

EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

JUN 16 2011

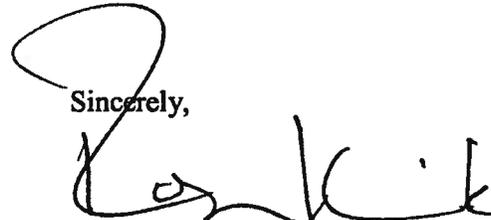
The Honorable Sander Levin  
Ranking Minority Member  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Levin:

Pursuant to section 213A(e)(5) of the Caribbean Basin Economic Recovery Act as amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), I am pleased to transmit the third report to Congress on the implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) Program. The report describes the efforts of Haiti, the Administration, and the International Labor Organization on the implementation of the TAICNAR program.

I look forward to working with you on HOPE II and other U.S. preference programs in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is fluid and cursive, with a large loop at the top left.

Ambassador Ron Kirk

Enclosure

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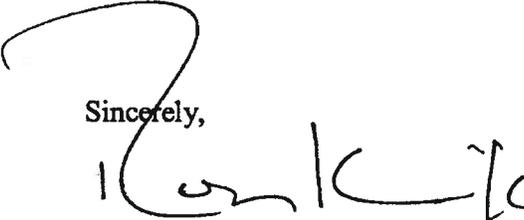
The Honorable Dave Camp  
Chairman  
Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Camp:

Pursuant to section 213A(e)(5) of the Caribbean Basin Economic Recovery Act as amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), I am pleased to transmit the third report to Congress on the implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) Program. The report describes the efforts of Haiti, the Administration, and the International Labor Organization on the implementation of the TAICNAR program.

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Ambassador Ron Kirk

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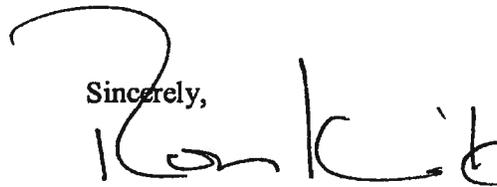
The Honorable Max Baucus  
Chairman  
Committee on Finance  
U.S. Senate  
Washington, D.C. 20510

Dear Chairman Baucus:

Pursuant to section 213A(e)(5) of the Caribbean Basin Economic Recovery Act as amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), I am pleased to transmit the third report to Congress on the implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) Program. The report describes the efforts of Haiti, the Administration, and the International Labor Organization on the implementation of the TAICNAR program.

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Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is written in a cursive style with a large, sweeping initial "R".

Ambassador Ron Kirk

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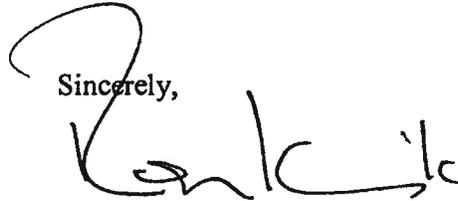
The Honorable Orrin Hatch  
Ranking Minority Member  
Committee on Finance  
U.S. Senate  
Washington, D.C. 20510

Dear Senator Hatch:

Pursuant to section 213A(e)(5) of the Caribbean Basin Economic Recovery Act as amended by the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II), I am pleased to transmit the third report to Congress on the implementation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) Program. The report describes the efforts of Haiti, the Administration, and the International Labor Organization on the implementation of the TAICNAR program.

I look forward to working with you on HOPE II and other U.S. preference programs in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Kirk". The signature is stylized with a large initial "R" and a long horizontal stroke.

