



## **Amidst Covid-19 Crisis, Untested Industry Group Assumes Safety Responsibilities for Bangladesh Garment Factories despite Concerns**

*The unprepared program will put the safety of Bangladeshi workers at risk*

### **A. Executive Summary**

On Monday, June 1, the Bangladesh office of the Accord on Fire and Building Safety in Bangladesh (Accord), the factory inspection program that has achieved historic progress in protecting the lives of the country's garment workers in the years since the 2013 Rana Plaza disaster, transitioned its functions to a recently established local organization, the Ready-Made-Garment Sustainability Council (RSC).<sup>1</sup>

Unfortunately, as described in this brief, the RSC is unprepared to take on this essential safety role. The RSC's takeover of the Accord's Bangladesh operations is the outcome of a protracted campaign by the Government of Bangladesh and factory owners. This campaign ended in 2019 with an agreement by the Accord to close its Bangladesh office and handover the latter's operations to the RSC by June 1, 2020.

Unlike the Accord, in whose governance worker representatives have an equal role with that of industry, the RSC is governed by a board of directors that is made up predominantly of representatives of brands and factory owners, with representatives of unions making up only a third of its members.

Preparations for the transition of the Accord's local factory inspection operations in Bangladesh to the newly formed RSC were hampered in the spring of 2020 as the apparel industry, both in Bangladesh and globally, was thrown into chaos by the Covid-19 pandemic. Calls from worker rights and safety advocates to postpone the transition until the crisis abates and industry conditions stabilize—the only responsible approach to this unprecedented situation—were ignored.

The hasty and ill-advised transition that has occurred as a result has left the safety of Bangladesh's garment workers in the hands of a RSC that is woefully unprepared to fulfill its immediate responsibilities.

As witness signatories to the agreement between international apparel brands and unions that established the Accord, our organizations are concerned that this rushed transition exacerbates other

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<sup>1</sup> Accord on Fire and Building Safety in Bangladesh, *Transition of The Accord Bangladesh Office Operations to The RMG Sustainability Council*, June 1, 2020, <https://bangladeshaccord.org/updates/2020/06/01/transition-to-the-rmg-sustainability-council-rsc>.

problems posed by the RSC's assumption of the Accord's in-country responsibilities and threatens the viability of continued progress toward factory safety in Bangladesh.

Over the past year, our concerns have been heightened as we observed the same factory owners who originally incited the government's campaign against the Accord's independent inspection program employ various other tactics to interfere with the Accord's work. The details of this track record of interference are provided in the annex to this brief.

As the global apparel industry faces a new crisis, during which maintaining orders and preventing the spread of Covid-19 in workplaces have quickly become top priorities for brands and manufacturers alike, it is all the more important to ensure that strong, credible measures are in place to complete and sustain the Accord's critical safety work. The purpose of this briefing is to outline the steps needed to safeguard this progress.

## **B. Background**

While the RSC was set up to be, going forward, the implementing agent of the Accord's prescribed safety programs in Bangladesh, it was never intended to replace the Accord agreement itself. Principally, the Accord is an enforceable agreement between global brands and labor unions. Established in 2013 following the Rana Plaza disaster, the Accord agreement made history by establishing binding and enforceable responsibilities for brands in ensuring safe conditions in their supplier factories.

Under the Accord, brands are required to contribute financially to monitoring and enabling improvements in fire and building safety in their supplier factories and take commercial action against those suppliers who refuse to take steps to improve safety. The Accord also substantially increased transparency as to safety conditions in supplier factories and provided for unprecedented representation of workers in not only the program's governance but in the implementation of its inspection and complaints programs as well.

