

August 17, 2020

The Honorable Mark A. Morgan  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Ave. NW  
Washington, DC 20229

Dear Mr. Morgan:

A year ago, the Global Labor Justice- International Labor Rights Forum<sup>1</sup>, Rainforest Action Network and SumofUs, filed a 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, but to date no action has been taken. The undersigned organizations ask that you take action and prohibit entry of FGV palm oil.

While FGV took a step in 2020 by publishing an Action Plan<sup>2</sup> on March 30th and a July 3, 2020 update<sup>3</sup>, it fails to prove FGV’s palm oil is not the result of forced labor. Based on our analysis, there remain issues with transparency and independent verification of progress, and many initiatives in FGV’s Action Plan aimed to address forced labor and labor violations have not begun and are not due to begin until the fourth quarter of this year.

SumofUs and our partner, anti-slavery organization Freedom United, have collected 127,296 petition signatures from consumers around the world, urging CBP to issue a Withhold Release Order against FGV palm oil.<sup>4</sup> This proves that consumers care strongly about the products they buy and that they believe the risk of forced labor is too high when it comes to FGV.

According to 19 C.F.R. § 12.42(e) “CBP requires information that is reasonable but not conclusive for issuance of a WRO.”<sup>5</sup> Here are some examples of strong evidence that forced labor still exists in FGV plantations:

Since we filed our petition, in January 2020 the Roundtable on Sustainable Palm Oil (RSPO) resuspended FGV’s Sawit Seriting mill after “unsatisfactory” findings from audits. The RSPO is an industry certification body comprising oil palm producers, processors or traders, consumer goods manufacturers, retailers, banks/investors, and environmental and social non-governmental organizations (NGOs) aimed at promoting sustainable palm oil. The RSPO’s Principles & Criteria sets standards for members to protect workers’ rights and prevent human trafficking and

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<sup>1</sup> Formerly known as International Labor Rights Forum.

<sup>2</sup> [https://www.fgvholdings.com/press\\_release/fgv-announces-action-plan-to-enhance-labour-practices/](https://www.fgvholdings.com/press_release/fgv-announces-action-plan-to-enhance-labour-practices/)

<sup>3</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/07/FGV's-Progress-Report-July-2020-Pertaining-to-RSPO's-Complaints-Panel's-Directives-of-28-November-2018-1.pdf>

<sup>4</sup> <https://www.freedomunited.org/advocate/blocktaintedpalmoil/>

<sup>5</sup> <https://www.cbp.gov/trade/programs-administration/forced-labor>

forced labor in accordance with international laws.<sup>6</sup> Specifically, RSPO audits found that pay and work conditions were not aligned with domestic labor laws and that FGV had failed to prevent migrant workers from paying exploitative recruitment fees and that workers were not adequately informed of their working conditions.<sup>7</sup>

While FGV indicates that steps in their Action Plan will be monitored and addressed by the Fair Labor Association, we have yet to see any public reporting. We are concerned by discrepancies between 2019 updates published by FGV and those from this year as outlined below, illustrating that promises to eliminate the risk of forced labor have not been kept or that initiatives have been delayed, thus bringing us to question the accuracy of FGV's self-reporting.<sup>8</sup> Specifically, in regards to long-standing issues that put migrant workers at risk of forced labor, we note the following:

**1. Use of undocumented contract workers in Sabah, Malaysia:**

In FGV's appeal to the RSPO decision in January 2020, the company claimed that "There are no undocumented foreign workers on FGV's operations in Sabah or anywhere else. As has been communicated to the RSPO on 13th December 2019 *FGV expected to complete the registration of undocumented contract workers in Sabah by 31st December 2019. This has been completed on schedule.* FGV no longer hires workers through contractors in Sabah or anywhere else."<sup>9</sup>

However, in FGV's July 2020 *Progress Report on their Action Plan in Response to RSPO's Complaints Panel's Directives of 28 November 2018* the company revised this language, stating that the issue has not been resolved: "the situation of undocumented persons in Sabah is highly complex and is a result of a multiplicity of contributing factors," adding that the Sabah State Government introduced a program for undocumented workers to apply for regularization.<sup>10</sup>

FGV continues, "While the initial target date to complete the regularization exercise was end of June 2020, this timeline has been revised given the Covid-19 outbreak and the Movement Control Order (MCO) imposed by the Malaysian Government, which has disrupted the regularization process. *The new target date for the completion of the regularization exercise is the end of December 2020.*"<sup>11</sup>

Thus, it is clear that there is a year-long delay in addressing this problem.

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<sup>6</sup> <https://rspo.org/resources/certification/rspo-principles-criteria-certification>

<sup>7</sup> <https://www.reuters.com/article/us-malaysia-palmoil-fgv/malysias-fgv-fell-short-of-labor-norms-palm-industry-watchdog-says-idUSKBN1ZE149>

<sup>8</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>.

<sup>9</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>. Page 90.

