STAFF REPORT

TO: **George Miller, Senior Democratic Member**
FROM: **Committee Staff**
RE: **Supply Chain Practices by U.S. Military Exchanges and Labor Conditions in Bangladesh Garment Factories**
DATE: **December 20, 2013**

With respect to the Committee on Education and Workforce's jurisdiction over labor rights and workplace health and safety, and as part of our focus on labor rights protections in the global supply chain for garments, we have been examining the practices of U.S. military exchanges with respect to their garment suppliers in Bangladesh. A provision proposed for inclusion in the FY 2014 Defense Authorization Act (H.R. 1960) would have required that Military Exchanges abide by the Accord on Fire and Building Safety in Bangladesh.[1] That provision, however, was not included in the final enacted bill. In the meantime, staff have followed up on letters that were sent to the Army-Air Force Exchange and the Marine Corps Exchange requesting information about the Exchange store system's oversight of safety and labor conditions at Bangladeshi factories which produce garments for sale by the Exchanges.[2] This memo summarizes the key findings from that oversight effort, namely:

- Exchanges have social responsibility policies, but provide little or no oversight of the labor and safety conditions in factories to assure compliance with the Exchange's own policies;
- Exchanges have outsourced responsibility for oversight to major U.S. retailers, and abrogated their core responsibilities to assure garments produced for sale in Military Exchanges are not produced in sweatshops; and
- While the Exchanges reject any association with the Accord as a means to improve factory safety, the Marine Corps Trademark and Licensing Office has taken a different tack and now requires its licensees to abide by the Accord for production of garments in Bangladesh.

The Exchanges have opposed legislation that would require them to abide by the Accord. They simply want to continue their current sourcing and oversight model, despite the clear failings detailed below. As AAFES noted in an email to the Committee: .

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[1] Section 634 states:

> *The senior official of the Department of Defense designated pursuant to section 2481(c) to oversee the defense commissary system and the exchange store system shall require, consistent with applicable international agreements, that the exchange store system— (1) for the purchase of garments manufactured in Bangladesh for the private label brands of the exchange store system, becomes a signatory of or otherwise complies with applicable requirements set forth in the Accord on Fire and Building Safety in Bangladesh; (2) for the purchase of licensed apparel manufactured in Bangladesh, gives a preference to licensees that are signatories to the Accord on Fire and Building Safety in Bangladesh; and (3) for the purchase of garments manufactured in Bangladesh from retail suppliers, gives a preference to retail suppliers that are signatories to the Accord on Fire and Building Safety in Bangladesh.*

[2] August 2, 2013, letter from U.S. Representatives George Miller and Jan Schakowsky to Tom Shull, Chief Executive Officer, AAFES; and September 24, 2013, letter from U.S. Representatives George Miller and Jan Schakowsky to Cindy Whitman Lacy, Chief Operating Officer, MCX. Exhibit 1.

> "I'm sure that you have heard that WalMart has committed $50M to help improve conditions in Bangladesh. Given this news, we believe any legislative action that mandates/taxes the Exchanges through the Accord is pre-mature. The prudent thing to do is continue to audit the factories (which we will do) and monitor the impact of the influx of WalMart's contribution."[3]

Military Exchange Supply Chain Standards and Oversight: Ineffectual to Nonexistent

The Army Air-Force Exchange (AAFES), Navy Exchange (NEX), and Marine Corps Exchange (MCX), which are non-appropriated fund agencies within the Defense Department, have authority to oversee and demand improvements to factories that provide their "private label" garments—if they chose to exercise it. "Private label" brands are owned by the Exchanges, such as "R&R Casuals," an AAFES clothing brand, and "1775," an MCX brand.

An existing DoD Instruction (DoDI)[4] requires Exchanges to assure that private label merchandise is not produced with child or forced labor, and that Exchanges have a code of conduct "that reflects the values and expectations the Exchanges have of their suppliers." The Exchanges' Codes of Conduct require factories to ensure workplace health and safety, prohibit forced and child labor, pay wages and overtime consistent with local laws, prohibit discrimination and physical and verbal harassment, and respect workers' right to freedom of association.

