THE MINISTRY OF AGRICULTURE AND LIVESTOCK DEVELOPMENT

REVISED REGULATORY IMPACT STATEMENT (RIS)

TEA (TEA LEVY) REGULATIONS, 2024

MAY 2025

1.0 Introduction

The Regulatory Impact Statement for the proposed Tea (Tea Levy) Regulations, 2024 was prepared in accordance with the provisions of sections 6 and 7(1) and (2) of the Statutory Instruments Act, 2013. Section 6 of the Act requires the Regulation Making Authority to prepare a Regulatory Impact Statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Sections 7(1) and (2) of the Act set out the contents of a regulatory impact statement for the proposed regulations as follows:

2.0 Statement of the Objectives and Reasons for the Proposed Regulations

Justification of the Levy

Tea Act, 2020 (the Act) proposed the Board impose the establishment of a Tea Levy 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 a levy of 100% of the import value for all imported tea to control importation into the country. This will deter unbridled importation of cheap but low-quality teas to compete with local tea and thus will 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; fifteen per cent 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/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 not only is 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 per cent of Kenya's tea exports are destined for only five countries, being Pakistan, Egypt, the United Kingdom (UK), the 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 a levy.

For many years, Kenya has prided itself as a producer of high-quality teas free from pesticides and chemicals. There are however serious concerns about the declining quality of Kenyan tea recently, 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 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. There is a need to introduce a levy that will be ploughed back into the development of the tea industry to provide finances for maintaining infrastructure in tea-growing areas. 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 the 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 unbridled importation of cheap and low-quality teas into the county and protect the local production of tea.

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 (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.

3.0 Statement on the Effect of the Proposed Regulations

The following are the effects of the proposed Tea (Tea Levy) Regulations, 2024.

3.1 Effects on the Public Sector

The proposed Regulations will affect the Public Sector in the following ways:

1. 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.
2. 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.
3. 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.
4. 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
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.

3.2 Effects on the Private Sector

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

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.

3.3 Effects on Fundamental Rights and Freedoms

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

i. Consumer Protection

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.

ii. Fair Administrative Action

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).

iii. Right to privacy

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.

iv. Access to Information

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.

v. Right to equality and freedom from discrimination

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 Statement on Regulatory & Non-Regulatory Options

This section highlights other regulatory and non-regulatory options that may be adopted to achieve the same intended objectives of the Tea (Tea Levy) Regulations 2024 in Kenya.

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 to 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 section 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 is paid, which 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. Complying with import or export declarations and paying the levy may be viewed as time-consuming and costly. However, TBK has digitized its services to enhance efficiency and effectiveness.

iv. Gazettement of the Tea Levy Regulations will require public participation and have an estimated budget of Kshs. 8.5 million. In addition, the implementation of the Regulations will require the employment of additional staff to administer the levy, which will have 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

i. The anticipated social benefits of the proposed Regulations are:

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

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

iv. Reduce the tide of rural-urban migration in search of employment opportunities by creating attractive paying alternatives in rural areas.
v. Improved infrastructure in rural areas through the development of modern or additional tea processing, manufacturing, and marketing facilities.
vi. 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.
vii. Improved education levels and reduced illiteracy in society due to improved incomes and thus improved social well-being of the rural communities.
viii. 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.
ix. 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 promotion of more climate-resilient tea cultivars and cultivars suitable for different agrozones 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 utilisation, especially in otherwise idle, underutilised, 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. This will enhance the sector's environmental sustainability.

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 road 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 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 to support 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 scrapping 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 yields 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 Kenya's tea export earnings are lower than those of Sri Lanka and China is that it sells in bulk rather than in 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 funds 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. The Regulations will be implemented holistically, with all their provisions 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 has been increasing at an average rate of 5% per annum over the last 10 years. 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 and 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 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

This section highlights reasons why other regulatory options identified above may not be appropriate for the VPS sector.

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 tea 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 the performance of the sector. The Board will therefore have to depend more on the Government to provide these services to the 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 the 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 Conclusion and Recommendation

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.

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.