

THE POLITICISATION OF TRADE IN HEALTH AND EDUCATION SERVICES: BLACK AND WHITE DIVISIONS OVER A 'GREY AREA'

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INTRODUCTION

The General Agreement on Trade in Services (GATS) is a multilateral agreement concerning cross-border trade in services which is currently being negotiated as part of the World Trade Organisation (WTO). In November 2000 the Scottish branch of a UK organisation campaigning against the GATS submitted a petition to the Scottish Parliament's Public Petitions Committee¹. This contended that the GATS could potentially affect the ability of the Scottish Executive to regulate health services, unless these services were specifically ruled out of the negotiations. The petition was based on the concern that pro-competition GATS rules could be used by other countries to challenge the NHS monopoly in some areas of Scottish health provision.

The GATS has provided a rule-governed framework for the resolution of disputes concerning trade in services since 1994. It allows countries to use 'legalised' sanctions against other nations if they can prove in the WTO that their 'exporting' suppliers are being treated unfairly (according to GATS rules) abroad in comparison with domestic suppliers. The Scottish debate concerning the GATS and publicly provided or supported health and education services was focused on the progress of a new round of

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¹ henceforth 'Petitions Committee'.

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negotiations concerning the scope of coverage of the GATS rules. It was alleged that attempts were made in the course of the negotiations to increase GATS coverage to include state provided health and education services. From this perspective, the GATS could, potentially, have been used to break up state monopolies or challenge state subsidies in welfare provision in the name of equal national treatment of suppliers. Others disputed this claim by maintaining that countries have freedom to specify which sectors they wish to liberalise, and that Article 1.3 of the GATS rules allows the exemption of publicly provided services.

Following the Amsterdam Treaty, much of the UK's input to international trade negotiations is mediated through DG Trade of the European Commission² although member countries retain the power to make specific exemptions in areas outwith the Single European Market³. The controversy surrounding the GATS in Scotland was therefore centred around two questions: whether the GATS could affect state provided health or education services, and, if so, whether the Scottish Executive should attempt to influence the UK line and thenceforth the EU negotiating line (or should push for UK caveats to any emergent EU consensus).

The petition concerning the GATS and healthcare remained 'in the system' until February 2003, and was thus one of the longest running before the Scottish Parliament. It paralleled a series of Scottish Parliamentary motions and written and oral questions concerning the GATS's potential effects on Scottish health and education services, and consultation by the Scotland Office and Scottish Executive with particular interest groups on the issue.

While international trade is unambiguously reserved to Westminster/Whitehall (and this, as previously noted, often only via the European Union), health and education services are in most respects a matter for the Scottish Parliament/Executive. Scottish institutions are extensively involved in the development of UK policies within European institutions, although they have no direct legal relationship with them. The GATS issue involved all three areas (international trade, health and education services, and Europe). The petition was, indeed, the first to be sent to both the

² *European Union, 1997, pp.99-100.*

³ *The UK has not, however, used this power extensively.*

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Parliament's European Committee and its Health and Community Care Committee⁴.

In some respects, jurisdictional issues concerning the GATS appear rather dry and technical. In practice, Scottish debate on the GATS, health and education was heavily politicised, both along party and non-party (but broadly left-right) lines.

Certain Scottish Executive and UK Government Ministers maintained, contra the campaigning group's claims, that the GATS could not affect Scottish or indeed UK public services, mainly because certain GATS clauses allowed governments to prevent public services from being considered under GATS rules. The hypothetical question of the scope of GATS would determine the legitimacy or otherwise of Scottish Executive involvement in GATS policy-making. If the campaigning group and MSPs concerned were vindicated by subsequent events, the Scottish Executive would have been acting within constitutional bounds were it to seek to get the European Union to rule health services out of GATS discussions, or to get the UK to specifically exempt Scottish health services in an annexe to the European negotiating schedule, for instance. If they were wrong, any such activity by the Scottish Executive would be overstepping its mandate as given in the legislation pertaining to devolution, aggrandising the Executive's powers at the expense of overall UK policy coherence. Furthermore, although negotiations in the current GATS round are set to end in 2005, their impact will not be clear until the 'testing' of GATS rules through foreign governments applying them in the course of trade disputes referred to the WTO, a process which could take decades.

Contrary to the Ministers' claims, in February 2003 the European Commission ruled education and health services out of its GATS negotiating position, thus implicitly accepting that the GATS rules could have affected governments' freedom of manoeuvre in these sectors.

