

Today, India is the world's largest grower of tea with a total production of 826.17 million kilograms in the year 2002. Among the teas cultivated in India, the most celebrated one is Darjeeling tea. Connoisseurs will assert that without Darjeeling, tea would be like wine without the prestige of Champagne.

The District of Darjeeling is situated in the State of West Bengal, India, Since about 1835, tea has been cultivated, grown and produced in certain tea gardens geographically located in the areas within the state. Due to the unique and complex combination of agro-climatic conditions prevailing in the region and the production regulations imposed by the Tea Board India, such teas has a distinctive and naturally occurring quality and flavour which has won the patronage and recognition of discerning consumers all over the world. Consequently, such tea has acquired both domestic and international reputation.

According to records, the first commercial tea gardens were planted by the British in 1852. Darjeeling was then only a sparsely populated hamlet which was being used as a hill resort by the Army and affluent people. However, by 1866, Darjeeling had 39 gardens producing a total crop of 21,000 kilograms of tea. In 1870, the number of gardens increased to 56 to produce about 71,000 kilograms of tea harvested from 4,400 hectares. By 1874, tea cultivation in Darjeeling was found to be a profitable venture and there were 113 gardens with approximately 6,000 hectares. Today, nearly 17,400 hectares in 87 tea gardens produce around 11.5 million kilograms of tea.

Tea cultivation, being a labour intensive enterprise, requires a sufficient number of workers to plant, tend, pluck and finally package the produce. The Darjeeling tea industry at present employs over 52,000 people on a permanent basis- a further 15,000 persons are engaged during the plucking season which lasts from March to November. A unique feature of this work force is that more than 60 per cent are women.

The income of a garden worker is half in the form of cash and the other half by way of perquisites which have over the years effectively provided a cushion against the impact of inflation and scarcities. Workers are provided with free accommodation, subsidized cereal ration and free medical benefits. Gardens used to run primary schools, which have since been taken over by the government but the buildings continue to be maintained by the garden management.

A major part of the annual production of Darjeeling tea is exported. The key buyers of Darjeeling tea are Germany, Japan, UK, USA and other EU countries such as the Netherlands, France etc. In the year 2000, about 8.5 million kilograms of Darjeeling tea was exported amounting to a total value of USD 30 million.

While the tea industry in India is almost completely in the private sector, it has been under the control of the Government of India since 1933. Originally, the Indian Tea Act of 1933 was enacted. Being a temporary enactment, it lapsed by efflux of time. In 1938, a permanent enactment was passed whose object was the control of the export of tea and extension of the cultivation of tea. The Tea Board Act 1949 came to be passed with the object of development of the tea industry under the control of the Government of India. Since the objects of the 1938 and 1949 Acts were interrelated, it was proposed that there should be a single Act containing the provisions of the two Acts. With a view to achieving the said objectives, the Tea Act of 1953 came to be passed on 28 May 1953. Under the Act, the Tea Board is a non-trading body and is run on a non-profit making basis with the objects, inter alia, to regulate the production and cultivation of tea in India, to encourage research, to regulate the sale and export of tea from India etc.

In order to preserve the integrity of tea sold under the name "Darjeeling", the Tea Board developed a distinctive "DARJEELING" logo in the year 1986 which consists of the image of a woman holding two tea leaves and a bud in a roundel with the word "DARJEELING" prominently displayed along the top of the logo as depicted below (hereinafter referred to as "DARJEELING Logo"):



The "DARJEELING" word and logo were the very first geographical indications to be registered under the Act in the year 2004 with Registration Numbers 1 and 2 respectively in Class 30 in respect of tea. Further, "DARJEELING" word and logo are registered as certification trade marks under the Trade Marks Act, 1999 under Nos. 831599 and 532240 respectively in class 30. The registration for the DARJEELING logo dates back to 1986 granted under the repealed Trade & Merchandise Marks Act, 1958 and the registration for the DARJEELING word goes back to 1998. In addition, the "DARJEELING" logo is copyright protected and is registered as an artistic work with the Copyright Office under no. A-67292/2004 and is entitled to protection as such under international law in all member countries of the Berne and the Universal Copyright Conventions.

The Tea Board has also been successful in securing statutory recognition of the geographical indications "DARJEELING" word and logo in various countries. "DARJEELING" word and logo are registered as certification/collective marks in USA, UK, EU, Australia, Benelux countries, Germany, Austria, Spain, France, Portugal, Italy, Switzerland, former Yugoslavia, Japan and Lebanon.

In November 2007, the Tea Board filed an application for "DARJEELING" as a 'Protected Geographical Indication' (hereinafter referred to as "PGI") under the European Commission Regulation 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs. Once registered, DARJEELING would enjoy protection throughout Europe and the scope of protection available to it under the said Regulation would extend to prohibit not only direct or indirect commercial use of the name "DARJEELING" on products not covered by the registration but also misuse, imitation or evocation of the name "DARJEELING" on a non-registered product including any instance of use with delocalizing terms such as type, style, method.

