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Assessing the "Green Cross" Proposal for a Global Framework Convention on the Right to Water

Summary

The following offers a critical assessment of a proposal by Green Cross International and two other organizations to establish a Global Framework Convention on the Right to Water1 (the "Proposal"). It was prepared for Blue Planet Project on behalf of the Friends of the Right to Water.

The Proposal is presented by its authors as a response to growing public demand for a "legally binding, enforceable and universally accepted Global Framework Convention on the Right to Water." Several of the specific proposals put forward by the Proposal enjoy broad support from civil society groups which share the view that it is time to strengthen international law and legal rights concerning the human right to water.

However, while the Proposal is commendable for including several positive features, in other respects it is so seriously flawed as to represent a retreat from current international legal protection for the human right water. This protection is currently embodied by several treaties, and is considered integral to international human rights law. Particularly important in this regard is *General Comment 15* (the "General Comment") on Articles 11 and 12 of the *International Covenant on Economic, Social and Cultural Rights.*2

While the proposed *Framework Convention* brings forward many elements of the *General Comment*, it ignores several key provisions and presents a weaker articulation of others. Too often, the Proposal also ignores the terminology of international human rights law, substituting ill-defined concepts that introduce uncertainty about its intent and consequences.

Particularly problematic is the Proposal's definition of the *"right to water"* to include the use and

1 The Proposal is the product of a process initiated by Green Cross International, International Secretariat of Water, and the Maghreb-Machreq Alliance for Water. This critique concerns a draft proposal dated Feb. 5, 2005, as accessed on April 3, 2005 at http://www.greencrossinternational.net/watercampaign/doc/Convention_final2005.html

2 The comment offers an authoritative interpretation under international law, concerning the right to water, by the UN Committee on Economic, Social and Cultural Rights.

exploitation of water for such commercial purposes as energy generation and industry. This conflation of commercial and human rights fundamentally undermines that very rationale for a new international instrument concerning water as a *human* right, which is to guarantee that priority be given to human not commercial rights.

At the same time, the Proposal introduces the concept of "*water for life*," which is aptly defined to mean water of sufficient quality and quantity to satisfy the basic human, not commercial, needs. But having done so, it inexplicably fails to establish a binding obligation for State parties to ensure the priority of this human right to *water for life*, and to prohibit interference with it. On these quintessential points, the Proposal would in fact undermine current international legal rights to water.

Also problematic is the Proposal's thematic support for treating water as a commodity, and its tacit support for privatisation and free-market policies for water and water services. These principles are advanced in spite of growing evidence that they do not offer a viable model for providing social or public services.

As for the role of the private investment in water and water services, the Proposal has recently been revised to remove previous references to the role of the private sector, no doubt because these served as a lightning rod for those opposed to privatization. But these amendments are more cosmetic than substantive, and in fact raise new concerns. Thus while there is no explicit reference to the private sector in the current Proposal, it is clear that private for-profit companies are seen as playing a central role in water business. Moreover, in removing overt references the private sector, the obligation to regulate the sector for the purpose of ensuring the human right to water has also ended up on the editing floor.

More importantly, using a "human rights" instrument as a vehicle for imposing free-market economic policies represents an unprecedented incursion of such policies into the sphere of international human rights law. It is also not plausible to suggest that an international convention on the *right to water* is needed to establish a market for water and water services. It must also be noted that most nations have relied on public financing and ownership models to establish water and sanitation infrastructure. Nevertheless, the Proposal would obligate poorer nations to eschew the only development model that has consistently demonstrated its effectiveness.

A third and related concern is the failure of the Proposal to adequately address the central role played by international financial institutions such as the World Bank in funding water and sanitation infrastructure and services in developing countries where the lack of access to a basic water supply is most acute. Not only are the banks the primary funders of water and sanitation projects in developing countries, but the pro-privatization conditionality of lending and credit agreements is regarded by many as creating structural and institutional impediments to ensuring the universal human right to water.

Similarly, the Proposal fails to indicate whether its provisions will prevail when conflicts arise with other international instruments, particularly international trade, services and investment rules that are incompatible with, or explicitly prohibit, government measures needed to establish a meaningful human

right to water. The General Comment requires State parties to ensure that international trade and investment agreements do not adversely impact upon the right to water and that such agreements not inhibit a country's capacity to ensure the full realization of the right to water. The Proposal is silent on this crucial question.

