

**Haitian Hemispheric Opportunity
through Partnership Encouragement
Act of 2008**

**2020 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. Since 2008, the U.S. Department of Labor (DOL) has provided the Better Work Haiti program (BWH) a total of \$14.5 million to support project activities through 2020 and is in the process of allocating additional funds for 2021. DOL also provided \$2.4 million over three years for a separate ILO project providing technical assistance to the government of Haiti that focused on improving labor inspection and other aspects of labor law enforcement. Although this program ended in December 2017, BWH has continued the ILO’s efforts to support capacity building of the labor ministry in Haiti.

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, the Secretary of Labor, 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). With several periods of civil unrest, including widespread protests and deteriorating security conditions in Haiti preventing DOL from conducting a full review of potential cases at the conclusion of the two-year review period ending December 2019, the Secretary of Labor and the USTR did not identify any producers in Haiti as non-compliant.

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. However, Haiti again experienced several periods of civil unrest during the reporting period that hindered Haitian government efforts. In the second half of 2019, there were widespread anti-government protests, fuel shortages, and political gridlock that disrupted the functioning of government agencies, businesses, and schools, particularly in and around Port-au-Prince. Despite these challenges, including several weeks of apparel factory closures, Haiti's apparel industry exports (which represent nearly 90 percent of total exports from Haiti) increased from \$916 million in 2018 to \$1.01 billion in 2019.

Although the security situation improved somewhat in early 2020, the COVID-19 pandemic led the government of Haiti to declare a state of emergency as of March 19, 2020, which included ordering the closure of all apparel factories. Several factories reopened in April and May, initially focusing on the production of masks and other personal protective equipment to meet needs within Haiti. The government of Haiti issued a communique on May 5 to establish criteria for factories to receive authorization for the export of masks. It remains to be seen what the longer term impacts of COVID-19 will be on the sector, which has seen a decline in orders, prompting layoffs in several factories.

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.

As in previous years, the Ombudsperson and her staff have remained active in the sector. Her office works closely with BWH and MAST to address disputes in the sector. In the past year, she has successfully intervened to mediate disputes in numerous cases covering a range of issues, including non-payment of maternity benefits, failure to pay healthcare and pension benefits, and allegations of unlawful dismissals or suspensions of trade unionists (most often in the aftermath of strikes or other work stoppages).

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) is designed to assist BWH in a consultative role, ensuring that relevant national partners are fully involved in the BWH program and promoting coordination of the project with other initiatives in the sector. In 2019, BWH and the Ombudsperson worked with the national stakeholders to reconstitute the PAC and resume regular meetings, when conditions allowed.

The Office of the Ombudsperson is assisted by other entities of the government of Haiti in implementing the requirement 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.

The key national authority mandated to enforce labor law in Haiti's formal sector, MAST, was limited in its operations due to the combination of civil unrest, factory closures, and impacts of COVID-19 throughout this reporting period. MAST officials have continued to collaborate with the Ombudsperson and BWH in joint efforts to assess and remediate potential violations of labor standards. On February 4, 2020, MAST and the Office of the Ombudsperson signed a joint protocol to clarify the respective roles of both institutions and to improve coordination in their efforts to improve working conditions and resolve industrial disputes.

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 government of Haiti increased the daily minimum wage from 420 to 500 gourdes (\$5.00) per day, effective November 1, 2019.³ Although there were no large protests connected to the minimum wage issue during the reporting period, several unions have voiced concerns that the increase in the minimum wage has not kept pace with inflation and the rising cost of living in Haiti.

Efforts by the ILO

Capacity Building and Program Support

The ILO continues to provide a wide range of support to Haitian stakeholders within the context of implementing HOPE II. During the reporting period, the ILO indicated that core services were impacted by civil unrest. BWH was able to conduct assessments of all of the apparel export factories in Haiti (including four newly registered producers), as well as 70 percent of planned advisory services and 80 percent of planned training services. BWH has been working to improve remote delivery of services, including virtual advisory services, training, and industry seminars.

Through BWH, the ILO continues its work to improve industrial relations in Haiti's apparel sector, which has approximately 40 enterprise-level unions (affiliated with eight confederations) present in nearly all of the factories registered with the program. BWH continues to liaise with national partners to strengthen social dialogue and to promote greater compliance with respect to freedom of association, which remains a key challenge in the industry. BWH has also increased its efforts to work with unions on their internal management programs, including dues collection, financial management, and strategic planning. BWH has continued to promote effective labor-management committees called Performance Improvement Consultative Committees (PICCs) within the factories. The PICCs provide a mechanism to promote social dialogue at the factory level, supporting improvement priorities outlined in BWH remediation plans.

³ Exchange rate as of effective date, November 1, 2019. 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, 300 gourdes in 2016, 350 gourdes in 2017, 420 gourdes in 2018, and 500 gourdes in 2019.

Compliance Assessment

HOPE II requires the TAICNAR program to assess producers' compliance with international 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 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.

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 regard to remediation efforts by the factory undertaken in response to prior non-compliance findings. This annual cycle provides factories with additional opportunities to work with the BWH Enterprise Advisors on long-term solutions for weak management systems, which are usually the root cause of recurrent non-compliance.

