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S. 532, THE PESTICIDE HARMONIZATION ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON PRODUCTION AND PRICE COMPETITIVENESS

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

JULY 18, 2002

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S. 532, THE PESTICIDE HARMONIZATION ACT

THURSDAY, JULY 18, 2002

U.S. SENATE,
SUBCOMMITTEE ON PRODUCTION AND PRICE
COMPETITIVENESS, OF THE COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SR–328A, Russell Senate Office Building, Hon. Kent Conrad, [Chairman of the Subcommittee], presiding.

Present or submitting a statement: Senators Conrad, Roberts, and Baucus.

OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD. The hearing will come to order. The subcommittee meets this afternoon to hear testimony on S. 532, the Pesticide Harmonization Act, sponsored by my colleague from North Dakota, Senator Dorgan. I am pleased to be among the nine other Senators who are cosponsors of Senator Dorgan's bill.

Senator Dorgan's legislation represents a thoughtful, straightforward, and responsible effort to address an issue that for several years has perplexed and frustrated U.S. agricultural producers, especially those who farm near the Canadian border. That issue has to do with the differential pricing for pesticides across the border and the dramatically lower prices available to Canadian farmers as compared to U.S. farmers for the very same pesticides.

We have heard a lot about the integration of the U.S. and Canadian market during the more than 10 years since enactment of the U.S.-Canada Free Trade Agreement. The essentially open border between our two countries has, in fact, resulted in a huge increase in two-way trade between the two countries. For example, in fiscal year 2001, our two-way agricultural trade set a record in both directions, totaling nearly $17.5 billion.

However, over the past decade, we have also seen the United States' historical agricultural trade surplus with Canada vanish, replaced by an agricultural trade deficit that last year favored Canada to the tune of $1.5 billion. It is no wonder, then, that our producers cry foul when on the one hand they feel firsthand the impact of Canadian commodities streaming across the border, and yet also see Canadian farmers benefiting from a competitive cost advantage that seems to have no rational explanation. Canadian wheat, barley, livestock, and meat can flow so freely across the

U.S. border. Why can competitively priced pesticides not do the same?

Just this past weekend, the Minot Daily News editorialized with the headline, "It Just Isn't Right." The paper cited the recent case of six North Dakota farmers who had purchased a herbicide from a Canadian distributor that the farmers believed had a special authorization to allow the chemical to be brought into the United States. The herbicide, called Liberty, costs $9 a gallon in Canada and twice that in the United States. According to the editorial, the manufacturer of the herbicide will not say—will not say—whether the formulation of the Canadian version is different from the U.S. version. It will not say whether there is any difference.

The editorial in the Minot paper concludes with the following. "So while it is against the law for North Dakota farmers to use Canadian Liberty, it is fully legal for Canadian canola treated with Canadian Liberty to be imported into the United States. This is an outrage." That is the statement of the newspaper, one of the four largest in our State.

This afternoon, the subcommittee will hear from Senator Dorgan and from Congressman Pomeroy of North Dakota, who has championed this effort in the House of Representatives. We will also have a chance to hear from the U.S. Department of Agriculture and the Environmental Protection Agency.

We will also have a chance to hear from the Lieutenant Governor of North Dakota, Jack Dalrymple, who chairs the State's Crop Protection Product Harmonization and Registration Board; North Dakota's Commissioner of Agriculture, Roger Johnson, who has been a leader on this issue for many years; Jay Vroom, the President of CropLife America; David Frederickson of the National Farmers Union; and Barry Bushue, representing the American Farm Bureau Federation.

I want to welcome each of our witnesses here today, and in order to maximize the amount of time available for questions and discussion, I would ask each witness following our two Congressional witnesses to please summarize their statements in 5 minutes or less. I appreciate all of the witnesses' cooperation on that matter.

I want to welcome again all of the witnesses. I especially want to welcome my colleague from North Dakota, Senator Dorgan, who is the author of this legislation. Again, he has done a very careful and thoughtful job of putting this bill together and it is a privilege to have him before the subcommittee today. Welcome, Senator Dorgan.

STATEMENT OF HON. BYRON DORGAN, A U.S. SENATOR FROM NORTH DAKOTA

Senator DORGAN. Thank you very much, Senator Conrad. Let me say that this is a bipartisan piece of legislation. We have Republican and Democratic Senators as cosponsors, and I do not want you to minimize your role here. Although my name is first on the legislation and I introduced it, I worked closely with you and especially my colleague Congressman Pomeroy in the House, who introduced an identical piece of legislation.

This is truly a team effort and you deserve a great deal of support for what you have done, and when we make this happen, a

lot of Members of Congress will be very pleased, but especially pleased will be those American farmers who are shortchanged, or effectively cheated these days by not being able to access a virtually identical chemical north of the border and bring it back and apply it to their crops.

Let me try to describe just briefly. You have done a good job in your opening statement. This legislation simply would permit a State to register a Canadian pesticide for distribution and use within that State if the pesticide is substantially similar or identical to one already registered in the United States.

I want to say that I especially feel that the stimulus for this legislation comes from North Dakota Agricultural Commissioner Roger Johnson. He has worked with all of us for a good number of years to try to write a piece of legislation that is workable, that does not compromise safety in any way, and he is going to testify today, but I wanted to pay special mention to his contribution to this issue that has been extraordinary.

It is interesting that we come to this point with the Environmental Protection Agency supporting this legislation. We have worked closely with them over the last several years. The Department of Agriculture supporting this legislation. This really is a good piece of legislation. It does not in any way compromise safety. It does allow our farmers to access a nearly identical chemical and pay a much lower price for it if the pricing practices of the companies are such that they would do that to the American farmer, that is, price theirs at multiples of what you could purchase it for north of the border.

What has happened is we have discovered that some chemicals sold in Canada are almost identical. In some cases, they are identical, but in other cases, they have tweaked the formula just enough so as not to make a substantive difference in the chemical, but to be able to say, this is a different chemical. Therefore, they have been able to keep American farmers from being able to access that chemical. Well, that is just a charade. It is a game. The sad part of the game is it has cost farmers a great deal of lost opportunity and money. With the slim margins that exist on the farm today, it is very important to pass S. 532 to give farmers the opportunity to take advantage of the lower prices.

I have a box here that I want to show you. This is a box in which the chemical Liberty will arrive. It would have five gallons of Liberty in this box and it will be sold in Canada and in the U.S. and these are the labels. This is a Canada label. This is a U.S. label. What you will see is this is an identical chemical. I mean, it is identical with respect to the labels. The difference is that if this box of Liberty is sold in Canada, this box is sold for $160. If the box of Liberty is sold to the American farmer, it is $450. It is a very dramatic price change, price difference.

Our American farmers would like to access that lower-priced product, but they are told, under current law, that they may not do that, and so what happens is the Canadians put this lower-priced product on their canola and ship it to our country where the canola is processed and then put into our food supply. It is not that the Canadian canola is not becoming part of America's food supply.

It is. It is just that American farmers are told, under current law, you cannot access the savings that comes with the Canadian prices.

The circumstance in North Dakota is that for 15 selected pesticides, there will be $23 million, nearly $24 million in savings, according to a study that Roger Johnson will tell you about today. CBO says that this bill has zero cost. I mentioned EPA helped us draft it and is testifying that the language poses no safety threat to the environment or to public health.

The organizations that support this, they are too numerous to mention, but the American Farm Bureau, National Farmers Union, National Association of Wheat Growers, North Dakota Soybean Growers, Canola Growers. The list is on and on and I will submit them for the record.

It is my hope that with this hearing, for which I am deeply appreciative, that I will be able to include this piece of legislation on the agriculture appropriations bill. I am a member of that subcommittee and that will be marked up, I expect, next week.

Once again, I am really pleased that you are holding this hearing. This piece of legislation should move quickly and I hope it will move easily, and the witness list you have today is excellent. It will describe why this ought to be done and it ought to be done now in the interest of American farmers.

Senator CONRAD. Thank you very much, Senator Dorgan. Thank you very much for the legislation and for your leadership on this issue. You know, I do not know how many times I have been to farm meetings in North Dakota and this has been brought up. It is vexatious. It angers people. It is inexplicable to people. This bill has really—you have done an excellent job of covering the bases. To have USDA and EPA and the major farm organizations all on the same page, that is not easy to do, and we appreciate the care that you have taken to put it together.

[The prepared statement of Senator Dorgan can be found in the appendix on page 40.]

Senator CONRAD. We have been joined by my ranking member, Senator Roberts, who is an extremely important member of the full Agriculture Committee. It is hard to find people more knowledgeable and more dedicated to fighting for farmers than Senator Roberts. Welcome.

OPENING STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR FROM KANSAS

Senator ROBERTS. Mr. Chairman, thank you for your very kind comments. I had originally thought that this hearing was on the Dorgan amendment to harmonize the two loan rates in the State for sunflowers.

[Laughter.]

Senator DORGAN. Without objection.

[Laughter.]

Senator ROBERTS. Unbeknownst, and I want the message loud and clear, and I have just talked with the Chairman, unbeknownst to many in the oilseed community, we have tried for 20 years to buildup this industry and the USDA or somebody in the USDA, in the bowels of the USDA, somehow decided there would be two loan rates, one for confectionery and one for oilseeds, and what it is

going to do is ruin the market for the confectionery side and we are going to lose a lot of support that we have for the oilseeds. I understand you may or may not have a bill. If you have a bill, put me on it.

I had thought that was the hearing today, but I understand it is a different matter, so part of what I am doing is just sending a message down to the USDA that there will be a bill unless we can change this administratively, but it is a very serious matter, and I know it would be to my former colleague and friend from the House side, Congressman Pomeroy, as well.

Thank you for holding the hearing today on S. 532. I do know what the legislation is, the Pesticide Harmonization Act. This has not been a big, major issue in Kansas, but I certainly realize it has been a very front-burner topic up on the Northern border, and your involvement in this issue, both from the standpoint of the Chairman and the two witnesses.

Obviously, there are a number of questions surrounding this legislation. It is important that we are giving all the parties involved the opportunity today to comment on its impact.

Mr. Chairman, I understand the concerns of many producers in your State. You just spoke to that. Did Senator Dorgan, and so will my esteemed friend from the House. All along the Northern border, we are concerned over the cost of pesticides and input costs, in general, especially in the tough times that we are in.

Certainly, with the recent report that net farm income will drop by nearly $7 billion in 2002, input costs and how bills are paid are even more pressing. That is a problem that will even be more pressing for our producers.

Now, I do find it somewhat ironic that Canada actually developed its own use program because pesticide prices were, on occasion, lower in the United States. Now, we are here today because some United States producers will argue that the prices are certainly lower in Canada.

As we take a look at this issue, it is important that we keep several principles in mind and also ask ourselves several questions, and I am just going to submit those questions for the record in that I do have to go to the Intelligence Committee on yet another meeting on what went wrong and what we need to do right in regards to 9/11.

We ought to take a close look at several issues. No. 1, what effect, if any, does the exchange rate have on the relative comparison of prices on these products?

No. 2, what can we do to improve the harmonization process between the two countries?

No. 3, this seems to be especially important to me. I am back on No. 2, really. As Mr. Jay Vroom in representing his organization, in his prepared testimony that I have read, indicates the review time for new products in Canada is 18 months. It is 40 to 46 months in regards to the United States. There is no doubt this extended review time is adding to the costs in the United States, and that is very important.

In addition, how do we protect the patents and the proprietary information in light of the differences between the two countries in these areas?

Who is going to be allowed to bring these pesticides back across the border and use them and who will handle the registration and approve the process for these activities?

The reasoning behind the bill is obvious. How we do this in terms of a pragmatic way that makes sense from a sound science approach is another matter. In my opinion, only individual approved applicators should be allowed to bring these products back across the border. This is especially important in the new world we have lived in since 9/11. I am not going to get into all the emerging threats and all of those dangers at this particular time, but they do represent a very factual challenge for us.

The bottom line, it seems to me we cannot really decrease our border security as a result of this legislation. We ought to address the problem, but we cannot get into a problem of border security.

Mr. Chairman, finally, while I have often had my own concerns with the approval and the labeling process under EPA, and that is probably the understatement of my statement, it is important that we have assurances in place that pesticides are not being simply brought across the border or trans-shipped and used for applications that are not approved in the United States.

I am going to stop there. I know you have a large number of witnesses today. It has been estimated half the population of North Dakota is here today.

[Laughter.]

Senator ROBERTS. I will yield back my time and I, as I say, have an obligation in the Intelligence Committee. I am going to submit these questions that I mentioned for the record. I would ask that the witnesses perhaps address those concerns that I brought up.

I want to thank you again for your leadership and thank you, Byron, for bringing this to the attention, and thank you, Congressman Pomeroy. It is good to see you again.

Senator CONRAD. Thank you so much, Senator Roberts.

Senator CONRAD. Let me just, if I could, return to where you started, and that is the question of this dual loan rate that USDA adopted. Senator Roberts would agree, that was never the intention anywhere in the process. It was not——

Senator ROBERTS. It was in the manager's amendment to do the other thing. If John McCain—pardon me.

Senator CONRAD. No, go ahead. I like that.

[Laughter.]

Senator ROBERTS. If John McCain, pardon me, Senator McCain, the distinguished Senator from Arizona, insists that we read the manager's amendment on virtually every bill that is considered in the Senate to make sure that it is applicable and it is pertinent and there is no pork in there, et cetera, et cetera, for some reason, the Department of Agriculture indicated that what was in the manager's amendment and the report language had no effect. In the slide rule world that some live in within the bowels of the USDA, we decided to come up, well, we are going to reclassify all these loan rates. Oh, by the way, here is something we needed to do for some years back.

Now, we have had letters back and forth from myself and my good friend Dan Glickman, when he was Secretary, even dating back to Ed Madigan. Well, if the manager's amendment and report

language does not mean anything, why in the hell do we put it in there?

I have a strong message for the USDA. I am upset about this, and I have talked to the Secretary about it. They are studying it. It seems to me they need to do administratively precisely what the Senator from North Dakota is addressing in legislation. We may not even have an agriculture appropriations bill the way we are headed. We might have a giant CR. I hope not. I hope we can get to that. You folks are more in charge of that than I am.

Having said that, I have a little blood pressure about this. We are going to take an industry that it took us 20 years to buildup, to get out of mono-agriculture in the Great Plains and destroy it with some slide rule decision within the Department of Agriculture. Other than that, I do not have strong feelings about it.

[Laughter.]

Senator CONRAD. We are glad you are here, Senator. We are glad you have expressed those feelings because we hope that the representatives of USDA that are here take back the message. Either they fix it or we are going to fix it, because it had absolutely no part of any of the Farm bill discussions. As a conferee who helped negotiate the result, I can say very clearly—in fact, I negotiated the loan rate on the minor oilseeds. There was no two-track. There was one track, one track, one loan rate, and that has to be fixed.

I would just say, if I could, and I am very appreciative that Senator Roberts has joined us in sending this signal, that we have a problem on the flax loan rate, too. They lowered it. They are going to wipe out the flax industry. They are going to destroy it. Cramby, for some reason, they decided that Cramby is not part of the program. Well, it comes as a big surprise to those who planted thousands of acres in anticipation that it was included and always has been, at least in the recent past.

Senator Dorgan.

Senator DORGAN. Senator Conrad, might I make just three very brief points, and I have to go to an Appropriations Committee markup.

No. 1, we have prepared some legislation. I would like to see if we could deal with the loan rates in the agriculture appropriations bill. It is not clear to me that we will be able to do that, but if we could solve this issue in the agriculture appropriations bill, we certainly will try to do that.

