

Trade Union
Advisory Committee
to the OECD
*Commission
syndicale consultative
auprès de l'OCDE*

Briefing #3

Implementing the OECD Guidelines to achieve Global Recovery

Paris, 7 February 2022

Businesses and Trade Unions have a common interest in promoting harmonious industrial relations, which can be achieved when they collaborate to implement the OECD Guidelines for Multinational Enterprises (“MNEs”) and respect the good offices of National Contact Points (“NCP”).

When enterprises and trade unions collaborate to implement the Guidelines, they can create best practices for inclusive workplaces, resilient business operations, and individual well-being.

Briefing#3: Implementing the OECD Guidelines to achieve Global Recovery examines the level of labour market resilience to global climate, health and economic crises.



The economic cost of the current crisis and its toll on employment levels are unpredictable for the near future. OECD governments will be tested throughout the present crisis, however long it lasts. For economic activity to recover linearly, it is crucial for governments to assess all potential stress factors and related operational risks. In this context, operational risks associated with a supply chain reliant on unit-level bargaining means a largely non-unionised workforce. This model requires close scrutiny as a potential source of social conflict and disruptive tendencies that would strain smooth recovery of production levels and economic resiliency.

Governments face Unprecedented Operational Challenges

Never have governments attempted to restart entire and so different segments of the economy at the same time, following periods of global lock-down. For economies to recover, all social partners must co-operate towards the common goal in a coordinated and complementary fashion. However, the progressive erosion of labour representation and compression of wage levels and job quality - a trend that started long before the Covid19 crisis, carries a strong risk of undermining the intended economic recovery. Extreme uncertainty heightens potential for labour-management disputes in the labour market. The low degree of unionisation combined with the potential for unknown spin-up costs creates extreme operational challenges across supply chains.

Capacity and Resilience Varies Widely

TUAC defines labour markets' resilience based on the level of social dialogue institutionalised in different countries. Disruptions arising out of firm-level disagreement are more likely to occur in more fragmented and disorganised bargaining systems, which tend to be tied to lower job quality in the first place, increasing the risk of workers' dissatisfaction even outside crisis times. In this perspective, we predict heavier trade union density and the wider collective bargaining have more capacity to avoid single and multiple disruptions at the firm level.

The OECD report, "Negotiating our way up"¹ published at the end of 2019 offered a prescient framing of the crises yet to come, introducing collective bargaining as "a key institution to promote rights at work," connecting collective bargaining and workers' voice as "unique instruments to reach balanced and tailored solutions to the challenges facing OECD labour markets."

The report considers two key characteristics of the labour bargaining system and the workforce: first, the predominant level where collective bargaining takes place, and second, the number of workers covered by collective agreements (if the latter are even considered).

Building on that, the TUAC determines three levels of systemic bargaining resilience based on the reported approaches to collective bargaining and workers' voice present in OECD labour markets (Figure 1):

- **Most resilient:** countries with a high level of collective bargaining coverage taking place predominantly at a sectoral or national level;
- **Moderately resilient:** countries with sectoral and/or company level bargaining and mid-range collective bargaining coverage;
- **Least resilient:** countries where bargaining takes place at the company level only, with limited capacity for balanced, tailored *pathways for a world in transition*.

Governments, especially those predominantly relying on company-level bargaining systems, may be able to offset lower labour market resilience by using their investment, procurement and export credit activities to implement the OECD, ILO and UN standards for responsible business. Doing so would situate the OECD Guidelines for Multinational Enterprises as a public-private framework for constructive industrial relations capable of building policy pathways out of crisis and into economic recovery that is inhabitable, inclusive and socially cohesive.

¹ OECD (2019), *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, <https://doi.org/10.1787/1fd2da34-en>.