The GATS controversy was not a simple turf war between UK institutions on the one hand and Scottish institutions on the other. Rather, different elements of the Scottish Executive and Scotland Office possessed relationships with Whitehall which led them, through various mechanisms, to attempt to undermine the claims made by elements of the Scottish Parliament Committee system and certain MSPs in alliance with particular Scottish campaign groups

⁴ henceforth 'Health Committee'.

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and trade unions. In doing so, the Scottish GATS-‘friendly’ elements were keen to portray GATS-‘sceptical’ lobby as (closet or overt) nationalists wishing to disrupt devolution arrangements. This strategy rather backfired when the European Commission itself apparently accepted that the GATS might have had an effect on health and education services.

This article briefly details how Scottish legislative and executive bodies debated the GATS-public-services issue. It will then critically examine the three elements of this policy area which appear to the author as responsible for its politicisation.

First, for a number of reasons the Scottish debate around GATS appeared more inclusive than that at Westminster and Whitehall. This potentially posed problems for the maintenance of a coherent ‘Team UK’ line in Europe on the issue. Second, whilst some Nationalist politicians were involved in debate on the GATS, claims of nationalist ‘manipulation’ were also made with regard to non-SNP MSPs, campaign groups and trade unions. The consequences of this shall be considered. Finally, the hypothetical nature of GATS might appear to give it a rather ‘exotic’ status on the UK policy-making scene. However, this rather obscures the fact that the GATS debate related essentially to ‘old political’ issues. Traditional enmities concerning privatisation versus state ownership and public accountability versus closed-door decision-making were thus replicated in the GATS debate. In considering these three dimensions of disagreement, the article highlights the problems for the Scottish Executive, Scotland Office, and Scottish Parliament in dealing with hybrid issues with the politicisation they perhaps inevitably entail.

The article is based mainly on research undertaken at the University of Edinburgh’s Department of Social Policy between March and September 2002. Twenty-three interviews were conducted with key individuals in different policy sectors and institutions concerning GATS (listed in the annexe). All interviews were transcribed and sent to interviewees to check and add any additional information. Points made in the interviews were compared and contrasted against the background of documentary analysis. Some interviewees were also re-contacted to discuss the consequences of recent developments.

THE SCOTTISH PARLIAMENT AND THE GATS

The GATS' potential effect on Scottish health and/or education services was first placed on the Scottish political agenda through the use of two mechanisms unique to the devolved Parliament: public petitions which were submitted by a campaigning group, one of which was accepted and considered by various Parliamentary Committees, and motions submitted to the Parliament which gathered considerable (and in one case ground-breaking) levels of support.

The long-standing petition concerning the GATS and Scottish health (PE 320) was notable for having been accepted by the Petitions Committee in the first place. Submitted by the World Development Movement Scotland in November 2000, it asked the Parliament's Health Committee 'to examine the possible implications [of the WTO] for health policy in Scotland and to relay their findings to the Executive, the Parliament and to the people of Scotland'. A previous petition (PE 40) submitted by the same organisation twelve months before and timed to coincide with the Seattle WTO meeting had requested 'an open debate on [the former's] implications ... for the people of Scotland and for others around the world' but was rejected by the Petitions Committee as relating to reserved issues.

In accepting the later petition, the Petitions Committee was implicitly contradicting UK Government claims that the GATS could not affect UK (and thus also Scottish) health or education services. It passed the petition to the Health Committee in April 2001, where John McAllion MSP was appointed to prepare a report on the scope for a more wide-ranging enquiry on the issue. McAllion's report remains confidential. However, given his claims of a lack of support and assimilable information from either the Scottish Executive or the DTI on the issue, and the contrasting extensive analysis and back-up provided to him by the GATS-sceptical UNISON Scotland and World Development Movement Scotland, it is likely that the report was GATS-'sceptical' in tone. This draft report remained in the Committee pipeline until, rather extraordinarily, February 2003.

It was passed to the European Committee in November 2001, which was broadly in agreement but suspended concrete judgement until full endorsement by the Health Committee. After two brief considerations in March 2002, that May the Health Committee decided to defer further consideration until after the recess, 'on the understanding from the DTI that after this point we would know whether any other participating nations had

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suggested that elements of the UK health service had been opened up to the GATS⁵.