The challenge of formulating a new international instrument concerning the human *right to water* raises several important policy and legal issues about which opinions are certain to differ. However, at a minimum, any new instrument concerning water as a human right must improve upon, not derogate from, current international legal protection for this right. Unfortunately the Proposal falls far short of this threshold and for this reason is likely, if implemented, to put the goal of assuring universal access to water for all humanity even further out of reach than it is today.

Defining the "Right to Water" to Include Commercial Interests

The Proposal defines "*right to water*" to mean "the fundamental right of access to '*water for life*' and '*productive water*'."

Distinguishing among these three concepts is key to understanding the intent and effect of the Proposal. *Water for life* is appropriately defined to mean water:

> *of sufficient quality and quantity to satisfy the basic human needs for drinking, hygiene, cleaning and cooking, and for producing food and revenues within the framework of a subsistence economy.*

Productive water is defined as water used for commercial purposes and includes water for industry and power generation.

While the Proposal indicates that *productive water* " … must be distinguished from the water for life, access to productive water is nonetheless guaranteed under the Proposal." The effect of these definitions is to conflate commercial and human rights to water. This was not the case for earlier drafts of the Proposal.

In fact, few provisions of the Proposal apply exclusively to water for life - *most are more broadly framed to include commercial interests as well.*

Unless these distinctions are kept clearly in mind, it is easy to overestimate the importance of the Proposal for advancing the cause of providing people, as opposed to commercial interests, with access to the water they need for basic sustenance. Conversely, the extent to which the Proposal would become a vehicle for asserting corporate and commercial rights might be overlooked.

Moreover the draft Proposal further conflates the right to water *with the* <u>*Human*</u> right to water*, which is not defined. For example, Article 2 - "The Human Right to Water," contains 8 provisions - only two of which apply explicitly to* water for life*. The confusion created by co-mingling these concepts and terminology creates the impression that the Proposal is far more concerned with basic human needs than it is.*

Moreover, by defining the right to water *as guaranteeing commercial access to water, and placing it on the same footing as the right to water for basic human needs, the Proposal may be seen as co-opting public interest and concern that motivates efforts to strengthen international legal rights to water for basic human needs.*

The deficiencies of the Proposal are even more apparent when considered against the obligations described by the General Comment, which focuses clearly on water essential to sustain human life and dignity.

While acknowledging that water is necessary for other purposes, and indeed to fulfill other human rights, the General Comment clearly states that priority in the allocation of water must be given to the *right to water* for personal and domestic uses, and to prevent starvation and disease.

By expanding the concept of the right to water to include commercial entitlement, the proposed *Framework Convention* removes one of the primary benefits of declaring water a human right, which is to ensure that that the minimum requirements of human life and dignity be given priority by State Parties.

State Obligations

Throughout, the Proposal fails to clearly set out the core obligations of State Parties. Instead, it offers broad and hortatory goals, without spelling out how these goals are to be achieved, or by whom. Among the more serious omissions in this regard are the following:

<u>No Binding Obligation to Provide Water for Life</u>

On the fundamental challenge of establishing a legally binding and effective obligation to ensure access to water for basic human needs, the Proposal represents a significant retreat from current international legal rights to water. For instance, paragraph 37 of the General Comment confirms that State parties have a

core obligation to "ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated …." and lists ten core obligations which are to have immediate effect. These include binding obligations to:

- ensure access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease [37(a)];

- adopt and implement a national water strategy and plan of action.. [26 and 37(f)]; and

- monitor the extent of the realization, or non-realization, of the right to water [37(g)].

The proposed *Framework Convention* fails to bring forward most of these core obligations. Thus, Article 3, titled *The Right to a Sufficient Quantity of Water*, remarkably fails to establish a positive obligation on the State parties to provide water to anyone.

At first glance, Article 4.2 of the Proposal – *The Right to Clean Water* – might appear to address this deficiency by stipulating that:

> *States shall ensure universal access to drinking water and sanitation, as well as acceptable sanitary installations on an equitable and non-discriminatory basis, in urban as well as rural areas.*

To be sure, this is an important and positive obligation. The problem however, arises from the fact that it is framed in a manner that sidesteps the putative goals of the *Framework Convention*. This is because Article 4.2 does not in fact oblige the State parties to provide *water for life*, but only the *right to water*. Thus, "universal access" as defined here includes both human and commercial use, with neither being given priority. Furthermore, the failure of Article 4 to incorporate the concept of *water for life* also skirts the obligation to ensure access to water or sanitation at an affordable price, which is a condition that applies only to *water for life* (Article 2.5).