Although the Exchanges lack authority to directly intervene factories used by popular brand names (such as Levi's or Ralph Lauren) whose garments are re-sold through the Exchanges, the Exchanges have the authority to establish minimum standards that approved vendors must meet. On paper, at least, the AAFES Code of Conduct says it "continues to expect that all brand-name merchandise suppliers comply with international laws regarding social responsibility and labor standards, and [Exchanges] shall take appropriate contractual [sic] or action if this expectation is not met. Social responsibility and labor policies at MCX and NEX are limited to private label brands, but do not extend to brand-name merchandise suppliers."[5]

The DoD Instruction further states that Military Exchanges: "shall develop a monitoring effort to ensure the codes of conduct are upheld." Monitoring approaches range from reliance on U.S. retailer audits to a one-sentence attestations of compliance, but in all cases, the compliance regimens represent little more than a paper-shuffling exercise.

For example, the AAFES "Code of Conduct" requires social compliance audits of private label supplier factories within the past year. AAFES accepts the submission of audits from a "large well-known U.S. retailer or brand-name company" (such as Wal-Mart and Sears), "or a cover sheet with the company's letterhead stating the factory was acceptable for social compliance." Walmart and Sears contract for these audits with for-profit auditing companies (such as Bureau Veritas), which then subcontract the work to local inspection companies. AAFES does not take any steps to verify the quality of these audits or intervene to correct any issues identified in the

[3] September 6, 2013 e-mail from Gregg Cox, AAFES to Committee staff.
[4] DoD Instruction 4105.71, Nonappropriated Fund Procurement Procedures (updated July 2002)
[5] AAFES Policy of Social Responsibility & Labor Standards for Private Label and Direct Import Merchandise.

audit. To the extent that the audits find serious problems, AAFES relies on the retailers who contracted for the audits to correct unacceptable conditions. According to AAFES staff:

> "The Exchange does not directly communicate with the factory. We utilize the audit by other retailers to facilitate the monitoring effort and rely on auditor's findings and report to determine if a factory is acceptable for our business."[6]

AAFES has outsourced its responsibility for compliance with the government's Code of Conduct.

In contrast with the mandatory compliance audits required by AAFES, MCX and NEX do not mandate audits. Committee staff was advised that USMC attorneys do not believe that the DoD Instruction requires a specific "social audit."[7] When asked how MCX assures "codes of conduct are upheld," MCX staff stated:

> "To ensure compliance, MCX requires a signed letter from each of our private label vendors that commits them to comply with the direction in the social responsibility letter. We are happy to provide those in lieu of the social audits."[8]

That means that factories producing products for MCX do not have to be audited by U.S. retailers or others, let alone by a credible outside entity. MCX relies solely on unverified statements that its products are produced without safety or labor violations.

MCX provided the Committee with letters prepared by a middleman, Scope Imports, and signed by five factory owners. The certifications state:

> "We certify that our establishment and any contracted factories are in compliance with all applicable labor laws. At no time will convict, forced or indentured labor or illegal child labor be employed for the production of merchandise for Scope Imports."

MCX apparently accepted this narrow reassurance at face value without any further verification. And because NEX uses the same policy as MCX, presumably it is left equally in the dark about the conditions at factories that produce its merchandise.

AAFES Has Outsourced Minimum Safety and Labor Standards to Walmart, Other Brands

AAFES provided the Committee with a list of 10 Bangladesh factories it has recently used to source private label men's, women's, and children's garments.[9] AAFES advised that it imported

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[6] MCX contends that the AAFES Policy does not apply to them, even though document states unequivocally that it also covers MCX. "The document you included is an AAFES policy document and as such it does not cover NEX or MCX." E-mailed communications between MCX and Committee staff, September 26, 2013.

[7] E-mailed communication from MCX to Committee staff, September 30, 2013

[8] http://community.marines.mil/news/publications/Documents/MCO%201700.30.pdf; e-mailed communications from MCX to Committee staff, September 30, 2013.

[9] August 21, 2013, letter to U.S. Representatives George Miller and Jan Schakowsky from Tom Shull, Chief Executive officer, AAFES. Exhibit 2. Data from the Import Genius database, which reflects shipping manifests through U.S. ports, indicates 14 factories had shipped garments to the AAFES over previous year.

$3.9 million in private label garments from Bangladesh last year. As described below, instead of overseeing its own minimum safety and labor standards, AAFES has substituted the judgment of U.S. retailers and their subcontracted auditors to determine whether a garment factory adheres to the AAFES Code of Conduct.

