

2/2019

With a Pinch of Risk

Working conditions in Valio's supply chains in Thailand



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Finnwatch is a non-profit organisation that investigates global impacts of Finnish business enterprises. Finnwatch is supported by 11 development, environmental and consumer organisations and trade unions: The International Solidarity Foundation (ISF), Finnish Development NGOs – Fingo, Felm, Pro Ethical Trade Finland, The Trade Union Solidarity Centre of Finland SASK, Attac, Finn Church Aid, The Dalit Solidarity Network in Finland, Friends of the Earth Finland, KIOS Foundation and The Consumers' Union of Finland.

Migrant Worker Rights Network (MWRN) is a migrant worker membership based organisation with offices in Thailand and Myanmar that seeks to empower migrant workers and ensure their access to rights and a good quality of life. MWRN is supported by international development organisations and global union federations amongst others and works closely with Thai businesses and industry associations to address migrant worker conditions in Thailand.



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1. Introduction

Valio Ltd is a Finnish dairy manufacturer. The company is owned by 16 dairy cooperatives. It has net sales of 1,7 billion euro, and it is Finland's biggest food exporter. Valio products are sold to some 60 countries around the world.¹

Valio has approximately 5 500 suppliers of goods and services. From risk-countries, Valio sources ingredients such as tropical fruit products (purees, pieces and concentrates). This report is focussed on working conditions in Valio's supply chains in Thailand and in particular, in the operations of its pineapple juice concentrate supplier Takerng Pineapple Industrial Co Ltd and its thickener supplier Ingredion Rayong, a subsidiary of the US-based Ingredion Inc.

Migrant workers constitute over 10 percent of Thailand's labour force. According to available statistics, there are nearly 4 million migrant workers in Thailand from Cambodia, the Lao People's Democratic Republic, Myanmar and Vietnam alone. The majority of them work in low-skilled occupations, or so-called dirty, dangerous and demeaning jobs that few Thais are willing to do.²

Migrant workers are particularly vulnerable to labour rights violations as they have limited knowledge of Thailand's labour laws and fewer channels available to them to file complaints and access remedy. Therefore, this report is focussed on the situation of migrant workers at Takerng Pineapple Industrial Co Ltd and Ingredion Rayong.

This report is produced as part of Finnwatch and Migrant Worker Rights Network's (MWRN) joint project aimed at empowering migrant workers to negotiate better terms of employment and working conditions in Thailand's export industries. MWRN is a membership based migrant workers' rights organisation with offices in Yangon in Myanmar and in Mahachai and Hat Yai in Thailand, and a

long-time partner of Finnwatch. The joint project between the two organisations is funded by Finland's Ministry for Foreign Affairs.

¹ Valio, About Us, <https://www.valio.com/about-valio/>

² United Nations Thematic Working Group on Migration in Thailand, Thailand Migration Report 2019

2. Valio Ltd

Valio is a Finnish dairy manufacturer. The company is owned by 16 dairy cooperatives. It has net sales of 1,7 billion euro, and it is Finland's biggest food exporter. Valio products are sold to some 60 countries around the world.³

Valio has approximately 5 500 suppliers of goods and services. In 2017, the share of domestic procurement from its purchases of goods and services (in terms of value) was more than 84 percent, excluding milk, machinery and equipment. With milk included, the percentage was 94⁴. In Valio brand products that are made in Finland, 96 percent of ingredients is milk. The percentage of risk-country ingredients in such products is 0,08. Valio sources from risk-countries ingredients such as tropical fruit products (purees, pieces and concentrates). Orange in Valio products originates from Brazil, Greece and Mexico for example, and pineapple from Indonesia and Thailand. From Thailand, Valio also sources thickeners (starches).⁵

One of Valio's Thai pineapple ingredient supplier is Takerng Pineapple Co Ltd (see pages 7–13). Pineapple ingredients made by Takerng are used in, for example, Valio and Valio Gefilus range juices. One of Valio's Thai thickener suppliers is Ingredion Rayong (see pages 14–16), a subsidiary of the US-based company Ingredion Inc. Thickeners (both cornstarch and tapioca) produced by Ingredion Rayong are used in Valio's cooking creams. Valio provided Finnwatch openly with information about its suppliers in Thailand, and also shared copies of their suppliers' audit reports.

Social sustainability in Valio's sourcing from risk countries

Valio has set as its key social sustainability goal the promotion of the livelihood of its dairy farmer entrepreneurs through advice and training on sustainability and by paying them the highest raw milk prices in the EU.

3 Valio, About Us, <https://www.valio.com/about-valio/>
4 Valio, Kristiina Kiviharju, email on 18th March 2019
5 Valio - Sustainability Report 2017

Valio aims to become largely soy and palm oil free

Production of both soy and palm oil have been linked to human rights abuse and environmental damage such as destruction of rainforests.⁶

Valio has set itself a target that by February 2019, all fodder for Valio owner co-ops' cows and young cattle in Finland is soy-free. Furthermore, Valio's goal is that by 2020, all Valio products are also soy-free and that the soy used in Valio Food Services' products is either RTRS or ProTerra certified.⁷

Palm oil is not used in Valio brand products that are made in Finland. Palm oil is still used in some Valio Food Services' products but the company has set itself a goal to discontinue its use by 2020.⁸

For its sourcing from outside the EU, Valio uses Amfori BSCI risk-country classification to identify risk-country suppliers whom it then requires to be Sedex (Supplier Ethical Data Exchange, see text box on page 6) members. All Valio suppliers must commit to the principles in Valio Supplier Code of Conduct (based on the SA8000 standard) and fill in its Supplier Questionnaire. According to the company, it has between 30 to 40 direct risk-country suppliers and many more in-direct suppliers.⁹

