

A complaint from

**The Building and Wood
Workers' International (BWI)**

And

**The Timber Industry Employees
Union of Sarawak (TIEUS)**

to the

**Tokyo Organising Committee
of the Olympic Games (TOCOG)**

regarding violations of

the Sustainable Sourcing Code (SSC)

This complaint has been brought by the Building and Wood Workers' International (BWI) alleges that a supplier of timber to the Tokyo 2020 construction has engaged in behaviour in violation of Section 4(4)(i) and (ii) of the Sustainable Sourcing Code (SSC).

We are requesting that the Tokyo Organising Committee for the Olympic Games (TOCOG) take swift action to arrange a mediation between the parties with a view to remedying the issues immediately.

1. Parties involved

- 1.1 This complaint is being filed by the Building and Wood Workers' International (BWI),¹ on behalf of aggrieved members of Zedtee Plywood Union, an enterprise union of the Timber Industry Employees Union of Sarawak (TIEUS) at the Zedtee Plywood plant in Bintulu.² TIEUS is an affiliate of the BWI and represents timber workers across the state of Sarawak, in both logging and timber processing activities.
- 1.2 The supplier is Zedtee Plywood (Tatau) Sdn. Bhd. (hereinafter 'Zedtee'), part of the Shin Yang Group (hereinafter 'Shin Yang'). Shin Yang is a Sarawak-based timber company that operates two mills in the Miri region and three in the Bintulu region of Sarawak, and holds a number of forest concessions. The Zedtee mill in Tatau (close to Bintulu) was Shin Yang's first plywood mill and was established in 1989. As their website notes "We strongly believe and emphasise towards Environmental and Social Responsibility from the very early stage." The BWI and TIEUS wish to assist Zedtee and Shin Yang in strengthening social outcomes, particularly with regard to labour rights.
- 1.3 There is evidence establishing the fact that concrete formwork plywood from the Zedtee Plywood mill is being used in the New National Stadium. In February 2018 the Tokyo 2020 website published information that around 8% (9300 sheets out of a total of 120,400 sheets) of concrete formwork plywood procured so far for Tokyo 2020 construction projects was certified Malaysian timber.³ According to a website⁴ covering news of the Anap-Muput Forest Management Unit (a Shin Yang-operated forest management unit), in May 2016 Zedtee Plywood signed a Memorandum with Itochu Kenzai Corporation and Japan Kenzai Corporation around marketing certified timber produced from Anap Muput Forest Management Unit (FMU) in Japan. By November 2016 a Sarawak representative of Itochu Kenzai Corporation was able to report to Zedtee stating that "Anap Muput FMU timber will feature significantly in the construction of Tokyo 2020 Olympic Stadium" likely indicating the New National Stadium. It also noted that "Itochu Kenzai would like to buy as much certified plywood manufactured by Zedtee Plywood SB as possible".⁵ Given the high proportion of uncertified timber that has been used in other Tokyo 2020 construction projects, it is likely that certified Malaysian timber would be a less controversial alternative.
- 1.4 The use of Zedtee-produced timber in construction of the New National Stadium is corroborated by other testimony. In their complaints about environmental and human rights violations in the New National Stadium timber supply chain, Rainforest Action Network and others provided photographic evidence that showed concrete formwork plywood stamped with the Zedtee certification tag, cited on the very centre of the construction site.⁶
- 1.5 The alleged violations of the SSC historically precede the announcement to workers of the supply contracts mentioned at [1.3] by a few months, and may well precede the signing of

¹ The BWI is the global union federation for workers in building and construction, wood and forestry, building materials and other allied sectors. We currently represent over 12 million workers globally, including in both Malaysia and Japan.

² Zedtee Plywood Sdn Bhd, Lot 555, Block 22, Buan Land District, Tatau, 97008 Bintulu, Sarawak.

