the ASTGS, BETA, various relevant agriculture, manufacturing and industrialization policies and other various policy instruments. This will therefore harness the potential of the industry to spur economic development in the tea sector and thus contribute to the nation's development.

The Regulations will also regulate tea imports and exports thus controlling all forms of illegal trade actions that can negatively impact the local tea and export tea markets. They will do so by distorting demand and prices and presenting poor-quality products to export markets as Kenyan products that may dent the high-quality image of Kenyan tea products.

Implementation of the Regulations will also create numerous employment opportunities both on-farm to increase production and off-farm in the industry, for the provision of auxiliary services.

In broad terms, the RIA noted that the following broad benefits and returns on investment will be achieved:

i. The regulations will enhance the promotion of Kenyan tea at the global level to grow the traditional Kenyan tea markets and develop alternative markets. This will reduce

dependency on a few markets and protect the local tea industry from shocks due to any form of destabilization in any of these markets.

ii. Increased tea exports from the expansion of traditional markets, alternative markets and export of Kenyan value-added tea products.

iii. Enhanced research in tea to produce high-yielding, drought and pest-resilient varieties, and new tea and tea derivatives products to meet the changing demographics, tastes and preferences in the global tea market.

iv. Reversion of the decline in the quality of Kenyan tea observed in recent years through enhanced monitoring and surveillance of leaf quality, transportation, manufacturing and handling standards.

v. Facilitation of the development of a well-regulated tea sector that promotes fair trade practices and eradicates existing trade malpractices including exploitation of smallholder producers by tea middlemen and other quality-lowering practices.

vi. Provision of additional resources for the development and maintenance of infrastructure in tea growing areas therefore reducing loss of quality and green leaf losses during transportation, processing and logistics.

vii. Improved production, reversing the decline in quality and value addition of Kenyan tea will increase tea sector income and thereby increase producers and other tea stakeholders' returns.

viii. Increased tea exports and sales volumes resulting in increased foreign exchange earnings and thus improved balance of payments for the country.

ix. Expansion into new markets for Kenyan tea, diversifying from over-reliance on the current traditional markets thereby reducing tea price fluctuations and assuring producers of stable tea prices and reliable market outlets.

x. Levy on tea imports will discourage the importation of tea into Kenya thereby protecting the local tea industry from proliferation of unbridled and cheap imports. This will avoid distortion of local market tea prices and demand.

xi. Increased revenue from the levy will enable the Board to better undertake its role in the industry including regulation of the industry and market development for Kenyan tea and reducing the Board’s dependency on the National Treasury for funding.

xii. Creating numerous employment opportunities both on-farm and off-farm across the tea sector and supporting industry auxiliary services.

xiii. Increased incomes for tea producers resulting from increased tea production and stable prices. This will lead to improved livelihoods and social well-being of the rural communities in tea-producing regions.

xiv. Increased tea production, manufacturing, value addition, trade and exports will translate into increased agricultural and national GDP as well as increased foreign exchange earnings.

xv. Regulating tea imports and exports will control any illegal trade actions that can negatively impact the local tea and export markets thus distorting tea demand and prices.

xvi. The funding from the levy will enable the government to achieve its targets under BETA of increased earnings of smallholder farmers from the current earnings of Kshs.59 per kg of green leaf to Kshs. 90 per kg by 2027. And increase of volume of Value-Added tea exports from the current 20 million to 235 million by 2027 as well as increase foreign exchange earnings from tea from 180 billion to over 360 billion by

2027. This target may be achieved through constant marketing and promotional activities including establishing tea hubs and supporting MSMEs in the country.

xvii. It will enhance the marketing and promotional activities of Kenyan tea because of the increased funding which will enable the government to establish and maintain a common user packaging facility. The facility will enable all traders to package their tea in a less costly manner compared to traders establishing and maintaining individual packaging facilities.

xviii. The funding from the levy will enable the government to establish warehouses in their market destinations to minimize the cost of transport and logistics in some of the international markets.

