

Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008

2015 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

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 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).

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 TAICNAR program in Haiti is 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 \$7.6 million from the U.S. Department of Labor (DOL) from fiscal years 2008 through 2013, which will support project activities through 2016. DOL also provided the International Labor Organization an additional \$1.4 million in fiscal year 2013 to help train Government of Haiti labor inspectors.

Labor Ombudsperson: HOPE II calls for the Labor Ombudsperson 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 seeking to provide 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). The most recent producer identification under HOPE II, discussed further below, was made in December 2013 and reflected in the 2014 report to Congress (see <https://ustr.gov/sites/default/files/06182014%20USTR%20Report%20Haiti%20HOPE%20II%202014.pdf>).

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. Officials from the Office of the Prime Minister and the Ministries of Commerce and Industry, Economy and Finance, and Labor and Social Affairs (Ministère des Affaires Sociales et du Travail, MAST) represent the Government of Haiti in the Tripartite Commission for the Implementation of the HOPE Act (known as the HOPE Commission or by its French acronym, CTMO-HOPE).

Some of the achievements and activities conducted under the auspices of the HOPE Commission in the past year included:

- establishing office space for the Commission and the Office of the Ombudsperson within the Metropolitan Industrial Park in Port-au-Prince, which will also serve as valuable training and meeting space for stakeholders in the sector;
- working with the Ministry of Commerce and Industry to improve processing of electronic visas for shipments of HOPE-eligible products; and
- coordinating workshops and educational programs with factory management and employees, including events with the U.S. Department of Commerce's Office of Textiles and Apparel and launching a major initiative with MAST to provide literacy training to factory workers.

The HOPE Commission also includes the Labor Ombudsperson, three representatives of employers' associations, and three representatives of labor unions. In previous reports to Congress, it was noted that the worker organizations on the HOPE Commission did not adequately represent the apparel sector. To improve tripartite engagement, other mechanisms have been established to ensure that representatives of workers and employers in the apparel sector have a forum for sharing their perspectives and engaging on critical labor relations issues. These mechanisms include the Social Dialogue Roundtable, which meets monthly and includes five union confederations as members, the Ombudsperson as an observer, and the restructured Project Advisory Committee (PAC) for BWH, which was officially formed in March 2015. The Ombudsperson also serves as the President of the PAC, which consists of three representatives each from the Government of Haiti as well as from sectoral employer and worker organizations. The 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.

The Government of Haiti continues to support the Office of the Ombudsperson, which is a critical institution in promoting labor standards compliance pursuant to the HOPE legislation. Josseline Colimon Féthière has served as the Labor Ombudsperson for the apparel sector since 2012, and after several years of handling these duties on her own, her staff now includes another mediator and an administrative assistant. Her office works closely with BWH and MAST to address disputes in the sector and in the past year, she has intervened in cases in over half of Haiti's apparel factories. She has also been instrumental in working with DOL to encourage remediation efforts in factories that have been identified as non-compliant under HOPE II. In addition to conducting formal mediation sessions after a complaint has been filed, the Ombudsperson conducts numerous activities to prevent disputes and promote improved labor-management relations. These activities include frequent meetings with stakeholders through the Social Dialogue Roundtable and other fora, factory visits with BWH, and consultations and training sessions with MAST to build the capacity of national mediation and conciliation services.

While Haiti's Ministry of Social Affairs and Labor continues to face significant resource constraints, its personnel have become more engaged in promoting labor rights in the apparel sector. In several cases, MAST labor inspectors have visited factories to review wage and

working hour issues and have assessed whether factories have properly paid social benefits, such as pensions and health insurance. In collaboration with the ILO, MAST has developed a comprehensive inspection plan for the sector, which is expected to be implemented in the next reporting period. In December 2014, MAST also launched a telephone hotline to provide free consultations. This service is not limited to workers and employers in the apparel sector. Early reports suggest that further training is needed for MAST staff that handles the calls, but plans are underway to strengthen this service, which could be a valuable tool in disseminating information on the Labor Code. MAST has been working closely with the ILO to produce a guide on the current labor laws and continues to oversee the process for review and revision of the Labor Code. However, there is no set date for conclusion of the Labor Code reform process, which has been complicated by the fact that Haiti's Parliament has lapsed and not functioned since January 2015 (legislative elections are expected to begin in August 2015).

In May 2015, 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 225 to 240 gourdes per day and the piece-rate wage went from 300 to 320 gourdes per day. When the HOPE II Act 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, 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, and finally to 240 gourdes in 2015.

