

# Forcing the UN's Hand on China

## Ending the CCP's preferential treatment on environmental treaties

By Ben Lieberman

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Most United Nations (UN) environmental treaties are a bad deal for America that are made worse by classifying China as a developing nation and thus handing it relatively lenient treatment. Doing so gives China a competitive advantage over the US and other developed nation signatories that must contend with more challenging treaty obligations. In its September 2022 deliberations over ratification of a UN treaty provision called the Kigali Amendment, the US Senate signaled that it finally had enough of this unfair bargain. It ratified the treaty provision, but included a requirement that the State Department request the UN to reclassify China as a developed nation.<sup>1</sup>

China is now the world's second largest economy and largest exporter. The idea of holding it to the same standards as the US and other developed nations has rapidly gained popularity in Congress.<sup>2</sup> Since the Kigali Amendment vote, legislation extending the China reclassification provisions to all treaties was enacted as part of the National Defense Authorization Act for Fiscal Year 2024 (NDAA).<sup>3</sup> Most significantly, this would include the 1992 UN Framework Convention on Climate Change (UNFCCC).

Such legislation is a welcome first step, but merely asking the UN to change China's status is insufficient. Congress also needs to make sure that there are concrete consequences under these treaties until the change is made. This OnPoint provides background on China's favorable treatment under environmental agreements and makes the case for taking steps to end this favoritism.

### Montreal and Kigali

The Montreal Protocol on Substances That Deplete the Ozone Layer (Montreal Protocol) dates back to 1987, and originally targeted a class of compounds called chlorofluorocarbons (CFCs) on the grounds that they contribute to depletion of the earth's ozone layer.<sup>4</sup>



CFCs (often called Freon), which were widely used as refrigerants at the time, have since been replaced in new air conditioning and refrigeration equipment and in many industrial processes by hydrofluorocarbons (HFCs).

Article 5 of the Montreal Protocol set out a process by which qualifying parties would be granted developing nation status and thus be subject to special consideration under the treaty.<sup>5</sup> China was among the countries so designated by the UN at the time, and the designation has never been updated.

- <sup>1</sup> United States Senate, Roll Call Vote on the Kigali Amendment, September 21, 2022, [https://www.senate.gov/legislative/LIS/roll\\_call\\_votes/vote1172/vote\\_117\\_2\\_00343.htm](https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00343.htm); S.Amdt. 5518 to Treaty Document 117-1, September 21, 2022, <https://www.congress.gov/amendment/117th-congress/senate-amendment/5518>.
- <sup>2</sup> Brett Schaefer, *The U.S. Must Challenge China's Status as a Developing Country in International Organizations and Treaties* (Washington, DC: The Heritage Foundation, March 22, 2023), <https://www.heritage.org/asia/report/the-us-must-challenge-chinas-status-developing-country-international-organizations-and>.
- <sup>3</sup> H.R. 2670 - National Defense Authorization Act for Fiscal Year 2024, 118th Congress, First Session, <https://docs.house.gov/billssthisweek/20231211/FY24%20NDAA%20Conference%20Report%20-%20%20FINAL.pdf>.
- <sup>4</sup> United Nations, Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), September 16, 1987, <https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-english.pdf>.
- <sup>5</sup> United Nations, Montreal Protocol, Article 5, Special Situation for Developing Countries, September 16, 1987, <https://ozone.unep.org/treaties/montreal-protocol/articles/article-5-special-situation-developing-countries>.

Decades later, the scope of the Montreal Protocol was expanded. Although HFCs were initially hailed as environmentally-friendly alternatives for CFCs, they were later branded as contributors to climate change. At an October 2016 Montreal Protocol meeting in Kigali, Rwanda, an amendment was added to the Montreal Protocol phasing down HFCs as well.<sup>6</sup> This amendment is known as the Kigali Amendment. The favorable treatment given China and other designated developing nations under the original Montreal Protocol also extends to the Kigali Amendment.

