

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008

2017 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. To be eligible for preferential treatment under HOPE II, Haiti must first have (i) implemented the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (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. On October 16, 2009, the President certified to Congress that Haiti had taken these actions. Further, 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 On June 29, 2015, the President signed the Trade Preferences Extension Act of 2015, which included the extension of Haiti's preferential tariff treatment until September 30, 2025.

HOPE II calls for the President to transmit an annual report to Congress by June 18, regarding the establishment and operation of the Labor Ombudsperson's Office and implementation of the TAICNAR program. The President has delegated the production and transmittal of this report to the United States Trade Representative (USTR). This report is to include an explanation of the efforts of the Government 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 the operator of the TAICNAR program, during the preceding one-year period; and, on a biennial basis, a list of 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:

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(d)(1)(A)(vi). 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).

- 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;
- issue public reports on compliance with such 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 factory-level compliance assessment and assistance, as well as the public reporting requirements of the TAICNAR program are being implemented through the ILO and the International Finance Corporation’s Better Work program, which promotes improved labor standards in global supply chains. The Better Work Haiti program (BWH) has received a total of \$10.4 million from the U.S. Department of Labor (DOL) for fiscal years 2008 through 2016, which will support project activities through 2017. DOL is in the process of adding additional funds to the program, which will cover activities through December 2018. Technical assistance to the Government of Haiti, with a focus on improving labor inspection and other aspects of labor law enforcement, is being provided through a DOL-funded ILO project. Since the project launch in early 2014, DOL has provided \$2.4 million, supporting project activities through the end of 2017.

Labor Ombudsperson: HOPE II called for Haiti to establish the Office of the Labor Ombudsperson within the national government to: (i) develop and maintain a registry of producers whose articles are 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 HOPE II. 19 U.S.C. § 2703a(e)(2). In addition, the Ombudsperson is required to coordinate, with the assistance of the ILO, a tripartite committee, described below, 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 a producer to remain eligible for preferential treatment, it 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 the USTR, is responsible for identifying any producer not in compliance with the core labor standards and related national law and providing assistance to such producer to come into compliance. If such efforts to assist fail, the President is required to withdraw, suspend or limit that producer’s benefits. 19 U.S.C. § 2703a(e)(4)(B)(ii). In the previous two-year period ending in December 2015, DOL and USTR did not identify any producers in Haiti as non-compliant at the end of the review cycle. Any identifications of producer non-compliance for the current cycle will be made in December 2017 and details on any such findings will be detailed in the 2018 USTR Annual Report.

Efforts by the Government of Haiti

The Government of Haiti continues to engage with the ILO and with the U.S. Government in all phases of the TAICNAR program. The Office of the Ombudsperson and the Ministry of Labor and Social Affairs (*Ministère des Affaires Sociales et du Travail*, MAST) remain the key institutions representing the Government of Haiti in its efforts to effectively implement HOPE II. The Office of the Labor Ombudsperson has benefited from the continued leadership of Josseline Colimon Féthière, who has served as the Labor Ombudsperson for the apparel sector since 2012. Concerns raised in the 2016 USTR Report regarding the failure of Haiti's provisional government to pay the salaries of the Ombudsperson and her staff have, for the most part, been resolved with the installation of the new Haitian administration in early 2017. There have been occasional delays in the payment of staff salaries, which the Government of Haiti should seek to resolve. Additionally, with the anticipated growth of the sector, in particular in areas outside of metropolitan Port-au-Prince, it will be necessary to evaluate whether current resources are sufficient to effectively serve the needs of the sector.

As in previous years, the Ombudsperson and her staff have remained active in the sector. Her office works closely with BWH, DOL, and MAST to address disputes in the sector and in the past year she has intervened in disputes involving nearly half of Haiti's apparel factories, convening approximately 60 mediation sessions with the disputing parties. These cases have covered a range of issues, including individual wage disputes, general conditions of work, inter-union disputes, and allegations of unlawful dismissals or suspensions of trade unionists.

As contemplated by HOPE II, the Ombudsperson also coordinates, with the assistance of the ILO, a tripartite committee comprised of three representatives each from the Government of Haiti as well as from sectoral employer and worker organizations. This Project Advisory Committee (PAC) meets on a quarterly basis and is designed to assist BWH in a consultative role, ensuring that relevant national partners are fully implicated in the BWH program and promoting coordination of the project with other initiatives in the sector. Lastly, the Office of the Ombudsperson is assisted by other entities of the Government of Haiti in implementing the requirement for it to maintain a registry of eligible producers. In particular, the Office works with the Tripartite Commission for the Implementation of HOPE II (known as the HOPE Commission or by its French acronym, CTMO-HOPE) and the Ministry of Commerce and Industry (MCI) to process and track electronic visas for shipments of HOPE II-eligible products and to examine other key issues such as transshipment of goods. During the year, several HOPE visas were issued to factories that had not been properly registered with the Office of the Ombudsperson (a process that requires registration with the TAICNAR program implemented by BWH). The Ombudsperson, BWH, and DOL have raised this issue with those responsible for the issuance of the visas in an effort to put in place appropriate protections against recurrence. U.S. government agencies continue to monitor the issue for resolution.

