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The Accord on Fire and Building Safety in Bangladesh: An Analysis

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1 Background

Following the terrible events in Bangladesh last month when the collapse of the Rana Plaza factory building left 1,127 dead, both the retail industry and international labour organisations have re-doubled their efforts to ensure a safe working environment for the employees of companies that supply clothes for many of the world's best known brands. The added impetus created by this tragedy resulted on May 15 last in over 30 of Europe's largest retailers signing up to the Accord on Fire and Building Safety in Bangladesh (the "**Accord**"), a document drafted by the two global union federations, IndustriALL Global Union and UNI Global Union. However laudable the aims of the Accord, it has in fact generated considerable controversy, with major US retailers declining participation due to concerns regarding the uncertain scope and application of the Accord together with the potential legal risk to which signatories may be exposed. This has led to an increasingly public and antagonistic war of words between those US retailers who believe their concerns to be well founded and the union federations responsible for drafting the Accord. This paper considers the framework laid down by the Accord and explores the provisions which are at the heart of this debate.

2 Summary of the Accord

The Accord is a development of some significance. For the first time, a number of multinational companies have signed with global trade union federations what looks like a legally binding agreement, enforceable through the courts, under which these companies commit to a range of measures aimed at transforming the working conditions at the premises of offshore suppliers who manufacture ready-made garments for them. The unions will look to use it as a template for other such agreements in other countries and in other industries, as statements posted on union websites have made clear.

For these reasons, it is important that all companies and unions fully understand what the commitments in the Accord mean and what they require of signatory companies.
The Accord is not a "negotiated agreement" in the usual sense of the words when applied to a collective bargaining agreement. As we understand it, the Accord was drawn up unilaterally by the two global union federations, IndustriALL Global and UNI Global (assisted by a number of interested NGOs) and discussed with some but not all of the signatory companies and other groups. An arbitrary deadline of May 15 was then fixed by the unions for companies to sign. That means there was no structured process of negotiations between these union federations and an organised group of employers on the wording of the Accord. The meaning of the language was not teased out in

detailed discussions nor, as far as we are aware, were the specific intentions behind each provision publicly documented or scrutinized. This leaves a number of significant questions to be asked about the Accord: what it will actually mean in practice, how it will be administered and financed, and how it will be enforced?

In summary, those signing up to the Accord agree that it:

1. Will run for a five-year period.
2. Commits the companies who are signatories to "continue business at order volumes comparable to or greater than those that existed in the year preceding the inception of this Agreement…at least through the first two years of the term of this Agreement, provided that (a) such business is commercially viable for each company and (b) the factory continues to substantially meet the company's terms and comply with the company's requirements of its supplier factories under this agreement."
3. Requires the signatory companies to ensure that safety inspections are undertaken, remediation plans followed, health and safety committees set up and fire and safety training is carried out at their supplier factories, as appropriate.
4. Puts in place a Safety Inspector and a Training Coordinator, supported by qualified personnel, to carry out the inspections and the training.
5. Mandates that if a factory has to be temporarily closed down for safety upgrades then the employer must maintain the workers' income for a period of up to six months.
6. Obliges signatory companies to "require their suppliers to provide access to their factories to training teams designated by the Training Coordinator that include safety training experts as well as qualified union representatives to provide safety training to workers and management on a regular basis."
7. Requires participating brands and retailers to "negotiate commercial terms with their suppliers which ensure that it is financially feasible for the [suppliers'] factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector."
8. Alternatively, allows companies to "use alternative means to ensure factories have the financial capacity to comply with remediation requirements, including but not limited to join investments, providing loans, accessing donor or government support, through offering business incentives or through paying for renovations directly".
9. Provides that companies will pay an annual fee of up to $500,000 to fund the activities provided for by the Accord.
10. Gives the parties 45 days from the signing of the agreement on May 15 to work out an Implementation Plan.
11. Appoints to oversee the program a Steering Committee (SC) with equal representation chosen by the trade union signatories, IndustriALL Global and UNI Global, and the signatory companies (a maximum of 3 seats for each side). The SC is to be chaired by a "representative from and chosen by the International Labour Organisation (ILO). The SC is to take decisions by consensus where possible but can do so by majority decision.
12. Provides, under Article 5 of the Accord, for a disputes procedure, under which the SC will rule in the first instance; with binding arbitration, enforceable through the courts of the home countries of the employer signatories, applying where the SC's rulings are contested.

The full text of the Accord is attached.

3 Detailed Analysis of the Accord

To those involved in transnational labor relations, the Accord bears the clear hallmarks of an International Framework Agreement between global trade union federations and a group of employers from a range of other countries, covering one issue, in one industrial sector in one country. As with any collective bargaining agreement the three questions to be asked are:

1. How long does the Accord last, and how can it be terminated or revised?
2. What, in substantive terms, do the list of commitments made in the Accord mean?
3. Who can initiate a dispute over the interpretation of, or compliance with, the Accord and how will rulings made under the Article 5 procedure be enforced?

