

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

**2021 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. 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 \$16 million to support project activities through 2021 and intends to continue funding BWH in future years. 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 United States Trade Representative, 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).

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, during the reporting period, Haiti’s efforts were hindered by several factors. The COVID-19 pandemic – which led to temporary closures of

apparel factories in the spring of 2020, supply chain interruptions, and shifts in production schedules – continues to have negative impact on stakeholders on the apparel sector. Furthermore, civil unrest, political instability, and security concerns have persisted throughout the reporting period, disrupting the functioning of government agencies, including those supporting and regulating the apparel sector. Despite these challenges, U.S. textile imports from Haiti, which were down 23 percent for calendar year 2020 compared to 2019, were down only six percent in the first quarter of 2021 compared to the same quarter of 2020 prior to COVID-19 shutdowns in Haiti.

The Office of the Labor 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. In a significant loss for the apparel sector, Josseline Colimon Féthière, who served as the Labor Ombudsperson since 2012, died in April 2021. While a successor has not yet been appointed, the remaining staff of the Office of the Labor Ombudsperson remain active in the sector, working closely with BWH and MAST to address disputes in the sector. In the past year, the Office has intervened in disputes involving over one-third of Haiti's apparel factories, offering mediation services to the disputing parties. These cases have covered 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.

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. The PAC convened most recently in February 2021 to discuss BWH activities from 2020, establish priority interventions for 2021, and strategize on ways to enhance BWH collaboration with all stakeholders.

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.

As the key national authority mandated to enforce labor law in Haiti's formal sectors, including apparel, MAST was limited in its operations due to the combination of civil unrest, 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. Since February 2021, labor inspectors from MAST have been working particularly closely with BWH in conducting on-site visits, which had been suspended for much of the reporting period. In addition to these joint visits with BWH, MAST inspectors and mediation personnel have also responded directly in several dismissal cases involving trade union representatives during the reporting period.

Haiti's Superior Wage Council (*Conseil Supérieur des Salaires, CSS*), the tripartite body tasked with reviewing wage rates on an annual basis, has not provided recommendations to the Presidency on adjustment to the minimum wage since October 2019.³ With several significant fluctuations of the value of the local currency in the past year, several trade unions have voiced concerns that the stagnant minimum wage fails to keep 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 to apparel producers were impacted by security concerns and restrictions due to the pandemic. BWH was able to perform document reviews to follow-up on non-compliance issues, investigate workers' complaints, and provide guidance to factories virtually. As noted above, on-site assessments resumed in February 2021, but conducting in-person activities will be continuously evaluated in line with health protocols as COVID-19 cases are trending upwards in Haiti. BWH continues to work on improving 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 over 40 enterprise-level unions (affiliated with ten 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 freedom of association issues, which remain key challenges in the textile industry. BWH collaborated with MAST to host a stakeholder workshop on freedom of association and collective bargaining, focusing on the relation between ILO Conventions and Haitian national labor law. 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.

Compliance Assessment

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

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, 420 gourdes in 2018, and 500 gourdes in 2019. The CSS is required by law to provide recommendations to the presidency on minimum wage adjustments on at least an annual basis. Haiti's labor law additionally stipulates that the minimum wage "will be periodically adjusted according to changes in the cost of living or whenever the official inflation index set by the Haitian Institute of Statistics and Informatics (IHSI) shows an increase of at least 10 percent over the period of one fiscal year." Annual inflation has remained above 10 percent, including in official IHSI statistics, since October 2019.

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 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. In terms of core labor standards findings from previous reporting, BWH assisted one factory in implementing an age verification system to eliminate the potential for child labor. No underage workers were identified at the factory in question. In another case involving a finding of sexual harassment, BWH assisted the factory through training, revision of applicable policies, and reinstatement of a victim who was unjustly dismissed. Other key advisory services provided in the past year focused on standards with the highest number of non-compliance findings. These included occupational safety and health (including pandemic protection measures, chemical storage, and emergency preparedness) as well as a continued focus on ensuring payment of social benefits (including social security and maternity insurance).

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

- Supporting the workers and industry by conducting a survey of over 3,000 workers in 38 factories to assess the impact of COVID-19 on the workers. The survey revealed financial stress and instability as top concerns among workers interviewed;
- Supporting pregnant factory workers through continued collaboration with other agencies. The collaboration resulted in facilitated access to medical services;

- Supporting factories by training medical staff on the prevention of COVID-19 and infection control measures;
- Launching a WhatsApp group for workers and other stakeholders to broaden dissemination of information on labor rights during the pandemic and promoting social dialogue;
- Collaborating with MAST to provide a workshop on ILO Conventions 87 and 98 to workers' associations, representatives of employers' associations, brands, and factory management. The workshop aimed to help national partners identify ideas for future development in terms of industrial relations.
- 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 the development of their national action plan and their plans for engagement with the BWH program.
- Responding to 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; and
- 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.

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 twenty-first biannual report,⁴ scheduled for release in October 2020, was published in January 2021 due to delays related to COVID-19 disruptions. The document is based on assessments and advisory visits conducted between March and September 2020 in 31 factories in operation during the assessment period.⁵ The ILO report includes one new finding of non-

⁴ BetterWork Haiti, 21st Compliance Synthesis Report Under the Hope Legislation, October 2019-September 2020, <https://betterwork.org/portfolio/better-work-haiti-21st-biannual-compliance-synthesis-report/>.

⁵ 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 2020, employment figures in the sector have fluctuated due to political instability and impacts of COVID-19. Recent

compliance with regard to core labor standards. The factory was cited for non-compliance with standards related to freedom of association, specifically the dismissals of trade union members.

The twenty-second biannual report, which was scheduled for release in April 2021, has also been delayed, and publication is expected in late June 2021. Findings from that report will be covered in the 2022 USTR Annual Report.

Efforts by the Administration

The U.S. Government has continued efforts to work 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 \$16 million to the BWH program and intends to continue funding the program in future years. 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 disruptions due to the COVID-19 pandemic and ongoing instability, which have limited 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 on these cases with the ILO and involved parties.

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 and occupation (Conventions 100 and 111). Pursuant to the Haitian Constitution, once international treaties or

figures show that employment in the sector has rebounded from a low of nearly 37,000 workers in April 2020 to nearly 57,000 workers in January 2021.

agreements are approved in the manner stipulated by the Haitian Constitution, they become part of Haitian legislation and abrogate any laws in conflict with them.⁶ 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 United States Trade Representative.⁷ At the same time, the President delegated to the Secretary of Labor the task of assisting non-compliant producers to come into compliance with HOPE II's labor requirements.⁸

For the current identification period under HOPE II, beginning in January 2020 and ending in December 2021, DOL is conducting follow up reviews of BWH non-compliance findings with regard to core labor standards remotely. As noted above, DOL site visits have been curtailed due to the COVID-19 pandemic and the operating environment in Haiti. 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 non-compliance identified in the BWH reports. 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 December 31, 2021 deadline for any formal identifications under HOPE II. 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. DOL intends to continue working closely with the ILO, the Office of the Ombudsperson, and other relevant parties to ensure that any potential cases of non-compliance are fully reviewed prior to the Secretary of Labor's December 31, 2021 deadline for any formal identifications under HOPE II.

⁶ See 1987 Constitution of Haiti, Art. 276-2.

⁷ Presidential Proclamation 8296, September 30, 2008.

⁸ *Id.*