

Mode 4 at work

The effects of mode 4 on immigration rules

Simon Tans, Radboud University Nijmegen
s.tans@jur.ru.nl

Comparing EU mode 4 commitments with India's commitments

Uruguay Round (1994/1997)

Similar mode 4 categories

- Business visitors
- Intra-corporate transferees (EU managers, India 'managers' and 'executive', substance is the same)
- Professionals (India) / Contractual Service Suppliers (EU)

Revised offer (2005)

- Addition of Independent Professionals
- EU also ICT Graduate trainees

Comparing GATS and RTA commitments

EU CARIFORUM / EU Canada (CETA) / India – Korea CEPA

Adoption of GATS model

Continuation of terminology used in GATS, now consistent in various RTAs

- Business visitors
- Intra-corporate transferees (India - Korea also 'executive')
- Contractual Service Suppliers
- Independent Professionals
- Graduate trainees (only EU)

Variation relates to the specifics:

- service sectors
- length of stay
- requirements

Comparing GATS and RTA provisions, EU CARIFORUM / EU – Canada (CETA) / India – Korea CEPA

Model of RTAs for service liberalization is the GATS model
Similar but in relation to mode 4, some striking differences

- GATS: market access, national treatment as key provisions applying to mode 4 commitments
- RTAs: separate chapter on mode 4
- EU CARIFORUM: market access provision, no provision on national treatment (market access restrictions only to those relevant to mode 4)
- CETA: no MA NT provisions, general obligation to allow entry with conditions
- India – Korea: no MA NT provisions, general obligation to allow entry with conditions, language on facilitating entry

Implementation of mode 4 into national legislation

Example of several EU Member States

Background: a tightening of entry conditions for most economic migrants, except highly skilled

Clear indication that (EU) Member States did not have entry schemes in immigration rules dealing with mode 4 type of movement

- After GATS: simple reference, entry possible under conditions GATS
- After additional RTAs: detailed scheme listing conditions mode 4 commitments (contractual service suppliers, intra-corporate transferees)

RTAs converge and lead to reforms of immigration rules

Example of independent professionals

Independent Professionals:

Not in current GATS commitments, included in RTAs

Category does not really fit investigated existing entry schemes.

- entry for self-employed persons under certain conditions, need of registration with the Chamber of Commerce, a business plan, an initial investment etc.
- Clearly does not suit intention of RTAs to have self-employed persons comply with conditions that relate to more permanent movement (as this is more akin to mode 3)

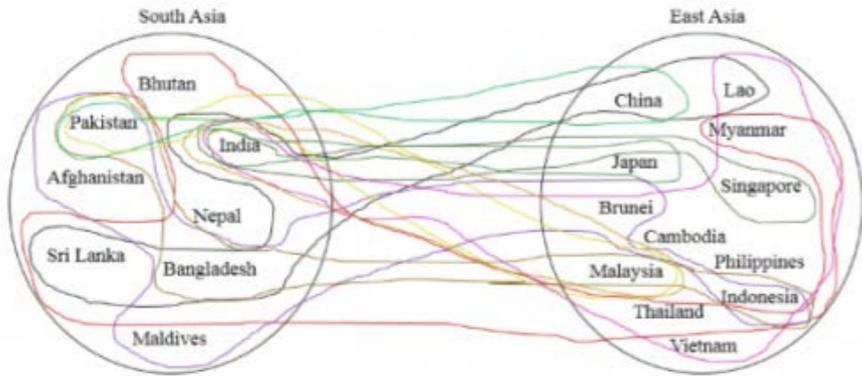
Clear need to create new entry schemes for IP on basis of RTAs

Conclusions

Mode 4 in GATS and RTAs unprecedented form of movement

- This partly explains similar definitions adopted under GATS, which were then used as model under RTAs
- This explains the need to create separate entry schemes when implementing mode 4 commitments, as they ill-suit existing schemes
- Mode 4 commitments thus seem to change immigration rules, and are thus not part of the general perception that GATS commitments bind Members under the level of actual unilateral entry level (however, schemes relating to the highly skilled already existed, but not specifically tailored to mode 4 movement)