According to Valio, it has chosen to use Sedex to monitor its supply chains primarily

6 See for example Finnwatch, 2014, The law of the jungle – Corporate responsibility of Finnish palm oil purchases, available at <https://finnwatch.org/images/pdf/palmoil.pdf>; Greenpeace International, 2018, The Final Countdown: Now or never to reform the palm oil industry, <https://www.greenpeace.org/international/publication/18455/the-final-countdown-forests-indonesia-palm-oil/>; World Wildlife Fund, Sustainable agriculture – Soy, <https://www.worldwildlife.org/industries/soy>
7 Valio - Sustainability Report 2017. For more information on RTRS and ProTerra certifications, see for example Finnwatch, 2016, Perspectives on the quality of social responsibility monitoring schemes https://finnwatch.org/images/pdf/PerspectivesOnVSS_forweb.pdf
8 Valio - Sustainability Report 2017
9 Valio representatives during a meeting on 20th February 2019

because so many of its suppliers are already Sedex members. Also according to Valio, some other social sustainability schemes restrict membership to companies of certain size only which would have led to some of Valio's existing suppliers to be excluded.¹⁰

During dialogue with Valio in the lead up to the publication of this report Valio said that it would, going forward, work to shorten its supply chains and reduce the number of its suppliers, and further develop its processes to identify supply chain risks. For risk mapping, Valio is currently using the Sedex risk assessment tool. The Sedex risk assessment tool is based on a combination of "inherent" risk information (country, product area, sector profile etc) and supplier specific information obtained from suppliers' self-assessments. According to Valio, neither of its Thai suppliers discussed in this report was identified as high-risk using this tool. Indeed, none of Valio's risk-country suppliers were.¹¹

Valio audits annually some 20 to 30 suppliers. These audits are food safety oriented and conducted by Valio employees, and come on top of other possible audits (e.g. audits by Amfori BSCI, SMETA etc). In 2018, Valio conducted four audits in risk-countries.

Sedex

Sedex is essentially an information sharing platform between its members – buyers, suppliers and auditors. Typically, the information shared on the Sedex platform is an audit report. Sedex does not control the quality of audits and accepts first-party audits (internal audits, i.e. audits by audited organisation itself), second-party audits (audits taken on behalf of a buyer) and third-party audits (audits taken by an independent certification body or similar third-party organisation – e.g. Amfori BSCI, SA8000 etc).¹² In other words, audit data in the Sedex database is not always controlled for quality.

Sedex has also created an audit methodology, SMETA, that can be applied by its members to audits. According to Sedex, almost 80 percent of audit reports in Sedex database are SMETA audits. SMETA methodology was revised in 2017 to incorporate elements of, for example, UNGPs and responsible recruitment.¹³

The information that is shared between Sedex members is intended to both reduce so-called "audit fatigue" and to be used by buyers to identify risks in their supply chains. When risks have been identified, it is up to buyer companies themselves to consider preventative and mitigating measures to manage those risks. However, it appears that the Sedex risk assessment tool is inadequate to identify labour rights risks as it is largely based on suppliers' self-assessment.

10 Valio, Kristiina Kiviharju, email on 13th December 2018

11 Valio representatives during a meeting on 20th February 2019

12 For more information see Sedex, About Us, <https://www.sedexglobal.com/about-us/>

13 For more information see Sedex, SMETA Audit, <https://www.sedexglobal.com/smeta-audit/>

3. Takerng Pineapple Industrial Co Ltd.

Takerng Pineapple Industrial Co Ltd¹⁴ is a manufacturer and exporter of pineapple and other tropical fruit products, located in Thailand's primary pineapple growing area, Prachuap Khiri Khan province. Its products are exported all over the world. The company was established in 1993.

The production process at Takerng pineapple factory is as follows:

- receiving raw material
- sorting
- peeling
- trimming
- washing
- slicing
- filling & adding syrup
- seaming
- cooking & cooling
- labeling
- packing
- storage & shipping

The factory consists of eight buildings. There are over 1300 shop floor workers at Takerng of whom more than 1100 are migrant workers from Myanmar. About half of the shop floor workers are female.

Takerng is not Valio's direct supplier. Valio buys pineapple ingredients from Takerng via Prodalim, an Israeli company and a global fruit-juice specialist¹⁵, and does not have a direct contact with Takerng. In addition to Valio, Finnwatch and MWRN field research findings were shared also with both Prodalim and Takerng for comments. Whereas Takerng did not respond, Prodalim told Finnwatch that they had brought the issues identified in the field research report into the attention of Amfori BSCI who has audited Takerng¹⁶.

Takerng was last audited by Amfori BSCI in December 2017, and it received an overall grade B (Good) from the audit. According

to the audit report, the maximum working hours at the factory were 13 hours per day (8 normal hours + 6 overtime hours [sic]) and 83 hours per week (48 normal hours and 35 overtime hours), and workers were paid the minimum wage and overtime compensation according to the law. The auditor, however, criticised the factory for the practice of charging workers for work clothes.

According to Prodalim, Amfori BSCI upon receiving notification of possible non-compliances identified by Finnwatch and MWRN, called for an emergency meeting and notified all the Amfori BSCI members linked to Takerng. As a next step, Amfori BSCI is expected to formulate an action plan to address Finnwatch and MWRN findings. Amfori BSCI confirmed this to Finnwatch stressing, however, that the exact actions to be taken have to be jointly agreed by the involved Amfori BSCI members and that Amfori BSCI can only give its members recommendations¹⁷. Amfori BSCI had previously also told Finnwatch that in 2018, it had identified some operational issues in Southeast Asia that affect the audit integrity. These operational issues included individual auditor performance. According to Amfori BSCI, it is undertaking mitigating action and defining activities to support auditors¹⁸. Amfori BSCI did not respond to questions on whether the integrity of the Takerng Pineapple Co Ltd audit had also been questioned.

