

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

**2019 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:

- 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

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).

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 \$13.3 million to support project activities through 2019, and DOL is in the process of allocating additional funds for 2020. 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, 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 2017, 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 2019, and details on any such findings will be included in the 2020 USTR Annual Report on the Implementation of the TAICNAR program.

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 experienced several periods of civil unrest during this reporting period that hindered efforts throughout the year. In 2018, there were widespread anti-government protests in July and November, and numerous smaller-scale

disturbances have occurred on a regular basis throughout the reporting period, disrupting the functions of government agencies, businesses, and schools, and impacting daily life, particularly in and around Port-au-Prince. Despite these challenges, Haiti's apparel industry continued to grow as new factories were established, employment numbers increased, and apparel exports (which represent nearly 90 percent of total exports from Haiti) increased from USD 858 million in 2017 to USD 916 million in 2018.

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; 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 non-payment of maternity benefits, failure to pay healthcare and pension benefits, sexual harassment, 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) 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. Notwithstanding disputes over the past year as to which unions would serve on the PAC, the sectoral unions completed the membership selection process as of February 2019, which should allow the PAC to continue playing its role as envisaged in HOPE II.

Lastly, 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. Tragically, in December 2018, the manager of the electronic visa system was murdered. Then, in April 2019, many MCI staff went on strike to protest the non-payment of salaries. The Ombudsperson was able to work with MCI officials to continue issuing visas in both instances. As of now, the responsibility of the electronic visa system was transferred to two employees at the Commerce Ministry's Foreign Trade Division, the unit responsible for transmitting visa documentation to the USCBP for each shipment of goods under HOPE/HELP. They will be in charge of handling the approximately 12,000 export visas issued each year.

The key national authority mandated to enforce labor law in Haiti's formal sector, MAST,

continues to face resource constraints and has experienced several leadership changes in the recent unstable political climate. However, with the support of the ILO, MAST labor inspectors have continued to carry out their inspection plan for the apparel sector, conducting several dozen unannounced visits in the reporting period. MAST inspectors and conciliators have also visited apparel factories in response to strikes or other workplace disputes. MAST officials have continued to collaborate with the Ombudsperson and BWH in joint efforts to assess and remediate potential violations of labor standards.

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 350 to 420 gourdes (USD 4.67) per day, effective October 1, 2018.³ Unlike previous years, there were no major sector-wide protests concerning minimum wage during the reporting period.

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. BWH has continued to perform factory assessments, provide compliance advisory services, and issue the biannual reports required under HOPE II. The ILO continues to work closely with MAST on numerous initiatives, including development of the annual inspection plan, creating a new website for MAST, and support for a national call center to answer labor law related inquiries from the public. As previously reported, the ILO continues to provide on-the-job training by working closely with MAST labor inspectors.

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 thirty-three factories registered with the program. BWH continues to liaise with national partners to strengthen social dialogue and to promote greater compliance with freedom of association issues, which remain key challenges 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. Lastly, BWH has increased 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-nine factories.

Compliance Assessment

³ 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, and 420 gourdes in 2018. However, despite this nominal increase, the real value of the minimum wage decreased between 2017 and 2018 due to the depreciation of the gourde.

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 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 international 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 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, including chemical storage and emergency preparedness, which continue to be the subject of the highest number of non-compliance findings. According to BWH, non-compliance rates continue to 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 provided a wide range of services for stakeholders in the apparel sector, including:

- Working 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;
- Serving as a key interlocutor with the Government of Haiti and providing technical expertise and advice on improving government provision of key services, including joint factory visits with relevant agencies to ensure compliance with health insurance programs and pension schemes for apparel sector workers;
- 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, and workers' rights and responsibilities;
- Organizing a series of seminars and workshops, addressing specific challenges facing women working in the apparel sector as part of its overall gender strategy;
- Launching the Better Work Academy in November 2018, convening stakeholder workshops in Caracol and Port-au-Prince to reflect on collaborative ways to shape the future of Haiti's apparel industry;
- Developing a series of radio spots covering relevant aspects of national labor law and international labor standards;
- Collaborating with social security institutions in order to increase the levels of enrollment as well as the quality of services provided with regard to pensions, accident insurance, and health programs; and
- Organizing a series of activities with the Office of the Secretary of State for the Integration of People with Disabilities to raise awareness and train stakeholders on the inclusion of people with disabilities in the workplace.