The key national authority mandated to enforce labor law in Haiti's formal sector, MAST, continues to face significant resource constraints. However, with the support of the ILO program discussed below, MAST labor inspectors have continued their work within the apparel sector, conducting 22 unannounced visits in the past year, meeting the targets established in the annual inspection plan formulated in May 2016. MAST has also completed its revision of inspection

tools, such as compliance checklists and report templates, and contributed to the finalization of the ILO-led efforts to draft a comprehensive labor law guide. A new Minister of MAST was installed in March 2017.

In May 2016, the Government of Haiti raised the minimum wage for workers engaged in export industries, including the apparel sector. Following the recommendation of the Superior Wage Council (*Conseil Supérieur des Salaires*, CSS), the tripartite body tasked with reviewing wage rates on an annual basis, the daily minimum wage rose from 240 to 300 gourdes per day and the piece-rate wage went from 320 to 350 gourdes per day. When HOPE II was passed in 2008, the national daily minimum wage in Haiti was 70 gourdes per day. With the passage of a new minimum wage law in 2009 and subsequent increases recommended by the CSS, the minimum wage for export industries, including the apparel sector, has risen over time to 125 gourdes in 2009, 150 gourdes in 2010, 200 gourdes in 2012, 225 gourdes in 2014, 240 gourdes in 2015, and finally to 300 gourdes in 2016.³ However, to date, the CSS has failed to conduct its 2017 review and issue recommendations regarding minimum wage setting. This lapse in the annual review, combined with fluctuations in the value of the gourde and an increase in fuel prices in May 2017 have contributed to significant tension in the sector. In May 2017, there were protests in the apparel sector as demonstrators took to the streets to demand a raise to 800 gourdes per day and to advocate for improved social services. At the time of drafting this report, the Government of Haiti was still in the process of trying to conduct the review and issue the annual minimum wage recommendations.

Efforts by the ILO

Capacity Building and Program Support

Through two DOL-funded programs in Haiti, the ILO continues to provide a wide range of support to Haitian stakeholders within the context of implementing HOPE II. Better Work Haiti (BWH) has continued to perform factory assessments, provide compliance advisory services, and issue the biannual reports required under HOPE II. The ILO also continues to implement a program to improve the labor inspection capacity of MAST. Since the launch of this project in 2014, the ILO has assisted MAST through a comprehensive training strategy supporting a specialized inspection task force for the apparel sector as well as by providing training sessions to staff in the conciliation services at MAST. As previously reported, the ILO has continued to provide on-the-job training by having MAST labor inspectors shadow BWH Enterprise Advisors in conducting advisory visits in the apparel sector, including in regions outside of Port-au-Prince. These joint visits continue to provide MAST inspectors with opportunities to improve technical skills. In 2016, the ILO's MAST project finalized plans to support the national labor law call center, which will answer labor law related inquiries from the public. However, the call center is not fully operational in terms of covering the sector due to ongoing technical issues, which the ILO will continue to address in collaboration with MAST.

³ Increases in the minimum wage during the HOPE II period, between 2009 and 2016, reflect a 43 percent increase in the value of the minimum wage rate adjusted for inflation.

Through BWH, the ILO continues its work to improve industrial relations in Haiti's apparel sector, which has approximately 40 trade union committees (affiliated with eight confederations) present in the 25 factories registered with the program. Through its Industrial Relations Officer, BWH continues to liaise with national partners to strengthen social dialogue and promote greater compliance with freedom of association issues, which remain a key challenge in the industry. BWH continues to work to increase the presence and effectiveness of labor-management committees called Performance Improvement Consultative Committees (PICCs) at the factories. The PICCs provide a mechanism to promote social dialogue at the factory level, supporting improvement priorities outlined in BWH remediation plans. To date, BWH has worked with employers and workers to establish PICCs at twenty factories.

Compliance Assessment

HOPE II requires the TAICNAR program to assess producers' compliance with core labor standards and the labor laws of Haiti related directly to those standards and to ensure acceptable conditions of work with respect to minimum wages, hours of work, and occupational health and safety. BWH continues to implement this aspect of the TAICNAR program, reporting on non-compliance findings and remediation efforts on a biannual basis (on April 16 and October 16 of each year) as required by HOPE II.