³ <https://tokyo2020.org/en/games/sustainability/>

⁴ anapmuputfmu.com

⁵ <http://www.anapmuputfmu.com/other-links-announcements.php>

⁶ Rainforest Action Network "Urgent investigation required as use of plywood likely linked to tropical forest destruction and human rights abuses found at construction site of new Tokyo Olympic Stadium" 20 April 2017. Available at: https://www.ran.org/urgent_investigation_required_as_use_of_plywood_likely_linked_to_tropical_forest_destruction_and_human_rights_abuses_found_at_construction_site_of_new_tokyo_olympic_stadium

those contracts. However given the nature of the allegations –particularly violations of the right to freedom of association – it is fair to say that the effects of the violations were still operating within the Zedtee plywood mill at the time. Thus it is alleged that as a result of actions taken by Zedtee in violation of the right to freedom of association, at the time that the supply contracts were concluded the workers that remained on site felt unable to exercise their rights freely.

2. The Code

- 2.1 This complaint concerns violations regarding the Tokyo 2020 timber supply chain, however we have referred to violations of the Sustainable Sourcing Code (SSC), rather than violations of Appendix 2-1, the Sustainable Sourcing Code for Timber (SSCT). This is because the SSCT contains a much more limited set of rights and obligations on suppliers than the SST does. In this instance it is accepted that the supplier has obtained PEFC certification (in line with Section (3) of the SSCT) and that they are therefore presumed to be in compliance with the SSCT. However, based upon our side-by-side reading of the SSC and SSCT, there is no provision in either Code preventing application of the SSC in cases regarding the use of timber products. As an annex, the SSCT imposes additional obligations on timber suppliers (hence the wording at the top of the SSCT document “In addition to the Sustainable Sourcing Code, the below Sustainable Sourcing Code for Timber provides a framework for sustainable procurement of timber...”).⁷
- 2.2 Section 2 of the SST notes that the Sourcing Code covers “the entire range of products and services procured by Tokyo 2020”. This complaint concerns labour rights violations alleged in relation to supply chains for the construction of the New National Stadium (also known as the Olympic Stadium), the centre-piece venue which will host the Opening and Closing Ceremonies as well as other major Olympic events.
- 2.3 The New National Stadium is being constructed under the direction of the Japan Sports Council (not TOCOG itself), meaning that it is not under the direct jurisdiction of the SSC.⁸ We contend, however, that regardless of these constraints, TOCOG still has a political obligation to ensure that complaints about Olympic construction projects (i.e. construction projects that would not proceed *but for* the Tokyo 2020 Olympics) are carried out in compliance with the obligations laid down in the SSC.
- 2.4 It is clear that TOGOC has some support for this idea, at least with regard to timber procurement. On the sustainability page of the TOGOC website⁹ a list is now provided of the countries from which concrete formwork plywood has been procured, that includes TMG projects (the Olympic Aquatics Centre, Ariake Arena and the Sea Forest Waterway) and JSC projects (the New National Stadium). With regard to the plywood used on the JSC-managed New National Stadium, it is noted that 2,900 sheets of plywood were procured from Malaysia, and they are classified as ‘Certified plywood as required in Paragraph 3 of the Code’. Further evidence of this sense of responsibility was exhibited in July 2017 when meetings were held with a Malaysian delegation that had travelled to Japan to assure TOCOG that the plywood had been duly certified by the relevant

⁷ Available at: <https://tokyo2020.org/en/games/sustainability/data/sus-procurement-timber-code.pdf>

⁸ The SSC’s jurisdiction is limited to TOGOC projects, and not those undertaken by Tokyo Metropolitan Government (TMG) or the Japan Sports Council. Because the majority of construction projects are undertaken by TMG and not TOGOC, this restricts the applicability of the SSC to only a fraction of the total Tokyo Olympic construction effort.

⁹ <https://tokyo2020.org/en/games/sustainability/>

agencies.¹⁰ If TOCOG is willing to publicly exercise responsibility for this matters regarding this plywood (noting that certification is 'required'), then it has already effectively bridged the jurisdictional gap.