6.0 REASONS WHY OTHER REGULATORY OPTIONS ARE NOT APPROPRIATE

6.1 Option 1: Maintaining the Status Quo

Maintaining the status quo will mean the country does not introduce the Tea levy which will deny the tea industry the much-needed financial resources to support further development of the tea sector. Maintaining the status quo will impact on the sector as follows:

i. The promotion of Kenyan tea will not be realized sufficiently to absorb the exponentially increasing production of tea in the country. This will lead to holding stocks of unsold processed tea which in turn will affect payments to producers affecting millions of Kenyans who derive livelihoods from the sector.
ii. Limited support for research to support the tea sector and to respond to changing tea production technologies, demographic changes and changing tastes in the tea market.
iii. The decline in the quality of Kenyan tea which has been a serious concern in the recent past may continue due to inadequate monitoring and surveillance on leaf quality, transportation, manufacturing and handling standards.
iv. Regulation of the tea sector will remain inadequate. This may result in increased unfair trade practices in the sector including over-exploitation of small producers by middlemen and other practices that may distort the demand and prices of tea or tea quality. It may, in addition, injure the good reputation of Kenyan tea internationally.
v. The complementing role of supporting the maintenance of infrastructure in tea-growing areas will not be possible in the absence of the levy, part of which is ploughed back for the development of the tea industry. This will mean continued high operational costs and inefficiencies in the industry which will be borne primarily by tea producers.
vi. The provision of various critical services to the sector, including clearance for exports and imports, will be affected by insufficient financing which will negatively impact on the performance of the sector. The Board will therefore have to depend more on the Government to provide these services to industry.
vii. The non-introduction of the levy on tea imports will leave the Kenya domestic tea market open to unbridled importation of cheap but low-quality teas. They may distort tea demand and prices in the local market.

The situation is undesirable, and the RIA recommends that the proposed Regulations be implemented to realize the optimal development and regulation of the tea sector for the benefit of all stakeholders within the industry in the country. In addition, this industry will effectively contribute to the realization of the objectives of Vision 2030, ASTGS, the National Agriculture Sector Strategy, the Government's BETA, the respective tea producing Counties' CIDPs and other national policies and strategies on agriculture, trade, industrialization and economic transformation.

6.2 Option 2: Other Practical Options

Alternatives to regulation include:

i. **No new intervention/do nothing**

This may include making use of existing regulations; simplifying or clarifying existing regulations; improving enforcement of existing regulations or making legal remedies more accessible or

cheaper. However, with this approach, the status quo is likely to remain as the tea sector in the country currently has no specific regulation on the tea levy and existing applicable regulations have failed to effectively stir its growth and development optimally. In the absence of any new intervention, the industry would likely remain as it currently is, and this will be to the detriment of all the sector stakeholders and the country in general.

ii. **Information and education**

Information and education can be used to empower stakeholders to make their own decisions, improving choices for the mutual benefit of all. However, information and education can take time to make an impact and may not be acceptable. This approach may also increase costs for the government, agencies and businesses that will be providing the information and education required. The desired objectives are unlikely to be realized within a reasonable time for the common good of all.

iii. **Incentive/market-based structures**.

The government can use economic instruments, such as taxes, subsidies, and initiatives to realize the desired objectives. These initiatives, however, are only practically possible in well-developed and efficiently functioning sectors which have well-defined structures. These sorts of systems often need their own regulation to establish the framework and may have additional costs to the government. They are, however, unlikely to be effective in the tea sector in Kenya, which is fragmented and has multiple industry organizations, each with different segments of actors being driven by different objectives and priorities. The regulations have however allowed exemptions from the tea levy for value-added tea exports and Kenyan tea value added in an EPZ or SEZ for local consumption (regulation 13).

6.3 Alternatives Models of Regulation

The alternative modes of regulating the tea sector include the following:

i. **Self-regulation**

The tea sector in the country does not have an all-inclusive industry representative(s) that could formulate and implement codes of conduct or practice, customer charters, standards, or accreditation systems acceptable to all sector actors for self-regulation and the necessary mechanisms to monitor the effective implementation of such self-regulation. Self-regulation is also not applicable for collection of levies as only the government is allowed to impose a levy for a particular sector in the country.

ii. **Co-regulation.**

Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where the industry may work with the government to develop a code of practice. The enforcement would be by the industry or a professional organization accredited by the government. The tea sector in Kenya currently does not have universally acceptable and all-inclusive industry representative organization(s) that can mobilize and organize the actors towards this. Co-regulation is practically not possible in the local tea industry as currently structured.

7.0 OUTCOME OF STAKEHOLDERS PARTICIPATION

This chapter examines the legal requirements and threshold for stakeholders' engagements in the regulation-making process. It also analyses the outcome of stakeholder engagements in developing the proposed Regulations to assess whether they met the legal threshold set for stakeholders' engagements in Kenya.

7.1 Legal Basis for Stakeholder Engagements

The principle of public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process. This principle upholds the sovereignty of the people by allowing them to make views in the decision-making process. Section 2 of the Statutory Instruments Act, 2013 defines public participation as the involvement by the regulation-making Authority of persons or stakeholders that the statutory instrument may directly or indirectly apply to.