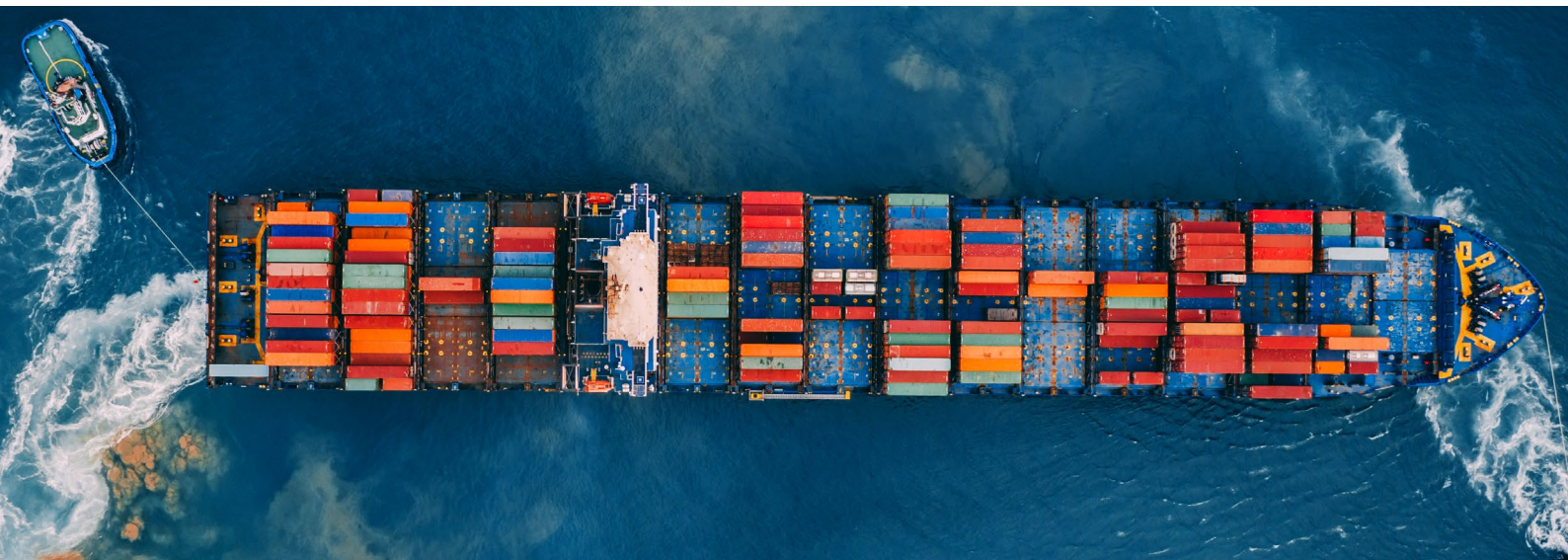
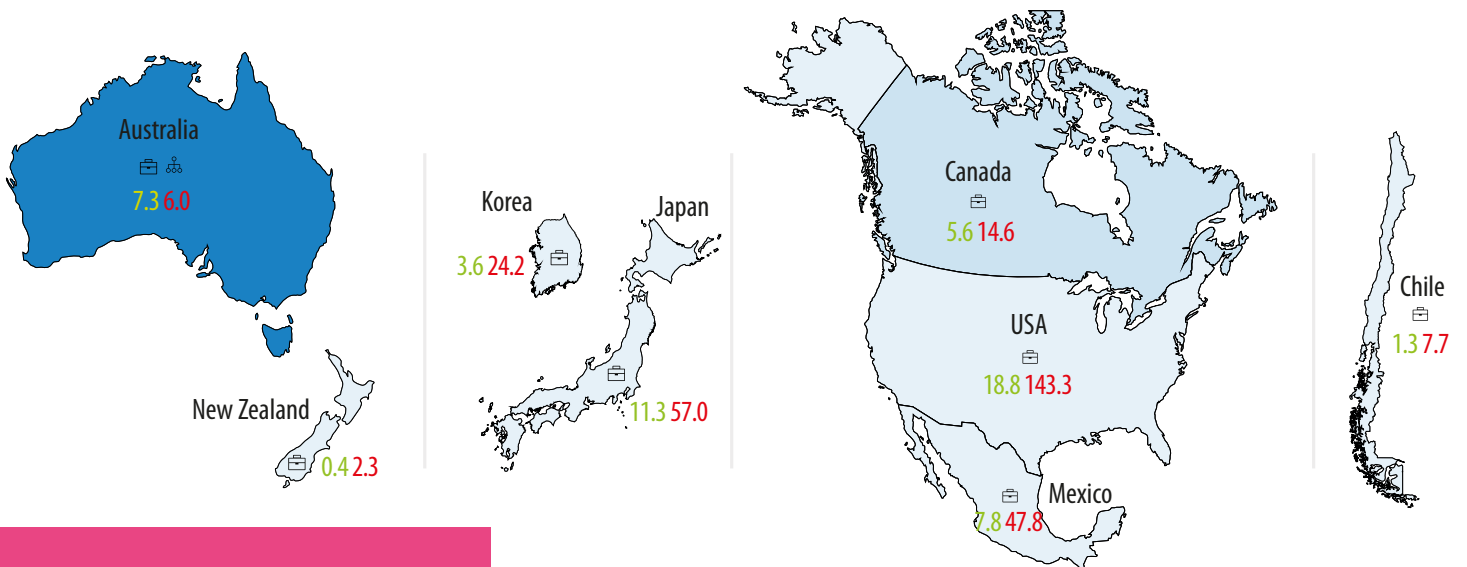