- 2.5 In the BWI submissions to TOCOG regarding the design of the proposed Grievance Mechanism, the BWI already outlined the suggestion that the SSC and GM cover all products and services procured for Olympic projects (i.e. including TMG and JSC projects construction projects). Accordingly we are requesting that the complaint be heard on the same footing as if the New National Stadium were a TOCOG project.¹¹

3. Violations alleged

- 3.1 This complaint alleges that a Tokyo 2020 supplier has engaged in behaviour in violation of Section 4(4)(i) and (ii), of the Sustainability Sourcing Code (SSC). See Appendix 1 for the text of these sections. It also mentions violations of Section 4(4)(viii) and (ix), however they are not the specific subject matter of this complaint.¹² The violations, which predominantly concern a worker (who was a union member) at the Zedtee plywood mill at Tatau, as well as his attempts to address other violations on site, will be dealt with in chronological order below.
- 3.2 On 09/09/04 (or thereabouts) Mr. Buan Anak Mengai began working at Zedtee as a workshop operator under the Engineering Department. This work largely involved mechanical maintenance work, as well as other obligations as directed.
- 3.3 Mengai joined the Zedtee Plywood Union, an enterprise-level union at some point in 2005 (exact date unknown).¹³ At the time he joined there were around 2000 workers at the site, and the union had membership of approximately 300 workers. While the union was popular amongst local workers, the high proportion of migrant workers¹⁴ that had been hired by the company made it difficult for the union to reach the thresholds set under Malaysian law required to achieve union registration and then initiate collective bargaining.¹⁵

¹⁰ See e.g. <https://www.thestar.com.my/news/nation/2017/08/10/tokyo-olympic-stadium-to-use-certified-msian-wood/>

¹¹ The BWI is happy to discuss this matter further if required.

¹² It is the view of the BWI and TIEUS that the appropriate method of dealing with these kinds of disputes at this stage is in discussion between the union and management, preferably by way of collective agreement. The allegations are included in this complaint to provide a better understanding of the nature of labour relations on the site at the moment and to add substance to the need for union recognition.

¹³ The Zedtee Plywood Union is affiliated to the Timber Industry Employees Union of Sarawak (TIEUS), an affiliate of the BWI.

¹⁴ Contrary to popular knowledge, migrant workers in Malaysia are able to join unions however they cannot serve on a union executive (meaning that they cannot form their own unions). There is however much confusion over this fact and often migrant workers feel that if they join a union they may lose their job. Since migrant workers' visa status in Malaysia is premised on their employment, migrant workers are generally extremely reluctant to join unions.

¹⁵ Malaysia has not ratified ILO Convention 87 on the Rights to Freedom of Association and the Right to Organise, and as a result Malaysian labour law sets a particularly high threshold for union recognition (required before collective bargaining can take place). Under the Industrial Relations Act, while employers may voluntarily recognise a union they are only under an obligation to do so if a secret ballot has been held by the Director General of Trade Unions has organised a secret ballot and a majority of workers (50% + 1) vote in favour of the union. In practical terms, this requirement has severely restricted the process of union formation across the country.