Below, we will explore each of these key elements, highlighting in particular those issues that remain unclear and may be of concern to signatory parties, or potential signatories.

3.1 The duration of the Accord

1. The Accord commits the signatories "**to establish a fire and building safety program in Bangladesh for a period of five-years."**
    a. Five years is an exceptionally long term for any collective agreement. It may be argued that effecting real change in fire safety and related topics could take several years. Yet the National Action Plan[1] covering the same objective and supported by the Bangladeshi Government, unions and employers runs only until the end of 2013; Moreover, while the help of other stakeholders such as those who have signed the Accord is welcomed, what is sought from them under the terms of that Plan is not a long term agreement among themselves, but their support for implementing the Bangladeshi National Plan and for using it as a platform for coordinating additional fire safety promotion activities.
    b. The termination provisions within the Accord are unusually brief and unparticularised, leaving a number of questions unanswered. For example, if you sign the Accord are you locked in for the full five years? Can you withdraw at any point if you are unhappy with the way the Accord is working or is being administered? Can you only withdraw after two years (see 2 below) and only sooner if commercial circumstances so dictate? If you do try to withdraw, could one of possibly a number of parties initiate a dispute under the terms of the Accord, triggering potential arbitration awards against you?
    c. The Accord is also silent on what is intended to happen at the end of its five year term. It therefore remains unclear whether the Accord is intended to be a one-off initiative to help secure a step-change in the health and safety culture of the Bangladeshi ready-made garment industry, or instead is merely viewed as stage one of a much longer term project. There is certainly no reference to what criteria, if any, would be used to determine if the factories covered by the Accord in Bangladesh were now sufficiently safe and that the program was no longer needed. It may be that its original authors intend that the Accord be renewed or strengthened at the end of the first five years until some as yet unspecified set of objectives are met, possibly covering other industries or extending beyond health and safety to pay and conditions. This is an important consideration for potential signatories

[1] National Tripartite Plan of Action on Fir Safety for the Ready-Made Garment Sector in Bangladesh, March 2013

3.2 Substantive commitments under the Accord

2. The Accord commits the companies who are signatories to **"continue business at order volumes comparable to or greater than those that existed in the year preceding the inception of this Agreement…at least through the first two years of the term of this Agreement, provided that (a) such business is commercially viable for each company and (b) the factory continues to substantially meet the company's terms and comply with the company's requirements of its supplier factories under this agreement**." This immediately begs the question of what happens if, for sound commercial reasons, a company decides to discontinue business, or continue business at lower volumes, with a particular factory, and the factory, or trade unions, dispute that decision? Can suppliers and/or the unions lodge a complaint with the SC? Would the SC carry out an assessment to determine whether the 'commercial viability' grounds were sufficiently well founded? If so, what sort of evidence could it demand and what level of potentially commercially sensitive information would a signatory be required to provide, particularly bearing in mind that at least 2, and in most cases 3, members of the SC will in all likelihood be direct competitors. Would the SC determine whether a failure by a supplier factory to meet the company's terms or requirements qualified as 'substantial'? Could the SC order the company to return volumes at a factory to the old level; and how in practice would such an order be enforced (the issue of enforcement is considered in more detail below)? If the SC has such powers, could it possibly be seen in the US or elsewhere as an anti-competitive vehicle, in effect, a cartel.
3. The Accord requires the signatory companies to undertake approved **safety inspections and remediation plans**, set up health and safety committees and ensure access for fire and safety training teams designated by the Training Coordinator at their supplier factories, as appropriate. Companies can either do safety inspections through their own programs, provided they meet the standards set by the Safety Inspector, or they can be subject to the programs put in place by the Safety Inspector.

   The SC's chosen Safety Inspector will:

   a. Operate without interference or restriction
   b. Select and direct skilled personnel to carry out safety inspections
   c. Determine whether a signatory company's own programs at least 'meet or exceed' the standards of safety inspections his teams will carry out
   d. Make all reasonable efforts to ensure all factories covered by this agreement are inspected within the first 2 years of the agreement
   e. Prepare written Inspection Reports on each factory to be shared immediately with factory management, the factory's health and safety committee, workers representatives or, in their absence, the unions signatory to the Accord, signatory companies and the Steering Committee; and within 6 weeks disclosed to the public along with any 'remediation plan' the factory produces
   f. In the event of the inspection disclosing a 'severe and imminent danger to worker safety' he will again inform the factory management, its health and safety committee, workers representatives or, in their absence, signatory unions and the Steering Committee (but not the signatory companies) and direct a remediation plan.

