

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008

2012 USTR Annual Report on the Implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) Program and Assessment of Producer Eligibility

The Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II) affords preferential treatment for imports of apparel, textiles, and certain other goods from Haiti. On October 16, 2009, as required by HOPE II for continued country eligibility, the President certified to Congress that Haiti has (i) implemented a TAICNAR program; (ii) established a Labor Ombudsperson's Office; (iii) agreed to require producers of articles for which preferential tariff treatment may be requested to participate in the TAICNAR program; and (iv) developed a system to ensure participation by such producers, including by establishing a producer registry. To remain eligible for preferential treatment, Haiti must also have established or be making continual progress towards establishing the protection of internationally recognized worker rights.¹

HOPE II calls for the President to submit a report to Congress no later than June 18, 2009, and every year thereafter, regarding the establishment and operation of the Labor Ombudsperson's Office and certain aspects of the operation of the TAICNAR program. The President has delegated the production of this report to the United States Trade Representative (USTR). This report is to include an explanation of the efforts of Haiti, the President, and the International Labor Organization (ILO) with respect to the Labor Ombudsperson's Office and the TAICNAR program; a summary of reports prepared by the ILO, as operator of the TAICNAR program, during the preceding one-year period; and, on a biennial basis, the producers that the President has identified as failing to comply with core labor standards² and with the labor laws of Haiti that directly relate to and are consistent with core labor standards. 19 U.S.C. § 2703a(e)(5)(B).

TAICNAR Program: In accordance with 19 U.S.C. § 2703a(e)(3), the TAICNAR program coordinates with the Labor Ombudsperson, and appropriate representatives of Haitian government agencies, employers, and workers to:

- assess compliance by producers of products eligible for benefits under HOPE II (“producers”) with core labor standards and the labor laws of Haiti that directly relate to and are consistent with core labor standards and Haitian laws on acceptable conditions of work;

¹ HOPE II defines internationally recognized worker rights to include: the right of association; the right to organize and bargain collectively; a prohibition on the use of any form of forced or compulsory labor; a minimum age for the employment of children; and acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. 19 U.S.C. § 2703a(a)(3). There are also additional HOPE II eligibility requirements not directly related to the TAICNAR program.

² HOPE II defines the core labor standards as follows: freedom of association, the effective recognition of the right to bargain collectively, the elimination of all forms of compulsory or forced labor, the effective abolition of child labor and a prohibition on the worst forms of child labor, and the elimination of discrimination in respect of employment and occupation. 19 U.S.C. § 2703a(a)(3).

- issue public reports on such compliance with worker rights;
- assist producers with addressing deficiencies in worker rights compliance;
- provide training for workers and management to promote such compliance; and
- provide assistance to Haiti's government to improve its capacity to inspect producers' facilities, enforce national labor laws, and resolve disputes.

The TAICNAR program in Haiti is being implemented through ILO and International Finance Corporation's Better Work program, which promotes improved labor standards in global supply chains. The ILO Better Work Haiti program (BWH) was funded by U.S. Department of Labor (DOL) fiscal year 2009 and 2010 appropriations in the amount of \$3.5 million. In FY 2011, DOL increased its funding for the program by \$1.1 million to help keep pace with expected growth in the textile and apparel sector and ensure the program's operation through 2013.

Labor Ombudsperson: HOPE II calls for the Labor Ombudsperson to (i) develop and maintain a registry of producers eligible for the preferential tariff treatment, (ii) oversee the implementation of the TAICNAR program, (iii) receive and investigate comments regarding compliance with core labor standards and relevant Haitian labor laws, and (iv) assist producers in meeting the requirements of the HOPE II legislation. 19 U.S.C. § 2703a(e)(2). In addition, the Ombudsperson is required to coordinate a tripartite committee with the ILO to evaluate the progress of the TAICNAR program and consult on improving core labor standards and working conditions in the textile and apparel sector. 19 U.S.C. § 2703a(e)(2)(B)(v).

Producer eligibility: For producers to remain eligible for preferential treatment, they must comply with core labor standards and with the labor laws of Haiti that directly relate to and are consistent with core labor standards. 19 U.S.C. § 2703a(e)(4)(B)(i). Every two years, DOL, in consultation with USTR, is responsible for identifying any producers not in compliance with the core labor standards and conforming national law and seeking to provide assistance to such producers to come into compliance. If such efforts to assist fail, the President shall withdraw, suspend or limit those producers' benefits. 19 U.S.C. § 2703a(e)(4)(B)(ii). While this is USTR's fourth report, this is the first reporting period that producers have been identified.

Efforts by Haiti

Haiti is the poorest country and the only least-developed country in the Western Hemisphere. Its population in 2012 was 9.8 million, its total GDP in 2011 was \$7.4 billion, with a GDP per capita of \$1,200. The size of the labor force was estimated at 4.8 million. There is widespread unemployment and underemployment in Haiti; more than two-thirds of the labor force does not have formal employment. In 2010, the official unemployment rate was nearly 41%. Ninety percent of Haiti's exports are to the United States.