Yet the report was again shelved at the 11 September 2002 Health Committee meeting, awaiting the publication of the documents relating to the recently announced DTI consultation. The Health Committee once more postponed consideration of the report on 4 December, again because of the need to wait for the publication of the DTI consultation documents. However, these documents had been publicly available three weeks before. Finally, in late February 2003 McAllion noted to the Health Committee that following the European Commission's announcement that it 'would not further commit Europe's health and education sectors to the free-market rules of the general agreement on trade in services' the petitioner 'did not think that the petition should go any further at this point'. The Committee Convener intimated that he would 'pass on to our successor committee [the petitioner's] comment about the need to keep a watching brief on the matter'⁶.

The four Scottish Parliamentary motions focusing on the GATS's potential impact on Scottish public services are notable for their longevity and the extent of their support. Helen Eadie MSP submitted two motions, the first promoting contributions to the DTI consultation on GATS and the second relating to the GATS's potential impact on water services (which is on-going at the time of writing). Linda Fabiani MSP also submitted two motions, one timed to coincide with the Seattle meeting (as had been the failed petition) and another calling for 'an open discussion of the implications of these [GATS] negotiations for the [Executive's] health policies and current and future health service funding'. Whilst all four motions attracted all-party support, Fabiani's second motion was one of the most popular and longest lasting in the Parliament, picking up signatures for over a year.

The profile of this petition and these motions within the Scottish Parliament contrasts with the relative lack of activity concerning the GATS's potential effects on health and education in Westminster and Cardiff. Whilst, for example, Early Day Motions concerning the GATS have proved popular in Westminster, they have tended to focus on the international development aspects of the negotiations rather than on their relevance to UK public policy

⁵ *Scottish Parliament Health and Community Care Committee, 2002b.*

⁶ *Scottish Parliament Health and Community Care Committee, 2003.*

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or otherwise. There has been little discussion in the Welsh Assembly concerning GATS, with only six AMs putting their names to a Statement of Opinion on the matter.

THE SCOTTISH EXECUTIVE AND SCOTLAND OFFICE AND THE GATS

From consideration of the various accounts offered by interviewees, it appears that while the Scottish Executive and Scotland Office were involved to a limited extent in certain formal, more or less public channels designed to develop and coordinate UK GATS policy, in practice most coordination operated at an informal, behind-the-scenes level.

The Scottish Executive was involved in three formal processes related to GATS policy-making.

Firstly, the Scottish Enterprise and Lifelong Learning Department was asked by the UK Department for Education and Skills to consult with Universities Scotland (the umbrella group for Scottish Higher Education institutions) concerning the latter's views on the GATS. The Department for Education and Skills had itself been asked in January 2002 to collect UK Higher Education institutions' views by the UK Department for Trade and Industry. Universities Scotland's GATS-sceptical response to the consultation was leaked to **The Herald** in February 2002, in contrast with Universities UK's response which was not made public. This model of consultation on GATS appears to have been peculiar to the Higher Education sector. There was no similar dialogue with health sector institutions, and the higher education consultation was formally separate from a more wide-ranging consultation conducted by the DTI between October 2002 and January 2003, which did not involve a separate Scottish consultation.

Secondly, again with regard to the potential impact of the GATS on education, the Enterprise and Lifelong Learning Department was represented at an Organisation of Economic Cooperation and Development (OECD) Forum on Trade in Education Services held in Washington in May 2002. Representatives of the Scottish Enterprise and Lifelong Learning Department were part of the UK Department for Education and Skills delegation. Other attendees included representatives of Universities UK, the UK National Union of Students, the DTI, and members of Universities Scotland. The invitation of Enterprise and Lifelong Learning Department civil servants was

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notable in itself, as it significantly raised the Department's international profile. Some interviewees intimated that the Forum was perceived as offering a 'neutral' territory for GATS discussion. However, the fact that the only formal occasion for interaction between UK and Scottish civil servants and Higher Education interest groups concerning the GATS was an OECD Forum merits some attention. While some interviewees stressed that GATS-'sceptical' as well as GATS-'friendly' views were expressed, others were keen to draw attention to the OECD's previous involvement with pro-liberalisation measures such as the Multi-Lateral Agreement on Investment.

Thirdly, the Enterprise and Lifelong Learning Department was purportedly involved in bilateral discussions with the DTI concerning the potential impact of the GATS on governmental competencies. The Scottish Deputy Minister for Education, Europe and External Affairs described this process as also involving Scottish Trade International and the Scotland Office⁷. The UK Secretary of State for Trade and Industry described Scottish-UK contacts as operating through a sub-group of the DTI, the Trade Policy Group, set up to regularly discuss general strategy with representatives of devolved bodies⁸.