g. Establish a worker complaint process ensuring that workers in the factories can raise concerns safely, confidentially and in a timely fashion with the Safety Inspector and 'aligned' with the Hotline being established under the NAP

In addition, its appointed Training Coordinator will:

a. Establish an extensive fire and building safety training program
b. Select skilled personnel to deliver the training for workers, managers and security staff "with involvement of trade unions and specialized local experts", and
c. Designate training teams, including both safety training experts and qualified union representatives, to provide safety training to workers and management on a regular basis in all supplier companies

The SC will regularly publish: information on all supplier companies in Bangladesh used by the signatory companies; Inspection Reports; Safety Inspector statements identifying factories not expeditiously implementing remedial recommendations; and quarterly aggregate reports.
The proposed régime of safety inspections, remediation and safety training is generally in line with what is to be found in most companies' own programs in Bangladesh as regards their supplier factories. What is not clear is how it will fit alongside the parallel, home-grown, program for expanding, training, and developing the role of the statutory factory inspectorate and the fire service that the Bangladeshi Government is implementing. Under the Accord, trade union representatives are to be involved in this. What their role is to be, as distinct from the role of the safety training experts, will need clarifying.

4. The Accord imposes a new obligation for signatory companies to require their suppliers to respect **the right of a worker to refuse work** that he or she has reasonable justification to believe is unsafe, or to refuse to enter or remain inside a building that he has reasonable justification for believing is unsafe for occupation, This right is familiar from European Health and Safety legislation, but, given the poor health and safety record in ready-made garment factories covered by the Accord, is likely to be much more significant and more frequently invoked in Bangladesh. How will it work? Who will determine whether the employee had reasonable justification? Will the claim immediately trigger a Safety Inspection? By whom? Is this likely to lead to multiple factory closures, and serious disruption to employment and supplies?
5. It further compels signatory companies to give **notice, warning and ultimately terminate the business relationship** with a supplier factory that fails to maintain its employees' employment and income for up to 6 months during any closure for renovations. But would the spirit of the Accord allow the signatory company to walk away leaving the factory to cope as best it could, possibly without the means to keep its employees on payroll, or would signatory companies come under pressure, say, to provide insurance for a sum equivalent to 6 months' pay for all the factory's employees, against the contingency that it had to be closed for renovations?
6. Signatory companies must "require **their suppliers to provide access to their factories** for training teams designated by the Training Coordinator that include safety training experts as well as qualified union representatives to provide safety training to workers and management on a regular basis." Here again, why, if the purpose is to provide safety training, is it necessary to have union representatives in addition to the training experts? Have they relevant expertise or authority in this field in Bangladesh? Here and elsewhere, for example in the constituting of health and safety committees, the Accord seems to assign to trade unions a role beyond that foreseen in the NAP and agreed with local unions. This may not be a 'deal-breaker', but it can be expected to give some companies pause for thought about signing.

7. Participating brands and retailers have to "**negotiate commercial terms with their suppliers** which ensure that it is financially feasible for the [suppliers'] factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector." Who is to decide that the terms are such as to make it "financially feasible"? Could a factory or, indeed, an appropriate union bring a complaint to the SC that the terms on offer from the signatory company were such that the factory could not afford to upgrade?
8. Companies may instead "**use alternative means to ensure factories have the financial capacity** to comply with remediation requirements, including but not limited to joint investments, providing loans, accessing donor or government support, through offering business incentives or through paying for renovations directly". How will this work in practice? Could a factory, or again a union, claim that the signatory company had refused to provide the loan needed to meet remedial requirements at the factory?
9. Companies signing the Accord will pay an annual fee of up to $500,000 to fund the activities provided for under its terms. The amount each company will have to pay has yet to be determined. Will the amount paid relate to the influence an individual company will have in the Accord governance process? It should be noted that this payment relates solely to the operation of the Accord and funding the work of the Safety Inspector and Training Coordinator. Signatory companies will be required to make additional payments for factory improvement work.
10. From the signing of the agreement on May 15 the Accord gives the parties 45 days to work out an **Implementation Plan**, which may address some of the concerns raised in this paper. As already noted, the Accord was not truly "negotiated" between the global unions and an organised group of employers. Now, however, that there are signatory companies, they will have to organise themselves and agree among themselves the issues that do need to be negotiated and agreed during the 45 day period now running, and the stance to be adopted . This will be a considerable challenge, as the novelty and complexity of some of the issues to be dealt with become apparent. (See also next section).

3.3 Analysis of the Role of the Steering Committee and the Disputes Procedure

The role of the **Steering Committee** (SC) needs to be considered in some depth, as it has considerable powers:

1. It will effectively employ two key people: the Safety Inspector and the Training Coordinator, with the SC responsible for: carrying out the selection of these officials, framing their contracts of employment, determining their compensation packages and reviewing their performance.
2. It will develop, administer and manage a programme of "credible" inspections, remediation and training
3. Signatory companies will be responsible for funding its activities, each paying according to an "equitable" formula to be established in the implementation plan.

