

Chapter 3 Regulatory Activities

Objective 1: Whether Tea Board performed its regulatory role effectively

3.1 One of the primary functions of the Tea Board is to regulate the activities of the various stakeholders in the cultivation of tea and its business in accordance with the provisions of the Tea Act and orders issued thereunder. The effectiveness of Regulatory functions also aid in the effective discharge of other functions like Developmental Activities, Marketing & Promotional Activities and Research Activities.

In this context, we reviewed regulatory functions of Tea Board as laid down in the Tea Act, 1953 and other orders such as Tea (Marketing) Control Order, Tea (Distribution and Export) Control Order and Tea Waste Control Order. We studied records relating to registration of growers, licenses given to exporters/distributors/manufacturers, returns submitted by different stakeholders and scheme for rehabilitation of closed tea gardens.

The Licensing Branch of the Board has been given the following powers:

Regulatory Powers of Tea Board

- Granting permission to small growers²⁴ and big growers²⁵ for tea cultivation;
- Issuing license to exporters, tea distributors;
- Issuing tea waste license;
- Registrations of tea manufacturing units, auction organisers/ auction brokers, buyers; and
- Taking action on closed gardens.
- Impose penalties on stakeholders

Permission to tea growers

3.2 As per Tea Act 1953, no one shall plant tea on any land not previously planted with tea, on the date of commencement of this Act unless permission has been granted to him in writing by or on behalf of Tea Board.

With regard to powers of Tea Board in respect of granting permission to tea growers, our audit findings are discussed below.

Low percentage of small growers registered with Tea Board

3.3 As on 1st January 2004 the total number of big and small growers in India were 1661 and 127366 respectively. During the period 2004-08²⁶, 25 big growers and 30,138 small growers started the activity of planting tea thereby increasing the total number of big and small growers to 1,686 and 1,57,504.

According to the information furnished by Tea Board as of December 2010, all 1,686 big growers were registered with Tea Board. However, we observed that only 32,288 out of 1,57,504 small growers (a mere 20 per cent) could be registered by Tea Board. The Board was not able to furnish information in

²⁴ A small grower is one who holds tea cultivated land up to 10.12 hectares.

²⁵ A big grower is one who holds tea cultivated land more than 10.12 hectares.

²⁶ Data was not available in Tea Board after 2008.

February 2010 relating to how many small growers were registered out of the 30,138 small growers who started activity during the period 2004 to 2009. We further observed that Tea Board did not have year-wise data (February 2010) for registration of small growers. In the absence of such data we could not ascertain the number of applications received, permissions granted, permissions pending, permissions denied, reasons for denying permissions etc. Tea Board, however, compiled yearwise figures of registration and furnished the same in May 2011.



Tea Garden of a small grower

The state-wise data in respect of small growers is given in the table below:

Table 2 – State-wise number of Small Growers registered with Tea Board		
State	Estimated total number (2008)	Registered with Tea Board (2010)
Assam	64597	4561
West Bengal	9990	1032
Tripura	1410	3378
Arunachal Pradesh	36	57
Manipur	427	490
Sikkim	3	0
Nagaland	1451	3354
Meghalaya	1013	72
Mizoram	269	1360
Uttarakhand	70	0
Himachal Pradesh	3695	0
Bihar	980	154
Total - North India	83941	14458
Tamil Nadu	68147	10404
Kerala	5402	7412
Karnataka	14	14
Total - South India	73563	17830
Total - All India	157504*	32288

*Source: Tea Board

From the table it can be seen that:

- None of the small growers in the state of Sikkim, Uttarakhand and Himachal Pradesh were registered.
- The percentage of small growers not registered in Assam, West Bengal, and Tamil Nadu was as high as 93 *per cent*, 90 *per cent* and 85 *per cent* respectively.

Thus, 125216 growers constituting about 80 *per cent* of the total small growers are continuing tea cultivation as of 2010 without the requisite permissions of Tea Board under the provisions of Tea Act 1953. **It is indeed a matter of concern that even after more than fifty-six years of its existence, Tea Board has not been able to even bring all the small growers into its folds.**

The Ministry agreed in October 2009 that there was a need for complete census of both small and big growers. It stated that steps were being taken in co-ordination with the State Governments to ensure coverage of small tea growers under the provision of Tea Act, 1953 and that they had extended funds to State Government of West Bengal and Assam to conduct census activities. However, the fact remains that failure to regulate the activity of small growers even after more than five decades was adversely impacting the effectiveness of its other functions as discussed in succeeding chapters.

