Trade and Health

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Trade affects health

- Positively

and

- Negatively

Trade can promote health improvement through economic development

- Jobs, tax revenue, access to technology
- Examples: Asian Tigers, China
- Where:
  - commercial activity actually contributes to social and economic development (↑GDP ≠ economic development)
  - the benefits (and costs) are fairly shared

Trade can damage health

- Slave trade, opium trade
  - tobacco trade, mutton flaps
- Competition
  - flooding of cheaper and better quality manufactured products
  - dumping cheap agricultural product on domestic prices and small farmers' livelihoods
- 'Trade' agreements which
  - allow easy patenting and strong intellectual property protection and affect prices and access
  - allow foreign investors in health care (and entrench stratified health care)
  - create investor friendly investment rules and restrict national policy space
  - cut tariffs and reduce government revenues
- Unregulated 'trade in professionals' ('brain drain')

Trade theory

- Mercantilism
  - promote exports, limit imports
- Protectionism
  - industrial development (eg Asian Tigers)
  - import substitution (dependency theory)
- ‘Free’ trade
  - mutual benefit in all settings?
  - variable distribution of costs and benefits
    - between participating countries
    - within participating countries

WTO

- 1944 conception of WB, IMF and ITO
  - 1948 GATT launched (ITO dead)
- 1993 Uruguay Round concluded
  - 23,000 pages of legal text
- 1995 Marrakesh
  - formation of WTO (administering GATT plus 22 other agreements)

World Trade Organisation

- Established 1995, based in Geneva
- 153 member countries
- Structures
  - Director-General
  - Secretariat
  - Ministerial Conference
  - General Council
  - specific councils
  - Disputes Settlements Body (DSB)

Agreements

- Multilateral Agreements on Trade in Goods (13)
- General Agreement on Trade in Services (GATS)
- Agreement on Trade-related Intellectual Property Rights (TRIPs)
- Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)
- Trade Policy Review Mechanism (TPRM)
- (non mandatory) agreements (5)

Agreements on Trade in Goods

- General Agreement on Tariffs and Trade (GATT)
- Agriculture (AoA)
- Sanitary and phyto-sanitary measures (SPS)
- Textiles and clothing
- Technical barriers to trade (TBT)
- Trade Related Investment Measures (TRIMs)
- Anti dumping agreement
- Rules of origin
- Import licensing
- Subsidies and countervailing measures

Disputes between trading partners

- “Disputes” the heart of the WTO system
- Member states can bring complaints before the DSB that one or more of its trading partners is violating some (of the 23,000 pages of) WTO agreements
- Penalties
  - payment of compensation to the foreign government or corporation
  - retaliatory trade restrictions on exports from the offending nation

EC Sugar case (2005)

- Australia, Brazil and Thailand complained that EC subsidising the production of sugar for export
- Panel appointed by DSB under DSU upheld complaint
- EC appealed Panel decision
- AB supported Panel findings under AoA
- AB finding supported by DSB

Agreements particularly relevant to health

- Agriculture
- GATS
- TRIPs
- SPS
- TBT
- Trade in Goods (NAMA)

Agreement on Agriculture

- Not focused on health
- But damaging to people's health in agricultural exporting countries (including very poor countries) are:
  - agricultural barriers to rich country markets (Eu, Japan and US),
  - subsidies in those markets to support local producers (and exporters) and
  - dumping by rich countries in poor country markets including in producer countries

GATS

- All services
  - most-favoured-nation (MFN) principle (allow one country in; allow all members in)
  - transparency (accessible data bases of laws and regulations)
- Specified services: opt in
  - market access (and modes of supply)
  - national treatment (eg subsidies)
- Ratchet function and schedule for extension

What are services?

