MINISTRY OF AGRICULTURE, LIVESTOCK, FISHERIES AND IRRIGATION

REGULATORY IMPACT STATEMENT (RIS)

THE CROPS (TEA INDUSTRY) REGULATIONS, 2019

FEBRUARY, 2019

Introduction

The Regulatory Impact Statement for the proposed Crops (Tea Industry) Regulations, 2019 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instruments Act, 2013 (No. 23 of 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. Section 7(1) and (2) of the Act set out the contents of a regulatory impact statement for the proposed regulations as follows:

1.0 A Statement of the Objectives and Reasons for the Proposed Regulations

The regulatory objective and justification of the proposed regulations is to promote and protect the tea industry for the benefit of the tea growers and other stakeholders in the tea industry to:

i. Facilitate formulation of general and specific policies for the development of the tea sub-sector in liaison with the State Department for Crops Development;
ii. Facilitate the marketing and distribution of tea through monitoring and dissemination of market information including identification of the local and international demand situation, domestic market matching and overseas market intelligence and promotion activities on tea;
iii. Issue licenses under these regulations.
iv. Issue registration certificates under these regulations.
v. Determine the criteria for issuance, refusal, revocation, cancellation, suspension or variation of licenses or registrations issued with respect to tea;
vi. Regulate and promote, the transportation and processing of tea;
vii. In liaison with the stakeholders and relevant government research institutions determine the research priorities on tea and advice generally on tea research.
viii. Promote training programs aimed at increasing knowledge in tea production, technology, market potentials and prospects for various types of tea;
ix. Partner with research institutions in the development of tea varieties suitable to the agro climatic conditions of the tea growing areas and markets that will provide greatest value addition to tea; and

x. The regulations will contribute to the manufacturing pillar of the National Government's *Big Four Agenda* through agro processing of increased tea volumes produced.

2.0 Statement on the Effect of the Proposed Regulations

The proposed tea regulations are expected to have a long-term impact on increased foreign exchange earnings for the country and improved incomes along the tea value chain through better yields and enhanced competitiveness in the global market as envisaged in the Economic Pillar of the Kenya Vision 2030.

2.1 Effects on the Public Sector

I. Compliance with national and international standards would guarantee better prices leading to increased incomes, and improved livelihood to industry players.

II. Unbundling of the management and marketing functions will enhance operational efficiency and governance.

III. The Government will further improve regulation in the sector for streamlined oversight and better management.

IV. County Governments will have a well-organized policy and strategy implementation structure at the local level, especially the mobilization of farmers, regulation and better coordination of the sub-sector in the county and promoting sector development in the counties.

V. The Tea Directorate will have improved sector structures, systems and implementation framework for more effective sector regulation and planning.

VI. Full implementation of these regulations will aid to advance the manufacturing pillar of the National Government's *Big Four Agenda* through increased productivity in the tea industry. The Regulations will result in increased farm incomes, increased export revenues and foreign exchange earnings.

2.2 Effects on the Private Sector

I. Enhancement of operational efficiency, product quality and ease of doing business.

II. Deliberate effort has been made to guarantee the period within which returns to the producer should be realized.

III. Tea growers will access quality planting materials, market access, and enhanced advisory services and support.

IV. Tea manufacturers – consistent and reliable supply of quality raw materials for better business planning and operation and Legal recognition of the informal businesses.

V. Dealers (Transporters, brokers, marketing and management agents, auction organizers, wholesalers & retailers, importers) - Regular supply of produce/products for sustainable businesses, consistent product quality, and reliable and stable markets.

VI. Tea buyers / exporters - regular supply of products for sustainable business planning, consistent product quality, and development of reliable and stable markets.

VII. Nursery operators - Formal recognition of nurseries, advisory services and support, reliable market for planting materials.

