



**Worker power in
supply chains:
The ITF 'Economic
Employer' strategy**

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INTRODUCTION

Where is power in a supply chain? Deregulation, privatisation and subcontracting mean that power is increasingly at the top.

In freight transport, corporate customers at the top of supply chains (economic employers) set the price of the subcontracted transport of their goods. Deregulation and poor enforcement of labour protections mean that subcontractors compete on price. Lower transport prices mean lower health, safety, conditions and wages for workers.

In passenger transport, national, regional, local or municipal government set the price of tenders or service contracts for subcontractors. In liberalised markets, private passenger transport companies compete on price, and the race to bottom ultimately impacts the pay, safety and standards of work.

To improve pay, conditions and health and safety in transport, trade unions are increasingly targeting the 'economic employers' at the top of supply chains that subcontract their transport and other services.

Subcontracting and price competition has also divided union solidarity and power. Union reliance on company-specific collective agreements has largely failed to address this problem. Strategies that target economic employers can overcome barriers between unions in different countries, sectors and companies, and rebuild union power along supply chains.

How can unions influence economic employers in both freight and passenger transport? How do workers reclaim power in supply chains? How can unions rebuild solidarity across supply chains?

Mandatory human rights and environmental due diligence is being adopted in many places, making companies legally responsible for checking and fixing human, labour and environmental rights violations in their supply chains. The ITF and its affiliates have developed two approaches to implementing the economic employer strategy in road freight: safe rates, and worker-based due diligence. Health and safety is at the heart of all these approaches, and has become an even more powerful issue during Covid-19.



These approaches share common methods and tactics, including:

- Standard-setting, campaigns and negotiations (both with government and economic employers);
- Union-based monitoring and enforcement; and,
- Organising of all groups and types of workers

These tactics are not separate and do not work in isolation. Together, they are a cycle for building workers power and solidarity.

Informal workers¹ represent the majority of transport workers in global supply chains. Organising these informal workers must be a priority for any economic employer strategy. This requires political and 'bottom-up' organising models that empower workers to organise themselves. Organising in supply chains does not work in isolation. It must be linked to standard-setting and union monitoring and enforcement.

Covid-19 has made supply chain responsibility, safe and fair transport rates, and human rights due diligence an ever more urgent necessity. Governments, economic employers and transport companies must take responsibility for the protection of drivers to safely move food, medicine, fuel and other goods essential for the survival and recovery of the global economy and society.

Decades of subcontracting, unfair competition and low prices have left many supply chain companies with minimal capital and mounting debts, unable to weather the economic storm in the wake of Covid-19.² Companies that have received state support to continue operations are likely to be subject to increased due diligence and inspections.³ For their businesses to survive, economic employers must work with unions to create an environmentally, socially and financially sustainable supply chain below them.

Strong, safe and reliable supply chains are needed. Supply chains built on exploitation, unsafe work, and human rights abuse are not strong, reliable or sustainable.

1. Informal workers in supply chains are any workers that do not have a formal employer-employee employment relationship. This includes dependent contractors, owner-drivers, self-employed workers, precarious workers and all non-standard forms of employment (NSFE)

2. Anner, Mark, 'Abandoned? The impact of Covid-19 on Workers and Businesses at the Bottom of Global Garment Supply Chains' *Center for Global Workers' Rights in Association with the Worker Rights Consortium*, 27 March 2020

3. 'Human rights due diligence and Covid-19: A rapid self-assessment for business', *Business and Human Rights: Asia Pacific*, 2020



1. MODELS OF WORKERS' POWER IN SUPPLY CHAINS

Union supply chain strategies can put real, lasting pressure on economic employers at the top of supply chains, and logistics and transport companies operating within them.

Pressure can be applied in three directions. Firstly, relationships with economic employers at the top of supply chains can be used to pressure supply chain companies to end exploitation and improve workers' welfare. Good economic employers increasingly recognise that they have responsibility for the business practices and labour conditions in their supply chain. Unions can offer effective, worker-based monitoring and enforcement in supply chains. Workers are on the ground, witnessing and experiencing the practices and conditions in their supply chain that are normally at 'arm's length', away from the economic employer.

Secondly, the reverse is true. Unions can target transport operators to disrupt supply chains of economic employers. 'Good' transport companies that are being offered declining transport prices from bad economic employers are potential allies. If unions have no allies in a supply chain, they may choose to target key 'bad' transport operators in the supply chain that move a significant proportion of the economic employer's goods. This disrupts both the 'bad' economic employers and the 'bad' transport operator's businesses.

Thirdly, union pressure on one economic employer and its supply chain can be transferred horizontally across a market or sector, and eventually into other markets and sectors. If union power, due diligence, good standards and strong relationships have been won in one supply chain, it can be used to pressure competitors and other sectors to do the same.

2. MANDATORY HUMAN RIGHTS DUE DILIGENCE LEGISLATION

Human rights due diligence is checking for and fixing negative impacts in a business or supply chain. Bargaining and cooperating with unions is increasingly recognised one of the most effective ways to do this.

Recognition of due diligence principles in international law, and a growing body of national law, has created an opportunity for unions to fight for mandatory human rights due diligence and can create a legal basis for workers being involved in designing, monitoring and enforcing standards in supply chains. To properly fulfil this role, unions should be given the right and resources to organise workers that can monitor and report on negative impacts.

Below are examples of legal instruments that unions can use to build their arguments and demands to government and employers for responsibility and worker power in supply chains. Initiatives to regulate the negative impacts of businesses at the international level may in the future result in economic employers being legally liable for human rights violations in their supply chains.

Human rights due diligence is a recognised and growing international framework for managing potential and actual negative human rights impacts related to business activities. Many instruments require corporations to **“identify, prevent, mitigate and account for”** negative human rights impacts linked to their business and its supply chain, even if they have not caused or contributed to these impacts.

These include:

- UN Guiding Principles on Business and Human Rights (UNGPs)
- OECD Guidelines for Multinational Enterprises
- ILO Tripartite Declaration concerning multinational enterprises (MNE) and social policy
- Sustainability Framework of the International Finance Corporation (IFC)
- 2014 ILO Protocol to the Forced Labour Convention.