Second, we have not been well served with harmonization promises for many, many years under administrations—this is not just one administration, several. We have this promise of harmonization of chemicals and so on with Canada, but it never really happens. Because it has not happened, we need to pass this legislation.

Third, I did not mention that—I mentioned specifically Congressman Pomeroy and you, Mr. Chairman, and Commissioner Johnson and the important contribution made by all three. I did not mention that the North Dakota State Legislature, represented by the Lieutenant Governor, who has, headed a committee on this and has worked with us for a long, long while, has played a significant role, as well, and I should have mentioned that and did not. I know he is going to testify today, so I wanted to mention his role and the interest of the North Dakota State Legislature on this.

Thank you for holding the hearing. I deeply appreciate it.

Senator CONRAD. Thank you. Thank you so much for what you have done.

Senator Baucus of Montana has now joined us. I would ask if it would be appropriate at this point that we turn to Congressman Pomeroy for his testimony and then if we could come back to you for any opening statement. Would that be all right?

Senator BAUCUS. Certainly. That would be fine. Thank you.

Senator CONRAD. Congressman Pomeroy, thank you. Thank you for your leadership. Thank you for introducing this bill on the House side. We have a good head of momentum and we appreciate very much all who have played a role. Clearly, you have been the lead on the House side. We are knocking at the door of getting this done.

STATEMENT OF HON. EARL POMEROY, A REPRESENTATIVE IN CONGRESS FROM NORTH DAKOTA

Mr. POMEROY. Mr. Chairman, thank you, and thank you for holding this important hearing.

Let me begin by just reflecting on the words of my former chairman, Senator Roberts. Serving with him in the Agriculture Committee was always interesting and often entertaining, sometimes damned irritating, but that is another matter——

[Laughter.]

Mr. POMEROY. I think very highly of the Senator.

Senator ROBERTS. Not very often.

Mr. POMEROY. Not very often was it irritating. I think very highly of Senator Roberts.

Senator ROBERTS. Very highly entertaining, though. He grabbed me out of here and said something entertaining to me, too.

[Laughter.]

Mr. POMEROY. He is absolutely right on this confectionery loan rate. The question I would ask the U.S. Department of Agriculture is how much confectionery sunflowers do you want the Federal Government to own, because in 2 or 3 years, they are going to own a whole lot of them, having totally skewed planting decisions and disrupted the carefully developed market for sunflower oil.

It is, astoundingly surprising, to use the most polite words I can think of, that they would advance this, and I hope we get it fixed. I would rather have it fixed administratively as quickly as possible as they look a little deeper into the consequences of it, but I am certainly prepared, Mr. Chairman, to join you legislatively with whatever we need to do to respond.

I also think with regard to flax: why put flax out of business in terms of domestic production in this country? I do not think there is an answer to that question, but that certainly would be the effect of what the loan rates would do.

Senator CONRAD. I would say to my colleague, it is widely understood the Farm bill raised loan rates.

Mr. POMEROY. Exactly.

Senator CONRAD. How they got to a conclusion that on flax the loan rate got lowered, how that is in any way in concert with the policy passed on a bipartisan basis is absolutely beyond me, and I hope very much that those who are here from USDA carry back the

message. If they want to have a fight, then get ready. We will have a fight, and it will get real tough real quick. We are not going to stand by and see a domestic industry liquidated because of—what would one term it, just foolish action.

Mr. POMEROY. The role of flax in the marketplace is going to continue. It will just be replaced with Canadian flax instead of ours. On the other hand, as you know, in the Northern Plains, without a lot of alternatives, producers need that crop in the rotation. Besides that, it has a lot of valuable contributions to make in terms of its impact on soils. It has continued in the rotation and, in fact, is experiencing some gradual development because of its end: market value in the Great Plains. We should not put it out of business.

Turning to the issue at hand, Mr. Chairman, Agriculture Commissioner Roger Johnson, through his actions in the North Dakota Department of Agriculture, has demonstrated to this country the foolishness of the existing framework relative to pesticides and the restriction of bringing lower-priced pesticide across the border from Canada into North Dakota. His actions 2 years ago relative to Achieve at the State level allowed the import of substantially identical product. Ultimately, this action was stopped, I believe due to a Customs, if not EPA, requirement.

The surprising thing, as I evaluated that action of our Federal Government, was that the action was not taken on behalf of public health because the product was substantially identical and being used for the identical purpose for which it had been approved in this country. It was taken simply to protect the discriminatory pricing practices advanced by the pesticide companies themselves.

We had, when I was serving in the Agriculture Committee, a very interesting bit of testimony presented by an economist that essentially demonstrates pricing methodology comes down to this: You charge what the market will bear. There has been a determination that producers north of the border will bear a little less by way of charges than producers south of the border, and so the companies have price discriminated right along that bright line of national border.

Now, this happens in spite of the fact that these very entities were all for NAFTA, right at the front of the parade for NAFTA, and enjoy post-harvest the blended market across borders. Closed market as they price their pesticides, blended market after harvest. Well, the net consequence, of course, is putting higher cost differentials on our farmers than Canadian farmers competing in the same market. It is totally unfair.

A recent instance in North Dakota again demonstrates the ludicrous result of this. Farmers were bringing in a Canadian chemical product called Liberty. The U.S. has the Liberty product available, made by the same manufacturer. The only difference is the U.S. product cost $9 per acre more. Under laws as they are presently constructed, the importation of the Canadian Liberty was a violation of law. If people were to literally carry out the letter of what they are supposed to prosecute, we would probably have people prosecuted for seeking a product at a lower price just north of the border.

Well, that has to change, and we have advanced a proposal that allows that change without any question of raising public health

concerns. The legislation, the Pesticide Harmonization Act, if enacted would eliminate the current barriers by amending FIFRA to grant States the authority to issue State registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products registered with EPA for use in the United States.

Now, this proposed legislation was well advanced 2 years ago. I have an awful lot of respect for the chemical and pesticide manufacturers and their trade association, ably led by Jay Vroom, but this is not a new question before them. Yet, if they look at this legislation, they will ask for more time to look and to study and to think, but this situation has been squarely before us for years.

Now, Mr. Chairman, as you say, now is the time is to act. We can eliminate the barriers, create a free market for pesticides, and allow the U.S. and Canadian farmers to compete on a more level playing field. The legislation is reasonable and holds the potential, I believe, to make a substantial impact on ongoing harmonization issues between the United States and Canada. It will obviously create free marketplace pressure to bring down prices on the domestic side.

I do not think that, in the end, if this legislation would pass, you would have this massive flow of chemicals from the north of the Canadian line to south of the Canadian line. You would have more equitable pricing south of the Canadian line in the U.S. market itself because pesticide companies no longer would be able to hide behind the border for purposes of surcharging, also known as gouging, U.S. farmers to the highest dimension the market will bear in their pricing. It is time we harmonized.

Thank you for listening to me, Mr. Chairman. I will be happy to answer any questions.

Senator CONRAD. Thank you, Congressman Pomeroy. We appreciate very much your being here today and for your advocacy on this issue. It is, as you know, critically important to our farmers. Other than the Farm bill itself and the need for disaster assistance, there are very few things I hear about more often than this, and you have the same experience.

Mr. POMEROY. Mr. Chairman, I noted Roger Johnson's role in the issuance of the Achieve certificate, import certificate, our State registration. What I did not tell you is that thereafter, he, along with my staff, along with EPA officials under the prior administration, negotiated for months and came up with the Pesticide Harmonization Act. Roger Johnson, as the State regulatory official, brought all of that expertise and background to bear and was integrally involved in the development of this legislative proposal and I also want his involvement in that respect to be noted for the record.

Senator CONRAD. I appreciate that very much.

[The prepared statement of Mr. Pomeroy can be found in the appendix on page 45.]

Senator CONRAD. Senator Baucus has joined us. Senator Baucus is a very active member of the full Agriculture Committee and has really taken the lead on disaster assistance this year, which is not before this committee at this time, but which is a critically important subject. I want to commend him publicly for his determination to get disaster assistance for our farmers this year. We could tes-

tify here at great length of the desperate need for that aid in the year 2002 and extending back to the disastrous conditions we faced in 2001.

With that, I would turn to Senator Baucus for any statement that he might make.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA

Senator BAUCUS. Thank you very much, Mr. Chairman. Congressman Pomeroy, you and Senator Dorgan and Senator Kent Conrad have just been aces when it comes to agriculture and defending your people. I admire you all three very much. You are terrific legislators.

I might just say, too, the evidence just keeps piling up on disaster needs. I talked to a guy who called me up, George is his name, called me up just the night before last and just said, it looked like maybe the spring crops might be a little bit promising—this was in July, because we got a little bit of moisture. Then we had, as you all did in the Dakotas, record-breaking heat temperatures, 109, 112, 111, and he says that his spring crop, his barley crop just all baked. It is just gone.

We all know that the administration is the stumbling block here. For example, Congressman Denny Rehberg, our only House member over in the House, has been working very hard to try to get something passed, too, but it is the administration that just said no, just no agriculture disaster assistance. It is unfortunate, to say the least.

Anyway, on this issue, Mr. Chairman, I commend you and Senator Dorgan and others for pushing this. It is just gut-wrenching to see people living on the land, trying to eke out an existence, have a tough enough time with the weather and with the vagaries of markets generally, and then, because they need pesticides, need product to help get a good crop and get rid of the weeds and the pests and so on and so forth, are unable to get a decent price for their products, for their pesticides. That just compounds one problem upon another.

In this latest problem, it is one not caused by nature, it is not one caused by the vagaries of the international markets, it is caused basically by an unfortunate action on the part of an industry that wants to segment the markets, the United States and Canada, that is, fellow human beings, either Americans or Canadians.

It is just, as I said, it is gut-wrenching, and I just hope, Mr. Chairman, that we can pass this legislation very quickly because, clearly, farmers want a level playing field. American farmers, Montana and North Dakota farmers will compete with Saskatchewan and Albertan farmers as long as it is fair. It just is not fair when the pesticide market is not harmonized, it is segmented, and when people on our side have to pay so much more compared with others. Both Canadian and American farmers, at least along the border, we are all in the same boat together. Let us just grow our crops and be able to market our crops.

It is not directly on subject, Mr. Chairman, but I met today with Ambassador Johnson, USTR Ambassador, and I urged him very, very strongly to followup on the 301 action with respect to the Ca-

nadian Wheat Board as we start commencing some CBD and other action. We have a 301 action at the WTO so we can start following up with deeds as well as words and help get some relief there from the Canadian Wheat Board, and I just urge all of us to followup in that regard, as well.

To add to the tragedy in my State, so many Montana farmers are tempted to break the law, and in some cases feel they have to in order to provide for their family. It is just not right. It just plainly and simply is not right. It is also extending beyond border States. This is starting to reach now further south into the United States, Nebraska and other States. It is just not right.

The Chairman just passed me a headline and the headline is, "It is Just Not Right."

[Laughter.]

Senator BAUCUS. Great minds think alike on the Northern border. Thank you. Thank you very much, and I will leave it there. It is just not right, and let us get on with this. Thank you very much.

Senator CONRAD. Thank you very much, Senator Baucus. Senator Baucus, of course, is Chairman of the Finance Committee that oversees and has responsibility for all trade laws and the oversight of all trade administrative decisions, so his opinion carries special weight in this regard.

Again, Congressman Pomeroy, thank you so much for being here with us.

Mr. POMEROY. Thank you for holding this hearing. I look forward to what vehicles there may be to move the legislation this session yet. Thank you.

Senator CONRAD. I am going to call to the witness table panel one, Mr. William Hawks, the Under Secretary for Marketing and Regulatory Affairs, the U.S. Department of Agriculture. Welcome, Mr. Hawks. Stephen Johnson, the Assistant Administrator, the Office of Prevention, Pesticides, and Toxic Substances of the Environmental Protection Agency. Welcome to Mr. Johnson, as well.

I would ask the two of you to summarize your testimony and the full testimony will be made a part of the record. We very much appreciate your presence here today. Thank you, Senator Baucus, for your participation. Thank you very much for being here, Mr. Hawks and Mr. Johnson. We do appreciate it.

We will go to Mr. Hawks first, and then to Mr. Johnson. Again, my welcome.

STATEMENT OF WILLIAM HAWKS, UNDER SECRETARY FOR MARKETING AND REGULATORY PROGRAMS, UNITED STATES DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Mr. HAWKS. Thank you, Mr. Chairman. It is certainly a pleasure to be with you this afternoon. For the record, I will say that I heard what you said and we will deliver the message back to the Department of Agriculture. I do not have direct responsibility for loan rates, but we can certainly deliver that message back there.

As I said, it is a great deal of pleasure with which I come here today to talk about pesticide harmonization and its potential impact on American farmers. The United States Department of Agri-

culture welcomes the opportunity to fulfill its role as the advocate of the American producer within this administration.

As you know, although the Environmental Protection Agency is the lead agency for pesticide regulation, the USDA has been concerned with this issue of pesticide harmonization for some time. Although important progress has been made in harmonization of registration for new pesticides, harmonization for older pesticides have not been matched. USDA supports efforts to facilitate harmonized pesticide regulations so that our farmers will have equitable and economical access to safe and effective agricultural chemicals.

The Department of Agriculture is very interested in proposals that offer to improve the competitiveness of our American growers in domestic and world markets. While recognizing there are many factors that can contribute to differential pricing between markets, some of which are marketing strategies, market size, demand, structural differences, and regulatory and legal systems that may have an impact on these issues.

Before serving in this current position as Under Secretary for Marketing and Regulatory Programs, I grew corn, wheat, and soybeans in Mississippi, and often I said as a farmer in Mississippi that I can compete with any farmer anywhere in the world, but I cannot compete with other governments and other regulatory frameworks in the world, and that is what our government is for. I want to, in this role, I want to help break down barriers to create a level playing field for U.S. producers while continuing to protect public health and the environment.

USDA supports EPA's efforts to harmonize pesticide registration as a means to promote the economic well-being of Americans farmers. In 1999, USDA commissioned a study to look at these differences. The study reported that pesticides accounted from ten to 18 percent of the overall cost of production. The report identified many factors affecting pricing on either side of the border, including difference in the patent protection length, difference in the market size and cost, difference in pesticide demand, and difference in the number of substitute products that were available.

The Department has been an active participant in the North American Free Trade Technical Working Group on Pesticides and will continue to work with the EPA and the United States Trade Representative through the Consultative Committee on Agriculture to resolve trade issues related to pesticide harmonization.

Thank you for the opportunity to address this issue on behalf of the American producers. We look forward to working with Congress and stakeholders to achieve pesticide harmonization with Canada and to eliminate the arbitrary differences that impact prices and availability.

Senator CONRAD. Thank you, Mr. Hawks. Let me just say publicly that you come here with a very good reputation being an advocate for farmer. I will tell you, you appear before this committee and you are respected by this committee and we are glad to have you here.

[The prepared statement of Mr. Hawks can be found in the appendix on page 43.]

Senator CONRAD. Mr. Johnson, please proceed with your testimony.

STATEMENT OF STEPHEN L. JOHNSON, ASSISTANT ADMINISTRATOR, OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Mr. S. JOHNSON. Thank you, Mr. Chairman, and good afternoon. Thank you for the opportunity to appear before your subcommittee to discuss the concerns of American farmers with regard to pesticide pricing between the U.S. and Canada.

Today, I would like to provide you with information on the long-term approach EPA is taking to address this issue, as well as discuss the current legislation which attempts to remedy these pricing discrepancies in the near term. I will also touch on some of the harmonization activities that my program has been involved in since I testified to Congress on this important matter last summer.