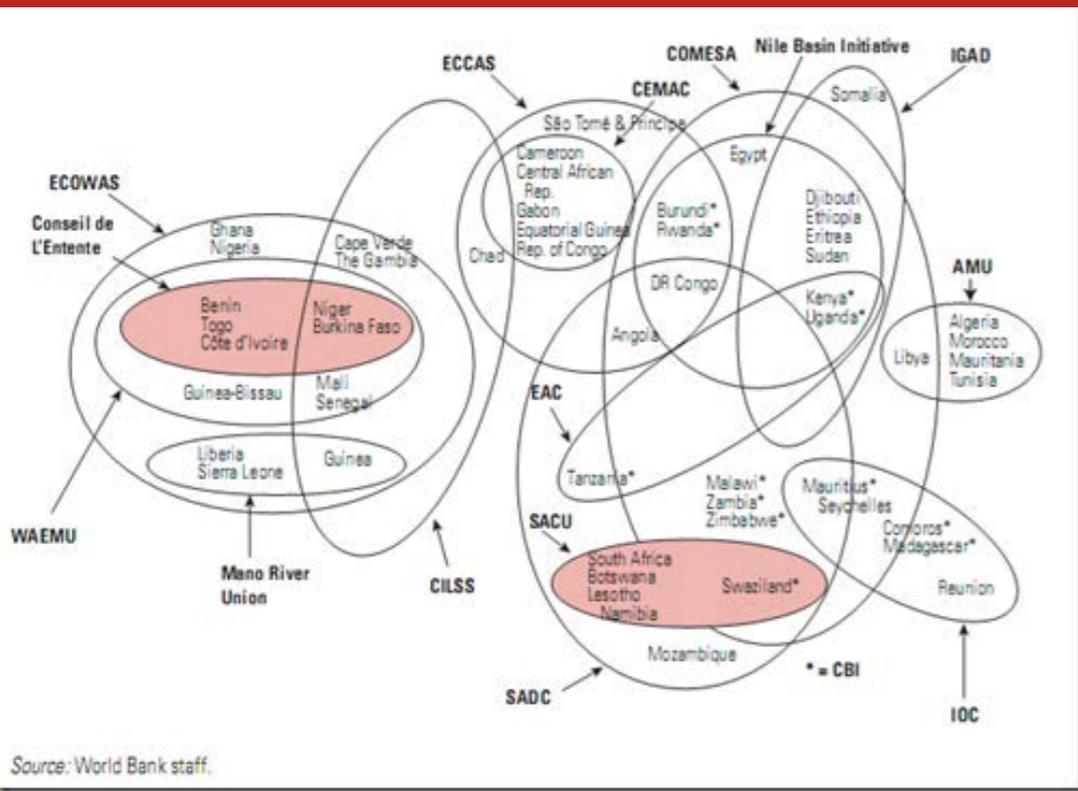
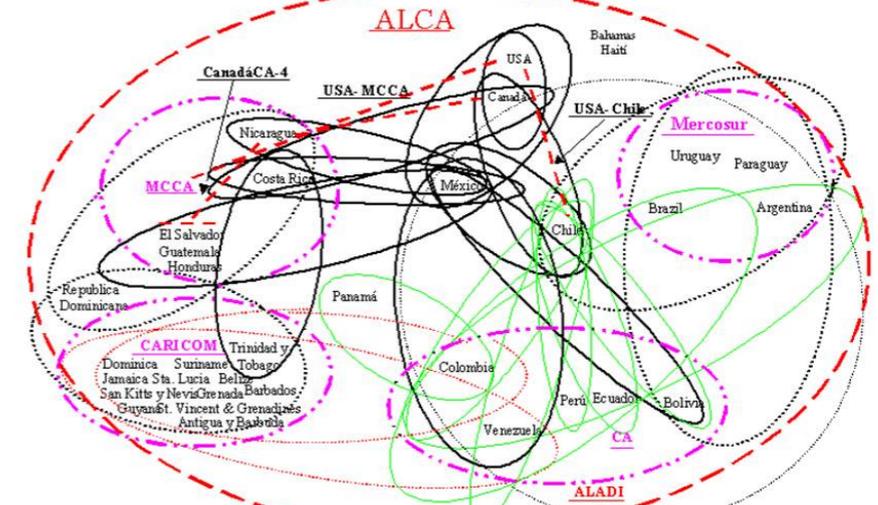
The Spaghetti Bowl Effect