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 requirements. Since 2009, Better Work Haiti (BWH) has continued to perform factory assessments, provide compliance advisory services, and issue the bi-annual reports required under HOPE II. In 2014, the ILO launched (with DOL fiscal year 2013 funding) an additional two-year \$1.4 million project aimed specifically at improving the labor inspection capacity of MAST. Since the launch of this new component, the ILO has assisted MAST by embarking on a comprehensive training strategy and establishing a specialized task force for inspection for the apparel sector. The ILO has conducted numerous training sessions to improve inspectors' skills in identifying non-compliance with regards to international labor standards and the Haitian Labor Code, with particular emphasis on occupational safety and health. The ILO has also held workshops addressing conflict resolution mechanisms and assisted in the design of an inspection plan for the apparel sector for 2015. Additionally, the ILO is planning to provide on-the-job training by having MAST labor inspectors shadow BWH Enterprise Advisors in conducting compliance assessment visits in the apparel sector.

The ILO also completed a review of MAST's human resource needs, including the elaboration of a comprehensive job profile for labor inspectors and is currently assisting on issues such as recruitment criteria, career planning, and continuing training programs for inspectors.

BWH continues to strengthen industrial relations and improve labor-management committees called Performance Improvement Consultative Committees (PICCs) at the factories. The PICCs promote social dialogue at the factory level, supporting both labor standards improvement and enterprise upgrading. To date, BWH has worked with employers and workers to establish PICCs at five factories and initiated the set-up of the PICCs in three additional factories. Additionally, seven other factories have agreed to set-up the PICC bipartite structure. As of January 2015, BWH has designated a full-time Industrial Relations Officer to liaise with national partners to strengthen social dialogue and promote greater compliance with freedom of association issues.

In February 2015, after several months of consultation with tripartite constituents, the ILO signed a Decent Work Country Program for Haiti, which could serve as a mechanism for improving and expanding the range of technical assistance provided to Haitian partners.

Compliance Assessment

HOPE II requires BWH 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. Following an independent evaluation, BWH recently revised the assessment, advisory and training services it provides to producers. The new approach, which is consistent with other Better Work country programs, places a greater emphasis on in-depth advisory and training services with the aim of promoting more sustainable solutions to the compliance problems that have persisted in the sector. Starting with the eleventh round of assessments, BWH will conduct one full assessment of each factory per year, spending several days at the plant to address the hundreds of questions contained in the compliance assessment tool. However, through follow-up visits to verify remediation and to provide advisory services, BWH anticipates that each factory will receive six to eight visits per year. BWH will continue to report 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 will be reported in one of the two synthesis reports. The other report will include information from advisory services especially with regards to remediation efforts by the factory concerning non-compliance findings identified in the previous assessment. This newly extended cycle will provide 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:

- Ongoing training programs on occupational safety and health (OSH). In cooperation with the Inter-American Development Bank (IDB), BWH provided extensive training to factory OSH committees. A training of trainers on OSH issues was conducted by IDB for key factory personnel as well as training on chemical management systems;
- Training for factory managers on supervisory skills, human resource management, and negotiation skills;
- Training for workers on life skills including maternity protection, workplace communication, financial literacy and introduction to HIV/AIDS;
- A workshop on improving conflict resolution processes to improve coordination between MAST conciliation services and the Office of the Labor Ombudsperson;
- Training for MAST inspectors on: industrial relations; international labor standards and the requirements of HOPE II; professional ethics; and identifying and preventing specific risks present in garment factories (combining combined classroom sessions and field work in four factories);
- Coordinating two workshops with Federal Mediation and Conciliation Service (FMCS) trainers on mediation skills and improving dispute resolution processes involving the Ombudsperson, MAST, and Labor Court officials; and
- Hosting an annual buyers' and multi-stakeholders' forum in December 2014, 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 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. *See* 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 ninth report was published on October 16, 2014, and is available at: <http://betterwork.org/global/?p=7201>. The document is based on assessments conducted between March and August 2014 in 25 factories (adding two factories to the report). The report shows a similar number of non-compliance findings compared with previous assessments with regard to core labor standards, with one finding related to discrimination (sexual harassment) and two related to freedom of association and collective bargaining issues. There was an increase in terms of non-compliance with certain aspects of national labor law on acceptable conditions of work (including social benefits payments, chemical and hazardous substance management, and other aspects of worker protections). Occupational safety and health issues still represented the highest percentage of non-compliance findings and remain a focus area for BWH training and remediation efforts.