Process of granting registration to plant tea

3.4 Tea Board grants permission for planting tea, extension planting, replacement planting or establishment of new tea area as well as identification of tea area along with its ownership. The conditions for granting permission to plant tea are given below.

Conditions for granting registration

Tea Board has the powers to grant permission to plant tea as per the provisions of Rule 30A of Tea Rules. For getting the permission applied for, the owner needs to submit records in support of:

- His ownership/grant/lease of the land,
- His ability to finance the undertaking including erection of a factory, where necessary,
- Suitability of the land in terms of the nature of the soil and climatic conditions

Further, the tea estate owner to whom the permit is issued is required to submit a return on 31st March of each year, showing the area planted up to that date in pursuance of the permit, the reasons for non-utilisation of any area that may not have been planted and the programme for planting tea for the next two years.

Granting permission without following procedures

3.5 We test checked the process of granting permission to plant tea in respect of six big growers and 10 small growers (permission granted during August 2003 to February 2010) and observed that:

- In 15 out of 16 cases, soil report did not contain the required certificate from the authorised laboratories stating that the land was suitable for planting tea. In four cases, Tea Board granted permission for cultivation of tea despite deficiencies of certain chemical properties of soil recorded in the soil reports.
- No returns were submitted by the owners of the Tea Estates, though the same were required to be submitted to Tea Board after permission to plant tea was granted.
- In three cases, Tea Board granted permission though the notarised copy of the sale deed was not submitted by the owners of the Tea Estates at the time of submitting the applications, whereby the fact of ownership could not be verified.

Thus, the procedure for granting permission to the growers (small and big) did not appear to be transparent and fair.

Regulating Tea Business

3.6 Tea Board is empowered²⁷ to regulate activities of different stakeholders in the tea industry like exporters, distributors, manufacturers, buyers, brokers and those dealing with tea waste. A few of the important regulatory functions are given below:

Regulation of activities of various stakeholders in tea industry by the Tea Board

The regulatory activities of tea include ensuring that no person engages himself as a manufacturer, broker, buyer, exporter, distributor or deal with tea waste except under and in accordance with the provision of a license issued by the Board. Accordingly, Tea Board has the right to:

1. Inspect the stock in the factory of the manufacturer or a buyer and draw sample of prescribed specification to check whether the sample conformed to the specifications as laid down under the Prevention of Food Adulteration Act 1954.
2. Enter and search at any time any land, building, premises or vehicles in which they had reason to believe that tea was stored, carried, distributed or sold in contravention of the laid down provisions.
3. Inspect the consignment prior to export to verify the compliance with any or all of the laid down the provisions, prior to export.

Further,

4. The manufacturers/ buyers/ exporters/ distributors should furnish the business information to the Board in prescribed formats.
5. Business license issued to exporters would be valid for a period of three

²⁷ Tea Act read with Tea (Marketing) Control Order (TMCO) 2003, Tea (Distribution and Export) Control Order 2005 and Tea Waste (Control) Order 1959.

years from the date of its issue/renewal. It should be cancelled by Tea Board if the exporter has not exported tea from India during any of the preceding three consecutive years.



A Tea Garden in Munnar

Ineffective regulatory control over various stakeholders

3.7 With respect to these regulatory functions of Tea Board, our audit findings are discussed below:

As of March 2011, 1720 manufacturers and 6079 buyers were registered with Tea Board. Similarly, 1821 exporters were registered with Tea Board as of March 2011. In this regard, we observed that:

- Although Tea Board was empowered to inspect the factory stock, no internal procedure existed in Tea Board as to how and when to inspect the factory stock and draw sample of prescribed specification to check whether the sample conformed to the specifications as laid down under the Prevention of Food Adulteration Act 1954. In absence of this procedure, Tea Board did not undertake inspections unless a complaint was received regarding quality of tea exported or a malpractice in trade by manufacturers/buyers. It also did not undertake inspections of factory stock to ensure that samples drawn conformed to the specifications laid down under the Prevention of Food Adulteration Act 1954.
- The Board also did not maintain information regarding number of inspections planned and undertaken in exercise of powers conferred under the subsections (3) and (5) of Section 30 of Tea Act. After being pointed out in audit, the Board started maintaining files including show-cause notices issued under the above order since September 2009. As such, there was no mechanism in Tea Board to exercise its regulatory

Inadequate monitoring of manufacturers and buyers

function to prevent manufacturing/buying/export/ distribution of adulterated tea.