The agreement establishing the Accord Secretariat, which is based in the Netherlands, is set to expire in 2021; however, current negotiations among its apparel brand and union signatories suggest that the term of the agreement will be extended and that its scope will be expanded to cover factory safety programs in other countries in South Asia.<sup>2</sup>

Since its inception, the Accord's implementation in Bangladesh has been staffed by a team of more than 200 personnel. The transition in management of the Accord's safety program in Bangladesh from the Accord itself to the RSC in June 2020 represents a change in the *in-country* agency tasked with assisting the brands in meeting their obligations under the Accord Agreement, from the Accord's own staff to that of the RSC. These obligations, however, remain in effect and unchanged

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<sup>2</sup> As witness signatories, we encourage the unions and brands to negotiate new terms of the Accord agreement that would extend and internationalize the safety program, thereby keeping the brands contractually obligated to make their factories safe and to offer prices and other commercial terms to suppliers that make safety improvements and safe operation feasible. The RSC itself is a voluntary initiative for the brands—comparable to the many that failed to prevent Rana Plaza and earlier disasters. Unless the brands' safety commitments are made binding through another contractual, worker-enforced instrument, the RSC has no chance of keeping garment workers safe.

until the Agreement's expiration, which is currently scheduled to occur in 2021 but, as just noted, is likely to be extended.

## C. Criteria

To successfully assume the role of the Accord's implementing body in Bangladesh, the RSC must demonstrate that it has the capacity to carry out the technical safety program and procedures mandated by the Accord Agreement and in accordance with the Accord policies and protocols carried over to the RSC. This section of our brief discusses the concrete criteria by which it can be assessed whether the RSC is adequately carrying out this responsibility.

**1. Full and Good Faith Cooperation with the Accord Secretariat.** The RSC must provide the Accord's Secretariat in the Netherlands with sufficient access to information and operations to enable the Secretariat to assess whether the Agreement's signatories are complying with their obligations under the agreement, with respect to safety conditions and practices in their supplier factories in Bangladesh.

As a condition of the Accord's Steering Committee agreeing that the RSC would assume the role, in Bangladesh, as the implementing agent of the Accord's in-country safety program, the Bangladeshi manufacturer associations that had backed the government's campaign against the Accord's operation committed to reaching a cooperation agreement between the Accord Steering Committee and the RSC prior to the handover of operations.<sup>3</sup>

The stated purpose of the parties in committing to reach such a cooperation agreement was to provide a framework for ensuring that the RSC's operations maintain the rigor and quality required to effectively manage the Accord's safety program in Bangladesh.

In discussions with the Accord Steering Committee, however, the manufacturer associations repeatedly attempted to water-down the cooperation agreement and hinder the Accord Secretariat's ability to monitor and verify the implementation of the Accord's prescribed safety programs. With that, contrary to the manufacturers' commitment, no such cooperation agreement was reached prior to the RSC beginning its operations on June 1, 2020.

After two months of delay, in August 2020, the Accord Steering Committee and RSC did reach an agreement on cooperation. However, the manufacturers' attempts to weaken the agreement underscores our concern that the RSC will undermine, rather than support, the Accord Secretariat in the latter's ongoing work of monitoring the Accord's implementation in Bangladesh.

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<sup>3</sup> *Transition Agreement Between Accord on Fire and Building Safety and BGMEA/BKMEA*, January 14, 2020, "BGMEA and Accord will agree to a plan regarding cooperation between RSC and the Accord Foundation staff from Amsterdam, in order to ensure that all functions to be assumed by the RSC and all relevant knowledge and information will be smoothly and fully transferred [...] The RSC will cooperate closely with the Accord Foundation in Amsterdam providing all necessary access to data and information as required for the implementation and management of the legally binding agreement between brands and unions. The RSC and the Accord Foundation will agree on a protocol specifying the terms of access to the RSC data." <https://bangladesh.wpengine.com/wp-content/uploads/2020/01/Accord-BGMEA-Transition-Agreement-Final-14Jan2020.pdf>.

**2. Safety Complaint Mechanism.** The RSC must maintain a demonstrably effective and independent complaint mechanism for factory workers.

For nearly seven years, the Accord's complaint mechanism has established itself as a credible and transparent source of remedy that is trusted by factory workers. This success is due to the fact that the Accord allows for anonymous and confidential complaints, is independent from factory owners and brands, actively protects workers' right to refuse dangerous work, shields workers who speak out from retaliation, and is transparent on the status and resolution of the complaints it has received.<sup>4</sup>

Moreover, the Accord's complaint mechanism has proved its worth in addressing workplace health-related issues beyond building safety, including sick pay/leave, maternity pay/leave, excessive work hours and forced overtime, and gender-based and other forms of workplace violence. Its mandate to protect workers from reprisal for speaking up on health and safety related issues has made the mechanism a trusted reporting tool for workers.<sup>5</sup>