## Senate ratification of Kigali

Deliberations over the constitutionally-required Senate ratification of the Kigali Amendment occurred in September of 2022. The lobbying efforts were a largely one-sided affair, as many advantage-seeking corporations – led by major chemical producers that have patented a suite of pricey substitutes for HFCs – found common cause with environmental activists in supporting the global crackdown on these chemicals.<sup>7</sup>

The Competitive Enterprise Institute led coalition letters sent to the Senate in 2021 and again in 2022 urging opposition to the Kigali Amendment.<sup>8</sup> The 2022 letter noted:

*China is classified as a developing nation under the Kigali Amendment, which allows it to benefit from highly favorable treatment as compared to the US and other developed nations. Developing nations were granted an extra decade to phase down their HFC production, so China will still have plentiful supplies for domestic use long after the US. Also, China and other developing nations will be eligible for financial assistance from the United Nations through a special multilateral fund set up under the Montreal Protocol*

*and applicable to the Kigali Amendment. The US is the single largest contributor to that fund.*

*Thus, under the Kigali Amendment China gets the best of all worlds – it can continue mass producing and using cheaper HFCs domestically for years after supplies begin to dry up in the US, including their use in industrial processes that give it an unfair advantage over American competitors. At the same time, China will be receiving millions of dollars in financial assistance from the US and other developed nations to help it comply with the Kigali Amendment.<sup>9</sup>*

Alas, the Senate did not go along with this letter's recommendation to reject the Kigali Amendment, which was ratified by a margin of 69 to 27.<sup>10</sup> But it did include an important and unprecedented amendment requiring that China's status as a developing nation be challenged. Sens. Dan Sullivan (R-AK) and Mike Lee (R-UT) offered that amendment, which requires the State Department to request the UN to change China's classification to that of developed nation.<sup>11</sup> The Sullivan-Lee amendment passed unanimously, 96-0.<sup>12</sup>

Nearly two years before the Kigali vote, Congress had already enacted its own restrictions on HFCs in the American Innovation and Manufacturing Act of 2020.<sup>13</sup> This costly domestic counterpart to the Kigali Amendment is a big part of the reason why the expense of repairing a home air conditioner has increased and why new equipment prices are also on the rise.<sup>14</sup> Beyond consumers, many manufacturing processes also rely on HFC-dependent equipment, thus American manufacturers face higher costs over the eventual replacement of this equipment with more expensive new systems designed to use substitutes for HFCs.<sup>15</sup>

The domestic HFC restrictions are hurting the American economy, but many Kigali Amendment proponents argued that a global treaty would level the playing field.<sup>16</sup> This

<sup>6</sup> United Nations, Kigali Amendment to the Montreal Protocol (Kigali Amendment), October 10-15, 2016, <https://ozone.unep.org/treaties/montreal-protocol/amendments/kigali-amendment-2016-amendment-montreal-protocol-agreed>.

<sup>7</sup> Ben Lieberman, "Full Court Press on Kigali Amendment Begins," Competitive Enterprise Institute, June 2018, <https://cei.org/blog/full-court-press-on-kigali-amendment-begins/>.

<sup>8</sup> Competitive Enterprise Institute, Letter to the US Senate on the Kigali Amendment, November 17, 2021, [https://cei.org/wp-content/uploads/2021/11/Kigali\\_Amendment\\_Coalition\\_Letter.docx.pdf](https://cei.org/wp-content/uploads/2021/11/Kigali_Amendment_Coalition_Letter.docx.pdf); Competitive Enterprise Institute, Letter to the US Senate on the Kigali Amendment, May 3, 2022, [https://cei.org/wp-content/uploads/2021/11/Kigali\\_Amendment\\_Coalition\\_Letter.docx.pdf](https://cei.org/wp-content/uploads/2021/11/Kigali_Amendment_Coalition_Letter.docx.pdf).

<sup>9</sup> Competitive Enterprise Institute, 2022 Letter to the US Senate, p. 2.

<sup>10</sup> United States Senate, Roll Call Vote on the Kigali Amendment, September 21, 2022, [https://www.senate.gov/legislative/LIS/roll\\_call\\_votes/vote1172/vote\\_117\\_2\\_00343.htm](https://www.senate.gov/legislative/LIS/roll_call_votes/vote1172/vote_117_2_00343.htm).

<sup>11</sup> Office of Sen. Mike Lee, "Lee Amendment: No More Special Treatment for China," press release, September 21, 2022, <https://www.lee.senate.gov/2022/9/lee-amendment-no-more-special-treatment-for-china>.