- We observed that only one-third of the 1046 registered tea exporters as of December 2008 were active in export of tea. This indicated that Tea Board did not take action to cancel the permanent²⁸ licenses held by these exporters after ascertaining their performance during the last three years as envisaged in the rules. Thus, the Board did not exercise its function of regulating export licenses as per laid down rules and provisions. The Ministry stated in October 2009 that they were taking action to cancel permanent exporters licence after ascertaining their performance during preceding three consecutive years.

Thus, by failing to undertake prescribed inspections, regulating exporter's licenses and ensuring fair trade practices by those who are involved in tea business, Tea Board had not exercised its regulatory powers effectively.

3.8 Manufacturers are required to furnish details of sale of tea in Form "E", which includes mode of selling i.e., through registered buyers/own retail outlets or branches directly to consumers/direct export etc. Similarly, buyers are required to furnish details of purchase of tea through public tea auction and total tea purchased in any calendar year in Form "F".



Tea leaves collected in a tea factory for manufacturing tea

We observed that such returns were not furnished regularly to Tea Board by the manufacturers and buyers. We test checked monthly returns ('E' and 'F') submitted by 10 manufacturers and 10 buyers for the period 2007-09. We observed that instead of submitting the returns every month, only one monthly return was submitted by four manufacturers as against 24 monthly returns each. The remaining six manufacturers did not submit any return during this period.

²⁸ Tea Board issues temporary license to an exporter first. Permanent license is issued thereafter.

Similarly, as against a total of 240 'F' returns which were to be submitted by 10 buyers in two years to Tea Board, only 54 returns were submitted.

Thus, due to non-submission of returns by the manufacturers and buyers on a regular basis, the Tea Board remained unaware of the activities of manufacturers and buyers and was not in a position to exercise control over their activities as envisaged. This also affected the timely compilation of Tea Statistics by Tea Board as we observed that there was delay in publication of Tea Statistics from one year to three years.

Tea Board agreed in October 2009 that submission of such returns regularly is necessary to exercise control over their activities.

Inadequate penalties for breach of provisions of Tea Act

3.9 Sections 36 to 42 stipulate different types of penalties for illicit export, making false return, obstructing a member of the Board in the discharge of any duty, illicit cultivation, contravention of order relating to control of price and distribution etc. In this regard, we observed that failure of Tea Board to effectively perform its regulatory role is in part attributable to the failure to levy appropriate penalties on the stakeholders. We also observed that the quantum of penalties which ranged from ₹1000 to ₹5000 only were not adequate as they did not serve as a deterrent for violation of various provisions of Tea Act. For exercising effective regulatory role, there is a need to review the existing rates of penalty for breach of various provisions of the Tea Act and to make effective use of the provisions so that Tea Board carry out its regulatory role as per the mandate of the Act.

Ministry of Commerce stated in May 2011 that for review of existing rates of penalty for breach of various provisions of Tea Act, all related sections of the Act need to be amended and this would be considered at the time of amendments in the Act.

Action taken on revival of closed gardens

3.10 One of the regulatory functions of Tea Board was to take action on closed tea gardens which was defined in Section 16(E) of Tea Act, 1953. As per the said provision, Central Government can take over the management without conducting any investigation in cases where due to reckless investment, creation of encumbrances or diversion of funds, a situation has arisen which is likely to affect production of tea or where the entity has been closed for a period not less than three months.

In June 2007, Ministry of Commerce approved a rehabilitation package for revival of closed tea gardens. The main features of the scheme for revival of closed gardens are given below.