As you know, EPA's legal authority over pesticides is to ensure the protection of public health and the environment. Our authority does not extend to pricing. Current U.S. pesticide laws require extensive scientific evaluation and a pesticide registration before it can be sold and distributed in the United States. Further, EPA is not aware of any evidence that indicates that national pesticide regulatory requirements contribute significantly to existing price differences. Many factors contribute to pricing, such as marketing, availability, and demand. As all parties have acknowledge, this is a highly complex issue.

That said, I know that EPA has worked very closely with Congressional staff, State officials, and pesticide companies over the last few years to explore remedies that would help address price differences that U.S. farmers are experiencing. EPA continues to make progress on a variety of administrative and regulatory approaches that help facilitate equal access and harmonization.

Let me describe some of the longer-term, more strategic actions that EPA has taken and partnerships that EPA has established to address this important issue. EPA continues to work closely with Canada and our other trading partners to break down barriers and facilitate trading competitiveness. Together, we are developing more consistent regulatory and scientific requirements, registering needed products, and supporting the principles of sustainable pest management.

EPA's work on pesticide harmonization with Canada is increasingly providing benefits to the American farmer. In the long term, the creation and ongoing support of a North American harmonized market for pesticides will ensure a level playing field.

EPA continues to make considerable efforts to receive input on harmonization approaches with representatives from industry and grower groups. This includes supporting and actively participating in the important work of the North American Free Trade Agreement, NAFTA, Technical Working Group on Pesticides.

We have recently published the NAFTA Technical Working Group report, called the Milestone Report, and Mr. Chairman, I have copies for you and members of the committee. This report highlights the numerous accomplishments of the NAFTA Pesticide Group over the last several years and it provides a valuable perspective for setting an agenda for future harmonization work. Efforts like these are helping to break down the political and regu-

latory barriers with respect to the delivery and use of pest management tools on both sides of the border.

An important part of this work continues to be the development of a NAFTA label, which will enable the sale and distribution of a pesticide across North America, thereby guaranteeing its availability at the same time in the U.S. and Canada. We continue to make great strides in putting this into practice, building on existing joint registration reviews. To date, our joint registration review program has resulted in the registration of 12 new pesticide products in the U.S. and Canada, with 11 additional products currently under review. We continue to believe that expansion of products under NAFTA labels will help break down potential trade barriers.

EPA stands ready to work with Congress and others on possible legislative solutions that effectively address observed differences in pesticide pricing, as long as the protection of public health and the environment are not compromised. EPA believes that S. 532 is intended to create a structure which ensures that appropriate safeguards remain in place to enable EPA to achieve its primary mission, the protection of public health and the environment.

However, I should mention that there remain some broad policy concerns with this legislation that we believe need to be further addressed and the consequences fully considered. For example, a legislative approach like this with a focus on one country alone may have international trade implications.

Another potential concern is that of implementation. For example, there are some important questions regarding a State's ability to maintain confidential business information and other trade secrets.

In conclusion, EPA has worked very closely with Congressional staff over the last few years, as well as State officials here today, to alleviate the concerns U.S. farmers have regarding differences in pesticide pricing. EPA continues to seek and create effective mechanisms that will ensure the safety of our health and environment while also ensuring an equal playing field for our farmers.

In the long term, EPA continues to work to harmonize the availability of pesticide products between the U.S. and Canada through NAFTA. In the near term, with no adequate administrative or regulatory option available to fully address the potential pricing disparity between the U.S. and Canada, EPA supports seeking an appropriate legislative solution. The legislation as drafted does not compromise protection of human health and the environment. That is EPA's principal criterion.

However, as I have mentioned, there are some implementation issues that should be addressed. Certainly, we commit to working with Congress, with States, with growers, with other Federal agencies and industry to resolve these concerns.

Again, I look forward to working with you, Mr. Chairman, and other Members of Congress and other affected stakeholders on this important issue and I would certainly be happy to answer any questions you may have.

Senator CONRAD. Very good. Thank you very much for your testimony. Again, thank you for being here.

[The prepared statement of Mr. S. Johnson can be found in the appendix on page 50.]

Senator CONRAD. Mr. Hawks, we are going to ask each of the witnesses here today, because there is strong interest on the committee and strong interest in the general body to move legislation this year, in that regard, the committee needs to know, do you or does the agency support enactment of S. 532 as proposed or with amendments?

Mr. HAWKS. I would have to say that we have not taken a position on this specific piece of legislation, so I would have to say that we are not in support of it, but we are not in opposition. We have not taken a position on this specific piece of legislation. Having said that, it is certainly my hope and my desire that we can address these concerns so that our farmers can have the same advantage or the same opportunity as farmers across the border.

Senator CONRAD. The committee would like to ask you, Mr. Hawks, to go back to USDA and ask them what amendments might be necessary to secure the Department's support for the bill.

Mr. HAWKS. I would be happy to do that.

Senator CONRAD. If you could go back and just ask, are there amendments that could be crafted here that would preserve the intent of this bill but allow the Department to support it, that would be useful to the committee.

Mr. Johnson, I would ask you the same question. Is EPA in a position to support this bill as proposed or with amendments?

Mr. S. JOHNSON. We certainly support, Mr. Chairman, the intent of the bill. There are, and as far as the EPA's role of protecting public health and the environment, we have no issue with the proposed legislation. As I mentioned, there are some implementation issues.

One, for example, confidentiality, that inherent in the ability of the bill to work or to operate, a State has to be able to handle confidential information. Certainly in the case of North Dakota, that is the case. There is the case with the State of Washington and the State of Vermont that have disclosure laws which would appear to be in conflict with the needed confidentiality in this. That kind of implementation issue needs to be worked out, and if those were worked out, then certainly the agency would be fully supportive of the legislation.

Senator CONRAD. That is very important to know.

Let me indicate that you have stated in your prepared remarks that you have had some concerns about the ability of States to protect confidential business information, and as I understand it, your concern lies with the specific statutes in a number of States, that is, the States that you named—Washington, and I cannot recall the other State——

Mr. S. JOHNSON. Vermont, yes.

Senator CONRAD. Washington and Vermont apparently have statutes that require disclosure?

Mr. S. JOHNSON. Yes.

Senator CONRAD. What would the disclosure requirements of those States be?

Mr. S. JOHNSON. I am not specifically familiar with, or familiar with the specifics of it. What I do understand is that whatever information with regard to chemicals, chemistry that some might interpret as having an effect on health of the environment, that that

information has to be disclosed and be made publicly available. Of course, the information that is necessary to say that a chemical is identical or substantially similar would require, if you will, the ability to look at the confidential statements of formula and be able to protect that confidentiality.

Senator CONRAD. Let me ask you this. Do most States not already exercise authority in emergency situations to register certain pesticides?

Mr. S. JOHNSON.Under the Section 18 programs, States and Federal agencies have the authority to ask the agency for a Section 18. The agency is responsible for granting or denying the emergency exemption, and so we are the ones who are the overseers and controllers of confidential information, for example.

Senator CONRAD. Has that authority, to your knowledge, ever led to the wrongful release of industry data?

Mr. S. JOHNSON. No.

Senator CONRAD. That is a model for how we might address this concern?

Mr. S. JOHNSON. That would be one approach, yes, sir.

Senator CONRAD. All right. Well, that is important.

Let me ask Mr. Hawks, before we go to the next panel, is there anything you would want to add, sir, to the deliberations of the committee on this legislation?

Mr. HAWKS. No, sir. I would just like to say that I am looking forward to working with the committee, with EPA, to alleviate this discrepancy in pricing that is certainly—we are looking forward and I have been working with—every speaker here has referenced Roger Johnson, and I would certainly add to that. I certainly enjoyed the opportunity to work with him within the NASDA association and am looking forward to continue to work with you all.

Senator CONRAD. We appreciate it very much. As I say, Mr. Hawks, you come here with a very good reputation as being a sincere advocate for farmers and we appreciate that, and we appreciate very much the two of you coming here this afternoon. Thank you very much.

Mr. HAWKS. Thank you.

Mr. S. JOHNSON. Thank you.

Senator CONRAD. We will now go to our second panel, led by Lieutenant Governor Dalrymple of North Dakota; Agriculture Commissioner Roger Johnson; Mr. Barry Bushue, the President of the Oregon Farm Bureau; Mr. David Frederickson, representing the National Farmers Union; and Mr. Jay Vroom, the President of CropLife America.

Thank you all for being here. Lieutenant Governor Dalrymple, why do you not proceed with your testimony. It would be the intention of the committee to hear from all of the witnesses and then open it up to questions, unless we do not follow that procedure.

[Laughter.]

Senator CONRAD. Lieutenant Governor Dalrymple, welcome.

STATEMENT OF JACK DALRYMPLE, LIEUTENANT GOVERNOR, STATE OF NORTH DAKOTA, BISMARCK, NORTH DAKOTA

Mr. DALRYMPLE. Chairman Conrad, thank you for the opportunity to provide a statement in support of S. 532, the Pesticide

Harmonization Act. I must say, as one interested in North Dakota agriculture, I am thoroughly enjoying this hearing and the broad range of topics that you are touching on here.

My name is Jack Dalrymple. I serve as Lieutenant Governor of the great State of North Dakota and I am here today in that capacity, as well as in my role as Chairman of the State's Crop Protection Product Harmonization and Registration Board. I also farm near Casselton, North Dakota, where my family raises wheat, soybeans, and barley.

The North Dakota Crop Protection Product Harmonization and Registration Board was created by the State legislature specifically to address and resolve pesticide availability and pricing fairness issues for the State's farmers. The bipartisan board consists of elected State officials and farmers who have a common mission of working with regulators and pesticide manufacturers to make effective products available at fair prices.

It seeks to promote the registration of new, safe crop protection products for farmers to use on the more than 70 crops that are raised in North Dakota. The board is conducting an ongoing survey of farmers and pesticide retailers in an effort to establish possible additional applications for the products that are already available. Primarily, the board is focused on efforts to harmonize the availability and pricing of herbicides, fungicides, and insecticides to match those of our world competitors, most notably in Canada, our immediate neighbor to the north.

The facts of North Dakota's agricultural economy and the variety of crops produced in the State will probably be addressed directly by Commissioner Roger Johnson. In summary, low-price commodities, higher input costs, and adverse long-term weather conditions leading to increased disease, weed, and insect pressure have challenged North Dakota farmers. These factors contribute to a poor profit outlook for producers. Costs are at a level where farmers simply cannot make a profit.

Because of increased pest problems, coupled with high pesticide costs, the North Dakota Crop Protection Product Harmonization and Registration Board supports this and other legislation that can help make more crop protection products available to farmers at costs that are comparable to those paid by their world competitors. It is simply unfair that farmers, especially in a border State like North Dakota, are placed at a competitive disadvantage to other countries' farmers, both in terms of availability and price of pesticide products.

Pesticide companies are able to charge higher prices in the United States because farmers are prohibited from purchasing the same products in Canada and importing those products to the United States. This bill seeks to provide the equivalent of joint labeling to effectively accomplish harmonization of pesticide products and their prices.

By the way, Mr. Chairman, Canada has adopted laws that allow farmers to import their own pesticides. Why would the USA not have a similar provision?

The Environmental Protection Agency here in the United States and its counterpart in Canada, the Pesticide Management Regulatory Agency, PMRA, have tried to address the issue of product

availability in their respective countries. While the EPA and PMRA's progress regarding harmonization of new product registrations encourages us, the heart of the issue lies with existing product availability and pricing. While the pesticide companies often blame the regulatory agencies, it is often the manufacturers themselves who make registration timing decisions. The decision is impacted by expected return on investment and anticipated competition.

This bill will effectively give the States the ability to co-label those products for the company, under the strict supervision of the EPA, if they are found to be essentially the same product. This simple mechanism will bring those products to market more quickly, to the benefit of the farmers and the manufacturers.

North Dakota's legislature has worked to expedite the chemical harmonization process, including providing the Agriculture Commissioner with the authority to seek special emergency exemptions on products registered in both countries. The legislature has also shown how serious they feel this problem is by creating this special harmonization board and appropriating State funds for this purpose.

American and Canadian growers produce virtually identical crops and are forced to compete with one another in the global market. Therefore, it is imperative that product availability and price stand on equal footing across borders. After all, Canadian wheat is allowed to move freely into the United States without any inspection to determine if it has been produced with chemicals that are banned in the USA.

S. 532 will be an important step in eliminating the crop protection product trade disparities between our two countries. Free trade policies must be applied consistently. The legislation will prove to be a tremendous asset in the effort to standardize the prices paid for substantially identical pesticides on either side of our shared border.

On behalf of the State of North Dakota and its Crop Protection Product Harmonization and Registration Board, I respectfully request your positive consideration of S. 532. It will provide the mechanism to level a competitive cost disadvantage facing American farmers. Thank you much for your attention.

Senator CONRAD. Thank you, Lieutenant Governor Dalrymple. Thank you very much for being here. Thank you for that excellent testimony.

[The prepared statement of Mr. Dalrymple can be found in the appendix on page 57.]

Senator CONRAD. We will now hear from our Commissioner of Agriculture in North Dakota, Commissioner Johnson, who as many have said here today has made such a positive contribution here. I do not know of anybody who has more credibility on this question than Commissioner Johnson, right across the board, and I say that on behalf of members of this committee who have, on numerous occasions, recognized the important leadership that Commissioner Johnson has given, not only on this issue, but if I could take this opportunity to thank you for your leadership on the Farm bill. The members of this committee on many occasions said to me, thank you for the job Commissioner Johnson did in bringing together ag-

riculture commissioners around a set of proposals. That made a meaningful difference here as we deliberated the Farm bill and I want to thank you for it.

Commissioner Johnson.

STATEMENT OF ROGER JOHNSON, COMMISSIONER OF AGRICULTURE, STATE OF NORTH DAKOTA, BISMARCK, NORTH DAKOTA

Mr. R. JOHNSON. Thank you, Senator and Mr. Chairman. I, too, wish to thank you for the leadership you have taken. In particular, I want to thank you for holding this hearing and in being one of the cosponsors of this important piece of legislation.

My testimony is very long, so I am just going to skip around and hit a few very quick high points and try to avoid repeating what has already been said.

It is important for all of us to understand when we talk about pesticide harmonization that there are two fundamental things that come to play. One is access to product, in other words, is the same product available on both sides of the border, or another example of that is are new chemistries allowed to move into the countries simultaneously? That is the access issue. This bill does not deal with that.

That is the harmonization question that a lot of us also want to work on, but this bill deals with the second part. That is pricing. It is where you have identical products or nearly identical products registered in both countries but priced differently because the law prevents producers or dealers, the network, from moving across the border and accessing those different price levels. This bill deals with pricing.

A number of studies have been done to describe the nature of the disadvantage that we are faced with. The first attachment to my testimony is a study that was done at NDSU, concluding that about $24 million of extra costs are charged to North Dakota farmers alone by the use of this practice. If they had access to the Canadian prices, they would save $24 million.

On page two of my testimony, I provide a table that we developed internally in the Department that comes very close to that number. It shows about $23.7 million and it lists pesticide by pesticide the price differences. You have already heard testimony about some of them.

On the next page of my testimony, I provide the equivalent information, but a year earlier, to demonstrate that this has been an ongoing practice. The difference there was just over $32 million to our disadvantage.

In many cases—in fact, the NDSU study said that in many cases, 10 percent of the net farm income of a farmer is comprised of pesticide costs and this issue is huge for many of the farmers that have substantial pesticide expenses. It is safe to say that for many of the products, a 40 or 50 percent increase in pesticide prices is what they pay as compared to the Canadian version of the identical product. For many of these producers, we are talking about bills that could range from $10,000 to $20,000 annually in differences that would be saved if this bill were adopted.