14 For more information see the company website at <http://www.takerng.co.th>

15 Prodalim Group has facilities in 10 different countries including the Netherlands, Spain, Italy, U.S. and Brazil.

16 Prodalim, Kata Korosi, email on 27th February 2019

17 Amfori representative, email on 8th March 2019

18 Amfori representative, email on 22nd February 2019

The other pineapple case

In 2013, Finnwatch published a report *Cheap Has a High Price*¹⁹, on social responsibility of Finnish supermarket chains' private label products. One product group in focus in the report was pineapple juice. At the time, all major Finnish grocery retailers' private label pineapple juices were made by a Finnish company VIP-Juicemaker from pineapple concentrate made by a Thai company Natural Fruit Pineapple Co Ltd. VIP-Juicemaker is part of Dutch Refresco Group, and at the time, Refresco Group was sourcing its pineapple concentrate from Natural Fruit via Prodalim. The Finnwatch report alleged many kinds of labour abuse at Natural Fruit pineapple factory, also located in Prachuap Khiri Khan province, including use of irregular migrant labour and non-payment of social security dues. At the time, Finnwatch research findings pertaining to Natural Fruit were shared with Prodalim which engaged in dialogue with Finnwatch over them.

Following the publication of the Finnwatch 2013 report, Natural Fruit sued Finnwatch researcher Andy Hall on multiple defamation and computer crimes charges. In 2016, Andy Hall received a suspended prison sentence in the most serious of those charges but the sentence was overturned on appeal in 2018. The Appeals Court in its ruling stated that Finnwatch and Andy Hall's research had been in the public interest. Furthermore, the court also stated that based on all the evidence before the court, there was indeed the real possibility of labour rights violations against migrant workers at Natural Fruit, as Finnwatch had reported in 2013.²⁰

Final court decisions on related civil damages claims against Andy Hall are still pending.²¹

19 Finnwatch, 2013, *Cheap has a high price - Executive summary*, https://www.finnwatch.org/images/cheap%20has%20a%20high%20price_exec%20summary_final.pdf

20 Finnwatch, *Thai Appeals Court rules in favour of Andy Hall quashing criminal conviction*, <https://finnwatch.org/en/news/550-thai-appeals-court-rules-in-favour-of-andy-hall-quashing-criminal-conviction>

21 Finnwatch, 2018, *Natural Fruit vs. Andy Hall, Q&A*, http://finnwatch.org/images/pdf/NaturalFruitvsAndyHallQA_May312018.pdf

Methodology

Finnwatch and MWRN interviewed altogether eight Takerng employees on three separate occasions in October and November 2018. The interviewees were all migrant workers from Myanmar. They were aged between 23 and 47 years, and all but one were male. Most of them were relatively new recruits who had been working at Takerng for up to a year. Only three interviewees in our research sample had been working at Takerng for longer than one year (up to nine years). The interviews were conducted off-site in Burmese language.

Only three of the interviewees were married and had children back home. All were, however, sending money to their family in Myanmar. Each month, most of them would aim to send 5000 baht (135 euros) back home. If they were not able to save that much themselves, they would borrow the missing amount from their friends and acquaintances.

The two organisations faced considerable challenges in trying to organise the interviews, with several workers who were contacted refusing to talk on record. Those workers who refused to be interviewed said that they were scared of possible repercussions should their employer find out that they had been talking to outsiders about working conditions in the factory.

Migrant workers have to pay high recruitment fees

Of the eight Takerng workers who were interviewed for this report, two had been recruited through MoU recruitment (see page 10). These two MoU workers had learned about the job from acquaintances who were already working at Takerng. They signed employment contracts with Takerng for two years in Myanmar.

According to the workers themselves, their recruitment process took about five months. These two workers had paid 660 000 (380 euros) in Myanmar to their recruitment agency before entering into Thailand. The



Pineapple juice concentrate made by Takerng is used in Valio and Valio Gefilus range juices.

interviewees had made the payment in two installments: they had first paid 160 000 kyat (92 euros) when they signed the contract and the rest, 500 000 kyat (288 euros), just before entering Thailand. The workers could not provide a breakdown of the costs but they had not had to pay anything else towards their travel, health check, or documents such as visas, work permits or passports – either in Myanmar or in Thailand. In order to cover the recruitment costs, the two MoU recruits had taken loans from loan sharks in their home village. These loan sharks typically charge interest rates between 5 to 10 percent for the loans. At the time of the interviews, they were still paying back these loans.

The cost of Thailand visa (for two years), 2-year work permit, and medical check is altogether 2 900 baht (80 euros). In addition, migrant workers must obtain a health insurance for the first three months of employment in Thailand (i.e. one time only) at a cost of 500 baht (14 euros) to cover the time before their enrollment to Thailand's social security system (SSO). In addition, by Thai law²², there should be no other recruitment related costs, such as travel costs, charged to migrant workers in Thailand. By

law, recruitment charges on Myanmar side should not exceed 150 000 kyat (80 euros) although it is not fully clear if this should include the cost of a passport or not. The official cost of Myanmar passport is 25 000 kyat (15 euros). Put together, these official charges add up to 174–189 euros. In other words, the two Takerng workers who were interviewed for this report and who had been recruited through the MoU process, had paid at least 191 euros extra to recruitment agencies on top of official, or officially permitted, fees.