- 3.4 Mengai became increasingly active in the union, and began raising issues with management, for example:
- a) As a result of the propensity of local workers to join the union, the company recruited more migrant workers, meaning that local workers (whose wages were generally higher) were missing out on jobs; and
 - b) Some workers were being prevented from taking annual leave. When workers did take leave, some would have salary deductions made by the company.
- 3.5 As a union representative, Mengai took a case to the Jabatan Perkhidmatan Pembetungnan (JPP)¹⁶ office in Kuching, alleging a number of complaints regarding violations of Malaysian labour law and workers' contracts:
- a) Workers that took more than five days of sick leave in a one year period were finding deductions from their overtime. This is in spite of the fact that these workers were entitled to up to fourteen days a year of sick leave for even the most junior employees;¹⁷
 - b) Everyday workers were being made to attend a morning meeting from 6:30am to 7:30am, rather than their scheduled starting time of 7:00am, however they received no overtime payment for this extra half-hour a day;
 - c) Workers were being made to work for a five-hour period without a rest, in breach of Malaysian labour standards **[See Document A (Memo dated 15 November 2015)]**;¹⁸
 - d) Management were refusing to pay time and a half for workers that were working on public holidays (they were just being paid the normal daily rate);¹⁹ and
 - e) At the time that the new minimum wage was implemented (i.e. from 1 November 2011), management began deducting workers' meal allowances from workers' salaries at a rate of 200RM a month, an unlawful deduction.²⁰

There were two mediations that took place with JPP on these matters, however none of these issues were resolved to the satisfaction of the workers.

- 3.6 A series of other ongoing actions from the company resulted in Mr. Mengai and other union activists taking a more active role in raising grievances:
- a) On a number of occasions (around three to four times) the company ransacked the workers' dormitory, confiscating and destroying foodstuffs, utensils and cutlery to prevent the workers from cooking their own meals. The company made it compulsory to buy RM130 monthly meal coupons to be spent at the company canteen. There is photographic evidence from when this happened on 10 November 2014 and 14 March 2015, and recorded video of one of the 14 March 2015 incident **[See Video 1]**;
 - b) Zedtee had also started charging the workers for their dormitory housing (RM50 per month) and electricity costs (RM20 per month) in violation of their employment agreement;
 - c) For occupational accidents resulting in death, the company's policy is to send the body to their place of origin and to compensate workers at RM13000. While this has been paid in cases involving migrant workers (that are not union members), local workers (that are union members) have not been subject to the same compensation

¹⁶ JPP is the Malaysian Industrial Relations Department.

¹⁷ Section 105E of the Sarawak Labour Ordinance.

¹⁸ Section 105(aa) of the Sarawak Labour Ordinance

¹⁹ Section 104 of the Sarawak Labour Ordinance

²⁰ Section 114(4)(e) of the Sarawak Labour Ordinance.

- payment. Instead the company has blamed the workers themselves for the accidents and refused to pay compensation to the families concerned; and
- d) A pattern of termination without notice had developed, and terminated migrant workers have been forced to leave the company compound immediately. One example occurred in August 2015, where a group of three migrant workers were arbitrarily terminated at night time and then forced to leave the compound immediately. They were taken by bus as far as the border with Kalimantan and then left to deal by themselves for the rest of their return journey. Two video depicts the beginning of this incident as workers are being put on the bus **[See Videos 2 and 3]**.

While these issues are not the direct subject matter of this complaint, they indicate some of the kind of issues that workers on this site have faced. It is further noted that these behaviours are arguably in violation of Section 4(4)(viii) and (ix) of the SSC.