2.3 Effects on Fundamental Rights and Freedoms

I. There are no foreseen negative impacts on fundamental rights and freedoms in relation to the proposed Regulations.

II. The proposed Regulations shall have a positive impact to the farmers. They will provide better returns on produce and investment to existing and new farmers. The regulations will also create wealth and employment for more Kenyans in the rural areas. This would contribute to improved household incomes and enhances capacities to afford an adequate standard of living envisaged in Article 43 of the Constitution of Kenya, 2010.

III. Further, the proposed regulations seek to advance the government policy of implementing reforms in the tea sector aimed at achieving the national goals set out in the Kenya Vision 2030 whereby the agricultural sector shall be a key driver of economic growth and value addition. The regulations will not only enhance public participation of the players in the sub-sector but also ensure consumers of tea have quality and safe products to consume as required in Article 46 of the Constitution.

3.0 Statement on Regulatory and Non-Regulatory Options

3.1 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 legislative and regulatory framework, thus maintaining the *status quo*.

Examples of this are:

a. making use of existing regulation;
b. simplifying or clarifying existing regulation;
c. improving enforcement of existing regulation; or
d. Making legal remedies more accessible or cheaper.

3.2 Option 2: Passing the Regulations

Government can achieve its policy objectives by using taxpayer's money, or through a range of non-spending interventions, including regulation. Regulation aims to set rules to protect and benefit people, businesses and the environment, stabilizing markets and addressing market failures to support economic growth. Regulation can also create costs for businesses and the public sector. It can, if overused, poorly designed or implemented, stifle competitiveness and growth in the sector.

Passing and operationalization of the proposed regulations will:

a) Further streamline regulation and coordination in the tea industry for efficient development of the sector.
b) Increase the productivity for both the smallholder tea growers and the plantation tea producers and thus increase tea production in the country.
c) Increase tea production which will translate to increased incomes for farmers and increased tea exports and export earnings.
d) Support innovations in value addition to diversify Kenyan tea products to target diverse tea markets.
e) Value addition of tea will increase tea export earnings from sale of black CTC and specialty teas.
f) Streamline tea marketing and eradicate green leaf diversion commonly known as 'tea hawking' malpractices to maintain quality and guarantee tea factories receive adequate supply of green leaf for optimal operation and avoid exploitation of small tea farmers.
g) Enhance access to quality planting materials to meet demand for new crop establishment.

h) Maintain and regularly update a data base on the sub-sector for planning and decision making.

i) Facilitate increased crop research and improved extension advisory services to farmers for increased production, improved produce quality and product diversification.

3.3 Option 3: Other Practical Options

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, 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.

1. **Alternatives to regulation**

The alternatives to regulation include:

a) No new intervention/do nothing: - This may include making use of existing regulation; simplifying or clarifying existing regulation; improving enforcement of existing regulation; or making legal remedies more accessible or cheaper and as discussed in the section above status quo in the sector are likely to remain.

b) Information and education: Information and education can be used to empower stakeholders to make their own decisions, improving choice for mutual benefit of all. There are potential risks associated with this. Information and education can take time to make an impact. Access to information and the ability to use it can vary within a community and so may not reach all equally. It may also not be straightforward to assess how people will react or change their behaviour in response to the information provided. It will also increase costs for government and businesses that will be providing the information and education required.

c) Incentive/market-based structures.

Although the tea sector has well-defined structures, they suffer from operational inefficiency. This has made it difficult for the government to use economic instruments, such as taxes, subsidies, quotas and permits, vouchers etc. as initiatives to realize the desired objectives. Further, often these sorts of systems need their own regulations to establish the framework and may have additional costs to the Government.