Over time, the complaint mechanism's track record of responsiveness and success in securing remediation, together with the Accord's factory Safety Training Program, has bolstered workers' awareness of and trust in its process over the years, and it contributed to the steady growth in its use: from 11 complaints filed in 2014 and 50 in 2015, to 663 and 749 complaints brought in 2018 and 2019, respectively. From January 1 until May 31, 2020, 371 complaints were filed, confirming that workers' trust in the Accord's complaint mechanism continued.<sup>6</sup>

To maintain the complaint mechanism's effectiveness and accessibility to workers, it is crucial to preserve the key factors that have contributed to its success: independence from brands and employers, confidentiality, transparency concerning its findings, and capacity to compel remediation by factory owners through brand sanctions. This last factor is particularly crucial and will require, in turn, that brands remain legally accountable, via extension of the Accord agreement (and/or other binding commitments), for ensuring that their suppliers implement measures to remediate health safety hazards and incidents of retaliation reported by their workers.

In order to safeguard the independence and credibility of the complaint mechanism, the RSC Head of Workplace Programs and her team must be able to run the complaint mechanism independently from the RSC governing body, a majority of which, as noted, is comprised of representatives of brands and factory owners, in order to prevent interested parties from influencing the handling of individual complaints.

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<sup>4</sup> Accord on Fire and Building Safety in Bangladesh, *Complaints Raised with the Accord*, <https://bangladeshaccord.org/safety-complaints>.

<sup>5</sup> International Labor Rights Forum, *Calling for Remedy*, May 2019, <https://laborrights.org/sites/default/files/publications/Calling%20for%20Remedy%205-14.pdf>.

<sup>6</sup> Accord on Fire and Building Safety in Bangladesh, *Update Safety and Health Complaints*, June 20, 2020, <https://bangladeshaccord.org/updates/2020/06/20/update-safety-and-health-complaints>.

**3. Full Application and Implementation of All Existing Accord Policies, Procedures, and Practices.** The historic success of the Accord program has been due in significant part to the robust and independent policies and practices it adopted. Two of these key policies—transparency and the escalation procedure—are discussed in greater detail below. However, it is crucial that all of these policies and practices be maintained in full by the RSC, including regular and independent safety inspections to monitor remediation, training of workers and Safety Committees in covered factories, full severance payments to workers affected by remediation-related factory relocations, and the aspects of the complaint mechanism, noted above.

*a. Transparency*

Compared to nearly all other private factory inspection programs, the Accord provides an unprecedented level of transparency, both to the public and to workers. Under most private factory inspection programs, workers rarely see the results of the inspections of their factories and such reports are usually not available to the public.<sup>7</sup> Under the Accord, all factory inspection reports are public and include, along with the name of the factory, detailed information on each specific safety hazard identified; the renovation, repair, or retrofit required to eliminate that hazard; and the date by which it must be completed. The Accord also issues detailed public reports on the progress of factory renovations and repairs; when a factory fails to implement the improvements deemed necessary by the Accord’s engineers, this failure is reported publicly.

Workers have access to the Accord’s initial inspection reports for their factories in the local Bangla language. These, together with the corrective action plans (CAPs), are available on the Accord’s website and are shared with and explained to the worker members of the joint labor-management Safety Committees at the covered factories, as part of the Accord’s Safety Training Program.

Moreover, all complaints received by the Accord, whether they are handled by the Accord’s complaint mechanism or referred to other channels—and even if they are withdrawn by the complainant—are posted publicly on the Accord’s website where workers and labor groups can monitor remediation of violations.<sup>8</sup>

It is crucial that this transparency—which empowers workers, enables effective monitoring, and enhances accountability of brands and factory owners—is maintained going forward. This will require close cooperation between the RSC and the international Accord Foundation, as well as timely and credible public reporting by the RSC leadership and staff.

*b. Escalation Procedure*

A critical element of the Accord program’s success has been its ability to declare factories that repeatedly refuse to make efforts to remediate safety violations ineligible to do business with any of the Accord’s signatory brands. In such cases, the Accord has a multistage escalation procedure

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<sup>7</sup> Clean Clothes Campaign, *Fig Leaf for Fashion. How Social Auditing Protects Brands And Fails Workers*, September 2019, <https://cleanclothes.org/file-repository/figleaf-for-fashion.pdf/view>.