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 proper payment of social benefits (including social security and maternity insurance), occupational safety and health issues, including chemical storage, and emergency preparedness, which continue to be the subject of the highest number of non-compliance findings.

In addition to factory assessments and advisory work, the ILO provided a wide range of services for stakeholders in the apparel sector, including:

- Continuing work with MAST and sectoral stakeholders towards the completion of a tripartite process to revise the Labor Code (which dates back to 1961 with amendments in 1984 and 2003) in order to update it and ensure consistency with international standards;
- Responding to recurring strikes and industrial disputes by continuing to work closely with the Office of the Labor Ombudsperson, MAST, and representatives from employer and worker organizations to improve mechanisms for social dialogue;
- Providing ongoing training programs on key issues for all stakeholders, such as

occupational safety and health, supervisory skills, human resource management, grievance mechanisms, negotiation skills, risk management, labor law, and workers' rights and responsibilities;

- As part of its overall gender strategy, organizing a series of seminars and workshops addressing specific challenges facing women working in the apparel sector;
- Assisting MAST in developing Equipment Management Guidelines, which MAST will use to improve management of resources such as computer, laptops and other mobile equipment;
- Providing support to MAST's legal department on the preparation of reports on the ILO Conventions signed by Haiti;
- Supporting trade unions to collect data on sexual harassment cases more systematically;
- Supporting the employers association, ADIH, in conducting a needs assessment survey to obtain information on the impact of COVID-19 and developing guidelines for factory operations in the face of the pandemic; and
- Supporting social partners and the government in the development of an HIV policy for the entire apparel sector in Haiti. The policy, signed in December 2019, outlines practices to respect the rights of and avoid discrimination against HIV positive workers.

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 that 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 [nineteenth report](#) was published on October 31, 2019. The document is based on assessments and advisory visits conducted between October 2018 and September 2019 in 27 factories in operation during the assessment period.⁴ The ILO report contained five new findings of non-compliance with regard to core labor standards. One of these findings involved non-compliance with standards related to child labor. Although no children were found to be working in the factory cited, the producers lacked proper procedures to request and retain

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 USTR Annual Report in June 2019, employment figures in the sector have fluctuated due to political instability and impacts of COVID-19. Recent figures show that employment in the sector has decreased from a high of over 57,000 workers in July 2019 to nearly 37,000 workers in April 2020.

documentation verifying the ages of their employees. Two findings from this report involved non-compliance with discrimination standards. Specifically, the factories were cited for cases of workers being sexually harassed by supervisors. Two additional findings involved non-compliance with standards related to freedom of association, specifically the dismissals of trade union members.

The ILO's [twentieth synthesis report](#) was released on April 30, 2020. The document is based on assessments and advisory visits conducted between April 2019 and March 2020 in 29 participating factories. The twentieth synthesis report included two non-compliance findings related to discrimination standards, specifically cases of sexual harassment.

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. 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 \$14.5 million to the BWH program, and is in the process of allocating additional funding to support TAICNAR through 2021. In addition, DOL provided \$2.4 million to the ILO for the MAST capacity-building component, which concluded at the end of 2017.

As previously discussed, this reporting period has been marked by several periods of civil unrest and the COVID-19 pandemic, which have impacted efforts on the ground. DOL staff have not been able to make routine monitoring and assistance visits to Haiti during this reporting period. DOL has continued to consider the reports of BWH and has conducted remote follow up with the ILO on these cases.

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, the President 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

Throughout the two-year identification cycle under HOPE II, beginning in January 2018 and ending in December 2019, DOL continued to review all BWH public reports, as well as the more detailed reports that BWH provides to individual producers. BWH identified eleven cases of non-compliance with core labor standards during the review cycle. These included three cases related to child labor standards, which producers remediated by improving their record-keeping systems to ensure that proper age documents were included in employee files. No underage employees were found to be working in any of the factories. There were also three findings of non-compliance with discrimination standards, based on cases of sexual harassment of female workers. In the discrimination cases, BWH reported that the factories have taken some steps towards remediation, including sanctioning offenders and providing further training for staff. There were five cases of non-compliance with standards related to freedom of association, each involving dismissals of trade union members or leaders. These cases continue to be under dispute, with the unions requesting intervention from the Office of the Ombudsperson and MAST.

As noted above, DOL site visits were limited due to the operating environment in Haiti. While DOL has been able to confirm through the ILO that cases from 2018 were remediated, the inability to conduct on-site reviews through all of 2019 did not allow sufficient examination of these cases to determine whether they met the standards for a Secretary of Labor identification of non-compliance under HOPE II. DOL has continued to review these cases and, if applicable, will make findings, verify remediation steps already taken, and provide further assistance on an ongoing basis. Any preliminary findings resulting from these, or other ongoing cases, will be reported on in the next USTR Annual Report on the Implementation of the TAICNAR Program and Assessment of Producer Eligibility.

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

⁶ Presidential Proclamation 8296, September 30, 2008.

⁷ *Id.*