



June 24, 2019

VIA CBP PORTAL

Mr. Kevin K. McAleenan
Commissioner
U.S. Custom and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

Petition to exclude all palm oil, palm kernel oil, and palm oil fractions produced in Malaysia by FGV Holdings Berhad from importation into the United States because they are produced “wholly or in part” with forced and child labor

Dear Commissioner McAleenan,

I write on behalf of the Grant & Eisenhofer ESG Institute and submit this petition pursuant to 19 CFR § 12.42 *et seq.* to request a determination from United States Customs and Border Protection (“CBP”) that palm oil produced by FGV Holdings Berhad (“FGV”) (formerly known as FELDA Global Ventures Berhad) and imported from Malaysia is produced “wholly or in part” with forced labor and is thereby prohibited from entry into the United States under § 307 of the Tariff Act of 1930, 19 U.S.C. § 1307 (“Section 307”). The Tariff Act prohibits the importation of “goods, wares, articles and merchandise mined, produced, or manufactured wholly or in part in any foreign country... by forced labor.”¹

Per the specifications set forth in 19 C.F.R. § 12.42, the facts herein demonstrate, first, that palm oil and palm oil products produced and distributed by FGV are produced using forced labor and therefore constitute a prohibited class of merchandise under Section 307. Second, this petition establishes that major U.S. companies are importing palm oil and palm oil products FGV has produced with forced labor. The entry of this palm oil and palm oil products into the United States is unlawful.

I. Description of the Good to be Excluded

Palm oil is a ubiquitous ingredient contained in approximately half of all packaged food products.² It is also a common ingredient in personal care and hygiene products, is a preferred raw material for biodiesel, and is found in pharmaceuticals including Vitamin A supplements,

¹ 19 U.S.C. § 1307.

² See *What is Palm Oil Used For?*, Green Palm Sustainability, greenpalm.org/about-palm-oil/what-is-palm-oil/what-is-palm-oil-used-for (2016).

weight loss supplements, and topical moisturizers.³ Palm oil is extracted from palm plants and comes in two main forms: (1) palm oil, which is extracted from the yellow pulp of oil-palm fruits, and (2) palm kernel oil, which is extracted from oil-palm kernels.⁴ Both crude palm oil and palm kernel oil are also imported as “fractions,” separated liquid and solid elements called palm olein and palm stearin, respectively.⁵ Both forms and their fractions are extracted from oil palms grown on plantations that are fraught with forced labor.⁶

Malaysia is the world’s second-largest exporter of palm oil by dollar value.⁷ In 2018, Malaysia exported \$8.7 billion worth of palm oil, accounting for 28.7% of global palm-oil

³ Soaps, shampoos, detergents, and lipsticks are all likely to contain palm oil. *See Which Everyday Products Contain Palm Oil?*, World Wildlife Fund, <https://www.worldwildlife.org/pages/which-everyday-products-contain-palm-oil>. Palm oil is also a popular raw material for biodiesel production. *See also* Khairul Azly Zahan and Manabu Kano, *Biodiesel Production from Palm Oil, Its By-Products, and Mill Effluent: A Review*, *Energies*, Vol. 11, Issue 8 at 2132 (2018). It is also packaged and marketed as a pharmaceutical supplement and used as an input in other supplements and moisturizers. *See Vitamins and Supplements: Palm Oil*, WebMD, <https://www.webmd.com/vitamins/ai/ingredientmono-1139/palm-oil>; *Drugs and Medications: Palm Oil Spray, Non-Aerosol*, WebMD, <https://www.webmd.com/drugs/2/drug-172990/palm-oil-topical/details>.

⁴ *Outline of Production: Palm Fruit to Product*, Schuster Institute for Investigative Journalism at Brandeis University (2017), <https://www.schusterinstituteinvestigations.org/palm-oil-supply-chain>; Food and Agriculture Organization of the United Nations, *Modern Oil Palm Cultivation*, <http://www.fao.org/docrep/006/t0309e/T0309E01.htm>. Palm oil has a lower ratio of saturated to unsaturated fats and is generally imported and used by food companies. Palm Oil Health, *The Surprising Differences Between Palm Oil and Palm Kernel Oil*, Malaysian Palm Oil: Good for the Planet and People (Aug. 26, 2015), <https://www.palmoilhealth.org/faq/the-surprising-differences-between-palm-oil-and-palm-kernel-oil/>. Palm kernel oil is mainly used for non-food purposes and is therefore imported mainly by companies that produce cosmetics, soaps, and other non-edible products. *Id.*

⁵ *About Palm Oil*, Palm Oil World (2011), http://www.palmoilworld.org/about_palmoil.html/. Note that all Malaysian palm kernel oil and palm kernel oil factions meet the specifications outlined by the Malaysian Edible Oil Manufacturers’ Association. *Id.*

⁶ *See* Letter from Dato Henry Barlow, Chairperson, RSPO Complaints Panel to FGV Holdings Berhad (Nov. 28, 2018) [hereinafter “Letter from RSPO Complaints Panel”] *cited by* Natasha Frost, *A Palm Oil Giant Has Been Sanctioned Over Labor and Trafficking Workers*, QZ.com (Nov. 29, 2018); *Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia*, *The Fair Labor Association* (Nov. 2018) [hereinafter “*Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia*”] (prepared for the Consumer Goods Forum).