The SC is also the body that is expected to rule in the first instance on disputes that arise under the Accord, as provided for in Article 5:

> **Article 5**: "Any dispute between the parties to, and arising under, the terms of this Agreement shall first be presented to and decided by the SC, which shall decide the dispute by majority vote of the SC within a maximum of 21 days of a petition being filed by one of the parties. Upon request of either party, the decision of the SC may be appealed to a final and binding arbitration process. Any arbitration award shall be

> enforceable in a court of law of the domicile of the signatory against whom enforcement is sought and shall be subject to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), where applicable. The process for binding arbitration, including, but not limited to, the allocation of costs relating to any arbitration and the process for selection of the Arbitrator, shall be governed by the UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006)."

The SC is made up of three nominees from the unions, three from the signatory companies and an independent chair appointed by the ILO. Will this chair have a vote? The text of the Accord does not say. If the chair does not have a vote what happens if the SC is deadlocked at 3-3 in a vote?
For many companies that have not signed, these provisions are reportedly among the most contentious in the Accord. Article 5 provides the SC with a quasi-judicial role by giving it responsibility for adjudicating on any dispute that arises "*between the parties to, and under the terms of*" the Accord. As with its more general management powers, a bare majority vote will be sufficient to carry the day. In practice we assume the chair will have a vote; and this is likely to place a great deal of power in the hands of someone whose identity and background is as yet unknown.

Given the power of the SC, one area on which further detail will be crucial is the way in which company nominees on the SC will be chosen. Bear in mind that the Accord was not "negotiated" between the unions on the one hand and a structured group of employers on the other. Rather, it was largely drafted by or for the unions and subsequently amended in the light of some comments and feedback given in an unstructured way. The signatory companies will now have to organise themselves and select their nominees to the SC for serious negotiations over the implementation arrangements. How will this be done? How will the employer group ensure "balanced representation" from among the signatories? Can membership rotate during the five years? Perhaps more importantly, giving the SC a quasi- judicial role as the Accord does, creates a situation where the competitors of a signatory company, along with the union nominees, could be sitting in judgement on it. This gives rise to potential conflicts of interest and real concerns regarding confidentiality that will surely need to be addressed for the reassurance of stakeholders.

The Accord does provide an appeal mechanism for those who are unhappy with the SC's decisions, stating that such appeals will be dealt with by way of a "final and binding arbitration process" which will be structured in accordance the UNCITRAL Model Law on International Commercial Arbitration. Crucially, the Accord also provides that "any arbitration award shall be enforceable in a court of law of the domicile of the signatory against whom enforcement is sought". It is this apparent power for domestic courts to enforce the provisions of the Accord that has caused particular concern for US-based retailers. Such caution is understandable, though the true extent of this power remains unclear.

The language of Article 5 refers to an "arbitration award" only, rather than, for example, "the decision of the arbitrator". Is the intention simply that domestic courts will have the power to enforce a financial penalty levied by the arbitrator but that they will be unable to order specific adherence by a signatory to its obligations under the Accord, for example by ordering that signatory to return to a certain volume of business with a particular supplier? On this point it is worth noting that there are a number of French signatories to the Accord. French courts have a recent record of reviewing commercial decisions and have frequently ordered companies to rescind decisions made and implemented, as many US businesses with operations in France have learned. If a French company was ordered by the SC to return production volumes to a previous level and that decision was endorsed by arbitration, there must be a risk that the French courts would look to enforce that order notwithstanding the vagaries of the wording in Article 5. If this outcome was the intended effect of the Article, then it is at least arguable that other domestic courts would also be obliged to enforce such an order, notwithstanding that this type of interference with the operational aspects of

business may offend the cultural norm in that particular jurisdiction. In practice, multiple judicial philosophies could be brought to bear in a confusing and inconsistent way as regards interpreting the text which, at the very least, creates a degree of uncertainty around how the Accord will be enforced in practice.

If the only effective remedy for a breach of the Accord is financial, how is the award to be quantified and to whom should it be paid? Basic principles of loss and damage that apply in most jurisdictions would suggest that any award should seek to compensate the wronged party for their losses. Applying this approach here could mean, for example, compensating the supplier for their loss of profit arising from reduced orders. The Accord would thereby effectively give the suppliers legal rights that are enforceable against the signatories in each signatory's home court. Such a result seems consistent with the wording of Article 5 of the Accord, despite the comment from UNI's Deputy General Secretary, Christy Hoffman, seeking to counter concerns raised by the US company, Gap, over the legal reach of the Accord, that "we have given GAP every assurance that this accord does not expose them to any litigation in the US courts, apart from the possible enforcement of an arbitration award, which is a seldom used but important assurance that arbitration awards will be respected. While they claim US exceptionalism, GAP stands in the same shoes as any other signatory. There is no right to third party litigation. There are no class actions, or punitive damages or fines made possible by this Accord."