The Constitution of Kenya provides for national values and principles of good governance and participation of the people of Kenya. Article 10 provides for the involvement of the people in the enactment of any law. The national values and principles bind all state organs, state officers, public officers, and all persons whenever they, *inter-alia,* apply the Constitution and enact any law.

Courts of law have in several instances provided modes of ensuring public participation is effective and meaningful. For instance, in, ***Independent Electoral and Boundaries Commission (IEBC) v National Super Alliance (NASA) Kenya & 6 others [2017] eKLR*** (para 164 – 5) the court of appeal stated:

> ***"…The mode, degree, scope and extent of public participation is to be determined on a case-by-case basis.***
> ***What is critical is a reasonable notice and reasonable opportunity for public participation. In determining what reasonable notice is, a realistic time frame for public participation should be given. Also, the purposes and level of public participation should be indicated. Reasonableness is also to be determined from the nature and importance of legislation or decision to be made, and the intensity of the impact of the legislation or decision on the public. The length of consultation during public participation should be given and the issues for consultation. Mechanisms to enable the widest reach to members of the public should be put in place; and if the matter is urgent the urgency should be explained…"***

Further, in ***Poverty Alleviation Network & Others v President of the Republic of South Africa & 19 others, CCT 86/08 [2010] ZACC 5,*** public participation was emphasized in the following terms;

> ***"…engagement with the public is essential. Public participation informs the public of what is to be expected. It allows the community to express concerns, fears and even to make demands. In any democratic state, participation is integral to its legitimacy. When***

a decision is made without consulting the public the result can never be an informed decision…"

In the totality of all the above pronouncements, the following points are important in determining the effective threshold for public participation:

i. Public participation was never intended to be a superfluous or ornamental suggestion; rather, it should be implemented and enforced to have a practical substantive value.
ii. Public participation should never be a mere cosmetic venture, formality, and public relations exercise, rather it ought to be conducted in a manner that informs the public of what is at stake, and how it will impact society and the end document should mirror and reflect the spirit of the public in concern; and
iii. Public participation should never be equated to mere consultations. The product of legislation ought to be a true reflection of public participation so that the end product bears the seal of approval by the public.

Section 5 of the Statutory Instruments Act, 2013 requires a regulatory Authority to, before issuing a statutory instrument, make appropriate consultations with persons who are likely to be affected by the proposed instrument. Specifically, section 5(3) (a) of the Act requires a regulatory authority to notify, either directly or by advertisement, persons who are likely to be affected by the proposed regulation.

Failure to conduct stakeholder engagement may risk the regulation being challenged in court and subsequently annulled. For example, in ***Republic v Cabinet Secretary, Ministry of Agriculture, Livestock & Fisheries & 4 others Ex Parte Council of County Governors & another [2017] eKLR,*** the court declared the Coffee (General) Regulations, 2016 unlawful for failure to comply with the provisions of the Statutory Instruments Act.

In ***ODM & 4 Others -vs- The Speaker of the National Assembly & 5 Others [CONSTITUTIONAL PETITION NO. E 491 OF 2023 (Consolidated with E010 of 2024 and E025 of 2024)]*** the court declared the Privatisation Act, 2023 unconstitutional for lack of meaningful and sufficient public participation. The court held that limiting public participation to select few stakeholders could not be considered reasonable, meaningful and effective both quantitatively and qualitatively as envisioned by the Constitution. The court pronounced that the public ought to have been informed of the intended public participation on the impugned Act.

In ***National Assembly & another v Okoiti & 55 others (Civil Appeal E003 of 2023 & . E016, E021, E049, E064 & E080 of 2024 (Consolidated)) [2024] KECA 876 (KLR) (31 July 2024) (Judgment) Neutral citation: [2024] KECA 876 (KLR)***, the Court of Appeal held that Article10 of the Constitution requires state organs and regulatory bodies to inform the general public and stakeholders why their views were not taken into account and why the views of some of the stakeholders were preferred over theirs. Such an approach will not only enhance accountability in the decision-making processes by State organs but also enhance public confidence in the processes and in our participatory democracy. It is on this basis that the court held that the Finance Act, 2023 offended Article 10 (1) and (2) (c) of the Constitution.

Stakeholder engagement is a statutory requirement and a constitutional mandate that the Authority should observe. It bears great importance to the public as it enables people who are likely to be affected by the proposed regulations to present their concerns to the regulatory body so that they can be considered in deciding the changes that need to be made to the draft regulations. This process should not be considered a formality. The views gathered during the process should be given serious consideration by the Authority even though they are not binding. Failure to consider the comments without justification may have adverse consequences on the draft regulations including legal, economic and cost implications.