⁷ Daniel Workman, *Palm Oil Exports by Country*, World’s Top Exports (May 9, 2019), <http://www.worldstopexports.com/palm-oil-exports-by-country/>.

exports.⁸ Palm oil is one of Malaysia's top five exports.⁹ Oil palm, the plant from which palm oil is extracted, accounts for nearly half the GDP of Malaysia's agricultural sector.¹⁰ Malaysian oil-palm production is increasing.¹¹ The highest total number of oil-palm fresh fruit bunches ever produced was recorded in 2018, a 17.9% increase from the previous year.¹²

FGV is one of the world's largest palm oil producers.¹³ Originally, FGV was the commercial arm of the Malaysian government's Federal Land Development Authority ("FELDA").¹⁴ The company was incorporated in 2007 and listed on the Bursa Malsia Securities Berhad, the Malaysian stock exchange, as FELDA Global Ventures Holdings Berhad in 2012. In 2018, then-FELDA Global Ventures Berhad renamed itself and many of its subsidiaries, replacing the name "FELDA" with "FGV" in order to distance itself from FELDA and the Malaysian government.¹⁵ However, FELDA, i.e. the Malaysian government, remains a 33% shareholder in FGV.¹⁶

Because FGV's palm oil and palm oil products are produced from fruits grown on FGV oil-palm plantations that use forced labor,¹⁷ we petition CBP to halt imports from Malaysia of palm oil, palm kernel oil, and palm oil derivatives including fractions produced by FGV Holdings because of the egregious, verified, and inadequately addressed forced labor occurring on FGV oil-palm plantations, as set forth herein.

II. Evidence of Forced Labor on FGV Plantations

Forced labor in the Malaysian palm oil industry is a consistent and recognized problem.¹⁸ Growing oil palms is labor intensive, and the plantations on which they are grown often are

⁸ *Id.* Others have valued Malaysia's palm-oil exports at \$9.9 billion. See Alexander Simoes, *Malaysia*, Observatory of Economic Complexity (2017), <https://atlas.media.mit.edu/en/profile/country/mys/>.

⁹ See Simoes, *supra* note 8.

¹⁰ *Selected Agricultural Indicators, Malaysia, 2018*, Dept. of Statistics Malaysia, Official Portal (Dec. 31, 2018).

¹¹ *Id.*

¹² The recorded total equaled 101,741.0 thousand tons. *Id.*

¹³ *About FGV*, FGVHoldings.com, <http://www.fgvholdings.com/our-company/about-fgv/>.

¹⁴ *Id.*

¹⁵ EE Ann Nee, '*FGV*' to Distance Itself From FELDA's Woes, *The Sun* (June 29, 2018); *FGV Chairman's Letter to Shareholders* (Jan. 14, 2019), <http://www.fgvholdings.com/fgv-chairmans-letter-to-shareholders>.

¹⁶ EE Ann Nee, *supra* note 15.

¹⁷ See Letter from RSPO Complaints Panel, *supra* note 6.

¹⁸ See e.g., *Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia*, *supra* note 6 (discussing forced labor risks in Malaysian and Indonesian palm-oil production); Ainur Rohmah, *Cost of Kit Kat and Pantene Shampoo: Child Labor Continues to Plague Palm*

situated in remote locations, making laborers especially vulnerable to abuses and forced labor.¹⁹ This problem is exacerbated where, as in Malaysia, the overwhelming majority of workers are migrant laborers who are already extremely susceptible to forced labor.²⁰ In fact, the 2018 U.S. Trafficking in Person’s report identifies Malaysian palm oil as a good produced using both child and forced labor, and considers palm oil to be a “high-risk” industry for human trafficking, an issue related to forced labor.²¹ At the end of 2018, following a series of complaints concerning labor abuses by FGV, investigators sent by the Roundtable on Sustainable Palm Oil (“RSPO”) confirmed that FGV is using forced labor on its oil-palm plantations in Malaysia.²²

The International Labor Organization (“ILO”) outlines eleven indicators of forced labor: abuse of vulnerability, deception, restriction of movement, isolation, violence, intimidation and threats, retention of identity documents, withholding of wages, debt bondage, abusive living and working conditions, and excessive overtime.²³ Where several of these indicators appear together, forced labor is likely present.²⁴ The 2018 RSPO investigation found many of these indicators to be present on FGV plantations.²⁵ First, FGV is exploiting foreign migrant workers,

Oil Plantations, The Globe Post (Jan. 9, 2018) (discussing child labor on palm-oil plantations); Cassidy Slater, *Slavery in the Palm Oil Industry*, Human Rights First (Mar. 1, 2017) (discussing forced labor in palm-oil supply chains and encouraging use of the Tariff Act to prevent it), <https://www.humanrightsfirst.org/blog/slavery-palm-oil-industry>; *The Great Palm Oil Scandal: Labour Abuses Behind Big Brand Names*, Amnesty International (2016) [hereinafter “*The Great Palm Oil Scandal*”] (analyzing how palm oil produced using forced labor enters the supply chains of major U.S. brands); *Sustainable Palm Oil? Promoting New Measures to Combat Risks of Forced Labor and Human Trafficking in Palm Oil Supply Chains*, Verité (May 2013) (summarizing Verité’s research on palm oil supply chains which indicates a high prevalence of forced labor and recommending measures for combatting the problem, including supply-chain assessments); E. Benjamin Skinner, *Indonesia’s Palm Oil Industry Rife with Human Rights Abuses*, Bloomberg Business Week (July 20, 2013) (discussing human-rights abuses in the palm oil industry, with an emphasis on Indonesia); *Empty Assurances: The Human Cost of Palm Oil*, International Labor Rights Forum (2013) [hereinafter “*Empty Assurances*”] (outlining findings of human-rights abuses on palm-oil plantations certified as “sustainable”).