BWH assesses factory compliance using a compliance assessment tool comprised of indicators for four categories based on international core labor standards and four categories based on national law. The international standards include: freedom of association and the right to 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 national labor law issues 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, BWH assesses whether there is compliance with the latter. Following BWH's factory assessment, a detailed report is shared with each factory before the biannual synthesis report is published.

The findings from each factory's annual assessment are reported in one of the two synthesis reports issued by BWH each year. The other report will include information gathered through regular engagement and follow up contacts with the producer, especially with regards to remediation efforts by the factory undertaken in response to prior non-compliance findings. This newly-extended cycle provides factories with additional opportunities to work with the BWH Enterprise Advisors on long-term solutions for weak management systems, which are usually at the root cause of recurrent non-compliance issues.

Remediation

BWH Enterprise Advisors work with individual factories to advise and assist in prioritizing specific improvements when instances of non-compliance have been identified. Key advisory services provided in the past year focused on occupational safety and health issues, which continue to be the subject of the highest number of non-compliance findings. According to

BWH, non-compliance rates remain high in this category because factories do not have effective management systems in place to ensure continuous monitoring, verification, and follow-up.

In addition to factory assessments and advisory work, the ILO (through BWH and the MAST capacity-building project) provided a wide range of services for stakeholders in the apparel sector, including:

- Working with MAST and sectoral stakeholders on the resumption of a tripartite process to revise the Labor Code (which dates back to 1961 with amendments in 1984 and 2003) to update it and ensure consistency with international standards;
- Working with MAST to draft a comprehensive guide to Haiti's existing Labor Code, which was completed in early 2017 and is available in French, Haitian Kreyol, English, Spanish, and Korean;
- Serving as a key interlocutor with the Government of Haiti, providing technical expertise and advice on improving government provision of key services, including health insurance programs and pension schemes to apparel sector workers;
- Initiating a collaboration with the national training institution, *École de la Magistrature*, to train judges on the application of international labor standards;
- Ongoing training programs on key issues for all stakeholders, such as occupational safety and health, grievance mechanisms, negotiation skills, and workers' rights and responsibilities;
- Training for factory managers and middle-management on supervisory skills, human resource management, and negotiation skills; and
- Hosting an annual buyers' and multi-stakeholders' forum in September 2016, allowing international brands sourcing from Haiti to discuss challenges and opportunities in the Haitian apparel sector with officials from the Haitian and U.S. Governments, and representatives of employers and workers in Haiti.

Biannual Report under the TAICNAR program

HOPE II requires the ILO TAICNAR program 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 to acceptable conditions of work. The report also includes the names of 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 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 deficiencies and the report's publication. The ILO publishes its biannual reports in October and April of each year, as specified by HOPE II. 19 U.S.C. § 2703a(e)(3)(D). The U.S. Government must consider these reports in identifying non-compliant producers under HOPE II. 19 U.S.C. § 2703a(e)(4)(B)(iv).

The ILO's thirteenth report was published on October 18, 2016, and is available at: <http://betterwork.org/haiti/?p=2009>. The document is based on assessments conducted between March and August 2016 in 14 of the 26 factories in operation during the assessment period. The ILO report shows one new finding of non-compliance with regard to core labor standards. This

case related to the dismissal of a trade unionist. There continued to be relatively high rates of non-compliance with certain aspects of national labor law, with occupational safety and health issues continuing to represent the highest percentage of non-compliance findings.

The ILO's fourteenth synthesis report was released on April 16, 2017, and is available at: <http://betterwork.org/haiti/?p=2261>. The document is based on assessments conducted between August 2016 and April 2017 in 11 of the 25 participating factories.⁴ With the new service-delivery model that includes only one formal assessment per year, it must be noted that the synthesis report now captures findings from two cycles, as non-compliance points are not removed from the report until remediation has been verified during the next assessment. As a result, the findings from the thirteenth synthesis report are still found in the factory tables along with new findings. The fourteenth synthesis report indicated that there continued to be no findings of non-compliance with child labor and forced labor standards. However, there were two cases of non-compliance in the discrimination category based on findings of sexual harassment. There was also one new finding of non-compliance related to collective bargaining as BWH determined that factory management was not providing lunch to workers on Sunday as required in a recent collective bargaining agreement.