The rest of the interviewees were so-called "walk-in" recruits (see page 10). They had entered Thailand illegally and started looking for work when they were already in the country. They had approached Takerng following their brokers' recommendation. The brokers had also arranged all the necessary documents for them (visas, work permits and certificates of identity, CI). The interviewees had paid these brokers between 5400 and 11 000 baht (148–302 euros) in total for their services and for the documents.

The official cost of Myanmar certificate of identity is 310 baht (8.5 euro), and the cost of Thailand visa (for two years), 2-year work permit, and medical check and three-month health insurance are as above. Put together, these official charges add up to 102.5 euro.

²² Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107728&p_count=4&p_classification=17

Recruiting migrant workers

Migrants make up more than 10 percent of Thailand's workforce²³. The majority of migrant workers in Thailand are from Myanmar. A Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers (MoU) regulates labour migration between the two countries. The MoU process is the only way for a Myanmar migrant worker to enter Thailand legally to work.

Most often a Thai employer looking to employ migrant workers under the MoU system would engage the services of a recruitment agency in Thailand and another one on the Myanmar side to handle recruitment and relocation of migrant workers. Although some Thai employers have their in-house human resources departments hire migrant workers directly, even they still engage a recruitment agency on the Myanmar side. Employers' reliance on external recruitment agencies – which often charge extortionate recruitment fees to migrant workers – to handle the recruitment and relocation of migrant workers has been a major contributing factor to forced labour and debt bondage of migrant workers in Thailand.

In 2017, the Thai government adopted new regulations, later enshrined in law, that forbid charging of recruitment fees to migrant workers in Thailand²⁴. However, it appears that these changes have simply lead to massive kickbacks that Myanmar recruitment agencies have to pay to Thai agencies, or Thai company human resources department, to secure demands for workers. Myanmar agencies collect these sums from workers they recruit.²⁵

In addition to the MoU process, many migrant workers enter Thailand illegally. New regula-

tions on labour migration that were introduced in Thailand in 2017, increased fines on both unregistered migrant workers and also their employers.²⁶

Thailand allows migrant workers who have entered the country illegally to become regularized through a process known as certification of identity (CI). The process requires migrant workers to first obtain a certification of identity from the Myanmar authorities. Certification of identity is similar to a passport but it is only valid for travel to and from Thailand. After obtaining a certification of identity, migrant workers can then apply for a Thailand visa and work permit, and with both the CI and a Thai work permit, they can apply to be enrolled to Thailand's social security system. The CI process was preceded by something called a "pink card". The pink card was its holder's ID, work permit, and health insurance all in one. No new pink card has been issued since 2014 although it has still been possible to renew existing ones. The CI process was originally created to replace the pink card system, but now the CI process is also being phased out, and in light of the currently available information, will no longer be available post-2020. This means that the last remaining CI workers will need to start transferring to MoU in 2019 at latest.

This process of transferring from CI to MoU is also known as MoU U-Turn. The term refers also to those MoU migrant workers who have already been in Thailand for four years and who have to return to Myanmar to renew their passports that are about to expire. Workers have reported excessive fees also for the MoU U-turn process.

23 United Nations Thematic Working Group on Migration in Thailand, Thailand Migration Report 2019

24 Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107728&p_count=4&p_classification=17

25 See for example, AFP, 4.10.2018, Extortion and abuse: Myanmar workers arrive debt-laden in Thailand, <https://www.france24.com/en/20181004-extortion-abuse-myanmar-workers-arrive-debt-laden-thailand>

26 Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107728&p_count=4&p_classification=17

In other words, the workers had paid between 46–200 euros to brokers on top of official fees.

The walk-in recruits had no written employment contract. However, they said they were familiar with the terms and conditions of work at Takerng already before approaching the company through word of mouth.

All interviewees were in possession of their own identity documents, work permits and visas.

Most interviewees had brokers take care of their 90-day registration. All foreign nationals who are staying in the country for longer periods of time have to register with the Thai authorities every 90 days. 90-day registration is free of charge but the interviewees paid brokers 200 baht (5.5 euro) for each registration. Migrant workers who do not want to lose a day's earnings typically have brokers take care of the registration for them.

According to some of the interviewees, previously there were undocumented migrants working at Takerng but now everyone has work permits, visas, and other necessary documentation.

Underage workers?

According to some of the interviewees, there are minors working at Takerng. These minors have lied about their age to the authorities, and therefore have official documents showing their age as over 18. The interviewees estimated that there were approximately 30 minors (aged 16 or 17) working at Takerng at the time of interviews.

Finnwatch and MWRN have documented similar concerns in numerous factories in Thailand. The two organisations acknowledge that it can be challenging for companies to address this issue effectively when young workers on purpose lie about their age. Finnwatch recommends that when minors over 15²⁷ but under 18 are found to be working at a factory, the management ensures that the work they are assigned to

do does not affect their health or personal development or interfere with their schooling, and that they can make a living within reasonable working hours.

Minimum wage and illegal salary deductions

Normal working hours at the factory are from 8am to 5pm, 6 days per week. The workers have one hour lunch break and two 15-minute tea breaks during the day. All interviewees said that workers at Takerng are paid the minimum wage which in Prachuap Khiri Khan province is 315 baht per day (8.5 euro), and 59 baht (1.5 euro) for overtime per hour. Salaries are paid to workers' bank accounts.

According to the interviewees, overtime at the factory is voluntary. Generally, they said that workers want to work as much as they can, and they would only refuse overtime if they were sick. According to the interviewees, there is overtime available during the pineapple peak season²⁸ on approximately 15 days per month. On those days, they work overtime for two to three hours, and have an additional 30 minutes break before overtime.