There needs to be attention given to this. Specifically, that study also points out the impact to just hard red spring wheat producers in North Dakota. Their disadvantage that they face in the marketplace is almost $12 million alone, just for hard red spring wheat producers.

On page four, I want to read a paragraph of my testimony because it is normally not our practice to talk about ongoing investigations, and what I am talking about, in fact, is one that is under investigation. Recent events in North Dakota illustrate the temptation these price differentials create for U.S. farmers struggling to remain economically viable. On June 15 of this year, we were notified by representatives of Bayer Cropsciences that several North Dakota farmers were attempting to import and use Canadian Liberty, one of their products, a broad-spectrum herbicide. Six farmers were erroneously allowed to import the product by EPA Region 8 and U.S. Customs. They declared it at Customs and were allowed to bring it in.

Our staff, working in consultation with EPA, stopped the importation because the information on the forms was incorrect and the product, in fact, was not registered by EPA. As such, it is illegal to bring the product across the border. We have tested this theory on numerous occasions, most recently 2 years ago with the importation of Achieve. In fact, we had a judge tell us you cannot do that.

Our investigations determined that nine farmers attempted or succeeded to import approximately 8,000 gallons of Canadian Liberty. The price difference between the two products is $9.55 an acre. If you are spraying this product on just 1,000 acres of canola, it is about a $10,000 savings. That is what drove these farmers to try to bring it in, and they thought what they were doing was legal.

This issue needs to be addressed. As the Lieutenant Governor indicated, the legislature has weighed in on this issue. All of the ag commissioners have weighed in on this issue. All of the border State ag commissioners have weighed in on this issue. Even the ag ministers from Canada support this legislation, if you can believe that. In the last three international accord meetings that we have conducted, they have agreed with us on that issue.

As has already been said, this bill does not compromise the environment or food safety, public health, in any fashion. That is principally EPA's concern and this bill is crafted to address those concerns and they have been addressed.

Finally, I want to make a point about who ought to be importing if this bill passes, because there are a lot of misconceptions about this. The way the bill is crafted, it is likely that the folks who would import pesticides using this authority would, in fact, be the distributors in the dealer network. It would not be individual producers, and that is as it ought to be. Producers should not be required to drive to Canada to buy chemicals to treat their products any more than—well, I do not want to get into the drug issue, but it seems very similar. The bill has been crafted to safeguard the environment and to allow for the distribution channels to access the lower price at the distribution level and that is the way it would, in fact, play out.

Mr. Chairman, when you get to the question and answer session, I am particularly interested in responding to the three questions that Senator Roberts raised, as well. Thank you.

Senator CONRAD. We welcome that.

[The prepared statement of Mr. R. Johnson can be found in the appendix on page 60.]

Senator CONRAD. Let me just say, when we get to the question period, I have often found it more useful to have those who are part of a panel be able to respond to other members on the panel. We are not going to engage in some rigid hierarchy here. I have often found the most useful exchanges come when the most knowledgeable people are able to discuss among themselves evaluations of the positions that are being taken. Do not feel that you are restricted to answering my questions. If there is something somebody else says you want to comment on or you want to discuss, feel free to ask to be recognized for that purpose.

Mr. Bushue, welcome very much. It is good to have you here. I noticed that you are from the town of Boring, Oregon. I do not know how a town came to be named Boring, but——

Mr. BUSHUE. It is.

[Laughter.]

Senator CONRAD. Well, maybe that explains it. Welcome. It is good to have you here, and please proceed.

STATEMENT OF BARRY BUSHUE, PRESIDENT, OREGON FARM BUREAU FEDERATION, BORING, OREGON, ON BEHALF OF THE AMERICAN FARM BUREAU FEDERATION

Mr. BUSHUE. Thank you. As a word of explanation, it is named after the name of the century farm who donated the original land for the original school in what was a rural community and has now become a very small rural town.

Senator CONRAD. It is a family name.

Mr. BUSHUE. Yes. Still, the Boring Farm still exists.

Good afternoon, Chairman, and unfortunately, not any other committee members. I am Barry Bushue, a farmer from Boring, Oregon, where I operate a family nursery stock and berry operation. I am also the President of the Oregon Farm Bureau Federation and a member of the Board of Directors of the American Farm Bureau Federation. I am testifying today on behalf of the American Farm Bureau Federation.

Farm Bureau is the nation's largest farmer and rancher organization, with over 5.1 million member families in all 50 States and Puerto Rico. As you know, Mr. Chairman, farmers and ranchers in all 50 States have been facing some rather hard times these past few years. These difficult times have forced us, those of us in production agriculture, to take a closer look at our bottom line and attempt to do whatever we can to reduce any unneeded costs and hopefully realize a profit, or if we are lucky, maybe even break even.

This has been hard to achieve in recent years. This examination has exposed a number of increasing costs that farmers are now voicing concern about and attempting to mitigate. Such expenditures include ever-increasing environmental regulation costs, labor

costs, energy costs, and agricultural chemical costs, which is what we want to focus on today.

Let me begin by saying that American Farm Bureau strongly supports S. 532, the Pesticide Harmonization Act sponsored by Senator Dorgan. This legislation will allow farmers, cooperatives, and farm supply stores access to lower-priced Canadian agricultural chemicals that are identical or substantially similar to those sold in the United States.

The high cost of some pesticides in the U.S. is contributing to the current farm crisis by inflating agricultural producer input costs. Producers in other nations, such as Canada, use pesticides substantially similar in content to those used in the United States, but the foreign products are often less expensive. Under current law, U.S. producers cannot import these pesticides from other nations.

We farm in a global market. Our competitors are not just down the road, but around the world. To remain competitive and hopefully profitable, we must constantly search for ways to reduce our production costs. From the producers' point of view, there is a price disparity amongst some agricultural chemicals in the U.S. and Canada that impedes our competitiveness and profitability. We believe that this legislation will work to remove that disparity.

Under the Pesticide Harmonization Act, States could petition the Environmental Protection Agency to issue pesticide labels that could be placed on Canadian products when the only significant difference between the two is the price. The U.S. product label would allow our farmers to buy the Canadian pesticide for use on their farms in the United States.

Farm Bureau believes this legislation is a significant step toward achieving the goals of gaining access to affordable and needed products for U.S. farmers while at the same time maintaining U.S. standards designed to protect consumers, farmers, and the environment. Farmers in this country need a level playing field to compete with foreign growers, and having equal access to less expensive crop protection materials will improve the competitive position of United States producers.

Studies have been conducted on cost differences by USDA and others, and the results demonstrate that similar compounds used on both sides of the border can be priced differently. Sometimes, these price differences are significant. Senator Dorgan has stated that recent surveys have found that U.S. farmers can pay as much as 117 to 193 percent more than farmers in Canada for virtually the same product.

A USDA study puts this in perspective by stating that although pesticide expenditures are not high for the study crops in the Canadian-U.S. prairie area compared with some crops in areas, they are relatively high compared with per-acre profits. A few dollars of extra cost can make a significant difference between a profitable and an unprofitable year.

The American Farm Bureau and the Canadian wheat pools have sponsored producer meetings for the last 3 years. This effort has resulted in forming the Canada-U.S. Producer Consultative Committee on Grain. These exchanges have resulted in the identification of issues that are important to grain producers in Canada and the United States. We reached consensus that harmonization of

pesticide registration and labeling was desirable. If we can solve this trade or border irritant, perhaps we can solve some other issues.

I applaud EPA's efforts to work with our international trading partners to promote consistency in the various regulatory and scientific requirements regarding pesticides, such as the work being conducted with the Technical Working Group for Pesticides under NAFTA. However, while the administration's actions are helpful, they have not resolved the issue.

Farm Bureau does understand that because pesticides must be registered in the U.S. before they can be sold and distributed, there are certain limits on EPA's involvement. EPA must continue to work within current authorities to find solutions.

We were pleased to hear the statement of EPA Assistant Administrator Steve Johnson during his confirmation hearing regarding the need for legislation to address this problem, and I quote, "I believe that legislation is needed because there does not appear to be adequate administrative or regulatory solutions."

Thank you, Mr. Chairman, for the opportunity to comment, and I will be happy to address any questions you may have for me and the rest of the panelists, if any.

Senator CONRAD. Thank you for that.

[The prepared statement of Mr. Bushue can be found in the appendix on page 97.]

Senator CONRAD. I would ask those who are in the audience, if you have pagers or cell phones, that those be disconnected during the pendency of the hearing. That is a Senate rule and all chairmen are encouraged, indeed, required to enforce that rule.

Mr. Frederickson, welcome.

STATEMENT OF DAVID J. FREDERICKSON, NATIONAL FARMERS UNION, WASHINGTON, DC

Mr. FREDERICKSON. Thank you, Mr. Chairman. I am Dave Frederickson, President of the National Farmers Union. However, for the purposes of you and this committee, I am also an FORJ, Friend of Roger Johnson.

[Laughter.]

Mr. FREDERICKSON. On behalf of our members, members of the National Farmers Union, farmers and ranchers across this country, it is an honor to appear before you today to discuss S. 532, the Pesticide Harmonization bill, and the effect of our current pesticide regulation that allows differential pricing between the U.S. and Canadian agricultural markets.

Mr. Chairman, before I summarize our written testimony, I would request that, on behalf of the North Dakota Farmers Union, that their statement, which I believe you have and a letter addressed to you from North Dakota Farmers Union, signed by their President, Robert Carlson, be included as part of the hearing record.

Senator CONRAD. Without objection, that will be the order.

Mr. FREDERICKSON. Thank you.

[The prepared statement of Mr. Carlson can be found in the appendix on page 101.]

Mr. FREDERICKSON. Also, Senator Conrad, we commend you for convening the hearing and for joining with your colleagues, Senators Burns and Baucus, Daschle, Dorgan, and Johnson, in sponsoring S. 532.

The key element that has disadvantaged U.S. producers relative to our Canadian neighbors is the impact of U.S. regulations that effectively curtails competition in the retail pesticide markets between the U.S. and Canada. Our trade agreements and domestic regulations have resulted in a hypocrisy that reduces the competitiveness and potential profitability of U.S. producers. The hypocrisy, Senator, is this. The U.S. allows the importation of food products from other countries that are produced with pesticides that are not registered in the U.S. at the same time our farmers are prohibited from purchasing crop protection products in Canada that are substantially similar or identical to products that are registered for use in this country.

The economic impact of these regulations on American producers can and is significant. Last year, National Farmers Union developed a comparison of the per acre costs for a variety of registered pesticides for the wheat and barley crops typically produced in both the U.S. and Canada. For a typical 1,500-acre wheat farm located near the border, the price differentials between the U.S. and Canadian pesticide markets resulted in a farm chemical bill that is about $13,400 per year greater for the U.S. producers than his or her Canadian counterpart for the same products.

That is substantial and that is significant, particularly in the down market that we are experiencing. This represents 12 to 15 percent of the typical farm's total gross crop income, assuming average yields and current market prices, and conveys a significant competitive advantage to our Canadian competitors in both U.S. and global markets.

We believe the purpose of FIFRA is to utilize the best available science in ensuring the safety of consumer food products treated with pesticides, as well as ensure their safe and effective use by producers and farm workers. We do not believe it was the intent of Congress to provide a shield for the manufacturers and marketers of crop protection products to allow and encourage price gouging of their farmer customers. Unfortunately, that is the experience we confront under current U.S. regulations.

The National Farmers Union is certainly not seeking to reduce the level of regulation or oversight provided by EPA to ensure the safety of agricultural pesticides. In fact, we support a more globally harmonized system of safety regulations based on scientific principles and risk assessment for those products that reflects the U.S. system. This legislation does not weaken that objective or its enforcement. It simply provides U.S. producers access to a more competitive pricing system through a State registration system of Canadian products that are the same or comparable to those that have already been approved for use in the U.S.

We support this legislation because it helps achieve fair market conditions and increased competition between the U.S. and Canada by reducing the potential for differential pricing by pesticide manufacturers.

Mr. Chairman, I appreciate the opportunity to appear before your subcommittee today and offer the support of the National Farmers Union for the Pesticide Harmonization legislation you and many of your colleagues have introduced. We certainly look forward to working with you to achieve passage of this important bill, and I particularly appreciate the opportunity to sit shoulder-to-shoulder with my colleagues from the American Farm Bureau Federation in support of this issue. Thank you very much.

Senator CONRAD. Thank you. I appreciate that testimony very much and I appreciate your willingness to participate in the hearing today.

[The prepared statement of Mr. Frederickson can be found in the appendix on page 102.]

Senator CONRAD. Let me indicate for the record, if I can, the number of cosponsors now, because it has grown. Senator Dorgan is, of course, the lead sponsor. The lead cosponsor is Senator Burns of Montana, joined by Senators Baucus, Cleland, Clinton, Conrad, Crapo, Daschle, Dayton, Johnson, and Levin. I would say that support for this bill is growing, and I have talked to a number of other Senators today who have signaled to me an interest in joining in this legislation as soon as their aides have had a chance to study it so that they understand its full implications.

Mr. Vroom, welcome. It is good to have you here. Thank you very much, and please proceed with your testimony.

STATEMENT OF JAY VROOM, PRESIDENT, CROPLIFE AMERICA, WASHINGTON, DC

Mr. VROOM. Thank you, Mr. Chairman. It is a pleasure to be here. I also want to thank you for holding this hearing and allowing me to represent my industry as part of this esteemed panel of witnesses.

I am Jay Vroom, President of CropLife America Association, formerly, the American Crop Protection Association. Our association represents about 80 companies that are engaged in most of the pesticide manufacturing, formulation, discovery, distribution, as well as the leading companies in crop biotechnology in the United States and, around the world. Our business is, a global business and it is a shrinking business, shrinking in part because of the fact that our farm markets and the agriculture economies of agriculture here and around the world have been put on a diet, as we all know.

Just as an aside, I would like to mention that I am an Illinois farm boy, and I still own my family farm. I inherited that ground from my parents, who are deceased and my cousin still operates that farm. My wife grew up on a family farm about 40 miles away in a different county in Illinois. My brothers-in-law farm that ground and we own part of that operation. I get to pay for pesticides, fertilizers, other inputs and the Federal Land Bank mortgage note every year. I am personally acquainted with the challenges that are involved with the economies of farming today and I do not dismiss in any way, either as the executive officially representing my industry association here today or from my personal experience, any of what these witnesses have said already about the challenges of the farm economy today.

I would also like to observe that the American farmer is the best customer that my industry has in the world. With all due respect to some of the comments that were made, perhaps ad lib, earlier in the hearing by Senator Dorgan and Congressman Pomeroy, I have been in this job for 14 years. I have been all over the world, including across the United States and Canada with representatives of my industry and I have never in 14 years witnessed anyone practicing marketing procedures or regulatory processes that are intended to gouge the American farmer.

We just finished a meeting of my board of directors and Roger was kind enough to have breakfast with us this morning and enter an open dialog with the leaders of my industry about this issue. There may be a problem with regard to the differentials that do exist. I would point out that there are a lot of products that are also cheaper in the United States than they are in Canada or in other markets.

Because of the visibility that this issue has and the examples that have been cited, including those that have been studied in North Dakota and the USDA survey and others, we believe that it is inevitable that legislation will move and we would like to be a part of that process. We have some constructive ideas to suggest which we discussed with Commissioner Johnson this morning at our meeting. We are prepared to offer some of those ideas to your staff and with Senator Dorgan's staff and others and hope to be part of the process of finding something that we can live with as we go forward.

It is truly unfair and unfortunate that the American farmer has this disparity of having Canadian grain, flooding into the United States when inputs, pesticides in particular, are not regulated, equally.

