



Regulating factory safety in the Bangladeshi garment industry

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Abstract

This paper examines how far the workplace inspection programme established under the 2013 Accord on Fire and Building Safety has served to improve safety in Bangladesh garment factories, and the extent to which its operation has been influenced by the factors that the literature suggests are important in shaping the outcomes of private regulatory initiatives. Its findings suggest that such regulation can generate positive outcomes, even in the absence of strong public regulatory support. They also caution against discounting the role of compliance-based enforcement strategies, while highlighting the importance of their adequate resourcing and transparency. Some support is also offered for the argument that such regulatory initiatives could directly influence the market dynamics that shape supplier working conditions.

Keywords: Bangladesh, garment industry, private regulation, safety, supply chains

Introduction

The offshoring of production to developing countries by multinational companies as part of the wider trend towards the establishment of globalised systems of supply has spawned an extensive literature on the labour conditions of those working in developing countries at the end of such supply chains. An important strand of this literature centres on the role of international labour standards in protecting and improving such conditions, and more specifically, that which can be played by systems of private regulation operated by multinationals themselves (Braithwaite and Drahos, 2000; O'Rourke, 2003; Vogel, 2008).

Existing evidence paints a mixed picture concerning how far such private systems of regulation have proved effective (Anner, 2012; Locke, 2013). It also suggests that this picture

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3 reflects the varying influence of various contextual and structural factors (Trubek & Trubek,
4 2007; Bartley, 2011). For example, some analysts argue that their effectiveness is intimately
5 connected to, and dependent on, their relationships with public, state-based regulation, and
6 hence to the legal regulatory regime within which they are embedded (Locke, 2013; Locke,
7 Rissing & Pal, 2013; Toffel, Short & Oullett, 2015). Others draw attention, more widely, to
8 the role of a range of non-legal and essentially voluntaristic factors that serve to generate
9 compliance, such as the extent of pressures emanating from consumer and other social
10 bodies, and the mechanisms in place to monitor and enforce laid down standards, including
11 the style of regulation adopted by non-state inspectors/auditors (see e.g. O'Rourke, 2003;
12 Piore & Shrank, 2008; Robinson, Meyer & Kimeldorf, 2013). Meanwhile, a third line of
13 analysis suggests that the effectiveness of private initiatives is shaped by the extent to which
14 they act upon the procurement practices of buyers that act to undermine decent working
15 conditions through the institutional refiguring of their surrounding market contexts (Anner et
16 al, 2013).

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35 The present paper sheds new light on the validity of these varying explanations of private
36 regulatory effectiveness. It does so through examining the operation of the safety inspection
37 regime introduced under The Accord on Fire and Building Safety
38 (http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf) established by
39 global unions and brands following the Rana Plaza factory collapse in April 2013, which left
40 1129 Bangladeshi workers dead and 2515 injured. Importantly, it is an initiative that is seen
41 to provide a rare example of one that incorporates a focus on influencing the wider market
42 behaviours of buyers (Anner et al, 2013). To this end, the paper addresses two related
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56 a) To what extent there are grounds to believe that The Accord's inspection programme,
57 as a private regulatory measure, is serving as a force for safety improvement;
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3 b) To what degree its operation in this respect has been positively or negatively impacted
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5 by the various contextual and structural factors referred to above.
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8 The paper commences with a review of the literature on the effectiveness of private global
9 supply labour regulation and the factors which influence it. It then moves on to outline the
10 backcloth to, and nature of, The Accord initiative. Following this, both qualitative and
11 quantitative data are used to address the above questions. In doing so, the article explores the
12 implications they have for current debates about how the effectiveness of systems of private
13 regulation aimed at enhancing the working conditions of those labouring within globalised
14 supply relationships can be improved.
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24 **The private regulation of labour standards**

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27 The view that (international) labour standards were needed to combat the risk of competitive
28 pressures driving down employment conditions has been expressed by a range of social
29 thinkers from as early as the 19th century (see Heintz, 2002: 13). Commencing in 1919 with
30 the adoption of the first six International Labour Organisation (ILO) Conventions, a complex
31 body of such standards has subsequently evolved. The standards so promulgated vary
32 enormously in terms of subject matter, with a useful distinction here being between ‘process
33 standards/rights’ concerning such matters as freedom of association and the right to collective
34 bargaining, and ‘substantive or outcome’ ones relating to matters like paid holidays,
35 maternity leave and minimum or living wages (Luce, 2005: 3; Alston, 2004: 487). The target
36 of the standards developed also varies between a focus, notably with those developed by the
37 ILO, to influence the domestic laws and practices of nation states, and attempts, as with the
38 OECD guidelines on multinational enterprises, to shape the international business activities
39 (and therefore supply chain practices) of multinational/global trading corporations.
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3 The focus on the regulatory role of multinationals reflects three interconnected but not
4 necessarily mutually consistent considerations. The first is a recognition that powerful supply
5 chain buyers can directly and indirectly act to drive down employment standards in supplier
6 organisations (James et al, 2015). The second is an acknowledgement that developing
7 countries frequently do not possess a regulatory capacity and/or willingness to counter such
8 adverse effects (Graham & Woods, 2006). The third is the belief that it is possible to use the
9 supply chain power of multinationals to improve, rather than harm, labour standards in
10 supplier organisations (James et al, 2007).

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12 This last argument exists, however, alongside very mixed evidence concerning the *actual*
13 effectiveness of private, multinational initiatives. Indeed, with reference to the apparel sector,
14 it has been observed that despite concerted efforts ‘private compliance programs appear
15 largely unable to deliver on their promise of sustained improvements in labour standards in
16 the new centers of global production’ (Locke, 2013: 20). A variety of explanations have been
17 put forward to explain these disappointing outcomes and the outcomes of such initiatives
18 more generally. As indicated in the introductory discussion, these can be viewed as falling
19 into three broad categories which respectively emphasise the nature and extent of
20 *voluntaristic sources of compliance*, the degree of supporting state-based *legal regulation*,
21 and how far *markets are institutionally configured* to support the adoption of laid down
22 labour standards.

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24 In relation to the first of these categories, it has been argued that the outcomes of private
25 regulatory initiatives are crucially influenced by the degree of pressure on multinationals
26 flowing from consumers and other sources of pressure to improve labour conditions in their
27 suppliers, as well the adequacy of the arrangements put in place to monitor and enforce any
28 codes of conduct they have developed (Gereffi, Humphrey & Sturgeon, 2005; Riisgaard &
29 Hammer, 2011; O’Rourke, 2003; Vogel, 2008; Toffel, Short & Oullett, 2015). In addition,
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3 attention has been drawn to how compliance is potentially influenced by the style of
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5 regulation adopted by inspectors/auditors. Most notably, Locke and colleagues have argued
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7 that the adoption by them of a 'compliance' orientated approach is problematically based on
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9 three faulty assumptions, namely a belief that asymmetrical power relationships invariably
10
11 exist between buyers and suppliers; an assumption that audits can generate reliable
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13 information about labour conditions within factories, and a view that deterrence forms an
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15 effective motivation towards compliance (see e.g. Locke et al, 2009). They have
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17 consequently gone on to argue that an alternative, commitment-based approach might offer a
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19 potentially more productive means of securing improved working conditions (Locke et al,
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21 2009; Locke, 2013). That is, one in which the causes of labour standard non-compliance are
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23 addressed through buyers and suppliers working to improve work processes, and associated
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25 labour practices, via joint, mutuality-based, problem solving processes.
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30 As regards the second of the above categories of explanation, attention has been drawn to the
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32 way in which the private regulatory initiatives of multinationals may be influenced by local,
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34 state-based regulatory arrangements. It has been argued that private regulatory systems are
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36 not transcendent. Rather, they are intertwined thickly with domestic laws, codes and practices
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38 (Trubek & Trubek, 2007; Bartley, 2011; Berliner & Prakash, 2014). Eberlein et al (2014)
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40 have consequently contended that it is important to understand how interactions between
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42 private and public forms of regulation impact on regulatory capacity and performance. In this
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44 regard, three rather different perspectives have been articulated on how private and public
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46 regulatory systems can productively combine together. One of these emphasises the general
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48 virtues of some form of mutually supportive complementarity between them (Locke et. al,
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50 2007; Locke & Romis, 2010; Locke, Rissing & Pal, 2013). A second embodies the view that
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52 the state must remain a key actor in labour regulation, because there is no substitute for the
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54 effective exercise of government authority. To be effective, private regulation must, from this
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3 perspective, therefore operate within an environment in which regulation is effectively
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5 enforced (see e.g. Esbenshade, 2004; Vogel, 2010). Finally, a third argues that, instead of
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7 displacing the state as regulator, private regulatory regimes play an important role in
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9 developing and strengthening the capacity of the state (Kolben, 2007; Kolben, 2011).

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12 Anner et al (2013) have meanwhile advanced a third, rather different, line of explanatory
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14 analysis. While accepting that existing approaches have failed to eliminate, or even
15
16 substantially reduce, labour violations in global supply chains, they question whether this
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18 failure can be meaningfully addressed through a better mix of private and public regulation,
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20 the commitment-based approach advocated by Locke and colleagues, enhanced systems of
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22 audit/inspection or increased ethical consumer pressures; although they don't discount that
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24 each of them might yield some beneficial outcomes. In their view, this is because while
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26 current initiatives are informed by an acknowledgement of the central role of buyers in
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28 creating conditions that encourage labour violations, they are seen, in an echo of the
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30 arguments of Bartley and Kincaid (2016), to 'leave this root cause unaddressed' (Anner et al,
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32 2013: 6-7). Drawing on a historical analysis of how collectively bargained contracts in the
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34 U.S apparel industry prompted a dramatic decline in sweatshop conditions during the middle
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36 part of the twentieth century, they argue that a more effective way forward would be to
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38 directly regulate the market behaviours of buyers that drive labour conditions in supplier
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40 factories, including via the creation of legal liabilities where there is a failure to comply with
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42 laid down standards (p.14).

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45 Anner and colleagues recognise the enormous challenges involved in creating such regulatory
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47 frameworks. They, however, argue that the global labour movement 'appears to be coalescing
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49 around' the type of approach they advocate (Anner et al, 2013: 42). In fact, they argue that
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51 key features of The Accord lend weight to this view. In particular, they highlight at least four
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3 key ways in which the agreement reflects core principles of the collective contracts that
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5 previously applied in the U.S apparel industry. These are:

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8 - The way in which it regulates the buying practices of buyers by imposing on them
9 requirements to fund safety improvements, to terminate business with non-
10 cooperative factories, and to provide multi-year commitments to suppliers, thereby
11 potentially providing greater contract stability;
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14 - The role unions are accorded in its governance, as well as the provision made for
15 safety committees, union inputs into training and the sharing of inspection reports
16 with workers' representatives;
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19 - The contractually binding nature of the Accord's provisions; and
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22 - The fact that, through its signatory companies, the agreement covers a broad portion
23 of the industry, thereby reducing the extent to which its operational costs put
24 individual buyers at a competitive disadvantage (p.28, 29).
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36 Their arguments concerning the distinctive nature of The Accord in turn suggests that an
37 investigation of its operation provides a unique opportunity to evaluate a private regulatory
38 initiative to improve labour condition in global supply chains operation that potentially
39 enables the influence of all the above sources of influence to be taken into account.