One of those AAFES factories is Citadel Apparels in Gazipur, Bangladesh, where a Walmart auditor tagged the factory with an negative "Orange" ranking[10] due to lack of fire exits, obstructed fire exits, blocked fire extinguishers, workers forced to work overtime in excess of the legal maximum, a worker participation committee that was selected by management rather than elected by workers, and no footwear or dust masks available for most workers.

Among the findings, auditors found cracks in factory walls and questioned whether the cracks were "hampering building safety." The factory told the auditor they would follow up with an engineer to assess whether the cracks were compromising the building's structural integrity. A Walmart follow-up audit that was coded a somewhat improved "Yellow" noted that the cracks were fixed, but provided no indication whether the cracks in that seven-story building were reviewed by an engineer for structural inadequacy, or whether they were simply plastered and painted over, hiding but not removing the potentially dangerous conditions. [11]

The Committee brought the audit finding about building cracks to the attention of AAFES, in part, because the Bangladesh Institute of Architects estimates that as many as 50 percent of the factories in that country may be unsafe; following the Rana Plaza collapse, there are multiple reasons to suspect that there might be safety concerns at this particular facility. When asked to confirm whether an engineering inspection had, in fact, occurred, AAFES responded:

> "We do not know if these occurred based on the report we received."[12]

And when asked if the follow-up review of the factory safety conditions was merely a perfunctory check, AAFES said:

> "We do not have information to come to that conclusion."[13]

In other words, despite red flags, there is no indication that AAFES ever took any action to confirm whether the factory is truly safe.

In August, AAFES was put on notice[14] that the Citadel factory had labor and safety conditions, which, if verified, would violate its Code of Conduct. These conditions, which were derived from 50 worker interviews as recently as July 2013, were not identified in the previously provided Walmart audit, and include:

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[10] Citadel Apparels audit, July 18, 2012. Exhibit 3. Walmart uses 4 color codes to designate social compliance from best to worst: green yellow, orange and red. Three "Orange" assessments in 2 years results in factory being placed in "disapproved" status.
[11] Citadel Apparels followup audit, January 15, 2013. Exhibit 4
[12] Emailed communications between AAFES and Committee staff, September 26, 2013.
[13] Ibid.
[14] August 2, 2013, letter from U.S. Representatives George Miller and Jan Schakowsky to Tom Shull, Chief Executive Officer, AAFES.

- fire safety hazards, including bars on windows and inadequate fire exits
- verbal and physical abuse (beatings) for failure to make production targets
- unpaid overtime or loss of a day's wages when production targets are not met
- unsafe drinking water
- workers are coached on what to say to auditors when factory audits are conducted

When asked six weeks later whether AAFES followed up on these concerns (independent of Walmart's follow-up audit), they responded:

> "We rely upon the audit report and its findings to assess the factory to determine if it is acceptable."

When pressed on whether the Walmart audit was sufficient to meet minimum AAFES requirements, the Exchange responded:

> "Wal-Mart's social responsibility requirements and acceptance standards (their Green or Yellow rating only) meet our minimum requirements."

In conclusion, AAFES was presented with substantial evidence that the factory that they have been sourcing garments from was not adhering to their own Code of Conduct and continues to be in noncompliance, yet they have responded with troubling indifference. It appears this branch of the U.S. government has outsourced its oversight responsibility, leaving Walmart's minimum standard and questionable audit results—no matter how inadequate—as the *de facto* U.S. government standard.

Had the AAFES been a signatory to the Accord on Fire and Building Safety in Bangladesh, there would, at a minimum, have been independent safety audits, a remediation plan, full transparency on the findings of the audit, and a requirement for an independently elected worker health and safety committee. These measures would have provided far greater assurance that the audits were credible and that this factory fully remediated building and fire safety hazards. As noted above, AAFES has thus far refused to sign the Accord, and resisted legislation mandating such compliance.

AAFES and MCX Audits Provided to Committee on Education and Workforce

The two Exchanges provided the Committee with audits for 13 factories in Bangladesh: AAFES provided the Committee with audits for 10 factories plus 1 follow-up; and MCX provided a total of 3 audits. This memo highlights audit findings from 7 of the 13 factories. The audit findings range from nearly fully compliant factories to those to with significant shortcomings. Whether these audit findings fairly capture the reality of working conditions is doubtful, because it is common practice for workers to be coached on what to say to auditors when factory audits are conducted.