Rehabilitation package for revival of closed gardens

The existing outstanding bank loans against the closed tea gardens were to be restructured by converting the same into term loans with a moratorium

period of five years, with recovery starting from the sixth to tenth year and accumulated penal interest waived. The banks were to charge a simple rate of interest of 11 *per cent* per annum on the restructured loan with moratorium of one year for payment of interest. The accumulated simple interest was to be shared equally by the banks, Central Government and the beneficiaries to the extent of one third each. The banks were to extend further facilities of working capital to the closed tea gardens after their accounts were regularised as stated above. Only after regularisation, could closed tea gardens become eligible to obtain loan and subsidy from the Board under Special Purpose Tea Fund Scheme.

Deficient formulation of the scheme

3.11 As of February 2010, 12 gardens remained closed with a financial liability of ₹92.51 crore of which ₹70.33 crore was towards liability of banks, affecting livelihood of 11,417 workers. The main causes for sickness/closure of tea gardens were falling quality and price realisations due to poor yields and poor garden management, labour to land ratio and labour productivity, uneasy industrial relations scenario, overall lack of development perspective and deterioration in profits since last few years etc.

We observed that no bilateral agreement/MOU was signed between the Board and Banks. The Banks were reluctant to carry out the restructuring as per the scheme. Thus, failure by Board to obtain formal commitment from the banks before formulation of the scheme resulted in the scheme becoming unworkable and only one tea garden account has been restructured till date. Tea Board invoked Section 16(E) in respect of only three²⁹ tea gardens so far, of which owners of the two³⁰ gardens in Kerala moved the High Court and obtained a stay against the proceedings for invoking of the section.

Our Recommendations and response of Tea Board

3.12 We recommended in November 2009 that Tea Board may evolve a mechanism to ensure registration of all small tea growers and ensure that all the stakeholders in the tea business furnish requisite and complete information on time which can be used by Tea Board for better regulation under the provisions of Tea Act. We also recommended that Tea Board may plan and conduct regular inspections for exercising effective control and ensuring fair practices in tea business.

Tea Board accepted these recommendations and stated in December 2009 that:

- *As a short-term measure, they are preparing a list of small growers with the help of their associations. It also stated that, on a long-term basis, a complete census of small tea-growers would be done for which survey has already been initiated by State Governments of Assam and West Bengal. This would be completed by **the end of the***

²⁹ Lone Tree, Permada and Bamondanga

³⁰ Lone Tree and Permada

Eleventh Five Year Plan.

- *Tea Board was advising all the stakeholders to provide requisite information and they were developing a computer-aided system for collection and analysis of information from various stakeholders. It added that it plans to completely re-engineer the existing process of information collection by **the end of the Eleventh Five Year Plan.***
- *Tea Board had formulated a plan to form a panel of independent inspectors for scheme like Special Purpose Tea Fund. For other areas, they propose to carry out inspections on the basis of complaints received. Complete details of manpower required to ensure effective inspections would be sent to the Ministry for approval. However, implementation of this recommendation would depend upon the approval by the Ministry.*

Conclusion 3.13 Even after five decade of existence of Tea Board, more than 125216 (80 per cent) small growers in India continue to be outside the ambit of regulations by the Tea Board. Inspection for regulating the activities of various stakeholders was weak and non-transparent. Further, no internal procedure existed in Tea Board regarding conduct of such inspections which led to failure to ensure fair practices and quality. Tea Board was also not able to ensure submission of business information by stakeholders so as to exercise effective control on their activities as well as timely collection of Tea statistics. The scheme for rehabilitation also remained ineffective due to failure of Tea Board to get a formal commitment from the banks.

Thus, Tea Board had been ineffective in exercising its role as a Regulator of Tea in India. This has also had an adverse impact on the effectiveness of its functioning in other areas of development, research, marketing and promotion of tea in India. Therefore, Tea Board needs to revamp its regulatory structure so as to exercise better control on its regulatory activities.

We are of the view that the response of Tea Board and the action proposed by it in response to our recommendations may not be sufficient to increase the registration of small growers, ensure better regulation of all stakeholders through collection of complete business information and ensure increase in inspections for better discharge of its regulatory role. Therefore, Tea Board needs to reassess its manpower requirement in consultation with the Ministry so that Tea Board is able to discharge its primary role of regulating Tea Business in India more effectively.