United Nations Guiding Principles (UNGPs) provide a framework for due diligence in the transportation supply chain. The UNGPs are built into the revised 'International Labor Organization (ILO) Tripartite declaration concerning multinational enterprises and social policy' (ILO MNE Declaration). These instruments require businesses to, “prevent or mitigate” negative human rights in their supply chain, “even if they have not contributed to the impacts.”⁴

The OECD Guidelines for Multinational Enterprises 2011 demand “risk-based due diligence...to identify, prevent and mitigate actual potential adverse impacts” and “engage with relevant stakeholders”, including workers and trade unions.

Some instruments highlight the importance of trade unions in human rights due diligence in supply chains. For example, the OECD Due Diligence Guidance for Responsible Business Conduct, which provides support for companies implementation of the OECD Guidelines for MNEs, states:

4. ‘Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’, *International Labour Organisation (ILO)*, 1977 (5th edition, as revised 2017)

“Enterprises may partner with or enter directly into agreements with trade unions in order to facilitate worker involvement in the design and implementation of due diligence processes, the implementation of standards on workers’ rights and the raising of grievances. Agreements with trade unions can take various forms and can be made at the workplace, enterprise, sectoral or international level. They include collective bargaining agreements, Global Framework Agreements, protocols and memoranda of understanding.”⁵

Paragraph 10 of the ILO MNE Declaration specifies that whilst carrying out due diligence, business enterprises should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue.

The 2014 ILO Protocol to the Forced Labour Convention binds ratifying states under international law to “support due diligence by both the public and private sectors to prevent and respond to risks” associated with modern slavery. States must ensure that companies address risks in their direct and indirect operations, including supply chains.

The European Union (EU) has adopted a number of initiatives that impose due diligence-related obligations for human rights and environmental impacts. These include the EU Timber Regulation and the EU Conflict Minerals Regulation, the latter of which will come into force in January 2021.⁶ The EU has also adopted the EU Non-Financial Reporting Directive, which requires reporting on due diligence, and is accompanied by Non-Binding Guidelines on non-financial reporting.⁷

A 2020 European Commission study confirmed that voluntary measures have not been effective in encouraging companies to identify, account and mitigate negative human rights and environmental impacts in their supply chains.⁸ The study found that:

- Only one-third of business respondents, including those based outside the EU, undertake due diligence that takes into account human rights and environmental impacts;
- One-third of businesses reported that their due diligence was limited to specific areas of their business and supply chain;
- The majority of businesses are undertaking due diligence restricted only at the first-tier of suppliers;
- The primary incentives for undertaking due diligence were reputational risk, and investors and consumers requiring a high standard. Regulatory and legal requirements were the least cited incentive for due diligence amongst businesses, whereas it was the most cited by civil society organisations;
- The majority of businesses stated that mandatory due diligence as a legal standard of care may provide benefits to their business, including legal certainty, a “level playing field”, and increasing leverage in their business relationships throughout the supply chain through a non-negotiable standard;
- The overall business preference appears for a general cross-sectoral regulation, but which takes into account the specificities of the sector; and,
- There would be no significant distortions in intra-EU competition if all companies were governed by and respected the same set of regulations, but that competitiveness would improve through the “levelling of playing field”.

Furthermore, the 2019 Corporate Human Rights Benchmark Report⁹ found that 49% of all companies monitored globally did not complete any human rights due diligence steps under the UN Guiding Principles.

5. ‘OECD Due Diligence Guidance for Responsible Business Conduct: Implementing the due diligence recommendations of the OECD Guidelines for Multinational Enterprises’, OECD, 2018

6. Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (“EU Timber Regulation”); Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (“EU Conflict Minerals Regulation”)

7. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 (“EU Non-Financial Reporting Directive”)

8. ‘Study on due diligence requirements through the supply chain’, European Commission, January 2020;

9. <https://www.corporatebenchmark.org/>

2.1. National law

Most corporations either do not recognise or do not properly follow these soft law, non-binding international obligations. However, a growing body of national (and supranational) human rights due diligence, supply chain transparency, and corporate liability legislation is changing this.

The ITF believes mandatory national human rights due diligence legislation must include the following elements to be effective:

- Coverage of all public and private companies and non-governmental organisations, regardless of size, structure or ownership;
- Enforcement of obligations throughout corporate structures and business relationships;
- Application of internationally recognised human, labour and environmental rights;
- Operational-level grievance mechanisms that include freedom of association and collective bargaining;
- Monitoring and remediation processes that meaningfully involve independent trade unions;
- Liability for any actor that has caused or contributed to any actual or potential negative impacts;
- Burden of proof resting with the actor that may have caused or contributed to actual or potential negative impacts; and,
- Involvement of trade unions throughout the due diligence development and implementation.

The French Duty of Vigilance Law requires large companies to have in place due diligence plans that identify and mitigate violations of human rights and fundamental freedoms.¹⁰ It is the only legislation which imposes a general mandatory due diligence requirement for human rights supported by a civil liability regime.

The California Transparency in Supply Chains Act (2010) in the US State of California, and the Modern Slavery Act (2015) in the UK are two leading pieces of mandatory transparency legislation. Both require companies to disclose efforts to address modern slavery in their operations and supply chains.

The 2019 Dutch Child Labour Due Diligence Law requires companies to identify if goods or services have been produced using child labour and requires steps in line with international guidelines to mitigate and remedy the risk.¹¹ The US Trade Facilitation and Trade Enforcement Act requires that importing companies conduct supply chain due diligence to prove products were not produced using forced or indentured labour.¹²

Similar pieces of legislation are being developed, debated and enacted in Austria, Belgium, Denmark, Germany, Finland, Ireland, Italy, Luxembourg, Norway, Sweden, Switzerland and many other countries.¹³

The Shadow EU Action Plan on Responsible Business Conduct (RBC) was launched by the European Parliament Working Group on RBC in March 2019. The Plan includes commitments to mandatory due diligence for EU businesses operating in the EU and protections for ‘human rights defenders’.¹⁴

The 2020 European Commission report highlighted a need for EU-wide mandatory legislation.¹⁵ In 2021, the Commission will introduce mandatory due diligence for businesses based or operating in the European Union (EU), subject to consultations with stakeholders.

The European Parliament stated that “reasonable vigilance measures” as a standard for care for human rights and environmental harms, enshrined in the French Duty of Vigilance Law, should be the basis for the “pan-European framework”.