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44 Consequently, in what follows, such an analysis is attempted in relation to the way in which
45 The Accord's inspection programme has operated.
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49 **The origins and nature of The Accord**

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53 The Bangladeshi garment industry has long been notorious for its unsafe working conditions
54 (Chartier, 2008; Labowitz & Baumann-Pauly, 2014). Accidents have claimed the lives of two
55 thousand workers since 2005. There has also been a litany of factory fires and building
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3 collapses which have killed and maimed many workers, these including at Spectrum,
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5 Phoenix, Gharib, Tasreen and, of course, Rana Plaza (Ahmed, Raihan & Islam, 2013; Islam
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7 & Ahmed, 2014; Kurpad, 2014; Peetha, 2016).

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10 Global brands in their capacity as purchasers have traditionally incorporated the issue of
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12 health and safety into their promulgated labour standards and associated monitoring and
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14 enforcement processes (Anner, et, al, 2013; Abernathy, Dunlop, Hammond & Weil, 1999).
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16 The collapse of the Rana Plaza factory, however, prompted unprecedented international
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18 efforts to improve health and safety in the Bangladeshi garment industry. One of the most
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20 significant of the developments to occur was the signing of an agreement, The Accord on Fire
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22 and Building Safety in 2013.

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27 Concluded against the backcloth of concerted pressure from both GUFs and NGOs (Reinecke
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29 and Donaghey, 2015), The Accord is a five-year legally binding and enforceable agreement
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31 between global brands and global trade union federations to build a safe garment industry.
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33 Disputes concerning its implementation are, in the first instance, submitted to the initiative's
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35 steering committee (see further below) for initial adjudication. Its decision may then
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37 subsequently be appealed to a process of binding arbitration.¹ The resulting award may be
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39 enforced in the home country of the signatory party that is the subject of a complaint, in line
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41 with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a
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43 convention commonly referred to as the New York Convention.

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47 Under The Accord, brands commit to a range of measures designed to improve working
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49 conditions in the factories which supply them. It covers approximately 1,800 factories and
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51 two million workers, half of the Bangladeshi garment workforce. The Accord has been signed
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53 by over 200 apparel brands, retailers and importers from more than 20 countries in Europe,
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55 North America, Asia and Australia (<http://bangladeshaccord.org/signatories/#witness-box>).

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3 Meanwhile, a number of other (predominantly North American companies) chose not to join
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5 and instead launch a parallel, but less onerous safety initiative, called The Alliance
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7 (<http://www.bangladeshworkersafety.org/>).²
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10 Governance of Accord affairs and its small implementation staff is via a steering committee
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12 consisting of three trade union representatives, three company representatives and an ILO
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14 chair. An advisory board includes Bangladeshi government representatives, and an executive
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16 director and safety inspector oversee safety improvement and worker participation
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18 programmes. Central to The Accord is the establishment of a system of private workplace
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20 inspections. Under this, global brands commit to (i) require supplier factories to submit to
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22 rigorous safety inspections (Article 9), (ii) accept public disclosure of inspection reports
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24 (Article 11), (iii) require suppliers to implement repairs and renovations necessary to make
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26 their factories safe (Article 12), (iv) pay suppliers prices sufficient for them to afford
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28 necessary repairs and operate safely (Article 22), and (v) cease doing business with suppliers
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30 failing to comply with any of the above requirements (Article 21).³
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35 The impact of The Accord on factory safety in garment factories in Bangladesh is therefore,
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37 in large part, related to how far its inspection system has generated positive outcomes. In the
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39 analysis below, we address our two central research questions through an evaluation of this
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41 system's operation.
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47 **The Accord's inspection programme in action**

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50 In order to examine the operation of The Accord's programme of factory inspections, we
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52 draw on both primary and secondary data. In the case of the latter, use is made of statistics
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54 published on The Accord's website that shed light on the scale and operation of its workplace
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56 inspection programme. In particular, these statistics are utilised to (i) detail the number of
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3 inspections undertaken, (ii) evaluate their outcomes e.g. numbers of workplaces where
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5 improvements were recommended or closures occurred on safety grounds or as a result of a
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7 failure to cooperate with the making of improvements, (iii) the aggregate number of
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9 improvements required, and (iv) the progress that has been made in making them.
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12 As regards the primary data collection, we draw on 23 interviews (face-to-face, skype,
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14 telephone) conducted with 18 stakeholders in the Bangladeshi garment industry. These
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16 respondents encompass representatives from The Accord (2), global brands (3), non-
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18 governmental organisations (4) and global unions (3), a senior national trade union leader (1),
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20 health and safety professionals (2), an academic researcher (1), and officials from the
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22 Bangladesh Garment Manufacturers and Exporters Association (BGMEA) (2). Some of them
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24 were interviewed more than once. Several global brands and officials from the BGMEA
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26 declined our invitation to participate. Interviews were conducted between October 2014 and
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28 February 2016. They were recorded, transcribed and analysed thematically and respondents
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30 invited to clarify or supplement their responses.
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36 In presenting our findings, we first detail the statistical data compiled by The Accord in order
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38 to paint an essentially descriptive picture of the operation of its inspection programme. We
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40 then draw upon the qualitative interview data collected to provide further insights into how
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42 the programme has been operating and the factors which have been influencing it. It is
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44 acknowledged that this means that interview data precedes statistical data by some months.
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46 This, though, is felt to be defensible on presentational and analytical grounds and also
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48 because a similar picture would have emerged if use was made of earlier sets of operational
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50 statistics.
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3 *The quantitative picture*
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6 Under The Accord's inspection programme, each factory is the subject of independent
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8 inspections of their fire, electrical and structural safety. Initial inspections are conducted by
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10 international engineering firms contracted by The Accord. After each inspection, a report is
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12 produced detailing its findings, including required remedial actions and timelines within
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14 which these should be carried out (so called "Corrective Action Plans"). A team of over 100
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16 permanent Accord staff engineers then conduct up to 500 follow-up inspections each month,
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18 meaning that each Accord factory is currently inspected once every three to four months (The
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20 Accord, 2016; 4). Where such inspections are undertaken, a detailed report is produced and
21
22 the relevant Corrective Action Plan updated. This report is sent not only to the factory
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24 concerned but also to the related brand and union signatories (The Accord, 2016: 6).
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30 Defects identified during inspections are each given a deadline for their remediation. These
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32 deadlines range from 'immediate', for repairs and renovations that can be done in a matter of
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34 hours or days, to up to one year for more complex improvements. Where suppliers are failing
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36 to adequately progress improvements, they potentially face, under Article 21 of the Accord, a
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38 process of escalating warnings and notices that can ultimately lead to business with them
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40 being terminated (The Accord, 2016: 12).
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46 For each factory inspected, The Accord website:

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- 48 1. Identifies the (often very extensive) improvements needed;
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 - 50 2. Provides its Corrective Action Plan (CAP), which outlines not only the actions
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52 required but the timelines applying to the undertaking of them, as well as a supporting
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54 financial plan signed off by factory owner and the purchasing brand;
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 - 56 3. Details progress on implementing this plan; and
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3 4. Indicates whether or not financial help is being provided to enable remediation to be
4 carried out (<http://bangladeshaccord.org/factories/list-factories/>)
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10 The Accord's website provides that, as of October 2016, initial inspections had been
11 undertaken in 1551 factories (The Accord, 2016: 5) and that, by the end of June 2016, there
12 had been 4098 follow-up inspections (The Accord, 2016: 12). It further indicates that
13 escalation measures had been applied to 472 suppliers and that in 41 cases business had been
14 terminated with suppliers (The Accord, 2016: 4).
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22 It is nevertheless acknowledged that processes of remediation are often running considerable
23 behind laid down deadlines (see Table 1 and 2 below).
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28 **Table 1: Rate of Progress (as of October, 2016)**
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Time since initial inspection	Number of factories behind schedule*
More than 1.5 years	1268
Between 1.5 and 1 year	19
Between 1 year and 0.5 year	87
Less than 0.5 year	14
Total factories behind schedule	1388

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- Source: The Accord, 2016: 13, 14
 - The phrase “behind schedule” means that Corrective Action Plans are being implemented but some timelines have not been met

Table 2: Progress levels in factories behind schedule

% of issues fixed (reported and verified)	Above 75%	50-75%	25-50%	Less than 25%
Number of factories	563	620	161	44
% of factories	40	45	12	3

- Source: The Accord, 2016: 14

At the same time, Tables 3 and 4 highlight that substantial numbers of improvements have been both identified and implemented through both initial and subsequent follow-up ones. Indeed, in total, the figures provided show that nearly 120,000 safety defects have been identified through such inspections, and that over 60,000 of these have been verified as having been remedied. Moreover, as Table 2 highlights, in nearly 1200 factories, between half and all required improvements have been implemented.

Table 3: Progress on improvements arising from initial inspections (information as of October, 2016)

	Corrected	Pending Verifications*	In Progress	Total
Electrical	25074	4055	4986	34115
Fire	16856	4800	11674	33330
Structural	4860	4249	1081	19950

- Source: The Accord, 2016: 10
- The term “corrected” means that the finding has been verified as corrected by the Accord engineers through follow-up verification visits. The phrase “pending verifications” means that the required improvements have been reported as completed but this has not been verified by Accord engineers. Finally, the phrase “in progress” means that remediation of the inspection findings is underway

Table 4: Progress on improvements arising from follow-up inspections (information as of October, 2016)

	Corrected	Pending Verifications	In Progress	Total
Electrical	13013	3095	6772	22880
Fire	2944	1096	3412	7452
Structural	168	198	401	767

- Source: The Accord, 2016: 10

How far financial support has been provided under the terms of The Accord to help factories make required safety improvements is unfortunately less clear. As part of every Corrective Action Plan, signatory companies and their suppliers are required to confirm that a remediation finance plan is in place. By the end of October 2016, 1361 such plans had been reported. On the basis of these reports, it appears that in 55 cases brands are providing financial assistance. However, The Accord reports that both labour and company signatories agree that in reality, such support is being more widely provided; although they disagree on the ‘question of whether and to what extent factories need financial assistance but are not receiving it, and whether that is a major cause for delays in remediation’ (The Accord, 2016: 15).

Qualitative insights

On the basis of these statistics, there would seem little doubt that The Accord is having a widespread and significant impact on factory safety, as regards fire, electrical and structural matters. Those interviewed offered confirmation of this:

SBT (a pro-union expert) argued (5, January 2016):

“Technical improvements in factories, the correct standards for building safety, electrical safety, and fire safety are finally being rolled out in factories. That's the change. And that has

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3 *been done because brands have supported it...Rana has provided...that critical weight, to*
4 *bring about those kinds of changes. And brands have really given attention to those kinds of*
5 *issues. So you can say now that factories are safer...there is less likely to be fires, less likely*
6 *to collapse (sic). ”*
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14 X (19, December, 2014), from The Accord, reported that factory owners had spent millions of
15 dollars on fire safety, sprinkler systems, updating electrical connections, etc. He reported on
16 the basis of verified evidence that “80% of factories are doing something, they are moving”.