The ILO's tenth synthesis report was released on April 16, 2015, and is available at: <http://betterwork.org/global/?p=7370>. The document is based on assessments conducted between September 2014 and February 2015 in 26 factories. The report indicated the same total number of findings of non-compliance with core labor standards as the previous assessment, with two related to freedom of association and collective bargaining and one related to child labor. The ILO notes that child labor is virtually non-existent in the sector and clarified that this particular finding was based on the lack of government-issued identification in worker files, not the actual presence of underage workers in the factory. The report notes improvements in some occupational health and safety categories such as chemicals and hazardous substance management, working environment, and improved reporting of workplace accidents. There was a notable increase in non-compliance with respect to recording working hours and overtime payments. As in prior reports, the occupational safety and health category still includes the highest rate of non-compliance findings.

In terms of wages in the sector, BWH continued to assess minimum wage compliance based on the reference wage of 225 gourdes per day. In the two synthesis reports issued in the reporting year, BWH identified three instances in which factories paid below the legal minimum wage. All three of the producers successfully remediated the issue prior to their subsequent assessment. BWH also continued to provide information on the percentage of workers earning an average of the piece-rate wage of 300 Gourdes or more per day. In the past year, the percentage of workers earning this amount rose from 29 to 41 percent.

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 \$7.6 million to the ILO BWH program, which will fund the TAICNAR program at least through the end of 2016. In addition, DOL provided \$1.4 million to the ILO for the MAST capacity-building component, which was formally launched in March 2014. This two-year project focuses on improving MAST's labor inspection capacity in the apparel sector to create a set of strong inspection practices that can later be expanded to other sectors. DOL also has supported efforts to build the capacity of worker organizations in Haiti through a \$1.2 million grant to the American Center for International Labor Solidarity, a non-profit organization affiliated with the AFL-CIO. While that program closed in May 2015, the U.S. Government and other partners, most notably the ILO and the Office of the Ombudsperson, will continue 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 five monitoring and assistance visits to Haiti in the reporting period, engaging on compliance-related issues at ten factories. As discussed below, DOL has provided compliance assistance to the factory that the Secretary of Labor identified as non-compliant in December 2013 as well as to factories where there were preliminarily findings of non-compliance during the reporting period.

The U.S. Government continues to provide significant support to the Caracol Industrial Park (CIP), a public-private partnership with the Government of Haiti and the Inter-American Development Bank. Established in 2012, the CIP now employs approximately 6,200 workers – the majority of which (5,450) are in apparel sector. An estimated additional 2,500 jobs will be available by the end of 2015 once factory construction currently underway is completed. Total current employment in the sector now stands at approximately 36,000 workers, an increase in over 50 percent since the implementation of the HOPE Act. Additional support to the apparel sector is also being provided through components of the Local Enterprise and Value Chain Enhancement (LEVE) project, funded by the U.S. Agency for International Development (USAID). With the ultimate goal of increasing employment levels in Haiti, LEVE is working in the apparel, construction, and agricultural sectors.

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 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). 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.³ As such, these eight core ILO conventions are part of Haitian law.

2013 Identification of Non-compliant Producer

In 2008, then President George W. Bush delegated the function of identifying non-compliant producers to the Secretary of Labor, in consultation with the USTR.⁴ 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.⁵

In December 2013, the Secretary of Labor, in consultation with USTR, identified Modas Gloria Apparel (MGA) as non-compliant with the core labor standard relating to freedom of association. After significant investigation, DOL found that management at MGA engaged in the following practices: (1) anti-union discrimination, by dismissing members of a nascent union; and (2) interference with the independent operations of unions, by promoting and assisting in the attempted dissolution of a second union. Details on these findings are included in the 2014 report to Congress.

Compliance Assistance Provided to the Producer and Current Status

During the reporting period, DOL has visited MGA four times to discuss the freedom of association cases and has maintained regular contact with MGA management, BWH, and the Ombudsperson to encourage fulfillment of the steps outlined in the remediation plan.

In terms of progress, MGA has reinstated all of the union members seeking reinstatement who were the subject of the non-compliance finding. Efforts are underway, with the assistance of the ILO, to ensure that MGA works collaboratively with all unions present in the factory to develop and implement a revised freedom of association policy. Once agreed upon by the parties, it is expected that all relevant personnel at MGA will receive training on the policy. DOL will continue to engage with MGA and the ILO to ensure that these steps have been taken, determining that remediation is finished only upon successful completion of these steps and verification with all stakeholders that there have been no additional acts of anti-union discrimination or interference in the upcoming reporting period.

³ See 1987 Constitution of Haiti, Art. 276-2.

⁴ Presidential Proclamation 8296, September 30, 2008.

⁵ *Id.*

Preliminary Findings under Review prior to Secretary of Labor Identifications

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 made one preliminary finding of non-compliance with respect to freedom of association. DOL is working closely with BWH, the Ombudsperson, and MAST, with the aim of remediating all preliminary findings prior to the end of 2015, at which point any producers with ongoing non-compliance issues would be publicly identified in the subsequent annual report to Congress.