- 3.7 As a result of Mr. Mengai's willingness to challenge the company on issues regarding labour standards and legal compliance, he faced increasing hostility from the company.
- 3.8 On 16 January 2015 Union President Vincent Bunyak (who had been at Zedtee since August 2002) received a letter from the Superintendent of the Log Yard telling him that his hours had been restricted to 8 hours a day unless otherwise informed **[see Document B (Letter dated 16 January 2015)]**. This restricted Bunyak's potential income, because he would be unable to earn overtime pay. Another subsequent letter dated 2 February 2015 from Zedtee management affirmed this decision **[see Document C (Letter dated 2 February 2015)]**.
- 3.9 On or around September 2015 Mr. Mengai was subject to a similar restriction, and his overtime was arbitrarily limited to a maximum of RM700 per month. Other workers did not experience the same restriction.
- 3.10 On 11 January 2016 management circulated a memorandum noting that management would not entertain any request for unpaid leave applications, and implementing a penalty system of RM100 per day for each day of non-attendance (as well as non-payment of wages for the day) **[see Document D (Memorandum dated 11 January 2016)]**.
- 3.11 On 15 March 2016 Mr. Mengai and Mr. Vincent both attended a union workshop together on employment legislation in Sarawak to improve their legal advocacy skills. They had taken annual leave to attend the workshop.
- 3.12 On 16 March 2016 (the day after the workshop) Mr. Mengai was called to a meeting with management, whereupon he was accused of stealing scrap metal from the workshop where he worked. During this meeting he was presented with no evidence, despite the fact there were a number of surveillance cameras operating in the workshop that should have had footage of any such misdemeanour. There were also no witnesses presented, and no due process was followed.
- 3.13 Instead, Mr. Mengai was told that he must leave Zedtee's premises within a two-hour period. Management threatened that the wages that he was already owed for that month's work would be withheld from him until such a time that he signed a document provided by the company indicating that he had voluntarily resigned. Overcome with shock at Zedtee's allegations and unsure how best to meet the costs for his family over the coming weeks without the wages he was already owed, Mr. Mengai reluctantly signed the document.
- 3.14 It is contended that Mr. Mengai's dismissal is a violation of the right to freedom of association (covered in Section 4(i) and (ii) of the SSC). 4(i) refers to obligation of suppliers

to comply with and respect international labour standards, including the Core Labour Standards,²¹ while 4(ii) refers specifically to the rights of freedom of association and collective bargaining.

- 3.15 ILO Convention 98 on the Right to Organise and Collective Bargaining explicitly prohibits the behavior of Zedtee. Article 1 notes that “workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment”, and 1(2)(b) notes that “such protection shall apply more particularly in respect of acts calculated to...

(b) *cause the dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.”²²*

In applying this principle to the present situation, it should be noted that particular complaints had been made by Zedtee with regard to his union activities. The behaviour of Zedtee – the false allegations made against Mr. Mengai and compelling him to sign the resignation letter under duress – constitute acts “calculated to cause the dismissal” or Mr. Mengai, driven by his participation in union activities.

- 3.15 The Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO (‘The Digest’), provide interpretative assistance to the obligations of freedom of association and collective bargaining, and the following segments address the situation in which a worker is dismissed for trade union organising:

771 *No person should be dismissed or prejudiced in employment by reason of trade union membership or legitimate trade activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment.*

789 *The dismissal of workers on grounds of membership of an organization or trade union activities violates the principles of freedom of association.*

The circumstances under which Mr. Mengai was dismissed clearly indicate that it was his trade union activities that caused him to be dismissed. He had been working at the factory for 12 years and had no rational reason to risk his job by stealing scrap metal. He had become increasingly vocal about the treatment of workers, and his dismissal came the very day after he had attended a legal advocacy training workshop. It appears that Zedtee’s primary concern was that Mengai’s vocalness might soon lead to an attempt to seek trade union registration and collective bargaining, thereby raising the costs of business for Zedtee.

- 3.16 It should also be noted that the allegations the company made against Mr. Mengai – that he had stolen scrap metal from the Zedtee workshop – were of a criminal nature. If they were confident of these allegations then the appropriate way to deal with them would have been through the criminal courts. Instead the allegations were used to harass Mengai, and then covered up under duress by having him sign the resignation letter. The Digest addresses the situation in which criminal allegations are leveled against trade unionists:

41 *Allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.*

²¹ Which includes the fundamental right to freedom of association and the effective recognition of the right to collective bargaining.

²² http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312243

4 Attempts to remedy the situation

- 4.1 The complainants have so far taken multiple approaches in attempting to resolve the issues, including through the Sarawak legal system and the certification dispute settlement process.

Sarawak courts

- 4.2 A case of constructive dismissal has been filed through the Sarawak court system immediately after it occurred in 2016, however this process has proved extremely slow. There have been a number of mediations, however no amenable conclusion was reached between the parties. The case received a mention on 23 January 2018, and a hearing has been set down for May 2018.