2. Alternatives models of regulation

Alternative modes of regulation include:

a) Self-regulation

An industry or a profession can self-regulate, for example through the use of codes of conduct, customer charters, standards or accreditation. In many cases rules and codes of conduct will be formulated by other industry representative or organization under their own initiative. The tea industry Self-regulatory mechanisms are currently in place through Kenya Tea Growers Association (KTGA) and East African Tea Trade Association (EATTA). However, not all the value chain players are members of these Associations. In addition, there is the code of practice which is applicable to all actors in the industry.

b) Co-regulation

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

4.0 Costs-Benefit Analysis (CBA)

Economic impacts of the Regulations will include:

i. Increased agricultural production of tea.
ii. Increased exports of tea volumes and products.
iii. Increased value addition and product diversification.
iv. Increased earnings from tea products exports.
v. Increased savings and investment by tea farmers.
vi. Increased farm incomes.
vii. Foreign Direct Investment through new investments in production, value addition and marketing of Kenyan tea products.
viii. Improved terms of trade - substitution of imported specialty tea products with local products.

ix. Increased job creation in the tea industry.
x. Maximized productivity of the tea industry in which Kenya has a comparative advantage in resources.

Social impacts of the Regulations will include:

i. Decreased poverty level among the tea farmers and the community in general.
ii. Improved income distribution among the tea farmers and the community in general.
iii. Improved access to water and sanitation among the tea farmers due to increased incomes.
iv. Improved health status of the tea farmers and the community resulting to reduced child and maternal mortality and reduced disease incidences.
v. Improved education levels and reduced illiteracy.

Environmental impacts of the Regulations will include:

i. Improved access to clean affordable water by the households.
ii. Reduced deforestation.
iii. Improved access to quality affordable energy by households.
iv. Reduced carbon emission.
v. Improved land conservation, utilization and management.
vi. Reduced soil degradation due to improved plant cover and reduced soil operations.

4.1 Administration and Compliance Cost

The RIA noted that resources would be required for operationalization of the regulations which will include human resource and operation costs for enforcement as well as for awareness creation of the regulations to the different stakeholders in the tea sector. More resources will go to the implementation of the wider National Agriculture Policy which supports extension services for strengthening knowledge transfer and technology distribution among the farmers.

4.2 Assessment of Return on Investment (Benefit)

Passing and operationalization of the regulations, will be critical in facilitating further development of the tea sector with an improved level of productivity; increased value addition, efficiency in tea production, manufacturing and marketing to guarantee improved incomes for the farmer and thus improved livelihoods and social welfare for communities, while also guaranteeing other businesses within the value chains good returns and higher export earnings for the country.

In broad terms, the RIA noted the following benefits:

a) The Regulations will streamline and organize the sector for better functioning while allowing for fair competition and this will result to enhanced efficiency and development of the sector.
b) Improved and more efficient agricultural advisory services will support the farmers to improve the productivity and quality of their tea.
c) Increased access to quality planting materials by tea growers will result to increased tea acreage, increased yields and improved quality.
d) New manufacturers, processors, dealers and other value chain actors will be attracted to invest in the more efficient tea sector providing farmers with alternative market options for their produce.
e) Processors, dealers, and other value chain actors will be assured of sufficient quantities of produce/products of acceptable quality for sustained operations of their businesses.
f) A comprehensive sector database will be maintained to inform sector planning and future investments.
g) More efficient tea marketing will reduce and eventually eliminate greenleaf diversion commonly known as 'tea hawking' thus resulting in improved tea quality.
h) Increased national production and value addition will translate to increased exports of the different tea products.
i) Improved production will translate to increased job creation through farm labour, tea manufacturing, value addition, marketing and services.
j) Enhanced production will also translate to increased exports and foreign exchange earnings.
k) Research in the sector will be focused to address identified issues and support further development of all spheres of the sector.

4.3 Quantification of the Benefit

The low productivity of tea by smallholders compared to the plantation producers represents a big economic loss for the farmers and the country. With appropriate interventions in the proposed regulations, if this gap was bridged, the production by smallholders would increase by about 40%. The small holder subsector has the potential to produce up to 395,993 tons/made tea (mt)/year compared to the 246,127 tons/mt/yr which was realized in 2017. This would increase the earnings from tea for small holders by an additional Kshs. 40 billion per year. This would also enable Kenya to realize an annual production of over 500,000 tons/mt/yr. (FAO, 2018)

Investment in value addition would steeply increase the value of Kenyan tea which currently earns US$ 2-3 per Kg mt by between 100-400% through the export of diversified tea products targeting defined differentiated markets. This would in return significantly increase the growers' earnings and foreign exchange earnings. (FAO, 2018)

Improved management of tea production costs, 50% of which are energy costs will see the factories returns improve significantly which will further improve the growers' earnings.