The latest draft of the international binding treaty on business and human rights, due to be presented to the dedicated working group of the UN Human Rights Council in October 2020, includes a clear obligation on States to enact human rights due diligence at the national level.

The arrival of mandatory due diligence law means that failure to conduct sufficient due diligence, without trade unions that represent workers in the supply chain, presents new **legal and reputational risks**. In a growing number of countries, the potential costs of inaction outweigh the costs of compliance. Multinational customers and their transport suppliers must update their business, supply chain and industrial relations models to satisfy the changing legal and regulatory landscape.

10. Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre; [Common French shorthand “Loi de devoir de vigilance”].

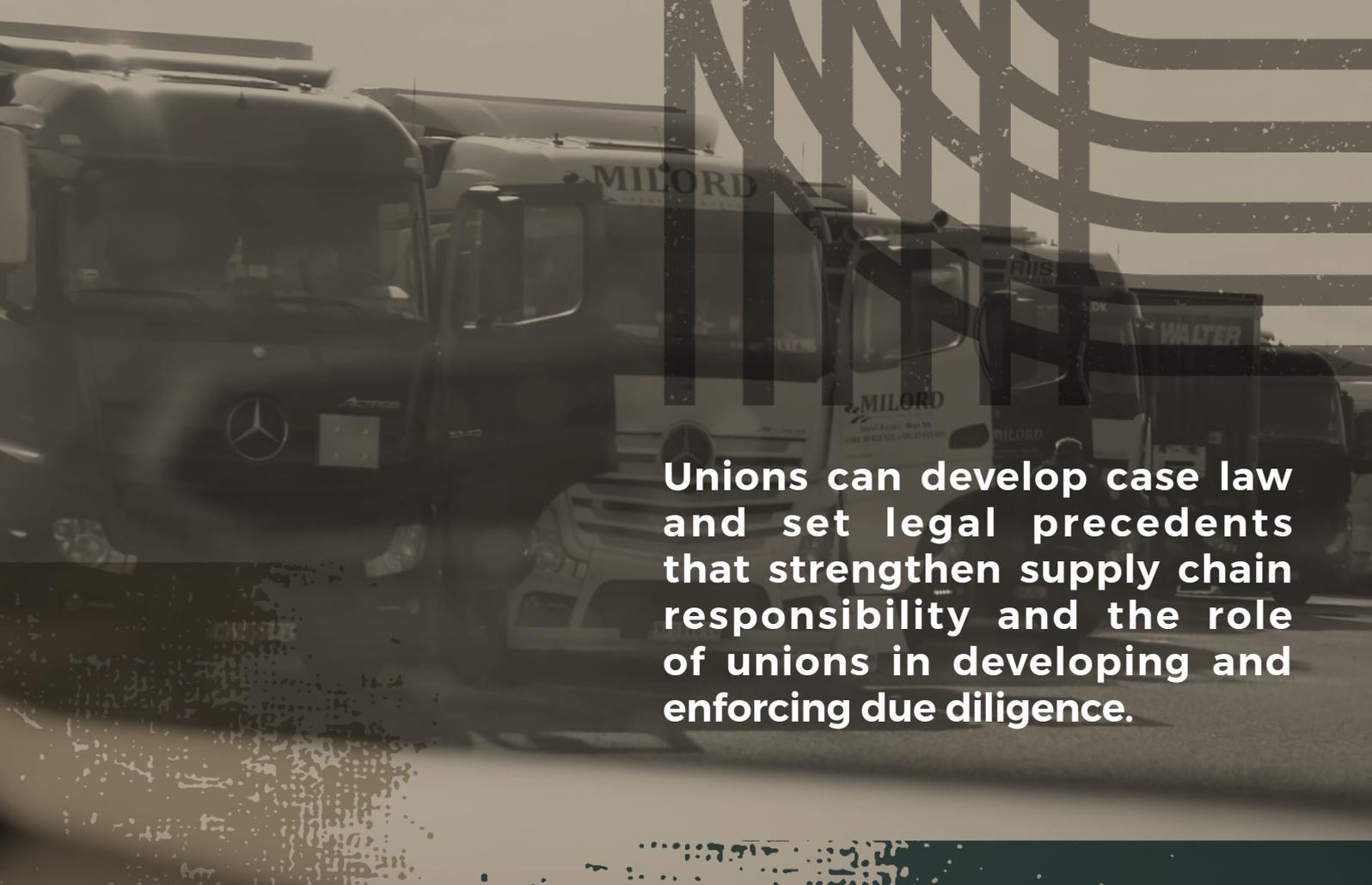
11. *Child Labour Due Diligence Law (Wet Zorgplicht Kinderarbeid)*, 2017, House of Representatives (Tweede Kamer der Staten-Generaal), Netherlands

12. Trade Facilitation and Trade Enforcement Act (TFTEA), 2016 (H.R. 644)

13. ‘National & regional movements for mandatory human rights and environmental due diligence in Europe’, *Business & Human Rights Resource Centre*, 22 May 2019

14. <https://responsiblebusinessconduct.eu/wp/2020/04/30/european-commission-promises-mandatory-due-diligence-legislation-in-2021/>

15. ‘Study on due diligence requirements through the supply chain’, *European Commission*, January 2020;



Unions can develop case law and set legal precedents that strengthen supply chain responsibility and the role of unions in developing and enforcing due diligence.

Supply chain insecurity during Covid-19 means economic employers may be more open to trade unions who can 'help' them adapt to these new legal demands. This provides several opportunities for trade unions to become active regulators and strengthen their power across supply chains. Companies that participate in such initiatives with trade unions remain responsible for adverse human rights impacts in their supply chain.

In countries where mandatory due diligence laws exist, trade unions have the opportunity to implement, monitor and enforce them. In order to play these roles effectively, however, they must have the necessary expertise and capacity on the ground. This requires new and innovative methods of organising both formal and informal workers, and building formal-informal solidarity through effective political education and campaigns.

There is also a growing body of case law in many countries and international bodies that must be cited and developed by trade unions.¹⁶ Unions can develop case law and set legal precedents that strengthen supply chain responsibility and the role of unions in developing and enforcing due diligence.