Other steps taken by the Tea Board include:

- (i) In 1998, the Tea Board appointed a worldwide watch agency, to monitor conflicting marks. Pursuant to the watch agency being appointed, many instances of attempted registrations were found and challenged through oppositions, cancellations and sometimes negotiations. Marks opposed included DARJEELING, DARJEELING with Map of India, DARJEELING with Woman Device, DARJEELING NOVEAU in countries like Bahrain, Belarus, France, Germany, Israel, Japan, Latvia, Lithuania, Norway, Sri Lanka, Saudi Arabia, Taiwan, USA, etc.
- (ii) The use of Darjeeling Tea in multi origin mixtures made subject to correct labeling requirements to protect the customer against any deception or confusion;
- (iii) The use of the expression 'blended Darjeeling Tea' or its variant restricted to a blend of Darjeeling Teas only drawn from more than one tea garden within the definition of Darjeeling tea;
- (iv) Labeling guidelines formulated and issued to govern and regulate use of Darjeeling word and logo marks as part of trade marks and thus prevent any misuse thereof for teas other than 'Darjeeling Tea'.
- (v) Detailed inspection procedures put in place to ensure the integrity and purity of the supply chain for grant of the Certificate of Origin by the Tea Board. In this connection, it would be relevant to state that the Tea Board has been instrumental in the issuance of the Custom Notification dated June 25, 2001 which makes all exports of Darjeeling tea subject to mandatory proof of such Certificate of Origin. Consequently, to ensure the integrity and reputation of tea exported as Darjeeling tea through the chain of sale, all consignments are authenticated by issue of Certificates of Origin (hereinafter

referred to as "COO"), which are verified by cross checking computer databases with tea garden invoice numbers. The Customs Authorities in India have been instructed by the Tea Board to check for COO accompanying Darjeeling tea consignments and to stop the export of any tea as "Darjeeling" without such a certificate.

- (vi) The Board has introduced a Trade Chain Management System for surveillance and monitoring the supply chain and addressing traceability issues in the Darjeeling tea trade chain.
- (vii) Computerized data collection centres have been set up in Darjeeling and Kolkata connected through internet enabled services to facilitate online collection and validation all plantation and processing related data, namely:
 - Daily green leaf plucking records
 - Daily area plucked records
 - Daily Manpower used records
 - Daily green leaf transfer/purchase records
 - Daily processing records
 - Daily invoice entry records
 - Daily dispatch records
- (viii) Pursuant to the above, all the 87 registered gardens have been provided with customized software for the data entry and submission of the required information.

Due to the extensive use of the geographical indication "DARJEELING", it today enjoys substantial public recognition and reputation in India and worldwide as indicative of the famed Darjeeling tea produced in a defined region of the Darjeeling District and certified by the Tea Board as conforming to the standards laid down by it.

The Tea Board, as part of its responsibility to maintain the integrity of Darjeeling tea, constantly strives to educate the public about the same and the meaning and significance of the "DARJEELING" word and logo. Over the years, the Tea Board has carried out promotional activities and has arranged for its representatives to participate in a large number of international fairs and exhibitions, buyer-seller meets, etc. It has also organised visits to India of tea delegations/buyers from abroad including arranging meetings with persons / organizations in tea trade, visits to tea growing areas, etc.

Directly assisting the Tea Board in its educational efforts is the Darjeeling Tea Association (hereinafter referred to as "the DTA"), an organisation comprised of representatives of each of the 87 tea estates in the Darjeeling region. The DTA aims not only to educate consumers about Darjeeling tea but also to raise awareness about the Darjeeling region and its gardens. The DTA

produces literature for distribution by the Tea Board, advertises Darjeeling tea in prominent publications such as the Tea and Coffee Trade Journal and it owns and operates the Internet website www.darjeelingtea.com which educates consumers concerning the growing and production of Darjeeling tea.

In 2006, in the United States of America, the Tea Board was successful in securing rejection of a trademark application for the mark 'DARJEELING NOUVEAU' in the name of an American company, Republic of Tea, Inc., on the basis of its certification trade mark registrations for "DARJEELING" word and logo. The Trademark Trial and Appeal Board ("TTAB") in the United States of America not only upheld the Tea Board's opposition but also denied the counterclaim of Republic of Tea, Inc. for cancellation of the "DARJEELING" certification mark.

In another landmark victory for the Tea Board, the Court of Appeal in Paris upheld its claim that the use of the name "DARJEELING", with the device of a teapot in respect of goods other than Darjeeling tea was misleading and was, therefore, a violation of its rights. It was held that 'DARJEELING' qualified as a geographical indication for a tea having unique attributes and originating in the Darjeeling District in India and hence entitled to be protected as such within the meaning of the TRIPS Agreement and the Paris Convention.

In Taiwan, the Tea Board successfully secured rejection of a trade mark application for DARJEELING (word) in the name of a French Company, Delta Lingerie on the premise that the use of the world famous Geographical Indication on such products would dilute the integrity and significance of DARJEELING as a Geographical Indication.

At the domestic level, in pursuance of its rights and goodwill in "DARJEELING" word and logo, the Tea Board has been actively engaged in opposing acts of misuse which have come to its notice. It has sent out many cease and desist letters to parties observed to be infringing its rights in the geographical indication "DARJEELING". More often than not, the offending parties have complied with the Tea Board's demands and respected its rights in the "DARJEELING" marks. Resolution of these matters has either been by negotiation whereby the offending party agrees to modify the mark or stop using the mark or matters have been decided on merits in favour of the Tea Board.

The Tea Board has spent extensive amounts in the promotion, protection and advertisement of Darjeeling tea and the "DARJEELING" word and logo, resulting in substantial reputation and goodwill so that any person ordering Darjeeling tea or seeing tea advertised or offered for sale as "Darjeeling" would expect that tea so ordered, advertised or offered for sale to be the tea cultivated, grown and produced in the defined regions of the Darjeeling District and having the special characteristics certified by the Tea Board.

By virtue of the aforesaid extensive certification scheme implemented by the Tea Board, including extensive marketing and promotional activities, the "DARJEELING" word and logo have acquired distinctiveness all over India and the major markets outside India. The goodwill attached to tea sold as Darjeeling tea originates from the various steps undertaken by the Tea Board to preserve and protect the integrity of the "DARJEELING" word and logo as geographical indications and prevent their misuse by third parties. The steps taken by the Tea Board have ensured that the Darjeeling tea leaving the shores of India is 100% certified Darjeeling tea.