Although all interviewees said that social security contributions are deducted from their salaries, only three of the interviewees were in possession of their social security card. One interviewee said that they had asked for their card at least twice but had still not received it. Migrant workers who are not in possession of their social security card can face challenges when they try to access social services, such as medical care. To access services, migrant workers need an ID and their social security number which is written on the social security card.

According to the interviewees, generally no other deductions but social security contributions are made to their salaries. At certain workstations however, 30 minute's salary is deducted for being late by just a couple of minutes. Also, according to the interviewees when there is less pineapple available, work

27 The legal minimum working age in Thailand is 15.

28 Pineapple peak season is from November to December and from April to June.

at certain workstations such as receiving and sorting raw material, trimming and canning, finishes already at 3pm, and the wages for the remaining two hours are deducted from workers' salaries. Such wage deductions are illegal in Thailand; workers are entitled to a minimum wage even when work finishes early²⁹.

Seasonal factory closure leaves workers without pay for three months

Furthermore, during the pineapple off-season, the factory is closed down for about three months. For example in 2018, the factory was closed from 5th July until 1st October. During such seasonal factory closures, workers are not paid wages at all. This practice too, is illegal in Thailand; legally, workers should be paid 75 percent of their wages during factory closure³⁰.

In the interview sample, workers recruited through MoU process were not informed about the seasonal factory closure at the time of recruitment, and it is not mentioned in their employment contracts. The walk-in recruits however, said they had heard about the seasonal factory closures before joining the company. During the seasonal closure of the factory, migrant workers return home or look for other jobs nearby. Some of the interviewees who returned home, had utilized the company arranged travel back to Thailand from Yangon in Myanmar at the end of the seasonal factory closure. For the return travel, the workers had paid 1150 baht (32 euros).

No paid annual leave

The interviewees confirmed that they get public holidays off, although for Songkran (Thai New Year), they claimed to have received only two days off instead of five. According to the interviewees, they receive no paid annual leave. The MoU workers

contract specifies 6 days of paid annual leave after one year of regular employment (also a legal requirement) and 13 days of traditional holidays (also a legal requirement in Thailand).

According to the interviewees, they can easily obtain sick leave if they need to and they do not need to obtain a medical certificate for being able to take time off to get better. But sick leave is only paid if they obtain a medical certificate from a doctor and if their appropriate manager signs it. Without a manager's approval, sick leave is not paid³¹.

The interviewees considered health and safety risks at the factory as low. Sometimes workers get small cuts from the sharp edges of the cans that are exposed before the cans are closed and sealed. According to the interviewees, when small accidents happen, the management takes the injured worker for treatment; the management response to small accidents was something that the interviewed workers viewed positively. Those workers, who had been employed at Takerng for longer recalled an accident from a couple of years back in which a worker lost their hand. According to the interviewees, the worker was not compensated but it was not possible to confirm this as the worker has already returned to Myanmar.

The interviewees said that they have to buy work clothes (a set of hat, shirt, trousers, and a paper mask) themselves. They buy three sets per year at a total cost of approximately 1200 baht (33 euros).

No trade union nor welfare committee

There is no trade union at the factory, and the interviewees were also unaware of any welfare committee. A welfare committee (comprising of at least five employees' representatives) is a legal requirement in workplaces with more than 50 employees. Presently, if workers at Takerng have any

29 Section 76, Labour Protection Act

30 Section 75, Labour Protection Act. See also for example, Draft amendments to the Labour Protection Act, <https://www.mazars.co.th/Home/Doing-Business-in-Thailand/Legal/Draft-amendments-to-the-Labour-Protection-Act>

31 According to Section 57, Labour Protection Act, sick leave must be paid and according to Section 32, a doctor's certificate may be required only for sick leave of a minimum of three days.

grievances, they will talk to the factory translator.

The interviewees had no complaints about translation services at the factory, and they felt that generally, communications between the workers and the supervisors, managers and office staff is satisfactory. They also thought there was no discrimination at the factory although they said that Thai nationals are never assigned the dirtiest tasks, such as cleaning.

Living conditions

Some of the migrant workers live in the factory dormitory. Workers who live in the dormitory have to return to the premises by 9pm at night. The rent for a small dormitory room, shared between four people, is 1500 baht (40 euros) per month. The rent includes electricity and water but the supply of both is regularly cut off in the afternoon. According to the interviewees, some dormitory rooms have broken doors which the workers have to repair themselves.

Interviewees who had arranged for their accommodation themselves were paying 1000 baht for a room and 500 baht for utilities. They were sharing a room with at least one other person and up to five other people, and their housing costs per person varied accordingly from 750 baht (20 euros) to 250 baht (6.5 euros) per month. They reported no similar problems with the supply of water and electricity.

4. Ingredient Rayong

Ingredient Incorporated³² is an ingredient solutions company. Ingredient makes sweeteners, starches, nutrition ingredients and biomaterials that are used in everyday products from foods and beverages to paper and pharmaceuticals. Ingredient is a supplier to companies in 60 industry sectors in more than 40 countries.

Ingredient Rayong employs about 260 people, of whom the vast majority (more than 200) are male. In the course of research, it became clear that Ingredient Rayong provides employment to relatively few migrant workers and that most of the company's workers are Thai nationals. Typically, Thailand's export industries rely on migrant labour.

The Ingredient factory in Rayong has passed a SMETA audit. In the last audit in July 2018, non-compliances were found in audit areas pertaining to living wages, social security payment, working hours and regular employment. All these non-compliances were in relation to security guards and maids engaged through service providers such as ISS. As such, the auditors concluded that the company's management systems were not effective to identify and monitor the hiring and management of all migrant workers and agency staff. The auditors found all non-compliances to have been satisfactorily addressed during a follow-up audit in September 2018.