The Scotland Office had previously been very active in conveying the position of certain Scottish institutions (such as agricultural and tourist interest groups) to the UK Government on certain aspects of international trade policy. Some interviewees claimed that this might partly have been a function of (the then Scotland Office Minister) Brian Wilson's longstanding interest in textile trade rather than being required by his Scotland Office role. In comparison, the Scotland Office appeared to keep rather a low profile with regard to GATS policy. The Scotland Office civil servant interviewed maintained that GATS policy was similar to a number of complex issues which the Scotland Office dealt with on a regular basis. Competence for GATS policy was split between different officials who dealt with its various aspects in liaison with their Whitehall counterparts and the corresponding Executive officials. Similarly, Anne McKechnie MP, one of the highest profile GATS-sceptical Scottish MPs, claimed that the Scotland Office had a 'political coordination' role in the involvement of Scottish interests in developing the UK line.

⁷ *Scottish Parliament Written Answers, 2000.*

⁸ *House of Commons, 2001.*

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It is rather difficult, however, to discern the impact of the Scotland Office on this issue in order to corroborate these accounts.

Firstly, there is limited evidence of the extent to which the Scotland Office represented the UK Government position to Scottish institutions concerning the GATS. When McAllion, acting as rapporteur for the Health Committee, asked the Scottish Executive for information on its GATS policy, he was apparently immediately passed to the DTI. The latter furnished him with a technical document but no further information or analysis. Yet one might have thought, *prima facie*, that the Scotland Office would have been involved in providing such information.

Secondly, one civil servant interviewed claimed that the Scotland Office would only have become significantly involved where 'high-level constitutional issues' were at stake. Yet, given the UK Government and certain Scottish Executive Ministers' claims of a lack of impact of the GATS on non-reserved issues, it would have been rather inconsistent of the Scotland Office to then have become heavily involved.

Importantly, whatever semi-formal structures existed between Whitehall, the Scottish Executive and Scotland Office which may have been relevant to GATS policy-making, the Scottish Executive and Scotland Office civil servants interviewed stressed that the majority of contacts were ad hoc, low key, and informal. It is of course difficult to delimit and evaluate these here. However, the consequences of this policy-coordination style as a contributing factor to public controversy surrounding the GATS is considered below.

WAS THERE A 'TEAM UK' EXECUTIVE LINE ON THE GATS?

Given the confidential nature of the relevant inter-executive and European fora, it is impossible at this stage to definitively claim the absence of a unified UK executive position on the GATS. However, one can discern two possible pressures against the formation of such a line. Firstly, methods used to handle the GATS issue differed markedly between the UK DTI and Department for Education and Skills, and the Scottish Enterprise and Lifelong Learning Department. Interviewees' explanations for these differences shall be considered in this section. Secondly, the use of formal mechanisms for policy coordination was limited with regard to GATS. The differing opinions of interviewees concerning the consequences of an informal method of policy-making on this issue shall also be examined.

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As previously noted, the DTI was directly involved in Scottish discussion of the GATS through the advice it provided to Scottish Parliament Committees concerning the petition on the GATS and Scottish health services. Some interviewees maintained that part of the reason for the delay in consideration of the petition related to problems in liaising with the DTI. This was unlikely to have been the only impediment to speedy treatment. The Clerk to the Petitions Committee pointed out that the Health Committee in particular had a 'very very heavy workload' causing difficulties in fitting consideration of the petition into its timetable.

Nonetheless, some of the reasons given for the DTI inducing the Health Committee to pause its consideration of the GATS at certain points appear rather incongruous. For instance, when the GATS was placed 'on the back burner' (to use John McAllion's words) until after the 2002 Parliamentary recess, this was to await the results of the 'current GATS round' which would be 'known', as the Clerk to the Petitions Committee put it, when the DTI released its negotiating line in June 2002. The Committee was informed that, after the recess, it would be clearer both what requests had been made of the EU in the negotiations, and which requests the EU was making of different countries. Apparently due to intra-EU disagreements, the June deadline was pushed back until late September 2002.

However, it is erroneous to speak even of this later date as a 'deadline'; the fluid nature of GATS negotiations allowed requests to be made of EU sectors right up until April 2003 when inter-country negotiations began. Furthermore, the EU was not planning at any point to release details of which sectors of other countries' markets it was requesting access to through the GATS. This would have prevented the Health Committee from making an assessment of whether health services might have been 'traded off' by the EU in order to gain access to other sectors (although, in practice, many of the EU's GATS requests for access to other countries' markets were leaked by campaigning groups).