- Trade and tourism
- Business, professional and technical
- Telecommunications
- Asset management
- Education
- Medical services
- Energy
- Construction

‘Modes of supply’ (for specified commitments)

- Cross border supply
  - eg telemedicine
- Consumption abroad
  - eg medical tourism
- Commercial presence
  - foreign owned health insurance and hospitals
- The presence of natural persons
  - eg visiting specialists

Concerns about GATS

- (Irreversible) privatisation of health care?
  - stratified health insurance arrangements
  - stratified health care provision
  - foreign owned corporate control of health care

TRIPs

- Agreement on trade related intellectual property rights
  - principles of national treatment and MFN treatment
  - uniform protection of IPRs
  - patents (20 years +), trademarks, designs, trade secrets

TRIPS and access to medicines

- Brazil
- South Africa
- India
- Thailand

Brazil

- Compulsory licences issued for generic equivalents of antiretrovirals
- Free care for all HIV+ people, AIDS-related deaths halved in four years, spread of the HIV reduced
- Savings of half a billion dollars by producing the generic equivalent of the patented drugs, saved $422 million in hospitalisation costs.
- Brazil taken to a WTO dispute panel by US over its patent legislation but not the issuing of compulsory licences

South Africa

- 1996 South Africa passes a new law for the procurement of medicines; sourcing brand name drugs internationally through cheapest supplier
- 1998 39 drug makers sued South Africa arguing that the law contravened international trade agreements
- 2001 Medicins Sans Frontiers petition against the lawsuit collects 250,000 signatures
- 2001 companies withdraw their lawsuit and agreed to pay the government's legal costs

Cipla (India)

- India - process-only patent laws
- Cipla offers to sell (to MSF) a three-drug cocktail for AIDS treatment at $US350 per year (compared with $10,000 to $12,000 a year in western markets)
- Cipla offers same cocktail to governments at $600 per year
- Cipla offers to pay the patent owners a 5% commission

Patent legislation, WTO and India

1972 - Patents Act introduced (process only)

1994/1995 - Creation of the World Trade Organization and launch of TRIPS Agreement, which obliges developing countries to grant patents on medicines no later than 2005

April 2005 - Amendment of India's Patents Act: medicines can now be patented in India. However, the law stipulates that only true medical innovations will be protected by patents.

Section 3(d) specifies that new forms of known substances do not deserve patents.

Section 3(d)

"the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant"

Novartis and Glivec (imatinib)

Prior to 1998, generic versions of imatinib were manufactured in India for approximately one tenth of the price of the patented drug.

1998 - Novartis applied for a patent for a new presentation, Glivec (the beta-crystalline form of imatinib mesylate). Novartis was granted EMR (Exclusive Marketing Rights) and generic manufacturers had to withdraw their versions of the drug.

Jan 2006 - The Indian Patents Office rejected Novartis' application on the basis of its structural similarity to an old compound.

Novartis and Glivec

May 2006 – Novartis filed a case against the decision of the Patents Office and also against the provision of the Indian Patents Act (Section 3(d)), arguing that it was not in compliance with TRIPS

6th August 2007 – India's High Court issues a landmark decision upholding the Patents Act and rejecting both cases

10th August 2007 – Novartis files a new case in the High Court against the Indian Patent Appellate Body

2nd September 2009 – New Novartis challenge to Section 3(d)

Doha (2001) and Access to Pharmaceuticals

- Doha 2001 - Ministerial Council of WTO
  - Statement of public health
  - Paragraph 6 decision
  - New ‘development round’ commissioned
- 2001-2003 – Debate over Implemenation of Para 6
  - Article 30
  - Article 31 (f)
- August 30, 2003. Interim waiver of article 31(f) plus amendment of TRIPS agreement
- 2007 Canadian shipment of TriAvir to Rwanda under 31(f) waiver; first and only!

WHO action on IP and Innovation

- 2003. Commission on IP, Innovation and Public Health set up (reported Mar 2003)
- 2006. Intergovernmental Working Group on Innovation, IP and Public Health
- 2008. Adoption of Global Strategy and Plan of Action
- December 2009. Report of DG to EB on Implementation of Global Strategy and Plan of Action

‘Counterfeit’ counter-attack

- Widespread problems of fake medicines
- WHA resolution 41.16 (1988) refers to counterfeit, substandard etc
- 2007 US-proposed ‘anti counterfeiting trade agreement’ (US, EC, Japan – then Australia and others)
- IMPACT (International Medical Products Counterfeit Taskforce)
- Seizures of Indian generics in transit through Frankfurt and Amsterdam
- 2009 WHO conflating off-license with substandard under the term ‘counterfeit’

Trade in goods (NAMA)*

- 13 Agreements
- Liberalisation of trade vs infant industry protection
- Tariff reductions
  - significant reductions in the industrialised world
  - tariffs remain high in the developing world
- Doha ‘development’ round

