

AMENDMENT TO MONTREAL PROTOCOL

("KIGALI AMENDMENT")

MAY 26, 2022.—Ordered to be printed

Mr. MENENDEZ, from the Committee on Foreign Relations,

submitted the following

REPORT

[To accompany Treaty Doc. 117-1]

The Committee on Foreign Relations, to which was referred the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the “Montreal Protocol”), Adopted at Kigali on October 15, 2016, by the Twenty-Eighth Meeting of the Parties to the Montreal Protocol (“The Kigali Amendment”) (Treaty Doc. 117-1), having considered the same, reports favorably thereon with one declaration, as indicated in the resolution of advice and consent, and recommends that the Senate give its advice and consent to ratification thereof, as set forth in this report and the accompanying resolution of advice and consent.

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I. PURPOSE

The purpose of the Kigali Amendment to the Montreal Protocol is to update the Montreal Protocol to add to its phasedown framework 18 harmful chemicals called hydrofluorocarbons (HFCs), which will facilitate the transition to next-generation, more efficient refrigerant chemicals, including those developed and manufactured by U.S. companies and workers.

II. BACKGROUND

The Treaty would be the fifth amendment to the Montreal Protocol; the Senate provided advice and consent to the Montreal Pro-

tocol and to the prior four amendments on an overwhelming, bipartisan basis. Major U.S. companies and industry groups, including those in the chemicals, retail, and manufacturing industries, strongly support U.S. ratification of the Kigali Amendment.

The principal features of the Kigali Amendment closely parallel control measures for other controlled substances under the Montreal Protocol. The Kigali Amendment provides for the gradual phasedown of the production and consumption of 18 listed HFCs between 2019 and 2036, subject to certain exemptions. The Amendment contains a stepwise phasedown schedule that would require a 10 percent reduction upon entry into force for the United States, a 40 percent reduction by 2024, a 70 percent reduction by 2029, and an 80 percent reduction by 2034. The last step of the phasedown would be an 85 percent reduction by 2036.

The Kigali Amendment amends the trade provisions in Article 4 of the Montreal Protocol to treat HFCs like other controlled substances, that is, Parties to the Amendment are banned from trading in HFCs with a non-Party, beginning in 2033. The Kigali Amendment similarly amends the Montreal Protocol's licensing provisions under Article 4B, to treat HFCs like other controlled substances by requiring each Party to establish a system for licensing the import and export of new, used, recycled, and reclaimed HFCs. The Amendment extends the Montreal Protocol's reporting regime in Article 7 to HFCs, by requiring Parties to report annually on their production and consumption of HFCs. The Amendment also requires Parties to destroy, to the extent practicable, by-product emissions of HFC-23, a highly potent greenhouse gas generated from the production of some substances listed in Annexes C and F of the Montreal Protocol, and to report on these efforts. Provisions related to the financial mechanism in Article 10 extend the scope of the financial mechanism to support implementation of the Amendment.

A business community witness testified before the committee that transitioning away from HFCs, including through U.S. ratification and global implementation of the Kigali Amendment, will generate new U.S. jobs and revenue for U.S. businesses. Further, the President's transmittal package cited a study conducted in 2018 by Inforum, the University of Maryland's Interindustry Forecasting Project, on behalf of the Air-conditioning, Heating, and Refrigeration Institute and the Alliance for Responsible Atmospheric Policy, which estimated that joining the Kigali Amendment and its global implementation will result in the creation of 33,000 new domestic manufacturing jobs, \$4.8 billion annually of increased exports, and \$12.5 billion of increased economic output per year.

The Kigali Amendment was negotiated among Parties to the Montreal Protocol, including the United States, and reflects significant input from the United States government and U.S. industry. It entered into force on January 1, 2019 and currently has 131 Parties.

III. IMPLEMENTING LEGISLATION

The Kigali Amendment is not self-executing; however, no further legislation is required to implement it. On December 27, 2020, the American Innovation and Manufacturing (AIM) Act of 2020 was enacted, which provides the Executive Branch with the necessary au-

thorities to phase-down the production and consumption of HFCs in the United States, consistent with the Kigali Amendment. The U.S. Government is already implementing the AIM Act.

IV. COMMITTEE ACTION

The Committee on Foreign Relations held a hearing to consider the Kigali Amendment on April 7, 2022. On May 4, 2022, the committee considered the Kigali Amendment and ordered it favorably reported by voice vote, with a quorum present.

V. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations believes that ratification of the Kigali Amendment will advance the interests of U.S. businesses and consumers, by contributing to the global adoption of next-generation refrigerant technologies in which U.S. industry leads and by opening markets to U.S. businesses. As a consequence, it will generate revenue and create U.S. jobs, while addressing harmful chemicals. Meanwhile, citing Article 4 of the Kigali Amendment, government and industry witnesses emphasized in their testimony before the committee the serious risks associated with U.S. businesses being locked out of the global trade in HFCs with the large and growing number of Parties to the treaty, if the United States fails to ratify the treaty. The committee therefore urges the Senate to act promptly to give advice and consent to ratification of the Kigali Amendment, as set forth in this report and the accompanying resolution of advice and consent.

The committee has included in its resolution of advice and consent one proposed declaration, which states that the Kigali Amendment is not self-executing. This declaration is consistent with the views of the executive branch. Historically, the Senate had not routinely included statements regarding the self-executing nature of treaties in resolutions of advice and consent, but in light of the Supreme Court decision, *Medellin v. Texas*, 552 U.S. 491 (2008), the committee has determined that a clear statement in the resolution continues to be warranted. A further discussion of the committee's views on this matter can be found in Section VIII of Executive Report 110–12.

VI. TEXT OF RESOLUTION OF ADVICE AND CONSENT TO RATIFICATION

Resolved (two-thirds of the Senators present concurring therein),

SECTION 1. SENATE ADVICE AND CONSENT SUBJECT TO A DECLARATION

The Senate advises and consents to the ratification of the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer (the “Montreal Protocol”), adopted at Kigali on October 15, 2016, by the Twenty-Eighth Meeting of the Parties to the Montreal Protocol (“The Kigali Amendment”) (Treaty Doc. 117–1), subject to the declaration of section 2.

SECTION 2. DECLARATION

The advice and consent of the Senate under section 1 is subject to the following declaration:

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The Kigali Amendment is not self-executing.