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20 G (Interview: 30, March, 2015), a western occupational health and safety professional
21 working with The Accord, commended the progress made since The Accord came into effect:
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23 *“...first time in which many factories even got inspected...500 corrective action plans which*
24 *have been approved and so you have someone to pay for remediation and you have a*
25 *plan...other corrective action plans under review...another 250 initial inspections in 2015. So*
26 *these are tremendous advances”*
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36 Last but not least, V (20, March, 2015), a signatory brand representative, suggested that the
37 situation had changed greatly. In the past, “*electrical equipment... was not being taken care*
38 *of...cables left hanging around.... You go into a factory today and visually, you can see that*
39 *it's being taken care of”*. She went on to further remark that, previously, factory owners did
40 not think that safety was important, it was “*just how things were... ”*, but now they understood
41 what caused fires and realised that their causes needed to be addressed.
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51 A number of respondents attributed these positive outcomes to the legally binding character
52 of The Accord. WW (6, March, 2015), for example, explained that brands can now no longer
53 justify their voluntary approach to helping supplier factories, based on CSR rhetoric. The
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3 only way to securing improvements in safety in factories is through brands observing legally
4 binding commitments:
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7 *“The Accord is a departure from this [voluntary] culture, we are trying to drag brands and*
8 *retailers into a different kind of thinking. It is going to take a great deal of time, which is why*
9 *it is legally binding, because we understand that things will change only through constant*
10 *pressure and over an extended length of time.”*
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19 Global unions were also reported to have resorted to the Accord’s legal mechanisms to bring
20 some brands back into line (Allchin & Kazmin, 2015). G (30, March, 2015) confirmed that
21 unions were preparing to file arbitration cases against several brands, who were failing to
22 comply with their obligations. At the time of writing, no public announcements have been
23 made. G suggested that this ought not to be viewed negatively since unions were using the
24 threat of legal proceedings to spur action on the part of brands.
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34 These last observations were in turn advanced against the backcloth of criticisms of the
35 brands’ reticence to fund safety improvements and their failure to change their
36 approaches towards the pricing of supply contracts, despite Article 22 of The Accord
37 requiring them to ensure that it was financially feasible for factories to maintain safe
38 workplaces and comply with safety upgrade requirements. For example, S (10,
39 November, 2014), a GUF respondent, noted:
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48 *‘The brands have failed to deliver their full financial contributions due under the*
49 *terms of The Accord. [Even] a contribution of a fraction of 1% of the global*
50 *brands’ annual turnover would comfortably secure all of the necessary funds’*
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3 Meanwhile, F (21, March, 2015), a BGMEA respondent, observed:
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6 *'...so when the building collapsed everybody said "you're at fault", like to us,*
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8 *you're at fault but hold on, if you felt so judgemental about the whole thing, then*
9
10 *maybe you should pay us a little more! Instead, our buyers continue to threaten*
11
12 *us, saying, if you don't want to take our orders, we will go elsewhere cheaper. But*
13
14 *factories cannot produce cheaper without cutting corners on workers' rights.'*
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20 Respondents also drew attention to how a 'CSR-based' interpretation by brands of their
21
22 responsibilities under The Accord had a negative impact in this regard. WW (6, March, 2015)
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24 remarked:
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29 *'The fact that you have brands which have a legal obligation to help factory*
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31 *owners, still using rhetoric which derives from CSR culture of voluntarism, is not*
32
33 *surprising. It is annoying, but it is predictable...What matters is that factories get*
34
35 *fixed, which will not happen if brands do not provide some form of financial*
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37 *assistance.'*
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42 It was further apparent that Bangladesh government support for The Accord was of a
43
44 qualified nature, notwithstanding institutional appearances to the contrary.
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49 Government departments and official bodies in Bangladesh initially supported The Accord's
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51 aims in conjunction with increased government efforts to prevent accidents. It adopted a
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53 National Action Plan on Fire Safety and Structural Integrity, a National Occupational Safety
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55 and Health Policy and a revised Labour Act (Rahman, 2014). A task force on Building and
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57 Fire Safety for the garment sector, a hot line for reporting fire accidents and a publicly
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3 accessible database on safety issues in garment factories were also established. In addition,
4
5 dozens of posts were created for fire inspectors to enforce safety standards in factories
6
7 outside The Accord. In turn, The Accord has affirmed and supported state initiatives on fire
8
9 and building safety. The fire, electrical and building inspection standards utilised for the
10
11 inspections of Accord factories are largely based on the Bangladesh National Building Code
12
13 and are the product of discussions between The Accord, the National Tripartite Plan of
14
15 Action, and the Alliance for Bangladesh Worker Safety (Alliance), initiated and facilitated by
16
17 the International Labour Organisation (<http://bangladeshaccord.org/building-standards/>).
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19 Furthermore, the Accord engages with the government through its Advisory Board, as noted
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21 earlier, through direct contact with officials and through its relations with the Bangladesh
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23 University of Engineering and Technology, which supports the government in its factory
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25 inspections (Articles 6, 7).
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30 Notwithstanding these various forms of apparently mutually supportive collaboration, a
31
32 common theme raised by respondents, however, was how hostility towards The Accord on
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34 the part of many factory owners privately received support from the government in a context
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36 in which 50% of politicians are associated with the garment industry, primarily via
37
38 ownership. Additionally, the government is heavily dependent on funding from business (B,
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40 23, October, 2014; X, 19, December, 2014). One respondent from The Accord, for example,
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42 reported how it was viewed by government officials as “a bunch of cowboys” (X, 19
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44 December, 2014). He further referred to a recent well-publicised “expo” on health and safety
45
46 in Bangladesh. Immediately before the expo, the Prime Minister declared in a cabinet
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48 meeting “We have our own programme, so...you do not need to prioritise...The Accord”. In
49
50 a similar vein, representatives of global brands (N, 24 February, 2015; P, 4 March, 2015)
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52 argued that the government lacked a political will to improve safety. They criticised state
53
54 policy in practice, arguing that in reality domestic regulations on safety governance were
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3 never enforced. More generally, according to SBT (5 January, 2016), the government has
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5 made it clear it does not want to prolong participation in the Accord after its five-year term
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7 comes to an end.
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10 Unions, as key pressure groups, continue to operate in a very hostile environment, despite
11
12 reform of domestic labour laws to enable workers to form unions more freely (Rahman,
13
14 2014). P (4 March, 2014) cautioned that a “pathological hatred for unions” remained among
15
16 employers, while WW (6 March, 2015), argued that the government ignored employers’
17
18 violent anti-union tactics. Such views have received external support. The International
19
20 Labour Rights Forum (2014) has reported continuing anti-worker violence in the garment
21
22 industry, noting governmental failures to address serious rights violations. It also claims that
23
24 government ministers have personally intimidated labour activists, calling for action against
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26 those reporting violence on labour organisers and suggesting that they were acting against
27
28 Bangladeshi interests. Such concerns have more led the ITUC and European TUC, along with
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30 Global Union Federations UNI and IndustriALL and their European regional bodies, to write
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32 to the European Commission (ITUC-CSI-IGB, 2015) calling on it to step up action as anti-
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34 union repression in Bangladesh had increased.
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43 **Discussion**

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46 On the basis of the presented findings, it is clear that the achievements of The Accord cannot
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48 easily be dismissed. With the exception of a small number of new supplier factories,
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50 inspections have been undertaken in all relevant factories and an extensive programme of
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52 follow-up ones is in place. It is further clear that these inspections have identified a vast
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54 number of electrical, fire and structural safety defects and that many of these have been
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56 remedied.
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5 At the same time, the operation of The Accord's inspection programme can be seen to have
6 embodied problematic features and therefore, highlights the challenges that attempts to
7 improve labour standards at the end of buyer-led supply chains face. In many cases, progress
8 on remedying identified safety defects has been slow and certainly outside laid down
9 deadlines, while almost 10 per cent of covered factories have been subjected to The Accord's
10 system of warnings and notices because of their lack of commitment to implementing the
11 safety improvements deemed necessary as a result of inspections. In addition, business with
12 some 40 factories has been terminated on the grounds of their lack of cooperation.

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23 Meanwhile, although it remains unclear how far buyers are providing financial support to
24 help make required improvements, tensions between the improvement of safety and the
25 financial objectives of buyers would seem to exist, both in relation to the continuation of
26 existing pricing models and differing perceptions among union and company signatories
27 regarding the provision of such support. Furthermore, against the backcloth of the political
28 influence wielded by factory owners, it is apparent that the support provided by the
29 Bangladesh government to The Accord is very much of a qualified nature, notwithstanding
30 that representatives of the government sit on The Accord's advisory board and hence form
31 part of its governance arrangements.

