



Mr. John P. Sanders
Acting Commissioner
U.S. Customs and Border Protection
U.S. Department of Homeland Security
1300 Pennsylvania Avenue, N.W.
Washington, D.C. 20229

August 15, 2019

Petition to exclude palm oil and palm oil products manufactured “wholly or in part” by forced labor in Malaysia by FGV Holdings Berhad.

Dear Acting Commissioner Sanders,

The undersigned organizations hereby submit this petition pursuant to 19 CFR §12.42 et seq. to request a determination from the United States Customs and Border Protection (CBP) that palm oil imported from FGV plantations in Malaysia is harvested “wholly or in part” by forced labor and are thereby prohibited from entry into the United States under the Tariff Act of 1930, 19 U.S.C. §1307. 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.” The information contained in this petition and in precise detail in the accompanying appendices demonstrates that Procter & Gamble, Bunge Lodders Croklaan, Clasen Quality Chocolate, INC and B&H Bakery Dist. Corp. purchase and import palm oil and palm oil products harvested by FGV, a prohibited class of merchandise under 19 C.F.R 12.42.¹

I. Background

Palm oil is an edible vegetable oil derived from the fruit of the African oil palm tree. Palm oil and its derivatives are used in a remarkable array of products sold in the United States and around the world, such as cookies, crackers, chocolate, cereals and breakfast bars, cake mixes, doughnuts, potato chips, instant noodles, frozen sweets and meals, baby formula, margarine, detergents, soaps, and personal care products. Since 2005, palm oil has been the world’s

¹19 CFR 12.42(b) states “Any person outside CBP who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States may communicate his belief to any port director or the Commissioner of CBP. Every such communication shall contain, or be accompanied by: (1) A full statement of the reasons for the belief; (2) A detailed description or sample of the merchandise; and (3) All pertinent facts obtainable as to the production of the merchandise abroad.”

most consumed edible oil and can be found in up to half of all products currently on grocery store shelves in the U.S. and Europe.

Palm oil cultivation is relatively labor intensive, relying on manual harvesting techniques that have changed little over the past 100 years. The vast majority of workers employed on palm plantations are engaged in two types of work: harvesting of fresh fruit bunches (FFBs) or regular maintenance tasks required to keep the palm trees productive. Mature palm trees can reach a height of 20 meters, so harvesters must use a long pole with a sharp, curved knife at the end to cut the FFBs. After the FFB falls to the ground, the harvester (or his assistant) loads the fruit into a wheelbarrow and hauls them to a roadside collection point. Harvesters typically need to meet a weight-based quota in FFBs for each day in order to be paid the minimum wage.²

After harvesting, FFBs are collected by trucks and hauled to local mills where the fruit is crushed for the extraction of crude palm oil (CPO) and crude palm kernel oil (CPKO). Shortly after harvesting, the oil molecules in FFBs begin to breakdown, causing an overall deterioration in the quality of the CPO that will be extracted. Thus, FFB are usually milled within 24 hours of harvesting at mills located on or close to oil palm plantations. Typically, mills are owned and operated by individual growers or grower collectives.³

Malaysia is the world's second largest producer of palm oil, behind only Indonesia. The Malaysian palm oil sector depends heavily on foreign migrant labor from countries such as Indonesia, Bangladesh, India, Myanmar, Nepal, and the Philippines. Major palm oil producing companies use third party labor recruitment contractors and informal brokers to hire workers for plantations. These contractors, through sending country labor recruiters and/or brokers, often deceive migrant workers in their home countries by promising high wages and good working conditions that are far from the reality. The journey to Malaysia can be dangerous and for some has resulted in death or arrest.⁴ Mass graves with the bodies of Rohingya refugees and Bangladeshi migrants bound for work in Malaysia were discovered in 2015 along the Malaysian and Thai border. Survivors of human trafficking recall horrors such as rape, torture and water deprivation en route to work on Malaysian plantations.⁵

Human trafficking can then lead to forced labor. Liberty Shared has reported extensively on the relationship between human trafficking and forced labor in the palm oil sector,⁶ reporting that many of the “subcontractors” used by companies like FGV to staff plantations are linked to organized crime factions. These crime factions collude with local law enforcement to evade prosecution, and sometimes force migrant workers to bribe police.⁷ Migrant workers are commonly

² Accenture & Humanity United, “Modern Slavery in the Palm Oil Industry” http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf

³ Food and Agricultural Organization of the United Nations, “Palm Oil Processing,” <http://www.fao.org/3/Y4355E/y4355e04.htm>

⁴ SUHAKAM and Fortify Rights, “Sold Like Fish: Crimes Against Humanity, Mass Graves and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015,” <https://www.fortifyrights.org/downloads/Fortify%20Rights-SUHAKAM%20-%20Sold%20Like%20Fish.pdf>

⁵ *id*

⁶ Liberty Shared, “The Environment of Criminality Surrounding the Palm Oil Industry” <https://static1.squarespace.com/static/5592c689e4b0978d3a48f7a2/t/5b9a158840ec9a28d650707c/1536824736371/Briefing+Paper+-+Criminality+and+Palm+Oil.pdf>

⁷ *id*

charged exorbitant fees by contractors and brokers which are used to hold workers in debt bondage.⁸ These “fees,” many of which were not agreed to by the migrants when they began their journey,⁹ can result in months of unpaid work for migrant workers.¹⁰ Unethical recruitment practices are key drivers of forced labor in the Malaysian palm oil sector.

