Economic arguments for linking labor standards to trade

- “Fair trade” argument: “conditionality” for trade (liberalization)

- To avoid race to the bottom or regulatory chilling (linkage aims at maintaining “regulatory autonomy” at national level)
Static concepts:
making trade conditional on labor standards

- Approach rejected in multilateral forums (WTO, ILO)
- Approach used in many regional/bilateral trade agreements
- Related approach in unilateral approaches: GSP plus, US-Cambodia textile agreement
Dynamic concepts

Hinted at in multilateral agreements:
- GATT Article XXIII
- Preamble of ILO Constitution

Start to be reflected in regional agreements
Static concepts in regional agreements:


- Parties strive to ensure that domestic law protect fundamental ILO law
- Parties shall not fail to enforce domestic labor law

Contains a “dynamic element”: no race to the bottom through non-enforcement
Static concepts in regional agreements:

Economic Partnership Agreement (EPA) between CARIFORUM States and the EU:

In social chapter:

Parties ensure that own social and labour regulations and policies provide levels of standards consistent with fundamental ILO standards
Static concepts in unilateral preferential schemes: EU’s GSP plus

- GSP: general system of preferences
- EU’s “GSP plus” scheme (2006):
  - For “dependent and vulnerable economies”
  - That ratify and effectively implement a number of conventions on human rights, good governance and protection of environment
  - That ratified and effectively implemented the 8 core conventions on labor rights

ILO recognized as international actor determining compliance
Static concepts in unilateral preferential schemes: US textile agreement with Cambodia

- 1999 Agreement; expired in 2005
- Sets “positive incentives”
- Quotas can be increased if enforcement of own labor laws and protection of internationally recognized worker rights is improved
- Sector-wide performance: peer pressure

Monitoring was carried out by ILO
Preamble of ILO Constitution:

“Whereas also the failure of any nation to adopt humane conditions of labor is an obstacle in the way of other nations which desire to improve the conditions in their own countries”
Dynamic concepts

Multilateral: GATT Article XXIII (nullification or impairment)

⇒ Provides for the possibility to withdraw concessions if a benefits of the agreement are being nullified or impaired by the application of “any measure” of another contracting party.
Dynamic concepts

Multilateral: GATT Article XXIII (nullification or impairment)

⇒ Interpretation: could be applied if countries lower labor standards (but high burden of proof).

⇒ Suggestion made in the academic literature: revise article such that countries that raise labor standards can increase protection
Dynamic concepts

Economic Partnership Agreement (EPA) between CARIFORUM States and the EU

Title II (investment, trade in service and e-commerce), chapter 2 (commercial presence) Article 73:

Maintenance of standards:
Parties shall ensure that FDI is not encouraged by lowering domestic environmental, labour or occupational health and safety legislation and standards by relaxing core labour standards or laws aimed at protecting and promoting cultural diversity.
Economic Partnership Agreement (EPA) between CARIFORUM States and the EU

Article 193 in Social Chapter (chapter 5 under “title III trade related issues”):

“Upholding levels of protection”:
Parties agree not to encourage trade or foreign direct investment to enhance or maintain a competitive advantage by:

(a) Lowering the level of protection provided by domestic social and labor legislation
(b) Derogation from, or failing to apply such legislation and standards
Dynamic concepts

Economic Partnership Agreement (EPA) between CARIFORUM States and the EC

Significant corporation ("aid for trade")

element that includes areas like:

- Tax reform
- Promoting private sector and enterprise development
- Strengthening of social and labor legislation; skills training; labor market adjustment
Conclusion

- Preferential trade agreements (regional/bilateral/unilateral schemes) most of the time make reference to **static** concepts of the trade-labor standard nexus.

- References to ILO differ in **static** concepts of the trade-labor standard nexus.

- Recent RTAs make reference to **dynamic** concepts of the trade-labor nexus, in particular EU-CARIFORUM. But only with an aim to avoid race to the bottom.

- Reference to regulatory chilling (**dynamic** concept) is only made in the Preamble of the ILO constitution and indirectly in RTAs through provisions on aid to enhance labour standards.