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45 It must be further admitted that the statistical data provided on the outcomes of The Accord's
46 inspection programme cannot unquestionably be said to show that the safety of workers in the
47 inspected factories has improved and hence that The Accord has been effective. The only
48 reliable test of this is whether it becomes apparent overtime that fires and building collapses
49 have become significantly less common.⁴ This said, the standards against which these defects
50 have been identified were agreed in ILO initiated and facilitated discussions between the
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3 Accord, the NTPA and the Alliance for Bangladesh Worker Safety. As a result, they were
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5 agreed by both local and global union representatives and hence, at a minimum, seem
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7 unlikely to fall significantly below internationally acceptable standards. This in turn logically
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9 suggests that Accord inspections are acting to identify many (although not necessarily all) of
10
11 the main risks concerned.
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16 This apparently positive picture of achievement clearly offers some confirmation for the view
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18 that private regulatory initiatives can serve to improve labour conditions in global supply
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20 chains. In doing so, it also brings us back to the question posed at the beginning of the paper
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22 about how its operation has been impacted by the various factors that existing literature
23
24 suggests are important in shaping the outcomes of private regulatory initiatives. On the basis
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26 of the collected data, it cannot be claimed that this question can be definitely answered.
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30 Nevertheless, they do enable a number of conclusions to be drawn with varying degrees of
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32 confidence regarding the respective roles of the three categories of explanatory factors
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34 identified earlier: the nature and extent of *voluntaristic sources of compliance*, the degree of
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36 supporting state-based *legal regulation*, and how far *markets are institutionally configured* to
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38 support the adoption of laid down labour standards through the procurement practices of
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40 buyers.
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46 In the case of the first of these, it would seem unquestionable that the horrific nature of the
47
48 Rana Plaza disaster and the public/consumer pressures it generated to do something about
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50 working conditions in Bangladesh garment factors played a crucial role in the establishment
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52 of The Accord and its unique form as a joint company-union collaboration involving a
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54 collectivity of brands (Reinecke and Donaghey, 2015). Its creation therefore adds clear
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56 weight to the view that the development of such initiatives generally stem from wider social
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3 pressures that act to prompt a recognition among buyers of the need to be seen to be trying to
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5 counter some of the adverse labour effects flowing from their market-driven supply
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7 relationships.
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12 Insofar as the Accord's compliance-orientated inspection programme has been effective in
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14 reducing the risks of fires and building collapses, this impact cannot logically be divorced
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16 from the fact that its resourcing has been sufficient to support the appointment of an
17
18 international consultancy to conduct initial inspections of all factories and the carrying out of
19
20 regular follow-up inspections by a current complement of over 100 engineering inspection
21
22 staff. The programme's operation therefore draws attention to the point that the impact of
23
24 private regulatory initiatives is likely to be tied up with the issue of the resources devoted to
25
26 their implementation. It further acts to raise an important qualification concerning Locke's
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28 critique of compliance-based regulation, namely that it largely side-steps this issue of
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30 resources and therefore the possibility that part of its apparent problematic impact stems from
31
32 the fact that it has frequently not been adequately resourced. In doing so, the programme's
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34 operation arguably suggests that the scope for compliance, as opposed to commitment, based
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36 enforcement mechanisms to generate improvements in labour standards may be greater than
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38 Locke and his colleagues suggest.
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46 As regards the argument that the effectiveness of private regulatory initiatives is influenced
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48 by the degree to which they receive support from surrounding state-based legal regulation,
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50 the findings obtained do not rule out that such complementarity can be beneficial. They do,
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52 however, suggest that the presence of such support is not necessarily crucial. Thus, a striking
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54 feature of the outcomes of The Accord's inspection programme is that they were achieved
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3 against the backcloth of a very mixed and qualified degree of support from the Bangladesh
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5 government and with no direct involvement of government inspectors.
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10 Finally, as to the argument of Anner et al (2013) relating to the need for global supply
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12 initiatives to address ‘the root cause’ of problematic labour conditions, namely the buying
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14 practices of buyers, it is not possible to conclusively demonstrate on the basis of the collected
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16 data how far, and through what means, all of the characteristics listed on page 7 have
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18 contributed to The Accord’s positive outcomes. However, and notwithstanding the reported
19
20 problems and disagreements surrounding the provision of financial assistance by brands to
21
22 support safety improvements, it is hard to believe that the joint nature of its founding
23
24 agreement, and the transparency that has flowed from it, have not served to enhance the
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26 priority accorded to safety related matters and associated expenditure. Particularly when the
27
28 role that reputational considerations played in The Accord’s establishment is borne in mind
29
30 (Reinecke & Donaghey, 2015). Thus, The Accord’s commitment to put on its website all
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32 inspection reports and to detail progress in implementing their recommendations has served
33
34 to provide much scope for unions and pressures groups to monitor whether safety
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36 improvements are carried out with sufficient urgency. Indeed, it was concerns over the slow
37
38 progress being achieved that led The Accord to expand the number of inspection staff to its
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40 current level. In this regard, the operation of The Accord can be contrasted with the
41
42 difficulties that pressure groups have faced in assessing progress in making safety
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44 improvements in factories supplying companies forming part of the Alliance, where it has
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46 only been possible to gain insights into this by drawing on data from factories inspected
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48 under The Accord that are also used by signatory companies of the Alliance (International
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50 Labour Rights Forum, et al, 2016).
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3 It can consequently be argued that neither Locke, in his critique of compliance-based
4
5 regulation, nor Anner and colleagues, in their advocacy for a contract-based approach to joint
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7 brand liability, have accorded sufficient weight to the role that transparency can play in
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9 supporting the implementation of private regulatory initiatives. This view is given added
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11 weight by studies concerning the role that transparency has played in supporting the
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13 operation of other private regulatory initiatives and the factors that influence the extent to
14
15 which it has done so. For example, research by Auld & Gulbrandsen (2010, 2014) on the
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17 operations of the Forest Stewardship Council and the Marine Stewardship Council, found that
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19 that transparent processes (granting ultimate decision-making authority to members, open
20
21 engagement with stakeholders, publishing assessment reports, and increasing the online
22
23 disclosure of audit outcomes) improved both their legitimacy and accountability. Meanwhile,
24
25 in an empirical analysis of levels of transparency in 143 regulatory standard-setting
26
27 programmes in the field of transnational sustainability, Schleifer et al found transparency to
28
29 be positively correlated with multi-stakeholder initiatives (with NGOs and public actors) and
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31 those in which meta-governance organisations promote an overarching normative framework
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33 for transnational rule-making (Schleifer, Fiorini & Auld, 2017). Together, such findings
34
35 suggest that future research on The Accord could usefully focus more detailed attention on
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37 how its operation has been influenced by its systems of internal governance and information
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39 disclosure, including the manner in which they mutually interact.
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51 The differing perceptions of signatory unions and companies about how far brands are
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53 funding safety improvements also usefully illustrates the way in which The Accord, as Anner
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55 and colleagues have argued, departs from the unilateral nature of much multinational supply
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57 chain action. Furthermore, it should not be forgotten that another consequence of The Accord
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3 has been the establishment of a regime of safety inspection under which factories supplying
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5 over 200 brands are required to comply with a common set of requirements in the areas of
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7 electrical, fire and structural safety and which therefore acts to limit their capacity to
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9 accommodate cost-cutting pressures by cutting corners on safety. Moreover, this feature is
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11 effectively reinforced by the fact that factories are often supplying a number of different
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13 Accord signatory companies and so potentially similarly reduces the ability of brands to
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15 competitively drive down the prices they pay.
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21 Given the above analysis, it would seem reasonable to argue that, through a combination of
22
23 the four features listed on page 7, The Accord does to some extent provide a platform through
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25 which ‘root cause’ market dynamics can be addressed. This view is furthermore reinforced by
26
27 the fact that although the legal enforcement mechanisms of The Accord have so far not been
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29 formally utilised, many of those interviewed did allude to the significance of its legally-
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31 binding nature. It may, therefore, be that the lack of formal legal action conceals how it has
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33 been used as a threat to bring recalcitrant brands into line.
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39 While, then, it cannot be claimed that the study’s findings offer firm confirmatory support to
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41 the arguments advanced by Anner and colleagues, they do suggest that they cannot sensibly
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43 be disregarded. There would seem a consequent need for them to be subjected to more
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45 detailed evaluation via a more in-depth and broader evaluation of The Accord in which all its
46
47 constituent elements, including its systems of governance and information disclosure, are
48
49 examined to identify their individual and combined effects. . This is particularly so given that
50
51 at least some of those involved in the development and governance of The Accord believe it
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53 to have had a positive effect and to be financially viable in the longer term. Thus, while the
54
55 BGMEA only favours an extension to its tenure beyond May 2018 as a ‘monitoring team’
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3 (New Age Business, 2017), more than 20 brands and the UNI and IndustriALL global unions
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5 have, subsequent to the research reported here, recently agreed a follow-on Accord agreement
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7 (Industriall, 2017a), which it is anticipated will eventually be signed by many more brands.
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10 Already, however, it is estimated that the new agreement will extend to cover over a thousand
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12 garment factories (The Accord, 2017; Industriall, 2017b).⁵ Furthermore, in the build up to the
13
14 July 2017 G20 summit in Hamburg, a number of global unions called on participants to look
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16 to The Accord as a model for promoting sustainable business practices. The Deputy Secretary
17
18 of UNI Global Union, for example, observing that its ‘model of accountability and
19
20 transparency works’ (<http://passport.uniglobalunion.org/news/global-unions-urge-world->
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22 [leaders-elevate-example-bangladesh-accord](http://passport.uniglobalunion.org/news/global-unions-urge-world-leaders-elevate-example-bangladesh-accord)).
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28 **Conclusion**

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31 This paper has sought to cast further light on the role of the various factors that have been
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33 argued to affect the development and operation of private regulatory initiatives aimed at
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35 protecting and enhancing the working conditions of those labouring at the end of global
36
37 supply chains. To this end, it has drawn on a combination of primary and secondary data on
38
39 the operation of the 2013 Accord on Fire and Building Safety to address how far its
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41 programme of workplace inspections has acted as a source of safety improvement and to
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43 what extent its operation, in this regard, has been influenced by factors which the literature
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45 suggests are important in determining the outcomes of private regulatory initiatives.
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51 The findings obtained lend weight to the view that such regulation can generate positive
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53 outcomes, even in the absence of strong public regulatory support. In doing so, they caution
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55 against discounting the role that compliance-orientated enforcement strategies can play in
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57 supporting the implementation of laid down labour standards, while also drawing attention to
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3 the importance of their adequate resourcing and, critically, the transparent nature of
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5 monitoring processes. They also lend more tentative weight to the argument that the
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7 effectiveness of such regulatory initiatives would be enhanced if they focussed attention on
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9 mediating the market dynamics that act to undermine the provision of decent working
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11 conditions.
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19 **Appendix 1: Interview respondents and dates**

20 21 22 B; 23, October, 2014	GUF Respondent
23 24 25 S; 10, November, 2014	GUF Respondent
26 27 28 29 X; 19 December, 2014	Respondent from The Accord
30 31 32 33 N; 24, February 2015	Global Brand Representative
34 35 36 37 P; 4, March, 2015	Global Brand Representative
38 39 40 41 WW; 6, March 2015	Respondent from a Labour Rights Organisation
42 43 44 V; 20, March, 2015	Global Brand Representative
45 46 47 48 F, 21, March, 2015	BGMEA Respondent
49 50 51 52 G; 30, March, 2015	Western occupational health and safety professional working with The Accord
53 54 55 56 SBT; 5, January, 2016	Trade Union Expert
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15 Notes

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21 ¹ It is specified that the process for selecting the arbitrator will be governed by the
22 UNCITRAL Model Law on International Commercial Arbitration 1985.
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25 ² There are several differences between The Accord and The Alliance. The Accord is an
26 agreement between global unions, on the one hand, and global brands and retailers, on the
27 other. The Alliance is an agreement between global brands and retailers only; it is a
28 corporate- led initiative. In addition, whilst it is a contractual requirement to do so under The
29 Accord, The Alliance does not require members to pay for remediation. Thirdly, under The
30 Accord, worker representative organisations may take enforcement action. Under The
31 Alliance, workers cannot enforce the agreement although they can report any breach to the
32 companies. Last but not least, The Accord requires a much higher level of transparency from
33 global brands and retailers about the progress of repairs. See
34 [https://cleanclothes.org/news/2016/11/21/alliance-for-bangladesh-worker-safety-overstates-](https://cleanclothes.org/news/2016/11/21/alliance-for-bangladesh-worker-safety-overstates-progress-while-workers-lives-remain-at-risk)
35 [progress-while-workers-lives-remain-at-risk](https://cleanclothes.org/news/2016/11/21/alliance-for-bangladesh-worker-safety-overstates-progress-while-workers-lives-remain-at-risk)
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39 ³ As noted earlier, these provisions existing alongside others which, among other things,
40 impose an obligation on buyers to make an initial two-year commitment to purchase at
41 current volumes from suppliers, and lay down requirements on training (including inputs
42 from union representatives), the establishment of safety committees and worker
43 representation more generally.
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47 ⁴ This point arguably takes on even greater significance in relation to the impact of other
48 elements of The Accord such as the requirements laid down with regard to the provision of
49 training and the establishment of safety committees. Thus, it cannot simply be assumed that
50 actions in these areas will lead to improved standards of safety protection. The evidence on
51 the factors which influence the effectiveness of safety committees, for example, illustrates
52 this point well (see e.g. Walters et al, 2016).
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55 ⁵ The text of the new agreement can be obtained at :([http://bangladeshaccord.org/wp-](http://bangladeshaccord.org/wp-content/uploads/2018-Accord-full-text.pdf)
56 [content/uploads/2018-Accord-full-text.pdf](http://bangladeshaccord.org/wp-content/uploads/2018-Accord-full-text.pdf)
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Regulating Factory Safety in the Bangladeshi Garment Industry

Abstract

This paper examines how far the workplace inspection programme established under the 2013 Accord on Fire and Building Safety has served to improve safety in Bangladesh garment factories, and the extent to which its operation has been influenced by the factors that the literature suggests are important in shaping the outcomes of private regulatory initiatives. Its findings suggest that such regulation can generate positive outcomes, even in the absence of strong public regulatory support. They also caution against discounting the role of compliance-based enforcement strategies, while highlighting the importance of their adequate resourcing and transparency. Some support is also offered for the argument that such regulatory initiatives could directly influence the market dynamics that shape supplier working conditions.