Certification

- 4.3 Given that Zedtee is a certified company,²³ on 15 September 2016 BWI APRO Regional Campaigns Officer Edward Miller met with Yong Teng Koon CEO of the Malaysian Timber Certification Council (MTCC) at the MTCC office. A case brief was provided [see **Document E**] and Miller requested that MTCC establish a dialogue between BWI and Zedtee so that Mr. Mengai could be reinstated and the union could resume its organising work. Yong recommended the BWI follows the existing procedure: filing a complaint with the certifying SIRIM QAS.
- 4.4 On 18 October 2016 BWI APRO Regional Representative Apolinar Tolentino and Regional Campaigns Officer Edward Miller met with SIRIM-QAS at their office. They delivered the case brief and explained the freedom of association violation (9.2.2(a) of the Chain of Custody Standard) in greater detail. There seems to be very limited knowledge of the meaning of workers' right to freedom of association. The BWI requested at the first instance that SIRIM-QAS seek to arrange a meeting with Zedtee to attempt to resolve the matter without recourse to the complaints mechanism, and SIRIM-QAS note that they will make that request. SIRIM-QAS noted that Zedtee's annual verification audit is soon, so it is agreed that the verification audit will be used to assess the claims made in the complaint and whether a violation of the obligations in the Standard has occurred.
- 4.5 On 2 November 2016 a meeting took place in Bintulu between the SIRIM-QAS verification audit team and a group of union members from the Zedtee Plywood Mill (Miller is also present). They explain in more detail the range of workers' rights' violations that commonly occur on the site, and Mr. Mengai is able to personally communicate the details of his dismissal.
- 4.6 On 3 November 2016 The SIRIM-QAS team visits the Bintulu mill and undertakes the verification audit, including investigation into the some details of the freedom of association complaint.
- 4.7 On 17 January 2017 Miller wrote to SIRIM-QAS requesting an update on when the response to the complaint can be expected. SIRIM-QAS responds saying they will respond when the report is ready. On 6 February 2017 Miller again writes to SIRIM-QAS

²³ Zedtee holds a PEFC Chain of Custody certificate (SIRIM-COC-0077, issued 8 November 2013, PEFC/34-31-155)

requesting an update, noting that it has been more than three months since the initial meeting and no report has been made available.

- 4.8 On 20 February 2017 a report [see Document F] on the complaint written by Fauziah Ahmad (Head of the QOSHE Section of SIRIM-QAS) is sent to Mr. Miller. The introductory section of the report notes the following, “*All issues that are related to Mr. Mengai was not included in the scope of verification as agreed during our discussion at SIRM and at Promenade Hotel*”. The remainder of the complaint looks at eight issues that were highlighted in the initial complaint but were not the core subject of the complaint (relating to sick leave, rest breaks, public holiday pay, meal allowances, cooking restrictions, housing and electricity costs, property damage, and, paradoxically, Mr. Mengai’s termination). The report also notes that they met with TIEUS representative Mr Sagai at the airport before their departure, who explained to him the restrictions on the right to freedom of association expressed within Malaysian law. They conclude that “all issues raised by the complainant are not valid” and that “workers had never approach the management for any negotiations”.
- 4.9 From the report, there appears to be serious deficiencies with the way the consultation had been undertaken in assessing the validity of the issues that Mr. Mengai was complaining about. For example, only 12 workers were interviewed out of more than 1000 on the site. And, given the history of opposition to independent worker organizing and the fact that the auditing team had already been working with management on site, the workers likely had reason to believe that they were not impartial actors in this process.
- 4.10 There are clear indications from the report itself that workers felt unable to exercise their rights within fear of retribution from management. At one point (when addressing the issue of break time), the report notes that workers did not feel comfortable taking breaks without receiving an official notification from management. It continues,

They were also asked if any of them had taken the issue to management for discussion. However, none of them had done so as they felt and had assumed that by doing so, they would be penalised by the management for trying to discuss or making such complaint.