Where such laws do not yet exist, trade unions should take a leading role in lobbying governments to adopt mandatory human rights due diligence laws. Coordinated political, legal and industrial campaigning is required to win this legal change.

16. <http://www.bhrinlaw.org/key-developments>

3. ENVIRONMENTAL DUE DILIGENCE

As signatories to the UN Framework Convention on Climate Change (UNFCCC) states are responsible for the reduction of GHGs within their borders.¹⁷

The UNGPs do not specifically address environmental issues. However, international human rights law concerns environmental issues including the right to life, health, occupational health and safety, water and food, and the rights of indigenous peoples.¹⁸

Articles 2 and 8 of the European Convention on Human Rights (ECHR) gives states responsibility to take action to prevent grave risks to their citizens, including environmental risks.¹⁹

Trade unions can use these international obligations to pressure governments into monitoring and fixing environmental problems across supply chains within their borders.

Chapter 6 of the OECD MNE Guidelines commits signatories to “protect the environment, public health and safety.” The Guidelines reflects Principle 17 of the 1992 Declaration of the UN Conference on Environment and Development (‘Rio Declaration’). Principle 17, the ‘polluter pays’ principle, obliges that firms or consumers should pay for the cost of the negative externality they create. The Guidelines also commit signatories to the Aarhus Convention²⁰ and ISO 14001.²¹

In 2017, Greenpeace filed an OECD Guidelines Complaint to the Dutch OECD national contact point (NCP) regarding ING Bank.²² The Dutch NCP called on the bank to set concrete climate goals for its financial services that are in line with the Paris Climate Agreement.

Environmental due diligence is mentioned in the Oslo Principle on Global Climate Change Obligations, 2015.²³ It commits states to provide information to determine if environmental financial support provided by another state was used for its intended purpose.

Whereas the Oslo Principles principally concern state obligations, The 2018 Principles on Climate Obligations of Enterprises concerns the activities of the private sector and their supply chains. Principle 3 states that enterprises “must, to the extent reasonably and feasibly possible, ascertain and take into account the GHG emissions of the suppliers of goods and services to the enterprise when selecting its suppliers.”²⁴

Environmental due diligence in national law features in the French Duty of Vigilance Law. The law enshrines civil liability for negative environmental externalities of business activities.

Worker-based due diligence can also apply to environmental issues. Many economic employers champion their environmental credentials, but use low-cost, subcontracted supply chain models which are carbon intensive and less efficient. Transport is often too cheap because prices do not reflect the true social and environmental costs. Unions must fight for both human and environmental due diligence, and help lead its development, monitoring and enforcement.

17. The State of the Netherlands .v. Stichting Urgenda, Supreme Courts of the Netherlands, 20 December 2019

18. Leghari .v. Federation of Pakistan, 2016; Netherlands .v. Urgenda, 2019; Ioane Teitota .v. New Zealand, 2020

19. The State of the Netherlands .v. Stichting Urgenda, Supreme Courts of the Netherlands, 20 December 2019

20. The United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25 June 1998 in Aarhus, Denmark.

21. The International Organization for Standardization (ISO) 14001 is an international standard for designing and implementing an environmental management system.

22. ‘Dutch NGOs vs. ING Bank’, OECD National Contact Point Netherlands, The Hague, Netherlands 8 May 2017; https://complaints.oecdwatch.org/cases/Case_476

23. <https://globaljustice.yale.edu/sites/default/files/files/OsloPrinciples.pdf>

24. <https://climateprinciplesforenterprises.org/>

4. WORKER-BASED DUE DILIGENCE

Governments are the most effective means of monitoring and enforcing standards in a supply chain. However, governments do not have the resources or know-how to properly enforce standards across a transnational transport industry on their own. Third-party auditors have a vested interest in turning a blind eye to exploitation and workers do not trust them.

Workers and the unions that represent them often know more about what happens in a supply chain than the economic employers that depend upon them. If used in an effective way, this shifts industrial power from employers to workers and their unions.

The European trucking industry has become a 'bandit' industry. Deregulation and layered subcontracting mean trucking prices, and drivers' wages and standards, have fallen below minimum human rights thresholds. The industry is broken, and market forces are unable to fix it.

In Europe, teams of union researchers and organisers are active along trucking supply chains, speaking to drivers stranded in car parks, logistics centres, ports and lay-bys. They collect stories, information and evidence from a variety of sources. FNV-VNB and the ITF then collate and analyse this evidence ready for targeting of 'bad' employers, or negotiations with 'good' employers.

In 2018, the FNV-VNB, the ITF and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) began working with several economic employers in the food and beverage sector to build a new, worker-based due diligence model for their road transport supply chains. The model aims to increase corporate supply chain accountability through human rights due diligence.

The model sets industry-wide standards with economic employers, ensuring that prices do not fall below minimum human and labour rights thresholds. This allows subcontractors to compete on quality of service at safe and sustainable prices.

The 'Road Transport Due Diligence' (RTDD) model is based on three, interdependent processes. All three processes must be in operation for the model to function:

1. Minimum standards

Standards are agreed with economic employers within an industry, which are properly reflected in tendering policies. These include standards and operating procedures concerning pay, working and resting time, health and safety and labour rights.

2. Monitoring and reporting

The FNV-VNB investigation model is scaled up to cover the transnational supply chains of the economic employers participating in the RTDD model. In addition, investigations uncover information and evidence of their competitors to ensure the model expands across the industry.

3. Remediation

Remediation (fixing the problem) aims to reform bad companies. Kicking them out the supply chain should be the last resort if they fail to reform or refuse to comply. Remediation should aim to establish quality of service, safety and fair treatment of workers as the principal criteria for winning a transportation contract. This may involve 'disintermediation' (reducing the number of layers in a subcontracting chain) and direct sourcing. Rewarding good business practices and punishing others through clear remediation is the best means of changing the culture of a supply chain (and industry) and making it sustainable.

The ITF, IUF and FNV-VNB must agree standards with a critical mass of economic employers within the food & beverage industry to encourage their competitors to participate in the model. As mandatory human rights due diligence legislation grows, economic employers will be incentivised to be 'first movers' on worker-based due diligence. Those that participate in the model early will be able to restructure their supply chains ahead of new regulatory requirements, and will be seen to be proactive on issues that could threaten their brands.