Beyond the suppliers, there are also other interested third parties who may be encouraged to look to the Accord as the basis for pursuing legal action over alleged breaches by signatories using the SC/arbitrator/domestic court route. This could include NGOs, factory owners and those working for the signatories' suppliers.

The Accord refers to: "**Any dispute between the parties to, and arising under, the terms of this Agreement…**" Who exactly are the parties? Could the 'arising under' provision bring in other potential complainants? And to what effect? This is a fundamental issue.

a. On the union side the signatories are IndustriALL Global and UNI Global. What about their affiliated unions? Could the IndustriALL Bangladesh Council or any other member union act independently of the central federations? Similarly on the employer side, who exactly are the "companies"? Multinationals are a complex mix of legal entities. Exactly which entities are covered? Is it only the parent or operational head company, or is it the entire group? Could participation by group company A somehow impact on the legal obligations of group company B? Last year Siemens found it could not enforce an IFA it had recently signed with IndustriALL when its local management in a plant in Maryland knocked back a union organising drive, which clearly breached the terms of the IFA. IndustriALL Global took up the issue with Siemens central management but they appeared powerless to do anything about the matter.
b. The Accord spells out a role for a number of bodies who are not actually signatories to the agreement. These include:
    i. The Bangladeshi supplier companies ("the factories");
    ii. The ILO and its Bangladesh office to whom the Accord gives "a strong role… to ensure that… the program foreseen by the signatories of this Agreement, get implemented";
    iii. An Advisory Board involving brands and retailers, suppliers, Government institutions, trade unions and NGOs who are "to ensure all stakeholders, local and international, can engage in constructive dialogue with each other and provide feedback and input to the SC"; and

iv. The 'High-Level Tripartite Committee' established to implement and oversee the National Action Plan who must be consulted by the SC in developing the administration and management of the program.

Could any or all of these, or their constituent members, be considered as "parties" with due access to the disputes procedures? They certainly all have access to the SC which is the first stage in that process. As set out above, if a signatory company reduces the volume of its business with a particular supplier, common sense suggests that the supplier should be able to raise a complaint to the SC. If this is right, it would appear that the intention of the Accord is to give suppliers at least enforceable rights against signatories. If not, how in practice will the signatories' obligations regarding business volumes be effectively monitored and policed? Will it be left to other signatories (i.e. competitors) to "blow the whistle"?

c. The words **"and arising under"** could potentially cover disputes between these various bodies and the signatories, and might even be interpreted as allowing parties who are not signatories or involved at all in the Accord to initiate disputes. Is it intended that, say, an NGO from a third country could allege that a company was not abiding by the terms of the Accord, and claim legal standing to sue under this language? What about a competitor that has not signed up to the Accord? Could they force the signatory company to meet its potentially costly obligations under an agreement they themselves chose not to sign?

The dispute between the University of Wisconsin and Adidas provides a possible example of how third parties might seek to use the Accord to bring legal action. The University sued Adidas over unpaid wages owed to the workers of one of Adidas's former Indonesian suppliers who had closed their factory abruptly and disappeared. Adidas said it had no responsibility in the matter. The University sued Adidas on the grounds that it was in breach of the University's code of practice which Adidas had signed in order to do business with it. Does this precedent give rise to the possibility that third parties could "adopt" the Accord into their own codes and then bring actions against signatory companies for alleged breaches of it? Whilst it should be noted that recent jurisprudence in the US may have made it more difficult for third parties to sue US based entities in the US courts for actions taken overseas, the law in this area is still developing.

On the other side of the coin, signatory companies should surely be able to lodge complaints against the unions if they believe, for example, that the unions are using the Accord and its procedures for objectives other than as provided for in the Accord – say, to enforce a union-only or 'closed' shop. However, this balancing power is again not clearly set out in the Accord.

Unless a more detailed set of guidelines is produced during the implementation period, there is a real risk that all these uncertainties will have to be resolved only as disputes arise. This potentially results in an environment where creative plaintiff lawyers seek to bring claims on behalf of a range of third parties which, even if ultimately unsuccessful, will be costly and time consuming for the signatory companies to deal with. This is of particular concern to US-based retailers. They already operate in a far more litigious environment than many of the European counterparts, and will be deeply concerned about potentially unquantifiable liabilities under the Accord.