Keywords: Bangladesh, garment industry, private regulation, safety, supply chains

Introduction

The offshoring of production to developing countries by multinational companies as part of the wider trend towards the establishment of globalised systems of supply has spawned an extensive literature on the labour conditions of those working in developing countries at the end of such supply chains. An important strand of this literature centres on the role of international labour standards in protecting and improving such conditions, and more specifically, that which can be played by systems of private regulation operated by multinationals themselves (Braithwaite and Drahos, 2000; O'Rourke, 2003; Vogel, 2008).

Existing evidence paints a mixed picture concerning how far such private systems of regulation have proved effective (Anner, 2012; Locke, 2013). It also suggests that this picture

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3 reflects the varying influence of various contextual and structural factors (Trubek & Trubek,
4 2007; Bartley, 2011). For example, some analysts argue that their effectiveness is intimately
5 connected to, and dependent on, their relationships with public, state-based regulation, and
6 hence to the legal regulatory regime within which they are embedded (Locke, 2013; Locke,
7 Rissing & Pal, 2013; Toffel, Short & Oullett, 2015). Others draw attention, more widely, to
8 the role of a range of non-legal and essentially voluntaristic factors that serve to generate
9 compliance, such as the extent of pressures emanating from consumer and other social
10 bodies, and the mechanisms in place to monitor and enforce laid down standards, including
11 the style of regulation adopted by non-state inspectors/auditors (see e.g. O'Rourke, 2003;
12 Piore & Shrank, 2008; Robinson, Meyer & Kimeldorf, 2013). Meanwhile, a third line of
13 analysis suggests that the effectiveness of private initiatives is shaped by the extent to which
14 they act upon the procurement practices of buyers that act to undermine decent working
15 conditions through the institutional refiguring of their surrounding market contexts (Anner et
16 al, 2013).

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35 The present paper sheds new light on the validity of these varying explanations of private
36 regulatory effectiveness. It does so through examining the operation of the safety inspection
37 regime introduced under The Accord on Fire and Building Safety
38 (http://bangladeshaccord.org/wp-content/uploads/2013/10/the_accord.pdf) established by
39 global unions and brands following the Rana Plaza factory collapse in April 2013, which left
40 1129 Bangladeshi workers dead and 2515 injured. Importantly, it is an initiative that is seen
41 to provide a rare example of one that incorporates a focus on influencing the wider market
42 behaviours of buyers (Anner et al, 2013). To this end, the paper addresses two related
43 questions:
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56 a) To what extent there are grounds to believe that The Accord's inspection programme,
57 as a private regulatory measure, is serving as a force for safety improvement;
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3 b) To what degree its operation in this respect has been positively or negatively impacted
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5 by the various contextual and structural factors referred to above.
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8 The paper commences with a review of the literature on the effectiveness of private global
9 supply labour regulation and the factors which influence it. It then moves on to outline the
10 backcloth to, and nature of, The Accord initiative. Following this, both qualitative and
11 quantitative data are used to address the above questions. In doing so, the article explores the
12 implications they have for current debates about how the effectiveness of systems of private
13 regulation aimed at enhancing the working conditions of those labouring within globalised
14 supply relationships can be improved.
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24 **The private regulation of labour standards**

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27 The view that (international) labour standards were needed to combat the risk of competitive
28 pressures driving down employment conditions has been expressed by a range of social
29 thinkers from as early as the 19th century (see Heintz, 2002: 13). Commencing in 1919 with
30 the adoption of the first six International Labour Organisation (ILO) Conventions, a complex
31 body of such standards has subsequently evolved. The standards so promulgated vary
32 enormously in terms of subject matter, with a useful distinction here being between ‘process
33 standards/rights’ concerning such matters as freedom of association and the right to collective
34 bargaining, and ‘substantive or outcome’ ones relating to matters like paid holidays,
35 maternity leave and minimum or living wages (Luce, 2005: 3; Alston, 2004: 487). The target
36 of the standards developed also varies between a focus, notably with those developed by the
37 ILO, to influence the domestic laws and practices of nation states, and attempts, as with the
38 OECD guidelines on multinational enterprises, to shape the international business activities
39 (and therefore supply chain practices) of multinational/global trading corporations.
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3 The focus on the regulatory role of multinationals reflects three interconnected but not
4 necessarily mutually consistent considerations. The first is a recognition that powerful supply
5 chain buyers can directly and indirectly act to drive down employment standards in supplier
6 organisations (James et al, 2015). The second is an acknowledgement that developing
7 countries frequently do not possess a regulatory capacity and/or willingness to counter such
8 adverse effects (Graham & Woods, 2006). The third is the belief that it is possible to use the
9 supply chain power of multinationals to improve, rather than harm, labour standards in
10 supplier organisations (James et al, 2007).

11
12 This last argument exists, however, alongside very mixed evidence concerning the *actual*
13 effectiveness of private, multinational initiatives. Indeed, with reference to the apparel sector,
14 it has been observed that despite concerted efforts ‘private compliance programs appear
15 largely unable to deliver on their promise of sustained improvements in labour standards in
16 the new centers of global production’ (Locke, 2013: 20). A variety of explanations have been
17 put forward to explain these disappointing outcomes and the outcomes of such initiatives
18 more generally. As indicated in the introductory discussion, these can be viewed as falling
19 into three broad categories which respectively emphasise the nature and extent of
20 *voluntaristic sources of compliance*, the degree of supporting state-based *legal regulation*,
21 and how far *markets are institutionally configured* to support the adoption of laid down
22 labour standards.

23
24 In relation to the first of these categories, it has been argued that the outcomes of private
25 regulatory initiatives are crucially influenced by the degree of pressure on multinationals
26 flowing from consumers and other sources of pressure to improve labour conditions in their
27 suppliers, as well the adequacy of the arrangements put in place to monitor and enforce any
28 codes of conduct they have developed (Gereffi, Humphrey & Sturgeon, 2005; Riisgaard &
29 Hammer, 2011; O’Rourke, 2003; Vogel, 2008; Toffel, Short & Oullett, 2015). In addition,
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3 attention has been drawn to how compliance is potentially influenced by the style of
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5 regulation adopted by inspectors/auditors. Most notably, Locke and colleagues have argued
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7 that the adoption by them of a 'compliance' orientated approach is problematically based on
8
9 three faulty assumptions, namely a belief that asymmetrical power relationships invariably
10
11 exist between buyers and suppliers; an assumption that audits can generate reliable
12
13 information about labour conditions within factories, and a view that deterrence forms an
14
15 effective motivation towards compliance (see e.g. Locke et al, 2009). They have
16
17 consequently gone on to argue that an alternative, commitment-based approach might offer a
18
19 potentially more productive means of securing improved working conditions (Locke et al,
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21 2009; Locke, 2013). That is, one in which the causes of labour standard non-compliance are
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23 addressed through buyers and suppliers working to improve work processes, and associated
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25 labour practices, via joint, mutuality-based, problem solving processes.
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30 As regards the second of the above categories of explanation, attention has been drawn to the
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32 way in which the private regulatory initiatives of multinationals may be influenced by local,
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34 state-based regulatory arrangements. It has been argued that private regulatory systems are
35
36 not transcendent. Rather, they are intertwined thickly with domestic laws, codes and practices
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38 (Trubek & Trubek, 2007; Bartley, 2011; Berliner & Prakash, 2014). Eberlein et al (2014)
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40 have consequently contended that it is important to understand how interactions between
41
42 private and public forms of regulation impact on regulatory capacity and performance. In this
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44 regard, three rather different perspectives have been articulated on how private and public
45
46 regulatory systems can productively combine together. One of these emphasises the general
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48 virtues of some form of mutually supportive complementarity between them (Locke et. al,
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50 2007; Locke & Romis, 2010; Locke, Rissing & Pal, 2013). A second embodies the view that
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52 the state must remain a key actor in labour regulation, because there is no substitute for the
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54 effective exercise of government authority. To be effective, private regulation must, from this
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3 perspective, therefore operate within an environment in which regulation is effectively
4
5 enforced (see e.g. Esbenshade, 2004; Vogel, 2010). Finally, a third argues that, instead of
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7 displacing the state as regulator, private regulatory regimes play an important role in
8
9 developing and strengthening the capacity of the state (Kolben, 2007; Kolben, 2011).

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11
12 Anner et al (2013) have meanwhile advanced a third, rather different, line of explanatory
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14 analysis. While accepting that existing approaches have failed to eliminate, or even
15
16 substantially reduce, labour violations in global supply chains, they question whether this
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18 failure can be meaningfully addressed through a better mix of private and public regulation,
19
20 the commitment-based approach advocated by Locke and colleagues, enhanced systems of
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22 audit/inspection or increased ethical consumer pressures; although they don't discount that
23
24 each of them might yield some beneficial outcomes. In their view, this is because while
25
26 current initiatives are informed by an acknowledgement of the central role of buyers in
27
28 creating conditions that encourage labour violations, they are seen, in an echo of the
29
30 arguments of Bartley and Kincaid (2016), to 'leave this root cause unaddressed' (Anner et al,
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32 2013: 6-7). Drawing on a historical analysis of how collectively bargained contracts in the
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34 U.S apparel industry prompted a dramatic decline in sweatshop conditions during the middle
35
36 part of the twentieth century, they argue that a more effective way forward would be to
37
38 directly regulate the market behaviours of buyers that drive labour conditions in supplier
39
40 factories, including via the creation of legal liabilities where there is a failure to comply with
41
42 laid down standards (p.14).

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44
45 Anner and colleagues recognise the enormous challenges involved in creating such regulatory
46
47 frameworks. They, however, argue that the global labour movement 'appears to be coalescing
48
49 around' the type of approach they advocate (Anner et al, 2013: 42). In fact, they argue that
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51 key features of The Accord lend weight to this view. In particular, they highlight at least four
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3 key ways in which the agreement reflects core principles of the collective contracts that
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5 previously applied in the U.S apparel industry. These are:

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8 - The way in which it regulates the buying practices of buyers by imposing on them
9 requirements to fund safety improvements, to terminate business with non-
10 cooperative factories, and to provide multi-year commitments to suppliers, thereby
11 potentially providing greater contract stability;
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14 - The role unions are accorded in its governance, as well as the provision made for
15 safety committees, union inputs into training and the sharing of inspection reports
16 with workers' representatives;
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19 - The contractually binding nature of the Accord's provisions; and
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22 - The fact that, through its signatory companies, the agreement covers a broad portion
23 of the industry, thereby reducing the extent to which its operational costs put
24 individual buyers at a competitive disadvantage (p.28, 29).
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36 Their arguments concerning the distinctive nature of The Accord in turn suggests that an
37 investigation of its operation provides a unique opportunity to evaluate a private regulatory
38 initiative to improve labour condition in global supply chains operation that potentially
39 enables the influence of all the above sources of influence to be taken into account.