As many economic employers share subcontractors in their supply chains, investigating the supply chain of one company inevitably gathers evidence of their competitors that refuse to engage in worker-based due diligence. This builds leverage and momentum for the growth of the model across an industry.

Once the model is established in the food & beverage industry, RTDD can be extended to other industries, and/or other regional markets.

How can unions grow and develop to carry out and negotiate worker-based due diligence?

Organising workers gives you two sources of leverage in supply chains:

1. Strength to carry out industrial action and bring employers to the negotiation table; and,
2. Enough information and evidence to know more about a supply chain than the economic employer it serves.

'Key' workers in road transport and modern supply chains are increasingly informal. Unions in the global North must learn from the organising models of the global South to build their membership amongst informal workers.

FNV-VNB hires Eastern European drivers as organisers. They bring real trust and understanding to due diligence. Organic networks of drivers grow along supply chains. They are in regular contact on WhatsApp and social media. Warnings and evidence of faulty trucks, denial of wages or human trafficking spread quickly across the network.

Political education, community organising and other innovative organising methods must be used to build a network of information and strong union membership amongst a precarious workforce with a high turnover of workers.

Furthermore, international labour campaigning and organising must reflect the international nature of supply chains and labour markets. Training and education in the 'home' unions of non-resident and migrant workers is essential.

International collaboration is important for analysing evidence gathered and using it effectively in negotiations with economic employers. Effective leverage combines the international research of global union federations (GUFs) with the practical understanding of active local unions.

5. SAFE RATES

What are 'Safe Rates'? When transport is deregulated and subcontracted, the price economic employers pay for transport (transport rates) often determines the pay, formality, health and safety of the work involved. In road transport, unfair competition has increasingly made transport too cheap, and work too unsafe.

Each year, 1.35 million people lose their lives in road traffic crashes. A disproportionate number of these deaths are related to commercial transport. Over half of the deaths resulting from highway traffic accidents in South Korea occur in relation to truck crashes, while trucks account for only a quarter of highway traffic. In Australia, truck drivers are killed on the job at 15 times the average rate for all occupations. Research has also demonstrated a correlation between an increase in rates of payments and a decrease in accidents.

Safe Rates set minimum rates of remuneration (payments) for transport services that prevent work, compensation for labour, health and safety falling below minimum human rights thresholds.

Safe Rates as a legal and industrial concept was first used by the Transport Workers' Union of Australia in the late 1990s, as part of their campaign to respond to the deregulation of the road transport industry. Over time, the concept has developed and become global. It is now used to refer to both:

- A framework of legal obligations for road transport supply chain parties, in particular economic employers; and,
- An industrial strategy to build worker and union power through campaigns for the implementation and enforcement of Safe Rates.

As a legal and regulatory framework Safe Rates can take the form of laws, regulations, policies and/or agreements with employers. Although Safe Rates feature in different countries and regulatory regimes, a 'complete' Safe Rates system has yet to be fully achieved anywhere in the world.

The two main parts of Safe Rates are:

- **Safe remuneration (rates model)** – A model for setting the minimum rates of remuneration necessary to ensure that drivers are not pressured into unsafe driving practices.
- **Regulatory system based on 'chain of responsibility' and stakeholder involvement** – A system for setting, implementing, monitoring and enforcing rates, which embeds unions in the process, and involves economic employers and all road transport parties while holding them accountable.

The ILO 'Guidelines on the promotion of road safety and decent work in the transport sector', adopted in 2019, is a recent example of an international framework of legal guidelines that includes many aspects of Safe Rates. These guidelines can be used by unions to lobby governments, economic employers and other industry stakeholders to introduce safe rates systems..

Safe remuneration (rates model)

Principles	Treatment in 2019 ILO Guidelines
The setting of legally enforceable safe minimum rates of remuneration	Dictates 'sustainable payments' to wage-earning and non-wage earning commercial motor vehicle (CMV) drivers, which "take into consideration the goals of increasing the attractiveness and sustainability of the industry" (para 73). Payment of labour is at the national minimum-wage rate or higher (paras 76(iii), 79). The minimum wage must account for 'the needs of workers and their families' in accordance with the Minimum Wage Fixing Convention, 1970 (No. 131) (para 78).
Drivers must be paid fairly for all time worked, including non-driving activities such as loading, unloading and waiting time. Ideally, payments will be calculated by the hour as opposed to by trip or weight.	Rates for wage-earning and non-wage earning CMV drivers should "provide for payments for both driving and subsidiary non-driving work activities, including 'time required to prepare and maintain a CMV; time expended in relation to loads intended to be carried by a CMV, other non-driving time expended within the road transport journey'" (paras 76(v), 80(c), 81).
All drivers of commercial road transport vehicles should be covered by the system, regardless of the type of vehicle they drive, the type of freight (or passengers) they carry and the existence (or non-existence) of an employment relationship. Safe rates systems will therefore likely include schedules of rates applying to drivers working under different circumstances.	The guidelines cover all road freight and long-distance passenger CMV drivers (para 19) and provide rates provisions for wage-earning and non-wage earning CMV drivers (the latter defined as "CMV drivers in a services contract who provide transport services to a contractor or road transport chain parties, including self-employed CMV drivers, independent CMV drivers, owner-operators, dependent contractor CMV drivers, and informal CMV drivers" (para 17).
Rates for owner drivers (self-employed or dependent contractors) must be calculated to ensure full cost recovery for all fixed and variable costs incurred in the process of providing road transport services.	The guidelines call for the "establish(ment) mechanisms to encourage predictable cost recovery for non-wage-earning CMV drivers by making provisions to support (i) recovery of fixed costs (ii) recovery of variable costs payment for personal labour... (iv) return on investment..." (para 76).