7.2 Stakeholders Engagements

The Ministry of Agriculture and Livestock Development (the Ministry), together with the Tea Board of Kenya (TBK) organized stakeholders' engagement and public participation workshops to provide an opportunity for the public to participate in the regulation-making process. The Ministry held specific engagement workshops with key stakeholders including national government ministries, government agencies, research organisations and private players in the sector. The public workshops were distributed in different counties to allow for proper public participation.

The Board held eleven consultative forums in different counties between 9th December 2024 and 18th March 2025. The public participation workshops took place at the following locations: Nairobi, Muranga, Kericho and Mombasa. The workshops attracted different stakeholders including growers, grower representatives, cooperative societies, retailers, processors, packers, brokers, exporters, Council of Governors, County Governments, State departments, private sector and research institutions.

On 29th January 2025 to 1st February 2025, the Board presented the outcome of the public participation to JASSCOM and SWAG PLS wherein the Authority incorporated the comments from the public participation exercise.

The records from the public forums show extensive deliberations on the myriad issues that arose from the proposed Regulations. Stakeholders were allowed to read and analyze the draft Regulations and share their views with the Board. There was evidence to show that the Board collated, reviewed, and incorporated the issues raised into the proposed Regulations and received comments from the workshops.

7.2.1 National Government/Level Consultations

Consultations were conducted with representatives of various national government agencies and state departments of the Ministry of Agriculture and Livestock Development, Tea Board of Kenya and Kenya Agriculture and Livestock Organization (KALRO)

7.2.2 County Governments/Level Consultations

The Ministry, in collaboration with the Board, conducted several public participation workshops in different counties such as Muranga, Kericho, Nairobi and Mombasa with a total of four counties being involved in the county consultations.

On 9th December 2024, the Ministry, in collaboration with TBK, held a meeting at TBK Hall in Nairobi County. The county represented in the consultations was Nairobi. The meeting was attended by representatives from the MOALD, Institute of Certified Secretaries, MMK, KTDA, Bahari Chai and farmers.

On 10th and 11th December 2024, the Ministry, in collaboration with the TBK, held a meeting at the Nokras Riverine Hotel in Muranga. The county represented in the consultations was Muranga. The meeting was attended by representatives from the MOALD, TBK, Kiminy Tea Factory (TF), Kirm Tea Factory, Imenti Tea Factory, Kinoro Tea Factory Company Ltd, Kionyo Tea Factory, Gatungiri Tea Factory, Ikumbit Tea Factory, Kagwe Tea Fcatory, Thumata Tea Factory, Kambaa Tea Factory, Ngere Tea Factory, Nduta Tea Factory, Theta Tea Factory, Herera Forest Edge Tea Factory, Githongo Tea Factory, Kionyo Tea Factory, Gacharage Tea Factory and farmers.

On 16th and 17th December 2024, the Ministry, in collaboration with the TBK, held a meeting at Sunshine in Kericho. The counties represented in the consultations were Kericho, Nyamira, Kisii, Nandi, Narok, Vihiga, Trans Nzoia and Kakamega. The meeting was attended by representatives from MOLAD, TBK, MMK, Kipsigis Highland Co- Operative Society Limited, Kenya Growers Tea Association (KTGA), farmers, Bowns Plantation, KTDA, KALRO, ICS and several tea factories including Twatwet TF, Lettein TF, Kebingi TF, Roret TF, Toror TF, Tombe TF, Roset TF, Nyankoba TF, Tombe TF, Mudete TF, Kabianga TF, Ogembo TF, Nyamache TF, Sotik TF, Mogogussek TF and Nyansiongo TF.

On 22nd and 23rd January 2025, the Ministry, in collaboration with the TBK, held a meeting at Tea Trade Centre in Mombasa. The counties represented in the consultations were Lamu and Tana River. The meeting was attended by representatives from Ministry of Agriculture & Livestock Development - State Department of Agriculture, Tea Board of Kenya, Kenya Tea Development Agency (KTDA), Kenya Tea Growers' Association (KTGA), Independent Tea Producers Association of Kenya (ITPAK), Tea Research Institute (TRI), East Africa Tea Trade Association(EATTA), Global Tea, Kenya Tea, Mogogosiek Tea Factory, Eastern Produce Kenya Limited (EPK Naza Tea Factory, Tusha Tea Limited, Choice Tea Brokers, Capital Tea, Cup of Tea Limited, Swafi Foods Limited, Almasi Chai Limited, Bahari (J) Company Limited, Waso Tea Limited, Empire Kenya EPZ Limited, EPRS Limited, Mabro EA Limited, Combrok Limited, Tea Brokers East Afica Limited, Imperial Tea Limited, Afro Tea Limited, Kenya Tea Grower's Association, Trust Tea Traders East Africa Limited, Neutec Tea Limited, Centraline Tea Brokers, Besty Tea Brokers Limited, Abbas Traders Limited, Trans- Atlantic Trading Company Limited, Wilpalm Tea Limited, Packamc Holdings Limited, Paulport Traders, Amber Tea Brokers, Kipkebe Limited (Sasini), Kirindo Traders Limited, Tropical Crepes and Communication Limited, Prudential Tea Brokers Limited, Kiptoo Tea Kenya PLC, Mizas Africa Commercial, Serene Sips Trading, Island Capital Venture, Greatwhale Packers, Global Tea, Tranzil Trading Limited, Atmco Enterprise Limited, Vintage Tea Limited, First Cup Coffee, Saman Tea Limited, Mizad Africa, Pwani Hauliers, Afro Tea Limited, Al- Khalifa Limited, ICS,