¹⁹ *Id.*

²⁰ See Sally C. Moyce and Marc Schenker, *Migrant Workers and their Occupational Health and Safety*, 39 Annual Rev. of Pub. Health 351, 356 (2018); Lorien Holland, *Malaysia Grapples With 1.5 Million Extra Migrant Workers*, Forbes (Mar. 22, 2016).

²¹ U.S. Department of Labor’s 2018 List of Goods Produced by Child Labor or Forced Labor [hereinafter “*D.O.L Child and Forced Labor List, 2018*”]; *Trafficking in Persons Report*, U.S. Dep’t. of Labor (2018), p. 21/28.

²² See Letter from RSPO Complaints Panel, *supra* note 6.

²³ *ILO Indicators of Forced Labour*, Int’l. Labor Office (2012).

²⁴ *Id.*

²⁵ See Letter from RSPO Complaints Panel, *supra* note 6; see also, Maris Zudrags, Shikin Rasikon, Jessie Ooi and László Máthé, *Compliance Audit and Investigation Report*,

some of whom are likely trafficking victims, a typical example of abuse of vulnerability.²⁶ First-person accounts also indicated that violence occurs in FGV's recruitment processes and that some migrant workers on FGV plantations are victims of debt bondage, both additional indicators of forced labor.²⁷ Second, the RSPO investigation found that workers were isolated on out-of-the-way plantations, and their movement was extremely limited, whether because their passports were retained by employers, because of plantation rules restricting their ability to leave their plantations, or because of intimidation and threats by employers.²⁸ Threats and intimidation, document retention, isolation, and restricted mobility are all forced labor indicators.²⁹ Third, workers on FGV plantations experienced abusive living and working conditions. FGV did not provide them with adequate food and supplies and the housing it provided was dire.³⁰ First-person reports indicate that FGV has in some instances failed to provide necessary safety equipment and medical coverage for its workers.³¹ Fourth, the investigation found that FGV's recruitment practices, especially where third-party contractors were involved, were deceptive.³² FGV failed to communicate contract and payment terms adequately to its workers and did not appear to have accessible and effective systems in place for workers to submit grievances.³³ As such, the RSPO investigators and complaints panel concluded that many of the workers had not freely consented to the employment.³⁴

Treatment of foreign, migrant workers on FGV plantations is particularly bad, evidencing abuse of vulnerability, discrimination against foreigners, deceptive recruitment practices, as well as complicity in human trafficking.³⁵ Official estimates indicate that 450,000 migrant workers are employed on Malaysian oil-palm plantations, not accounting for undocumented migrants.³⁶ A 2015 article in the *Wall Street Journal* tracked the story of Mr. Mohammad Rubel, a migrant Bangladeshi worker on an FGV oil-palm plantation in Malaysia, whose harrowing experiences

Accreditation Services International (Oct. 9, 2015); Syed Zain Al-Mahmood, *Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations*, *Wall Street Journal* (July 26, 2015).

²⁶ See Letter from RSPO Complaints Panel, *supra* note 6.

²⁷ See Al-Mahmood, *supra* note 25.

²⁸ See Letter from RSPO Complaints Panel, *supra* note 6.

²⁹ *ILO Indicators of Forced Labor*, *supra* note 23.

³⁰ See Letter from RSPO Complaints Panel, *supra* note 6.

³¹ Al-Mahmood, *supra* note 25.

³² See Letter from RSPO Complaints Panel, *supra* note 6.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Eric Gottwald, *Certifying Exploitation: Why 'Sustainable' Palm Oil Production is Failing Workers*, 27 *New Labor Forum: CUNY School of Labor and Urban Studies* 74-82 (May 1, 2018) (first published online, Apr. 5, 2018).

are far from unique.³⁷ Mr. Rubel was smuggled into Malaysia by human traffickers who falsely promised that he and the other migrant workers would be provided with food during the transport and would receive wages for work upon arrival.³⁸ The traffickers demanded a fee equivalent to U.S. \$2,000 from each migrant, which was to be paid from the wages earned in Malaysia.³⁹ Instead of transporting the workers from Bangladesh and arranging work for them as promised, the traffickers loaded the workers onto boats where they were deprived of food and water and were beaten by armed men when they asked for more than the small amount of food they were provided.⁴⁰ Many workers died on the trip, and the traffickers gutted their bodies before throwing them overboard.⁴¹ Then, the traffickers brought the remaining workers, including Mr. Rubel, to Thailand where they were held in crowded camps until their families paid the ransom the smugglers demanded.⁴² Once the ransoms were paid, the traffickers transported the workers to Malaysia and contracted work arrangements for them with conditions that were, once again, far different from what was promised.⁴³ They sent Mr. Rubel to an FGV plantation where he toiled in the heat seven days a week sawing off fruit bunches from high up in palm trees and then loading the heavy fruit clumps onto trucks for transport to palm oil mills. For at least the first seven months of his employment, FGV did not pay Mr. Rubel.⁴⁴