The Government of Haiti (GOH) has engaged with the ILO and with the U.S. Government (USG) in all phases of the TAICNAR program. The GOH also has played an active role in the Tripartite Commission for the Implementation of the HOPE Act (known as the HOPE Commission or by its French acronym, CTMO-HOPE), which was established in 2007 as mandated in the HOPE legislation. 19 U.S.C. § 2703a(e)(2)(B)(v).

The HOPE Commission is composed of Haitian government officials from the Office of the Prime Minister and the Ministries of Commerce and Finance and of Labor and Social Affairs (MAST), the Labor Ombudsperson, three representatives of employers' associations, and three representatives of labor unions. A key weakness remains in the composition of the Commission in that its worker representatives were selected from workers' organizations that do not primarily represent the apparel sector. Until 2011, there were no active sector-level apparel unions in Port-au-Prince that could have been represented on the Commission. Although a sector-wide trade union of textile and apparel workers, Sendika Ouvriye Tekstil ak Abiman (SOTA), was established in 2011, it has not yet been given a seat on the Commission. HOPE II accords important oversight roles to the HOPE Commission, including that of evaluating progress on implementing the TAICNAR Program and consulting on improving core labor standards in the textile and apparel sector in Haiti. The HOPE Commission also serves as the BWH Project Advisory Committee. In early January 2012, members of the HOPE Commission, including the newly appointed HOPE Commission President and three worker representatives traveled to Washington, DC. The delegation met with officials from USTR, the Department of State, and DOL to discuss this report and technical assistance needs, including training to strengthen the capacity of worker representatives and training to strengthen MAST's ability to enforce Haitian labor laws.

Under the Commission President's leadership, the HOPE Commission has developed a draft action plan to improve compliance with core labor standards in the apparel and textile sector. The draft action plan includes objectives and activities for the Commission to accomplish over the next 18 months, such as training for workers, compliance-related counseling for employers, and improved mediation of workplace disputes. The HOPE Commission has already begun implementing select elements of the draft action plan, including by distributing an informational packet for producers on compliance with labor-related requirements under HOPE II in French and English. A Haitian Creole version is forthcoming.

The HOPE Commission has organized meetings with the U.S. Embassy in Haiti, BWH, and the Labor Ombudsperson to attempt to improve coordination among the various entities involved in implementing HOPE II. In addition, its President organized a series of meetings with staff from the National Office for Old-Age Insurance (ONA), BWH, and worker and employer representatives to discuss concerns about the role of the pension agency in ensuring that factories are paying the required employer contribution and that workers' contributions are being forwarded and maintained appropriately. In its April 2012 synthesis report, BWH found a 75 percent non-compliance rate among factories related to mandatory ONA contributions. In concert with the HOPE Commission, MAST, which oversees ONA, is working to correct these problems through sensitization campaigns and employer outreach. In addition, ONA has begun implementing an electronic ID card for workers so that they are able to more effectively track their employers' payments to ONA.

On April 12, 2012, the Prime Minister's Office appointed Josseline Fethiere as the new Labor Ombudswoman. The previous Ombudsperson was appointed on August 28, 2009; however, he was mostly inactive from June 2011 until his replacement was named.³ During his tenure and

³ With no government in place from May 2011 until the ratification of former Prime Minister Garry Conille in October 2011, it was difficult for the existing Ombudsperson to carry out his duties.

after he became inactive, the Office of Labor Ombudsperson lacked adequate resources, such as an office, staff, and training. The lack of resources impaired the Office's capacity to carry out the responsibility of receiving and investigating allegations regarding working conditions in HOPE II eligible factories and referring the results to the appropriate Haitian authorities. While resources for the Labor Ombudswoman's Office are still lacking, Fethiere traveled to the United States in her second week in the new position, along with representatives from MAST and the President of the HOPE Commission, to participate in a USG sponsored mediation training program. Within just a few weeks of their return to Haiti, each member of the Haitian delegation became engaged in assisting producers in their efforts to comply with the labor eligibility requirements of HOPE II, including by clarifying aspects of the Haitian Labor Code, informing producers of their obligations under core labor standards and conventions ratified by Haiti, as well as by mediating in several specific workplace disputes.

MAST is partnering with United States Agency for International Development's (USAID) Office of Transition Initiatives (OTI) to build a new regional office near or in Haiti's new Caracol Industrial Park in Haiti's northern corridor with costs shared by OTI and the GOH. MAST is also part of a tripartite process, supported by the ILO, to reform the labor law and bring it into conformity with international labor standards. Representatives from MAST as well as employer and worker organizations have been charged with drafting separate labor reform proposals. The process has been delayed, however. The proposals were initially scheduled to be discussed in March 2012, but the discussions have been postponed until July 2012.

The GOH has implemented an electronic product "visa" system to ensure that products shipped to the United States are not made in countries other than Haiti. The visa system continues to serve as the producer registry required by HOPE II, and producers that do not participate in the TAICNAR program are not eligible to use the visa system. As of the ILO's April 2012 report, 21 factories were registered under the TAICNAR program. Of the 23 registered factories reported on in the October 2011 assessment cycle, one factory has shut down its operations and two factories have merged into a single factory. With the opening of the new Caracol Industrial Park in Haiti's northern corridor, the ILO anticipates additional factories to register by the end of 2012.