*Non Agricultural Market Access

Doha ‘development’ round

- Demands by developing countries for action on rich country agricultural subsidies and agricultural protection
- Pressure on developing countries to reduce tariffs on manufactured goods (NAMA) as a condition for action on agricultural protection
  - the ‘Swiss formula’ debacle
- ‘Special and differential treatment’ (‘non-reciprocal’)

Bilateral Trade Agreements

- ‘Bilateral’ includes
  - 1 to 1
  - 1 to many
  - many to many
- Increasing resistance
  - developing country resistance at WTO leads US and EU to stall in multilateral negotiations and drive bilateral agenda
- Participants
  - North South (especially US and EU)
  - Japan preference for multilateralism
  - China and India also on bilateral trade agreement drives
  - South South Regional FTAs eg ASEAN, Mercosur

US FTAs

- Pre 2000
  - Canada, Israel, Mexico
- Concluded since 2000
  - Australia, Bahrain, Chile, Jordan, Oman, Morocco, Singapore, Peru
  - CAFTA (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua)
- Presently negotiating
  - Korea, Panama, Thailand, United Arab Emirates
  - Andes (Colombia and Ecuador)
  - US-SACU (Botswana, Lesotho, Namibia, South Africa and Swaziland)
- Preliminary stages
  - Malaysia, Algeria, Egypt, Tunisia, Saudi Arabia and Qatar
- Probably defeated
  - FTAA

US FTA Model

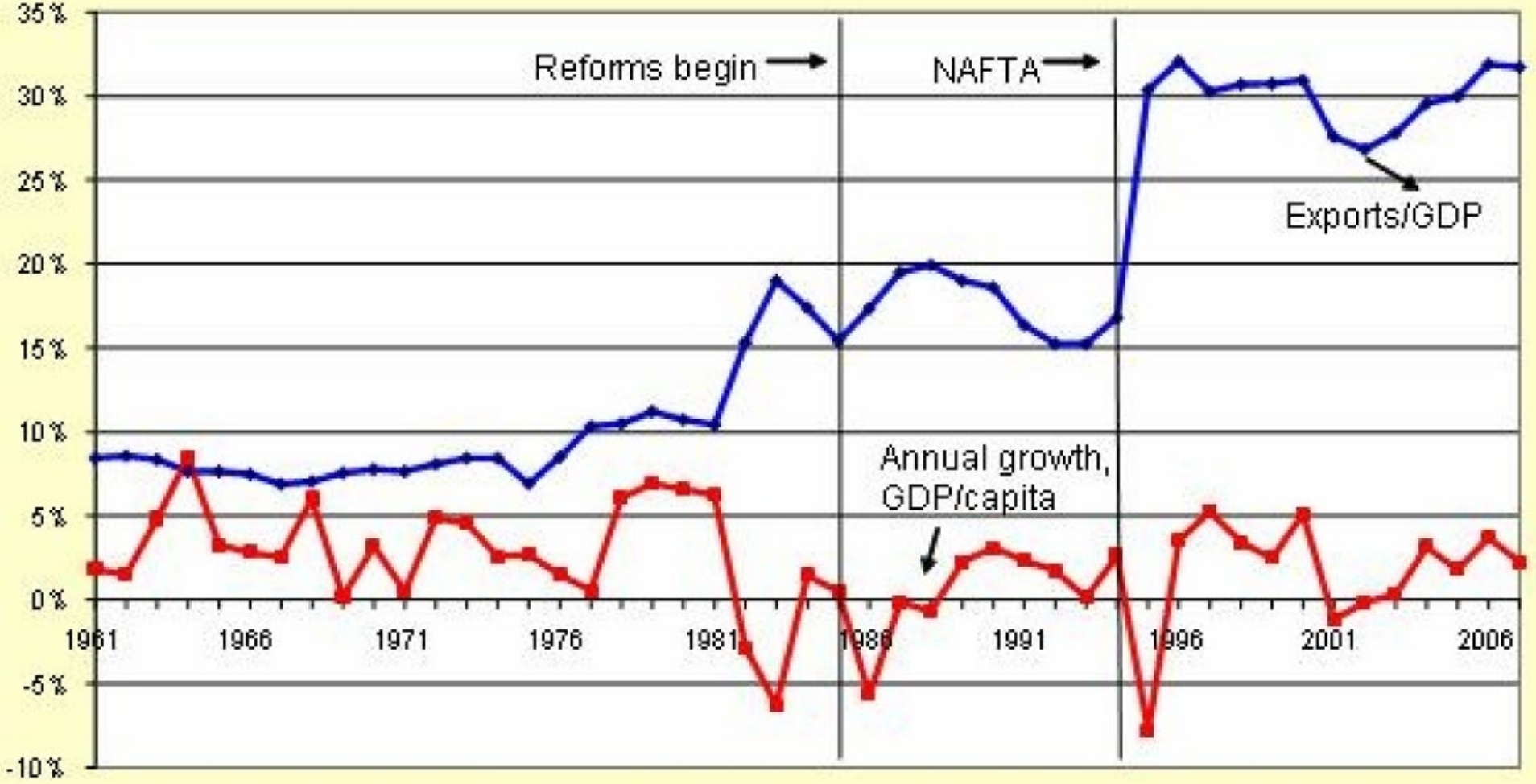
Agriculture	Investment	IPRs	Services	Other
All products, except 'sensitive' ones like sugar No commitments on anti-dumping or agricultural subsidies	Compensation for expropriation (direct and indirect) Investor state dispute settlement Prohibition of certain performance requirements	Limits on compulsory licensing and prohibition of parallel imports Patentability of plant varieties 'Linkage' of IP and drug approval Data exclusivity Extended patent terms (for approval delays) Precedence of trade mark over geographical indications	Negative list approach Broad coverage Priority for telecoms, e-commerce, financial services, audiovisuals, legal and professional Departure from GATS four modes	'Yarn forward' rules of origin in textiles and clothing Competition law Labour standards Environmental standards