Highlights of findings from other audits provided by AAFES

The Citadel factory is not the only facility with the potential for severe, ongoing safety and labor concerns, as the following audits illustrate:

- **Green Fair Textile, Chittagong,** Sears Audit, 2/12/2013 ("Acceptable with Issues"): 80 percent of cut-and-sew workers "had worked on average 80 hours per week." The legal limit is a 60-hour workweek, with one day off. The audit provides weak admonition: the "factory needs to think about how to keep working hours down to more reasonable levels."[15]
- **Savannah Fashion, Chittagong,** Sears Audit, 11/5/12 ("Acceptable with Issues"): Emergency fire exits obstructed.[16]
- **Eastern Dresses, Chittagong,** Sears Audit, 11/29/12 ("Acceptable with Issues"): 87 of 440 workers paid less than minimum wage for the grade in sewing section, and 29 paid less than minimum wage for their grade in the quality section.[17]

Documents provided by MCX also suggest widespread violations of social responsibility requirements

Until the Committee oversight request was sent to MCX in September, MCX had apparently not known whether their private label garments were produced in Bangladesh. MCX has now identified 10 factories in Bangladesh that produce clothing for its MCX brand "1775" but has only been able to provide 3 audits.[18] As noted above, MCX does not mandate factory audits as a pre-condition of sourcing, but has authority to request them, and did so only in response to the oversight request. Highlights of the audits provided include:

- **Trouser World, Gazipur,** Walmart audit, 6/10/2012: "ruptured wall found…almost in all of the floors from 1st floor to 5th floor."[19] Note: Lacking a follow-up audit, Committee staff asked the Accord about the factory's safety. The Accord sent a structural engineer to examine the crack in December 2013. On a preliminary basis, the Accord has concluded that the crack is superficial, but the factory is slated for further inspection.
- **V&R Fashions, Gazipur,** Sears audit, 6/27/13 ("Needs Improvement"): Did not pay overtime to "cutter man, marker man, sample man, electrician, mechanic, and storekeeper." Engaged in wage theft by withholding a full day's wages when employee was absent only a half day. Fire fighters not trained and inadequate number of fire extinguishers (116 vs. 187 required). The Workers' Participation Committee was apparently selected by management instead of being elected by workers, as workers "could not recognize worker participation committee members," and the committee members were "not aware of their roles and responsibilities."[20]

[15] Green Fair Textile Audit, Exhibit 5
[16] Savannah Fashion audit, Exhibit 6
[17] Eastern Dresses audit, Exhibit 7
[18] November 18 letter to U.S. Representatives George Miller and Jan Schakowsky from Cindy Whitman Lacy, Chief Operating Officer, MCX. Exhibit 8
[19] Trouser World audit, Exhibit 9
[20] V&R Fashions audit, Exhibit 10

- **Scope Imports, Houston, Texas**: MCX provided "letters of compliance" from Scope Imports that covered five factories, but did not produce any audits.[21] M CX wrote that Scope Imports was terminated "based on their lack of compliance with MCX requirements." According to a conversation between MCX and Committee staff, Scope Imports failed to supply audits for these five factories when requested by MCX.
- **Caesar Apparels, Chittagong:** Received the Worldwide Responsible Accredited Production (WRAP) "Platinum Certificate of Compliance," the highest possible rating.[22] However, an audit summary underpinning this 1 page certificate tells a different story.[23] The factory was assigned a "D" rating (Critical) for health and safety violations following an audit on 6/24/2012. WRAP apparently relied upon an overall audit rating score of "B" (Acceptable) to award this certificate. This glaring inconsistency raises a question about the validity of WRAP certificates as a basis for assuring compliance. This requires further inquiry.

The Marine Corps Trademark and Licensing Office Is Raising Standards for Worker Safety and Labor Conditions

Found in the rubble following the November 2012 fire at Tazreen Fashions outside of Dhaka were order books and patterns for Marine Corps-licensed apparel marked "Semper Fidelis" and "Marines--the Few the Proud." The orders were placed by Soffe, a North Carolina company that had licensed these logos from the Marine Corps through its Trademark and Licensing Office (TMLO). As you know, that fire took the lives of at least 112 workers—mostly women-- many of whom were locked into the burning factory with barred windows. Some were burned beyond recognition and have still not been identified. Those who survived had to jump from the third and fourth stories after crawling through the blades of ventilation fans; twelve of those who jumped did not survive the fall.