<sup>12</sup> S.Amdt. 5518 to Treaty Document 117-1, September 21, 2022, <https://www.congress.gov/amendment/117th-congress/senate-amendment/5518>.

<sup>13</sup> 42 U.S.C. § 7675, [https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section7675\(a\)&num=0&edition=prelim](https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section7675(a)&num=0&edition=prelim).

<sup>14</sup> Comments of the Competitive Enterprise Institute to the Environmental Protection Agency Regarding the American Innovation and Manufacturing (AIM) Act, Docket No. EPA-HQ-OAR-2021-0044, July 6, 2021, [https://cei.org/regulatory\\_comments/comments-to-epa-regarding-the-american-innovation-and-manufacturing-aim-act/](https://cei.org/regulatory_comments/comments-to-epa-regarding-the-american-innovation-and-manufacturing-aim-act/); Ben Lieberman, Competitive Enterprise Institute, Testimony before the House Committee on Energy and Commerce, September 13, 2023, [https://cei.org/congressional\\_testim/ceis-ben-lieberman-testifies-before-energy-and-commerce-committee-on-doe-efficiency-standards-for-home-appliances/](https://cei.org/congressional_testim/ceis-ben-lieberman-testifies-before-energy-and-commerce-committee-on-doe-efficiency-standards-for-home-appliances/).

<sup>15</sup> Ben Lieberman, "Businesses Critical of Costly Climate Bill Finally Get to Weigh in," Competitive Enterprise Institute, April 2020, <https://cei.org/blog/businesses-critical-of-costly-climate-bill-finally-get-to-weigh-in/>.

<sup>16</sup> See, US Chamber of Commerce, Coalition Letter on the Kigali Amendment to the Montreal Protocol, June 22, 2022, <https://www.uschamber.com/environment/coalition-letter-on-the-kigali-amendment-2>.

is simply not the case, and in fact Kigali makes things worse by codifying a regime in which the US is placed at a global disadvantage. As noted in CEI's 2022 letter, the UN gives special consideration to China and other designated developing nations under both the original Montreal Protocol and the Kigali Amendment.

Specifically, these nations are subject to a phasedown of HFC production that is a full decade slower and thus can continue to use them long after the US and other developed nations will have to move on to costlier substitutes.<sup>17</sup> Developing nations also qualify for compliance assistance from the Montreal Protocol Multilateral Fund for which the US is the single largest contributor.<sup>18</sup> In other words, American taxpayers are on the hook to help China comply with its already-weaker treaty requirements as compared to the US.

## Reclassification request not enough

The 35th meeting of the parties to the Montreal Protocol was held in Nairobi, Kenya from October 23rd through 27th of 2023. It was the first UN meeting in which the US request to change China's status was on the agenda.<sup>19</sup> No progress on the matter has been reported, and in fact China strongly protested even discussing it.<sup>20</sup> The parties did agree on a record-high \$965 million-dollar replenishment of the Multilateral Fund over the next three years, with the US expected to contribute about 20 percent of that sum.<sup>21</sup>

There is ample reason to believe the State Department is not inclined to aggressively pursue China's reclassification. After all, the inappropriateness of China's ongoing status as a developing nation has been obvious for quite some time, yet the State Department never sought to raise the matter on its own in any prior Montreal Protocol meeting, until forced to do so by the Sullivan-Lee amendment. When asked about the issue in an April 6, 2022 hearing on the Kigali Amendment before

the Senate Foreign Relations Committee, Deputy Assistant Secretary of State John Thompson strained to downplay the significance of China's developing nation status.<sup>22</sup> "[W]e do not believe it really gives them a competitive advantage," he said, speculating that HFCs will soon become obsolete in favor of American-made substitutes and thus the slower HFC phasedown for developing nations is inconsequential.<sup>23</sup>

There is much to dispute about this assertion, most notably China's staunch insistence on retaining its developing nation status in this and other environmental treaties, which strongly suggests that it is far from meaningless.<sup>24</sup> The bottom line is that the State Department is unlikely to vigorously press for China's reclassification, in which case the request will probably languish at the UN.