Ambassador Ron Kirk

Enclosure

**June 16, 2011**

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

**USTR Annual Report on the Implementation  
of the TAICNAR Program**

The Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II) affords preferential treatment to imports of apparel, textiles, and other goods from Haiti, provided that Haiti's government takes certain steps to assess participating producers' compliance with core labor rights and improve the government's capacity to enforce national labor laws. HOPE II calls for the President to submit a report to Congress no later than June 18, 2009, and every year thereafter, regarding certain aspects of the operation of the Technical Assistance Improvement and Compliance Needs Assessment and Remediation (TAICNAR) program. The President has authorized the United States Trade Representative (USTR) to produce this report.<sup>1</sup> This report is to include an explanation of the efforts of the Government of Haiti, the President, and the International Labor Organization (ILO) to carry out the TAICNAR program. The report also is to include a summary of ILO biannual reports regarding the operation of certain aspects of the TAICNAR program, identifications by the President of producers failing to comply with core labor standards and relevant Haitian law, and determinations regarding changes in the application of preferential treatment to articles of such producers.<sup>2</sup> This is the third annual report.

HOPE II conditioned Haiti's continued eligibility for preferential treatment after October 18, 2009, on the President's certification to Congress that Haiti had:

- implemented a TAICNAR program;
- established a Labor Ombudsman;
- agreed to require producers seeking preferential tariff treatment for their products to participate in the TAICNAR program; and
- developed a system to ensure participation by such producers, including by establishing a producer registry.

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<sup>1</sup> Presidential Proclamation 8296, 73 FR 57475, September 30, 2008.

<sup>2</sup> Presidential Proclamation 8296 tasked the Secretary of Labor (in consultation with USTR) to identify non-complying producers, which in accordance with the statutory requirement shall occur by the end of 2011. The Secretary also is tasked to offer assistance to such producers.

On October 16, 2009, the President made this certification.

### **The TAICNAR program**

The TAICNAR program is required to carry out the following activities:

- assess compliance by producers of products eligible for benefits under HOPE II (“producers”) with core labor standards and appropriate Haitian labor laws;
- provide assistance to Haiti’s government to improve its capacity to inspect facilities of producers, enforce national labor laws, and resolve disputes;
- assist producers with addressing deficiencies;
- provide training for workers and management to promote compliance; and
- issue public reports on compliance with worker rights.

### **Labor Ombudsman**

HOPE II also calls for Haiti to establish a Labor Ombudsman to:

- develop and maintain a registry of companies;
- oversee the implementation of the TAICNAR program;
- receive and investigate comments regarding compliance with core labor standards and Haitian labor laws; and
- assist producers in meeting the requirements of the HOPE II legislation.

In addition, the ombudsman is required to coordinate a tripartite committee with the ILO to evaluate the progress of the TAICNAR program and consult on improving core labor standards and working conditions in the apparel sector.

The TAICNAR program in Haiti is being implemented through the ILO Better Work Haiti program, which promotes improved labor standards in global supply chains. The ILO Better Work Haiti program was initially funded by United States Department of Labor (DOL) FY 2008 appropriations in the amount of \$1,000,000, for programs intended to “address worker rights issues through technical assistance in countries with which the United States has trade preference programs.” In September 2009, DOL obligated an additional \$2.5 million to the ILO from FY 2009 appropriations to extend

the project in Haiti until 2013. This extension of the Better Work Haiti program allows for the implementation of monitoring and reporting activities in Haiti as required in the TAICNAR provisions of HOPE II.

### **Efforts by Haiti**

The Government of Haiti has engaged with the ILO and with the U.S. Government in all phases of the TAICNAR program. Haiti also has played an active role in creating and participating in the Tripartite Commission for the Implementation of the HOPE Act (known as the HOPE Commission or by its French acronym, CTMO-HOPE), which was established in 2007 following enactment of the initial HOPE legislation.<sup>3</sup> The HOPE Commission comprises members of Haiti's government (Office of the Prime Minister and Ministries of Commerce, Economy, and Labor and Social Affairs), business associations, and Haiti's three main union confederations.

During the preparatory phase of the Better Work Haiti program, the ILO requested that the HOPE Commission itself serve as a project advisory board. The HOPE Commission was initially active in this role; however, a subcommittee of the HOPE Commission is now serving in that capacity. That tripartite Project Advisory Committee (PAC), composed of one representative each from Haiti's government, employers, and unions, has been appointed and is now functioning as the project advisory board.