In response to a request from the Prime Minister's Office, the USG provided the GOH and the HOPE Commission with recommendations on how to improve the implementation of the HOPE II labor requirements. The USG recommended Haiti: bring its labor laws into conformity with international core labor standards and the core ILO conventions ratified by Haiti; reform the HOPE Commission to be representative of producers' and workers' organizations in the apparel sector; provide the Labor Ombudswoman's Office with the necessary resources to assist the sector in complying with core labor standards, relevant and consistent Haitian labor laws, and acceptable conditions of work; ensure necessary funding and training for MAST to effectively enforce labor laws; and train labor court officials on Haitian labor laws and core labor standards.

Efforts by the Administration

The USG has continued to work closely with the GOH and other national and international stakeholders to promote the viability of Haiti's apparel sector, to facilitate producer compliance

with labor-related eligibility criteria under HOPE II, and to ensure full implementation of the TAICNAR program in accordance with the provisions of HOPE II.

In January 2011, the USG signed an agreement with the GOH and the Inter-American Development Bank to build the Caracol Industrial Park with the Republic of Korea's largest garment manufacturer, as the anchor tenant. The Caracol Industrial Park is projected to create at least 20,000 apparel sector jobs from the manufacturer's investment alone and could create an estimated 65,000 jobs with the arrival of other tenants and factory buildings. The total committed investment exceeds \$300 million. USAID is funding a training center to provide skills training to the first wave of apparel workers in the industrial park.

The USG has continued to provide technical assistance to support implementation of the provisions of HOPE II. As noted above, DOL has contributed \$4.6 million to the ILO program and is committed to funding the TAICNAR program at least through the end of 2013. Between February and April 2012, DOL staff also provided trainings on the core labor standards of freedom of association, forced labor (focused on concerns related to certain mandatory overtime practices), and non-discrimination (focused on sexual harassment) to Haitian employer, worker, government and civil society representatives. In May 2012, DOL and other USG experts hosted a webinar on international core labor standards and labor-related eligibility requirements of HOPE II for Haitian stakeholders as well as current and prospective buyers. In addition, with funding and logistical support from the U.S. Embassy's Office of Public Affairs, DOL and the Federal Mediation and Conciliation Service sponsored a study tour in the United States on mediation and alternative dispute resolution for a delegation comprised of Haitian government officials from MAST, the President of the HOPE Commission, and the new Labor Ombudswoman.

USG officials have continued their dialogue with the HOPE Commission, local and international representatives of workers' organizations and civil society groups, Haitian apparel and textile producers, and current and prospective apparel buyers and retailers through regular telephone conference calls and meetings in Washington, DC and Haiti, to discuss the implementation of HOPE II. A high-level interagency delegation, which included senior officials from DOL, USTR, and the Department of State, traveled to Haiti in January 2012. The delegation met with producers, worker organizations, and government representatives to highlight the specific labor requirements of HOPE II. The delegation also met individually with the three producers identified as non-compliant with HOPE II labor-related eligibility requirements, emphasizing the need to take immediate actions to address the non-compliance findings and offering to assist each factory in remediation efforts.

In response to a request by the USG, the HOPE Commission provided the following recommendations as to how the USG could better support implementation of the HOPE II labor commitments: closer coordination with the HOPE Commission, in particular regarding engagement with non-compliant producers; longer and more interactive trainings; technical assistance to MAST and the Ombudsperson's Office; and more frequent monitoring and engagement with producers, BWH, and the HOPE Commission.

Efforts by the ILO

Capacity Building and Program Support

Better Work Haiti developed a strategic action plan to strengthen the capacity of MAST through: i) managerial reforms; ii) legislative and statutory reforms; iii) social dialogue; and iv) development of methods and effective tools of monitoring and management. Based on this plan, BWH provided a series of trainings to 38 high-level MAST officials on strategic management and methodology for writing labor policy. BWH also trained 42 labor inspectors on designing and using inspection guides.

Better Work Haiti has also been promoting the establishment of worker-manager committees at the factory level (Performance Improvement Consultative Committees (PICCs)). The PICCs promote social dialogue at the factory level, supporting both labor standards' improvement and enterprise upgrading. To these ends, BWH is building the capacity of two Haitian organizations that will train managers and workers on communication, mediation and negotiation skills. During this reporting period, PICCs were established at Island Apparel and Pacific Sports. The PICCs held their first meetings in March to discuss, adapt, and agree on the guidelines, outlining the principles of collaboration among their members. During the meetings, BWH clarified the roles of each party and provided tools and methods to strengthen their participation in the BWH program. BWH plans to provide further assistance to both PICCs and aims to have established PICCs in four to six additional factories by the end of 2012.

To help maintain the engagement and support of international buyers, BWH held the third annual International Buyers Forum and Multi-Stakeholders' Meeting on June 13-14, 2012. Representatives from 10 brands attended the meeting as well as representatives from the State Department, including the U.S. Ambassador. The International Buyers Forum provided an opportunity for brand representatives to discuss the objectives and implementation successes and challenges of BWH with the program management team. During the Multi-Stakeholders' Meeting, brand representatives, Haitian government officials and employer and worker representatives at the national and international levels held an open dialogue to share expectations, progress and plans for and commitments to BWH.