## The need to reclassify China

After the Kigali Amendment vote, Congress introduced bills requiring the State Department to request the UN to change China's status on all treaties, including the UNFCCC.<sup>25</sup> Such provisions were included in the NDAA, which was signed into law by President Biden on December 22, 2023.<sup>26</sup>

Like the 1987 Montreal Protocol, the 1992 UNFCCC originally designated China as a developing nation at a time when doing so was economically rational, but the designation remains in place long after the justification has evaporated. The UNFCCC addresses emissions of greenhouse gases (GHG) blamed for anthropogenic climate change, primarily carbon dioxide from fossil fuel use. China has seen a four-fold increase in carbon dioxide emissions since 1992, and it is now the world's largest emitter by a wide margin.<sup>27</sup>

Under the UNFCCC, the Biden administration has committed the US to a GHG emissions reduction of

<sup>17</sup> United Nations Environment Program, "Introduction to the Kigali Amendment," [https://wedocs.unep.org/bitstream/handle/20.500.11822/26869/7876FS01Intro\\_EN.pdf?sequence=1&isAllowed=y](https://wedocs.unep.org/bitstream/handle/20.500.11822/26869/7876FS01Intro_EN.pdf?sequence=1&isAllowed=y).

<sup>18</sup> United Nations Environment Program, "Multilateral Fund for the Implementation of the Montreal Protocol," <http://www.multilateralfund.org/default.aspx>.

<sup>19</sup> United Nations Environment Program, "Issues for discussion by and information for the attention of the Thirty-Fifth Meeting of the Parties to the Montreal Protocol," August 14, 2023, <https://ozone.unep.org/system/files/documents/MOP-35-2E.pdf>.

<sup>20</sup> International Institute for Sustainable Development, Daily report for 23 October 2023, 35th Meeting of the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer, <https://enb.iisd.org/montreal-protocol-meeting-parties-ozone-mop35-daily-report-23oct2023>.

<sup>21</sup> United Nations Environment Program, Multilateral Fund, October 27, 2023, <http://www.multilateralfund.org/default.aspx>; Congressional Budget Justification, Department of State, Foreign Operations, and Related Programs, Fiscal Year 2024, [https://www.state.gov/wp-content/uploads/2023/06/508-compliant-FY-2024-CBJ\\_FINAL\\_4.26.2023.pdf](https://www.state.gov/wp-content/uploads/2023/06/508-compliant-FY-2024-CBJ_FINAL_4.26.2023.pdf).

<sup>22</sup> US Senate, Foreign Relations Committee, Full Committee Hearing on Three Treaties, April 6, 2022, <https://www.foreign.senate.gov/hearings/treaties-040622>.

<sup>23</sup> US Senate, Full Committee Hearing on Three Treaties.

<sup>24</sup> Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Wang Wenbin's Regular Press Conference, June 9, 2023, [https://www.fmprc.gov.cn/eng/xwfw\\_665399/s2510\\_665401/202306/t20230609\\_11094406.html](https://www.fmprc.gov.cn/eng/xwfw_665399/s2510_665401/202306/t20230609_11094406.html).

<sup>25</sup> See, S.308 - Ending China's Developing Nation Status Act, 118th Congress, First Session, <https://www.congress.gov/bill/118th-congress/senate-bill/308>.

<sup>26</sup> H.R. 2670 - National Defense Authorization Act for Fiscal Year 2024, 118th Congress, First Session, <https://docs.house.gov/billsthisweek/20231211/FY24%20NDAA%20Conference%20Report%20-%20%20FINAL.pdf>.

<sup>27</sup> "China Carbon (CO2) Emissions 1990- 2024," Macrotrends, accessed February 1, 2024, <https://www.macrotrends.net/countries/CHN/china/carbon-co2-emissions>.

50 to 52 percent by 2030 and to achieve net-zero by 2050.<sup>28</sup> In contrast, China has pledged to reach its GHG emissions peak no later than 2030 (so its GHG emissions can continue rising until then) and to achieve net-zero no later than 2060.<sup>29</sup> China is also eligible for financial assistance available to developing nations under several UNFCCC programs, all paid for by the US (i.e. American taxpayers) and other developed nations.<sup>30</sup>

The UNFCCC is far more economically significant than the Kigali Amendment. While HFCs are an important class of specialty chemicals with many uses, carbon dioxide is the ubiquitous byproduct of all coal, oil, and natural gas combustion which provides 80 percent of the world's energy.<sup>31</sup> Thus, the economic impacts of the UNFCCC are much greater than that of the Kigali Amendment – as is the competitive advantage handed China because of its relatively unconstrained access to low cost coal as a consequence of its developing nation status.<sup>32</sup>