The other substantive reference to drinking water underscores this concern. Thus under Article 6.2 "drinking water needs of individuals" are to be balanced with "the needs of agriculture and cattle farming, industry and energy production, and leisure activities". In other words, the State parties, in providing universal access to drinking water and sanitation, have no obligation to give priority to human needs over those of industry and commerce.

Here again, the Proposal would negate existing international obligations because the General Comment clearly states that in allocating water, priority must be given to the right to water for personal and domestic uses and to other core obligations. Thus, State parties may balance water used for domestic purposes and industrial uses, but only *after* essential domestic and subsistence needs are met. As we have seen, the Proposal consistently ignores this crucial priority.

In sum, a superficial reading of Article 4.2 creates the false impression that it imposes an obligation on State parties to ensure access for all to water that is affordable, and sufficient in quality and quantity to satisfy basic human needs. A more careful reading reveals that this is not the case.

No Binding Obligation to Prevent Persons From Being Deprived of Access to Essential to Basis Human Needs

The draft Proposal of July 2004, included an explicit acknowledgement by State parties of the need to "prohibit the disconnection of persons from their domestic water supply . . ." This proviso essentially reiterated a requirement set out by the General Comment (see para. 56). Unfortunately, its most recent iteration retreats from imposing an obligation for State parties to prevent anyone from being "deprived of the minimum essential level of water." Instead, it defines *water for life* to mean "interrupted access to water for household uses for communities and individuals that are currently deprived of it and/or for the poor."

It is important in this regard to appreciate the difference between a hortatory or declaratory provision on the one hand, and an explicit obligation for State parties to achieve measurable goals, on the other. Defining *water for life* in strong terms is of little utility if the Parties are under no substantive obligation to actually provide, and prevent interference with, this essential human right. As we have seen, the most glaring deficiency of the Proposal is its failure to establish either obligation as a binding commitment for State Parties.

No Commitment to Measurable Progress

Linked to these concerns is the failure of the Proposal to incorporate the principle of *progressive realization.* This concept is important because it acknowledges the resource and capacity constraints facing many nations, but nevertheless establishes certain immediate obligations and obliges State parties to move consistently forward towards the full realization of the human right to water.3 The failure to stipulate a requirement for progressive realization establishes no accountability standard for judging the actions of nations that lack the capacity to achieve all of the Proposal's goals over the short term.

A related concern is the failure of the Proposal to establish an obligation for State parties to develop and monitor plans for realizing the goals of providing access for all persons to *water for life.* The failure to include these obligations, or to acknowledge the principle of progressive realization, reinforces the view that the obligations of the Proposal are to be taken as hortatory, rather than as binding obligations for which nations will be held to account.

No Obligation to Respect International Human Rights Norms

Article 2 – *The Human Right to Water* - includes two provisos having to do with non-discrimination based on gender and age, but neglects to include other international norms relating to non-discrimination. Some, but not all of these rights are included in Article 7. This discrepancy in enumerating protected rights is unexplained.

It is essential for the draft to stipulate, as it does not, that all steps taken by State parties to implement

3 See General Comment 17-19 and 45.

the Proposal be carried out in a manner that is consistent with the requirements of the Proposal and international law concerning human rights.

International Obligations

Paragraphs 30 through 36 of the General Comment emphasize the crucial role that international cooperation and assistance must play if the full realization of the right to water is to be achieved. Few of these obligations are taken up by the Proposal, which addresses these issues in Articles 2.7 and 7. The following identifies three of the more significant deficiencies of the Proposal in this regard.

No Obligation To Provide Technical and Financial Assistance

The Proposal fails to establish a positive obligation for wealthy nations to provide international assistance and cooperation, especially economic and technical assistance, to poorer nations. As noted, the importance of such assistance is emphasized by the General Comment4 which stresses the special responsibility of economically developed states to facilitate the realization of the right to water in poorer nations.