In addition to abuse of vulnerability and deceptive recruitment practices, isolation and restricted mobility are also strong indicators of forced labor observed on FGV plantations.⁴⁵ FGV traps workers like Mr. Rubel on remotely-located closed oil-palm complexes under slave-like conditions, segregating them from the general population and subjecting them to the whims of plantation managers.⁴⁶ There is evidence that employers withhold workers' passports, making it essentially impossible for the workers to find work elsewhere even if they do attempt escape.⁴⁷ Even where workers have access to their passports, as is required by new FGV regulations, FGV does not allow them to leave the plantations without written permission.⁴⁸ FGV plantation managers and supervisors bring in police officers and threaten to have the workers sent to jail if

³⁷ Al-Mahmood, *supra* note 25.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Al-Mahmood, *supra* note 25.

⁴⁴ *Id.*

⁴⁵ See Letter from RSPO Complaints Panel, *supra* note 6.

⁴⁶ *Id.*

⁴⁷ *Id.*; *Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia*, *supra* note 6.

⁴⁸ See Letter from RSPO Complaints Panel, *supra* note 6.

they attempt to escape the plantations.⁴⁹ Undocumented workers may be especially fearful of the Malaysian police as undocumented immigrants in Malaysia often face police brutality and may be subjected to corporal punishment, generally caning, if they are found to have violated Malaysian immigration laws.⁵⁰ As in Mr. Rubel's case, pay is often withheld where third-party contractors are involved.⁵¹ Moreover, FGV often requires workers to meet extremely high work quotas before they become entitled to the minimum hourly wage, in violation of Malaysian law.⁵² Workers who, like Mr. Rubel, paid high recruitment fees to smugglers, may end up stuck in debt-bondage.⁵³

Inadequate food and supplies and dire housing arrangements, both indicators of forced labor, are also evidenced on FGV plantations.⁵⁴ Workers are responsible for purchasing their own food and supplies, excepting some basics which are provided upon their arrival and then deducted from their paychecks.⁵⁵ As discussed above, FGV prevents its workers from leaving the plantations, thus forcing them to purchase goods from the few suppliers physically located on the FGV plantations.⁵⁶ These suppliers charge excessive amounts for basic goods, such that many workers cannot afford to consume sufficient food for sustenance.⁵⁷ The RSPO's on-the-ground investigation into this matter corroborated the allegations that FGV is not providing its workers with adequate food and supplies.⁵⁸ The housing accommodations that FGV provides for its workers are in dire condition.⁵⁹ Safety supplies and precautions and medical care are likely inadequate, as well, on FGV plantations. Mr. Rubel, for example, worked with the toxic weed-killer Paraquat without ever having received training on how to use it safely.⁶⁰ Others who worked with the same chemical did not even receive protective gear.⁶¹ In some cases, FGV fails to compensate workers for injuries occurring on the worksite.⁶² A worker whose right leg was

⁴⁹ Al-Mahmood, *supra* note 25.

⁵⁰ *Exploitative Labor Practices in the Global Palm Oil Industry*, Accenture (Nov. 2014) (prepared for Humanity United), p. 36.

⁵¹ Al-Mahmood, *supra* note 25.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ See Letter from RSPO Complaints Panel, *supra* note 6.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Al-Mahmood, *supra* note 25.

⁶¹ *Id.*

⁶² *Id.*

run over by a company tractor and a worker who partially lost his eyesight when a palm thorn stabbed him in his left eye both reported covering much of their medical costs themselves.⁶³

In addition to forced adult labor, child labor may also be occurring on FGV plantations.⁶⁴ The United States Department of Labor lists Malaysia's palm oil industry as a sector where child labor is occurring.⁶⁵ Children on Malaysian palm plantations assist their parents in collecting and hauling palm fruit and weeding oil-palm fields.⁶⁶ Children's help can be necessary in order for parents to reach the high quotas set by plantation managers.⁶⁷ Due to the remoteness of palm-plantation locations, many children residing on palm plantations do not attend school and work instead.⁶⁸ According to one report, sixty percent of child workers in Malaysia are between six and ten years old.⁶⁹ FGV's subsidiary Pontian United Plantations Berhad operates 15,161 hectares of oil-palm plantations in Sabah, the main region in Malaysia where child labor on oil-palm plantations has been documented.⁷⁰ FGV's confirmed lack of control and supervision of its workers combined with the prevalence of child labor on Malaysian oil-palm plantations makes it highly likely that child labor is occurring on FGV oil-palm plantations.⁷¹ FELDA's lack of concern with preventing child labor is evidenced by its 2017 acquisition of a 37% stake in the Rajawali Group's PT Eagle High Plantations whose individual plantations did not have no-exploitation policies or RSPO certification at the time and allowed children as young as six years old to be put to work.⁷²

⁶³ *Id.*

⁶⁴ *See Children in the Plantations of Sabah: Stakeholder Consultation Workshop Report*, TFT Earth (2017) (discussing child labor on plantations in the Sabah region of Malaysia in general).