On 18th March 2025, the Ministry, in collaboration with the TBK, held a meeting at Lake Naivasha in Nakuru. The meeting was attended by the representatives from the various counties where tea is grown including Nyamira, Bomet, Nakuru, Kirinyaga, Kisii, Muranga, Nyeri, Kiambu, Nandi, Tharaka Nithi and Meru.

7.2.3 Research and Academia

There The Ministry, in collaboration with the Board, involved stakeholders from research institutions such as KALRO and Tea Research Institute.

7.2.4 Private Sector

The Ministry, in collaboration with TBK, held various forums with various farmers, growers' associations, tea factories, cooperative societies, marketing organizations and packers and brokers, who gave considerable comments on improving the draft regulations.

7.3 Summary of Stakeholders' Views

Stakeholder views were captured, discussed, and addressed in consultative meetings. They were thereafter documented in a matrix, which indicates the issues and how they were addressed. Some views were incorporated into the proposed regulations, while others were not. The Ministry occasionally indicated the reasons for the non-adoption of some views, including the fact that some of the views had already been addressed by other regulations.

A summary of the public consultation outcomes was as follows:

Item	Key Areas of the Regulations	Proposed Changes by the Stakeholders	Responses from The Technical Drafting Team	Justification/Action Taken
1.	Regulation 3(2) (a) Levy on direct sales	EATTA objected to imposing a levy on direct sales, arguing it's not provided for under the Tea Act	Not adopted	Section 53(1) of the Act includes all exports, including direct sales and court-negotiated consent between TBK and EATTA allowed for direct sales.
2.	Regulation: 3 – Basis for Levy	EATTA and EPK proposed charging levy per kilo instead of a percentage of value.	Not adopted	Section 53(2) and (3) legally mandate a value-based levy; equity in taxation supports a value basis overweight.
3.	Regulation: 3(1) – Levy on Exports	Several farmers proposed removing the export levy, citing	Not adopted	Exporters, not farmers, bear the levy. Funds will be reinvested in the sector to improve farmer returns.

		high taxation and reduced farmer income.		
4.	Regulation: 3 (2) (b) – Import Levy	Reduce the 100% levy on imports to a lower or progressive rate	Not adopted	The Act mandates 100% levy to protect against cheap imports undermining Kenyan tea.
5.	Regulation: 3 (2) (a) – Rate of Levy on Exports	EPK proposed reducing levy rate to 0.5% of export value	Not adopted	One percent rate is the industry's general consensus and is needed to fund essential programs.
6.	Regulation: 3 – Fairness of Levy	KTGA argued levy contradicts Malabo/Maputo declarations; government should fund the sector.	Not Adopted	Tea levy provides a sustainable alternative amid inadequate exchequer support.
7.	Regulation: 13 – Exemptions	Clarify that imports into EPZs and SEZs are exempt from the levy.	Adopted	Such imports are not for domestic consumption and are excluded by design.
8.	Regulation: 11 – Permits	Replace export permits with licenses to reduce bureaucracy.	Partially adopted	Permits ensure compliance on a consignment basis; licenses are covered under separate regulations.
9.	Regulation: 12 – Value Addition	Exemptions should be extended to retailers to encourage local consumption.	Adopted	Retailers already exempt; levy only applies to exports and imports
10.	Regulation: 15 – Digital Monitoring	Introduce digital tracking for levy payment and compliance	Adopted	Regulation 15 added to enable real-time monitoring through the Integrated Management Information System.
11.	Regulation: 15 – Infrastructure Funds	Counties requested specific frameworks and	Adopted	Infrastructure was defined clearly and a joint