Methodology

Six Ingredient Rayong employees were interviewed for this study in November 2018. The interviewees were all migrant workers from Myanmar. The interviewees had been working at Ingredient Rayong for between a few months and three years. The interviewees estimated that the total number of migrant workers at Ingredient Rayong was about 20. All of them were tasked with loading trucks.

The field research findings were shared with Ingredient before the publication of this report. Ingredient's responses are incorporated below. A statement by Ingredient Inc. is also included in an appendix to this report.

Subcontracted migrant labour?

All six Ingredient workers who were interviewed for this report were CI holders. They had been recruited through word of mouth, and they paid around 5000 baht (135 euros) in document fees (e.g. certification of identity, visa, work permit, medical check) to their broker. All interviewees were in possession of their personal documents.

However, in the interviewed migrant workers' documents their employer is named as Puttoh Design and Subcontracting Limited Partnership, not Ingredient Rayong, even though they appear to be clearly employed to do work for Ingredient Rayong, not for the subcontracting agency, and their type of work is specified as agricultural processing, not transport and logistics. Using subcontracted labour was outlawed in Thailand for MoU workers in 2016 and for all migrant workers in 2017 although it is not fully clear how enforcing authorities are currently interpreting the law³³. Indeed, following the 2017 legal changes³⁴, an employer who hires a migrant worker for work not in accordance with their work permit (the employer named and the workplace address in the work permit is different from the actual employer) is subject to a fine of 400 000 baht (more than 11 000 euros) per worker. Migrant workers themselves risk deportation.

³³ Private correspondence between MWRN and Department of Employment, Thai Labour Ministry. Previously, it was possible for an employment agency to register as migrant workers employer and then supply those workers labour to other companies, but following changes to Thai laws governing use of migrant labour, this should no longer be possible.

³⁴ Royal Ordinance Concerning the Management of Employment of Foreign Workers, B.E.2560 (2017), available at https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=107728&p_count=4&p_classification=17

³² For more information see the company website at <https://www.ingredient.com>



Thickeners made by Ingredion Rayong are used in Valio Eila and Valio Arki range cooking creams.

According to Ingredion, these migrant workers are however, not subcontracted labour. In its response, the company stated that it has a service agreement with Puttoh Design and Subcontracting Limited Partnership and that the workers have work permits via their employer i.e. the service provider.³⁵

No overtime pay

As noted above, the interviewees had written employment contracts, in both Thai and Burmese languages. These contracts however, appear to be out-of-date and have very little to do with actual terms and conditions of their work.

According to the workers' contracts, they should be paid 330 baht per day and their daily quota is about 10 tons. However, according to the interviewees, up until around July 2018, they were paid at a piece-rate. In other words, their salaries were dependent on the amount they loaded onto trucks. Since then, they have received a daily wage of 500 baht (13.5 euros). This is well

above the legal minimum wage (the current minimum wage in Rayong is 330 baht per 8-hour working day). According to the interviewees, the changes to the salary calculations were made on workers request as they did not understand the previous, piece-rate based system. The workers' wages are paid by Puttoh Design and Subcontracting Limited Partnership.

The regular working hours at Ingredion Rayong are from 8am to 5pm, including breaks. According to the interviewees, sometimes they will carry on working beyond 5pm, and even in excess of 3 hours of overtime. They are not compensated for overtime. By law, overtime must be compensated at at least 1,5 times the normal hourly pay rate³⁶.

In their response, Ingredion acknowledged that workers pay had been changed in 2018. According to Ingredion, workers now receive 10 000 baht per month, and they are compensated for overtime in accordance with the law³⁷. Ingredion did not provide further details and stated that they are not these workers' employer. Finnwatch and MWRN note that the company's responsibility to

35 Ingredion Inc, Becca Hary, email on 18th February 2019

36 Section 61, Labour Protection Act

37 Ingredion Inc, Becca Hary, email on 18th February 2019

respect human rights and exercise due diligence extends to all their business relationships, including labour supply chains and service providers.

Although social security contributions are deducted from the workers salaries, they are not in possession of their social security cards. They have only been given their social security numbers. In migrant workers' experience, this makes accessing services, such as medical care, harder for them. Factors that contribute to difficulties they face are language barriers and discriminatory attitudes that many migrant workers still face in Thai society.

Ingredion in their response simply noted, that workers can still access medical services with an ID and citing their social security number, and that Ingredion also provides basic medical services to the workers free-of-charge on-site.³⁸

In addition to social security contributions, 200 baht (5.5 euros) for the 90-day registration is also deducted from workers' salaries. All foreign nationals staying in the country for longer periods of time have to register with the Thai authorities every 90 days. There are no official costs related to 90-day registration: it is free of charge.

No paid leave

According to the interviewees, they do not get public holidays, annual leave or paid sick leave. Legally, and according to their contracts, workers should be given 13 days traditional holidays and, when they have been employed for a year, 6 days annual leave³⁹. Ingredion in their response, refuted this finding stating workers are provided all holidays, annual leave and paid sick leave at levels that meet or exceed applicable law⁴⁰.

According to the workers' contracts, they should also be paid for the weekly rest day. This would not be common in Thailand, and according to the interviewees, also does not actually happen. In Finnwatch and MWRN's view, this is yet another sign that the terms and conditions in the workers' employment contracts are outdated and do not match the reality.

38 Ingredion Inc, Becca Hary, email on 18th February 2019

39 Section 30, Labour Protection Act

40 Ingredion Inc, Becca Hary, email on 18th February 2019

5. Conclusion

Companies have a responsibility to respect human rights that extends their full value chain. This means, among other things, that companies must exercise human rights due diligence, including assessing their actual and potential human rights impacts. Human rights due diligence helps companies also assess their involvement in adverse human rights impacts. Where adverse impacts are identified, the company must act on the findings. What is expected from a company in such situations depends on whether a company is causing an adverse impact, contributing to it, or directly linked to it by its business relationships.