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44 Consequently, in what follows, such an analysis is attempted in relation to the way in which
45 The Accord's inspection programme has operated.
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49 **The origins and nature of The Accord**

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53 The Bangladeshi garment industry has long been notorious for its unsafe working conditions
54 (Chartier, 2008; Labowitz & Baumann-Pauly, 2014). Accidents have claimed the lives of two
55 thousand workers since 2005. There has also been a litany of factory fires and building
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3 collapses which have killed and maimed many workers, these including at Spectrum,
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5 Phoenix, Gharib, Tasreen and, of course, Rana Plaza (Ahmed, Raihan & Islam, 2013; Islam
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7 & Ahmed, 2014; Kurpad, 2014; Peetha, 2016).

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10 Global brands in their capacity as purchasers have traditionally incorporated the issue of
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12 health and safety into their promulgated labour standards and associated monitoring and
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14 enforcement processes (Anner, et, al, 2013; Abernathy, Dunlop, Hammond & Weil, 1999).
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16 The collapse of the Rana Plaza factory, however, prompted unprecedented international
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18 efforts to improve health and safety in the Bangladeshi garment industry. One of the most
19
20 significant of the developments to occur was the signing of an agreement, The Accord on Fire
21
22 and Building Safety in 2013.

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27 Concluded against the backcloth of concerted pressure from both GUFs and NGOs (Reinecke
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29 and Donaghey, 2015), The Accord is a five-year legally binding and enforceable agreement
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31 between global brands and global trade union federations to build a safe garment industry.
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33 Disputes concerning its implementation are, in the first instance, submitted to the initiative's
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35 steering committee (see further below) for initial adjudication. Its decision may then
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37 subsequently be appealed to a process of binding arbitration.¹ The resulting award may be
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39 enforced in the home country of the signatory party that is the subject of a complaint, in line
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41 with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, a
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43 convention commonly referred to as the New York Convention.

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47 Under The Accord, brands commit to a range of measures designed to improve working
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49 conditions in the factories which supply them. It covers approximately 1,800 factories and
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51 two million workers, half of the Bangladeshi garment workforce. The Accord has been signed
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53 by over 200 apparel brands, retailers and importers from more than 20 countries in Europe,
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55 North America, Asia and Australia (<http://bangladeshaccord.org/signatories/#witness-box>).

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3 Meanwhile, a number of other (predominantly North American companies) chose not to join
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5 and instead launch a parallel, but less onerous safety initiative, called The Alliance
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7 (<http://www.bangladeshworkersafety.org/>).²
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10 Governance of Accord affairs and its small implementation staff is via a steering committee
11
12 consisting of three trade union representatives, three company representatives and an ILO
13
14 chair. An advisory board includes Bangladeshi government representatives, and an executive
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16 director and safety inspector oversee safety improvement and worker participation
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18 programmes. Central to The Accord is the establishment of a system of private workplace
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20 inspections. Under this, global brands commit to (i) require supplier factories to submit to
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22 rigorous safety inspections (Article 9), (ii) accept public disclosure of inspection reports
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24 (Article 11), (iii) require suppliers to implement repairs and renovations necessary to make
25
26 their factories safe (Article 12), (iv) pay suppliers prices sufficient for them to afford
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28 necessary repairs and operate safely (Article 22), and (v) cease doing business with suppliers
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30 failing to comply with any of the above requirements (Article 21).³
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35 The impact of The Accord on factory safety in garment factories in Bangladesh is therefore,
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37 in large part, related to how far its inspection system has generated positive outcomes. In the
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39 analysis below, we address our two central research questions through an evaluation of this
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41 system's operation.
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47 **The Accord's inspection programme in action**

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50 In order to examine the operation of The Accord's programme of factory inspections, we
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52 draw on both primary and secondary data. In the case of the latter, use is made of statistics
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54 published on The Accord's website that shed light on the scale and operation of its workplace
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56 inspection programme. In particular, these statistics are utilised to (i) detail the number of
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3 inspections undertaken, (ii) evaluate their outcomes e.g. numbers of workplaces where
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5 improvements were recommended or closures occurred on safety grounds or as a result of a
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7 failure to cooperate with the making of improvements, (iii) the aggregate number of
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9 improvements required, and (iv) the progress that has been made in making them.
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12 As regards the primary data collection, we draw on 23 interviews (face-to-face, skype,
13
14 telephone) conducted with 18 stakeholders in the Bangladeshi garment industry. These
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16 respondents encompass representatives from The Accord (2), global brands (3), non-
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18 governmental organisations (4) and global unions (3), a senior national trade union leader (1),
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20 health and safety professionals (2), an academic researcher (1), and officials from the
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22 Bangladesh Garment Manufacturers and Exporters Association (BGMEA) (2). Some of them
23
24 were interviewed more than once. Several global brands and officials from the BGMEA
25
26 declined our invitation to participate. Interviews were conducted between October 2014 and
27
28 February 2016. They were recorded, transcribed and analysed thematically and respondents
29
30 invited to clarify or supplement their responses.
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35 In presenting our findings, we first detail the statistical data compiled by The Accord in order
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37 to paint an essentially descriptive picture of the operation of its inspection programme. We
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39 then draw upon the qualitative interview data collected to provide further insights into how
40
41 the programme has been operating and the factors which have been influencing it. It is
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43 acknowledged that this means that interview data precedes statistical data by some months.
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45 This, though, is felt to be defensible on presentational and analytical grounds and also
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47 because a similar picture would have emerged if use was made of earlier sets of operational
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49 statistics.
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3 *The quantitative picture*
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6 Under The Accord's inspection programme, each factory is the subject of independent
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8 inspections of their fire, electrical and structural safety. Initial inspections are conducted by
9
10 international engineering firms contracted by The Accord. After each inspection, a report is
11
12 produced detailing its findings, including required remedial actions and timelines within
13
14 which these should be carried out (so called "Corrective Action Plans"). A team of over 100
15
16 permanent Accord staff engineers then conduct up to 500 follow-up inspections each month,
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18 meaning that each Accord factory is currently inspected once every three to four months (The
19
20 Accord, 2016; 4). Where such inspections are undertaken, a detailed report is produced and
21
22 the relevant Corrective Action Plan updated. This report is sent not only to the factory
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24 concerned but also to the related brand and union signatories (The Accord, 2016: 6).
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30 Defects identified during inspections are each given a deadline for their remediation. These
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32 deadlines range from 'immediate', for repairs and renovations that can be done in a matter of
33
34 hours or days, to up to one year for more complex improvements. Where suppliers are failing
35
36 to adequately progress improvements, they potentially face, under Article 21 of the Accord, a
37
38 process of escalating warnings and notices that can ultimately lead to business with them
39
40 being terminated (The Accord, 2016: 12).
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46 For each factory inspected, The Accord website:

- 47
- 48 1. Identifies the (often very extensive) improvements needed;
 - 49
 - 50 2. Provides its Corrective Action Plan (CAP), which outlines not only the actions
51
52 required but the timelines applying to the undertaking of them, as well as a supporting
53
54 financial plan signed off by factory owner and the purchasing brand;
 - 55
 - 56 3. Details progress on implementing this plan; and
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3 4. Indicates whether or not financial help is being provided to enable remediation to be
4 carried out (<http://bangladeshaccord.org/factories/list-factories/>)
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10 The Accord's website provides that, as of October 2016, initial inspections had been
11 undertaken in 1551 factories (The Accord, 2016: 5) and that, by the end of June 2016, there
12 had been 4098 follow-up inspections (The Accord, 2016: 12). It further indicates that
13 escalation measures had been applied to 472 suppliers and that in 41 cases business had been
14 terminated with suppliers (The Accord, 2016: 4).
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23 It is nevertheless acknowledged that processes of remediation are often running considerable
24 behind laid down deadlines (see Table 1 and 2 below).
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28 **Table 1: Rate of Progress (as of October, 2016)**
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33 **Table 2: Progress levels in factories behind schedule**
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37 At the same time, Tables 3 and 4 highlight that substantial numbers of improvements have
38 been both identified and implemented through both initial and subsequent follow-up ones.
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40 Indeed, in total, the figures provided show that nearly 120,000 safety defects have been
41 identified through such inspections, and that over 60,000 of these have been verified as having
42 been remedied. Moreover, as Table 2 highlights, in nearly 1200 factories, between half and all
43 required improvements have been implemented.
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53 **Table 3: Progress on improvements arising from initial inspections (information as of**
54 **October, 2016)**
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3 **Table 4: Progress on improvements arising from follow-up inspections (information as**
4 **of October, 2016)**
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9 How far financial support has been provided under the terms of The Accord to help factories
10 make required safety improvements is unfortunately less clear. As part of every Corrective
11 Action Plan, signatory companies and their suppliers are required to confirm that a
12 remediation finance plan is in place. By the end of October 2016, 1361 such plans had been
13 reported. On the basis of these reports, it appears that in 55 cases brands are providing
14 financial assistance. However, The Accord reports that both labour and company signatories
15 agree that in reality, such support is being more widely provided; although they disagree on
16 the ‘question of whether and to what extent factories need financial assistance but are not
17 receiving it, and whether that is a major cause for delays in remediation’ (The Accord, 2016:
18 15).
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31 *Qualitative insights*
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35 On the basis of these statistics, there would seem little doubt that The Accord is having a
36 widespread and significant impact on factory safety, as regards fire, electrical and structural
37 matters. Those interviewed offered confirmation of this:
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42 SBT (a pro-union expert) argued (5, January 2016):
43

44 *“Technical improvements in factories, the correct standards for building safety, electrical*
45 *safety, and fire safety are finally being rolled out in factories. That's the change. And that has*
46 *been done because brands have supported it...Rana has provided...that critical weight, to*
47 *bring about those kinds of changes. And brands have really given attention to those kinds of*
48 *issues. So you can say now that factories are safer...there is less likely to be fires, less likely*
49 *to collapse (sic).”*
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3 X (19, December, 2014), from The Accord, reported that factory owners had spent millions of
4
5 dollars on fire safety, sprinkler systems, updating electrical connections, etc. He reported on
6
7 the basis of verified evidence that *“80% of factories are doing something, they are moving”*.