⁶⁵ *D.O.L Child and Forced Labor List, 2018, supra note 21.*

⁶⁶ *Exploitative Labor Practices in the Global Palm Oil Industry, supra note 50 at 38.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Overview*, FGVHoldings.com, <http://www.fgvholdings.com/our-business/plantation/>; *Children in the Plantations of Sabah, supra note 64.*

⁷¹ *See Letter from RSPO Complaints Panel, supra note 6* (discussing FGV's weak control over some of its workers and its failure to exercise due diligence to ensure that workers on FGV plantations are properly treated).

⁷² Gabriel Thoumi, *The Chain: FELDA Purchases 37 Percent Stake in PT Eagle High Plantation; Cargill Receives Indonesian Sustainability Awards; FGV Seeks RSPO Certification*, ValueWalk.com (Jan. 4, 2017) (discussing FELDA's purchase of a 37% stake in PT Eagle High Plantations); Hiroko Tabuchi, *How Big Banks are Putting Rainforests in Peril*, N.Y. Times (Dec. 3, 2016) (describing child labor on Eagle High Plantations); Yuliana Langowuyo, *Women and Oil Palm in an Investment Region*, Down to Earth (Oct. 2014) (providing first-hand observations of child labor on Rajawali Group plantations).

The forced-labor situation on FGV plantations is so extreme that in November 2018, RSPO sanctioned FGV, issuing a warning letter indicating that FGV's membership in the RSPO could be suspended if the forced-labor issue was not dealt with and revoking the certificate stating that FGV complied with RSPO's principles and criteria.⁷³ This was despite the fact that nonprofits have consistently criticized RSPO, whose membership is overwhelmingly composed of industry players, for failure to address flagrant human rights abuses on oil-palm plantations and for certifying oil produced on plantations where forced labor occurs as "sustainable," (defined by RSPO as "legal, economically viable, environmentally appropriate and socially beneficial").⁷⁴ While FGV has initiated a "transformation plan" in response to the forced-labor accusations, FGV palm oil should not be allowed entry into the United States until FGV's forced labor issues have been adequately addressed.⁷⁵

The 2018 investigation by RSPO was the third in a series of investigations prompted by the 2015 exposé by the *Wall Street Journal* on abuse of migrant laborers on FGV's oil-palm plantations in Malaysia.⁷⁶ In October following the publication of the article, RSPO published the results of a compliance audit of FGV plantations.⁷⁷ The audit found several indicators of forced labor, including passport retention, constant debt, and minimum wage not being paid.⁷⁸ A second audit, commissioned by FGV itself in 2016 from the nonprofit Wild Asia, found

⁷³ See Letter from RSPO Complaints Panel, *supra* note 6.

⁷⁴ See Gottwald, *supra* note 36 at 74-82 (criticizing RSPO's certification scheme); see also, *Unilever and Kraft Call Plantations Using Trafficked and Child Labor "Sustainable,"* ILRF <https://laborrights.org/industries/palm-oil> (visited Feb. 22, 2019); *Over 60 NGOs Call for Stronger Reforms to the Roundtable on Sustainable Palm Oil Standards*, Mighty Earth (July 16, 2018) [Note that some of these suggested reforms were incorporated into new RSPO standards in November 2018, RSPO Members Agree on New Palm Oil Standard To Halt Deforestation and Improve Human Rights Protection, RSPO (Nov. 15, 2018)]; *The Great Palm Oil Scandal*, *supra* note 18; *Empty Assurances*, *supra* note 18. See *Certification*, RSPO.org, <https://rspo.org/certification> (defining sustainable palm oil). See *Exploitative Labor Practices in the Global Palm Oil Industry*, *supra* note 50 at 39 (discussing the breakdown of RSPO membership. As of 2012, the RSPO was composed of 225 palm oil processors and traders, 223 consumer goods manufacturers, 111 oil-palm growers, 43 retailers, 17 environmental and nature NGOs, 10 banks and investors, and only 9 social or developmental NGOs).

⁷⁵ See *FGV Holdings Progress Report* (Dec. 14, 2018), <http://www.fgvholdings.com/wp-content/uploads/2019/03/FGV-Holding-Berhad-Progress-Report-14-Dec-2018-FINAL-1.docx.pdf>. *FGV Chairman's Letter to Shareholders* (Jan. 14, 2019), <http://www.fgvholdings.com/fgv-chairmans-letter-to-shareholders>.

⁷⁶ Al-Mahmood, *supra* note 25.

⁷⁷ *Compliance Audit and Investigation Report*, *supra* note 25.

⁷⁸ *Id.*; *Every Investor Has a Responsibility: A Forests & Finance Dossier*, Rainforest Action Network, p. 13 (June 2017).

continuing forced-labor risks.⁷⁹ Despite the Wild Asia report's assurance that FGV was already taking steps to remediate the situation and its explicit recommendations for reforming FGV's social-compliance management system, RSPO investigators found strong forced-labor indicators on FGV plantations at the end of 2018.⁸⁰

III. Evidence that FGV Palm Oil Is Imported into the United States

Malaysian palm oil produced on FGV plantations wholly or in part using forced and child labor is being imported to the United States. The global palm oil market is growing.⁸¹ Since 2010, global production by volume has grown at an average rate of 7% annually, reaching 77 million metric tons in 2018, the equivalent of over 4.5 million loaded school busses.⁸² Meanwhile, U.S. imports of edible oils such as palm oil are rising, and palm oil is the third most consumed edible oil in the United States.⁸³ The United States is currently the eighth-largest importer of Malaysian palm oil and palm oil-based products.⁸⁴

FGV is the second largest oil-palm plantation company in Malaysia.⁸⁵ FGV has a fully integrated supply chain with subsidiaries in the plantation sector, the milling and refining

⁷⁹ *Final Report: Verification Assessment of Social Management and Practices: FELDA Global Ventures Plantations (Malaysia) Sdn Bhd*, Wild Asia (Malaysia) (Mar. 4, 2016); *Every Investor Has a Responsibility*, *supra* note 78 at 13.