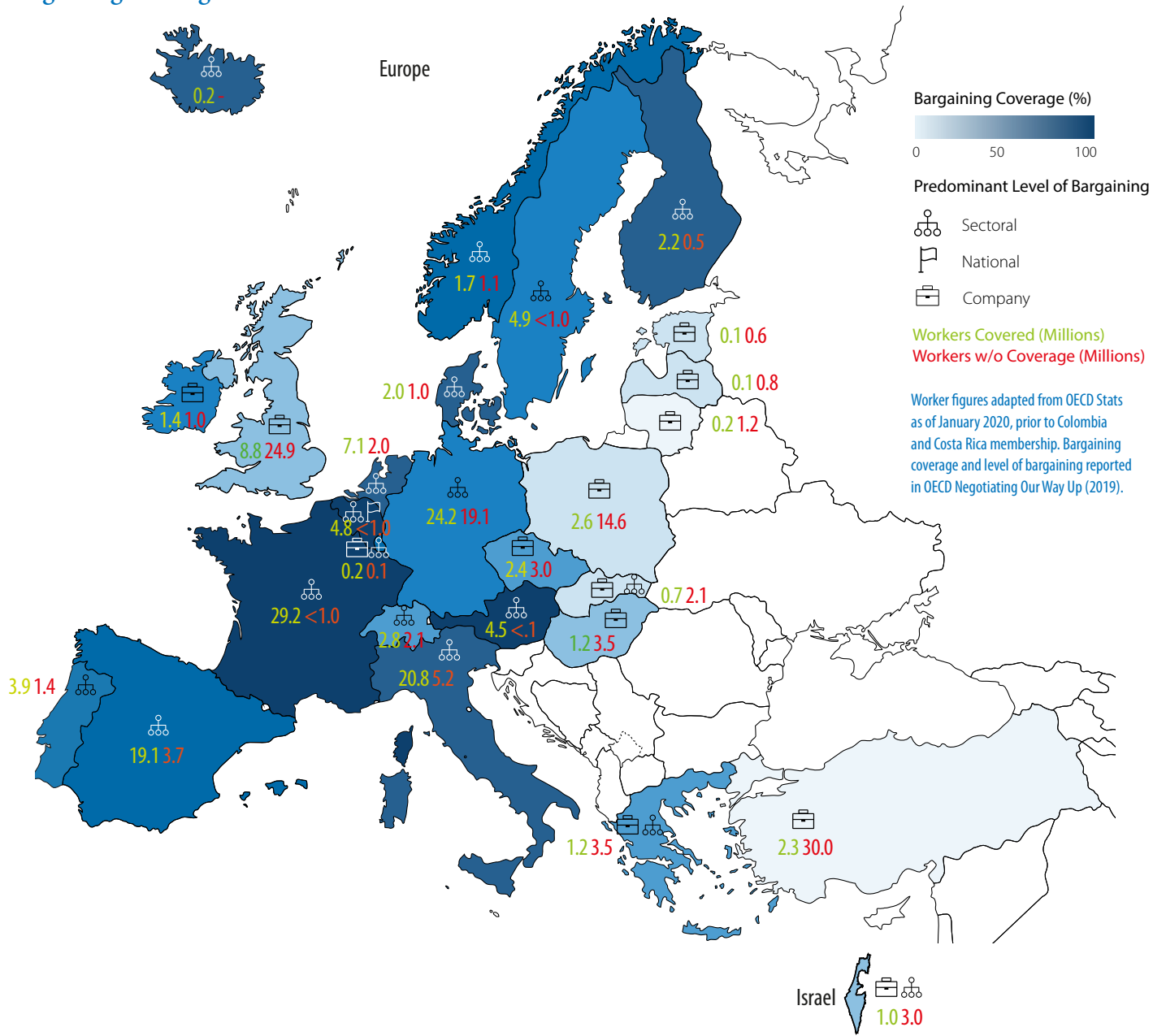