On August 28, 2009, President Preval issued a decree naming Jean Paleme Mathurin as the Labor Ombudsman. Mathurin served as the Prime Minister's chief economic adviser, a consultant, and later, the President of the HOPE Commission. He was appointed after consultation with Haiti's trade unions and industry associations, as HOPE II requires. He is also the government of Haiti's chief negotiator for the new industrial park. The Government of Haiti is in transition to a new parliament and president and is working to confirm the nominee for the post of Prime Minister. It does not yet have a nominee for a permanent labor ombudsman. Mathurin will remain HOPE Commission President and Labor Ombudsman until the new administration makes appointments to these positions.

Haiti has implemented an electronic product "visa" system to ensure that products shipped to the United States are not made in countries other than Haiti. The visa system also serves as the producer registry required by HOPE II. Haiti's Ministry of Trade and Industry has circulated a notice indicating that Haiti's producers must participate in the TAICNAR program and that producers that do not participate will not be eligible to use the visa system.

As of the ILO's April 2011 report there were 28 garment factories in Haiti registered under the TAICNAR program, 13 of which have been assessed too recently to have

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<sup>3</sup> Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006.

completed their first improvement plans and progress reports. One company that had registered in 2009 as a single factory re-registered as five factories with separate legal entities. The ILO anticipates an additional five factories to register by the end of 2012.

### **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 and to ensure full implementation of the TAICNAR program in accordance with the provisions of HOPE II. In January 2011, the U.S. Government signed an agreement with the Government of Haiti and the Inter-American Development Bank to build an industrial park in Haiti's North Corridor with Sae-A Trading Co. Ltd., Korea's leading garment manufacturer, as the anchor tenant. The North Industrial Park, which is projected to create at least 20,000 apparel sector jobs, fulfills priorities in the Government of Haiti's National Action Plan to create centers of economic development outside of Port-au-Prince for Haiti's future growth and to bring much needed jobs to Haiti's underserved regions. Total investment is expected to be around \$244 million.

In February 2010, U.S. Trade Representative Ron Kirk announced a new initiative to assist post-earthquake recovery efforts in Haiti. The initiative, called the *Plus One* for Haiti program, encourages U.S. brands and retailers to work toward sourcing one percent of their total apparel production from Haiti. The *Plus One* program has continued to provide incentive to manufacturers and retailers to do business in Haiti and has created the demand that led to the development of the Northern Industrial Park where thousands of additional apparel jobs will be created.

U.S. Government officials have continued their dialogue with the representatives of the HOPE Commission, local and international representatives of workers' organizations and civil society groups, as well as current and prospective apparel buyers and retailers through regular phone calls and meetings in Washington, D.C., as well as in Haiti, to discuss the implementation of HOPE II. The ILO program's annual Multi-Stakeholder Forum, held June 9, 2011 in Port-au-Prince, included the participation of U.S. Ambassador Kenneth H. Merten, as well as the Assistant United States Trade Representative for Textiles, a Trade and Investment Advisor from USAID, the Senior Advisor for Industrial Development in Haiti from the Department of State, and a representative from DOL's Bureau of International Labor Affairs (ILAB). At the Forum, U.S. Government officials spoke about U.S. Government efforts to promote textile and apparel industry growth in Haiti and highlighted the ILO program's achievements and efforts made by national stakeholders. U.S. Government officials also emphasized areas where improvement is still needed and conveyed to stakeholders the need for factories to take immediate efforts to address their non-compliant findings, as required by the HOPE II legislation.

## **Efforts by the ILO**

The TAICNAR program in Haiti is being implemented through the ILO Better Work Haiti program. Significant progress was made early on, but some of the Better Work Haiti project activities were delayed due to the catastrophic earthquake that struck Haiti on January 12, 2010. The aftermath of the January 2010 earthquake, subsequent cholera outbreak, temporary factory closures during hurricane season, and political unrest in the wake of the latest elections, are all factors that have continued to impact implementation of the program, although progress has been made.