⁸⁰ See Letter from RSPO Complaints Panel, *supra* note 6; *Final Report: Verification Assessment of Social Management and Practices FELDA Global Ventures Plantations (Malaysia) Sdn Bhd*, Wild Asia (Malaysia) (Mar. 4, 2016).

⁸¹ *Palm Oil Market: Global Industry Trends, Share, Size, Growth, Opportunity and Forecast 2019-2024*, Research and Markets (Feb. 2019).

⁸² *Id.* 1 metric ton = 1,000 kg. 1 loaded school bus = app. 17 tons. *Approximate Vehicle Weights*, Pennsylvania Dep't. of Transportation, <http://www.dot.state.pa.us/public/pdf/InfoBridge/Approximate%20vehicle%20weights.pdf>.

⁸³ *Palm Oil Market*, *supra* note 81; *Consumption of Edible Oils in the United States in 2018, by Type (in 1000 Metric Tons)*, Statista: The Statistics Portal (2019), <https://www.statista.com/statistics/301044/edible-oils-consumption-united-states-by-type/>. The U.S. imported 182,000 MT of palm oil in 2000; 596,000 MT in 2005; 980,000 MT in 2010; 1,307,000 MT in 2015; and 1,475,000 MT in 2018; and is projected to import 150,0000 in 2019 See *United States Palm Oil Imports by Year*, Index Mundi (2019), <https://www.indexmundi.com/agriculture/?country=us&commodity=palm-oil&graph=imports> (visited May 29, 2019).

⁸⁴ *Rising U.S. Edible Oil Imports Could Benefit Malaysian Palm Oil*, MalayMail (July 4, 2018), <https://www.malaymail.com/news/money/2018/07/04/rising-us-edible-oil-imports-could-benefit-malaysian-palm-oil/1648634>. In 2017, the United States imported \$1.1 billion worth of palm oil, making it the seventh-largest importer of palm oil by dollar value. See Workman, *supra* note 7.

⁸⁵ FGVHoldings.com.

industries, and the transport and distribution industries.⁸⁶ FGV's plantations produce palm fruit which is processed at mills belonging to FGV and its subsidiaries; that oil is generally then refined and distributed by FGV.⁸⁷ It is therefore relatively straightforward to trace FGV palm oil through the supply chain, from plantations to final products.

U.S. import records indicate that FGV ships palm oil via its subsidiary FELDA IFFCO to ports in Newark, New Jersey and Oakland, California.⁸⁸ F&A Ingredients LLC, a New York corporation with an address in Roslyn Heights, is the importer listed on recent FELDA IFFCO shipments of palm oil to Newark.⁸⁹ B&H Bakery Distribution Corporation, a wholesale distributor located in Hayward, California, and Clasen Quality Chocolate Inc., a chocolate confectionary located in Madison, Wisconsin, are the importers indicated on FELDA IFFCO's Oakland shipments.⁹⁰ F&A Ingredients LLC and B&H Bakery Distribution Co. appear to be purchasing mainly Refined, Bleached, and Deodorized ("RBD") palm oil, also labeled as 'shortening.'⁹¹ Clasen Quality Chocolate, Inc. is importing RBD palm oil, RBD palm kernel oil, palm kernel oil, and palm stearin (the liquid palm-oil fraction) from FELDA IFFCO on a regular basis.⁹²

⁸⁶ *Business Structure*, FGVHolding.com, <http://www.fgvholdings.com/our-company/business-structure/>; Overview, Our Business, FGVHolding.com, <http://www.fgvholdings.com/our-business/plantation/plantation-overview/>.

⁸⁷ *Palm Upstream*, FGVHolding.com, <http://www.fgvholdings.com/our-business/plantation/palm-upstream/>. Approximately one third of palm fruit processed at FGV mills comes from FGV's own plantations. *Id.* During the production process, oils originating from different plantations are combined making it impossible, as FGV acknowledges, to trace any final batch of crude palm oil back to a single plantation and highly predictable that any such batch originates, at least in part, from FGV plantations. *Id.*; Schuster Institute, *supra* note 4. (Note that some palm oil is certified as "identity-preserved" and can be traced back to its plantations sources. FGV palm oil, however, does not have this certification. *Identity Preserved*, RSPO.org, <https://rspo.org/certification/supply-chains>; Traceability, FGVHolding.com, <http://www.fgvholdings.com/sustainability/traceability/>.)

⁸⁸ *See Import of Palm Oil in USA from Malaysia*, Zaubacom, <https://www.zaubacom/USA-import-palm+oil/country-MY/seller-FELDA-IFFCO-SDN-BHD/p-1-data.html> [hereinafter "*Import of Palm Oil in USA from Malaysia: FELDA IFFCO*"] (visited Mar. 11, 2019); <http://www.fgvholdings.com/our-company/business-structure/> (listing FELDA IFFCO as a downstream subsidiary); www.feldaiifco.com (providing information on FELDA IFFCO).