Contractors and plantation overseers often seize and retain the passports of migrant workers to prevent them from leaving. Malaysia has very strict immigration laws, and minor violations by migrant workers, such as traveling without a passport, could land them in jail for months and lead to their deportation. The seizure of passports is a key indicator of forced labor as it creates a dynamic where workers cannot freely leave the plantation.

There are around 2 million documented migrant workers in Malaysia, and an estimated 4 million undocumented migrant workers.¹¹ The Malaysian Agricultural Planters Association (MAPA) reports that foreign labour on plantations comprises 80% of the total, and the Malaysian Palm Oil Board (MPOB) databases yield an even higher level, at 84%.¹² Migrant workers are, by law, forced to remain with one employer.¹³ Harsh laws like this discourage workers from leaving dangerous work environments where they may be trapped in forced labor conditions.

Women working on palm oil plantations are usually relegated to lower paying positions such as maintaining the palms, which also puts them at a point of greater contact with harmful pesticides.¹⁴ Malaysian law also forbids migrant workers from marrying, and immigrant women are deported if they are found to be pregnant.¹⁵ These laws and workplace practices have created an employment environment especially difficult for women workers.

The ILO’s 2017 Report of the Committee of Experts on the Application of Conventions and Recommendations expressed “deep concern” for indications of the forced labor and human trafficking of migrant workers on palm oil plantations in Malaysia, especially in the state of Sabah,¹⁶ where FGV operates many plantations¹⁷ and relies heavily on migrant worker families

⁸ The Fair Labor Association and the Consumer Goods Forum, “Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia,” https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf (pgs 3, 15)

⁹ Liberty Shared, “Potential for legal liabilities and claims for unpaid wages in the palm oil industry,” pg 3 <https://static1.squarespace.com/static/5592c689e4b0978d3a48f7a2/t/5b9a15438985830bc3e5b27d/1536824656319/Position+Paper%231+-+Palm+Oil.pdf>

¹⁰ Liberty Shared “Malaysia’s Palm Oil Industry,” pgs 6-7 <https://static1.squarespace.com/static/5592c689e4b0978d3a48f7a2/t/5b9a15db88251b25f1bc59d1/1536824861396/Malaysia-Analysis-120218-FINAL.pdf>

¹¹ United Nations Institute on Migration, “Malaysia” <https://www.iom.int/countries/malaysia>

¹² Institute of Labour Market Information and Analysis (ILMIA), ‘A Study on Leading and Lagging Indicators for Human Capital Development Game Changers for the 11th Malaysia Plan’. Putrajaya International Convention Centre, 30 November–1 December 2016; V. T. Chandra Segaran, ‘Reliance on Foreign workers in the plantation sector: the reality’, Presentation at the Workshop on Industrial Engagement on Demand for Skilled Workers, 28–29 September 2015.

¹³ Fair Labor Association, “Triple Discrimination: Woman, Pregnant, and Migrant” (pages 19-25) https://www.fairlabor.org/sites/default/files/documents/reports/triple_discrimination_woman_pregnant_and_migrant_march_2018.pdf

¹⁴ Das, Glorine, “Women workers in palm oil plantations - a neglected sector of M’sian labour”, Published in Malaysiakini, <https://www.malaysiakini.com/news/422451>

¹⁵ *id*

¹⁶ International Labor Organization, “Report of the Committee of Experts on the Application of Conventions and Recommendations” at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543646.pdf (pg 205)

¹⁷ Intertek, “FELDA GLOBAL VENTURES PLANTATIONS (MALAYSIA) SDN BHD” at www.intertek.com/WorkArea/DownloadAsset.aspx?id=34359742470

from Indonesia.¹⁸ The ILO cites an Indonesian governmental report that estimated there are 72,000 Indonesian children on Malaysian palm oil plantations in Sabah subjected to forced labor conditions.¹⁹ These children are denied citizenship in Malaysia and are often unable to inherit citizenship from their parent's country. They cannot attend school beyond primary level or receive important government services such as healthcare in either country and are particularly susceptible to being caught up in child and/or abusive labor conditions.²⁰ This makes them especially vulnerable to exploitation by employers. The ILO noted in 2018 that the Malaysian government has failed to reply or respond in any way to these findings.²¹

The United States government has taken notice, along with other governments and international bodies. These egregious industry practices have earned Malaysian palm oil a place on the U.S. Department of Labor's "List of Goods Produced With Forced or Child Labor,"²² and have also been highlighted in the U.S. State Department's "Trafficking in Persons Report."²³

II. Forced Labor and Human Trafficking on FELDA/FGV plantations

FELDA was founded as a Malaysian government agency in the 1950s to organize and develop rural farms in order to produce cash crops, including palm oil. FELDA has since evolved and is now one of the largest palm oil plantation operators in the world.²⁴ While FELDA began as an agency mainly dedicated to developing smallholder farms,²⁵ its business model changed in the 1980s to focus on large plantations employing tens of thousands of migrant workers.²⁶ Scholars such as Lesley Potter report that FGV plantations depend almost entirely on migrant labor.²⁷ FELDA has effectively transitioned from a government development agency empowering