<sup>8</sup> International Labor Rights Forum, *Calling for Remedy*, May 2019, <https://laborrights.org/sites/default/files/publications/Calling%20for%20Remedy%205-14.pdf>.

under which factories are given notices and warnings that their eligibility to sell products to any of the Accord's signatory companies will be withdrawn if they persist in refusing to correct unsafe conditions.

If the Accord's notice and warning process does not lead to increased compliance by the factory, as determined by the Accord's Chief Safety Inspector, all Accord signatory brands must terminate their business relationships with the factory. Ineligibility for business with Accord brands is in effect for a minimum period of 18 months and until the factory completes the required remediation.

This escalation process has led to the application of the sanction and termination of over 180 unsafe and noncompliant factories from the Accord program. Maintaining eligibility to do business with the Accord's signatory brands has been a powerful incentive for factory owners to make progress in improving factory safety under the Accord program.

As part of the transition of the Bangladesh-based Accord functions to the RSC, the implementation of the escalation protocol and procedures has become the responsibility of the RSC Chief Safety Officer (CSO). At the time of writing, the RSC's CSO position remains vacant, which raises serious concerns about the effective implementation of escalation procedures, which allows for factories to perpetuate unsafe working conditions.

**4. Credible Progress in Rates of Safety Hazard Remediation.** The RSC must require factories to continue to eliminate the safety hazards identified by the Accord in their facilities, in accordance with the requirements and timelines noted in their corrective action plans.

Over the past year, while the Government of Bangladesh, at the behest of manufacturer associations, threatened to end the Accord safety program in Bangladesh, many factories halted completion of safety renovations mandated by the Accord. Due to the uncertainty surrounding the Accord's future operations in Bangladesh, factory owners no longer felt compelled to carry out safety renovations.

An indicator against which the RSC effectiveness could be measured is the acceleration of remediation, under the RSC's oversight, with the reported rate of factory safety renovations returning to the levels of progress seen under the Accord—prior to the government's interference in the Accord's operations. In such case, however, it will be important to ensure that such reporting on progress of factory renovations can be credibly verified by the Accord Secretariat, who is mandated to monitor and verify the implementation of the Accord signatories' obligations under the Accord agreement. It is important to ensure that any efforts to increase remediation rates are not achieved by compromising on the standard of required remediation.

In short, the RSC must ensure that the outstanding hazards in factories—including the installation, testing, and commissioning of fire detection and suppression systems and the completion of structural remediation—are eliminated under the supervision of a CSO who practices the same independence, autonomy, authority, and reporting requirements instituted by the Accord.

**5. Boiler Safety Program.** The RSC must begin and carry out a robust program across all factories producing for Accord signatories focused on the safe operation and maintenance of factories' boilers.

Another vital Accord initiative, whose progress has been undermined by the Bangladesh Garment Manufacturers and Exporters Association's (BGMEA) interference with the Accord's operations, has been its boiler inspection program. The Accord's factory inspection program, which focuses on fire and building safety, originally did not cover inspection of factories' boilers.

In 2018, after a series of deadly boiler explosions in the Bangladesh garment industry, the Accord signatory brands and unions agreed on a pilot program to assess the feasibility of the Accord conducting boiler inspections. Manufacturers' resistance to this program, which increased as the Government of Bangladesh intensified its interference with the Accord's operations, prevented the initial launch of this program under the Accord. As a compromise, the Accord brands and unions agreed with the BGMEA to start the roll-out of the boiler safety program at the start of the establishment of the RSC.

The RSC's founding documents state that the RSC will conduct boiler safety inspections and suppliers must remediate pursuant to their findings. In the coming months, a boiler safety standard for such inspections must be finalized and agreed upon, RSC staff should receive additional training in boiler safety training, and boiler inspections should start at all factories producing for Accord signatories.