On the basis of information available to Finnwatch and MWRN, it is not possible to assess Valio's involvement (cause, contribute or directly linked) in the labour rights violations in its supply chains highlighted in this report. In order to determine appropriate response and devise a fit-for-purpose action plan, Valio needs to undertake such assessment and also review its own internal corporate social responsibility processes. Suffice it to say, Valio's corporate social responsibility processes are inadequate to ensure the sustainability of its risk-country sourcing. Valio relies heavily on Sedex as a tool to monitor working conditions in its supply chains and applies Sedex methodology to identify high risk suppliers. However, in applying these it had not identified its Thai suppliers as high risk, or migrant workers in its supply chains in Thailand as a vulnerable group, even when they clearly are. Furthermore, by only using Sedex, Valio would not necessarily have found out about problems with Amfori BSCI audit integrity in Southeast Asia. Sedex does not control the quality of all audits the results of which are shared in its database.

Finnwatch and MWRN research found several issues in Valio's supply chains in Thailand that require attention and preventative, mitigating and remedial action, possibly from a number of actors. At both Takerng and Ingredion Rayong, the main challenges relate to

recruitment of migrant workers. At Takerng, migrant workers had paid recruitment related fees above legal limits. This is a common problem in Thailand's export industries yet only a few companies have so far attempted to tackle the issue. According to international standards, recruitment-related fees should not be charged to the workers and instead, the employer should bear the full cost of recruitment.

The research also found both Takerng and Ingredion to be in breach of several of Thailand's labour laws. At Takerng, the factory operations are closed during pineapple off-season for three months and the workers are not compensated during factory closure. Illegal deductions are made to workers salaries also when there is not enough pineapple to operate the factory for full working hours and workers have no paid annual leave.

At Ingredion Rayong, Finnwatch and MWRN research found possible subcontracted migrant labour which was made illegal in Thailand in 2017. Issues related to management systems on migrant labour at Ingredion Rayong had been identified during a previous SMETA audit but the corrective actions appear to have been insufficient. Interviewed workers were also not compensated for overtime and reported no paid leave.

6. Recommendations

TO VALIO

- Valio must carry out human rights due diligence, including a comprehensive human rights impact assessment of its risk-country sourcing that also seeks to clarify Valio's involvement with the actual and potential adverse human rights impacts. Based on findings of such assessment, Valio must stop activities that cause or contribute to adverse impacts and devise a plan of preventative and mitigating actions when it is linked to adverse impacts by its business relations. Neither of these means that Valio should simply stop purchases from certain suppliers; disengagement with suppliers is appropriate only in certain circumstances, for example, after several failed attempts of mitigation.
- In particular, Valio must strengthen its processes for identifying and prioritising human rights risks. The Sedex tool it is currently using is clearly inadequate. These efforts should include engaging local civil society to supplement information obtained through audits and to be used in human rights risks assessments.
- Valio must strengthen its pre-qualification criteria for suppliers. For example, from its suppliers that rely heavily on migrant labour, Valio must require a zero recruitment fee policy. Effective implementation of such policy require companies to arrange pre-departure training to prospective workers on issues such as recruitment fees and their rights and to conduct post-arrival checks with workers with a view to gathering information on any recruitment related fees they have had to pay. Where migrant workers are found to have paid recruitment related fees, they must be promptly reimbursed.
- Several Finnwatch research reports have brought to light labour rights issues in tropical fruit industry. Where Valio is lacking in leverage to influence its suppliers, it must seek to increase its leverage by cooperation with other buyers. This could mean joining a social responsibility scheme where implicated members are required to participate in corrective actions and remedying abuses in their supply chains. Addressing collective or cumulative impacts (e.g. where the company is only one of several entities contributing to an adverse impact) may require companies also to seek engagement with governments, in addition to cooperative efforts at industry level.
- Valio should also broaden the scope of its corporate social responsibility processes further upstream its supply chains, to suppliers of high risk raw materials and ingredients. For example, Valio should consider switching to using certified tropical fruits. Of social responsibility certification schemes, at least Rainforest Alliance and Fairtrade certify fresh fruits.

TO THAI COMPANIES

- Adopt a zero recruitment fee policy. Effective implementation of such policy requires companies to arrange pre-departure training to prospective workers on issues such as recruitment fees and their rights and to conduct post-arrival checks with workers with a view to gathering information on any recruitment related fees they have had to pay. Where migrant workers are found to have paid recruitment related fees, they must be promptly reimbursed.
- Ensure all workers are in possession of their social security cards.
- Ensure workers are paid for first two days of sick leave even without a doctor's certification in accordance with law.

- Ensure workers are also given and paid for public holidays and annual leave in accordance with law.
- Actively promote social dialogue, freedom of association and collective bargaining among their workforce, including migrant workers.
- Advocate for the ratification of ILO Core Conventions 87 and 98 by Thailand.

To Takerng Pineapple Industrial Co Ltd:

- Do not make any illegal deductions from workers' salaries. Make sure that workers

are paid at least a minimum wage even when work finishes early.

- Make sure that workers are paid a portion of their salary during seasonal factory closure in accordance with law.

To Ingredion Rayong:

- Guarantee the legality of all workers' employment status by ensuring that they are employed at the location stated in their work permit.
- Ensure that workers are compensated for overtime in accordance with law.