¹⁸ Potter, Lesley, "Managing Oil Palm Landscapes: A Seven Country Survey of the Modern Palm Industry in Southeast Asia, Latin America and West Africa," (pages 36-37) accessed at: https://books.google.com/books?id=tw2eCgAAQBAJ&pg=PA34&lpq=PA34&dq=felda+sabah+child+labor&source=bl&ots=TsoAyiZw_z&sig=ACfU3U29dBWK-VP-9Igf0nKLqMf6XluIQQ&hl=en&sa=X&ved=2ahUKEwj-k46myOTiAhUt11kKHdEeCcc4ChDoATACegOICBAB#v=onepage&q=felda%20sabah%20child%20labor&f=false

¹⁹ International Labor Organization, "2017 Report of the Committee of Experts on the Application of Conventions and Recommendations" at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543646.pdf (pg 302)

²⁰ Gooch, Liz; Chou, Chan Tau, "Malaysia's Invisible Children" in Al-Jazeera, <https://www.aljazeera.com/indepth/features/2015/04/malaysia-invisible-children-150429064406390.html>

²¹ International Labor Organization, "2018 Report of the Committee of Experts on the Application of Conventions and Recommendations" at https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_617065.pdf (Pg 576)

²² U.S. Department of Labor, "2018 List of Goods Produced by Child Labor or Forced Labor," at <https://www.dol.gov/sites/default/files/documents/ilab/ListofGoods.pdf>

²³ U.S. Department of State, "2018 Trafficking in Persons Report," <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>, (pages 91, 112, 119, 126-128, 227, 228, 286-289)

²⁴ "About FGV" <http://www.fgvholdings.com/our-company/about-fgv/>

²⁵ Hai, Teoh Chang, "The Palm Oil Industry in Malaysia: From Seed to Frying Pan" (pg 31) <https://www.brandeis.edu/investigate/slavery/docs/palm/from-seed-to-frying-pan-wwf.pdf>

²⁶ Pye, Oliver, "Commodifying Sustainability: Development, Nature and Politics in the palm oil industry" (pg 224-225) in World Development, September 2019, Vol.121. Accessed at <https://www.sciencedirect.com.ezproxy.neu.edu/science/article/pii/S0305750X18300524>

²⁷ Potter, Lesley, "Managing Oil Palm Landscapes: A Seven Country Survey of the Modern Palm Industry in Southeast Asia, Latin America and West Africa," (pages 36-37) accessed at: https://books.google.com/books?id=tw2eCgAAQBAJ&pg=PA34&lpq=PA34&dq=felda+sabah+child+labor&source=bl&ots=TsoAyiZw_z&sig=ACfU3U29dBWK-VP-9Igf0nKLqMf6XluIQQ&hl=en&sa=X&ved=2ahUKEwj-k46myOTiAhUt11kKHdEeCcc4ChDoATACegOICBAB#v=onepage&q=felda%20sabah%20child%20labor&f=false

rural Malaysians into a major corporate global force in the palm oil industry using low-paid and tightly controlled migrant workers.

FELDA's plantations are administered through FGV Holdings Berhad,²⁸ which FELDA launched as a private company in 2007 under the name "FELDA Global Ventures Holdings Berhad," and has since changed to simply "FGV." Despite its status as an independent company, FGV is heavily linked to the government, which owns a 33% stake in the company²⁹. FGV is one of the largest producers of crude palm oil in the world.³⁰ FGV operates 70 palm oil mills, 416 palm oil plantations and 4 palm oil kernel mills throughout Malaysia.

FGV mills process fresh palm fruits (FFBs) harvested from FGV plantations located nearby. The resulting crude palm oil (CPO) and crude palm kernel oil (CPKO) is then sold to traders³¹ such as Cargill or processed further in FGV-owned refineries and oleochemical plants. FELDA-IFFCO sells refined palm oil directly to companies such as Clasen Quality Chocolate Co. (Exhibit A).

The International Labour Organization (ILO) has listed and described factors, which are indicative of forced labor in order to help law enforcement identify individuals and communities potentially trapped in forced labor conditions. These indicators are abuse of vulnerability, deception, restriction of movement, isolation, physical and sexual violence, retention of identity documents, withholding of wages, debt bondage, abusive working and living conditions, and excessive overtime.³² According to the ILO guidelines, when there is an indicator of involuntariness, such as debt bondage, plus a threat of penalty, such as passport confiscation, then forced labor is present.³³

Findings and reports by the U.S. Department of Labor, The Roundtable on Sustainable Palm Oil, the International Labour Organization, as well as major non-governmental organizations and newspapers have documented evidence and indicators of forced labor on FELDA/FGV palm oil plantations.