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 seventeenth report was published on October 31, 2018, and is available at: <https://betterwork.org/blog/portfolio/better-work-haiti-17th-biannual-synthesis-report-under-the-hope-ii-legislation/>. The document is based on assessments and advisory visits conducted between August 2017 and September 2018 in 28 factories in operation during the assessment period.⁴ The seventeenth ILO report contained three new findings of non-compliance with regard to core labor standards. Two of these findings involved non-compliance with standards related to child labor. Although no children were found to be working in the two factories cited, the producers lacked proper procedures to request and retain documentation verifying the ages of their employees. The third finding from this report involved non-compliance with discrimination standards. Specifically, the ILO report found that the factory violated its own sexual harassment policies by rehiring a known offender. Once identified by Better Work, the producer

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 2018, employment in the sector has increased from approximately 48,000 to nearly 57,000 workers.

immediately addressed the issue by dismissing the offender and has since worked with the ILO to improve policy safeguards and provide additional training to relevant staff.

The ILO's eighteenth synthesis report was released on April 30, 2019, and is available at: <https://betterwork.org/blog/portfolio/better-work-haiti-18th-biannual-synthesis-report-under-the-hope-ii-legislation/>. The document is based on assessments and advisory visits conducted between April 2018 and March 2019 in 25 participating factories. The eighteenth synthesis report included two non-compliance findings related to freedom of association. Both cases related to the termination of trade union officials following strike actions.

As in previous reports, BWH has expressed its concern with persistent non-compliance found in certain categories of its assessments. The highest rates of non-compliance with national labor law were in the areas of occupational safety and health, emergency preparedness, and proper payments of social security and other benefits.

In terms of wages in the sector, BWH continued to assess minimum wage compliance based on the legal wage applicable at the time of assessment. Effective October 1, 2018, the Government of Haiti raised the minimum wage from 350 to 420 gourdes (USD 4.67) per day for workers in the apparel export sector. All factories assessed by BWH were found to be in compliance with regard to payment of the legally required minimum wage during the reporting period.

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 \$13.3 million to the BWH program and is in the process of securing additional funding to support TAICNAR through 2020. In addition, DOL provided \$2.4 million to the ILO for the MAST capacity-building component, which concluded at the end of 2017.

As noted above, this reporting period has been marked by several periods of civil unrest, which have impacted efforts on the ground. Due to the unpredictable nature of these events, on February 14, 2019, the State Department ordered the departure of all non-essential personnel and their family members. DOL staff made routine monitoring and assistance visits to Haiti prior to the ordered departure but have been conducting follow up reviews of BWH non-compliance findings with regard to core labor standards remotely since February. DOL is planning additional monitoring activities before the end of the calendar year, in order to ensure that any potential cases of non-compliance are fully reviewed prior to the Secretary of Labor's December 31, 2019, deadline for any formal identifications under 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 14,000 workers – the majority of whom are women. Additional support to the apparel sector was also provided through the Local Enterprise and Value Chain Enhancement (LEVE) project, funded by the U.S. Agency for International Development (USAID). Prior to its end in May 2019, LEVE promoted new investment and increased employment in the sector, supporting activities such as training of production line workers, mechanics, and supervisors.

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 2018 and ending in December 2019, 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

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

⁶ Presidential Proclamation 8296, September 30, 2008.

⁷ *Id.*

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 non-compliance 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 2019, at which point any producers with ongoing non-compliance issues would be publicly identified in the subsequent annual USTR report to Congress on the implementation of the TAICNAR program.