A similar sentiment is expressed later in the report:

During the team consultation session with the workers, they admitted that there was no attempt by their side to initiate any discussion or negotiation with the management of Zedtee on the issues raised. The main reason was they presumed their attempt for negotiation would end up as a sanction from management.

The clear message from these statements is that even among the very limited sample size that had been gathered, workers do not feel comfortable addressing management on employment issues, given that the last individual who had done this, Mr. Mengai, lost his job on false allegations. This is a strong indication that workers do not feel comfortable exercising their legal rights.

- 4.11 On 21 February 2017 Mr. Miller sent a response to the above report [see Document G], questioning the apparently mutual decision not to investigate matters relating to Mr. Mengai. “*How this conclusion could be reach is unclear – Buan’s dismissal was the issue about which we were complaining.*” It questions the assessment made of Mr. Mengai’s

case in Issue 8 of the report, that notes that since the union was not recognised that there could be no violation of the right.²⁴

- 4.12 On 21 March 2017 Mr. Miller contacts Standards Malaysia's Accreditation Division Assistant Director Nurul 'Aini Bt Hashim requesting information on how to lodge a complaint against SIRIM-QAS.
- 4.13 A meeting was held at the SIRIM-QAS headquarters with Mr. Miller and Mr. Yong as well as SIRIM-QAS auditing staff (including the team that had audited Zedtee) to discuss the disagreements in viewpoint on the complaint. The BWI highlighted the fact that the report had intentionally opted to exclude the major thrust of the complaint – Mr. Mengai's unjustified termination – without consultation. During the discussion two major sticking points arose:
- 1) That SIRIM-QAS felt unable to decide on a case of this nature without having facts established in a court of law; and
 - 2) That there was confusion over the interpretation of the term 'freedom of association'.

There are clear issues with both of these arguments. On the first point, it is unclear how SIRIM-QAS felt they were able to justify intervening on the other matters of legal compliance that they covered in their report (such as restricted overtime and non-provision of annual leave) but were unable to address the issue of freedom of association. The job of the certifying body is to assess compliance with the standard, not defer to the courts on matters that it finds difficult.

On the second point, it appeared that SIRIM-QAS and MTCC were arguing that the appropriate threshold for assessing whether there had been a violation of the right to freedom of association was whether there had been a violation of Malaysian law on union recognition. On these grounds, since the union had not been recognised there could be a violation of the right to freedom of association. Mr Yong also made a comparison with how environmental issues are audited, noting that auditors are less concerned with single instances of a violation and more with sustained patterns of behaviour (nothing in the Standard or any other interpretive material was cited in connection to this position). The position taken by the BWI was that the appropriate interpretation of that right should not specifically reference thresholds set in Malaysian law, but rather should be defined in connection to the ILO conventions themselves. It was also suggested that the ILO Digest of Decisions and Principles was the appropriate starting point for interpretation to assess compliance. Further, the BWI suggested that the comparison with environmental violations is inappropriate, and that a single violation of the right to freedom of association on an individual like Mr. Mengai, who is very involved in the union, can undermine the ability of all workers on a site to exercise their right to freedom of association.

- 4.14 On 1 October 2017 BWI again met with Yong at the MTCC office to discuss potential avenues to resolve the case. Again, BWI officials requested that MTCC use their role to facilitate a meeting between Zedtee and BWI directly. On 8 November 2017 the BWI

²⁴ The SIRIM-QAS position that a union has to claim union recognition before it is formally considered established is not supported by the Malaysian labour law. Section 9(1) of the Trade Union Act 1959 notes that "For the purposes of this Act, a trade union is established on the first date on which any workmen or employers agree to become or to create an association or combination within any particular establishment, trade, occupation or industry, and whether temporary or permanent, for the furtherance of any one or more of the objects specified in the DEFINITION of a trade union in section 2."



received a response from Yong that this request had again been rejected by Zedtee, who noted that the company was dealing with other more pressing issues at the time.