Since 2009, the U.S. Department of Labor has included Malaysian palm oil on its List of Goods Produced by Child or Forced Labor, including its latest list in 2018.³⁴ In the bibliography for its latest list, the Department cites a Wall Street Journal Article³⁵ by Syed Zain Al-Mahmoud which details human trafficking, forced labor and unsafe working conditions on FELDA/FGV

[oAyjZw z&sig=ACfU3U29dBWK-VP-9Igf0nKLqMf6XluIQO&hl=en&sa=X&ved=2ahUKewj-k46myOTiAhUt11kKHdEeCcc4ChDoATACegQICBAB#v=onepage&q=felda%20sabah%20child%20labor&f=false](https://www.fgvholdings.com/fgv-chairmansletter-to-shareholders)

²⁸ *id*

²⁹ FGV Chairman's Letter to Shareholders, <http://www.fgvholdings.com/fgv-chairmansletter-to-shareholders>.

³⁰ Reuters, "UPDATE 1-Malaysia's FGV forecasts 2019 palm prices in 2,000-2,500 rgt/T range" <https://in.reuters.com/article/fgv-results/update-1-malysias-fgv-forecasts-2019-palm-prices-in-2000-2500-rgt-t-range-idINL3N20N4E4>

³¹ The Fair Labor Association and the Consumer Goods Forum, "Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia," https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf (pg 4)

³² International Labor Organization, "ILO Indicators of Forced Labor" https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf (pg 3)

³³ *id*

³⁴ U.S. Department of Labor, "2018 List of Goods Produced by Child Labor or Forced Labor," at <https://www.dol.gov/sites/default/files/documents/ilab/ListofGoods.pdf>

³⁵ U.S. Department of Labor, "List Required by the Trafficking Victims Protection Reauthorization Act of 2005: Bibliography," (page 155) at <https://www.dol.gov/sites/default/files/documents/ilab/ListofGoodsBibliography2017.pdf>

plantations in Peninsular Malaysia. Al-Mahmoud reports that some workers are paid below minimum wage, and some not at all:

“Among the workers is Mohammad Rubel, 22 years old, who said he has been doing this seven days a week, without receiving any pay....Several workers interviewed, including some with legal documents, said their pay was often below the minimum. A number of recent pay slips seen by The Wall Street Journal, bearing Felda's name, showed monthly payments of 700 to 800 ringgit...[one worker] said the contractor has withheld all of his wages, without giving a reason.³⁶”

The article also details FGV plantation management’s practice of seizing migrant worker’s passports upon arrival:

“Being in Malaysia illegally, workers such as Mr. Rubel see little they can do to change matters, especially since workers said their employers took away their passports. ‘There is no escape,’ said Muhi, a migrant who identified himself with just one name. ‘They bring policemen and threaten to send us to jail.’³⁷”

The Wall Street Journal report triggered an investigation by The Roundtable on Sustainable Palm Oil (RSPO)³⁸, the industry’s largest certification system, as well as a FELDA/FGV commissioned investigation by a consultant, Wild Asia. RSPO certification is used by palm oil companies to certify their practices against a set of Principles and Criteria, which includes labor criteria. After the Wall Street Journal story, FGV commissioned Wild Asia to conduct an assessment on three FGV plantations: Pasoh, Serting Hilir and Palong Timur and Wild Asia confirmed the presence of red flag indicators of forced labor, including passport retention, unfair termination clauses, and debt bondage, concluding that further investigations were vital to ensure the safety of workers.³⁹ In 2018, the RSPO Complaints conducted an investigation at FGV’s Kilang Sawit Serting mill and its supply base and also confirmed the presence of forced labor indicators, detailed in a follow up letter in late 2018. The letter informed the company that it found exploitative practices on its plantations, including forcing workers to sign contracts in languages they do

³⁶ Al-Mahmoud, Syed Zain, “Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations” at <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>

³⁷ *id*

³⁸ Reuters, “Palm Oil body says it finds exploitative labor practices at Malaysia’s FGV” at <https://www.reuters.com/article/us-malaysia-palmoil-fgvholdings/palm-oil-body-says-it-finds-exploitative-labor-practices-at-malaysias-fgv-idUSKCN1NZ18J>

³⁹ Wild Asia, 2016, Verification Assessment of Social Management and Practices: Felda Global Ventures Plantations (Malaysia) Sdn Bhd, http://www.feldaglobal.com/wp-content/uploads/2016/10/FGV-Group-Review-and-Field-Report_04032016.pdf

not understand,⁴⁰ depriving workers the right to terminate their job,⁴¹ discrimination against foreign workers,⁴² seizure of passports,⁴³ human trafficking,⁴⁴ inadequate food supplies,⁴⁵ and other human rights violations.⁴⁶ The letter noted that few improvements had been made since the 2015 Wall Street Journal report.⁴⁷

Following the investigation, the RSPO suspended the certificate of Kilang Sawit Serting mill and its surrounding plantations.⁴⁸ The organization also ordered a full investigation and audit of every other FGV owned and operated plantation in Malaysia.

In 2015, FGV attacked the Wall Street Journal article⁴⁹ and then attempted to portray the Wild Asia report as exonerating the company, a claim which Wild Asia vigorously disputed.⁵⁰ FGV has since made various commitments to change its practices,⁵¹ but has repeatedly failed to demonstrate improvements, as noted in the 2018 RPSO letter. The RPSO letter required that FGV issue reports based on its progress addressing workers' rights issues on its plantations, but FGV has not produced independent verification of improvements, raising doubts about whether any material improvements have been made. FGV has demonstrated a clear pattern of failing to act to address serious worker rights abuses.