<sup>10</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/07/FGV's-Progress-Report-July-2020-Pertaining-to-RSPO's-Complaints-Panel's-Directives-of-28-November-2018-1.pdf>. Page 14.

<sup>11</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/07/FGV's-Progress-Report-July-2020-Pertaining-to-RSPO's-Complaints-Panel's-Directives-of-28-November-2018-1.pdf>. Page 15.

## **2. Prohibition and Prevention of Forced Labor**

In their 2020 Action Plan, FGV notes that they will “strengthen the existing procedures and mechanisms to effectively prevent forced and bonded labor, and to establish remediation processes should they occur.” However, the timeline for this is “2020 (continuous)” – indicating that the procedures and mechanisms are incomplete.<sup>12</sup>

## **3. Prohibition and Prevention of Child Labor**

In their 2020 Action Plan, FGV again states that they “will strengthen the existing procedures and mechanisms to prevent child labor, and to establish effective remediation processes should they occur.” The timeline for this is “2020 (continuous)” – a vague timeframe that does not detail what these mechanisms or remediation processes entail, aside from the fact that they have not been completed.<sup>13</sup>

## **4. Strengthen Recruitment Agencies’ Compliance to Labor Standards**

In the 2020 Action Plan, FGV wrote they “will develop a mechanism for monitoring and assessment of the implementation of the labor standards by recruitment agencies.” However, the timeline says this is not due to begin until the fourth quarter of 2020.<sup>14</sup>

## **5. Strengthen Post-Arrival Orientation Program for Migrant Workers**

In the 2020 Action Plan, FGV states that they “will strengthen the post-arrival orientation program for newly arrived workers. The post-arrival orientation program will include training on FGV’s labor policies, workers’ rights and responsibilities, no recruitment fees, no retention of passports and a choice to use employer provided lockers, taking leave and exiting the premises and repatriation procedures.” Yet again we see that this is not due to begin until the fourth quarter of 2020.<sup>15</sup>

## **6. Review and Amendment of Employment Policy and Contract, Ensuring Consistency with the Code of Conduct for the Agriculture Sector (Ag CoC)**

In its 2020 Action Plan, FGV notes that it “will reflect the UNGPs and the ILO Guidelines on Fair Recruitment in its recruitment policy and practices.” However, this is not scheduled to begin until the fourth quarter of 2020.<sup>16</sup>

FGV has a history of inaccurate reporting to the RSPO. Here are some examples:

1. FGV reported in their *Action Plan and Second Quarterly Progress Report in Response to the RSPO’s Complaints Panel Directives Date 28 November 2018* on June 29, 2019 that it had fully resolved labor issues, but six months later the RSPO resuspended certification

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<sup>12</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>. Page 116.

<sup>13</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>. Page 117.

<sup>14</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>. Page 118.

<sup>15</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>. Page 120.

<sup>16</sup> <https://www.fgvholdings.com/wp-content/uploads/2020/04/Appeal-by-FGV-against-RSPO-CP%E2%80%99s-Decision-of-13-January-2020-2.pdf>. Page 116.

of FGV's Sawit Seriting mill. The issue of exploitative recruitment fees – a reason for Sawit Sering mill's resuspension – was raised by the RSPO Complaints Panel years ago, stressing that “no recruitment fees/costs should be charged to/deducted from workers at any stage of the recruitment process, including by its contractors.” In response, in their June 29, 2019 update FGV simply stated that they would seek “Clarity on the imposition of recruitment fees.”<sup>17</sup>

In particular, in relation to properly informing migrants of working conditions – an issue RSPO raised in FGV's resuspension in 2020 – the company wrote in June 2019 that “Information regarding working conditions in the host country, including the nature of work, wages, benefits and duration of contract is also clearly stipulated under the newly-adopted Guidelines and Procedures for Responsible Recruitment of Foreign Workers.”<sup>18</sup> The fact that FGV claimed in June 2019 that responsible, ethical recruitment was taking place but subsequently had their Sawit Seriting Mill certification resuspended for workers' exploitative recruitment fees illustrates that FGV's promises are not being kept.

In light of the weaknesses and gaps in FGV's own reporting identified above, we maintain that the claims made in our petition remain valid and urge U.S. Customs and Border Protection to issue an WRO against FGV palm oil.

Sincerely,



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Executive Director  
Global Labor Justice -  
International Labor Rights Forum



Robin Averbeck  
Forest Program Director  
Rainforest Action Network



Fatah Sadaoui  
Campaigns Manager  
SumOfUs



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<sup>17</sup> <https://www.fgvholdings.com/wp-content/uploads/2019/12/FGV-Action-Plan-and-2nd-Quarterly-Progress-Report-to-RSPOwebsite.pdf>. Page 9-10.

<sup>18</sup> <https://www.fgvholdings.com/wp-content/uploads/2019/12/FGV-Action-Plan-and-2nd-Quarterly-Progress-Report-to-RSPOwebsite.pdf>. Page 6.