Figure 1:
Bargaining coverage for OECD members



Map scales are inaccurate, varied for clarity and do not indicate preference or priority.

Government Examples of Incentivising Enterprise Implementation of the OECD Guidelines and NCP and balance stakeholders' interests.

Trade agreements and their subsequent impact on labour markets do not happen in a bubble. There are important implications and trade-offs between international trade, taxation and investment agreements that drive companies' decisions affecting workers in both receiving and sending economies. Internationally, securing respect for human rights and labour standards can be made a mandatory subject in any trade negotiation, with enforceable provisions demonstrating compliance with the ILO Core Conventions, the United Nations Guiding Principles on Business and Human Rights (UNGPs), the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises and the related OECD Due Diligence Guidance.

Examples:

Europe and South America

The Mercosur Trade Agreement contains Article 11 - Trade and Responsible Management of Supply Chains, in which the governments recognise the importance of responsible management of supply chains through responsible business conduct and corporate social responsibility practices based on internationally agreed guidance, agree to support the dissemination and use of relevant international instruments that it has endorsed or supported, such as the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the UN Global Compact, the UN Guiding Principles on Business and Human Rights and the **OECD Guidelines for Multinational Enterprises**. The governments also agree to promote the **voluntary uptake by companies** of corporate social responsibility or responsible business practices, consistent with the above-mentioned guidelines and principles, while also having a **supportive policy framework for the effective implementation** of the abovementioned guidelines and principles, *specifically including the respect for freedom of association and collective bargaining.*

North America

US-Mexico-Canada Agreement (USMCA)

Labour chapters in investment agreements should benefit from appropriate dispute settlement mechanisms between states, ensuring early warning mechanisms, access for victims and – importantly – sanctions, which could for instance take the form of escalating penalties. The USMCA included a rapid enforcement provision related to freedom of association and bargaining rights.

Local and regional government policies

State, county and municipal governments across the United States have often introduced legislation as part of awarding large construction projects and community development rights. So-called “labour peace” provisions frequently appear in city development agreements for hotels, convention centers, airports and professional sports arenas. Such provisions also appear in procurement of services, such as retail and catering operations for government facilities. When used effectively, they have led to constructive industrial relations, increased bargaining coverage, job security, liveable wages and social protections, all of which may not otherwise be available but for the government using its role as a proprietary role as a way to deliver them.



The Trade Union Advisory Committee to the OECD

The TUAC is informed by real-time experiences by national and global trade unions with combined representation of 300 million workers taking steps to implement the Guidelines every day.

Under the OECD Guidelines, governments are expected to establish national contact points to promote and defend responsible business. Companies are expected to undertake due diligence in order to identify, prevent, mitigate and account for how they address actual and potential adverse impact in their own operations, as well as in their global supply chains and other business relationships.

The Guidelines implementation is not optional for businesses in order to:

- Support and not oppose core labour rights;
- Increase bargaining coverage;
- Extend responsible business practices through supply chains;
- Secure jobs with retention and reemployment.

What we ask



The TUAC recommends **OECD delegates support text improvements to implement the OECD Guidelines and NCP Procedures to achieve positive industrial relations**

The TUAC encourages **Governments to modernize trade, investment and procurement policies to promote positive industrial relations and respect for the NCP**



The TUAC calls on **business, government and institutional investors to acknowledge the National Contact Points as the authority for the Guidelines**



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