5. Demands

- 5.1 First of all, the BWI demands that TOCOG finds a way that the jurisdictional gap preventing cases concerning violations of the SSC in relation to projects managed by TMG and JSC be bridged and that the case be allowed to be heard by the GM, or failing that, by TOCOG directly.
- 5.2 Given the foregoing alleged violations, in particular those concerning violations of the right to freedom of association and collective bargaining, the BWI and TIEUS is requesting that TOCOG use its political power to mediate the relationship and arrange a meeting between the parties in which a resolution with Zedtee can be reached.
- 5.3 In particular to Zedtee we are demanding compensation for Mr. Mengai and an agreement by Zedtee to voluntarily recognise the union and begin collective bargaining as soon as possible.

Appendix 1: Relevant Section from the Sustainability Sourcing Code

(4) Labour

While labour is involved in each phase of production, distribution and other processes, and other labour-related problems, including child labour, long working hours, and issues related to foreign workers, have been pointed out in Japan and abroad, Tokyo 2020 will require suppliers etc. to ensure proper labour management and an appropriate working environment. In addition, promotion of good work life balance is necessary.

(i) Compliance with and respect for international labour standards

Suppliers, etc. shall comply with and respect international labour standards (the Fundamental Principles and Rights at Work advocated by ILO, which include the ILO Core Labor Standards, in particular) throughout the production, distribution and other processes of procured products etc.

(ii) Freedom of association and the right of collective bargaining

Suppliers, etc. shall secure the fundamental rights of workers engaged in the production, distribution and other processes of procured products, etc., such as freedom of association and the right of collective bargaining.

(viii) Safety and hygiene of workplaces

Suppliers, etc. shall create physically and mentally safe and healthy working environments and conditions, including the establishment of a safety and health committee and mental health care, for workers, etc. engaged in the production, distribution and other processes of procured products, etc. in accordance with laws and ordinances relevant to health and hygiene. Suppliers, etc. also should give due consideration to fostering working environments that bring workers a favorable work-life balance.

(ix) Foreign and migrant workers

Suppliers, etc. shall not treat foreign and migrant workers (including technical interns) who work in the supplier's country for the production, distribution and other processes of procured products, etc. unjustly in terms of labour management, such as depriving them of their passport, forcing them to return home, collecting deposit money from them, paying no wages, setting illegally long work hours for them, or illicit conduct specified in relevant laws and ordinances (for example, in Japan, the Ministerial Ordinance on Criteria for Landing, which provides for criteria mentioned in Clause 2, Paragraph 1, Article 7 of the Immigration Control and Refugee Recognition Act). Suppliers, etc. also shall notify each worker of his/her working conditions in a format written in the language that he/she can understand in accordance with laws, administrative directions, etc. Moreover, if suppliers, etc. have workers introduced or sent to them, they should check whether the businesses who introduce or send workers to them have been licensed based on laws and ordinances, or whether the said businesses illicitly violate the rights of foreign workers. Additionally, suppliers, etc. should take measures to provide favourable living environments for foreign workers, to establish systems for enabling foreign workers to easily file complaints and ask for consultation, and to collaborate with authorized labour-related organisations.

Appendix 2: Evidence List

Documents

Document A	Memo dated 15 November 2015
Document B	Letter dated 16 January 2015
Document C	Letter dated 2 February 2015
Document D	Memo dated January 2016
Document E	BWI Case brief
Document F	SIRIM QAS QOSHE report February 2017
Document G	BWI response February 2017

Videos

Video 1	Depicts Zedtee management destroying migrant workers' food and personal possessions (these events are also captured in photos in the information package)
Videos 2 and 3	Depicts the situation as migrant workers were about to be deported back to Kalimantan following termination without notice