4 Conclusion

The very fact that we, experienced labour relations negotiators and lawyers, can without too much difficulty identify the range of unanswered questions we have highlighted in this paper shows that the Accord is far from being a workable agreement as it stands. Although the intention of the Accord,

to provide a safe working environment in Bangladesh for the 4 million plus garment industry workers, is one every company can support, good intentions are not enough to ensure a practicable way forward. We believe that, as it stands, the Accord exposes companies, especially US companies, to potentially extensive liabilities which they may be able to do very little to mitigate. It might be argued that all the issues we raise in this paper can be resolved during the 45-day Implementation Plan discussions. However, in our experience it is highly unusual for unions and employers to sign a document and only then enter into discussions as to what it might mean in practice. Normally, you need to fully understand the commitments you are making before you make them. We know of too many labor relations agreements that have unravelled amidst disappointment, disillusion and recriminations because the parties to them failed to give due thought to their implementation. Given the unresolved issues we have highlighted in this paper the reluctance of the US companies to endorse the Accord is understandable and should not be a cause of hasty condemnation. Further reflection may lead to the discovery of clearer routes to more lasting improvements.

MAY 13, 2013

Accord on Fire and Building Safety in Bangladesh

The undersigned parties are committed to the goal of a safe and sustainable Bangladeshi Ready-Made Garment ("RMG") industry in which no worker needs to fear fires, building collapses, or other accidents that could be prevented with reasonable health and safety measures.

The signatories to this Agreement agree to establish a fire and building safety program in Bangladesh for a period of five years.

The programme will build on the National Action Plan on Fire Safety (NAP), which expressly welcomes the development and implementation by any stakeholder of any other activities that would constitute a meaningful contribution to improving fire safety in Bangladesh. The signatories commit to align this programme and its activities with the NAP and to ensure a close collaboration, including for example by establishing common programme, liaison and advisory structures.

The signatories also welcome a strong role for the International Labour Organization (ILO), through the Bangladesh office as well as through international programmes, to ensure that both the National Action Plan, and the programme foreseen by the signatories of this Agreement, get implemented.

The signatories shall develop and agree an Implementation Plan within 45 days of signing this Agreement. The nongovernmental organisations which are signatories to the Joint Memorandum of Understanding on Fire and Building Safety (dated March 15, 2012), having stated their intention to support the implementation of this programme, shall, at their own election, be signed witnesses to this Agreement.

This Agreement commits the signatories to finance and implement a programme that will take cognizance of the Practical Activities described in the NAP involving, at minimum, the following elements:

SCOPE: The agreement covers all suppliers producing products for the signatory companies. The signatories shall designate these suppliers as falling into the following categories, according to which they shall require these supplier to accept inspections and implement remediation measures in their factories according to the following breakdown:

1. Safety inspections, remediation and fire safety training at facilities representing, in the aggregate, not less than 30%, approximately, of each signatory company's annual production in Bangladesh by volume ("Tier 1 factories").

2. Inspection and remediation at any remaining major or long-term suppliers to each company ("Tier 2 factories"). Together, Tier 1 and Tier 2 factories shall represent not less than 65%, approximately, of each signatory company's production in Bangladesh by volume.

3. Limited initial inspections to identify high risks at facilities with occasional orders, one-time orders or those for which a company's orders represent less than 10% of the

factory's production in Bangladesh by volume ("Tier 3 factories"). Nothing in this paragraph shall be deemed to alleviate the obligation of each signatory company to ensure that those factories it designates as Tier 3 represent, in the aggregate, no more than 35%, approximately, of its production in Bangladesh by volume. Facilities determined, as a result of initial inspection, to be high risk shall be subject to the same treatment as if they were Tier 2 factories.

GOVERNANCE:

4. The signatories shall appoint a Steering Committee (SC) with equal representation chosen by the trade union signatories and company signatories (maximum 3 seats each) and a representative from and chosen by the International Labour Organization (ILO) as a neutral chair. The SC shall have responsibility for the selection, contracting, compensation and review of the performance of a Safety Inspector and a Training Coordinator; oversight and approval of the programme budget; oversight of financial reporting and hiring of auditors; and such other management duties as may be required. The SC will strive to reach decision by consensus, but, in the absence of consensus, decisions will be made by majority vote. In order to develop the activity of the SC, a Governance regulation will be developed.

5. Dispute resolution. Any dispute between the parties to, and arising under, the terms of this Agreement shall first be presented to and decided by the SC, which shall decide the dispute by majority vote of the SC within a maximum of 21 days of a petition being filed by one of the parties. Upon request of either party, the decision of the SC may be appealed to a final and binding arbitration process. Any arbitration award shall be enforceable in a court of law of the domicile of the signatory against whom enforcement is sought and shall be subject to The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (The New York Convention), where applicable. The process for binding arbitration, including, but not limited to, the allocation of costs relating to any arbitration and the process for selection of the Arbitrator, shall be governed by the UNCITRAL Model Law on International Commercial Arbitration 1985 (with amendments as adopted in 2006).