Third World Resurgence 182/183 (2006), p26

Mexico 10 years post NAFTA

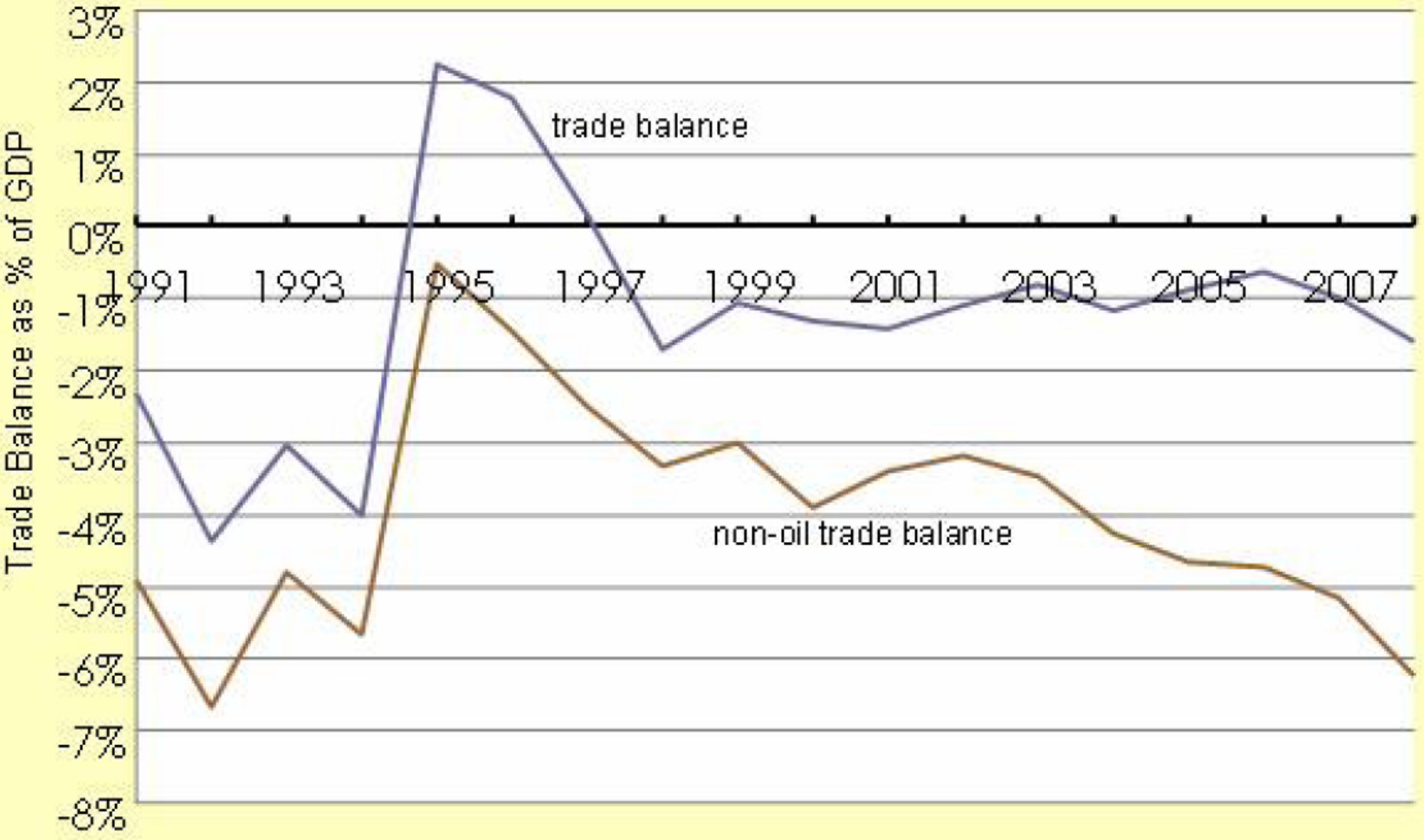
- 1.6% growth rate (1992-2007)
- 2m farmers left their land; incl illegals to US
- Increased exports of fruit and veges, despite SPS barriers, anti-dumping actions
  - mainly benefiting commercial farmers in the north
- Increased imports of subsidised corn from US lead to falling prices and loss of livelihood
- Dumped grains > wheat cultivation halved
- Importing 99% soybeans, 80% rice, 30% beef, pork and chickens, 30% of beans