Compliance Assessment

Central to the BWH program is the assessment of producer compliance with ILO core labor standards and the labor laws of Haiti that relate directly to those standards and to ensuring acceptable conditions of work. Two teams of national and international consultants conducted the first compliance assessment during the fall of 2009. Since then, three additional assessments have been conducted and public reports issued in April and October 2011 and April 2012. In 2011, BWH recruited three additional Enterprise Advisors, and the assessment team is now composed of six Haitian professionals.

Following the assessments, BWH shares a detailed report with each factory, presenting findings on eight categories of labor standards, half of which are based on international standards and half on national legislation. Factory compliance is assessed based on the answers to a checklist of

questions based on compliance indicators for each of the eight categories. The four categories based on international core labor standards include: freedom of association and collective bargaining; the elimination of forced or compulsory labor; the effective abolition of child labor and a prohibition on the worst forms of child labor; and the elimination of discrimination in employment and occupation. The four categories based on national labor laws cover the Haitian standards on compensation, contracts and human resources, health and safety at work, and working time. In cases where national law is not consistent with core labor standards, the international core labor standards are applied.

Remediation

After assessing compliance gaps, BWH works with each individual factory with non-compliance findings to advise and assist in prioritizing specific improvements, which often include identifying relevant advisory services and training to be provided. Whenever possible, the improvement plan is agreed upon and discussed with the PICCs.

In September 2011, six members of the Executive Committee of SOTA, the newly formed trade union in the Haitian garment sector, were terminated by three factories in Port-au-Prince. The trade union organization that supports SOTA, Batay Ouvriye, as well as the employers' association, the Association of Industries of Haiti (ADIH), requested BWH's technical assistance to assess the situation. In response to the request, BWH conducted fact-finding and published a report finding violations of freedom of association. After the release of the public report, a negotiation with workers, employers and government representatives resulted in the reinstatement of five of the six dismissed SOTA leaders before the end of 2011 (the sixth was reinstated in 2012).

BWH also worked to address other findings of non-compliance with core labor standards and Haitian labor laws identified in 2010 and during the ordinary assessment cycles of 2011. For example, BWH provided various trainings for management and roughly 1,028 workers in 2011. Key trainings included:

- management skills to human resources staff, particularly to address non-compliance issues related to the recruitment process in factories;
- life skills training for workers, to raise awareness and increase knowledge of issues such as maternity protection, workplace communication, and financial literacy; and
- occupational safety and health training for workers to develop awareness of potential risks and identify ways to decrease them.

The January 2012 USG interagency delegation shared concerns and recommendations with BWH. These included the need for BWH to develop more effective methods for conducting assessment and advisory services on core labor standards, to provide more specific plans for remediation, to gather information from workers away from the workplace where they may feel less intimidated and more comfortable discussing potentially sensitive issues, to modify BWH assessment methods to limit the advance notice to producers of factory visits, and to take steps to ensure neutrality and objectivity for persons recruited to the Enterprise Advisor positions. DOL

is collaborating with BWH to strengthen its methods for identifying and responding to violations of core labor standards, particularly those involving sexual harassment.

Biannual Report under the TAICNAR program

HOPE II requires the ILO to publish biannual reports identifying the producers that are complying with core labor standards and the labor laws of Haiti that relate directly to those standards and acceptable conditions of work; and identifying the producers that have deficiencies, with respect to those standards and laws, and have failed to remedy such deficiencies. With regard to the deficient producers, HOPE II also requires a description of the deficiencies identified, specific suggestions for remediation, a description of any remediation efforts, and the time elapsed between the initial identification of unremedied deficiencies and the report's publication. The ILO publishes its biannual reports in October and April of each year, as specified by HOPE II. *See* 19 U.S.C. § 2703a(e)(3)(D). The USG must consider these reports in identifying non-compliant producers under HOPE II. 19 U.S.C. § 2703a(e)(4)(B)(iv).

The ILO's third report was published on October 16, 2011, and is available at:

<http://www.betterwork.org/EN/Publications/Documents/Better%20Work%20Haiti%203rd%20Biannual%20Report%20under%20the%20HOPE%20II%20Legislation.pdf>

The document is based on an assessment conducted between June and September 2011 in 23 factories. The report shows significant improvements from the previous assessment cycle. In particular, all issues previously identified by the ILO related to discrimination have been resolved, and improvements are shown in compliance with the core labor standards related to child labor and forced labor. Occupational safety and health remains the main focus of non-compliance findings, though there were positive developments, including factories repairing deficient toilets, establishing eating areas, and providing personal protective equipment.