#### **D. Conclusion**

While we are concerned for the transition in management of the Accord's safety program in Bangladesh from the Accord itself to the RSC, we nonetheless hope that the RSC is successful in its role. However, if the RSC shows that it is not able or willing to carry out the requirements of the safety program outlined in the Accord agreement, the Accord's signatories could terminate its relationship with the RSC and determine alternative ways to fulfill their obligations to the enforceable agreement. This may include, for example, utilizing the expertise of other local organizations in Bangladesh or international engineers.

The witness signatories will continue to monitor and publish a progress update on the work of the RSC. If by end of November 2020, which will mark six months since the RSC assumed its responsibilities, the RSC has not carried out the activities outlined in this brief, the witness signatories will recommend that the Accord initiate that process.

The Accord is the best example in the global garment industry of how industry, labor, and civil society stakeholders can come together and bring meaningful change to workers' lives *through a binding, credible, and transparent commitment to action*. The elements that have contributed to the Accord's historic success must be preserved going forward. Otherwise, the immense progress in factory safety made over the seven years since the Rana Plaza disaster may be lost, and the lives of millions of workers once more put at deadly risk.

## **Annex: June 2019 to June 2020: A Year of Uncertainty and Turmoil**

The Accord has faced considerable challenges from the moment that brand and trade union signatories reached a memorandum of understanding (MOU) with garment industry representatives from Bangladesh on May 8, 2019. The MOU took away the pending restraining order against the Accord's Bangladesh office, at the Bangladesh High Court, which would have made further operation in the country impossible. This High Court *suo moto* (*sua sponte*) restraining order had been in place as of November 30, 2018, in response to a case brought against the Accord by a Bangladeshi factory owner. The factory owner filed the case against the Accord for requiring its brand signatories to terminate their business relationships with the factory. The reason the Accord had required this of the brand signatories was because the factory had falsified structural integrity tests and endangered the lives of workers. The High Court repeatedly extended a stay on the order to allow for a negotiated agreement between the Accord signatories, the Government of Bangladesh, and the BGMEA, demonstrating the politicization of the legal proceedings. The MOU, which was reached in May 2019, resolved the court case and superseded earlier arrangements between Accord signatories, the government, and the BGMEA that a state body would eventually take over the tasks of the Accord. The MOU outlined that the Accord would be replaced by a brand-union-employer governed body and significantly shortened the timeline of transition, which previously had been based on conditions of readiness but now amounted to a hard court-ordered deadline of about one year.

The MOU foresaw the immediate integration of a BGMEA unit in the Accord's Bangladesh office, as well as negotiations throughout the year on the exact parameters of the new entity. This directly impacted the Accord's ability to carry out its work. To safeguard the success of the Accord's operations and to make the now imminent transition as smooth as possible, it was critical to complete the outstanding safety renovations before June 1, 2020. This would have allowed the RSC to start with a clean slate. Accord covered factories had completed 90 percent of the required renovations in May 2019, with many of the most difficult, expensive, or time-consuming remediations still pending.<sup>9</sup>

However, the uncertainty on the future of the Accord directly resulted in factories slowing down remediation since November 2018, and progress slowed down even more after the MOU was signed. Manufacturers operated on the understanding that the Accord's local programming would soon partly fall under the purview of the BGMEA, guardian of the interests of employers and, therefore, saw less urgency in speeding up remediations. Moreover, from the onset of the installation of the BGMEA unit in the Accord's Bangladesh office, as well as the ongoing negotiations between Accord signatories and the BGMEA, the industry association has had undue influence on Accord activities, slowing down critical decision making related to safety renovations. For example, one improvement of the 2018 Transition Accord over the original 2013 Accord was the explicit inclusion of severance payments for workers of factories that have to close (temporarily) or relocate for safety reasons.<sup>10</sup> The BGMEA has, however, been reluctant to accept this provision as it requires its members to pay these amounts.

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<sup>9</sup> Accord on Fire and Building Safety in Bangladesh, *Quarterly Aggregate Report*, April 2019, <https://bangladeshaccord.org/updates/2019/05/17/april-quarterly-aggregate-report>.

<sup>10</sup> Accord on Fire and Building Safety in Bangladesh, *2018 Accord on Fire and Building Safety in Bangladesh: May 2018*, June 21, 2017, Article 8, <https://bangladesh.wpengine.com/wp-content/uploads/2018/08/2018-Accord.pdf>.