The DTI subtly changed its advice to the Health Committee by accepting in September 2002 that 'more requests will be forthcoming over the coming months', although also stating its belief 'that any request to open up the NHS is unlikely to be forthcoming as this would be outwith article 1.3 of the GATS'⁹. The Health Committee then decided to postpone further

⁹ *Scottish Parliament Health and Community Care Committee, 2002a.*

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consideration of the issue until after the publication of the DTI's consultation paper on the GATS. As noted above, there appears subsequently to have been a lack of communication between the two organisations, with the Health Committee being unaware of the date of release of this document.

Aside from these problems of coordination between the DTI and Scottish Parliament Committees, one can discern substantive differences between the DTI and DfES general positions on the GATS and that of the Scottish Enterprise and Lifelong Learning Department.

All interviewees who were questioned on the role of the DTI drew attention to its agenda-setting and ultimate decision-making powers in defining the UK position on international trade issues (including where these were subsequently mediated through DG Trade, part of the European Commission). To an extent the DTI has evangelised for the GATS, with, for instance, its civil servants representing the GATS-'friendly' position in public debates on the subject in Wales when no other speakers could be found. The DTI's traditional free trade ethos has been bolstered by its close relationship with the similarly-minded DG Trade. As Martin Smith quoted a DTI civil servant in his research on the Department, 'in the areas that are core to the DTI, trade policy and single market policy, [the DTI is] closer to the Commission probably than any other member state' (Smith 1999, p. 237).

The DTI would be expected to take the primary role in defining UK international trade policy, given its Departmental ambit and the provisions relating to international trade in the Memorandum of Understanding and relevant concordats. However, some interviewees questioned this supremacy where the definition of a UK line involved not only questions of international trade, but also public policy issues. Indeed, it was precisely the (il-)legitimacy of DTI dominance in international trade issues which may or may not have also affected health or education policy that GATS-'sceptical' MSPs and campaigning groups attempted to put into question.

At an overall UK level, although the Department for Education and Skills did engage in a consultation with Higher Education institutions, this appears to have been relatively limited and low profile. Whilst this might be partially explained by Universities UK's reluctance to take a public stance on the issue, a similar level of secrecy has prevailed concerning the Department's negotiations with bodies very publicly opposed to the GATS such as the UK National Union of Students. This contrasts with the Enterprise and Lifelong

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Learning Department's openness concerning its consultations with Universities Scotland and NUS Scotland on the issue.

There is, further, little evidence of extensive cooperation between the DTI and the Department for Education and Skills on the GATS. This contrasts with the extensive overlap between the Scottish devolved institutions responsible for trade and higher education policy (if not, explicitly, for health policy). Both the NUS Scotland President and the Enterprise and Lifelong Learning Department civil servant noted the importance of the conjunction within one Scottish Department of enterprise and higher education policy in developing a coherent GATS policy, in comparison with the separate UK DTI and Department for Education and Skills.

Physical and organisational proximity of higher education and enterprise civil servants need not translate automatically into policy coherence. Accepting this caveat, however, it should be noted that some interviewees stressed the closer organisational relationship between enterprise and higher education policy and also between economic development and regeneration and higher education institutions, in Scotland compared with the UK as a whole. Whilst this may contribute on the one hand to a more enterprise-oriented higher education policy, it may also have a knock-on effect on the perceived legitimacy of involvement of higher education interests in enterprise and trade policy-making.

Given the above differences in the GATS consultations undertaken on a UK as against a Scottish level, how were Scottish positions fed into the 'Team UK' line on the GATS?

As previously noted, the main institutional elements purportedly involved in Scotland-UK executive coordination of GATS policy comprised the Trade Policy Group of the DTI and meetings between the DTI and Scottish interest groups and the Enterprise and Lifelong Learning Department, against the background of extensive informal contacts which also involved the Scotland Office. Interestingly, these channels differ from any of those posited in the Memorandum of Understanding and the Concordats as specifically designed to coordinate international trade policy, European policy, health policy and/or education policy¹⁰. The Committee for Overseas Promotion, for example, which was proposed in an annexe to the DTI Concordat, does not appear to

¹⁰ listed in the References section.

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have been involved. Indeed, an interviewee (Roland Diggens) noted that the latter's role as against that of Trade Partners UK is still rather unclear. Certain of the interviewees were sceptical concerning the applicability of the relevant concordats to the reality of UK-Scotland trade policy coordination. This is of course complicated by the 'hybrid' nature of the GATS controversy.