The General Comment also stipulates an obligation on the part of State parties to establish legal and political constraints on resident companies to ensure that these do not violate the right to water in other countries. Establishing legal accountability for transnational corporations in their home jurisdictions can provide a powerful incentive for them to adhere to the goals of ensuring water or life, but the Proposal also fails to incorporate this requirement.

Failure to Specify Relationship with Other Instruments

Article 2.7 of the Proposal provides that:

> *The right to water shall be taken into account and used as an indicator in multilateral and bilateral trade, economic and financial negotiations.*

Paragraphs 35 and 36 of the General Comment go much further by essentially calling for the reconciliation of international trade and investment treaties to ensure that these support, not undermine, the human right to water.

The importance of requiring this policy integration is crucial because international trade, services and investment regimes explicitly apply to water and water services. Moreover, the trade liberalization policies codified by these treaties are often difficult to reconcile with the non-market objectives of ensuring universal access to water for human needs. In fact these regimes explicitly prohibit some measures that may be needed to establish the human right to water, such as regulation of foreign investment in water and water services, including requirements relating to technology transfer, or the

4 Paragraphs 34 and 38

reinvestment of a percentage of profits for infrastructure improvement.5

Of particular concern are the provisions of international investment treaties which may be enforced privately, and which have been now invoked to challenge groundwater protection measures, or to claim damages from developing countries when water privatisation projects fail.6 These latter disputes have consistently involved questions of water rates and service obligations to people who can afford only nominal fees for water. Despite the broad societal implications of such claims, they are resolved by international commercial tribunals that have no competence to consider, let alone apply, international law concerning human rights, including the right to water.

It may be possible to reform international trade and investment law to incorporate water as a human right, but until that occurs it is essential to stipulate, as the Proposal does not, that in the event of conflicts with international commercial agreements, the requirements of international law relating to the water as a human right must prevail.

Failure to Address the Policies and Practices of International Financial Institutions

Virtually all nations where the need for water is greatest, are dependent upon funding or credit arrangements from international financial institutions ("IFIs"), such as the World Bank, to establish water infrastructure and services. These financial institutions have enormous influence in dictating the terms upon which such projects will proceed and often insist that recipient nations privatise water services and implement market oriented economic policies.

Yet the Proposal essentially ignores the role of IFIs, which accordingly would remain free to implement policies that may fundamentally undercut the goals of the proposed *Framework Convention*. The obligations of a poor nation under the Proposal concerning pricing and access to water will mean very little if it is compelled, by the terms of a lending or credit agreement, to implement market oriented policies that are incompatible with, or explicitly prohibit non-market pricing or service obligations. Similar problems arise where water services are privatised and nations lose effective, if not formal, control over pricing and service policies.

Certainly, the challenge of ensuring that IFIs adhere to the objectives and goals of international human rights law concerning water is a formidable one. Nevertheless, it is difficult to imagine serious progress being made to ensure universal access to *water for life* unless these institutions are legally bound to adopt funding policies and programs that incorporate the values and requirements necessary for achieving that goal.

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5 It is typical for bilateral and multilateral investment treaties to preclude the imposition of various performance requirements on foreign investors, including requirements relating to technology transfer, local procurement, and certain types of sales or service restrictions. There are more than 2000 such treaties now extant. See International Centre for Sustainable Development, Bilateral Investment Treaties and Development Policy-Making and related publications http://www.iisd.org/publications/publication.asp?pno=658

6 Howard Mann, *Private Rights and Public Problems* (International Institute for Sustainable Development and the World Wildlife Fund, 2001). This may in part explain why there has yet to be a State-to-State claim under NAFTA investment rules.

No Provision for International Enforcement

Under the heading Principles of Participation and Transparency, *Article 9 sets out certain obligations relating to "water governance" and to the enforcement of the rights established by the Proposal.*

As noted, the substantive obligations of the Proposal fall far short of those engendered by the General Comment. Of particular concern is the failure of the Proposal to establish a binding and progressive obligation for State parties to provide universal access to *water for life.*

That being said, the effectiveness of the enforcement provisions of the Proposal is paramount if the obligations it establishes are to be taken seriously. For the reasons which follow, the Proposal fails to specify or require the establishment of meaningful and effective remedies for those denied or cut off from access to *water for life.*

Section 55 of the *General Comment* provides that:

> *Any persons or groups who have been denied their right to water should have access to effective judicial or other appropriate remedies at both national and international levels… All victims of violations of the right to water should be entitled to adequate reparation, including restitution, compensation, satisfaction or guarantees of non-repetition. National ombudsmen, human rights commissions, and similar institutions should be permitted to address violations of the right.*

The Proposal, on the other hand, only calls for the establishment of national judicial remedies, again retreating from current international legal protections for the human right to water. However, the availability of effective international legal remedies is crucial for people in nations where water deprivation is serious, but where domestic administrative and judicial institutions are unreliable. Nevertheless, even in cases of persistent non-compliance by a State party which local remedies have failed to resolve, the Proposal provides no recourse to individuals or groups denied access to *water for life.*

Several models for creating legal remedies for human rights abuses or deprivation exist under international law. Regrettably the Proposal fails to adopt or draw upon these precedents.

The Commodification of Water and the Privatization of Water Services as Promoted by the Proposed Framework Convention

Article 10 of the Proposal addresses various issues relating to *Financing Water Services for the Sake of the Right to Water*. The Article does not, however, specifically address the particular challenges of financing water infrastructure and services needed to ensure access to *water for life.* Rather the focus here is on the *right to water*, which as noted, includes both commercial and human use.

In general terms, Article 10 offers tacit and sometimes explicit support for the commodification of water, the privatization of water services, and the implementation of market policies with respect to the financing of water infrastructure. At the same time, Article 10.3 stipulates that *ownership of water equipment and infrastructures shall rest with national or local authorities.* While this is an important proviso, legal title does not ensure effective public management and control of water infrastructure. For example, public-private partnership agreements typically leave formal ownership with the public sector while transferring effective control of facilities to the private sector pursuant to concession contracts that routinely last for decades.

To contain the free market forces it would thus unleash, the Proposal calls upon the State parties to establish regulatory frameworks to ensure access to water and sanitation services for the hundreds of millions who have no realistic ability to participate in the market. However, there is good reason to be skeptical about the capacity of poor nations to establish robust regulatory regimes to contain the power and influence of the global conglomerates that dominate the water services sector.

Because of the importance of these provisions, the following offers a clause by clause assessment of Article 9.

1. *Water shall not be exploited for excessive profits and speculative purposes.*

   This provision contemplates the commodification of water but seeks to limit profiteering, as did 10.5 of the preceding draft, which called for the reinvestment of a certain percentage of profits to ensure access for the poor to water. That requirement, which would have likely offended the constraints of international investment treaties, has been abandoned by this latest draft.

   No attempt is made to define "excess", and it is unrealistic to expect an international convention to include an obligation for Parties to regulate corporate profits associated with a particular enterprise to some ill-defined international standard.

   The Proposal also fails to safeguard the sovereign authority of nations to maintain public ownership of water, or to regulate or prohibit private investment in the water sector.

2. *Under the local, national and international budgetary resources allocated to investment expenditure in the water sector, priority shall be given to access to water, particularly for the poor and those without access.*

   This is an important and progressive requirement. However, as noted, the capacity of poor nations to comply with this obligation will depend on their ability to insist that this priority be included as a condition of any loan or credit agreement negotiated with the World Bank or other international financial institution. But the leverage enjoyed by poor nations in such negotiations is negligible and, as discussed, the Proposal makes no effort to bind IFIs on this crucial issue.

3. *The ownership of water equipment and infrastructures shall rest with national or local authorities.*

See introductory comment on page 9.

4. *The prices of water supply and sanitation services shall take into account the lasting character of the service, sustainability of water resources, the protection of public health and of the environment, and social cohesion.*

These principles are also sound, but stop short of requiring State parties to set prices in a manner that will ensure access to *water for life*. Articles 10.6 and 10.8 which establish positive obligations concerning universal access to and affordability of water services are also constructive, but once conflate human rights with commercial claims by applying only to the *right to water*.

Apart from this threshold concern, the broad principles engendered by these provisions may be applauded. This being said, effective price regulation of water and sanitation services will be very difficult to implement where control of the monopoly infrastructure is ceded to powerful international corporations pursuant to lending and credit agreements that may disparage or preclude such regulation.