Moreover, the BGMEA consistently challenged the Accord on placing noncompliant factories into the multistage escalation procedure, the Accord's most powerful means of pressure for recalcitrant factories, which culminates in losing the business of all Accord company signatories. As part of the MOU, a new third step of the Accord Escalation Protocol was introduced. Not only would the noncompliant factory lose the privilege to do business with Accord brand signatories but, under the protocol, the BGMEA would also withdraw the factory group's Utilization Declaration (UD), which is mandatory to export apparel from Bangladesh.<sup>11</sup> Although throughout the year several UD's of escalated factories were withdrawn, withdrawal was delayed or not carried out at many other noncompliant factories. This step replaced the ability of the Accord to apply escalation to groups of factories owned by the same owner. This change makes it easier for employers to circumvent penalties and, therefore, weakens the sanction of escalation and termination.

In May 2020, factories had completed 92 percent of all remediations, only two percent more from the year before. The eight percent of renovations yet to be completed represent: 1,333 factories yet to install fire alarm systems; 934 factories yet to install safe emergency exits; and 417 factories with outstanding structural renovations.<sup>12</sup> These outstanding renovations mean that many thousands of workers continue to face critical safety hazards every day.

When the Accord engineers confirmed the need for such a program,<sup>13</sup> the Accord's Steering Committee decided in June 2019 to integrate boiler safety in the Accord's standard inspection and remediation programs.<sup>14</sup> The Steering Committee also decided that boiler safety would be integrated in the RSC and that the Accord would take the lead on developing a boiler safety standard.<sup>15</sup> While among Steering Committee members—consisting of signatory brands and unions—commitment to the boiler program was clear, pushback continued from the BGMEA, which prevented the program from beginning. There has been no demonstrable effort on the part of the RSC board to begin a comprehensive boiler safety program in earnest any time soon. In the summer of 2019, the BGMEA president, Rubana Huq, stated that boiler safety “should now be left on the RMG [Ready-Made-Garment] industry's shoulder.” She added that the “[RSC] is about to be launched [...] and Accord doesn't have time to take on another issue. Demands of monitored compliance must cease and self-monitoring must begin.”<sup>16</sup>

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<sup>11</sup> Accord on Fire and Building Safety in Bangladesh, *Quarterly Aggregate Report*, July 1, 2019, [https://bangladesh.wpengine.com/wp-content/uploads/2019/09/Accord\\_Quarterly\\_Aggregate\\_Report\\_July2019.pdf](https://bangladesh.wpengine.com/wp-content/uploads/2019/09/Accord_Quarterly_Aggregate_Report_July2019.pdf).

<sup>12</sup> Accord on Fire and Building Safety in Bangladesh, *Safety Remediation Progress*, June 20, 2020, <https://bangladeshaccord.org/updates/2020/06/20/safety-remediation-progress>.

<sup>13</sup> Accord on Fire and Building Safety in Bangladesh, *Accord Boiler Safety Pilot Program Results*, March 18, 2019, <https://bangladeshaccord.org/updates/2019/03/18/boiler-safety-pilot-program-results>.

<sup>14</sup> Accord on Fire and Building Safety in Bangladesh, *2018 Transition Accord Steering Committee Quarterly Meeting – Minutes*, June 28, 2019, 10, <https://bangladesh.wpengine.com/wp-content/uploads/2019/08/190628-SC-Minutes-Amsterdam.pdf>.

<sup>15</sup> Accord on Fire and Building Safety in Bangladesh, *2018 Transition Accord Steering Committee Quarterly Meeting – Minutes*, October 2019, 4, <https://bangladesh.wpengine.com/wp-content/uploads/2019/11/19100103-SC-Minutes-Dhaka.pdf> and Accord on Fire and Building Safety in Bangladesh, *2018 Transition Accord Steering Committee Quarterly Meeting – Minutes*, January 2020, 6-7, <https://bangladesh.wpengine.com/wp-content/uploads/2020/02/20011213-SC-Minutes-Dhaka.pdf>.

<sup>16</sup> Apparel Insider, *Accord to go ahead with boiler inspections*, August 27, 2019, <https://apparelinsider.com/accord-goes-ahead-with-boiler-inspections>.