The ILO's most recent report was released on April 16, 2012, and is also available at:

<http://www.betterwork.org/EN/Publications/Documents/Better%20Work%20Haiti%204th%20Biannual%20Report%20Under%20the%20HOPE%20II%20Legislation.pdf>

The document is based on an assessment conducted between December 2011 and February 2012 in 20 factories. The report shows a higher number of violations of core labor standards than in all three previous assessments, especially related to freedom of association and discrimination (sexual harassment). According to BWH, the increase in non-compliance findings is due to BWH's strengthened internal capacity to conduct such assessments and effectively identify violations, rather than a significant decline in sector-wide compliance levels. BWH continued to find significant non-compliance with national labor law, such as factories failing to pay workers the minimum wage for piece-rate work. Other significant and persistent areas of non-compliance relate to payment of social protection benefits, occupational safety and health, and work time issues, such as breastfeeding and daily breaks. As a result, BWH has indicated that it will continue to focus, in particular, on non-compliance with occupational safety and health laws, especially in the areas of emergency preparedness and handling chemicals and hazardous substances, which have been identified as particularly challenging.

Implementation of the Producer-level Labor Eligibility Provisions of HOPE II

Summary of Relevant HOPE II Provisions (19 U.S.C. § 2703a (e)(4)(B)(i) – (iv))

HOPE II requires the President to identify “whether a producer . . . has failed to comply with core labor standards and with the labor laws of Haiti that directly relate to and are consistent with core labor standards.” 19 U.S.C. § 2703a(e)(4)(B)(i). Such identifications must be made biennially, beginning the second calendar year after the President certified Haiti’s country eligibility to participate in the HOPE II program. The President certified Haiti’s eligibility on October 16, 2009, and, therefore, the first identification of non-compliant producers was required by December 31, 2011. The statute provides further that the President “shall seek to assist” any non-compliant producers “in coming into compliance with core labor standards” and with directly related Haitian labor laws that are consistent with those standards. In turn, “[i]f such efforts fail, the President shall withdraw, suspend, or limit the application of preferential treatment . . . to articles of such producer.” 19 U.S.C. § 2703a(e)(4)(B)(ii).

Haiti has ratified the eight ILO Conventions covering the core labor standards: freedom of association and collective bargaining (Conventions 87 and 98), forced labor (Conventions 29 and 105), child labor (Conventions 138 and 182) and discrimination in employment/occupation (Conventions 100 and 111). Pursuant to the Haitian Constitution, once international treaties or agreements are approved in the manner stipulated by the Constitution, they become part of Haitian legislation and abrogate any laws in conflict with them.⁴ As such, these eight core ILO conventions are part of Haitian law.

Identification of non-compliant producers

The President delegated the authority for the identification of non-compliant producers to the Secretary of Labor, in consultation with the USTR.⁵ As part of the same Proclamation, the President delegated to the Secretary of Labor the statutory requirement to seek to assist each non-compliant producer to come into compliance with core labor standards and the labor laws of Haiti that directly relate to and are consistent with core labor standards.

DOL engaged in detailed fact-finding during the second half of 2011 to assess producer compliance. This process utilized varied sources of information, including but not limited to field research, the assessment reports produced by BWH,⁶ and academic research. The field research was conducted by an interagency delegation consisting of DOL, USTR, and the Department of State in November 2011 in Port-au-Prince. The delegation met with factory owners, human resources managers, supervisors, and representatives of trade unions and non-governmental organizations, and interviewed nearly one hundred workers. After the delegation concluded its visit, DOL conducted a follow-up investigation, including telephone interviews

⁴ See 1987 Constitution of Haiti, Art. 276-2.

⁵ Presidential Proclamation 8296, September 30, 2008.

⁶ HOPE II requires the President to “consider” BWH reports in making determinations of producer non-compliance, though it does not limit the President to that source of information. 19 U.S.C. § 2703a(e)(4)(B)(iv).

with workers and an assessment of information from employers related to allegations presented to the delegation.

Based on the information gathered, DOL identified certain concerns both in individual producers and across the textile and apparel sector. These concerns were related to the following core labor standards: 1) freedom of association; 2) non-discrimination, in particular sexual harassment; and 3) forced labor, in particular certain mandatory overtime practices.⁷

Freedom of Association

Anti-union discrimination is inconsistent with the core labor standard of freedom of association. Anti-union discrimination includes suspension, dismissal and other retaliation for engaging in protected association activity, such as worker organizing and legitimate strike activity, or for union membership. Employers bear the burden of remedying these violations promptly when they occur, as well as providing sufficient information to counter any allegations of anti-union discrimination, particularly in the case of union leaders.

Sex Discrimination, in Particular Sexual Harassment

Sexual harassment is a form of prohibited activity inconsistent with the core labor standard of non-discrimination. It includes any unwanted sexual advances, solicitations, looks, gestures or unnecessary physical contact, when acceptance of such conduct is perceived as a requirement for hiring, job security or better treatment or for avoiding reprisals or retaliation. Conduct also constitutes sexual harassment when it creates a hostile work environment, such as by humiliating or intimidating the victims or affecting their ability to do their jobs.

Forced Labor, in Particular Certain Mandatory Overtime Practices

Mandatory overtime is inconsistent with the core labor standard of forced labor when it is exacted under the menace of any penalty and is involuntary. Evidence of such inconsistency could include workers being required under threat to perform more than the legal limit of overtime,⁸ and being so vulnerable that they, in practice, are not in a position to refuse. The menace of any penalty could include credible threats of dismissal or suspension; the use of guards or locked gates to prevent workers from leaving the workplace could provide evidence of involuntariness.