Thus, notwithstanding serious doubts whether GHG emissions reductions under the UNFCCC will have any real benefits, the disproportionate burdens for achieving these reductions will unquestionably give China an economic edge over the US.<sup>33</sup>

## Enacting measures with teeth

Legislation requiring that the State Department ask the UN to reclassify China is unlikely to accomplish anything. Granted, the Sullivan-Lee amendment, with its unanimous Senate support, represented an important milestone.<sup>34</sup> It put the issue of China's favored treatment on the agenda and made it bipartisan. The subsequent provisions in NDAA extending this approach to other treaties - especially the UNFCCC - are also useful. However, these measures alone will not achieve the desired result, given the State Department's questionable commitment and Chinese intransigence. It will be

many years – if ever – before the UN takes action and reclassifies China as a developed nation under any treaty. This is especially true of the UNFCCC, where China can be expected to strenuously defend the significant competitive advantage conferred upon developing nations under it.

What is needed now are measures with teeth, ones that disrupt the continued operation of these treaties unless and until China is reclassified. The best example thus far is S. 1035, the “Ending China's Unfair Advantage Act of 2023,” introduced by Sen. John Barrasso (R-WY), which would withhold the US contribution to the Montreal Protocol's Multilateral Fund and to the UNFCCC until China is no longer defined as a developing country.<sup>35</sup> Beyond defunding these treaties, Congress could also consider suspending any and all substantive treaty requirements that are more stringent than those imposed on China.

Granted, the ultimate policy goal should be the withdrawal from all treaties not in the best interests of the American people. In the meantime, demanding equal treatment with China is a substantial and politically practical step forward.

## Conclusion

UN environmental treaties like the Kigali Amendment and UNFCCC are bad enough in that their cost greatly outweighs any modest benefits. In addition, they are made worse by classifying China as a developing nation and thus giving it a competitive advantage over the US and other developed nations.

Congress has belatedly recognized the unfair nature of this disparate treatment, and has recently adopted provisions requiring the State Department to request that the UN change China's status to developed nation under such treaties. While a welcome first step, Congress needs to affirmatively block the continued implementation of these treaties until the change is made.

<sup>28</sup> United States Nationally Determined Contribution, Reducing Greenhouse Gases in the United States: A 2030 Emissions Target, <https://unfccc.int/sites/default/files/NDC/2022-06/United%20States%20NDC%20April%2021%202021%20Final.pdf>.

<sup>29</sup> UNFCCC, China's Achievements, New Goals and New Measures for Nationally Determined Contributions, <https://unfccc.int/sites/default/files/NDC/2022-06/China%E2%80%99s%20Achievements%2C%20New%20Goals%20and%20New%20Measures%20for%20Nationally%20Determined%20Contributions.pdf>.

<sup>30</sup> UNFCCC, Funds and Financial Entities, <https://unfccc.int/process-and-meetings/bodies/funds-and-financial-entities>.

<sup>31</sup> International Energy Agency (IEA), “World Energy Balances: Overview,” 2021, <https://www.iea.org/reports/world-energy-balances-overview/world#abstract>.

<sup>32</sup> Sen. John Barrasso, Washington Examiner, “No More Free Climate Rides for China,” December 13, 2023, <https://www.washingtonexaminer.com/opinion/2607229/no-more-free-climate-rides-for-china/>.

<sup>33</sup> See, Chris Horner and Marlo Lewis, The Legal and Economic Case Against the Paris Climate Treaty, Competitive Enterprise Institute, May 2017, <https://cei.org/sites/default/files/Chris%20Horner%20and%20Marlo%20Lewis%20-%20The%20Legal%20and%20Economic%20Case%20Against%20the%20Paris%20Climate%20Treaty.pdf>.

<sup>34</sup> Senate Democrats initially took the State Department position belittling the significance of China's developing nation status under Kigali, but apparently realized the position was untenable and voted for the amendment.

<sup>35</sup> S.1035, “Ending China's Unfair Advantage Act of 2023,” March 29, 2023, <https://www.congress.gov/118/bills/s/1035/BILLS-118s1035is.pdf>.



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