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Grant & Eisenhofer ESG Institute Petitions U.S. Government to Block Importation of Palm Oil Produced by FGV Holdings Berhad in Malaysia, Based on Evidence of Child and Forced Labor Practices

Corporate governance ESG Institute seeks agency determination to ban U.S. importation of "palm oil, palm kernel oil, and palm oil derivatives" produced by FGV, Malaysia's biggest palm oil producer, because of labor abuses on FGV oil-palm plantations; petition filed with DHS Customs and Border Protection

NEW YORK (June 24, 2019) – The **Grant & Eisenhofer ESG Institute** announced the filing of a petition to ban importation of palm oil produced in Malaysia by that country's biggest, and one-third government-owned palm oil producer, **FGV Holdings Berhad** (formerly known as FELDA Global Ventures Berhad), due to widespread evidence of forced labor and illegal child labor practices on FGV's oil-palm plantations. The petition was filed with the U.S. Customs and Border Protection, the agency within the Department of Homeland Security that enforces laws and facilitates lawful trade.

The ESG Institute's petition requests that the CBP make an official determination that FGV palm-oil products imported from Malaysia are produced "wholly or in part" using forced labor, and that the CBP halt all such imports. Under federal law, importation of goods produced abroad by forced labor is prohibited.

A copy of the full 14-page petition can be found here:
https://www.gelaw.com/ge/esg-institute/ESG_Institute_Palm_Oil_Petition.pdf

The United States is the eighth-largest importer of Malaysian palm oil and palm oil-based products. A ubiquitous ingredient, palm oil is contained in an estimated half of all packaged food products sold in the U.S., from many snack foods to make-up and other skincare products. It is also a common ingredient in many hygiene products — including popular brands of toothpaste, shampoo and laundry detergents — and is found in various pharmaceuticals.

In filing an official petition with the CBP, the ESG Institute is calling on the U.S. government to take meaningful official action against "an unconscionable labor and human rights problem," notes **Olav Haazen**, a director at law firm Grant & Eisenhofer, who filed the petition for the Institute, a global policy group focused on legal issues regarding environmental, social and governance issues in institutional investing.

"The problem of forced and child labor in the global palm oil industry has been widely recognized for several years," said Mr. Haazen. "Beyond bringing greater public awareness to a serious human rights issue, we hope our petition will compel industry-wide changes in the treatment of workers who cultivate and harvest palm oil. The inhumane and immoral conditions in producing this commodity product have persisted way too long, and our government has done little in response."

The ESG Institute petition, sent to CBP Commissioner Kevin K. McAleenan, sets forth ample evidence of forced labor — including child labor and human trafficking — in Malaysia's $9.7 billion palm oil industry. It details press accounts, including notable reports by The ***Wall Street Journal*** and **Quartz**, in 2015 and 2018, respectively. It also relies on a November 2018 **decision letter** to FGV from nonprofit trade organization Roundtable on Sustainable Palm Oil (RSPO), sanctioning the company and finding numerous indicators of forced labor present on FGV plantations. The indicators reference standards in identifying such abuses as set forth by the International Labor Organization.

The petition contends that FGV exploited foreign migrant workers, some of whom are likely trafficking victims. Workers are believed to be kept isolated on remote plantations with limited ability to leave, in some cases because their passports are retained by employers, and in other instances because of employer intimidation and threats. The petition accuses FGV of providing plantation workers with inadequate food, housing and supplies, and failing to provide safety equipment and medical coverage for injuries.

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Child labor, which the U.S. Labor Department in 2018 reported as a problem in Malaysia's palm oil industry, may be occurring on FGV plantations as well. The ESG Institute's petition notes that 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. The petition states that FGV's confirmed lack of supervision of its workers combined with the prevalence of child labor on Malaysian oil-palm plantations makes it highly likely that illicit child labor occurs on FGV oil-palm plantations.

The petition notes that the RSPO's investigation found that the company's recruitment practices were deceptive, and that FGV failed to communicate contract and payment terms adequately to workers, and did not allow workers to submit grievances. RSPO investigators concluded that many of the workers had not freely consented to the employment.

"RSPO's findings last November served as a clear warning to FGV that its RSPO membership could be suspended if the forced-labor issues are not dealt with," said Mr. Haazen. "While FGV has since initiated a so-called 'transformation plan' in response to RSPO's complaint, FGV palm oil should be barred entry into the States until the company's many labor issues have been adequately addressed."

Citing news reports and corporate documents, the ESG Institute petition notes that a handful of the largest U.S. companies — including Cargill, Mars, Nestle, PepsiCo, and Procter & Gamble — all have sourced palm oil from FGV mills, whether via direct imports or through third-party suppliers. The petition maintains that FGV palm-oil imports by these and other companies, as well as by FGV's wholly-owned U.S.-based subsidiary Twin Rivers Technologies, Inc. and other subsidiary shippers, should be considered to be produced using forced labor and should be prevented from entering the United States.

Palm oil is a major part of the American economy. Unfortunately, the palm oil that FGV produces using forced labor is entering the supply chains of major U.S. companies and is present in their end-products. In addition to effecting genuine change in working conditions in the Malaysian palm oil industry, the ESG Institute hopes the petition before the CPB will instill confidence in investors of the companies that rely on FGV palm-oil exports that their investments are ethically sound.

The legal linchpin forming the basis of the petition is Section 307 of Tariff Act of 1930, which prohibits the importation of goods or merchandise produced, wholly or in part, in any foreign country by forced labor. Previously, Section 307 had a "consumptive demand" exception, which permitted importation of forced-labor goods if the goods were not produced in such quantities stateside as to meet U.S. domestic consumptive demand. The Trade Facilitation and Trade Enforcement Act, signed on Feb. 24, 2016 by President Obama, repealed the "consumptive demand" clause.

The prior version of the Tariff Act essentially acted as a loophole that would support forced labor economies. The law on the books today further empowers the CPB to prevent products made by forced labor from being imported into the country. The ESG Institute's approach to petition the CPB is much different from litigating against a single company to effect change; it calls upon the federal government to simply enforce the law.

Grant & Eisenhofer has an over 20-year history of leading cases promoting the shareholders' rights and legal issues related to ESG considerations and socially responsible investment. In 2012, G&E represented a prominent institutional investor in a lawsuit against Hershey, contending that the company used cocoa derived from unlawful child labor in West Africa. In the past decade, the firm has grown beyond its core practice of securities litigation to include: consumer class actions, whistleblower cases involving the False Claims Act, mass tort and environmental suits, birth injury litigation, and other disputes. Most recently, this past March G&E launched its civil rights practice.

Mr. Haazen said, "We're hoping that the CPB will take immediate notice of the petition. Human rights should not be disregarded at our ports of entry that are under the CPB's charge, and it's time that forced labor behind FGV palm oil production is addressed."

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