8
9
10 G (Interview: 30, March, 2015), a western occupational health and safety professional
11
12 working with The Accord, commended the progress made since The Accord came into effect:

13
14 *“...first time in which many factories even got inspected...500 corrective action plans which*
15
16 *have been approved and so you have someone to pay for remediation and you have a*
17
18 *plan...other corrective action plans under review...another 250 initial inspections in 2015. So*
19
20 *these are tremendous advances”*
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22

23
24 Last but not least, V (20, March, 2015), a signatory brand representative, suggested that the
25
26 situation had changed greatly. In the past, *“electrical equipment... was not being taken care*
27
28 *of...cables left hanging around.... You go into a factory today and visually, you can see that*
29
30 *it's being taken care of”*. She went on to further remark that, previously, factory owners did
31
32 not think that safety was important, it was *“just how things were...”*, but now they understood
33
34 what caused fires and realised that their causes needed to be addressed.
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39 A number of respondents attributed these positive outcomes to the legally binding character
40
41 of The Accord. WW (6, March, 2015), for example, explained that brands can now no longer
42
43 justify their voluntary approach to helping supplier factories, based on CSR rhetoric. The
44
45 only way to securing improvements in safety in factories is through brands observing legally
46
47 binding commitments:
48
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50
51 *“The Accord is a departure from this [voluntary] culture, we are trying to drag brands and*
52
53 *retailers into a different kind of thinking. It is going to take a great deal of time, which is why*
54
55 *it is legally binding, because we understand that things will change only through constant*
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57 *pressure and over an extended length of time.”*
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5 Global unions were also reported to have resorted to the Accord's legal mechanisms to bring
6 some brands back into line (Allchin & Kazmin, 2015). G (30, March, 2015) confirmed that
7 unions were preparing to file arbitration cases against several brands, who were failing to
8 comply with their obligations. At the time of writing, no public announcements have been
9 made. G suggested that this ought not to be viewed negatively since unions were using the
10 threat of legal proceedings to spur action on the part of brands.
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21 These last observations were in turn advanced against the backcloth of criticisms of the
22 brands' reticence to fund safety improvements and their failure to change their
23 approaches towards the pricing of supply contracts, despite Article 22 of The Accord
24 requiring them to ensure that it was financially feasible for factories to maintain safe
25 workplaces and comply with safety upgrade requirements. For example, S (10,
26 November, 2014), a GUF respondent, noted:
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35 *'The brands have failed to deliver their full financial contributions due under the*
36 *terms of The Accord. [Even] a contribution of a fraction of 1% of the global*
37 *brands' annual turnover would comfortably secure all of the necessary funds'*
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46 Meanwhile, F (21, March, 2015), a BGMEA respondent, observed:
47

48 *'...so when the building collapsed everybody said "you're at fault", like to us,*
49 *you're at fault but hold on, if you felt so judgemental about the whole thing, then*
50 *maybe you should pay us a little more! Instead, our buyers continue to threaten*
51 *us, saying, if you don't want to take our orders, we will go elsewhere cheaper. But*
52 *factories cannot produce cheaper without cutting corners on workers' rights.'*
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5 Respondents also drew attention to how a ‘CSR-based’ interpretation by brands of their
6
7 responsibilities under The Accord had a negative impact in this regard. WW (6, March, 2015)
8
9 remarked:

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14 *‘The fact that you have brands which have a legal obligation to help factory*
15
16 *owners, still using rhetoric which derives from CSR culture of voluntarism, is not*
17
18 *surprising. It is annoying, but it is predictable...What matters is that factories get*
19
20 *fixed, which will not happen if brands do not provide some form of financial*
21
22 *assistance.’*
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27 It was further apparent that Bangladesh government support for The Accord was of a
28
29 qualified nature, notwithstanding institutional appearances to the contrary.
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34 Government departments and official bodies in Bangladesh initially supported The Accord’s
35
36 aims in conjunction with increased government efforts to prevent accidents. It adopted a
37
38 National Action Plan on Fire Safety and Structural Integrity, a National Occupational Safety
39
40 and Health Policy and a revised Labour Act (Rahman, 2014). A task force on Building and
41
42 Fire Safety for the garment sector, a hot line for reporting fire accidents and a publicly
43
44 accessible database on safety issues in garment factories were also established. In addition,
45
46 dozens of posts were created for fire inspectors to enforce safety standards in factories
47
48 outside The Accord. In turn, The Accord has affirmed and supported state initiatives on fire
49
50 and building safety. The fire, electrical and building inspection standards utilised for the
51
52 inspections of Accord factories are largely based on the Bangladesh National Building Code
53
54 and are the product of discussions between The Accord, the National Tripartite Plan of
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3 Action, and the Alliance for Bangladesh Worker Safety (Alliance), initiated and facilitated by
4 the International Labour Organisation (<http://bangladeshaccord.org/building-standards/>).

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7 Furthermore, the Accord engages with the government through its Advisory Board, as noted
8 earlier, through direct contact with officials and through its relations with the Bangladesh
9 University of Engineering and Technology, which supports the government in its factory
10 inspections (Articles 6, 7).

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17 Notwithstanding these various forms of apparently mutually supportive collaboration, a
18 common theme raised by respondents, however, was how hostility towards The Accord on
19 the part of many factory owners privately received support from the government in a context
20 in which 50% of politicians are associated with the garment industry, primarily via
21 ownership. Additionally, the government is heavily dependent on funding from business (B,
22 23, October, 2014; X, 19, December, 2014). One respondent from The Accord, for example,
23 reported how it was viewed by government officials as “a bunch of cowboys” (X, 19
24 December, 2014). He further referred to a recent well-publicised “expo” on health and safety
25 in Bangladesh. Immediately before the expo, the Prime Minister declared in a cabinet
26 meeting “We have our own programme, so...you do not need to prioritise...The Accord”. In
27 a similar vein, representatives of global brands (N, 24 February, 2015; P, 4 March, 2015)
28 argued that the government lacked a political will to improve safety. They criticised state
29 policy in practice, arguing that in reality domestic regulations on safety governance were
30 never enforced. More generally, according to SBT (5 January, 2016), the government has
31 made it clear it does not want to prolong participation in the Accord after its five-year term
32 comes to an end.

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Unions, as key pressure groups, continue to operate in a very hostile environment, despite reform of domestic labour laws to enable workers to form unions more freely (Rahman, 2014). P (4 March, 2014) cautioned that a “pathological hatred for unions” remained among

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2
3 employers, while WW (6 March, 2015), argued that the government ignored employers'
4
5 violent anti-union tactics. Such views have received external support. The International
6
7 Labour Rights Forum (2014) has reported continuing anti-worker violence in the garment
8
9 industry, noting governmental failures to address serious rights violations. It also claims that
10
11 government ministers have personally intimidated labour activists, calling for action against
12
13 those reporting violence on labour organisers and suggesting that they were acting against
14
15 Bangladeshi interests. Such concerns have more led the ITUC and European TUC, along with
16
17 Global Union Federations UNI and IndustriALL and their European regional bodies, to write
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19 to the European Commission (ITUC-CSI-IGB, 2015) calling on it to step up action as anti-
20
21 union repression in Bangladesh had increased.
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29 **Discussion**

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32 On the basis of the presented findings, it is clear that the achievements of The Accord cannot
33
34 easily be dismissed. With the exception of a small number of new supplier factories,
35
36 inspections have been undertaken in all relevant factories and an extensive programme of
37
38 follow-up ones is in place. It is further clear that these inspections have identified a vast
39
40 number of electrical, fire and structural safety defects and that many of these have been
41
42 remedied.
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48 At the same time, the operation of The Accord's inspection programme can be seen to have
49
50 embodied problematic features and therefore, highlights the challenges that attempts to
51
52 improve labour standards at the end of buyer-led supply chains face. In many cases, progress
53
54 on remedying identified safety defects has been slow and certainly outside laid down
55
56 deadlines, while almost 10 per cent of covered factories have been subjected to The Accord's
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3 system of warnings and notices because of their lack of commitment to implementing the
4
5 safety improvements deemed necessary as a result of inspections. In addition, business with
6
7 some 40 factories has been terminated on the grounds of their lack of cooperation.
8

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10 Meanwhile, although it remains unclear how far buyers are providing financial support to
11
12 help make required improvements, tensions between the improvement of safety and the
13
14 financial objectives of buyers would seem to exist, both in relation to the continuation of
15
16 existing pricing models and differing perceptions among union and company signatories
17
18 regarding the provision of such support. Furthermore, against the backcloth of the political
19
20 influence wielded by factory owners, it is apparent that the support provided by the
21
22 Bangladesh government to The Accord is very much of a qualified nature, notwithstanding
23
24 that representatives of the government sit on The Accord's advisory board and hence form
25
26 part of its governance arrangements.
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32 It must be further admitted that the statistical data provided on the outcomes of The Accord's
33
34 inspection programme cannot unquestionably be said to show that the safety of workers in the
35
36 inspected factories has improved and hence that The Accord has been effective. The only
37
38 reliable test of this is whether it becomes apparent overtime that fires and building collapses
39
40 have become significantly less common.⁴ This said, the standards against which these defects
41
42 have been identified were agreed in ILO initiated and facilitated discussions between the
43
44 Accord, the NTPA and the Alliance for Bangladesh Worker Safety. As a result, they were
45
46 agreed by both local and global union representatives and hence, at a minimum, seem
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48 unlikely to fall significantly below internationally acceptable standards. This in turn logically
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50 suggests that Accord inspections are acting to identify many (although not necessarily all) of
51
52 the main risks concerned.
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3 This apparently positive picture of achievement clearly offers some confirmation for the view
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5 that private regulatory initiatives can serve to improve labour conditions in global supply
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7 chains. In doing so, it also brings us back to the question posed at the beginning of the paper
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9 about how its operation has been impacted by the various factors that existing literature
10
11 suggests are important in shaping the outcomes of private regulatory initiatives. On the basis
12
13 of the collected data, it cannot be claimed that this question can be definitely answered.
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15 Nevertheless, they do enable a number of conclusions to be drawn with varying degrees of
16
17 confidence regarding the respective roles of the three categories of explanatory factors
18
19 identified earlier: the nature and extent of *voluntaristic sources of compliance*, the degree of
20
21 supporting state-based *legal regulation*, and how far *markets are institutionally configured* to
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23 support the adoption of laid down labour standards through the procurement practices of
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25 buyers.
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32 In the case of the first of these, it would seem unquestionable that the horrific nature of the
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34 Rana Plaza disaster and the public/consumer pressures it generated to do something about
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36 working conditions in Bangladesh garment factors played a crucial role in the establishment
37
38 of The Accord and its unique form as a joint company-union collaboration involving a
39
40 collectivity of brands (Reinecke and Donaghey, 2015). Its creation therefore adds clear
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42 weight to the view that the development of such initiatives generally stem from wider social
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44 pressures that act to prompt a recognition among buyers of the need to be seen to be trying to
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46 counter some of the adverse labour effects flowing from their market-driven supply
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48 relationships.
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54 Insofar as the Accord's compliance-orientated inspection programme has been effective in
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56 reducing the risks of fires and building collapses, this impact cannot logically be divorced
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3 from the fact that its resourcing has been sufficient to support the appointment of an
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5 international consultancy to conduct initial inspections of all factories and the carrying out of
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7 regular follow-up inspections by a current complement of over 100 engineering inspection
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9 staff. The programme's operation therefore draws attention to the point that the impact of
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11 private regulatory initiatives is likely to be tied up with the issue of the resources devoted to
12
13 their implementation. It further acts to raise an important qualification concerning Locke's
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15 critique of compliance-based regulation, namely that it largely side-steps this issue of
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17 resources and therefore the possibility that part of its apparent problematic impact stems from
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19 the fact that it has frequently not been adequately resourced. In doing so, the programme's
20
21 operation arguably suggests that the scope for compliance, as opposed to commitment, based
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23 enforcement mechanisms to generate improvements in labour standards may be greater than
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25 Locke and his colleagues suggest.
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32 As regards the argument that the effectiveness of private regulatory initiatives is influenced
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34 by the degree to which they receive support from surrounding state-based legal regulation,
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36 the findings obtained do not rule out that such complementarity can be beneficial. They do,
37
38 however, suggest that the presence of such support is not necessarily crucial. Thus, a striking
39
40 feature of the outcomes of The Accord's inspection programme is that they were achieved
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42 against the backcloth of a very mixed and qualified degree of support from the Bangladesh
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44 government and with no direct involvement of government inspectors.
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49 Finally, as to the argument of Anner et al (2013) relating to the need for global supply
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51 initiatives to address 'the root cause' of problematic labour conditions, namely the buying
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53 practices of buyers, it is not possible to conclusively demonstrate on the basis of the collected
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55 data how far, and through what means, all of the characteristics listed on page 7 have
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3 contributed to The Accord's positive outcomes. However, and notwithstanding the reported
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5 problems and disagreements surrounding the provision of financial assistance by brands to
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7 support safety improvements, it is hard to believe that the joint nature of its founding
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9 agreement, and the transparency that has flowed from it, have not served to enhance the
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11 priority accorded to safety related matters and associated expenditure. Particularly when the
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13 role that reputational considerations played in The Accord's establishment is borne in mind
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15 (Reinecke & Donaghey, 2015). Thus, The Accord's commitment to put on its website all
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17 inspection reports and to detail progress in implementing their recommendations has served
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19 to provide much scope for unions and pressures groups to monitor whether safety
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21 improvements are carried out with sufficient urgency. Indeed, it was concerns over the slow
22
23 progress being achieved that led The Accord to expand the number of inspection staff to its
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25 current level. In this regard, the operation of The Accord can be contrasted with the
26
27 difficulties that pressure groups have faced in assessing progress in making safety
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29 improvements in factories supplying companies forming part of the Alliance, where it has
30
31 only been possible to gain insights into this by drawing on data from factories inspected
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33 under The Accord that are also used by signatory companies of the Alliance (International
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35 Labour Rights Forum, et al, 2016).