It might have been assumed that the Joint Ministerial Committee would have been an ideal venue for discussion of the GATS, particularly in its Knowledge Economy incarnation which mirrors the Enterprise and Lifelong Learning Department's conjunction of trade, enterprise and higher education issues. Given the confidential nature of discussions at JMCs, it is of course impossible to state whether GATS policy was discussed at any of these. However, from the available press releases issued it appears that the GATS has not been a major agenda item thus far (or at least, one which any JMC wished to publicise). Since 'European' JMCs have been scheduled to coordinate a UK line apropos of particular EU summits and to feed in to UK input to the European Convention, the GATS could potentially have been discussed under these headings. However, again, the GATS has, apparently, not been a major feature of any Council of Ministers meetings until very recently. It was not, for instance, discussed at the Health Council when the Scottish Health Minister Susan Deacon represented the UK¹¹. Nor has it been prioritised in British input to the Convention, aside from through an amendment concerning trade in services jurisdiction proposed by the UK Government's representative to the Convention, Peter Hain MP (formerly Minister for Europe and currently Secretary of State for Wales) as part of the External Action working group¹².

Some interviewees were adamant that the lack of formal structures did not impede Scottish involvement in the development of a UK line on the GATS. The Enterprise and Lifelong Learning Department civil servant claimed, for example, that attempting to conduct GATS policy coordination through the formal mechanisms posited in the devolution documents would just create 'more machinery', which 'would just mean more bureaucracy, possibly'. She related this to the hypothetical nature of the GATS and its novelty.

¹¹ *As Malcolm Chisholm stated in Scottish Parliament Official Report, 2001, col.1644.*

¹² *European Convention, 2002, 8c.*

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Nonetheless, it may be contended that the apparent lack of a formal, clear, conduit between the Scottish Executive and the development of the UK GATS line, contra to what ‘an analysis of the mechanisms outlined in the various documents involved ... would suggest’¹³, fuelled controversy on the issue.

It was, therefore, not entirely the fact that the DTI appeared to be assuming almost sole responsibility for defining the UK GATS line which caused controversy. It was also the confusion over this arrangement which inflamed discussion over the UK’s GATS position. This was compounded by apparently self-contradictory actions by both Scottish and UK executives such as the consultation with higher education interests by the Enterprise and Lifelong Learning Department and by the Department for Education and Skills simultaneous with DTI denial of any connection between the GATS and higher education.

THE GATS AND THE SCOTTISH PARLIAMENT: A NATIONALIST STALKING-HORSE?

The second dimension of GATS controversy concerns the politicisation of the jurisdictional issues examined above. Some interviewees claimed that elements of the Labour leadership attempted to dismiss GATS as a nationalist stalking-horse, and painted GATS-‘sceptical’ Labour MSPs as falling into the hands of the SNP. Certainly, SNP support for GATS-‘sceptical’ motions was exceptionally strong, with every SNP MSP bar one (the Deputy Presiding Officer) signing Fabiani’s second motion on the GATS and Scottish health services. Furthermore, particular SNP MSPs were keen to maintain a specifically Scottish input into the GATS as a matter of ‘of principle’¹⁴.

However, the GATS is notable as one of the few issues before the Health Committee which was not polarised along Party lines. Support for the GATS

¹³ *To quote the Select Committee on the Constitution’s broad opinion on the relationship of devolution documents to working arrangements; Select Committee on the Constitution, 2002, p.13 Para 22.*

¹⁴ *To use Colin Campbell MSP’s term in his criticism of a proposal by Sarah Boyack MSP in the European Committee, to pass the GATS petition to the Commons’ European Scrutiny Committee (Scottish Parliament European Committee, 2002, col.1405).*

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petition and motions was spread across the Parties except the Scottish Conservatives, albeit unevenly. Some interviewees maintained that pressure had been applied by elements of the Labour leadership to prevent Labour MSPs who had signed Fabiani's first GATS motion from signing her second one (and there is some evidence for this in terms of the composition of signatories). However, any such persuasion by Scottish Labour leadership elements pales in comparison with that applied in Wales, for instance, where Rhodri Morgan himself was allegedly involved in inhibiting Labour AMs from debating the issue¹⁵.