		control over 15% infrastructure allocation.		administration framework introduced.
12.	Regulation: 15 – County Roads	Specify that levy applies to feeder and county roads only	Adopted	Regulation amended to define infrastructure and avoid duplication with national road authorities.
13.	Regulation: 15 – Public Participation	Clarify who leads public participation (Board vs Counties).	Adopted	Roles clarified, Board handles levy use under its portion, Counties handle infrastructure.
14.	Regulation: Entire Tea Levy Regulations– Allocation Transparency	Stakeholders requested key performance indicators (KPIs) to ensure transparency.	Adopted	TBK operates under the Public Finance Management Framework; stakeholder board oversight applies
15.	Regulation: Entire Tea Levy Regulations– Role of Counties	Counties wanted revenue-sharing and inclusion in implementation	Adopted	15% allocation to infrastructure managed in collaboration with counties as per Regulation 14.
16.	Regulation: 15 – Emergency Fund	Establish emergency fund for adverse weather events	Adopted	Covered under price stabilization fund in Section 53(5).
16.	Regulation: Entire Tea Levy Regulations – Value Addition Incentives	Provide incentives for domestic processing and value addition	Adopted	Regulation 12 exempts value-added teas from levy, encouraging domestic processing.
17.	Regulation: Entire Tea Levy Regulations – National vs County Roles	Counties asked for participation in oversight and use of funds.	Adopted	Section 7 of the Act ensures county representation on TBK Board

18.	Regulation: RIA (Regulatory Impact Assessment)	EATTA contested accuracy of stakeholder consultation claims.	Adopted	RIA was corrected to reflect actual consultation history and include additional input.
19.	Regulation: Entire Tea Levy Regulations – Farmers' Support	Stakeholders supported levy if it benefits research, marketing, and infrastructure.	Adopted	Levy apportioned to support TBK, TRI, infrastructure and price stabilization directly benefits farmers

7.4 Assessment of Adequacy of Stakeholder Participation

The Ministry conducted various stakeholder consultation meetings and stakeholder public participation forums, which allowed it to receive various comments, especially from farmers, which would help in developing and improving the draft regulations.

The public participation workshops took place across four counties in the Republic of Kenya. The consultations covered participants from 20 counties including Kericho, Nairobi, Mombasa, Nyamira, Kisii, Nandi, Nyeri, Narok, Vihiga, Trans Nzoia, Lamu, Tana River, Bomet, Nakuru, Kirinyaga, Muranga, Kiambu, Tharaka Nithi, Meru and Kakamega counties. The records show that the Ministry proactively mapped out and sent invitations to various stakeholders from different regions.

From the records, the Consultant established that attendees of the public participation workshops raised their issues and gave their comments, and the Board was able to respond to them. Additionally, the attendance lists revealed that the attendees were a good representation of the stakeholders who are likely to be affected by the proposed regulations in accordance with the law.

The records from the public forums show extensive deliberations on the issues that arose from the proposed Regulations. Stakeholders were allowed to read and analyze the Regulations and share their views with the Ministry. There was evidence to show that the Ministry collated, reviewed, and incorporated the issues raised and comments received from the workshops into the proposed regulations.

Overall, the formulation of the draft Regulations was substantially compliant with the law relating to public participation and stakeholder engagement in Kenya. The Consultant therefore believes that there is still room to improve the level of stakeholder engagement and consult more stakeholders, especially those from the academia and general members of the public before and during the national validation workshop.

8.0 ENFORCEMENT AND COMPLIANCE

The following regulatory tools have been proposed to help ensure compliance with the regulations: the appointment of agents to assist the Board in collecting levies, declaring, verifying, and remitting the levy, issuing permits, cancelling permits, and granting exemptions.

The Board will employ the following enforcement tools to aid in ensuring compliance with the regulations: imposing interest on unpaid levies and criminal sanctions, which include the imposition of fines and imprisonment against the contravening party.

The following compliance and enforcement tools are provided in the draft Regulations:

1. The Board shall appoint agents to collect the tea levy on its behalf under Regulation 8.
2. The tea exporter or importer shall declare to the Board the value of exports or imports under the prescribed forms as required under Regulation 9 (1) at the time of import or export.
3. The Board or its authorized agent shall verify the tea export or import documentation to authenticate the export or import declaration under Regulation 9 (2).
4. The tea exporter or importer shall, upon payment of the applicable levy provide to the Board or its authorized agent proof of payment of the tea levy payable as required under Regulation 10 (1).
5. The agent is required to remit the amount paid by the exporter or importer to the Board not later than the 30th day of the following month, as required under regulation 11.
6. The Board shall issue the exporter or importer with a permit in the prescribed form under Regulation 12 (1) upon verification of the tea exports or imports documentation and payment.
7. The Board may cancel an export or an import permit if an exporter or importer contravenes the provisions of the Tea Act or its regulations as provided for under Regulation 12 (3)
8. The Board shall exempt value-added tea exports and Kenyan tea value-added in the EPZ or SEZ for local consumption from the levy, as required under Regulation 13.
9. The Board shall recover the unpaid tea levy as a civil debt by issuing interest at the prevailing Central Bank Rates until payment in full as required under Regulation 14.
10. Criminal sanctions which include the imposition of fines and imprisonment against the contravening party as per section 71 of the Tea Act under Regulation 15.