Regulatory system

Elements	Treatment in 2019 ILO Guidelines
Formal recognition of the link between transport rates/rates of remuneration, supply chain pressures and safety	"The extent to which the decent work deficits of CMV drivers and other factors that can impact road safety present risks to other road users has become a public policy concern" (para 19). "The road transport industry and multiple supply chains and contracting chains which often lead to pressures on margins that can leave transport workers unable to exercise their fundamental rights and principles at work" para 27). "Pressure from supply chain entities can be an underlying cause of transport workers adopting riskier and unsafe driving practices" (para 29).
Remuneration model based on minimum safe rates	The model described in 'Safe remuneration' above, contained in paras 73 to 82 of the guidelines.
Involvement of trade unions	Governments establish 'sustainable payments' mechanisms "in consultation with social partners and road transport chain parties" (para 76).
Legally enforceable obligations for economic employers and all parties in the transport supply chain (chain of responsibility)	"Governments, social partners and road transport chain parties should promote, in law and practice, adequate remuneration and sustainable payments for CMV drivers" (para 77).
Monitoring and enforcement mechanism	"Governments should provide an adequate system of inspection that has the authority to conduct investigations on 'chain of responsibility principles'" to monitor payments and deal with infringements (para 82).

5.1. Examples of Safe Rates regulatory frameworks and campaigns

Australia

The Transport Workers' Union (TWU) has articulated a specific vision of Safe Rates as a "comprehensive chain of responsibility to ensure safe rates for owner-drivers and employees in road transport" (Kaine and Rawling, 2010). They use a 'comprehensive strategy' combining grassroots organising, industrial action, community work, academic research and political action.

Industrial action, combined with public messaging, publicly shames and disrupts 'bad' unsafe companies that make roads dangerous for everyone. 'Good' companies that cooperate with the TWU are promoted publicly.

Industrial action is taken in tandem with worker surveys and press events with family members affected by truck accidents. International academic research is used to substantiate the powerful stories of families affected. Research, stories and public messaging is also targeted at sympathetic Labour Party representatives, who lobby for Safe Rates in government.

The TWU secures agreements with major retail companies (economic employers), which include guarantees for union monitoring and enforcement in those companies' road transport operations.

In 2012, the TWU successfully lobbied for the Road Safety Remuneration Act, which established an independent tribunal that determined minimum rates and other conditions on a national level. It also required economic employers take certain actions to enforce these rates. This law was repealed by a conservative government in 2016. However, similar legal systems exist at a local level, including across the state of New South Wales. TWU continues to campaign for reinstatement of the national system.

Most recently, the TWU has agreed its 'Vision 2035' objectives and strategy. The plan aims to:

- Reorganise the road transport industry by expanding Safe Rates legislation;
- Agree industry standards and organising rights with all major economic employers; and,
- Achieve 70% union density in all markets.

The strategy is coordinated through bargaining cycles with specific employers, allowing for regular industry-wide strike action to support demands made to economic employers.

The Netherlands

The Dutch Civil Code makes national and international road transport employers, their clients, and their direct contractors jointly liable for payment of wages. Wages are set by sectoral agreements between the union and employers. If wages are not properly paid, liability extends to the next level of the supply chain both directly above and directly below. This liability ultimately goes up to the top of the supply chain. However, third parties are not liable in cases where goods are both loaded and unloaded outside of the Netherlands.

Stichting VNB, the road haulage enforcement team of the Dutch national union, Federatie Nederlandse Vakbeweging, is given the funding and responsibility to monitor and enforce the sectoral agreements with road transport companies.

South Korea

In 2018 the Korean Public Service and Transport Workers' Union Cargo Truckers' Solidarity Division (KPTU-TruckSol) won the passage of Safe Rates legislation after 15 years of campaigning, primarily through strike action and legislative activities.

In the South Korean Safe Rates system, a Safe Rates Committee comprised of economic employers, transport companies, truck drivers (union) and (government-appointed) public interest representatives meets annually to agree road safety freight rates (safe rates) for the import-export container and bulk cement sectors. The South Korean road freight market is made up almost entirely of (dependent) owner drivers and the legislation does not apply to employee drivers, who are covered by the minimum wage, but not chain of responsibility principles.

The Korean Safe Rates system includes most of the element described in the table above, and explicitly recognises the link between safety and rates. The Safe Rates Committee has a rates model that calculates drivers' cost recovery and payment for non-driving time. Economic employers pay minimum transport rates to transport companies, who in turn pay minimum contracting rates to truck drivers. A complaint system allows for reports of violations, and fines and criminal sentences in the case of violations.

9. <https://www.thestand.org/2020/02/ban-port-automation-subsidies-to-protect-jobs-and-taxpayers/>

However, KPTU-TruckSol has identified some weaknesses in the Korean Safe Rates system, including:

- **Coverage** – it only applies to a small number of vehicles and freight types;
- **Missing links** – it only regulates two links in the contracting chain (presumably the first and the last), confusing responsibility and creating conflicting interests;
- **Monitoring and enforcement** are weak without guarantee for trade union involvement, and the complaint system is not yet functional;

- **Temporary** – the legislation includes a 3-year sunset clause, which means the system will expire at the end of 2022 unless new legislation is passed.

Since agreeing rates in 2019, TruckSol has led protests and strikes to force economic employers and trucking companies to bargain with the union on the enforcement of rates. This has led to several agreements with economic employers and trucking companies, and the organising of over 4,000 new members since the end of 2019.



United States

Safe Rates models have developed at both the state and federal level. California has the most developed version for port trucking.

California's Safe Rates model was introduced through two laws. The first ('AB5') expanded the definition of employee to cover 'independent' contractors and other non-standard forms of employment (NSFE). Individuals hired

to perform work must be considered employees, entitled to minimum wage and working conditions standards.

The second established a chain of responsibility between economic employers and their subcontracted port trucking. The law makes economic employers jointly liable with subcontracted port trucking companies for all unpaid wages, unreimbursed expenses, damages and penalties.

25. California Labour Code (Section 2750.3), or 'AB5'

5.2. Industrial strategy

Unions can use campaigns to win and enforce Safe Rates to build union membership, expand union influence over supply chains, and ultimately reorganise the road transport industry in a way that makes it safer, fairer and easier to organise.

Safe Rates as an industrial strategy has four main elements.