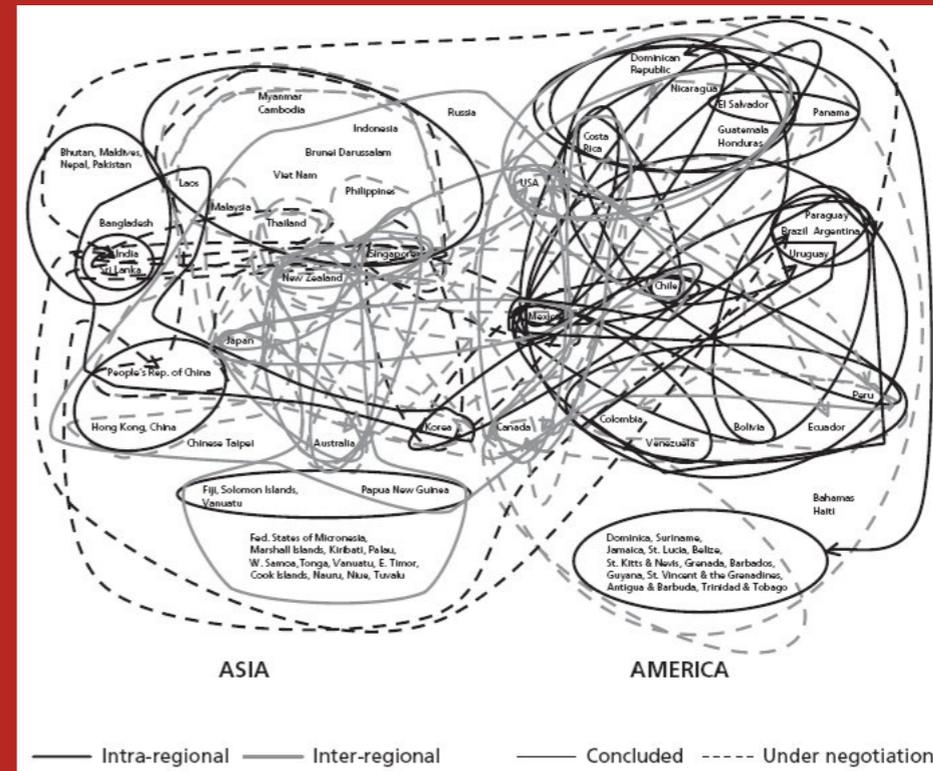
Depicting Spaghetti Bowl



Regionalismo Abierto o Spaghetti Bowl: exceptuando las negociaciones del ALCA, la mayoría de los acuerdos reseñados aquí, están vigentes o en proceso de negociación. Fuente: BID



Source: World Bank staff.



Lessons to be learned

GATS is the model used, RTAs depart from this to a greater or lesser extent

- EU – CARIFORUM and CETA have a chapter on mode 4 but different obligations (in effect probably similar)
- India – Korea again different approach

RTAs have dispute settlement provisions, risk of dispute settlement leading to differences in scope and content of concepts relating to mode 4

Considering practical implementation, some concepts are untested, example what is the scope of references indicating that ‘rules relating to the orderly movement of persons across borders continue to apply’

WTO remains crucially important as the only venue where consistency in relation to mode 4 can be ensured