- Rules ensuring that the CDM is a credible, effective mechanism. To ensure credibility it is essential that certified emission reductions represent emission reductions that would not have occurred in the absence of the CDM. In the opinion of the ENGO community, the setting of project by project baselines with no limits on the types of project acceptable under the CDM is unlikely to ensure additionality. The setting of stringent benchmarks for a limited range of project types that are "additional" in the vast majority of cases is likely to be far more effective in ensuring the environmental integrity of the CDM.

- Rules ensuring that the methods for calculating JI emission reduction units are rigorous and credible. Because ERU vendors may be permitted to sell ERUs when their nation is out of compliance with reporting requirements, rigorous rules for ERU creation are essential to guard against nations "end-running" restrictions on emissions trading that will almost certainly exist when a nation is out of compliance with reporting requirements. As noted above, use of default factors will not solve this problem unless they represent the upper limit of possible emissions.

- Rules for the sharing of liability between buyers and sellers that ensure that emissions trading does not reduce the environmental effectiveness of the Kyoto Protocol. Rules must avoid the risk that cash strapped nations or nations with poor domestic monitoring systems will oversell their emission rights. The international system is likely to react too slowly to effectively restrict overselling. And the nations most likely to oversell (Russia and the Ukraine) are unlikely to have the economic wherewithal to remedy non-compliance through trading. Thus, it appears that the only way to ensure trading does not reduce the Protocol's effectiveness is through a joint buyer/seller responsibility approach to emissions trading.

- Rules to effect the "supplementarity" requirements. Although only Articles 6 and 17 specifically deal with supplementarity, in order for the Kyoto Protocol to provide an effective incentive for new technologies and shifts in energy production and consumption patterns, it is essential that all flexibility mechanisms be supplemental to domestic action.

- Rules clarifying that investments under the CDM, trading in emission rights, or domestic restrictions or taxes on the purchase of emission rights, CERs or ERUs are not subject to existing or future international agreements on trade or investment.

Environmental groups will want to be actively involved in the development of Canada's positions on these issues and encourage Canada to play a leading role in ensuring that the Kyoto mechanisms do not simply become 'loopholes' that weaken the environmental integrity of the Protocol.

Finally, we would like to emphasize that the fact that the Kyoto Protocol (in particular, the Kyoto mechanisms) will not be fully elaborated until COP-6 in no way should be used as a rationale for delaying the design and implementation of Canada's domestic climate change action plan. The government has been clear that Canada will meet the majority of its Kyoto obligations through actions at home. If we are to meet this objective, meaningful action is required immediately.

This report was prepared by Chris Rolfe (West Coast Environmental Law Association)