9.0 REVIEW, MONITORING, EVALUATION AND LEARNING

Monitoring, evaluation and Learning (MEL) of the regulations is important in determining its effectiveness, efficiency and adequacy in achieving its intended objectives and purpose. It informs the government and players in the sector whether the regulations are working. Proper use of M&E mechanisms constitutes a major change in the operational style and working culture of regulatory authorities that enables them to set up a process of continuous learning through experience and evidence. A well-functioning system of M&E would directly influence the ability of the regulations to foster competitiveness and economic growth in the sector. A review of regulations will ensure it is consistent and effective in regulating the activities in the sector.

It is expected that the Regulations will be a subject of great interest to all stakeholders particularly because of its potential to enhance the promotion of Kenyan tea in the local and international market. There is a need for increased markets for Kenyan tea as the production has increased exponentially in Kenya over the last decade. The levy would facilitate the budget that would enhance the marketing and promotion activities.

The board has established the following mechanisms to enhance the monitoring and evaluation of the draft regulations.

i. The Board will report the performance of the levy through its annual and quarterly reports in line with sections 82 and 83 (1) and (2) of the PFMA. This will ensure that the Board tracks whether the levy has met the set collection target as per the annual estimates of the Board and if the purpose of the levy to the Board and the stakeholders has been achieved within the period.
ii. The Board maintains a register of tea importers and exporters. This ensures that the Board accurately monitors the persons carrying out tea export and import activities and paying the levy and those carrying out the business without paying the levy which would attract a penalty.
iii. The Board publishes information in the Kenya Gazette regarding the grant of the permit at the point of export and import and the amount of levy charged by the Board under Regulation 5. This would provide the public with adequate information on the imposition of the levy.
iv. The Board ensures that tea exporters and importers have valid permits issued by the Board before carrying out the activity. This ensures the quality of the tea exported and imported meets the required standards. It also deters unbridled importation of cheap but low-quality teas which would hinder competition in Kenya.
v. The Board has sufficient capacity to track any tea levy that remains unpaid and take the necessary action under the law.
vi. The Board shall collaborate with other government agencies such as the Kenya Revenue Authority and Kenya Trade Network Agency when necessary to ensure effective and timely collection of the levies.

10.0 CONCLUSION AND RECOMMENDATIONS

This chapter provides other laws and policies that could complement the proposed Regulations. It also provides concluding observations regarding the proposed Regulations and makes a specific recommendation on whether the proposed regulations should be adopted and implemented.

10.1 Conclusion

The RIA has examined the history of tea levy in the sector. It has stated the justifications for imposing a tea levy in the sector and analyzed the effects of the proposed levy on the private and public sectors. In addition, the RIA has examined the economic, social and environmental benefits and costs of the proposed levy and the viability of the alternative options. It has therefore concluded that if the proposed regulations are implemented, the levy will be used to grow and develop the sector through funding critical activities such as marketing and promotion, research, infrastructure development and supporting TBK to perform its regulatory function more effectively. These activities will enhance the competitiveness of Kenyan tea in the market and the sustainability of the tea sector.

10.2 Recommendation

The RIA recommends a further public participation phase before and during the national validation workshop to collect final public views and consider the comments on the proposed regulations before gazetting and implementing them in the country's tea industry.

10.3 Linking the Draft Regulations to Other Laws and Regulations

The RIA certifies that the Tea (Tea Levy) Regulations, 2024 will be complemented by other statutes and policies with overlapping/complementary objectives including:

i. Agriculture Sector Transformation and Growth Strategy (ASTGS), 2019-2029
ii. Agricultural Finance Corporation Act, Cap 323
iii. Agricultural Produce (Export) Act, Cap 319
iv. Agricultural Policy 2021
v. Auctioneers Act, Cap 526
vi. Co-operative Societies Act, Chapter 490
vii. County Governments Act, 2012
viii. Crops Act, 2013
ix. Data Protection Act, 2019
x. Disposal of Uncollected Goods Act, 1987
xi. East African Community Agriculture and Rural Development Policy provided under Article 105 of the Treaty for the Establishment of the East African Community
xii. Environmental Management and Coordination Act, 1999 (Act No. 8 of 1999) revised in 2015.
xiii. Food, Drugs & Chemical Substances Act, Cap 254
xiv. Insurance Act Cap 487
xv. Kenya Climate-Smart Agriculture Strategy 2017 – 2026
xvi. Kenya Vision 2030
xvii. Micro- and Small Enterprises Act, No. 55 of 2012
xviii. Moveable Property Security Rights Act, 2017
xix. National Agricultural Research Systems Policy, 2012

xx. National Agricultural Sector Extension Policy, 2012
xxi. National Cereals & Produce Board Act, Cap 338
xxii. National Environment Policy, 2013
xxiii. National Environmental Management Authority (NEMA) Regulations, 2006
xxiv. National Food and Nutritional Security Policy, 2012
xxv. National Food Safety Policy, 2013
xxvi. National Trade Policy, 2009
xxvii. Pest Control Products Act, Cap 348
xxviii. Plant Protection Act, Cap 324
xxix. Public Audit Act, 2015
xxx. Public Finance Management Act, 2012
xxxi. Public Health Act, Cap 242
xxxii. Public Officers Ethics Act, 2003
xxxiii. Relevant County Policies and Legislation
xxxiv. Sale of Goods Act (Cap 31)
xxxv. Science, Technology and Innovation Act, No. 28 of 2013
xxxvi. Seed & Plant Varieties' Act, Cap 326
xxxvii. Sessional Paper Number 6 of 1999 on Environment and Development Policy
xxxviii. Standards Act, Cap 496
xxxix. Statutory Instruments Act, 2013
xl. The Constitution of Kenya, 2010
xli. The Kenya Agricultural and Livestock Research Act, 2013 (No. 17 of 2013)
xlii. Trade Description Act, Cap 513
xliii. United Declaration of Human Rights
xliv. Warehouse Receipts System Act, 2019
xlv. Weights and Measures Act, Cap 513

11.0 PERTINENT ISSUES

The Consultant raised the following pertinent issues relating to the proposed Regulations, which may be considered when finalizing them.

11.1 Gaps in Drafting the Regulations

The Consultant noted the following structural gaps in the drafting of the regulations:

a) There is inconsistency in cross-referencing within the Regulations. For instance, the definition of permit in Regulation 2 refers to the permit issued in accordance with Regulation 8, yet Regulation 8 concerns the collector of the levy. The definition should have cross-referenced Regulation 12 instead, which concerns permits. It is recommended that draft Regulations cross-reference the correct Regulations.
b) There is repetition of some parts of the Regulations. For instance, Regulations 4(1) and (2) on the point of imposition of the levy are similar to Regulations 7(1) and (2) which also describe the point of imposition of the levy. This should be corrected to enhance the flow of the Regulations.
c) The Regulations do not have a table of contents. The Board should include one in the draft Regulations.
d) The draft regulations contain several typos and spelling mistakes. The Board should proofread them to correct the mistakes.
e) The words in the definition section are not arranged in chronological order. An example is a permit which comes after the point of import.
f) Words such as import, and export are not included in the definition section.
g) The Regulations have omitted an important section on application and the objectives/purpose of the Regulations. This should be included in the Regulations

11.2 Non-compliance with the law and Inadequacy in the Proposed Regulations.

The proposed Regulations do not provide for an internal dispute resolution mechanism in cases of breach or where an applicant for an export or import permit feels that a decision has been unlawfully or unreasonably made to decline the issuance or cancellation of their permit. It is recommended that a provision establishing an internal dispute resolution mechanism be introduced within the Tea Act to handle disputes before they move to court. It may not be possible to create a dispute resolution mechanism within the Regulations where the parent Act does not address the same. The Board can lobby Parliament for the establishment of a Tribunal or a Committee within the Tea Act to handle any disputes under the Tea Act.

The draft Regulations do not provide for an appeal process where the Board decides to cancel an export or import permit under Regulation 12(3). This is in breach of Article 47 of the Constitution which guarantees the right to fair administrative action. Regulation 12(2) further gives the Board power not to issue a permit where an exporter or importer has not paid the levy or complied with the Tea Act or any regulations. There is however no appeal process to this decision.

Regulation 68 of the Public Finance Management (National Government) Regulations No.34 of 2015 provides that revenue refunds shall be in accordance with the relevant legislation. The draft Regulations do not provide guidance on instances where a revenue refund may arise, such as when over-collections are made in error. This creates a gap where such an instance arises.

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