As an industry, we are regulated in two separate marketplaces by two sovereign governments and that is an absolute fact. We agree that there has been substantial progress in the NAFTA harmonization process. Steve Johnson's testimony from EPA did speak to the fact that industry and the governments in the United States and Canada have made significant progress in harmonizing the testing protocols and some of the other processes.

What has come up short in terms of harmonization is implementing the harmonization process, actually getting simultaneous reviews and mutual acceptance of reviews between the two governments in the United States and Canada. It has not progressed as quietly as should have. One of the things we would like you to consider and Senator Dorgan to consider would be more hard deadlines and requirements for PMRA and EPA to that industry implement some of these harmonization steps so and the American farmers can enjoy the benefits long-term.

Short-term, you are planning to take some legislative steps to relieve the pricing differential perception that exists, and we believe that is a reality. Keeping EPA more closely in charge of that short-term regulatory process than S. 532 would provide is appropriate. We hope you will consider some suggestions specific to Section 24 of FIFRA, to expand, the special local need supplemental label provisions that are already there, precedent already established. It would be fairly easy to expand the definition of a special local need

to include these trade irritant issues around pesticide pricing through petitions by State governments to EPA, and to mandate quick action.

We thank you once again for the opportunity to be here and to acknowledge that this is a real problem, both in perception and reality. We stand ready to work with you to find a solution that we can live with as an industry that will continue to provide incentives for long-term harmonization that we think is so vital. It is a huge frustration for us right now. Once we get past this issue, hopefully it will look only like a speed bump. We want to be a part of the long-term solution and continue to bring new, innovative products in both pesticides and biotechnology to American farmers to help keep them the most important producers and viable producers in the world. Thank you very much.

Senator CONRAD. Thank you, Mr. Vroom. Thank you for your very constructive testimony. I want to make clear that all of us view your industry as a responsible industry and one that has served American farmers well and served really world agriculture well. We know it is a very difficult time for the industry because of the economics of agriculture. It is a difficult time because of a number of these irritants to the relationship between all those who are players in the market, and we want to acknowledge that. We look forward very much to working with you to try and resolve these places where there are differences so that we can have even broader support for the bill. I thank you for that testimony.

[The prepared statement of Mr. Vroom can be found in the appendix on page 106.]

Senator CONRAD. Let me just go through the witnesses and ask the question that I have asked the other witnesses, and that is do you support the enactment of S. 532 as proposed or with amendments, and if amendments are required for your support, what would those amendments entail? I would start with you, Lieutenant Governor Dalrymple.

Mr. DALRYMPLE. Chairman Conrad, the North Dakota Harmonization Board would support S. 532 exactly as it is. We have reviewed the legislation. We feel that it is sound, it is a result of a lot of background work that has already been done.

The only thing I would add to that is that we, like everyone at this table, would like to see a good law that will work well when implemented. The implementation will be challenging, and any ideas that come forward that would make the law work better, we would certainly support.

Senator CONRAD. Can you tell us if the National Governors Association or Lieutenant Governors Association have endorsed this bill or if there are any plans to get their endorsement?

Mr. DALRYMPLE. Chairman Conrad, there has not been an official endorsement of it that I know of. As you know, this is sort of a—it is quite a formal process of submitting the resolution well in advance, building support, and gaining the support and that type of thing. If that is something that you think would be helpful, we would be happy to expend more energy and spend time in getting that done.

Senator CONRAD. I do think it would be useful. I can tell you that I do not have the concern so much for the committee. I do have a

greater concern when we get to the floor. Any additional endorsements that would come from the Governors, Lieutenant Governors, would be very useful.

Commissioner Johnson, the same question I would pose to you. Do you support the enactment of S. 532 as proposed or would it require amendments for you to support it, and if so, what would those amendments be?

Mr. R. JOHNSON. Mr. Chairman, I support it just the way it is. I agree with what the Lieutenant Governor said. If folks want to offer amendments, I certainly think we would look at them. There was a lot of work that went into crafting this language.

I do want to make it clear that we worked very closely with EPA to make sure that they would not be saying, we cannot support this bill, and that is sort of a litmus test that needs to be met, because if the administration support drops off or if, in fact, it turns to opposition, it seems to me that would be a real problem. I certainly support it as it is drafted.

Senator CONRAD. You did make in your testimony, and I want to acknowledge for the record, a number of recommendations on technical changes to the bill. We have asked the staff to explore those proposals——

Mr. R. JOHNSON. Yes.

Senator CONRAD [continuing]. Make a judgment on each of those. In looking at them, they look to me to be reasonable and common sense——

Mr. R. JOHNSON. Yes.

Senator CONRAD [continuing]. Implementation issues to make it a bill that is more easily administered, if you will, and we are taking a close look at those proposals.

Mr. R. JOHNSON. I would call them just technical corrections, just to clarify intent and so forth.

Senator CONRAD. I appreciate that.

Mr. Bushue, if I can ask you, do you support this bill as proposed or would it require amendments to garner your support, or are there amendments that you would urge us to consider?

Mr. BUSHUE. Certainly, American Farm Bureau Federation supports the bill as proposed and we will continue to do so. However, we would be remiss in at not least looking at an opportunity to look at other amendments which may make the bill more workable and perhaps more passable and help our friends in the agricultural chemical industry. I certainly have to address the fact that they do have some confidentiality issues and some liability issues that perhaps some of the amendments that Mr. Vroom brought up would be opportunistic. We like the bill the way it is and we will work with you however you wish to proceed.

Senator CONRAD. Thank you very much.

Mr. Frederickson, same question, if I can, to you.

Mr. FREDERICKSON. Mr. Chairman, generally speaking, the same answers. Our organization, the National Farmers Union, together with many of the border State organizations, North Dakota, Minnesota, Montana, and on across, have time after time, year after year, submitted resolutions both to the local, the State, and the national organization in support of this effort, and so we have read and examined the legislation and my compliments, Commissioner,

for your hard work. We support the legislation as drafted and certainly reserve the right to have an opinion on various amendments that may be forthcoming. At this point in time, Mr. Chairman, we like it the way it is.

Senator CONRAD. All right. Thank you very much.

Mr. Vroom, what would your response be to that set of questions with respect to support for the bill as proposed or amendments that you would consider necessary?

Mr. VROOM. Mr. Chairman, we would be willing to consider support for the legislation with amendments in six key areas, some of which actually collapse together, but if I may just elaborate on those quickly.

No. 1, to address the protection of business data confidentiality.

No. 2, to provide a liability waiver should import supplemental label regulations for imported Canadian products be granted over the objection of the registrant and that registrant could submit to EPA a rationale for why they believe that the particular label would create either personal injury or product, crop damage, liability potentials, that there could be some mechanism there for that process to be allowed for, liability waiver.

We would like to see EPA, instead of on the back end of the process, on the front end of the process the way I had described in my oral remarks, an amendment perhaps to Section 24 of FIFRA to enable——

Senator CONRAD. Is this still No. 3?

Mr. VROOM. Yes, that is No. 3.

Senator CONRAD. OK.

Mr. VROOM [continuing]. Border States to petition for special local needs supplemental labels.

No. 4, we prefer to see this restricted to farmers and their neighbors being able to bring product through Customs for their own use and not extend it to the commercial trade. I would cite, for example, in the 2002 Farm bill, there are amendments that mandate that Congress asks that EPA study the impact of electronic commerce on the trade of pesticides within the United States, and that speaks to the fact that there are already a lot of disruptions going on within our marketplace and we believe that a farmer-owned use provision would mirror the type of mechanism that already exists in Canada coming the other direction, would harmonize that way and provide a little more stability to our marketplace.

No. 5, we would like to ask you to consider including an amendment that would direct the USDA and Ag and Agri-Food Canada, their counterpart agency in Canada, to update the study they did a few years ago on the situation—Under Secretary Hawks referred to that earlier in his testimony—with particular attention to how, over a couple of years' period of time, if such amendments that I am suggesting were implemented, what impact was being achieved or not.

Then No. 6, a hard deadline on EPA to mandate that they and PMRA walk this talk in implementation of the harmonization of the standards.

That may sound like a long list, but we have already drafted some legislative language amendment ideas along those lines and

could be quickly prepared to sit down and work with your staff on seeing if we could iron those out.

Senator CONRAD. I would ask you if you could work quickly to submit any language that you have in each of these six areas.

Let me, if I could, turn to Commissioner Johnson. I do not know what the subject was of your breakfast meeting, whether or not you have heard these six areas before, whether you have had a chance to think about them or react to any or all of them, but I would want to give you that opportunity. Then any other member of the panel, if you feel there is something you want to comment on, do not hesitate to just raise your hand and we will call on you. We do not have to be overly formal here. Commissioner Johnson.

Mr. R. JOHNSON. Thank you, Mr. Chairman. Let me respond to each of these and preface it by saying, as I told Mr. Vroom and his board of directors this morning, that all of us in agriculture absolutely depend upon their industry. You acknowledged that, and I want to second that. If there is a way that we can come to agreement on acceptable amendments, we certainly ought to do it. The goal is to equalize the price to create a level playing field, and as long as we can accommodate that, that is what we are after.

First of all, the issue of confidentiality, I certainly think that no State should be allowed to use this provision unless they can guarantee that confidential information remains confidential. That is a reasonable request. The bill prescribes some way for that to happen, and if a State cannot meet the prescription that is outlined in the bill, then, frankly, they should not receive the confidential business information. If they need to change a law in a State, they ought to change the law. I mean, that ought to be a condition. I certainly concur with them on that point.

Senator CONRAD. Let me stop you on that point, if I can, because I want the record to be complete. Are you familiar with impediments to that position with respect to the States of Washington and Oregon? Have you heard this before?

Mr. R. JOHNSON. No, I have not. We have looked at it in North Dakota. It was actually Washington and Vermont, were the States that were mentioned.

Senator CONRAD. Yes. I want to stand corrected, Washington and Vermont.

Mr. R. JOHNSON. I am not familiar with those, but I am familiar with open meetings and open records laws. We have them in North Dakota, but we also have, and perhaps the Lieutenant Governor can better address this because he has been in the legislature for a long, long while, but we have the ability to receive confidential business information and maintain its confidentiality, and we would demonstrate that to EPA and the industry's satisfaction that that would happen.

With respect to the liability waiver, the way the bill is crafted, whoever played a role in doing whatever, they would be liable for the role that they played, and that is sort of a standard practice, as I understand, that applies across many industries. If there is specific language, we would certainly be willing to look at it, but we crafted it with sort of the standard language——

Senator CONRAD. That is correct.

Mr. R. JOHNSON.—that is used not just in agriculture, but across much of the economy.

The third issue, the special local needs registration and using supplemental labels, in fact, as we crafted the bill, we talked about creating—a special local need is actually what is referred to in the trade as a 24(c) registration. That is a State registration instead of an EPA registration and there are certain requirements that need to be met and we routinely issue those, as do other States.

We crafted this bill, following that model. In fact, I do not recall whether the final version had this, but we talked about creating a new section of the law that would be created 24(d). I mean, it was intended to follow that sort of procedure.

Senator CONRAD. That is something we should be able to work out?

Mr. R. JOHNSON. I would certainly think so. It was intended that way.

Senator CONRAD. Let us go to No. 4.

Mr. R. JOHNSON. No. 4, restricting access to individual farmers, we spent a lot of time dealing with this issue, and frankly, this was, I know, one of the questions that Senator Roberts posed. It would be a mistake to restrict it to individual farmers. I do not think EPA will support that. There are lots of integrity questions that arise. There are lots of procedural problems that arise.

Senator CONRAD. Integrity—maybe we could just be specific. Integrity, not with respect to the product.

Mr. R. JOHNSON. With respect to the process. The problem you have if you have individuals accessing it is who is going to prove what is where? Who is going to prove that the Canadian product is identical to the U.S. product? There has to be somebody that can make that judgment. In fact, judgment is the wrong term, that absolute determination.

Currently, it is EPA. Currently, they have the confidential statement of formula and the bill is designed such that that formula would remain confidential. If we start opening it up just to individual farmers, you raise lots of questions about how do you prove that the product is the same as the one we have here? That is the fundamental issue that we had with Achieve. That is the issue that presents itself with Liberty. Unless you have the confidential information, you cannot make that proof.

Senator CONRAD. Let me just stop there and say to Mr. Vroom, I detected that you wanted to say something on that point.

Mr. VROOM. I am not sure we were talking about the same thing. In the concept that I was trying to describe in terms of farmer-owned use, that would be the mechanism by which individuals who could actually bring, using the supplemental label that EPA would have already drafted and established for trade irritant designation, the mechanism is only farmers would be able to cross Customs using that supplemental label, as opposed to any commercial enterprise——

Senator CONRAD. Distributors?

Mr. VROOM [continuing]. Distributors, dealers. Again, that is the mechanism that the Canadian government had put in place some years ago——

Senator CONRAD. Their own use.

Mr. VROOM. There is some industry experience with regard to that impact in the marketplace on either side of the border for the Canadian——

Senator CONRAD. This is clearly an area where we have a problem.

Mr. VROOM. Yes.

Mr. R. JOHNSON. Yes.

Senator CONRAD. As I hear it, one through three of what you raised, Jay, are things we can work out. We have a problem on No. 4.

Mr. R. JOHNSON. If I can add to that, the real problem you would have here is not just what I have described, but it is what would be the impact on the dealer network in border States. If individuals were forced to drive to Canada to buy their pesticides, what would that do to the local pesticide dealer, to the local co-op, to that whole regulatory system, the whole farm supply system, I should say, that we have?

Senator CONRAD. Just the efficiency of it is——

Mr. R. JOHNSON. Absolutely. I mean, why would you want someone from South Dakota to have to drive all the way through North Dakota to go to Canada to buy a product when if you could make it accessible through the dealer network, it would be much more efficient. That——

Senator CONRAD. Let us go to No. 5, if we could.

Mr. R. JOHNSON. As I heard No. 5, it was to direct USDA and Canada Agri-Food to do another study and to sort of——

Senator CONRAD. Update their study, as I heard.

Mr. R. JOHNSON. I do not have an issue with that. I do not know that that would need to be in the bill. We could just ask USDA and Agri-Food Canada to do it and they would probably do it.

Senator CONRAD. We might be able to do report language or something like that.

Mr. R. JOHNSON. Sure, and your conversation earlier is evidence of that. I suspect USDA heard what you said.

Senator CONRAD. Let us go to No. 6, if we could, on the hard deadline on the implementation. This is with respect to EPA's deadlines.

Mr. R. JOHNSON. You know, frankly, I agree with the industry on this issue. I am not just exactly sure how we do it. In my opening remarks, I describe sort of harmonization as being this two-step thing. It is access to products and it is pricing. This is about access, and frankly, the bill does not deal with it. If we can figure out a way to have the bill deal with it, I would certainly be open to that.

Senator CONRAD. Can I just raise this point with respect to No. 6. We have a very hard time making that part of this bill, and I say that because we get into all kinds of jurisdictional issues as soon as we cross that line. We are immediately over into Environment and Public Works Committee jurisdiction. I mean, that is the way they will see it. That creates lots of problems.

I agree with you, Roger. I agree with the industry on this. They have a very reasonable concern and complaint here and we need to find a way to address it. I have real reservations about this bill being the place because I know what it would lead to. We would immediately be into a referral question with respect to jurisdiction

and EPW has, if you go to the backlog of what they are dealing with in terms of the issues that are before them, including the whole matter of highway funding this year, a highway bill, and their four pollutants legislation, and so forth, that is a problem.

The industry has a very legitimate concern here and I am struggling in my own mind at the moment as to how we address it. Jay.