### *Better Work Program - Capacity Building and Program Support*

An ILO mission in late March-early April 2011 focused on training enterprise advisors on industrial relations and the development of a strategy and plan to establish Performance Improvement Consultative Committees (PICCs), made up of workers and managers, in the factories in Haiti. Trade union representatives attended a two-day forum. The first day focused on providing the unions with more information on the Better Work Haiti program and provided opportunities for stakeholders to share their experiences in the context of the HOPE II Commission. The second day focused on the Better Work Haiti PICCs.

In order to gain the support and engagement of international buyers in the Better Work Haiti program, the program held the first International Buyers' Forum in September 2009. Representatives of the Haitian Ministry of Social Affairs and Employment, DOL, USTR, and the U.S. House of Representatives Ways and Means Committee, as well as the garment industry and unions in Haiti, attended that event. The forum provided an opportunity for national and international stakeholders to meet and discuss the objectives and activities of Better Work Haiti. Another Better Work Haiti Buyers' Forum and a Multi-Stakeholder Forum were held June 8-9, 2011. Several buyers participated in the Buyers' Forum. U.S. government participation included representatives of the Departments of State and Labor and USTR.

### *Compliance Assessment*

Central to the TAICNAR program is the performance of compliance needs assessments, to determine the extent of compliance by producers with ILO core labor standards and Haiti's labor laws. Two teams of national and international consultants conducted the compliance needs assessments during the fall of 2009.<sup>4</sup> The ILO's most recent biannual report, issued April 15, 2011, showed that individual factories have improved on several

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<sup>4</sup> A consultant retained by Better Work Haiti adapted the Better Work Compliance Assessment Tool (CAT) to the Haitian context. The Haitian version of the CAT was translated into French and was used to conduct the compliance needs assessment of the factories participating in the TAICNAR program.

individual compliance points such as non-discrimination, fair compensation and dispute resolution. Non-compliance was highest in the area of occupational safety and health, e.g. adequate toilets, hand washing facilities and soap, in spite of some actions taken in response to the earthquake and cholera epidemic.

### *Remediation*

A meeting with the factory owners was held on April 19, 2010, to present the results of the compliance needs assessments and to enable the producers to discuss aspects of non-compliance with ILO and Better Work Haiti program experts. Program staff will work with the companies to improve their compliance records. The Better Work Haiti program recruited several enterprise advisors to work with the program to provide advisory services and training modules adapted to the factories' identified compliance needs. In March 2011, the enterprise advisors were specifically trained on how to address the issue of freedom of association and collective bargaining in supporting interviews that will take place during assessment visits. The enterprise advisors also conducted focus groups with workers and management interviews to gather information on the establishment of PICCs, and how PICCs might serve as a means for resolving issues at the factories as well as oversee the development and implementation of improvement plans in each factory.

In conjunction with the ILO World Day on Health and Security at work on April 28, 2011, Better Work Haiti led an occupational safety and health awareness raising event in the SONAPI zone in Port-au-Prince on April 30, 2011. The event was aimed at raising awareness among factory owners and managers in the garment sector on how to identify common health and safety risks and on the importance of creating a safe working environment. The day also included a range of events such as medical exams for workers, the launching of a pilot project for work-related accidents insurance schemes, inter-factory activities for workers and life skills (reproductive health, HIV/AIDS, savings/financial education, health and hygiene, nutrition, personal safety and protection from violence). This event was implemented in collaboration with the government of Haiti, the Association of Industries of Haiti (an employer association), workers associations, Gildan Activewear, Inc., and the Levi Strauss Foundation.

There are a number of training courses scheduled to take place in the coming months:

- A human resources management modular program (April-July 2011);
- An emergency preparedness procedures course: designed to be a longer-term intervention implemented over nine months, subject to financing; and
- An occupational safety and health seminar: a follow-up to train the trainers for risk assessment training and factory-level implementation (June-August 2011).