Individual Producer Eligibility

Throughout the process, DOL carefully analyzed the evidence gathered and the record of each producer in accordance with the statutory requirements for determining non-compliance. In late December 2011, the Secretary of Labor, in consultation with USTR, determined that, considering the totality of the circumstances, there was sufficient credible evidence to conclude that three

⁷ Mandatory overtime practices of concern, and that are considered inconsistent with the core labor standard of forced labor, are those in which the work or service is exacted under menace of penalty and is involuntary.

⁸ According to Haitian law, overtime is only permitted with specific MAST approval, and, in industrial establishments, must not exceed 80 hours per trimester. Haitian Labor Code, Article 98.

specific producers were non-compliant with one or more of the core labor standards described above. This section includes a description of these specific findings of non-compliance, the compliance assistance offered and provided, steps taken by the producers to remediate, and the current status of each of the three producers' efforts to come into compliance.

Sewing International, S.A.

Sewing International, S.A. (SISA) was identified as non-compliant with the core labor standards of non-discrimination, in particular sexual harassment; freedom of association; and forced labor, in particular certain mandatory overtime practices.

On the issue of freedom of association, DOL's investigation found that in response to a May 2011 work slowdown and stoppage and subsequent lock-out at its factory, SISA targeted and dismissed the 146 workers most actively engaged in organizing the slowdown and stoppage, all of whom were participating in nascent association efforts at the factory.⁹ SISA placed the fired workers on a "blacklist," which it circulated to multiple factories in order to impede or prevent the workers' future hiring at other factories. Blacklisting and targeting for dismissal those workers most actively engaged as leaders and organizers of protected association activity are not consistent with the core labor standard of freedom of association. SISA claims that some of the workers were also dismissed for committing violent or destructive acts during the lockout. Such dismissals could have been justified on these grounds; however, SISA has not provided DOL with any evidence of such behavior. In its two most recent public assessment reports of October 2011 and April 2012, BWH found SISA non-compliant with respect to the core labor standard of freedom of association as it related, in particular, to SISA's response to the May 2011 strike-related activity.

On the issue of discrimination, DOL's investigation revealed that certain SISA supervisors regularly solicited workers for sex and subjected workers to negative consequences if they refused, including less favorable treatment, transfer to less productive modules, and termination. Further, SISA employees were subjected to unwelcome physical contact of a sexual nature that created a hostile work environment.

On the issue of forced labor, DOL's investigation of SISA found the following practices that, when taken together, are inconsistent with the core labor standard of forced labor: requiring workers to work overtime in excess of the legal limit; threatening them with dismissal or suspension if they refused to do so; physically preventing workers from freely leaving the facility, including by posting armed guards at the exit, locking gates so that workers could not leave without the assistance of guards, and frequently denying exit passes required for leaving the facility; and additional practices that evidence worker vulnerability, such as sexual harassment and payment at less than the legal minimum wage, suggesting extensive employer control and worker inability, in practice, to decline the unlawful overtime.

⁹ Though MAST declared the spring 2011 strike-related activity unlawful under Haitian law, under the higher bar of international core labor standards, it was protected association activity. BWH also found in its two most recent public assessment reports that the referenced strike-related activity had been declared illegal by MAST on grounds that were "not consistent with international labor standards." Inconsistencies between Haitian law and international core labor standards have been the source of much confusion among both GOH officials and producers.

Compliance Assistance Provided to the Producer

DOL and other USG officials, including from the National Labor Relations Board (NLRB) met with the ownership and management of SISA during four separate visits to Haiti between late January and mid-May 2012, communicating the findings of non-compliance and indicating a desire to assist in remediation efforts. During each visit, DOL offered to provide technical assistance and shared contact information for DOL experts on each of the areas of identified non-compliance. The producer also received tailored training sessions and remediation assistance on all three core labor standards for which non-compliance was identified. USG officials have outlined for and discussed with SISA the specific steps necessary for full remediation and have provided detailed remediation work plans, outlining specific actions, policies, and procedures that, if implemented, would achieve compliance with those standards. DOL and SISA also held several phone calls and email exchanges to follow up on the training provided and SISA's compliance efforts.

Steps Taken by the Producer to Remediate

As of June 2012, SISA has developed and implemented a new, more robust policy against sexual harassment and abuse; established a new sexual harassment committee to conduct impartial and confidential investigations and document cases; adopted an action plan to prevent sexual harassment; and trained employees, at all levels, on the new sexual harassment policy and procedures, including examples of sexual harassment, complaint procedures, and the factory's new policy of zero tolerance. SISA has also taken some steps to address mandatory overtime, including developing a new policy against forced labor, training security personnel on the policy, and collecting signed statements from those security personnel that they will not use violence to prevent workers from exiting the facility. SISA has also implemented a new, reduced work schedule, although based on legal advice provided by MAST, it appears that the current schedule continues to exceed the overtime limits in Haitian law. DOL has recommended to SISA that it seek an opinion from MAST on the legality of the new schedule, but SISA has not done so to date.