Mr. VROOM. Mr. Chairman, I do think that there are sections in FIFRA, and unfortunately, among the things I have here at the table with me is not my copy of FIFRA, but there are sections that deal with harmonization and international movement of pesticides. Certainly, I am not interested in having to go over to that other committee you mentioned, so——

[Laughter.]

Mr. VROOM. That was not my intent. We can stay——

Senator CONRAD. I did not think it would be.

[Laughter.]

Senator CONRAD. All of us would be much happier if we did not go through that.

Mr. VROOM. I will retreat from that if that is proven to be the case, but I actually do think that this amendment that we have in mind could be clearly deemed to be a FIFRA amendment in the jurisdiction of the Agriculture Committees.

Senator CONRAD. Let me say this to you. We get into a whole series of issues. I did not go down my whole list, but I can tell you, this gets to be a resource question at EPA in terms of prioritization of the use of resources. It gets to be an Appropriations Committee question. I can just tell you, the way this place works, we get drawn into a swamp of the Appropriation Subcommittee, the EPW Committee, this committee's jurisdiction, and a mud wrestling match with respect to an amendment like this on this particular bill.

I am not sure, I just raise these red flags for the purpose of being very direct with everybody on that particular amendment. You have a very good case. There is no question in my mind. We have had many meetings in my office—Roger Johnson has been at some of them—with EPA for years and we go around and around and around and all these things are going to happen and some of them do, but a lot of them do not, and these deadlines are set up and I do not know, their idea of a deadline, some of these people, is a lot different than my idea of a deadline.

Those of us who were brought up in the Midwest, it really means something to us. If somebody says, be someplace at 10, our understanding is that you are there at 10. That is not the culture of this institution, I can tell you that.

[Laughter.]

Senator CONRAD. I am still 20 minutes early for almost every meeting. You would think I would figure it out by now.

[Laughter.]

Senator CONRAD. You know what I am saying. It applies to these deadlines. I mean, a lot of them, they just—I do not know, they think that is advisory or something. It is not compulsory, it is like, well, if you get it done by then, great, but it does not really matter, and that is impossible for an industry to function under that kind of regime.

Mr. Vroom.

Mr. VROOM. The resource question is also eminent with regard to the pesticides program at EPA because we have statutory authorities that expire the end of September and we had, thanks to Chairman Harkin, a very good comprehensive solution in the Senate version of the Farm bill, which unfortunately got kicked out at the very end on the weekend before you finished the Farm bill in conference.

Senator CONRAD. I was there.

Mr. VROOM. It was there, but Senator Harkin's staff, in fact, called us again today, so I guess that Senator Mikulski is planning to mark up VA, HUD, and Independent Agencies next week and there may be an opportunity to do something there in this broad context.

To the point of resources to do more of the harmonization implementation or walk, frankly, I believe the case could be made that it could result in less work for the U.S. regulatory agencies and the Canadian agencies if they were actually implementing mutual acceptance of reviews because then only one of them would do this and they would trust the other one to have done the job. It begs the question.

Senator CONRAD. I will tell you something, sign me up. Sign me up. This has been a matter of I do not know how many hours of meetings in a meeting room in my office. I can remember at least three lengthy, detailed meetings in which we discussed that very matter. We trust the Canadians to guard our northern border with fighter aircraft. That is the way it works. The protection of the northern border of the United States, do you know whose responsibility it is? It is the responsibility of the Canadian Air Force. We trust them to protect our northern border. We cannot trust them to evaluate these kinds of applications on a similar basis and work-up? Come on, I mean, this is not that tough.

The fact is, much of their procedure and approach is the same as ours. Somehow, we have a turf battle. Let us just say it the way it is. It is a turf battle, and that has to get resolved. It is in the interest of everybody to do it. I hope that message goes back out of this meeting, that we have had enough meetings. For God's sake, let us get the job done.

Mr. Bushue.

Mr. BUSHUE. Chairman Conrad, I would appreciate it if I could be excused. You mentioned deadlines.

Senator CONRAD. Yes, sir.

Mr. BUSHUE. I have a flight to catch.

[Laughter.]

Senator CONRAD. I would say to Mr. Bushue and other members of the panel, we indicated that we would finish by 4 and that is our intention. We understand you need to leave for a plane. You are excused, and I would say to the other members, we have about completed. Certainly, you take your leave so that you do not miss your flight.

Mr. BUSHUE. Thank you, Mr. Chairman.

Senator CONRAD. We appreciate very much your appreciation here today.

If there are any last thoughts or observations, we would entertain those at this time. Lieutenant Governor Dalrymple.

Mr. DALRYMPLE. Mr. Chairman, I also have a flight, but I also have one last comment. Thank you.

I just wanted to point out that I did meet about a year ago now this summer with some of the leaders, also, of the Crop Protection Product Association and some of these ideas or concerns, I guess you could say they had, were mentioned then, protection of business data, liability waiver, farmer own-use importation, and I asked them at that time if they would produce for me some suggested language or a suggested amendment to cover some of these issues.

I guess what I am reporting to you is that a year later, I am still waiting for that to come to me, and now that we have had a hearing, I hope that we can ask the association to show us in detail what it is that they would like to see and that we would not simply wait for that.

Senator CONRAD. No, waiting is over. We are done. This is it. The train is moving. You get on board or you are going to get left behind. That is the message out of here.

Let me just say, on the question of confidentiality, on page 13 of the bill, under No. 4, if the State certifies to the Administrator that the State can and will maintain the confidentiality of any trade secrets and commercial or financial information provided by the Administrator to the State under this subsection to the same extent as is required under Section 10—this is preceded by this paragraph.

The EPA Administrator may disclose to a State that is seeking to register a Canadian pesticide in the State information that is necessary for the State to make the determinations required by paragraph four if the State certifies to the Administrator that the State can and will maintain the confidentiality of any trade secrets and commercial or financial information provided by the Administrator to the State under this subsection.

That is designed to get at this question. If it does not accomplish it, then we need to address it. There is a good faith desire to do precisely that.

Are there any other final comments?

Mr. VROOM. Mr. Chairman, one thing I did want to mention earlier, and that is that we worked with all the other organizations and witnesses here on a range of issues and have enjoyed their support on things like the Food Quality Protection Act and TMDL, water quality regulations, tough scientific and emotional issues and we appreciate the partnerships that we have had, as well as with the Senate Agriculture Committee's support on those kinds of issues. I just want to thank those that have been so supportive of us. NASDA and Commissioner Johnson have been involved in so many of those kinds of issues. We want to put this contentious issue behind us.

The Lieutenant Governor is absolutely correct. He did ask for that and we have been struggling to try to get our membership together to address this issue in a consensus way. It has not been easy. Part of the reason, as I mentioned at our breakfast meeting this morning with the Commissioner, is that we are constrained by

antitrust regulations also before us that makes it very difficult for price-related issues to be discussed in an association context. As we try to gather our own price information data, it has to all come through legal counsel and be carefully vetted. It has just been a very difficult issue, not necessarily any more difficult than any of the others I just mentioned, but different in nature. I apologize for appearing to have been dragging our feet, and in fact, we probably have at times. Some of it has just been the nature of this issue.

I appreciate the chance, again, to be here. We want to be at the table and we want to be on the train. Thank you.

Senator CONRAD. I appreciate that, and I just will send a very clear, distinct message here. We are going to move to completion and we are going to do it quickly, but we are going to do it with reaching out to everybody. We are going to listen respectfully. We are going to reach conclusion. We have just got to do that.

I want to again thank all the witnesses for what has been a very constructive and productive hearing, and I thank you.

With that, the committee will be adjourned.

[Whereupon, at 4:02 p.m., the subcommittee was adjourned.]

APPENDIX

JULY 18, 2002

Senator Byron L. Dorgan
Statement Submitted for the Record
Thursday, July 18, 2002

Agriculture Subcommittee on Production and Price Competitiveness
Hearing on S. 532, the Pesticide Harmonization Act

I would like to thank Chairman Conrad for holding this hearing on S. 532, the Pesticide Harmonization Act, here in the Agriculture Subcommittee on Production and Price Competitiveness. This is legislation that Senator Burns and I introduced, and is cosponsored by Senators Baucus, Cleland, Clinton, Conrad, Crapo, Daschle, Dayton, Johnson and Levin. I should also note that Congressman Pomeroy has introduced similar legislation in the House of Representatives.

I find it fitting that this hearing takes place in a subcommittee titled "Production & Price Competitiveness." Why? Because, if enacted, S. 532 would eliminate a competitive edge that Canadian farmers currently enjoy when compared to United States farmers. S. 532 would amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a state to register a Canadian pesticide for distribution and use within that state if the pesticide is substantially similar or identical to one already registered in the United States.

We drafted S. 532 because United States farmers pay significantly higher prices than Canadian farmers for essentially the same pesticides, often made by the same company or an affiliate. The price difference in many cases is more than the farmer will make in a year, and can often cause a loss to be posted for the year.

With margins this slim, farmers constantly search for ways to cut costs, and Congress could help them in this if it were to pass S. 532.

I have some examples of these price differences that I want to bring to the attention of the subcommittee. The first example concerns the pesticide, Liberty, which is a selective use herbicide used on canola, corn, soybeans and sugar beets. Liberty is sold in boxes such as this one. A box like this would contain two 2-1/2 gallon jugs of the pesticide.

In the United States, Liberty costs approximately $90 per gallon, or about $450 for the 5 gallons that would come in this box. In Canada, those same 5 gallons cost about $165 US, after converting liters to gallons and accounting for the currency exchange.

Let me repeat, if a farmer buys this box of Liberty in Canada, he pays $165. But, if he buys it in the United States, the price jumps to $450. The United States farmer is asked to shell out an additional $285 just because he is in the United States! To elaborate further on the cost discrimination our farmers must operate with, the labeled rate of Liberty varies from 20 to 34 ounces per acre, depending on what crop or weed is being sprayed. This translates into a price difference of $9 to $15 per acre!

This is simply not acceptable, and is especially repugnant to farmers when they come to realize the Liberty sold in the United States is the same as that sold in Canada, and made by the same company.

The second example of price difference deals with Folicur, a fungicide used to treat wheat and durum for Fusarium Head Blight, more commonly referred to as Scab. For instance, here's a box that contained two 2-1/2 gallon jugs of Folicur. This particular box was purchased in Canada during the 2000 crop by a United States farmer, who was able to bring it across because the pesticide did have a United States label attached to it. However, it should be noted that it also had a Canadian label.

There is quite an interesting story behind this box of Folicur. Apparently, a shortage of this fungicide occurred in Canada during the 2000 growing season, prompting the manufacturer, Bayer, to transfer some of their United States inventory of Folicur up into Canada. Once across the border, Bayer simply put the Canadian label on the Folicur box, and left the United States label on the 2-1/2 gallon jugs located inside the box.

You can easily see the Canadian label attached to the box, right here. And as you can see, here also is the United States label still on the empty jug located inside the box. The reason I am pointing out the obvious is this: Besides gaining another label when the box crossed the border into Canada, this box also had a magical change in value – the price suddenly decreased by over $500.

So, we have one box of Folicur, two separate labels, along with two very different prices. Once again, let me emphasize, the Canadian farmers paid $500 less than a United States farmer for literally the very same pesticide that was being sold a few miles south.

I could go on, but the story is the same for other products with varying degrees of price differences. The North Dakota Department of Agriculture is submitting documentation today from a study their pesticide division conducted that estimates the price disparities are costing North Dakota farmers alone over $24 million this year for the most widely used pesticides. While this is better than the previous year's estimate of over $32 million, it is still too much of a difference. If this cost difference is spread nation-wide, it is easy to see that this is a very serious handicap for United States producers.

Beyond the price issue, I also want to emphasize that care has been taken not to pose a safety risk to the environment or the public's health. We worked closely with the EPA when drafting this legislation, taking advice from them to make sure the use of the various pesticides affected by this legislation would continue to take place in a safe manner

EPA testified last year in a hearing I conducted in my Commerce Subcommittee hearing on S. 532 that the legislation posed no safety risk to the environment or public's health. I believe they will testify to this today as well.

In closing, let me say that family farmers in North Dakota and across the country are asking Congress to pass this legislation so that they can more readily compete with their Canadian counterparts. It makes little sense to force United States producers to use more expensive versions of the very same or substantially similar products, often manufactured by the very same companies or affiliates.

Chairman Conrad, I want to thank you once again for holding this hearing. I believe this hearing will be instrumental getting this problem rectified for family farmers across this country.

TESTIMONY OF
WILLIAM HAWKS
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MARKETING & REGULATORY PROGRAMS
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
SUBCOMMITTEE ON PRODUCTION AND PRICE COMPETITIVENESS
U.S. SENATE AGRICULTURE, NUTRITION AND FORESTRY COMMITTEE
JULY 18, 2002

Good afternoon Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to appear before you to discuss pesticide harmonization and its potential impact on American farmers. The United States Department of Agriculture (USDA) welcomes this opportunity to fulfill its role as the advocate of the American producer within the Administration.

As you know, although the Environmental Protection Agency (EPA) is the lead agency for pesticide regulation, USDA has been concerned with the issue of pesticide harmonization for some time. Although important strides have been made in harmonization of registration procedures for new pesticides, harmonization for older pesticides has not been matched. USDA supports efforts to facilitate harmonized pesticide registrations so that our farmers will have equitable and economical access to safe and effective agricultural chemicals.

The Department of Agriculture is very interested in proposals that offer to improve the competitiveness of American growers in domestic and world markets. While recognizing there are many factors that can contribute to differential prices between markets, some of which include marketing strategies, market size and demand, we are also aware that structural differences in the regulatory and legal systems may have a real impact on these issues.

Before serving in my current position as Under Secretary of Marketing and Regulatory Programs, I grew corn and soybeans in Northern Mississippi. As a farmer, I often times commented that I could compete with any farmer in the world, but I couldn't compete with foreign governments and regulations. Now, as Under Secretary, I want to break down barriers to create a level playing field for U.S. producers while continuing to protect public health and the environment.

USDA supports EPA's efforts to harmonize pesticide registrations as a means to promote the economic well being of American farmers. In 1999, USDA commissioned a study to document pesticide availability and pricing between the U.S. and Canada. This report showed that prices for some pesticides are lower in North Dakota, while other pesticides have lower prices in Manitoba. The study also reported that pesticides accounted for only 10-18% of the overall cost of production for the four other crops studied on both sides of the U.S./Canada border. The report identified many factors affecting pricing on either side of the border including: differences in patent protection length; differences in market size and costs; differences in pesticide demand; and differences in the number of substitute products available.

The Department has been an active participant in the North American Free Trade Agreement (NAFTA) Technical Working Group on Pesticides, and we will continue to work with EPA and the United States Trade Representative (USTR) through the Consultative Committee on Agriculture to resolve trade issues related to pesticide harmonization.

Thank you for the opportunity to address this issue on behalf of American producers. We look forward to working with Congress and stakeholders to achieve pesticide harmonization with Canada, and to eliminate arbitrary differences that impact pricing and availability.

Statement of Congressman Earl Pomeroy
Subcommittee on Production and Price Competitiveness
U.S. Senate Committee on Agriculture, Nutrition, and Forestry
July 18, 2002

First, I would like to thank Chairman Conrad for the opportunity to testify. He has been an outspoken supporter for North Dakota's farmers in his role on the conference committee to the Farm Bill and continues to do his part to represent their interests by holding this hearing.

Senator Dorgan and I have worked together -- in concert with officials from the Environmental Protection Agency and the North Dakota Department of Agriculture -- for several years on the topic of pesticide harmonization, an area of special concern for North Dakota farmers. I appreciate and share his dedication to having this issue resolved for the benefit of North Dakota farmers and farmers across the nation.