Reports by other media outlets indicate that forced labor and worker abuse on FGV plantations extend far beyond the three plantations noted in the RSPO letter. Research and reporting suggests that forced labor practices could be widespread on FGV plantations in Sabah. Migrant workers account for around 90 percent of workers on FGV's palm oil plantations in the state of Sabah, mostly from Indonesia.⁵² In 2018, Professor Oliver Pye of the University of Bonn released an article on the palm oil industry in the scholarly journal *World Development*, which included descriptions of forced labor on FGV's Sabah plantations drawn from first hand interviews with FGV workers in the region.⁵³ Pye reports:

“According to workers, a transnational network of labour subcontractors based out of Bulukumba, an area in Southern Sulawesi, lured workers from that area to work in the palm oil

⁴⁰Barlow, Dato' Henry, "FGV Holdings Decision Letter" at

http://ap8.salesforce.com/sfc/p/#90000000YoJi/a/90000000PagQ/ZW4jz6LO5zY01E.T_qSo4uHRvoha1iJt8CgYScuWt4(pg 3)

⁴¹ *id* (pg 3)

⁴² *id* (pg 8)

⁴³ *id* (pg 10)

⁴⁴ *id* (pg 12)

⁴⁵ *id* (pg 16)

⁴⁶ *id* (pg 18)

⁴⁷ *id* (pg 18)

⁴⁸ *id* (pg 18)

⁴⁹ <http://www.fgvholdings.com/fgvs-response-to-the-wall-street-journal-wsj-article/>

⁵⁰ <https://www.wildasia.org/5770/fgv-labour/>

⁵¹ <http://www.fgvholdings.com/sustainability/stakeholder-engagement/sustainability-updates/>

⁵²Hall, Derek, "Where the Streets are Paved with Prawns: Crop Booms and Migration in Southeast Asia," (page 31) in "Migration, Agrarian Transition, and Rural Change in Southeast Asia" accessed at <https://books.google.com/books?id=ZVeO-AQAAQBAJ&dq=felda+sabah+child+labor>

⁵³ Pye, Oliver, "Commodifying sustainability: Development, Nature and Politics in the palm oil industry" (pg 224) in *World Development*, September 2019, Vol.121. Accessed at <https://www.sciencedirect.com.ezproxy.neu.edu/science/article/pii/S0305750X18300524>

sector. Once in Sabah, the workers were then told that they had a debt that they had to pay off, and were given no wages for the first months of work. Meanwhile, the credit that they are given at the local store in order to buy food was added to their debt, creating an ever-increasing amount. The subcontractors used violence and physical control to prevent workers from escaping.”⁵⁴

FGV depends heavily on migrant workers, many of whom are undocumented and are illegally trafficked across international waters.⁵⁵ The horrors of the journey to Malaysia for trafficked workers was described in the U.S. State Department’s 2018 Trafficking in Persons Report⁵⁶ and has been further documented in reports by The Fair Labor Association,⁵⁷ The Human Rights Commission of Malaysia (SUHAKAM),⁵⁸ Amnesty International,⁵⁹ Human Resources Without Borders,⁶⁰ and The United Nations.⁶¹ Despite the overwhelming international outcry from newspapers and NGOs, advertisements from third party “recruiters” enticing migrants to seek work at FELDA/FGV can still be found on websites such as Placement India,⁶² Youtube,⁶³ Facebook,⁶⁴ and Aasaan Jobs.⁶⁵

In the Wall Street Journal Report, one worker described being trafficked from Bangladesh to a FGV plantation in Peninsular Malaysia, stating:

“[a]rmed men operating the boat rationed food and water so the packed-in migrants would make fewer trips to the toilet, and beat them when they asked for more. The heat and stench were overpowering, he said, and he saw dozens die. At one point, he said, he watched as the traffickers threw migrants' bodies into the sea, after slitting open their abdomens so they

⁵⁴ *id*

⁵⁵ Humanity United, “Modern Slavery in the Palm Oil Industry” http://humanityunited.org/pdfs/Modern_Slavery_in_the_Palm_Oil_Industry.pdf

⁵⁶ U.S. Department of State, “2018 Trafficking in Persons Report,” <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>. (pages 91, 112, 119, 126-128, 227, 228, 286-289)

⁵⁷ The Fair Labor Association and the Consumer Goods Forum, “Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia,” https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf

⁵⁸ SUHAKAM and Fortify Rights, “Sold Like Fish: Crimes Against Humanity, Mass Graves, and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015,” <https://www.fortifyrights.org/downloads/Fortify%20Rights-SUHAKAM%20-%20Sold%20Like%20Fish.pdf>

⁵⁹ Amnesty International, “Trapped: The Exploitation of Migrant Workers in Malaysia”, <https://www.amnesty.org/download/Documents/36000/asa280022010en.pdf>

⁶⁰ Human Resources Without Borders, “in malaysia, the scandal of outsourcing companies is at the heart of forced labour” <http://www.rhsansfrontieres.org/en/press/our-press-opinion/329-article-malaysia-forced-labour>

⁶¹ Office of the High Commissioner of Human Rights at the United Nations, “Trafficking in persons: UN human rights expert urges Malaysia to focus efforts on victims,” <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15633&LangID=E>