Fig. 1. Trade and Income Divergence in Mexico
1961–2007



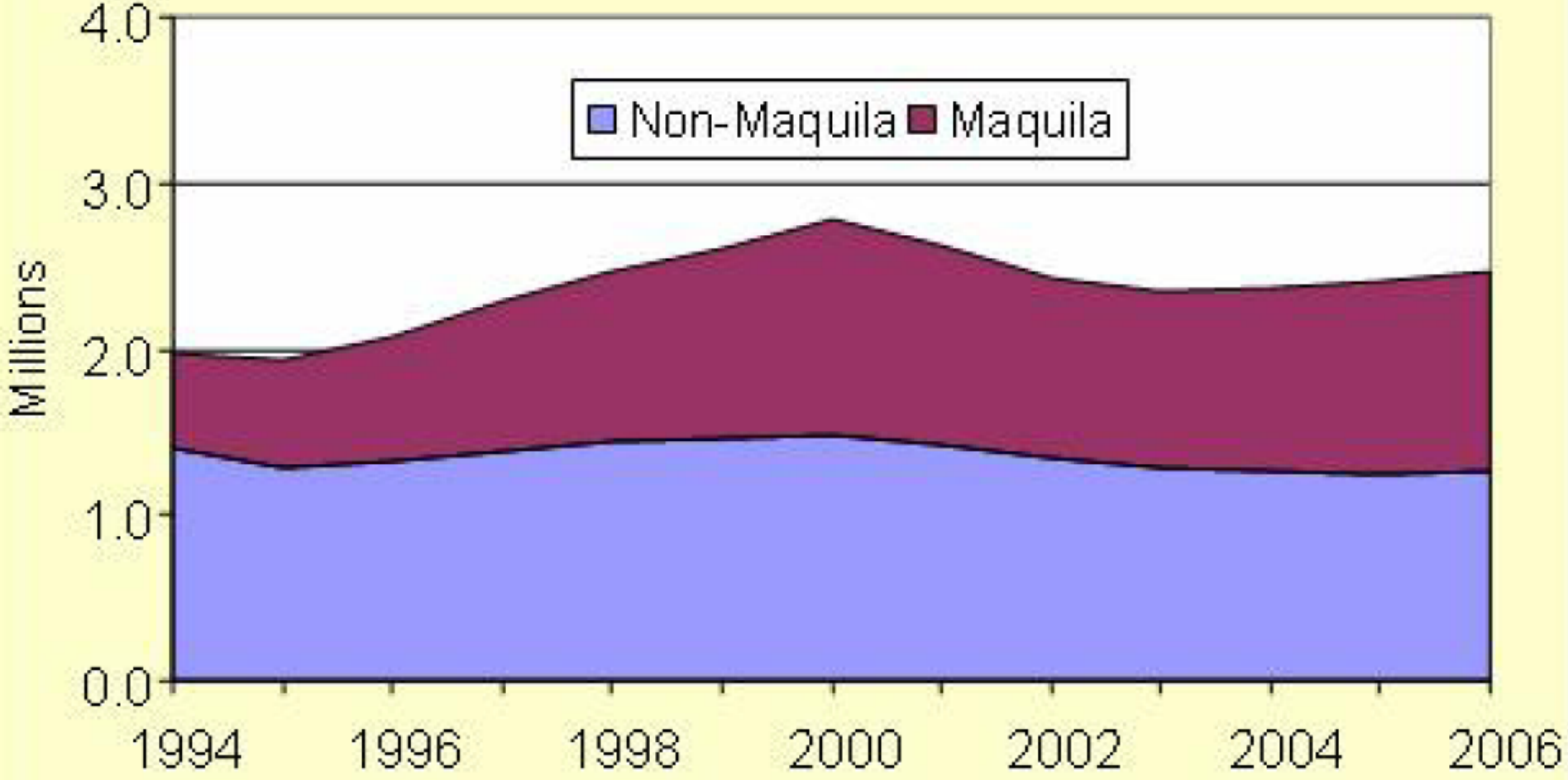
Source: World Bank, *World Development Indicators, 2008.*