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37 It can consequently be argued that neither Locke, in his critique of compliance-based
38
39 regulation, nor Anner and colleagues, in their advocacy for a contract-based approach to joint
40
41 brand liability, have accorded sufficient weight to the role that transparency can play in
42
43 supporting the implementation of private regulatory initiatives. This view is given added
44
45 weight by studies concerning the role that transparency has played in supporting the
46
47 operation of other private regulatory initiatives and the factors that influence the extent to
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49 which it has done so. For example, research by Auld & Gulbrandsen (2010, 2014) on the
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51 operations of the Forest Stewardship Council and the Marine Stewardship Council, found that
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3 that transparent processes (granting ultimate decision-making authority to members, open
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5 engagement with stakeholders, publishing assessment reports, and increasing the online
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7 disclosure of audit outcomes) improved both their legitimacy and accountability. Meanwhile,
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9 in an empirical analysis of levels of transparency in 143 regulatory standard-setting
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11 programmes in the field of transnational sustainability, Schleifer et al found transparency to
12
13 be positively correlated with multi-stakeholder initiatives (with NGOs and public actors) and
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15 those in which meta-governance organisations promote an overarching normative framework
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17 for transnational rule-making (Schleifer, Fiorini & Auld, 2017). Together, such findings
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19 suggest that future research on The Accord could usefully focus more detailed attention on
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21 how its operation has been influenced by its systems of internal governance and information
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23 disclosure, including the manner in which they mutually interact.
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33 The differing perceptions of signatory unions and companies about how far brands are
34
35 funding safety improvements also usefully illustrates the way in which The Accord, as Anner
36
37 and colleagues have argued, departs from the unilateral nature of much multinational supply
38
39 chain action. Furthermore, it should not be forgotten that another consequence of The Accord
40
41 has been the establishment of a regime of safety inspection under which factories supplying
42
43 over 200 brands are required to comply with a common set of requirements in the areas of
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45 electrical, fire and structural safety and which therefore acts to limit their capacity to
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47 accommodate cost-cutting pressures by cutting corners on safety. Moreover, this feature is
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49 effectively reinforced by the fact that factories are often supplying a number of different
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51 Accord signatory companies and so potentially similarly reduces the ability of brands to
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53 competitively drive down the prices they pay.
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3 Given the above analysis, it would seem reasonable to argue that, through a combination of
4 the four features listed on page 7, The Accord does to some extent provide a platform through
5 which 'root cause' market dynamics can be addressed. This view is furthermore reinforced by
6 the fact that although the legal enforcement mechanisms of The Accord have so far not been
7 formally utilised, many of those interviewed did allude to the significance of its legally-
8 binding nature. It may, therefore, be that the lack of formal legal action conceals how it has
9 been used as a threat to bring recalcitrant brands into line.
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20 While, then, it cannot be claimed that the study's findings offer firm confirmatory support to
21 the arguments advanced by Anner and colleagues, they do suggest that they cannot sensibly
22 be disregarded. There would seem a consequent need for them to be subjected to more
23 detailed evaluation via a more in-depth and broader evaluation of The Accord in which all its
24 constituent elements, including its systems of governance and information disclosure, are
25 examined to identify their individual and combined effects. . This is particularly so given that
26 at least some of those involved in the development and governance of The Accord believe it
27 to have had a positive effect and to be financially viable in the longer term. Thus, while the
28 BGMEA only favours an extension to its tenure beyond May 2018 as a 'monitoring team'
29 (New Age Business, 2017), more than 20 brands and the UNI and IndustriALL global unions
30 have, subsequent to the research reported here, recently agreed a follow-on Accord agreement
31 (Industriall, 2017a), which it is anticipated will eventually be signed by many more brands.
32 Already, however, it is estimated that the new agreement will extend to cover over a thousand
33 garment factories (The Accord, 2017; Industriall, 2017b).⁵ Furthermore, in the build up to the
34 July 2017 G20 summit in Hamburg, a number of global unions called on participants to look
35 to The Accord as a model for promoting sustainable business practices. The Deputy Secretary
36 of UNI Global Union, for example, observing that its 'model of accountability and
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3 transparency works' (<http://passport.uniglobalunion.org/news/global-unions-urge-world->
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5 leaders-elevate-example-bangladesh-accord).

11 **Conclusion**

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13 This paper has sought to cast further light on the role of the various factors that have been
14 argued to affect the development and operation of private regulatory initiatives aimed at
15 protecting and enhancing the working conditions of those labouring at the end of global
16 supply chains. To this end, it has drawn on a combination of primary and secondary data on
17 the operation of the 2013 Accord on Fire and Building Safety to address how far its
18 programme of workplace inspections has acted as a source of safety improvement and to
19 what extent its operation, in this regard, has been influenced by factors which the literature
20 suggests are important in determining the outcomes of private regulatory initiatives.
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33 The findings obtained lend weight to the view that such regulation can generate positive
34 outcomes, even in the absence of strong public regulatory support. In doing so, they caution
35 against discounting the role that compliance-orientated enforcement strategies can play in
36 supporting the implementation of laid down labour standards, while also drawing attention to
37 the importance of their adequate resourcing and, critically, the transparent nature of
38 monitoring processes. They also lend more tentative weight to the argument that the
39 effectiveness of such regulatory initiatives would be enhanced if they focussed attention on
40 mediating the market dynamics that act to undermine the provision of decent working
41 conditions.
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15 Notes

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21 ¹ It is specified that the process for selecting the arbitrator will be governed by the
22 UNCITRAL Model Law on International Commercial Arbitration 1985.
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24 ² There are several differences between The Accord and The Alliance. The Accord is an
25 agreement between global unions, on the one hand, and global brands and retailers, on the
26 other. The Alliance is an agreement between global brands and retailers only; it is a
27 corporate- led initiative. In addition, whilst it is a contractual requirement to do so under The
28 Accord, The Alliance does not require members to pay for remediation. Thirdly, under The
29 Accord, worker representative organisations may take enforcement action. Under The
30 Alliance, workers cannot enforce the agreement although they can report any breach to the
31 companies. Last but not least, The Accord requires a much higher level of transparency from
32 global brands and retailers about the progress of repairs. See
33 [https://cleanclothes.org/news/2016/11/21/alliance-for-bangladesh-worker-safety-overstates-](https://cleanclothes.org/news/2016/11/21/alliance-for-bangladesh-worker-safety-overstates-progress-while-workers-lives-remain-at-risk)
34 [progress-while-workers-lives-remain-at-risk](https://cleanclothes.org/news/2016/11/21/alliance-for-bangladesh-worker-safety-overstates-progress-while-workers-lives-remain-at-risk)
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39 ³ As noted earlier, these provisions existing alongside others which, among other things,
40 impose an obligation on buyers to make an initial two-year commitment to purchase at
41 current volumes from suppliers, and lay down requirements on training (including inputs
42 from union representatives), the establishment of safety committees and worker
43 representation more generally.
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46 ⁴ This point arguably takes on even greater significance in relation to the impact of other
47 elements of The Accord such as the requirements laid down with regard to the provision of
48 training and the establishment of safety committees. Thus, it cannot simply be assumed that
49 actions in these areas will lead to improved standards of safety protection. The evidence on
50 the factors which influence the effectiveness of safety committees, for example, illustrates
51 this point well (see e.g. Walters et al, 2016).
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54 ⁵ The text of the new agreement can be obtained at :([http://bangladeshaccord.org/wp-](http://bangladeshaccord.org/wp-content/uploads/2018-Accord-full-text.pdf)
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Table 1: Rate of Progress (as of October, 2016)

Time since initial inspection	Number of factories behind schedule*
More than 1.5 years	1268
Between 1.5 and 1 year	19
Between 1 year and 0.5 year	87
Less than 0.5 year	14
Total factories behind schedule	1388

- Source: The Accord, 2016: 13, 14
- The phrase “behind schedule” means that Corrective Action Plans are being implemented but some timelines have not been met

Table 2: Progress levels in factories behind schedule

% of issues fixed (reported and verified)	Above 75%	50-75%	25-50%	Less than 25%
Number of factories	563	620	161	44
% of factories	40	45	12	3

- Source: The Accord, 2016: 14

Table 3: Progress on improvements arising from initial inspections (information as of October, 2016)

	Corrected	Pending Verifications*	In Progress	Total
Electrical	25074	4055	4986	34115
Fire	16856	4800	11674	33330
Structural	4860	4249	1081	19950

- Source: The Accord, 2016: 10
- The term “corrected” means that the finding has been verified as corrected by the Accord engineers through follow-up verification visits. The phrase “pending verifications” means that the required improvements have been reported as completed but this has not been verified by Accord engineers. Finally, the phrase “in progress” means that remediation of the inspection findings is underway

Table 4: Progress on improvements arising from follow-up inspections (information as of October, 2016)

	Corrected	Pending Verifications	In Progress	Total
Electrical	13013	3095	6772	22880
Fire	2944	1096	3412	7452
Structural	168	198	401	767

- Source: The Accord, 2016: 10

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10 **Appendix 1: Interview respondents and dates**
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B; 23, October, 2014	GUF Respondent
S; 10, November, 2014	GUF Respondent
X; 19 December, 2014	Respondent from The Accord
N; 24, February 2015	Global Brand Representative
P; 4, March, 2015	Global Brand Representative
WW; 6, March 2015	Respondent from a Labour Rights Organisation
V; 20, March, 2015	Global Brand Representative
F, 21, March, 2015	BGMEA Respondent
G; 30, March, 2015	Western occupational health and safety professional working with The Accord
SBT; 5, January, 2016	Trade Union Expert

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