These developments alongside other interventions that will make the tea industry more efficient will attract additional investments along the value chains further creating more employment opportunities and increasing the number of beneficiaries from the current 5 million.

4.4 Distribution of Impacts

The operationalization of the regulations will generate more positive than negative impacts/risks if they are implemented with sufficient financial, logistical, technical and human resources. The impacts are expected to be more positive on the private sector.

The proposed regulations are expected to facilitate further development of the tea industry through addressing specific identified problems while providing a favorable environment for continued growth. The increased productivity of tea among tea growers, improved quality, and access to quality planting materials, value addition, product diversification and efficient management of tea production costs will translate to improved producer prices which will motivate farmers even further to increase production and quality of their tea.

This will in return result in improved livelihoods through reduced poverty levels, improved income distribution and better access to water and sanitation. In addition, there will be access to better health care thus reducing child and maternal mortality. There will be better access to education thus reducing illiteracy. Moreover, the growing of these crops will improve land use management, reduce soil degradation and deforestation. Further, increased production and value addition process will create more employment opportunities in the private sector improving livelihoods for more people in the local communities.

The public sector, the regulation and coordination of a better organized and streamlined tea sector will be significantly improved. The improved production and value addition will contribute to increased exports and earning in foreign exchange for the country.

5.0 Reasons why other Regulatory Options are not Appropriate

5.1 Option 1: Maintaining the *Status Quo*

Maintaining the *status-quo* will only sustain the challenges facing the tea sector and stifle further growth of the sector, including the following:

a) The growing productivity gap between smallholder tea growers and the estate will continue to increase, denying the farmers optimal returns from their tea fields and reducing the country's tea export volumes and earnings.
b) Ineffective agricultural advisory services to farmers, contributing to low tea production among small holder tea growers.
c) "Hawking" of Greenleaf may continue, with consequences of declining tea quality and threatening community tea factories operations due to inadequate supply of green leaf.
d) Limited access to high quality seedlings and seedlings for crop establishment.
e) Declining and unreliable production and further diminish of Kenya's importance in the global tea market.
f) Rising production costs making Kenya's tea globally uncompetitive.
g) Lack of value addition will deny Kenya's tea entry in global niche markets and deny the country the premium prices offered specialty teas.
h) County Governments will not play any role in the regulation of the sub-sector thus contravening the Fourth Schedule of the Constitution,

section 6 of the Crops Act, 2013, section 29 of the AFA Act and relevant provisions of the County Governments Act, 2012 (No. 17 of 2012).

The situation is not sustainable, and the RIA recommends that the proposed regulations be put in place to facilitate further development of the tea sector.

5.2 Option 2: Other Practical Options

The other practical options set out in section 3.3 above were weighed against the need to pass the proposed regulations. Therefore, considering the cost benefit analysis; the economic, environmental and social costs; administration and compliance costs; assessment of the return on investment; and quantification of the benefit of the proposed regulations, it is concluded that the proposed Crops (Tea Industry) Regulations, 2019 should be passed and operationalized whereas the other practical options identified herein are not viable options. However, they can complement the regulations where no operational conflicts are apparent.

6.0 Conclusion

The proposed regulations if effectively implemented will improve the operating environment and will advance the development of the tea industry in Kenya. The improvement will be in terms of volume, quality and product diversification allowing the country to expand tea exports in traditional markets and venture in niche specialty tea markets. The regulations recognize and promote private investment and entrepreneurship which would be attractive to many local and foreign investors.

7.0 Recommendations

The regulatory impact assessment recommends passing and operationalization of the proposed Crops (Tea Industry) Regulations, 2019.