⁸⁹ *See Import of Palm Oil in USA from Malaysia: FELDA IFFCO*, *supra* note 88; *F A Ingredients LLC*, ImportGenius.com, <https://www.importgenius.com/importers/f-a-ingredients-llc> (2019).

⁹⁰ *See Import of Palm Oil in USA from Malaysia: FELDA IFFCO*, *supra* note 88; *see also* bandhdistributor.com (B&H Distribution Corporation website); <https://www.cqc.com/> (Clasen Quality Chocolate website).

⁹¹ *See Import of Palm Oil in USA from Malaysia: FELDA IFFCO*, *supra* note 88.

⁹² *See Import of Palm Kernel Oil in USA from Malaysia*, Zaubacom, <https://www.zaubacom/USA-import-palm+kernel+oil/country-MY/seller-FELDA-IFFCO-SDN-BHD-data.html> (visited Mar. 11, 2019); *Import of Palm Stearin in USA from Malaysia*,

Import records also indicate that FGV is shipping palm-oil products via its subsidiary FPG Oleochemicals to ports in San Francisco and Richmond, California.⁹³ Procter and Gamble care of Stolthaven Terminal and Procter and Gamble care of Kinder Morgan Energy Partner Terminal are the importers listed on these FPG Oleochemicals shipments.⁹⁴ These Procter and Gamble imports are in the form of palm oil fatty acid methyl esters.⁹⁵ Any form of palm oil shipped by FPG Oleochemicals, FELDA IFFCO, or Cargill should be considered a good produced using forced labor and should be denied entry into the United States.

FGV palm oil is also imported through non-subsiary companies. For example, Cargill's Malaysian branch sources palm oil from third-party mills including more than fifty FGV mills.⁹⁶ Cargill's U.S. branches and other companies then import refined Cargill oil.⁹⁷ The New York-based company Strahl and Pitsch, Inc. imports RBD palm oil from Cargill through Newark ports.⁹⁸ Cargill's Malaysian branch, Cargill Palm Products Sdn Berhad, is named as the shipper on these imports.⁹⁹ Several Malaysia-based Wilmar subsidiaries which ship palm oil to the United States also source some of their palm oil from FGV mills. These include Sandakan Edible Oils Berhad ("Sandakan"), Bintulu Edible Oil Sdn Berhad ("Bintulu"), and Lahad Datu Edible Oils Sdn Berhad ("Lahad Datu").¹⁰⁰ AAK USA, Inc., ADM International, Inc., and FGV's own subsidiary Twin Rivers Technologies, Inc. import large amounts of palm oil using these shippers.¹⁰¹ AAK USA Inc.

Zauba.com, <https://www.zauba.com/USA-import-palm+stearin/country-MY/seller-FELDA-IFFCO-SDN-BHD-data.html> (visited Mar. 11, 2019).

⁹³ *See Import of Palm Oil in USA from Malaysia*, Zauba.com, <https://www.zauba.com/USA-import-palm+oil/seller-FPG-OLEOCHEMICALS-SDN-BHD-data.html> (visited Mar. 11, 2019).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Cargill Global Mill List – Quarter 3 2018*, <https://www.cargill.com/doc/1432132831699/cargill-palm-mill-list-q3-2018.pdf> (listing Malaysia-based, FGV-owned mills amongst its source mills)[hereinafter "Cargill Global Mill List"].

⁹⁷ *Imports of Palm Oil in USA*, Zauba.com, <https://www.zauba.com/USA-import-palm+oil/seller-CARGILL-PALM-PRODUCTS-SDN-BHD-data.html> (visited Mar. 11, 2019) (listing Cargill as a shipper of palm oil from Malaysia to the United States).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Sandakan Edible Oils Sdn Bhd, Sandakan, Traceability Summary - Supplies October 2017 - September 2018*, Wilmar (listing FGV's Tanah Emas Oil Palm Processing Sdn Bhd as source mill); *Bintulu Edible Oils Sdn Bhd, Bintulu, Traceability Summary - Supplies April 2017 - March 2018*, Wilmar (listing FGV's Sampadi as a source mill); *Lahad Datu Edible Oils Sdn Bhd, Lahad Datu Traceability Summary - Supplies October 2017 - September 2018*, Wilmar (listing FGV's Pontian Fico Plantation Sdn Bhd Pontian United Mill as a source mill).

¹⁰¹ *Imports of Palm Oil in USA*, Zauba.com, <https://www.zauba.com/USA-import-palm+oil/country-MY-data.html> (visited Mar. 12, 2019).

imports RBD palm oil and RBD palm kernel oil shipped by Sandakan and Bintulu through ports in New York, NY, and Newark, NJ.¹⁰² AAK USA Richmond Co. imports RBD palm oil, RBD palm-kernel oil, RBD palm olein, and RBD palm stearin from Sandakan and RBD palm stearin from Lahad Datu to ports in Richmond, CA.¹⁰³ ADM International imports RBD palm oil and RBD palm stearin shipped by Sandakan, Bintulu, and Lahad Datu to ports of entry in New Orleans, LA.¹⁰⁴ Twin Rivers Technologies, Inc. imports RBD palm oil and RBD palm stearin shipped by Sandakan, Bintulu, and Lahad Datu through ports in Boston, MA.¹⁰⁵