In some respects, the Scottish Parliament's willingness to involve itself in discussion of GATS, against the wishes of some elements of the Executive, signals a broader institutional struggle. For the European Committee in particular, examining the GATS fitted with a broader project of enlarging the scope of the Committee's scrutiny to cover international issues. Admittedly, such attempts to increase the issue coverage of the Scottish Parliament might be seen as furthering SNP policies. However, as previously noted, the claims that GATS-'sceptical' campaigners were only jumping on a nationalist bandwagon appears rather contradicted by the European Commission's own climb-down over inclusion of education and health in the negotiations. Given that the GATS could, apparently, have covered health and education services, it was legitimately within constitutional bounds for campaigners and MSPs to push for the Executive to take a position on the matter.

The dismissal of attempts to clarify the Scottish Executive's input or otherwise into the UK's GATS position as motivated by nationalism was thus an important contributing factor to the controversy surrounding the issue.

THE GATS, HEALTH AND EDUCATION: NEW ISSUE OR SAME OLD POLITICS?

The controversy precipitated by the GATS might be seen as partly due to its novelty on the policy landscape. The TRIPS Agreement (Trade Related Intellectual Property Services) is also often viewed as potentially affecting health and education services. However, overall, the extension of

¹⁵ A Welsh GATS activist interviewed, Ele Hicks, claimed that Rhodri Morgan 'published the Westminster line in a memo to all Labour AMs', which maintained that the GATS should not be discussed by the Assembly.

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international trade policy to potentially cover 'traditional' areas of state provision is a 'newcomer to the trade policy party' (Esty 1994, p. 37). This is in contrast to apparently uncontroversial acknowledgement of the WTO's impact on Scottish farming and rural industry. The Scottish Minister for Rural Affairs has publicly noted the importance of the WTO concerning Scottish agricultural subsidy and whisky production¹⁶. As previously noted, the Scotland Office was involved in publicly lobbying for Scottish interests, specifically the Borders cashmere and other industries, during the 'cashmere' and 'banana' 'wars' of the late 1990s.

The controversy surrounding the GATS echoes that over the Scottish implementation of certain EU competition directives. Interestingly, following the European Commission's February 2003 announcement, the attention of GATS-'sceptics' has turned to the potential effects of the negotiations on UK water services. This is just as measures to implement the EU Water Directive have come under fire for aiding the privatisation of Scottish water services. Given this conjunction, one is led to question whether the GATS controversy is less a 'new' question of multinational versus national sovereignty than a more 'traditional' one concerning the accountability and ownership of public institutions. While some interviewees saw the GATS as a unique phenomenon intruding on the Scottish political horizon, others (especially trade unionists) were keen to link the issue to broader questions of private finance involvement in public service provision. The GATS measures may have threatened little more than a codification of certain 'public service modernisation' measures advocated by the UK Government and (if to a lesser extent) promoted by the Scottish Executive. As with perhaps all such questions of causality, the links or otherwise between the GATS and already existent public policy are disputed. To use rather simplistic terms, it is difficult to separate the 'liberalising' GATS chicken from the 'privatising' Scottish Executive egg.

Aside from such subtleties, it is clear that the GATS issue tapped in to an already existent reservoir of disagreement concerning the place of private involvement in health and education provision. This 'left-right' political disagreement compounded the controversy caused by jurisdictional and party political issues.

¹⁶ Compare, for example, *Scottish Parliament 2000a, Col.978 and 2000b, Col.362, respectively.*

CONCLUSION

This article has considered the debate on the GATS's potential effects on health and education within Scottish legislative and executive arenas post devolution. The manner by which the GATS's potential effects on health and education were highlighted in the Scottish Parliament contrasts with the relative lack of activity in the Westminster Parliament and the Welsh Assembly. A campaigning group was able to use the new petitions process to force the issue onto the Parliament's agenda, and two MSPs managed to attract the support of large numbers of signatories for motions on a previously unknown issue. The concerns expressed through these mechanisms were later implicitly acknowledged by the European Union.

The Scottish Executive was 'publicly' implicated in the formation of a UK GATS 'line' through its consultation with Scottish Higher Education interest groups, its representation at an OECD Forum on the issue, and its formalised relationship with the DTI through the Trade Policy Group. However, most of the Executive's work on the GATS was conducted on an informal, behind-the-scenes basis. The Scotland Office was also allegedly involved in GATS policy-making through informally communicating Scottish views to Whitehall and vice versa. The Scottish Executive and Scotland Office were unwilling to endorse concerns over the GATS's potential coverage of Scottish health and education services. This contrasted with their willingness to lobby for Scottish agricultural and rural interests 'threatened' by WTO measures.