6. The signatories shall appoint an Advisory Board involving brands and retailers, suppliers, government institutions, trade unions, and NGOs. . The advisory board will ensure all stakeholders, local and international, can engage in constructive dialogue with each other and provide feedback and input to the SC, thereby enhancing quality, efficiency, credibility and synergy. The SC will consult the parties to the NAP to determine the feasibility of a shared advisory structure.

7. Administration and management of the programme will be developed by the SC in consultation with the 'High-Level Tripartite Committee' established to implement and oversee the National Action Plan on Fire Safety, as well as with the Ministry of Labour and Employment of Bangladesh (MoLE), the ILO and the Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH (GIZ), to maximize synergy at operational level; and the SC may make use of the offices of GIZ for administrative coordination and support.

CREDIBLE INSPECTIONS:

8. A qualified Safety Inspector, with fire and building safety expertise and impeccable credentials, and who is independent of and not concurrently employed by companies, trade unions or factories, shall be appointed by the SC. Providing the Chief Inspector acts in a manner consistent with his or her mandate under the provisions of this Agreement, and unless there is clear evidence of malfeasance or incompetence on his or her part, the SC shall not restrict or otherwise interfere with the Chief Inspector's performance of the duties set forth in the Agreement as he or she sees fit, including the scheduling of inspections and the publishing of reports.

9. Thorough and credible safety inspections of Tier 1, 2 and 3 factories shall be carried out by skilled personnel selected by and acting under the direction of the Safety Inspector, based on internationally recognized workplace safety standards and/or national standards (once the review foreseen under the NAP is completed in June 2013). The Safety Inspector shall make all reasonable efforts to ensure that an initial inspection of each factory covered by this Agreement shall be carried out within the first two years of the term of this Agreement. The Safety Inspector will be available to provide input into the NAP legislative review and to support capacity building work regarding inspections by the MoLE foreseen under the NAP.

10. Where a signatory company's inspection programme, in the opinion of the Safety Inspector, meets or exceeds the standards of thorough and credible inspections, as defined by the Safety Inspector, it will be considered an integral part of the programme activities set forth in this Agreement. Signatory companies wishing to have their inspection programme so considered shall provide the Safety Inspector full access to the findings of their inspections and he or she will integrate these into reporting and remediation activities. Notwithstanding this provision, all factories within the scope of this Agreement shall still be subject to all the provisions of this Agreement, including but not limited to a least one safety inspection carried out by personnel acting under the direction of the Safety Inspector.

11. Written Inspection Reports of all factories inspected under the programme shall be prepared by the Safety Inspector within two (2) weeks of the date of inspection and shared upon completion with factory management, the factory's health and safety committee, worker representatives (where one or more unions are present), signatory companies and the SC. Where, in the opinion of the Safety Inspector, there is not a functioning health and safety committee at the factory, the report will be shared with the unions which are the signatories to this Agreement. Within a timeline agreed by the SC, but no greater than six weeks, the Safety Inspector shall disclose the Inspection Report to the public, accompanied by the factory's remediation plan, if any. In the event that, in the opinion of the Safety Inspector, the inspection identifies a severe and imminent danger to worker safety, he or she shall immediately inform factory management, the factory's health and safety committee, worker representatives (where one or more unions are present), the Steering Committee and unions which are signatories to this Agreement, and direct a remediation plan.

REMEDIATION:

12. Where corrective actions are identified by the Safety Inspector as necessary to bring a factory into compliance with building, fire and electrical safety standards, the signatory company or companies that have designated that factory as a Tier 1, 2, or 3 supplier, shall require that factory to implement these corrective actions, according to a schedule that is mandatory and time-bound, with sufficient time allotted for all major renovations.

13. Signatory companies shall require their supplier factories that are inspected under the Program to maintain workers' employment relationship and regular income during any period that a factory (or portion of a factory) is closed for renovations necessary to complete such Corrective Actions for a period of no longer than six months. . Failure to do so may trigger a notice, warning and ultimately termination of the business relationship as described in paragraph 21.

14. Signatory companies shall make reasonable efforts to ensure that any workers whose employment is terminated as a result of any loss of orders at a factory are offered employment with safe suppliers, if necessary by actively working with other suppliers to provide hiring preferences to these workers.

15. Signatory companies shall require their supplier factories to respect the right of a worker to refuse work that he or she has reasonable justification to believe is unsafe, without suffering discrimination or loss of pay, including the right to refuse to enter or to remain inside a building that he or she has reasonable justification to believe is unsafe for occupation.