Fig. 3. Mexico's Trade Balance, 1991–2008

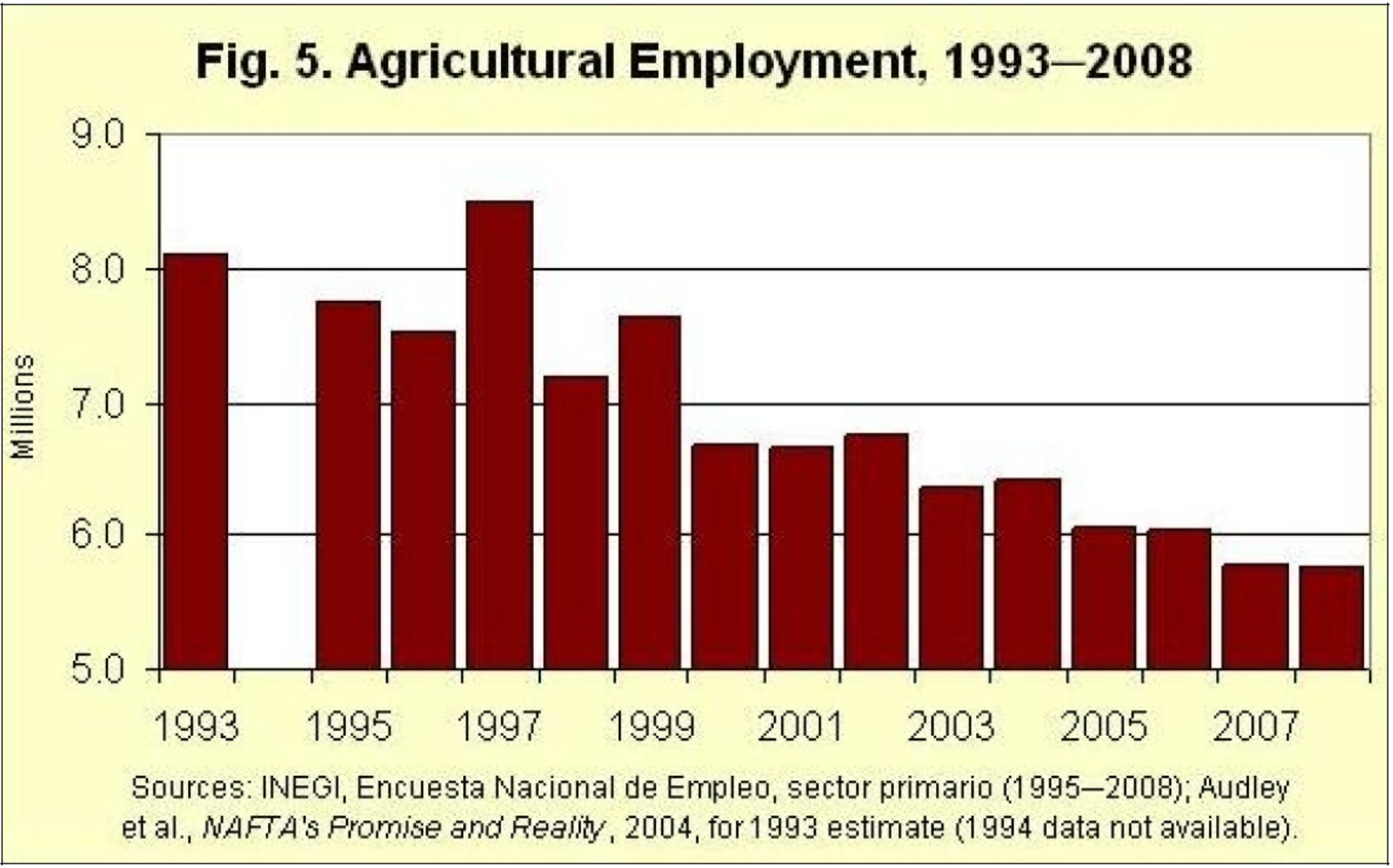


Source: INEGI-BANXICO-SAT (Servicio de Administración Tributaria) y la Secretaría de Economia.

Fig. 4. Manufacturing Employment, 1994–2006



Sources: INEGI, Encuesta Industrial Mensual, Estadística de la Industria Maquiladora de Exportación.



Note: Agricultural employment includes livestock, fishing, and forestry.

Metalclad in Mexico (case study in 'policy space')

- Metalclad sets up toxic waste dump in Mexico above town drinking water source (without a construction permit)
- Mexican state government stops Metalclad from operating waste dump
- Metalclad appeals to NAFTA under Chapter 11 concerning 'expropriation'
- State forced to pay $17 million to Metalclad compensation

Europe and the ACPs

- Lome I, II, III, IV
- Cotonou
- EPAs (regional)
- EPAs (individual countries)

Lomé

- Empires and imperial preference
- Decolonisation and continued ‘imperial preference’
- 1976 Formation of European Community and new preferential trading agreement (plus aid) with ACP countries (Lomé I)
  - preferential trading access
  - investment and aid commitments

ACP = Africa, Caribbean, Pacific

Cotonou Agreement 2000

- 1995. USA lodges complaint with WTO that Lomé Agreement violates WTO rules