I am sure later witnesses will add new value to the understanding of the details of the issue at hand. I just want to spend a couple of moments summarizing what I see as the core issues for this hearing, concentrating on why we are in this current situation, and how this bill will help to solve the problem.

THE PROBLEM

The issue of pesticide harmonization unfortunately does not strike many Members of Congress as meriting the attention that it very much deserves. One of the simplest ways to explain the problem is to cast it in the light of another pricing disparity issue that we are currently wrestling with in this Congress -- prescription drugs. American citizens go into Canada, receive Canadian prescriptions from Canadian doctors, and travel back to the United States to take those

prescription medicines -- all because that the price of the medicine they need is so dramatically lower than it is in the United States. The medicines are the same. Their prices are not.

Pesticide pricing is similar. The Canadian pesticides that we are discussing in the context of harmonization legislation are the same as the American pesticides our farmers are able to purchase from American farm stores and apply on American land. The chemicals are the same. The prices are not.

However, the pesticide pricing cross-border difference may be even easier to explain than that for prescription drugs, an often subsidized product with legislated low prices in other countries. When people first become aware of the problem of pesticide pricing disparities between the United States and Canada, the first inclination is to blame it on the differing regulatory schemes in the two countries. However, these regulatory differences have been explored, the EPA and its Canadian counterpart have compared regulatory demands, and the conclusion is that the agencies' requirements for pesticide registration are very similar. No excuse remains for the price disparity other than a border that allows for market segmentation by the chemical companies.

The current disparate pricing system is based on the ability of agricultural chemical companies to tightly control the distribution of their products and to segment the US/Canadian markets. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) guarantees that the government retains control over the production and distribution of potentially harmful chemicals.

However, FIFRA also sets up a barrier to cross-border trading of agricultural chemicals, allowing chemical companies to sell the same chemicals in the United States and Canada at different prices. Although a Canadian chemical may be identical in substance and use to the American chemical, it cannot be imported because of strict labeling and production requirements stipulated under FIFRA. Without free trading in these chemicals, there is no possibility of the natural economic arbitration of those prices.

According to a 1998 survey conducted by the North Dakota Agricultural Statistics Service, farmers in North Dakota were paying between 117 percent and 193 percent higher prices for pesticides than Canadian farmers. A 2001 study by researchers at the North Dakota State University showed a 3 to 5 percent average increase in net farm income if Canadian priced chemicals could be used in the United States. Through these studies, we are beginning to understand the impact of having a two-tiered pesticide pricing structure.

NORTH DAKOTA ON THE FRONTLINE

The issue of pesticide pricing parity comes home on a regular basis for those of us on the Northern border. Recently, a group of North Dakota farmers were caught on the border bringing in the Canadian chemical product Liberty. The United States also has a Liberty product available. The two Liberty chemicals are made by the same manufacturer, Bayer Crop Science. In fact, we believe the only difference between the products is $9 more per acre for the United States Liberty product.

The United States government is forcing farmers to violate the law in order to purchase a product, that were it to have the same label as the product on this side of the border, it would be

identical to what the farmer finds in his local farm store. It is an identical product sold at a much higher price in the United States.

THE PESTICIDE HARMONIZATION ACT AS A SOLUTION

Almost one year ago today, we were talking about the issue of pesticide harmonization at a hearing in the Senate. At the same time, the House was beginning to write a farm bill. The Farm Bill justifiably became the dominant agricultural legislation considered by the Committees and Congress last year. However, our work for agriculture is not done. Congress must turn its attention to the problem of input prices and solve this problem once and for all. We helped to address low market prices through the Farm Bill, and I think we can address high input costs through the hearing today and subsequent legislation.

We have long discussed the problem and the need to solve that problem. We have the solution in this legislation. If enacted, the Pesticide Harmonization Act would eliminate the current barriers that prevent U.S. farmers, dealers, and distributors from accessing pesticides from Canadian sources. The Act would amend FIFRA to grant states the authority to issue state registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products registered with EPA for use in the United States. By eliminating access barriers, the Pesticide Harmonization Act would essentially create a free market for pesticides, and allow U.S. and Canadian farmers to compete on a more level playing field. I believe the legislation is reasonable and holds the potential to make a substantial impact on the ongoing harmonization issues between the United States and Canada.

As important as what the bill would do is what the bill would not do. This bill will not endanger human or environmental health. It will not allow dangerous, unapproved chemicals to enter U.S. borders and be applied on U.S. cropland. In order to register a Canadian pesticide in the United States, the state will have to certify that pesticide as being identical to the domestic pesticide already registered for use in the United States and that the pesticide meets the strict standards set by the EPA under FIFRA.

A LARGER HARMONIZATION EFFORT NEEDED

I strongly believe that if we are going to create a free AND fair trade regime then we must address this inequitable situation. The Canada - US Trade Agreement (CUSTA) came into effect more than ten years ago to foster free trade between the two countries. Part of the understanding for that agreement was that our two nations were going to move rapidly toward the harmonization of pesticide regulation. Now, ten years later, we are still working toward meaningful harmonization. As I understand it, the EPA is working with PMRA on this issue and I am hopeful they will be able to arrive at an agreement. Until that point, however, solving this narrower issue would help alleviate some of the financial strain caused by high input costs.

Registrants simply are able to sell pesticides at higher prices in the United States than in Canada because of the differing regulatory schemes. This runs contrary to the intent of free trade between the two nations and results in a situation where our producers compete with Canadian producers on the output side, but not the input side. I am encouraged by the Senate's willingness to hold hearings on this topic, and I hope this will lead to action on this legislation.

TESTIMONY OF
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BEFORE THE
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SENATE AGRICULTURE, NUTRITION, AND FORESTRY COMMITTEE
JULY 18, 2002

Introduction

Good afternoon Mr. Chairman and members of the Subcommittee. Thank you for the opportunity to appear before this Subcommittee to discuss the concerns of American farmers with regard to pesticide pricing between the U.S. and Canada. The U.S. Environmental Protection Agency (EPA) remains committed to working with Congress, the states, farmers, other Federal Agencies, and industry to address this ongoing concern.

Today, I will provide you with information on the long-term approach EPA is taking to address this issue, as well as discuss the current legislation which attempts to remedy these pricing discrepancies in the near-term. I will also touch on some of the harmonization activities that my program has been involved in since I testified on this important matter last summer. As you likely know, EPA's legal authority over pesticides is to ensure the protection of public health and the environment; our authority does not extend to pricing. Current U.S. pesticide laws require an extensive scientific evaluation and a pesticide registration before it can be sold and distributed in the U.S. Further, EPA is unaware of any evidence that indicates national pesticide regulatory requirements contribute significantly to existing price differences. Many factors contribute to pricing, such as marketing, availability, and demand. As all parties have acknowledged, this is a highly complex issue.

That said, I know EPA has worked very closely with congressional staff, state officials, and pesticide companies over the last few years, to explore remedies that would help address prices differences that U.S. farmers may be experiencing. EPA continues to make progress on a variety of administrative and regulatory approaches that help facilitate equal access and harmonization.

A Long-Term Solution: Harmonization

First, let me describe some of the longer-term, more strategic actions that EPA is taking, and partnerships that EPA has established, to address this important issue. EPA continues to work closely with Canada and other trading partners to break down barriers and facilitate trade and competitiveness. Together, we are developing more consistent regulatory and scientific requirements, registering needed products, and supporting the principles of sustainable pest management. EPA's work on pesticide harmonization with Canada, which began in earnest in 1993, is increasingly providing benefits directly to the American farmer. In the long term, the creation and ongoing support of a North American harmonized market for pesticides will ensure a level playing field across borders while maintaining our high standards of protection for human health and the environment.

EPA has also had continued success in facilitating free trade with Canada. In December of 1998, the U.S. and Canada signed a formal agricultural trade "Record of Understanding." This agreement includes provisions specific to pesticide harmonization by encouraging greater cooperation among government regulators, growers, and the pesticide industry. This Agreement, and the subsequent discussions it has inspirited, have resulted in significant improvements in the approach EPA and the Canadian Pest Management Regulatory Agency (PMRA) are taking toward international harmonization. The Record of Understanding has led to more frequent and open dialogue among EPA, grower groups, and industry, which in turn, has begun to accelerate regulatory harmonization. We have learned through this process that harmonization depends on a partnership with our key public stakeholders, growers, and industry, so that strategic planning and priority setting across borders can occur simultaneously.

EPA continues to make considerable efforts to receive input on harmonization approaches with representatives from industry and grower groups. Most recently, in November 2001, all affected parties were invited to participate in the North American Free Trade Agreement (NAFTA) Technical Working Group on Pesticides annual meeting. EPA strongly supports these broad-based efforts, which continue to move us closer to a harmonized North American market for pesticides. In essence, this vision of a North American market, elaborated by the NAFTA pesticides group, promotes equal access to pesticides by offering incentives, a harmonized review process, and work sharing across national boundaries.

We have also recently published the NAFTA Technical Working Group on Pesticides' *Milestone Report.* This report highlights the numerous accomplishments of the NAFTA pesticides group over the last several years, and it provides a valuable perspective for setting an agenda for future harmonization work.

Efforts like these are helping to break down the political and regulatory barriers with respect to the delivery and use of pest management tools on both sides of the border. An important piece of this work is the creation of a "NAFTA label," which will help enable the sale and distribution of a pesticide across North America, thereby guaranteeing its availability at the same time in the U.S. and Canada. We continue to make strides in putting this into practice, building on the existing Joint Registration Review program. The joint review program has resulted in the registration of twelve new pesticide products in the U.S. and Canada, with eleven additional products currently under review. The governments continue to share resources and scientific expertise, or "work sharing," in reviewing data on several other pesticide products. One of the products under joint review, which will be for use on northern crops, is currently a pilot for a NAFTA label. The registration decision on this pesticide and NAFTA label is scheduled for Spring of 2003. It is worth noting that as we work through issues associated with NAFTA labels, such as specific label language, the ultimate decision to use theses types of labels lies with the pesticide registrant. We continue to believe expansion of products under NAFTA labels will help break down potential trade barriers.

Overall, the NAFTA pesticide group continues to enable EPA and PMRA to work together on the entire range of pesticide regulatory requirements, review procedures, and programs. Mexico is our other important partner, and the Mexican pesticide regulatory authority participates on individual projects as its resources permit. The NAFTA pesticide group has improved governments' capacities to address trade irritants by building national scientific and regulatory capabilities, by sharing the data review burden, and by coordinating scientific and regulatory decisions. To date, the vast majority of data requirements and test guidelines that must be adhered to in the registration process have been harmonized, and as a result of work sharing and joint reviews of recent pesticide registration submissions, the harmonization of risk assessment procedures is well underway between the U.S. and Canada. These are important milestones that are establishing the framework for facilitating equal access to pesticides, which could lead to more uniform pricing across borders. As I have stated previously, you have our commitment to continue to work within our current authorities as creatively and flexibly as possible to promote a level playing field for U.S. and Canadian farmers.

A Near-Term Solution

EPA stands ready to continue our work with Congress and others on possible legislative solutions that effectively address observed differences in pesticide pricing, as long as the protection of public health and the environment are not compromised. As you know, S. 532 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to permit Canadian products that are substantially similar to U.S. registered products to be imported and registered in the U.S. The intent of this legislation is to alleviate as quickly as possible the inequities U.S. farmers may be experiencing today as a result of pricing differences.

EPA's understanding is that this legislation, if passed, would authorize a state to register certain Canadian pesticides, thus allowing such pesticides to be imported into the U.S. for use in that state. Any person or state may seek registration of a qualified Canadian pesticide. To be

qualified for registration under this proposed legislation, a Canadian pesticide must be identical or substantially similar in composition to a U.S. registered pesticide that is not subject to any enforcement, administrative, or regulatory review, control or action. There must also be a tolerance, or tolerance exemption for any intended use of the Canadian pesticide. In addition, the Canadian pesticide must be registered in Canada by the registrant of the comparable domestic pesticide or an affiliate of that registrant. Once registered, the Canadian pesticide must bear only the labeling required under this bill, which is essentially the EPA approved labeling for the comparable domestic pesticide but excludes use directions unrelated to the intended use(s) of the Canadian pesticide in the U.S. Furthermore, the registrant must affix the labeling required under this proposal to the Canadian pesticides at an establishment registered with EPA.

The legislation would require that the registrant of the comparable domestic pesticide provide to a state any information that is necessary for the state to make the determinations required for registration, providing that state can certify that it can and will maintain confidentiality of any trade secrets and confidential commercial and financial information provided by the registrant of the comparable domestic pesticide. As drafted, the registrant of the Canadian pesticide would not be liable for compensation for data supporting the registration of such pesticide.

EPA understands that this legislation is intended to create a structure which ensures that appropriate safeguards remain in place to enable EPA to achieve its primary mission: the protection of public health and the environment.

However, there remain some broad policy concerns with this legislation that will need to be fully addressed, and the consequences fully considered. For example, a legislative approach like this, with a focus on one country alone, may have international trade implications. EPA will continue to work with congressional staff to address these issues as they arise.

Another potential concern is that of implementation. For example, there are important questions regarding a state's ability to maintain confidential business information and other trade

secrets, which in this legislation is a critical step in acquiring a state registration of a Canadian pesticide. In fact, there are some states that are required by right-to-know and other information disclosure laws to reveal any information they may hold. Also, the current legislation insulates state registrants from data compensation, potentially denying manufacturers their rights to be compensated for the use of their data to support registration. As a result, pesticide companies may take legal action to prevent the states from collecting this data, or seek compensation. To uphold the current incentive program, we must also ensure that intellectual property rights are protected. Furthermore, any legislation should not place unreasonable resource burdens on our pesticide registration program, or cause any unintended consequences on other priorities in regulating pesticides. Again, EPA will continue to work closely with your staff to help address these types of implementation concerns.

Conclusion

In conclusion, again, I would like to emphasize that EPA has worked very closely with congressional staff over the last few years, as well as with state officials and others, to explore remedies that would help alleviate the concerns U.S. farmers have regarding differences in pesticide pricing. EPA continues to seek and create effective mechanisms that will ensure the safety of our health and environment, while also ensuring an equal playing field for our farmers.

In the long-term, EPA is working to harmonize the availability of pesticide products between the U.S. and Canada through the NAFTA pesticide group in cooperation with stakeholders, including registrants, farmers, and concerned states. International harmonization of pesticide regulation efforts continues to be a key focus for EPA, and these efforts hold promise to help alleviate some of the pricing issues that exist today.

In the near-term, with no adequate administrative or regulatory option available to fully address the potential pricing disparity between the U.S. and Canada, EPA supports seeking an appropriate legislative solution. However, although the legislation as drafted does not compromise protection of human health or the environment -- EPA's principal criterion – there

are some implementation issues and potential international trade concerns that EPA will continue to address. If these issues are resolved, EPA would be in a position to support this legislation. Again, EPA commits to working with Congress, the states, farmers, other Federal Agencies, and industry to resolve these concerns.

Thank you for the opportunity to discuss these matters. I look forward to working with you and other members of Congress, and other affected stakeholders on this important issue.

— State of —
North Dakota
Office of the Governor
John Hoeven
Governor

Testimony of Jack Dalrymple
Lt. Governor of North Dakota
and Chairman of the North Dakota Crop Protection Product Harmonization and Registration Board

To The United States Senate Committee on Agriculture, Nutrition and Forestry, Subcommittee on Production and Price Competitiveness

RE: S.532 PESTICIDE HARMONIZATION ACT
July 18, 2002

Chairman Conrad, thank you for the opportunity to provide a statement in support of S. 532, the Pesticide Harmonization Act.