Palm oil is traceable to the mill where it is produced, even once it has been sent onward to palm-oil refineries, and many companies publish lists of source mills.¹⁰⁶ Cargill, Hershey's, Mars, Nestle, PepsiCo, Procter & Gamble, and Unilever all have sourced palm oil from FGV mills, whether via direct imports or through third-party suppliers.¹⁰⁷ Unilever reports that it suspended its contract with FGV in January 2018 (though its palm oil “Grievance Tracker” indicates that it continues to purchase FGV palm oil through third-party suppliers) and Hershey’s instructed its suppliers to remove FGV from its supply chain following FGV’s suspension from RSPO in December 2018.¹⁰⁸ The latest published supplier information from the remainder of these companies, however, indicates that they continue to use FGV palm oil.¹⁰⁹ In response to request for

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See European Palm Alliance, *Traceability*, <https://www.palmoilandfood.eu/en/traceability>; see e.g., *Full Mill List*, Mars Inc. (June 2018), https://www.mars.com/docs/default-source/Policies-and-Practices/mars_39_suppliers_2018_full_mill_list.pdf?sfvrsn=6/ [hereinafter “Mars Inc. Full Mill List”].

¹⁰⁷ Emma Rae Lierley, *Palm Oil Giant FELDA Sanctioned Over Forced Labor, Human Trafficking*, Rainforest Action Network (Nov. 29, 2018); Sehjali Kapadia, *Nestle, Hershey’s, P&G Among Brands Slammed for Forced Labor in Palm Oil Supply Chain*, supplychaindive.com (Dec. 4, 2018); *Palm Oil Supply and Traceability*, PepsiCo (Mar. 2018), https://www.pepsico.com/docs/album/a-z-topics-policies/pepsico-2018-direct-palm-oil-supplier-list_vf.pdf; Mars Inc. Full Mill List, *supra* note 106; *Cargill Global Mill List*, *supra* note 96; *Palm Oil Facts*, The Hershey Company, https://www.thehersheycompany.com/en_us/shared-goodness/shared-business/palm-oil-facts.html [hereinafter “The Hershey Company”]. (Note that some of the 2018 mill lists refer to FGV by its former name, “FELDA.”)

¹⁰⁸ Lierley, *supra* note 107; The Hershey Company, *supra* note 107; *Unilever’s Palm Oil Grievance Tracker* (update Jan. 2, 2019), https://www.unilever.com/Images/unilever-palm-oil-grievance-tracker_tcm244-530071_1_en.pdf.

¹⁰⁹ *Cargill Global Mill List*, *supra* note 96; Mars Inc. Full Mill List, *supra* note 106, *Nestlé’s Palm Mill List* (Feb. 27, 2018), <https://www.nestle.com/asset-library/documents/creating-shared-value/responsible-sourcing/list-mills-february-2018.pdf>; https://www.mars.com/docs/default-source/Policies-and-Practices/mars_39_suppliers_2018_full_mill_list.pdf?sfvrsn=6/; *Palm Oil Supply and Traceability*, *supra* note 107.

comment on their FGV connections, PepsiCo and Mars pointed to vague policies for protecting against supply-chain forced labor.¹¹⁰ Neither mentioned a policy to exclude FGV palm oil, specifically.¹¹¹ PepsiCo's policies have been severely criticized for being inadequate.¹¹² Nestle, Cargill, and Procter & Gamble, meanwhile, did not respond to requests for comment.¹¹³ As of November 2018, Procter & Gamble has failed to take action against FGV despite more than 160,000 global consumer calls for action.¹¹⁴ As a result, the palm oil which FGV produces using forced labor is entering the supply chains of major U.S. companies and is present in their end-products. FGV palm-oil imports by any of the above listed companies and by FGV's wholly-owned U.S.-based subsidiary Twin Rivers Technologies, Inc. should be considered to be produced using forced labor and should be prevented from entering the United States.

IV. Conclusion

This petition and the information provided in support thereof provides sufficient evidence for Customs and Border Patrol to issue an exclusion order on crude palm oil, palm kernel oil, and palm oil fractions produced by FGV in Malaysia because they are produced "wholly or in part" using forced labor.

Furthermore, pending a final determination, there is sufficient basis for an immediate detention order on all pending and future imports of crude palm oil, palm kernel oil, and palm oil fractions produced by FGV pending action by FGV to end forced labor on its plantations. We therefore request that all port directors be directed to withhold release of crude palm oil, palm kernel oil, and palm oil fractions exported by FGV from Malaysia, as provided for under 19 C.F.R. § 12.42(e).

Please do not hesitate to contact me should you require any additional information.

Respectfully submitted,

/s/ Jay W. Eisenhofer

Jay W. Eisenhofer
Grant & Eisenhofer ESG Institute
(646) 722-8500

¹¹⁰ Kapadia, *supra* note 107.

¹¹¹ *Id.*

¹¹² *PepsiCo Misses Yet Another Opportunity to Fix its Major Palm Oil Problem*, Rainforest Action Network (June 21, 2018).

¹¹³ Kapadia, *supra* note 107.

¹¹⁴ Will Green, *Brands Attacked Over Palm Oil Slavery*, Cips.org (Nov. 30, 2018), <https://www.cips.org/en/supply-management/news/2018/november/brands-attacked-over-palm-oil-slavery/>.