When the TMLO granted a license to M.J. Soffe, the company "specifically agreed that all manufacturing would be done in North Carolina." Despite the presence of Soffe order books in the rubble, Soffe contends that they did not manufacture at Tazreen, but they admit to manufacturing at six factories in Bangladesh, including Tazreen's parent company, Tuba Garments, as well as Hemple Rhee, Mono Attire, Southern Designers, and DK Knitwear. TMLO suspended Soffe's license for one year until December 6, 2013. Its application for reinstatement is pending.

Subsequent to the Tazreen fire, the TMLO revised its Standards of Manufacturing Practice to add requirements that licensees must: (1) become a signatory to Accord on Fire and Building Safety in Bangladesh for garments made in Bangladesh; and (2) comply with Executive Order

[21]Scope Imports "Letters of Compliance" for 5 factories (JK Shirt & Fashion, Fashion Park International, Afrah Dresses, Premier Fashion, Authentic Garments), Exhibit 11

[22]The Worldwide Responsible Accredited Production (WRAP) program claims, according to its website, to be "the world's largest facility certification program mainly focused on the apparel, footwear and sewn products sectors. Facilities receive a certification based on compliance with the 12 WRAP Principles. The WRAP Principles are based on generally accepted international workplace standards, local laws and workplace regulations which encompass human resources management, health and safety, environmental practices, and legal compliance including import/export and customs compliance and security standards." http://www.wrapapparel.org/

[23] Platinum Certificate of Compliance and audit summary for Caesar Apparels, Exhibit 12

(EO) 13126 regarding the Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. This EO only applies to government vendors, but the TMLO has extended it to cover licensees of Marine Corps intellectual property. The Marine Corps has taken a noteworthy step by raising the bar instead of incentivizing a race to the bottom. It is in the public interest for the Marine Corps to take this step: they want to protect the reputation of a trademarked brand which belongs to the American people. To our knowledge, this is the first government agency to adopt this higher standard, which establishes a precedent worthy of emulation.[24] It is disappointing that the Marine Corps Exchange has not taken an equally enlightened approach.

Feasibility of Broader Adoption of the Accord on Fire and Building Safety

Military Exchanges generally have a special area where Marine Corps licensed products (garments, jewelry, firearms, etc.) are available. Given the current lack of consistent standards, garments made in Bangladesh under licenses granted by the Marine Corps must be produced under the Accord's "high road" safety standards, while the Exchange's own private label garments (and many of the garments it resells) are produced under a lower-road model with little accountability.

TMLO's enlightened policy stands in contrast to the largely ideological objections to stronger worker protections that have been voiced by the Military Exchanges, which contend that it is infeasible for them to abide by the Accord because it will drive up the costs of garments. However, the annual fee for Accord membership would not exceed $10,000 per year for each of the 4 Exchanges, plus a pro-rata share of Accord-mandated factory improvement costs, a small price for the Military Exchanges to pay to protect workers. According to the New York Times, the Military Exchanges made $485 million last year.[25] Of the 115 retailers/brands that have become Accord signatories, 8 are major U.S. brands/retailers.

The proposed legislation—which was ultimately not included in the FY 2014 Defense Authorization Act—would have required that the Exchanges provide a preference to suppliers who are Accord signatories, guaranteeing that their garments are produced in factories which are independently audited, that unsafe conditions are corrected, and that factory owners are provided with the necessary financing and long-term contracts to assure they can afford to make the upgrades. U.S. retailers/brands that are not Accord signatories, such as some members of the Retail Industry Leaders Association, opposed this proposed legislation because they are concerned that they might lose the ability to sell to Military Exchanges. However, in the end, all U.S. retailers/brands have the option of choosing to join the Accord in addition to any other initiatives they might be a part of. And there is already a high-profile example: Fruit of the Loom just recently joined the Accord, in addition to participating in another retailer safety initiative.[26]

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[24] Three universities (U. Penn, NYU and Temple) now require licensees using their university logos to become signatories to the Accord on Fire and Building Safety in Bangladesh. Licensees who are signatories include Knights Apparel and Top of the Hill.

[25] U.S. Flouts Its Own Advice in Procuring Overseas Clothing, New York Times, December 23, 2013

[26] List of Accord signatories and covered factories are at www.bangladeshaccord.org.