TRAINING:

16. The Training Coordinator appointed by the SC shall establish an extensive fire and building safety training program. The training program shall be delivered by a selected skilled personnel by the Training Coordinator at Tier 1 facilities for workers, managers and security staff to be delivered with involvement of trade unions and specialized local experts. These training programmes shall cover basic safety procedures and precautions, as well as enable workers to voice concerns and actively participate in activities to ensure their own safety. Signatory companies shall require their suppliers to provide access to their factories to training teams designated by the Training Coordinator that include safety training experts as well as qualified union representatives to provide safety training to workers and management on a regular basis.

17. Health and Safety Committees shall be required by the signatory companies in all Bangladesh factories that supply them, which shall function in accordance with Bangladeshi law, and be comprised of workers and managers from the applicable factory. Worker members shall comprise no less than 50% of the committee and shall be chosen by the factory's trade union, if present, and by democratic election among the workers where there is no trade union present.

COMPLAINTS PROCESS:

18. The Safety Inspector shall establish a worker complaint process and mechanism that ensures that workers from factories supplying signatory companies can raise in a timely fashion concerns about health and safety risks, safely and confidentially, with the Safety Inspector. This should be aligned with the Hotline to be established under the NAP.

TRANSPARENCY AND REPORTING:

19. The SC shall make publicly available and regularly update information on key aspects of the programme, including:

    a. a single aggregated list of all suppliers in Bangladesh (including sub-contractors) used by the signatory companies, based on data which shall be provided to the SC and regularly updated by each of the signatory companies, and which shall indicate which factories on this list have been designated by that company as Tier 1 factories and which have been designated by that company as Tier 2 factories, however volume data and information linking specific companies to specific factories will be kept confidential,

    b. Written Inspection Reports, which shall be developed by the Safety Inspector for all factories inspected under this programme, shall be disclosed to interested parties and the public as set forth in paragraph 11 of this Agreement.

       Public statements by the Safety Inspector identifying any factory that is not acting expeditiously to implement remedial recommendations.

    c. Quarterly Aggregate Reports that summarize both aggregated industry compliance data as well as a detailed review of findings, remedial recommendations, and progress on remediation to date for all factories at which inspections have been completed.

20. The signatories to this Agreement shall work together with other organizations such as ILO and the High-Level Tripartite Committee and the Bangladeshi Government to encourage the establishment of a protocol seeking to ensure that suppliers which participate fully in the inspection and remediation activities of this Agreement shall not be penalised as a result of the transparency provisions of this Agreement. The objectives of the protocol are to (i) support and motivate the employer to take remediation efforts in the interest of the workforce and the sector and (ii) expedite prompt legal action where the supplier refuses to undertake the remedial action required to become compliant with national law.

SUPPLIER INCENTIVES:

21. Each signatory company shall require that its suppliers in Bangladesh participate fully in the inspection, remediation, health and safety and, where applicable, training activities, as described in the Agreement. If a supplier fails to do so, the signatory will promptly

implement a notice and warning process leading to termination of the business relationship if these efforts do not succeed.

22. In order to induce Tier 1 and Tier 2 factories to comply with upgrade and remediation requirements of the program, participating brands and retailers will negotiate commercial terms with their suppliers which ensure that it is financially feasible for the factories to maintain safe workplaces and comply with upgrade and remediation requirements instituted by the Safety Inspector. Each signatory company may, at its option, use alternative means to ensure factories have the financial capacity to comply with remediation requirements, including but not limited to joint investments, providing loans, accessing donor or government support, through offering business incentives or through paying for renovations directly.

23. Signatory companies to this agreement are committed to maintaining long-term sourcing relationships with Bangladesh, as is demonstrated by their commitment to this five-year programme. Signatory companies shall continue business at order volumes comparable to or greater than those that existed in the year preceding the inception of this Agreement with Tier 1 and Tier 2 factories at least through the first two years of the term of this Agreement, provided that (a) such business is commercially viable for each company and (b) the factory continues to substantially meet the company's terms and comply with the company's requirements of its supplier factories under this agreement.

FINANCIAL SUPPORT:

24. In addition to their obligations pursuant to this Agreement, signatory companies shall also assume responsibility for funding the activities of the SC, Safety Inspector and Training Coordinator as set forth in this Agreement, with each company contributing its equitable share of the funding in accordance with a formula to be established in the Implementation Plan. The SC shall be empowered to seek contributions from governmental and other donors to contribute to costs. Each signatory company shall contribute funding for these activities in proportion to the annual volume of each company's garment production in Bangladesh relative to the respective annual volumes of garment production of the other signatory companies, subject to a maximum contribution of $500,000 per year for each year of the term of this Agreement. A sliding scale of minimum contributions based on factors such as revenues and annual volume in Bangladesh will be defined in the Implementation Plan with annual revisions, while ensuring sufficient funding for the adequate implementation of the Accord and the Plan.

25. The SC shall ensure that there are credible, robust, and transparent procedures for the accounting and oversight of all contributed funds.