SISA has expressed interest in exploring ways to address non-compliance with the core labor standard of freedom of association and SISA's ownership sent an email on May 30, 2012, to the President of the HOPE Commission and the Labor Ombudswoman to confirm the factory's "intention to collaborate with the Office of the Ombudswoman as a mediator between SISA and the dismissed employees in finding ways to rehire them." However, to date none of the 146 above-referenced workers have been offered reinstatement and SISA has taken no other concrete actions to remediate the non-compliance.

Inter-American Wovens, S.A.

Inter-American Wovens, S.A. (IW) was identified as non-compliant with the core labor standards of freedom of association and forced labor, in particular certain mandatory overtime practices.

On the issue of freedom of association, DOL concluded that IW targeted for dismissal, workers who had begun organizing a group to discuss and address their terms and conditions of employment and had collectively expressed concerns about terms and conditions to management. Targeting for dismissal workers engaged in such protected association activity is not consistent with the core labor standard of freedom of association.

On Friday, October 14, the group of IW workers complained to management about a number of terms and conditions of their employment, including wages and unlawful overtime, in particular being required to work on Saturdays, often without receiving pay. The group failed to report to work on Saturday, October 15, and on October 18, IW suspended over 100 workers, apparently including all those who had participated in the group complaint. IW justified the suspensions on the grounds of a lack of raw materials and told the suspended workers to return to the factory on November 21, 2011, for possible reinstatement. Fifty-four of the workers who had complained to management and had been suspended, accompanied by union representatives, filed complaints with MAST for wrongful suspension. They also joined with other workers to establish a Committee of Victims of IW. On November 21, IW terminated them. According to several of the terminated workers, management told them they were fired for supporting a union. Management denies this allegation, and throughout the investigation provided a number of different explanations for the dismissals, including that these workers were terminated due to their inefficiency, turnover in management, reduction in orders, and a lack of raw materials. IW has failed to credibly justify the dismissals on such grounds.¹⁰

On the issue of forced labor, DOL's investigation of IW found the following practices that, taken together, are inconsistent with the core labor standard of forced labor: requiring workers to work overtime in excess of the legal limit; threatening them with suspension or dismissal if they refused to work unlawful overtime, and in the above-described case, in fact suspending them on October 18 for such refusal; and additional practices that evidence worker vulnerability, such as limiting workers' ability to get up from their machines for water or restroom breaks, suggesting extensive employer control and worker inability, in practice, to decline the unlawful overtime.

Compliance Assistance Provided to the Producer

DOL and other USG officials (including from the NLRB) met with the ownership and management of IW during four separate visits to Haiti between late January and mid-May 2012. During the February and March 2012 visits, the producer received tailored training sessions and compliance assistance on forced labor and freedom of association. At each visit, DOL offered to provide additional technical assistance and provided IW with contact information for DOL experts on each of the areas of non-compliance. DOL and IW held multiple phone calls and frequently exchanged emails to follow up on the training provided and IW's efforts to comply with the core labor standards.

¹⁰ BWH's October 2011 report was published prior to the events detailed above and thus did not take them into account. Due to a recent merger between IW and Inter-American Knits, BWH did not assess this factory for its most recent report published in April 2012, which would have covered the period of non-compliance discussed here. As a result, BWH has not addressed the above-described events in its reporting.

Steps Taken by the Producer to Remediate

IW has taken steps to come into compliance with the core labor standards of freedom of association and forced labor. In March 2012, IW committed to offer reinstatement, by the end of May 2012, to 25 of the 54 workers who were wrongfully dismissed on November 21, 2011, and to recall and consider for reinstatement the remaining workers if the company experiences more growth and as opportunities arise. In addition, IW has begun to engage in dialogue with the dismissed workers' legal representative and reports that it has added language to its internal regulations that expressly recognizes the right to freedom of association.

The firm acknowledged that, considering current production levels, it is behind in rehiring but asserts that it is committed to following through with the promised reinstatements. Workers have expressed confusion, however, about who is being recalled for reinstatement and have requested additional information from IW. To date, IW has not responded to these requests and has also further delayed reinstatements by failing to utilize various easily accessible means for providing workers re-employment related information, such as by contacting the workers indirectly by phone or by letter through the executive members of the worker committee and/or their chosen legal representatives; posting a list on the factory gate that encourages those workers who are identified to contact management if they are interested in becoming reemployed; or involving the President of the HOPE Commission and/or the Labor Ombudsperson in their efforts in reaching out to those workers. Some current IW workers have also reported that supervisors, in some cases, continue to express anti-union sentiments, cautioning workers against engaging in union activity.

On the issue of forced labor, IW has instituted a new regular work schedule for at least some of the workers in the factory. However, based on legal advice provided by MAST, it appears that the current schedule continues to exceed the overtime limits in Haitian law. DOL has suggested to IW that it seek an opinion from MAST on the legality of the new schedule, but IW has not done so to date.

One World Apparel, S.A.

One World Apparel, S.A. (OWA) was identified as non-compliant with the core labor standard of freedom of association.