TO AMFORI BSCI AND SEDEX

- Neither Amfori BSCI or Sedex require off-site interviews with workers during audits. Off-site interviews with workers must be incorporated as a compulsory part to all audits, and auditors must, when necessary, be given training on how to interview workers. Where off-site interviews cannot be arranged, interviews must be conducted in conditions that guarantee confidentiality and anonymity.
- Amfori BSCI and Sedex should publish audit reports in so far as trade secrets and the privacy of workers and other interviewed individuals are not jeopardised. Increased transparency would make it easier for stakeholder groups to highlight any possible problems or weaknesses in the audits' methodology and quality. Published audit reports should include sufficient information on how the conformity with each criterion has been ascertained.
- Amfori BSCI and Sedex should conduct country and sector-specific risk analyses and use them to provide auditors with information on what probable problem areas audits should focus on. Audits could be further steered to focus on pertinent labour rights issues by requiring off-site interviews with the workers already during an audit's preparatory stage. When necessary, schemes should adjust their criteria or provide country or topic-specific interpretation guidance that match the problem areas

observed in risk analyses. For example, in industry sectors that are dependent on migrant workers, it is of utmost importance to include recruitment practices within the scope of audits in order to identify possible cases of forced labour and human trafficking.

- Amfori BSCI should communicate more openly about the challenges it is facing in ensuring audit quality, and the actions taken to overcome these challenges. In additions to improving audit quality, Amfori BSCI should also strengthen its criteria for responsible labour practices, in particular in regards to recruitment of migrant workers and the so-called employer pays principle. Problems with both Amfori BSCI audit quality and the way Amfori BSCI takes into account recruitment-related labour rights risks have been highlighted a number of times in the past, by Finnwatch and others, and the system risks losing credibility if it does not take more decisive action to address these issues.
- Sedex should also revise its risk assessment tool which currently appears completely inadequate. Companies human rights due diligence efforts must be commensurate with risk, but if they do not properly identify risks in the first place, they will not be able to tailor and prioritise their approach and actions accordingly.

TO THE THAI GOVERNMENT

- Amend Sections 88 and 101 of the 1975 Labour Relations Act to permit registered migrant workers to exercise the right to establish and register a union, and to be a member of the union committee, from which the individuals are chosen to lead the union. Ratify ILO Core Conventions 87 and 98.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which guarantees fundamental rights and freedoms of migrant workers and their families.
- Enforce labour protections to ensure that all workers, including migrants, are paid at least the minimum wage and granted paid leave in accordance with law.
- Encourage Thai companies to develop, implement, and publish human rights policies and practices (including those concerning labour rights) appropriate to their size and circumstances and in line with international standards on business and human rights, including:
 - specific commitments to meet the responsibility to respect human rights, including labour rights; and
 - a human rights due diligence process to identify, prevent, mitigate, and account for how the company addresses their impacts on human rights.
- Impartially investigate all allegations of labour rights abuses and take appropriate legal action, including seeking compensation from responsible companies, for workers who have been harmed.

TO THE MYANMAR GOVERNMENT

- Establish clear timelines for each stage of the migrant worker recruitment process in Myanmar as one means to address corruption.
- Introduce legislation or regulations that assign recruitment fee costs to employers or establishments in line with international standards. Pending this, clarify breakdown of the officially permitted total of fees that can be charged to migrant workers in Myanmar.

TO THE FINNISH GOVERNMENT

- Draft a government proposal for national mandatory human rights due diligence legislation.
- Promote mandatory human rights due diligence at an EU level during the Finnish EU Presidency in July–December 2019.

Appendix 1. Prodalim Group statement, 18th March 2019



March 18, 2019

TO WHOM IT MAY CONCERN

Prodalim, as the biggest supplier of pineapple juice globally, works with almost all the pineapple processors worldwide.

Our group, that exists for more than 30 years, have always been known for its values of fairness, equality and integrity.

We have zero tolerance to any case of abusement of labor or any kind of discrimination!

As we work with more than 120 suppliers over more than 40 countries, we have to rely on international organizations to certify and audit our suppliers and so we have cooperation with amfori BSCI, SEDEX and EcoVadis.

Thailand is classified as a high-risk country by Prodalim, therefore we are auditing our suppliers every year. During these audits our SGF certified auditor observes the Health and Safety program at the production site and interviews randomly chosen workers checking the following topics:

- if the company contracts migrant workers directly
- interviews migrant pregnant workers
- if the company provides social and health insurance under the Thai labor law for migrants
- if the company pays at least the minimum wage
- if the sick leave is paid
- if the salary is paid via bank transfer
- if the company provides the necessary conditions and equipment for work

In case we hear or find out of any wrong doing of any supplier, we take immediate action by demanding answers, corrective action plan and external audits. Otherwise we stop working with such supplier.

Our business depends on assuring social responsibility and finding the right partners, therefore every finding of the report will be investigated thoroughly.

Appendix 2. Ingredion Inc statement, 12th March 2019

For the past six years, Ingredion has been recognized by Ethisphere as one of the World's Most Ethical Companies, and we are dedicated to being a good corporate citizen in every country where we do business. We have a longstanding commitment to maintaining a safe and productive workplace, and we take that commitment seriously. In addition, we have a "Supplier Code of Conduct⁴¹" which plays an important part of our supplier selection and evaluation process, and we expect our suppliers to adhere to these guidelines. We are committed to operating with integrity and maintaining the highest ethical standards wherever we do business. We have verified both directly and via our subcontractor that these workers have been properly compensated per the terms of their contract, which we have seen. Ingredion believes that these workers' employer, our service provider, is complying with all applicable laws. As such, at this time, we are unaware of any issues, but will promptly address any discrepancies if they are uncovered in the future.

⁴¹ Available at <https://www.ingredionincorporated.com/CorporateResponsibility/GlobalProcurement/Supplier-CodeofConduct.html>



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