⁶² Compact Overseas, “Required Plantation Worker for FELDA,” <https://www.placementindia.com/job-detail/required-plantation-worker-for-felda-jobs-in-for-compact-overseas-573089.htm>

⁶³ Saidul Haque <https://www.youtube.com/watch?v=TsdvHcMYfZ0>

⁶⁴ Octa Jobs, “→ FELDA TECHNOPLANT SDH BND. →” https://www.facebook.com/search/top/?q=FELDA%20TECHNOPLANT%20SDH%20BND&epa=SEARCH_BOX

⁶⁵ Career Dream Manpower Consultants, “Vacancy For Helper (Freshers) For Malaysia,” <https://www.aasaanjobs.com/job/vacancy-for-helper-freshers-for-malaysia-in-career-dream-manpower-consultants/b435bd10-296c-438c-83ab-fead83509f89/>

would sink...the traffickers, demanding money...would put them on the phone to their parents and beat them so the parents could hear their screams and pay up.”⁶⁶

In Sabah, where FGV operates many plantations the process of human trafficking where contractors reportedly “buy and sell”⁶⁷ workers to FGV, is a crucial indication of forced labor conditions in the industry. A report in the scholarly journal *Asia Pacific Viewpoint* drawn from first person interviews with FGV workers revealed:

“Azizah and her husband work for several companies for nothing; their food is credited to them in the local plantation shop and ends up contributing to further debt. After being sold various times and then running away, they ended up working for FELDA in the ‘Tongko system’...The system works by informal recruitment networks that lure migrant workers from villages in Bulukumba to the Tungku area. The workers are then told they have a debt they have to pay off and are given no wages. Meanwhile, the credit they are given at the local store in order to buy food is added to their debt, creating an ever-increasing amount.”⁶⁸

The revelations of numerous indicators of forced labor prompted several companies, such as Hershey’s⁶⁹ and Unilever,⁷⁰ to announce plans to remove FGV produced palm oil from their supply chains. The European Union passed legislation in March of 2019 to curtail the importation and use of palm oil for many reasons,⁷¹ but specifically cited FGV’s abuse of workers in its commissioned report which led to the decision.⁷²

FGV claims to have improved its practices after the 2018 RPSO letter, reporting that it has returned passports in Peninsular Malaysia and made changes to contracts to allow termination. However, given that it took four years since the Wall Street Journal article for FGV to initiate these minor improvements, any company claims of improvement without full independent verification should be met with suspicion. FGV released an action plan in April 2019, but failed to show any real progress beyond the plan, meaning that they are likely still producing palm oil under similar conditions reported in the RPSO letter. FGV stated that the sub-contracting system which directly leads to forced labor was too complex to be phased out right now.⁷³ This means that the sub-contracting system that produces forced labor is still in place.

⁶⁶ Al-Mahmoud, Syed Zain, “Palm-Oil Migrant Workers Tell of Abuses on Malaysian Plantations” in *The Wall Street Journal* at <https://www.wsj.com/articles/palm-oil-migrant-workers-tell-of-abuses-on-malaysian-plantations-1437933321>

⁶⁷ Pye, Oliver, Daud, Ramlah; Harmono, Yunyun; Tatat ”Precarious lives: Transnational biographies of migrant oil palm workers” in *Asia Pacific Viewpoint* Vol. 53, No. 3, December 2012 (pg 335) <https://onlinelibrary-wiley-com.ezproxy.neu.edu/doi/epdf/10.1111/j.1467-8373.2012.01496.x>

⁶⁸ *id*

⁶⁹ The Hershey Company, “Palm Oil Facts,” https://www.thehersheycompany.com/en_us/shared-goodness/shared-business/palm-oil-facts.html

⁷⁰ Supply Chain Dive, “Nestle, Hershey’s, P&G among brands slammed for forced labor in palm oil supply chain” <https://www.supplychaindive.com/news/Nestle-Hershey-Pepsi-forced-labor-FGV-palm-oil-supply-chain/543536/>

⁷¹ Keating, Dan, “EU Labels Biofuel From Palm Oil As Unsustainable, Bans Subsidies” <https://www.forbes.com/sites/davekeating/2019/03/14/eu-labels-biofuel-from-palm-oil-as-unsustainable-bans-subsidies/#11597c489c9d>

⁷² Barthel, Mark; Jennings, Steve; Shreiber, Will; Sheane, Richard; Royston, Sam; Fry, James; Khor, You Leng; McGill, Julian; “Study on the environmental impact of palm oil consumption and on existing sustainability standards” http://ec.europa.eu/environment/forests/pdf/palm_oil_study_kh0218208enn_new.pdf (pages 88, 192, 249,

⁷³ <http://www.fgvholdings.com/wp-content/uploads/2019/04/FGV-Action-Plan-1st-quarterly-Update-April-2019.pdf>, pg 9

The RSPO has lifted its suspension of the FGV's Serting Complex due to their published "action plans."⁷⁴ However, "action plans" do not guarantee that concrete steps have been taken to root out forced labor practices on FGV's Serting Complex or more broadly across its operations in Malaysia. The RSPO states in its decision that "the lifting of the suspension is conditional upon satisfactory implementation of the Complaints Panel's directives," and "the Secretariat is to verify the same by audit conducted by the Certification Body."⁷⁵ However, it is unclear if any such audit was conducted, and if it was conducted, there is no way to judge its credibility because the RSPO has not published it.