The GATS' potential impact on health and education was quickly politicised along three dimensions:

Firstly, the DTI and Department of Education and Skills on the one hand, and the Enterprise and Lifelong Learning Department on the other, differed in the ways they consulted potentially affected interests on the issue. While some interviewees forcefully maintained that both the Executive and, especially, the Scotland Office were involved in discussions on GATS with Whitehall, the informal nature of these contacts failed to counter the impressions of GATS-'sceptics' that Scotland's interests in health and education were being by-passed.

Secondly, certain elements of the Scottish Executive and of the Labour party leadership were quick to paint GATS-'sceptics' as pro-SNP. This personalised division over GATS when some GATS-'sceptics' were Labour MSPs or non-party political organisations such as the World Development

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Movement Scotland or Unison Scotland. Indeed, the cross-party nature of GATS-‘scepticism’ and the extensive consideration given to the second GATS petition constituted for some interviewees an indication of the ‘new politics’ operating within the Scottish Parliament, rather than a ‘wrecking’ nationalism.

Finally, whilst the GATS acronym is unfamiliar, the issues it raises are familiar to the point of cliché. Certainly, the involvement of multinational bodies in health and education policy-making, whether the WTO or the European Union, has mainly been a feature of the last three decades. However, there has been intermittent controversy over the involvement of private bodies in these sectors throughout the past century. Discussions concerning the GATS’s effects on Scottish health and education must, therefore, be placed within the context of much wider disagreements concerning the role of the state as against that of the private sector in the provision of Scottish welfare services.

ANNEXE: INTERVIEWS CONDUCTED

Black, Peter, Welsh Assembly Liberal Democrat Assembly Member. Wednesday 17 July 2002, Telephone.

Cemmel, James, Member of ESIB’s Committee On the Commodification of Education. South West Area NUS Convenor. Friday 2 August 2002, Telephone.

Diggens, Roland, Scottish Council for Development and Industry Parliamentary Officer. Thursday 18 July 2002, SCDI Offices, Edinburgh.

Fabiani, Linda, SNP MSP. Tuesday 11 June 2002, Scottish Parliament Offices, Edinburgh.

Farrell, Steve, Clerk to the Public Petitions Committee. Monday 10 June 2002, Scottish Parliament Offices, Edinburgh.

Hamnett, Andrew, Principal of Glasgow Strathclyde University and commentator on the GATS. Wednesday 10 July 2002, Glasgow Strathclyde University, Glasgow.

Hicks, Ele, Welsh People and Planet activist. Friday 19 July 2002, Telephone.

HE Civil Servant in the Enterprise and Lifelong Learning Department. Thursday 18 July 2002, Edinburgh and Glasgow.

Imrie, Stephen, Clerk to the European Committee. Thursday 6 June 2002, Scottish Parliament Offices, Edinburgh.

Scottish Affairs

- Jones, Polly, UK World Development Movement Officer. Tuesday 24 July 2002, Telephone.
- Jones, Helen-Mary, Plaid Cymru Assembly Member and Plaid's liaison officer with SNP. Monday 15 July 2002, Telephone.
- McAllion, John, Labour MSP. Thursday 13 June 2002, Scottish Parliament Offices, Edinburgh.
- McAlpine, Robin, Public Affairs Officer, Universities Scotland. Tuesday 28 May 2002, Universities Scotland Offices, Edinburgh.
- McKechin, Anne, Labour MP. Friday 21 June 2002, House of Commons, London.
- Okasha, Rami and Liam Jarneiki, NUS Scotland President and NUS Scotland Director. Thursday 13 June 2002, NUS Scotland Offices, Edinburgh.
- Rikowski, Ruth, Anti-GATS network, Information for Social Change. Thursday 20 June 2002, Forest Gate, East London.
- Scotland Office Civil Servant, Friday 30 August 2002, Telephone
- Senior, Mary, UNISON Scotland. Friday 12 July 2002, UNISON Scotland Offices, Glasgow.
- Stevenson, Peter, Compassion in World Farming Legal and Political Officer. Wednesday 19 June 2002, Charing Cross, Central London.
- Watson, John, World Development Movement Scotland, Monday 20 May 2002, WDM Scotland Offices, Edinburgh.
- White, Tracey, Assistant Secretary, Scottish Trade Union Congress. Thursday 27 June 2002, STUC Offices, Glasgow.
- Worth, Jess, People and Planet GATS campaigner. Wednesday 10 July 2002, Telephone.
- Young, Dr Ben, Scottish Civic Forum Research Officer for Democratic Participation Audit. Thursday 25 July 2002, SCF Offices, Edinburgh.

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