Element of industrial strategy	Methodology
<p>1. Legislative – Campaigning for new, better and enforced safe rates laws and regulations</p> <p>2. Political - Coordinated public and political education linking supply chain pressures, low rates and road safety</p>	<p>To win legislative support for Safe Rates, build a political environment that recognises the link between supply chain pressures transport rates/rates of remuneration and safety.</p> <p>Research and policy development; application of successful international examples of Safe Rates in the development of regulatory systems and lobbying of road transport's stakeholders.</p> <p>Target specific politicians, committees, tribunals and other visible forums. Consistent, clear and simple messaging on the link between safety, pay and prices must be repeated at all opportunities.</p>
<p>3. Industrial - Actions and negotiations targeting economic employers</p>	<p>'Carrot and stick' approach to 'good' and 'bad' economic employers and transport suppliers. Build a critical mass of participating or supportive employers that makes opposition financially and politically unsustainable:</p> <ul style="list-style-type: none"> • 'Carrot' - Incentivise 'good' economic employers to be first-movers, with benefits of getting ahead of public criticism, averting industrial disruption and securing their sustainable, safe and reliable supply chains, which satisfies responsible, long-term investors. • 'Stick' - target opposing or reluctant economic employers and transport suppliers, making opposition to Safe Rates unsustainable for the business and investors.
<p>4. Organising - Organising workers in key supply chains</p>	<p>Safe Rates is a basis for organising and unifying workers beyond specific companies, sectors or countries. Unions must organise formal and informal, employee and (dependent) self-employed workers, and workers in all non-standard forms of employment (NSFE), across the supply chain. This can be the most effective means of gaining enough leverage to lead standard-setting industrial actions and negotiations, and stop competition between workers, which to a race to the bottom in wages, conditions, and health and safety.</p>

6. HEALTH AND SAFETY

During the pandemic, trade unions are essential to the safe and sustainable return to work and the resumption of global trade:

- Supply chains are major **potential vectors for transmission** of the virus;
- Supply chains are only as strong as their weakest link: **precarious and informal** workers disproportionately lack health and safety protections, healthcare access, and sanitation facilities, increasing the risk of transmission in supply chains;
- **Subcontracting** obscures the responsibility of economic employers and transport companies in providing personal protective equipment (PPE), health and safety protections and sanitation facilities;

Sanitation rights offer significant scope for trade unions organising, campaigning and bargaining across supply chains during Covid-19 and beyond. The ITF Sanitation Charter demands that **investors**:

“...have due diligence processes in place, which require consultations with stakeholders, including unions of local workers that stand to be affected by transport infrastructure projects...subcontractors [must] endorse and respect human rights, including labour rights...These protections must equally apply to informal workers.”²⁶

The Charter also calls upon **governments** to:

“Introduce legislation (including chain of responsibility provisions to ensure that clients and subcontracting companies are held accountable) that encourages or requires businesses to use their influence to encourage the fair treatment of workers along their supply chains.”²⁷

Employers have a responsibility to ensure sanitation rights throughout all their operations, specifically to:

“Fulfil their obligations to respect human rights and exercise proper due diligence to ensure the fair treatment of workers hired by other employers along their supply chains.”²⁸

How can unions combine and fight for both sanitation rights and due diligence? The Charter explicitly demands employers to bargain and work with elected workplace health and safety and equality representatives and committees. Unions must organise and campaign for trained health and safety representatives to make (the return to) work safe and sanitary in the context of Covid-19 and beyond.

The Charter also calls for gender impact assessments to ensure all workers' occupational health and safety (OSH) and sanitation rights are respected. Women workers are disproportionately denied these rights and government and employer protections. Campaigns for due diligence must promote and combine the importance of women's, sanitation and OSH rights.

The ITF Sanitation Charter should be integrated into the standards that trade unions bargain for and are on the ground enforcing.

Trade unions must build on the momentum of these trends to cement their role in performing health and safety and human rights due diligence.

26. ITF Sanitation Charter, 19 November 2019

27. ITF Sanitation Charter, 19 November 2019

28. ITF Sanitation Charter, 19 November 2019

7. URBAN TRANSPORT

The ITF's 'Our Public Transport' (OPT) campaign is building a new model for urban transport based on:

1. **Public ownership** and operation of urban transport
2. **Adequate and sustainable funding**, including profit reinvestment
3. **Accountability** through worker (and passenger) empowerment and control
4. Creation of **decent work with equal standards** across **integrated** transport systems

Governments and/or transit authorities are the obvious economic employers in public and private passenger transport. Authorities sometimes subcontract passenger transport to local or multinational transport companies. They set the standards in subcontracted operations through their pricing, procurement and tender policies.

Economic employer strategies can pressure governments into taking responsibility for, and internalising the true environmental and social costs of its subcontracted urban transport. Municipal accountability for the true cost further down the urban transport supply and value chain show that 'savings' made through outsourcing urban transport are often illusory.

Subsidies and/or profit guarantees made to private operators often mean municipal governments pay more than if they kept the same services in-house. Furthermore, the social costs of subcontracting, which can include working conditions, service quality, safety and sustainability, are borne by other parts of the urban economy, municipal services and citizens (e.g. healthcare, congestion, labour market inefficiency, inequality, tax and social security systems, etc.). This can provide a strong argument for public ownership or municipalisation.

In some places, remunicipalisation may not be immediately viable due to high levels of privatisation of urban transport. In this situation, unions can use an economic employer strategy that seeks to make government responsible for all economic and social costs of transport, including subcontracted transport.

Where government and transit authorities are being pressured to take responsibility for the social cost of subcontracting, campaigns must be combined with demands for **adequate funding and profit reinvestment** to prevent any increase in costs leading to an unfair increase in passenger fares or pressure to cut jobs.

UN Guiding Principle 6 stipulates that, "States should promote respect for human rights by business enterprises with which they conduct commercial transactions." The commentary to UNGP 6 states that procurement activities "provides States – individually and collectively – with unique opportunities to promote awareness of and respect for human rights by those enterprises, including through the terms of contracts, with due regard to States' relevant obligations under national and international law."

The Sustainable Development Goals (Target 12.7) requires States to "promote public procurement practices that are sustainable, in accordance with national policies and priorities". Several States also have progressive sustainable procurement laws that unions can rely on.

Local, regional and national governments that procure public transportation contracts therefore have a duty to only engage responsible suppliers. Many national action plans on business and human rights provide for responsible procurement. Trade unions have a responsibility to hold States to such commitments in their National Action Plans (NAPs).