- Complaint upheld
- Negotiations: US demands end to all preferential deals; EU and ACPs argue for new arrangement
- June 2000. Cotonou Agreement between EU and 71 ACPs
  - continued market access (to EU) for least developed countries (LDCs) (40/79 ACPs)
    - "Everything but arms" (EU, 2001)
  - regional free trade agreements between EU and ACP MICs
  - WTO waiver with respect to MFN principle to expire end 2007

Generalised system of preferences (GSP)

- Exemption from ‘most favoured nation’ (MFN) principle in WTO agreements
  - OK to reduce tariffs for LDCs without being obligated to reduce for all
  - ‘generalised’, ‘non-discriminatory’, non-reciprocal’
- Product exclusions (ie not ‘generalised’)
  - US GSP program includes high tech manufactures but excludes ‘simple’ manufactures

Regional Economic Partnership Agreements (EPAs)

- Envisaged as regional FTAs between EU and regional groupings of ACP countries (Pacific Island Countries, SADC, ECOWAS, CEMAC, ESA)
- Due to be finalised by end 2007 (end of WTO waiver from MFN)
- Not finalised by Dec 2007
- EU pressure for single country 'interim EPAs' (under threat of lifting of WTO waiver)
- Ghana proceeding (slowly)
- Nigeria refused

Content of EU offer (for EPAs)