The RSPO has long been criticized for shortcomings in its auditing systems, particularly on its auditing of labor issues.⁷⁶ Given this history and the importance of this particular audit—an audit which is intended to verify that FGV has sufficiently addressed forced labor issues on its plantations in accordance with the RSPO Principles and Criteria—the RSPO must make it publicly available for critical review before it can be legitimately accepted.

FGV released a second progress report in June 2019 outlining its actions in response to the RSPO Complaints' Panel directives.⁷⁷ In the progress report, FGV does not address the Complaints Panel's directive to ensure no recruitment fees or costs are charged to workers at any stage in the recruitment process, including by contractors, and it states it has yet to phase out the use of contractors to hire workers—two key drivers of forced labor on FGV plantations. FGV also fails to fully address working conditions Sabah in its progress reports, ignoring the work published in World Development and Asia Pacific Viewpoint which show how deeply ingrained debt bondage and violence against workers are to FGV's labor practices in that state. There is no guarantee that working conditions have truly improved and forced labor conditions have been fully addressed at Serting Complex or in FGV's operations more broadly without credible, transparent independent verification.

III. How FGV palm oil enters the U.S. market

According to U.S. Customs' import data, during the last year alone, over 14 million pounds of Palm Oil Product was imported by Procter & Gamble through their joint venture with FGV. Bunge Loders Crocklaan, a U.S. agribusiness and food processing giant, has self-reported importing FELDA/FGV palm oil products to several U.S. ports in the first quarter of 2019. Additionally, over 6 million pounds of palm oil and palm derivatives was imported directly from FELDA by two U.S. companies, Clasen Quality Chocolate, INC and B&H Bakery Distribution Corporation.

⁷⁴ <http://www.fgvholdings.com/wp-content/uploads/2019/08/Lifting-Of-Certification-Suspension-for-FGVs-Serting-Complex.pdf>

⁷⁵ https://ap8.salesforce.com/sfc/p/#90000000YoJi/a/90000000PagQ/ZW4jz6LO5zY01E.T_qS04uHRv0ha1iJt8CgYScuWt4

⁷⁶ <https://eia-international.org/wp-content/uploads/EIA-Who-Watches-the-Watchmen-FINAL.pdf>

http://poig.org/wp-content/uploads/2017/11/WWF_Auditing_Innovations_Nov-2017.pdf

https://www.ran.org/wp-content/uploads/rainforestactionnetwork/pages/19315/attachments/original/1511714176/Human_Cost_Revisited_vWEB.pdf?1511714176

⁷⁷ <http://www.fgvholdings.com/wp-content/uploads/2019/07/FGV-Action-Plan-and-2nd-Quarterly-Progress-Report-to-RSPOwebsite.pdf>

Procter & Gamble operates a joint venture with FGV called FPG Oleochemicals (FPG) located in Kuantan, Malaysia.⁷⁸ FPG exports refined palm derivatives such as fatty acids⁷⁹ and methyl esters⁸⁰, and exports them to the United States⁸¹, where the products are used in the manufacture of common household consumer goods.⁸² Imports by FPG to the United States can be found in publicly available import/export records (Exhibit B). Procter & Gamble has been aware of the forced labor problems on FGV's plantations since as early as 2016 (cite to petition), but has continued to source palm oil and operate the FPG joint venture. Procter & Gamble has failed to make meaningful progress to protect and ensure the safety and compensation of workers in their palm oil chain, despite a 160,000 signature petition⁸³ and engagement with NGOs.

Bunge Loders Crocklaan (Bunge) is a major global importer and exporter of food products. In the first quarter of 2019, Bunge reported importing palm oil products from 23 FELDA/FGV mills to Channon, Illinois,⁸⁴ palm oil products from 33 FELDA/FGV mills to Decatur, Alabama,⁸⁵ palm oil products from 20 FELDA/FGV mills to Fort Worth, Texas,⁸⁶ palm oil products from 30 FELDA/FGV mills to Kearny, New Jersey,⁸⁷ palm oil products from 38 FELDA/FGV mills to Modesto, CA,⁸⁸ palm oil products from 23 FELDA/FGV mills to Morristown, IN,⁸⁹ and palm oil products from 37 FELDA/FGV mills to Sandston, VA.⁹⁰

Clasen Quality Chocolate, INC is directly importing products from Malaysian palm oil mills operated by FELDA and using it to produce goods sold in the United States (Exhibit A). Clasen Quality Chocolate is a major supplier of confectionary ingredients, all of which are sold in the United States.⁹¹ Clasen operates two manufacturing plants in Middleton and Watertown, WI and has corporate offices located in Madison, WI.