During the week of September 23, 2011, six of the seven executive committee members of SOTA, the new trade union of textile and apparel workers, were fired in three different factories in Port-au-Prince. One of the SOTA representatives was an experienced employee in good standing at OWA with more than two years of service at the factory. In a series of follow-up meetings, Haitian apparel workers' unions and the employers negotiated reinstatement of five of the six dismissed union leaders.¹¹ The committee member from OWA is the only one of the six

¹¹ While the other two factories involved in the dismissal of the SOTA executive committee members were part of DOL's fact-finding investigation in November 2011, they moved quickly to reinstate the other five affected workers prior to the Secretary of Labor's identification of non-compliant producers in December 2011. As a result, those two factories were not identified by the Secretary of Labor as non-compliant with the core labor standard of freedom of association.

who was not reinstated by his employer prior to the Secretary of Labor's identification of non-compliant producers. DOL's investigation concluded that OWA fired a union representative without adequate justification for the dismissal and denied entry to union officers who arrived to carry out their representation functions on behalf of their member in the factory.

In its two most recent public assessment reports of October 2011 and April 2012, BWH found OWA non-compliant with respect to the core labor standard of freedom of association. The BWH report found that, considering the circumstances surrounding the termination of the union representative and based on the information collected, the employer did not provide sufficient information to counter the allegation of anti-union discrimination in the firing. BWH also found OWA non-compliant for impeding union operations, noting that union officials were denied access to the factory on September 26, 2011, when they presented themselves at the factory gates in an effort to support their fellow union executive committee member who was in the process of being terminated.

Compliance Assistance Provided to the Producer

DOL and other USG officials (including from the NLRB) met with the ownership and management of OWA during four separate visits to Haiti between late January and mid-May 2012, each time expressing the desire to assist the producer in coming into compliance with the core labor standard of freedom of association. During the March visit, the producer received a tailored training session and compliance assistance on freedom of association. Following each of the compliance assistance visits there were regular phone calls and frequent exchanges of correspondence and documentation between DOL and the producer to follow up on the training and discuss a plan for remediation. USG officials outlined for OWA the steps necessary for full remediation and informed OWA that it would need to reinstate the dismissed union representative to the same or a substantially similar position to come into compliance with the core labor standard of freedom of association.

Steps Taken by the Producer to Remediate

As a result of a mediation process between the terminated union representative and OWA, facilitated by the President of the HOPE Commission and the Labor Ombudswoman, the parties reached a mutually-acceptable plan for reinstatement on May 31, 2012, and the worker was reinstated on June 5, 2012. Reinstatement was conditioned by both the employer and the former worker. The employer required that the terminated union representative signing an apology statement for conduct that OWA has asserted led to his dismissal, offering a verbal apology to management for such conduct, and taking trainings on internal factory procedures and effective communication. The dismissed worker required that the employer provide education on freedom of association to employees at all levels. In addition, in May, in response to a direct invitation from OWA management, trade union representatives from the HOPE Commission conducted training at OWA on freedom of association for the management, including line supervisors. DOL is also not aware of further reports of worker representatives being denied entry to the factory.

Sector-Wide Concerns

Based on the information gathered, DOL also found certain patterns across the textile and apparel sectors relating to the core labor standards of non-discrimination, particularly sexual harassment; freedom of association; and forced labor, particularly certain mandatory overtime practices. These patterns put additional producers at significant risk of future non-compliance, though with respect to each producer at issue, there was insufficient evidence to conclude, at this time, considering the totality of the circumstances, that a core labor standard had been violated.

Discrimination, in Particular Sexual Harassment

Numerous workers from over half of the HOPE II-eligible factories reported instances of supervisors soliciting workers for sex and subjecting them to unwelcome sexual comments and touching; workers who refuse such advances may be fired, transferred to less productive modules, or subjected to less favorable treatment and other reprisal by their supervisors. Workers also reported that in many instances they are required to provide sexual favors as a condition for being hired.

Freedom of Association

Numerous workers from over half of the HOPE II-eligible factories reported acts of suspension, termination and other retaliation by employers on the grounds of legitimate trade union activities, membership, collective action and other associational activity. In some cases, these violations were remedied, in whole or in part, by the employers subsequent to the DOL investigation, including by reinstatement of the affected workers.

Forced Labor, in Particular Certain Mandatory Overtime Practices

Numerous workers from over a quarter of the HOPE II-eligible factories reported working overtime that exceeds the legal limit, usually necessary to earn a bonus for reaching a team-based production quota; often receiving no payment for the overtime hours worked if they fell short of the production quota; and being threatened with penalties if they failed to work the mandatory overtime, such as suspension, dismissal, or other practices indicative of worker vulnerability. These workers, if paid at all for the overtime, were rarely paid according to established standards for overtime.

Technical Assistance Provided by the USG

The high-level delegation that visited Haiti in January 2012 raised these concerns with industry and worker representatives and officials from the GOH and offered technical assistance to all parties in order to facilitate compliance with core labor standards and help prevent additional producers from falling into future non-compliance. DOL and other experts from the Department of Commerce, NLRB and the Federal Mediation and Conciliation Service carried out a variety of trainings from February through May 2012 for government officials, worker representatives, industry groups, prospective buyers and importers, and individual producers. DOL will continue to provide and coordinate technical assistance, offer compliance assistance to all relevant parties and systematically monitor compliance and investigate allegations.