Further activities will also include developing curricula for PICC worker representative and management representative training materials and informational pamphlets to promote worker participation in the PICCs.

*Biannual Report under the TAICNAR program*

HOPE II requires the ILO to submit biannual reports identifying, among other things, the producers that are complying with core labor standards and Haiti's relevant labor laws, the producers that have failed to remedy deficiencies and a description of those deficiencies, and efforts of those producers to remedy their deficiencies. The ILO publishes its biannual reports by October 16 and April 16 of each year as specified by HOPE II.

The ILO Better Work Haiti program assesses factory compliance with core international labor standards and national labor law. Following assessments, a detailed report is shared with the factory presenting findings on eight categories of labor standards, half of which are based on international standards and half on national legislation. According to the non-compliance methodology used, a factory is found non-compliant if any of the checklist questions within a category were found to be non-compliant.

**Core labor standards:** The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, calls upon Member States to respect, promote and realize the principles concerning the fundamental labor rights in four categories, even if they have not ratified the relevant ILO Conventions. These categories are: freedom of association and collective bargaining, the elimination of forced or compulsory labor, the effective abolition of child labor, and the elimination of discrimination in employment and occupation. The relevant conventions that form the reference base in assessing factory compliance with fundamental rights are Nos. 29, 87, 98, 105, 100, 111, 138, 182.

**National labor law:** The remaining four categories refer to standards set in national legislation and cover compensation, contracts and human resources, health and safety at work and working time.

The ILO's first report was published October 18, 2010,<sup>5</sup> and is available at: <http://www.betterwork.org/EN/Publications/Documents/Better%20Work%20Haiti%201st%20Biannual%20Report%20under%20the%20HOPE%20II%20Legislation.pdf>

The first report was based on assessments conducted in late 2009 in 21 factories. The report includes detailed information about 16 of the factories. Four of the factories

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<sup>5</sup> President Obama certified that Haiti had implemented the TAICNAR program on October 16, 2009, so the first report under the HOPE II legislation was due on April 16, 2010. However, as indicated in USTR's report to Congress in June 2010, "it was not practicable for the ILO to produce the biannual report by April 16 due to the extraordinary circumstances in Haiti resulting from the earthquake of January 12, 2010."

closed down after the assessments and a fifth had to relocate as a result of the earthquake. The highest areas of non-compliance related to national labor law rather than international core labor standards. Non-compliance was highest in the areas of occupational health and safety (worker protection, health services and first aid) and work time (regular work hours and overtime). Reports on efforts made by the factories to remedy the non-compliance points were based on self-assessment by the factories, to be verified by further assessments in fall 2010.

The ILO's most recent report was released on April 15, 2011, and is available at: <http://www.betterwork.org/EN/Publications/Documents/Better%20Work%20Haiti%20n%20d%20Biannual%20Report%20Under%20the%20HOPE%20II%20Legislation.pdf>.

The April 15, 2011, report indicates that overall non-compliance rates have increased, particularly in the indicators relating to social security and other benefits and employment contracts. However, individual factory reports show a fairly broad pattern of improvement on many of the compliance points, such as non-discrimination, fair compensation and dispute resolution. A majority of the factories (17 of 28), were found to be non-compliant in minimum wages for not meeting the requirements of Haitian law concerning piece rate workers. The previous report did not report on minimum wages due to a disputed interpretation of the law. The HOPE Commission provided Better Work Haiti with an official interpretation of the law in July 2010.

Historically, in other ILO Better Work country programs, the rate of overall non-compliance has been known to increase between the first and second assessment, possibly because of under-reporting in the first assessment. In Haiti's case, this may be attributable to the use of outside contractors for the first assessment and improved rapport between factory personnel and the Better Work Haiti enterprise advisors who make regular visits. This improved rapport and candor are important to the effectiveness and credibility of the program and are commendable.