B&H Bakery Dist. Corp. is directly importing products from Malaysian Palm oil mills operated by FELDA (Exhibit A). B&H Bakery is a supplier of bakery products and ingredients which sells products solely in the United States⁹² and is headquartered in Hayward, CA.⁹³

⁷⁸ Bloomberg, "Company overview of FPG Oleochemicals Sdn. Bhd." <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=5569677>

⁷⁹ <https://www.pgchemicals.com/oleochemicals-products/fatty-acids>

⁸⁰ <https://www.pgchemicals.com/oleochemicals-products/methyl-esters>

⁸¹ Datamyne, "FPG OLEOCHEMICALS SDN BHD: 12 month supply chain summary" <http://www.datamyne.com/supplier/2753997/fpg-oleochemicals-sdn-bhd>

⁸² <https://www.pgchemicals.com/oleochemicals-products>

⁸³ <https://actions.sumofus.org/a/procter-and-gamble-covergirl-head-and-shoulders-modern-slavery-there-is-no-escape-palm-oil-nightmare>

⁸⁴ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_CHANNAHON.pdf

⁸⁵ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_DECATUR_AL.pdf

⁸⁶ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_FT_WORTH_TX.pdf

⁸⁷ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_KEARNY_NJ.pdf

⁸⁸ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_MODESTO.pdf

⁸⁹ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_MORRISTOWN_IN.pdf

⁹⁰ http://europe.bungeloders.com/images/applications/BLC_MillList_2019Q1_SANDSTON_VA.pdf

⁹¹ National Confectioners Association, "Clasen Quality Chocolate," <https://www.candyusa.com/company/clasen-quality-coatings-inc/>

⁹² <https://bandhdistributor.com/>

⁹³ <https://bandhdistributor.com/contact/>

In addition to direct imports, there is a very high likelihood that many other products sold in the U.S. marketplace, particularly consumer goods, contain palm oil from FELDAs plantations. According to their publicly disclosed palm oil mill lists, major palm oil traders such as Cargill, ADM, AAK, Sime Darby, and Louis Dreyfus Company along with major consumer goods corporations including Colgate-Palmolive, Ferrero, Johnson & Johnson, Kellogg's, L'oreal, Mars, Mondelez, Nestle, PepsiCo, and Reckitt Benkiser source palm oil from a wide range of FELDA/FGV plantations. (Appendices C-Z) These corporations are likely using FELDA/FGV palm oil in the production of popular consumer goods, including soaps, lotions, and a wide variety of snack foods. A number of other consumer goods companies that use palm oil in their products but are not publicly disclosing their mill lists, such as Campbell Soup Company, Dunkin Donuts, Grupo Bimbo, Krispy Kreme, and Smuckers, are also highly likely using palm oil from FELDA's plantations.

IV. Conclusion

As documented in the RSPO investigation, the Wall Street Journal, World Development, and Asia Pacific Viewpoint, and recognized by the U.S Department of Labor, indications and evidence of forced labor are rampant across FGV's plantations. FGV has long relied on the labor of thousands of migrant workers from countries such as Bangladesh, Myanmar, India, Nepal, Indonesia and the Philippines. The evidence shows that workers are often solicited from economically vulnerable areas in their home countries with false promises of lucrative jobs by traffickers who charge exorbitant fees. Some workers have been violently trafficked illegally to FGV plantations where they are isolated from the rest of Malaysian society, and are forced to sign employment contracts written in languages they cannot understand. Migrant workers on these plantations are commonly forced to work overtime, are paid below minimum wage, and sometimes not paid at all. Some workers wait months at a time to be paid back wages that may never arrive, and many work seven days a week without overtime pay. Debt bondage, isolation, withheld wages, and excessive overtime are all indicators of involuntariness under the ILO, and these factors are coupled with menace of penalties.

Plantation managers restrict the movement of migrant workers by seizing their passports upon arrival and threatening to report workers as undocumented if they "misbehave" or leave the plantation. Migrant workers who are arrested for being undocumented face months in detention centers and eventual deportation. Migrant workers on FGV plantations face systematic denial of safe, fair and consensual workplaces in Peninsular Malaysia and Sabah. Passport seizure, the physical threat of deportation along with the violence experienced during the trafficking process has made it difficult for FGV workers to report, organize or change their coercive work places, and seek freedom from forced labor.

Despite international outcry from the United States Government, European Union, RSPO and major companies such as Hershey's and Unilever, FGV palm oil is still being imported into the United States. Procter & Gamble, Bunge Lodders Crocklaan, Clason Quality Chocolate INC, and B&H Bakery Dist. Corp. are importing palm oil products directly from FGV. Other suppliers like Cargill, along with major consumer goods corporations such as Nestle, Mars, Mondelez, and PepsiCo are sourcing palm oil from FGV/FELDA plantations in Malaysia and are likely using it to produce goods sold in the United States.

V. Relief Sought

Petitioners respectfully request a determination pursuant to 19 CFR §12.42 et seq. that palm oil imported from FGV plantations in Malaysia is harvested “wholly or in part” by forced labor and is thereby prohibited from entry into the United States under the Tariff Act of 1930, 19 U.S.C. §1307. Accordingly, and based on the information provided here, we ask that you take immediate steps to halt the importation into the United States of palm oil and palm oil products from FGV plantations until the company’s forced labor practices have been independently verified by credible labor assessors to have been addressed.

Thank you for your consideration in this matter,



Judy Gearhart, Executive Director
International Labor Rights Forum



Robin Averbeck, Agribusiness Director
Rainforest Action Network



Hannah Lownsborough, Executive Director
SumOfUs