The problem arises from the powerful forces unleashed by the privatization model the Proposal tacitly supports, namely the fiduciary obligation of corporate directors to maximize returns, while reducing risks, to shareholders. Countering these pressures is a serious challenge for any nation seeking to achieve competing societal goals, such as environmental protection. It is particularly daunting for developing nations with modest policy and regulatory institutions and little bargaining power. Moreover, the capacity of governments to impose price and service obligations once water infrastructure is privatized is seriously constrained by international services and investment agreements to which most developing countries are parties.

5. *There are many different ways, innovative and recognized, to ensure the financing of water services: collective labour in rural areas, community participation, etc.*

Support for privatization of water services was explicit in preceding drafts. In this draft it is either implied (see reference to profits and the market model) or, as is the case here, couched in broad generalities. See also comment #9 below.

No definition of 'community' is offered, nevertheless the term is used on several occasions.

6. *A regulatory framework needs to be established in order to organize the participation of communities in the financing and management of water services, as well as the redistribution of costs so as to ensure a universal service.*

See comment #4 above.

7. *Arbitration mechanisms shall be created in order to solve any budget-related conflicts between different sectors.*

   No reference to arbitration appeared in earlier drafts, and the intent of this provision is unclear. It is of concern, however, that international commercial arbitration has become the favorite venue for transnational corporations seeking damages when water privatization projects fail to produce expected returns. The challenge for a new instrument on the right to water is to ensure that international bodies called upon to resolve disputes concerning water are competent to consider, and bound to give effect to, the human right to water. As noted, international commercial arbitral tribunals have neither competence nor authority to weigh such concerns.

8. *Water services shall be complemented, at the national and local level, by guarantees designed to ensure that water is provided at an affordable price and that provision is made for targeted and transparent subsidies in order to protect the rights of disadvantaged communities.*

   See comment #4 above.

9. *The financing of "productive water" projects and infrastructures shall follow economic efficiency rules — and not only market rules — in accordance with national regulations and international standards that guarantee the right to water.*

   It is unclear whether this provision intends to limit the application of market rules to *productive* water projects and infrastructure, and therefore not apply to projects and infrastructure intended to ensure access to *water for life.* If in fact this is the intent, it is unclear how the distinction could be made for infrastructure that often serves the needs of individuals, institutions and the commercial sector. Equally unclear is the status of 'productive uses' by marginalised and vulnerable groups.

   The terms "economic efficiency rules" and "market rules" are undefined. Despite their juxtaposition, both are commonly used to describe the same normative concepts of market efficiency. In this regard, it should be noted that the establishment of water and sanitation infrastructure in most nations has not followed market rules, but rather has relied upon public funding, general tax revenues, and subsidies. Nevertheless, the Proposal would impose a binding obligation on those nations least equipped to participate in the market economy, to eschew the only development model that has consistently demonstrated itself to be effective.

   However, the most remarkable aspect of this particular provision is that it seeks to use an international "human rights" convention to entrench policies of economic and investment liberalization that are controversial, and for many in civil society and developing nations alike, entirely incompatible with the notion of water as a human, not economic right. It is noteworthy

that even in the context of the WTO, such proposals have failed.7 Nevertheless, the Proposal would impose market disciplines as a binding requirement of international law on every State party to the proposed Framework Convention.

Finally, on the issue of commodification, Article 7.1 states that "water in its natural state is a public good", indicating that once removed from its natural state no such stipulation applies, thus allowing water to be treated as a private good or commodity. No attempt is made to define when water will be considered to have been removed from its natural state. Coupled with the Proposal's failure to require State parties to regulate water takings or diversions, this proviso may open the door to wholesale commodification of water.

In sum:

The foregoing critique hi-lights some, but certainly not all of the deficiencies of the proposed Global Framework Convention for a new international instrument concerning the *right to water*. Admittedly the critique focuses on the weaknesses of the Proposal and overlooks some stronger points, such as its support for the precautionary and 'polluter pays' principles. However, given the seriousness of the Proposal's shortcomings, this seems warranted, because if implemented, the Proposal would represent a significant diminishment of current international law concerning water as a human right.

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7 The inclusion of trade liberalization for investment, competition policy (the "Singapore Issues" has been consistently rejected by the majority of WTO members, see for example, ICTSD, Bridges Weekly, Vol.7 no.43, Dec. 17, 2003.