International trade union law sets precedents for an economic employer strategy in urban transport. The Labour Clauses (Public Contracts) Convention, 1949 (No. 94) (ILO, 1949) and the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84) (ILO, 1949) require that governments will inform tenderers that service contracts will require the application of minimum wage and other labour standards. C94 covers all high-value procurement contracts for construction, goods, or services which are concluded by a government authority, involve the expenditure of public funds, and employ workers. Whereas the coverage of C94 is applicable to "central authorities", R84 extends the coverage to include subsidised or licensed public utilities, which can include local authorities contracting to private bus operators.

Confusingly, national, municipal and local governments are also regulators, as well as economic employers. This can be both useful and problematic for an economic employer strategy. For example, unions can use relationships with government as regulators to pressure it to act as a responsible employer. However, governments could be reluctant to regulate the industry because of its budgetary limitations as an employer.

An economic employer strategy in passenger transport could pursue the following process:

1. **Organise both formal and informal workers** across the bus supply chain to build industrial strength and gather information and evidence to substantiate public messaging;
2. Launch a **public campaign**, based on academic **research**, local evidence and worker stories, that links:
 - a. Social standards (including health and safety, pay, working conditions, service quality, environmental impacts) with transport costs set in service contracts with transport operators; and,
 - b. The false 'savings' of outsourcing urban transport, and the higher, true costs ultimately shouldered by citizens and taxpayers down the supply and value chain of the urban economy;
3. Coordinate a series of escalating **political and industrial actions** towards local, municipal and/or national government. These escalating actions can include worker surveys, lobbying, press conferences, media stories, go-slows, 'work to rule', strikes, etc.
4. Agree **standards** with the local or municipal government responsible for setting pricing, procurement and tender policies in transport. Pay, health and safety, environmental and service standards must be included in tender processes and transport service contracts;
5. Support (4) by campaigning for the development of standards by regional or national governments, and increasing public campaigns towards voters and citizens;
6. Develop **capacity** (organising, training, etc.) of representative unions to monitor compliance of transport providers with these standards; and,
7. Develop structures for regular **bargaining** to review transport costs, tender processes and social standards in the transport system and contracting chain.

Private passenger transport operators may initially be supportive of efforts to agree common standards and therefore create a floor for safe and sustainable pricing. However, if tender prices for private operators reflect the true cost of transport, it may well mean that local and municipal governments see public ownership as the cheaper option.

In Aotearoa New Zealand, FIRST Union's 'Bus Fair' campaign has shown how an economic employer strategy can work in passenger transport. With a population of only five million, buses are the country's main form of public transport. Local councils award contracts to private companies based on cost, creating a 'race to the bottom' on driver wages and safety.

Without sectoral bargaining, FIRST Union is forced to negotiate directly with each bus company to improve pay. However, employers are limited by how much council funding they receive - after they have been through a tendering competition based on cost.

Bus Fair aims to shift the responsibility for bus driver wages to the economic employers: the councils. In 2018, disputes with the Waikato Regional Council culminated in the company locking out drivers for a week and the city's bus services halving. The Council was forced to award a bus company additional funding to meet union drivers' Living Wage claim. The intervention set an important precedent and FIRST Union has since been fighting to achieve the same victory in the country's biggest city, Auckland.

Another important precedent was set when the current Government committed to introducing industry bargaining in the form of Fair Pay Agreements. Thanks to the achievements of the Bus Fair campaign, the bus industry was cited as an example of where industry bargaining is desperately needed.

CONCLUSION: HOW CAN UNIONS WIN BACK SUPPLY CHAIN POWER?

The ITF 'economic employer' strategy is built on the strengths and weaknesses of both economic employers at the top of the supply chain, and workers and unions at the bottom. The power of economic employers to dictate lower and lower prices down subcontracted supply chains meant pay, conditions and health and safety have fallen. However, decades of layered subcontracting in transport means economic employers often unaware of the impact of their business and tender models lower down the supply chain. Covid-19 has highlighted that this is a serious weakness in economic employers' business models.

Workers can reclaim supply chain power by being strong where economic employers are weak. 'Bottom-up' organising, research, campaigning and international solidarity is the most powerful weapon at the disposal of workers and their unions in supply chains.

Workers and their unions must combine their 'bottom-up' power with the 'top-down' power of economic employers to set standards across the industry. This 'bottom-up' power and solidarity is based upon the following cycle:

- Standard-setting, campaigns and negotiations (both with government and economic employers);
- Union monitoring and enforcement; and,
- Organising of all groups and types of workers

What methods and tactics can unions practically use to develop this strategy?

1. Organise all workers, including formal, informal and workers in non-standard forms of employment. Organise along the supply chain into other companies, industries, sectors and countries that link to their target. Support 'bottom-up' organising and empower workers to organise themselves. Empower organisers

that work in, or are part of the community of the workers being organised. Use community organising and political education to maintain membership amongst mobile, vulnerable, precarious and informal groups of supply chain workers.

2. Research the industry and supply chain structure and understand it better than the economic employer(s) being targeted. Combine academic and international desk research, with local evidence and worker stories from the field.

3. Public messages that are powerful and simple. Messages must link health, safety, prices, external environmental and social costs, and wages. Use innovative media strategies to raise awareness about the dangers that the public are directly and indirectly exposed to. Economic employers' brands (including municipal governments) are more well-known and vulnerable than the unknown brands of their transport suppliers. Media strategies should target and exploit this weakness.

4. Industrial action that links formal and informal, and the organised and unorganised, to disrupt supply chains, create business uncertainty, and bring economic employers to the negotiating table.

5. Political support – unions must lobby and build relationships with supportive politicians and governments, and target those which oppose supply chain responsibility. Lobbying campaigns must combine industrial action, public messaging field research, desk research, and worker stories and use international standards to create legal and political consensus.

29. To increase supply chain responsibility, unions must lobby for standards including national human rights due diligence legislation; the UN Binding Treaty on Transnational Corporations with respect to Human Rights; responsible procurement laws; collective (and sectoral) bargaining with economic employers; and freedom of association.



About the ITF

The International Transport Workers' Federation (ITF) is a democratic, affiliate-led federation recognised as the world's leading transport authority. We fight passionately to improve working lives; connecting trade unions from 147 countries to secure rights, equality and justice for their members. We are the voice for nearly 20 million working women and men in the transport industry across the world.

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