In its most recent reports, BWH has expressed its concern at the persistent non-compliance found in certain categories of its assessments. The challenge of promoting sustainable solutions to these recurring compliance problems is not unique to Haiti. The Better Work Global program has country programs in seven countries, including Haiti, Bangladesh, Cambodia, Indonesia, Vietnam, Jordan, and Nicaragua. It is hoped that the recently-increased emphasis on management systems within the factories, in conjunction with increased collaboration with national labor ministries will contribute to improved compliance with national labor laws.

In terms of wages in the sector, BWH continued to assess minimum wage compliance based on the reference wage of 300 gourdes (US \$4.49) per day. Based upon clarification from the Government of Haiti regarding its minimum wage law in late 2013, BWH has not considered payment of piece-rate wage targets as a legal minimum wage. However, since its Eighth Synthesis report (issued in April 2014), BWH has continued to provide information on the percentage of workers earning an average of the prevailing piece-rate wage or more per day. In the past year, the percentage of workers earning the piece-rate target of 350 gourdes (US \$5.24) per day was recorded as 50 percent in October 2016 (up from 40 percent in the previous report) and increased to 58 percent in April 2017.

Efforts by the Administration

The U.S. Government has continued to work closely with the Government of Haiti 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.

⁴ The total number of participating factories is subject to change for each BWH reporting cycle as new factories are established and others close down operations. Since the release of the previous Annual Report in June 2016, overall employment in the sector has remained relatively steady at approximately 40,000 workers.

The U.S. Government continues to provide technical assistance to support implementation of the labor provisions of HOPE II. As noted above, since fiscal year 2008, DOL has contributed \$10.4 million to the BWH program, which will support the TAICNAR program through the end of 2017 and is seeking to provide funding for program activities through 2018. In addition, DOL provided \$2.4 million to the ILO for the MAST capacity-building component, which is scheduled to operate through 2017. In terms of the assistance to worker organizations required of the TAICNAR program under HOPE II, the ILO and the Office of the Ombudsperson have continued to engage directly with worker organizations in Haiti to ensure ongoing support for unions in their efforts to represent the interests of apparel sector workers in Haiti.

DOL staff made three monitoring and assistance visits to Haiti in the reporting period, conducting follow up reviews of any BWH non-compliance findings with regard to core labor standards. In addition, these visits have provided an opportunity for DOL to engage with the Government of Haiti, project partners, and sectoral stakeholders to promote continued compliance with the country- and producer-level eligibility requirements of HOPE II.

In partnership with the Government of Haiti and the Inter-American Development Bank, the U.S. Government continues to provide significant support to the Caracol Industrial Park (CIP), a mixed-use light manufacturing facility in the northern commune of Caracol. Established in 2012, the CIP now employs over 11,000 workers – the majority of whom are women and in the apparel sector. Additional support to the apparel sector is also being provided through the Local Enterprise and Value Chain Enhancement (LEVE) project, funded by the U.S. Agency for International Development (USAID). In its efforts to promote new investment and increase employment in the sector, LEVE is supporting activities such as training of production line workers, mechanics, and supervisors as well as developing service centers in national industrial parks.

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

Summary of Relevant HOPE II Provisions

HOPE II requires the President to identify on a biennial basis “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). The statute further provides 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). 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).

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.⁵ As such, these eight core ILO conventions are part of Haitian law.

Identifications of Non-compliant Producers

In 2008, President George W. Bush delegated the function of identifying non-compliant producers to the Secretary of Labor, in consultation with the USTR.⁶ At the same time, he delegated to the Secretary of Labor the task of assisting non-compliant producers to come into compliance with HOPE II's labor requirements.⁷

For the current identification period under HOPE II, beginning in January 2016 and ending in December 2017, DOL continues to review all BWH public reports and has several more monitoring visits planned before the end of the identification period. As part of the process to identify non-compliant producers on a biennial basis, DOL consults with inter-agency partners in cases where there is sufficient credible evidence to make a preliminary finding of non-compliance during the course of the two-year review cycle under HOPE II. These preliminary findings, which allow DOL to immediately commence assistance efforts to remediate any non-compliance issues, are not made public unless the producer fails to fully remediate the issue prior to the end of the biennial period when the Secretary of Labor makes formal findings under HOPE II. In the current reporting period, DOL has not made any preliminary findings but is in the process of reviewing the cases of sexual harassment and collective bargaining identified in the BWH reports discussed above. In the event DOL and interagency partners make any preliminary findings of non-compliance, DOL will work closely with BWH, the Ombudsperson, and MAST, as appropriate, with the aim of remediating all preliminary findings prior to the end of 2017, at which point any producers with ongoing non-compliance issues would be publicly identified in the subsequent annual USTR report to Congress.

⁵ See 1987 Constitution of Haiti, Art. 276-2.

⁶ Presidential Proclamation 8296, September 30, 2008.

⁷ *Id.*