- Elimination of tariffs for 80% of EU imports (with a ‘sensitive products’ list exception)
- ‘Standstill clauses’ (preventing any increases in tariffs)
- Elimination of export taxes
- Stringent ‘rules of origin’ (RoO)
- MFN restriction on all other bilateral or regional FTAs
- Compensation for economic losses through increased aid
- Liberalisation of services and investment (not required as part of the WTO waiver)

Trade and health advocacy in Africa

- Sponsors of 2007 Workshop in Bagamoyo, Tanzania
  - Southern and Eastern African Trade Informationand Negotiations Institute (SEATINI)
  - Training and Research Support Centre (TARSC)
  - Network For Equity In Health In East And Southern Africa (EQUINET)
- Country advocacy plans

Advocacy framework

1. Goals of the advocacy plan
2. Principles and key messages of the plan
3. Platforms and processes where the goals will be achieved
4. Key Actors
    1. the major targets who will produce the change
    2. the people targeted who influence them
    3. the people who implement the advocacy
5. Communication channels
6. A working project plan
7. Reporting
8. Budget

South South FTAs

- ALBA (Bolivarian Alternative for the Americas), 2004-6 (Cuba, Venezuala extended to Bolivia 2006)
- Arab FTA Agreement (1997)
- Arabic Mediterranean (2004) Jordan, Tunisia, Egypt, Morocco
- Mercosur
- ASEAN

Current trade issues with implications for health

- Reform of AoA (protection from dumping, access to markets)
- Implementation of Doha principles with respect to access to pharmaceuticals
- Health service provision - privatisation, foreign ownership, stratification, primary health care
- Environmental standards and food standards
- NAMA and deindustrialisation (line by line tariff reduction or average; uniformly down or leave space for industry policy)
- Elimination of tariffs – impact on government revenues

WHO Role in Advising on Trade and Health

- Secretariat paper on Trade and Health discussed at EB (27 May 2005)
- Draft resolution (Thailand + 13 others) calling for 'policy coherence' across trade and health and calling on WHO to advise and assist
- Opposition (US) plus watering down (Australia, France, Luxemburg) lead to deferral (to Jan 06)
- WHA May 2006 (http://www.who.int/trade/en/)
  - policy coherence across trade and health
  - WHO support to countries
  - intersectoral dialogue (including civil society and private enterprise)
  - WHO/WTO(2002)Health and Trade

WHA Resolution 59.26 urges member states to

- promote multi-stakeholder dialogue at national level to consider the interplay between international trade and health;
- adopt, where necessary, policies, laws and regulations that deal with issues identified in that dialogue, and to take advantage of the potential opportunities, and address the potential challenges that trade and trade agreements may have for health, considering (where appropriate) using their inherent flexibilities;
- apply or establish, where necessary, coordination mechanisms involving ministries of finance, health, and trade, and other relevant institutions, to address public-health related aspects of international trade;
- create constructive and interactive relationships across the public and private sectors for the purpose of generating coherence in national trade and health policies;
- continue to develop capacity at national level to track and analyse the potential opportunities and challenges of trade and trade agreements for health-sector performance and health outcomes;

Requests the Director-General to:

- provide support to Member States, at their request and in collaboration with the competent international organizations, in their efforts to frame coherent policies to address the relationship between trade and health;
- respond to Member States' requests for support of their efforts to build the capacity to understand the implications of international trade and trade agreements for health and to address relevant issues through policies and legislation that take advantage of the potential opportunities, and address the potential challenges, that trade and trade agreements may have for health;
- continue collaborating with the competent international organizations in order to support policy coherence between trade and health sectors at regional and global levels, including generating and sharing evidence on the relationship between trade and health;
- report to the Sixty-first World Health Assembly, through the Executive Board, on progress made in implementing this resolution.

Conclusions

- Colonisation as a particular ‘trading regime’
  - promoting transfer of value from the colonies to the colonising countries
- WTO and EPAs impose a different ‘trading regime’
  - still promoting the transfer of value from the ‘developing’ countries to the ‘metropolitan’ countries?

Key health issues relating to trading relations

- Agricultural trade and farmers' livelihoods
- Development of manufacturing and urban employment
- Tariffs and government revenues
- Intellectual property and access to medicines
- Brain drain
- Health systems and stratified health care
- Policy space and regulation for health ('expropriation' rules; GATS rules; etc)