My name is Jack Dalrymple, I serve as the Lieutenant Governor of the Great State of North Dakota. I am here today in that capacity, as well as in my role as Chairman of the state's Crop Protection Product Harmonization and Registration Board. I also farm near Casselton, North Dakota, where my family raises wheat, soybeans and barley.

The North Dakota Crop Protection Product Harmonization and Registration Board was created by the state Legislature specifically to address and resolve pesticide availability and pricing fairness issues for the state's farmers. The bi-partisan board consists of elected state officials and farmers who have a common mission of working with regulators and pesticide manufacturers to make effective products available at fair prices. It seeks to promote the registration of new, safe crop protection products for farmers to use on the more than 70 crops that are raised in North Dakota. The Board is conducting an ongoing survey of farmers and pesticide retailers in an effort to establish possible additional applications for the products that are already available.

Primarily, the board is focused on efforts to harmonize the availability and pricing of herbicides, fungicides and insecticides to match those of our world competitors, most notably in Canada, our immediate neighbor to the north.

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The facts of North Dakota's agricultural economy and the variety of crops produced in the state will be well established by others testifying here today. Other witnesses have emphasized that North Dakota farmers grow many of the same crops as producers directly across the border in Canada, thereby putting them in direct competition with their Canadian counterparts. I concur with this fact and urge adoption of this bill to begin to alleviate that discrepancy that exists in the relative productions costs.

Low-priced commodities, higher input costs, and adverse long-term weather conditions leading to increased disease, weed, and insect pressure have challenged North Dakota farmers. These factors contribute to a poor profit outlook for producers. Costs are at a level where farmers simply cannot make a profit.

Because of increased pest problems, coupled with high pesticide costs, the North Dakota Crop Protection Product Harmonization and Registration Board supports this and other legislation that can help make more crop protection products available to farmers at costs that are comparable to those paid by their world competitors.

It is simply unfair that farmers, especially in a border state like North Dakota, are placed at a competitive disadvantage to other countries' farmers, both in terms of availability and price of pesticide products. Pesticide companies are able to charge higher prices in the United States because farmers are prohibited from purchasing similar products in Canada and importing those products to the United States. This bill seeks to provide for joint labeling to effectively accomplish harmonization of pesticide products and their prices.

The Environmental Protection Agency (EPA) here in the United States and its counterpart in Canada, the Pesticide Management Regulatory Agency (PMRA), have tried to address the issue of product availability in their respective countries. While the EPA and PMRA's progress regarding harmonization of new product registrations encourage us, the heart of the issue lies with existing product availability and pricing.

While the pesticide companies often blame the regulatory agencies, it is often the manufacturers themselves who make registration-timing decisions. The decision is impacted by expected return on investment and anticipated competition. This bill will effectively give the states the ability to register those products for the company, thereby bringing those products to market more quickly, to the benefit of the farmers and the companies.

North Dakota's legislature has worked to expedite the chemical harmonization process, including providing the agriculture commissioner with the authority to seek special emergency exemptions on products registered in both countries.

American and Canadian growers produce virtually identical crops and are forced to compete with one another in the global market. Therefore, it is imperative that product availability and price stand on equal footing across borders. S. 532 will be an important step in amending the

crop protection trade disparities between our two countries. Free trade policies must be applied consistently. The legislation may prove to be a tremendous asset in the effort to standardize the prices paid for substantially equal pesticides on either side of our shared border.

On behalf of the State of North Dakota and its Crop Protection Product Harmonization and Registration Board, I respectfully request your positive consideration of S. 532. It will provide the mechanism to level a competitive cost disadvantage facing American farmers.

Thank you for your attention.

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Testimony of Roger Johnson
North Dakota Agriculture Commissioner

Senate Committee on Agriculture, Nutrition & Forestry
Subcommittee on Production and Price Competition
July 18, 2002
2:00 p.m.
SR-328A

Good morning. Chairman Conrad and members of the subcommittee, I am North Dakota Agriculture Commissioner Roger Johnson. I appreciate both the opportunity to offer testimony before you today and your willingness to hold this hearing to discuss pesticide price harmonization. I am here to testify in support of Senate Bill 532, which deals with pesticide price harmonization, a pressing issue in northern border states with nationwide impact.

Pesticide harmonization deals with two issues: product access and pricing. Senate Bill 532 addresses the pricing issue, which results when the same or similar pesticide is registered in both Canada and the United States but has been priced differently. The access issue is categorized into two different areas. The first is when there is a product available in one country but not in the other for the same use and the second area is making new chemistries available in both countries at the same time.

Disparate chemical pricing harms U.S. farmers

Every day, Canadian grain moves freely south across the U.S./Canada border to compete with domestic grain on the open market. Much of that Canadian grain has been produced using pesticides that are identical or substantially similar in chemical composition to pesticides registered for use in the U.S. but offered at a price substantially lower in Canada. However, barriers currently exist in federal statutes that prevent American growers or pesticide dealers from legally importing Canadian pesticides without the consent of the product registrant, even if the products are identical in composition to pesticides registered with EPA for the desired use. As a result, product registrants have been able to use the U.S./Canada border to create two separate pesticide markets.

U.S. farmers pay more for farm chemicals

This system of segmented pesticide markets has resulted in significant economic impacts to American farmers. Pesticide pricing studies have repeatedly shown that American producers pay significantly higher pesticide prices than do Canadian producers. For reference, I have included a copy of a May 2001 Northern Plains Trade Research Center report by Richard Taylor and Won Koo that determined North Dakota farmers would save approximately $24 million if they could purchase pesticides at Canadian prices (Attachment 1, page 8, table 6).

Internal estimates at the North Dakota Department of Agriculture this year (Table 1) show this cost disparity is similar to the results of the Taylor/Koo study. Conservative estimates, using only fifteen common herbicides, indicate that North Dakota farmers would save approximately $24 million per year if they could pay Canadian prices. Last year estimates by my department indicated a $33 million disparity (Table 2) in favor of Canadian farmers.

Table 1. Examples of pesticides that are substantially more expensive in North Dakota than in Canada based on 2001 retail prices.

Product	Active Ingredient	Price Difference per Acre ($)[a]	ND Acres (000)[b]	Increased Cost to ND Producers ($)
Achieve	tralkoxydim	4.02	280.4	1,127,529
Assert	imamethabenz	3.74	323.8	1,212,609
Avenge	difenzoquat	1.75	30.6	53,688
Basagran	bentazon	2.03	403.2	817,493
Bromac	bromoxynil + MCPA	1.34	1757.6	2,261,737
Buctril	bromoxynil	1.90	139.2	264,696
Curtail M	clopyralid + MCPA	1.68	70.8	119,098
Discover	clodinafop	4.68	72.3	338,503
Dual	metolachlor	2.74	14.5	39,699
Eptam	EPTC	1.68	16.5	27,638
Far-Go	triallate	4.05	281.2	482,760
Liberty	glufosinate	9.15	111.6	1,021,140
Puma	fenoxaprop-p-ethyl	4.06	3641.6	11,376,416
Stinger	clopyralid	9.69	63.2	612,408
several	glyphosate	1.76	2255.3	3,963,690
Total				**23,719,104**

[a]Reflects the increased cost per acre in U.S. dollars in North Dakota vs Canada. These figures are based on 2001 retail prices. North Dakota retail prices were derived from the publication "2002 North Dakota Weed Control Guide" prepared by NDSU Extension Service. Canadian prices were derived from the publication "Guide to Crop Protection 2002" prepared by Saskatchewan Agriculture and Food. Price differences are based on the same rate of active ingredient per acre after converting all prices to U.S. dollars.

[b]Product use numbers were obtained from a year 2000 pesticide use survey conducted by the North Dakota State University Extension Service.

Table 2. Cost summary of pesticides that are substantially more expensive in North Dakota than in Canada based on 2000 retail prices.

Product	Active Ingredient	Price Difference per Acre ($)[a]	ND Acres (000)[b]	Increased Cost to ND Producers ($)
Achieve	tralkoxydim	6.34	280.4	1,776,334
Assert	imamethabenz	6.19	323.8	2,003,027
Avenge	difenzoquat	1.50	30.6	45,790
Bromac	bromoxynil + MCPA	1.54	1757.6	2,714,437
Curtail M	clopyralid + MCPA	1.87	70.8	132,296
Discover	clodinafop	2.70	72.3	195,196
Fargo	triallate	4.17	281.2	1,172,182
Liberty	glufosinate	11.46	111.6	1,278,802
Stinger	clopyralid	9.74	378.1	3,681,787
Puma	fenoxaprop	5.39	3641.6	19,628,224
Total				**32,628,174**

[a]Reflects the increased cost per acre in U.S. dollars in North Dakota vs Canada. These figures are based on 2000 retail prices. North Dakota retail prices were derived from the publication "2001North Dakota Weed Control Guide" prepared by NDSU Extension Service. Canadian prices were derived from the publication "Guide to Crop Protection 2001" prepared by Saskatchewan Agriculture and Food. Price differences are based on the same rate of active ingredient per acre.

[b]Product use numbers were obtained from the 2000 pesticide use survey conducted by the North Dakota State University Extension Service.

These studies also indicated that there were products less expensive in the U.S. than in Canada. The price differences for these products were generally much smaller. However, a legal mechanism exists in Canada whereby Canadian farmers can gain access to the lower priced U.S. pesticides. This mechanism is called the "Own Use Import" permit.

Segmented markets and disparate pesticide prices have a direct effect on the economic viability of American farming operations. Pesticide costs are a major cash expense for producers and dramatically impact farm profitability.

For example, 452 non-Red River Valley farms from North Dakota enrolled in the year 2001 in the Farm Business Management Program sponsored by the North Dakota State Board for Vocational and Technical Education. These farms reported an average crop chemical expense of $18,772 in the year 2001. This figure represents 9.5 percent of a farm's average total reported cash expense. For these representative farms, a 10 percent decrease in chemical prices would have meant an increase of $1,877 or 3.6 percent in net farm income.

Comparatively, 475 non-Red River Valley farms from North Dakota enrolled in the year 2000 in the Farm Business Management Program sponsored by the North Dakota State Board for

Vocational and Technical Education. These farms reported an average crop chemical expense of $17,480 in the year 2000. This figure represents 9.4 percent of a farm's average total reported cash expense. For these representative farms, a 10 percent decrease in chemical prices would have meant an increase of $1,748 or 3.2 percent in net farm income.

This direct link between pesticide prices and net farm income was further supported by the Taylor-Koo report mentioned previously. Taylor and Koo determined that net farm income for small size representative farms would increase 5.2 percent if American farmers could pay the same pesticide prices as their Canadian counterparts (Attachment 1- page 10). This puts American producers at an immediate competitive disadvantage, especially in the current agricultural economy. The report also concludes that the negative economic impact for North Dakota hard red spring wheat producers alone is $11.6 million (Attachment 1 – page 7).

Recent events in North Dakota illustrate the temptation these price differentials create for U.S. farmers struggling to remain economically viable. On June 15, 2002, NDDA was notified by representatives from Bayer Cropsciences that several North Dakota farmers were attempting to import and use Canadian Liberty®, a broad-spectrum herbicide. Six farmers were erroneously allowed to import the product by EPA Region 8 and U.S. Customs. NDDA staff stopped the importation because the information on the approved "Notice of Arrival" form 3540-1 was incorrect and the product did not have an approved U.S. EPA label on the container. NDDA investigations determined that nine farmers attempted or succeeded to import approximately 8,000 gallons of Canadian Liberty®. The price difference between the two products is $9.55/acre in Canada (U.S. dollars) versus $18.70/acre in the U.S. NDDA and EPA were forced to enforce the current law even though the Canadian version of Liberty is substantially similar to the U.S. version and the canola that it is applied to is allowed to come across the border to compete against canola raised in the U.S. (Table 1) using the higher priced version. The farmers involved in this incident told us they figured they would save approximately $9/acre using the Canadian version of Liberty®.

Public concern

Pesticide harmonization is a pressing issue in North Dakota. In the 57th North Dakota Legislative Assembly held in 2001, several bills and resolutions dealt directly with the issue of pesticide harmonization. An outcome of the session was the passage of North Dakota House Bill 1328, which created the Crop Protection Product Harmonization and Registration Board. This Board, chaired by the governor's office and including legislators, industry representatives, farmers, and myself, was formed to address and resolve pesticide harmonization issues. The 57th Legislative Assembly also passed a resolution (Attachment 2) urging the U.S. Congress to adopt legislation granting states the authority to issue state registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to pesticides registered for use in the United States. I have included a copy of this resolution with my written testimony.

This is a national problem

It should be noted that pesticide price harmonization is not solely a North Dakota issue. I have included a copy of a letter sent to the Environmental Protection Agency (EPA) and signed by agriculture commissioners and directors from 12 northern border states expressing the need to eliminate barriers that segment Canadian and American pesticide markets (Attachment 3). I

have also included a copy of a letter sent by the National Association of State Departments of Agriculture to members of the U.S. Congress fully supporting this bill (Attachment 4). In addition, I have included copies of "Joint Communiqué(s)" from the Tenth, Eleventh and Twelfth Meetings of the States/Provinces Agricultural Accord (Attachment 5, 6, and 7). In the communiqué(s), senior agricultural officials from Canada and the United States agreed on the importance of allowing farmers to purchase pesticides from neighboring countries.

The "Pesticide Harmonization Act" would solve the problem

My staff and I have worked extensively with EPA to identify legal barriers that prevent parties from importing Canadian products for use in the United States without the consent of the product registrant. At the conclusion of that exercise, we worked collaboratively with North Dakota's congressional delegation, the North Dakota Office of the Attorney General, and EPA to draft this bill. If enacted, Senate Bill 532 would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to grant states the authority to issue state registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products registered with EPA for use in the United States. (Attachment 6 provides a section-by-section analysis of the bill).

This bill creates a system in which a party can serve as a state registrant for certain Canadian pesticides without the consent of the primary registrant. A state registrant for the Canadian product is necessary since it ensures that some party will assume responsibility for distributing and re-labeling the product to meet EPA requirements. To protect state registrants under this legislation, data compensation requirements are waived. The costs associated with data development would be waived because those costs should be included in the market pricing strategy used by the companies in a joint U.S./Canada market. In addition, the bill clearly states that state registrants would assume liability only for those parts of the product "production" (re-labeling and distribution) for which they had control and/or knowledge.

The ability to issue state registrations without the consent of primary registrants is a critical component of this bill. My staff and I have attempted repeatedly to work with product registrants to import Canadian pesticides for use in the U.S. For example, we sent letters to at least five different agricultural chemical companies in the fall of 1999 requesting their support to issue Section 24(c) Special Local Needs registrations for certain Canadian pesticides that were allegedly identical to more expensive products registered for use in the U.S. Not one of those companies granted their consent to allow access to their products at Canadian prices. Therefore, it is essential that a mechanism be created in which access to Canadian pesticides is not contingent upon primary registrant consent. This bill provides that mechanism.

Sustains high environmental standards

A second major issue addressed in this bill is access to proprietary chemical composition data. To prevent unreasonable adverse effects to man or the environment and to ensure a safe and high-quality food supply, state registrations under this bill are limited to Canadian products that are identical or substantially similar to products currently registered with EPA for the desired use. The bill creates a mechanism that allows state regulatory agencies to access the Confidential Statement of Formula (CSF) for both the Canadian and comparable domestic

pesticide products. This access to proprietary chemical composition data is critical to ensure that the Canadian and U.S. products are identical or substantially similar, and that the Canadian products do not contain unregistered active or inert ingredients.

Chemical distribution system would be maintained

In many rural communities, the agricultural chemical dealer is a major part of the local economy. Therefore, we must ensure the economic viability of pesticide retailers and the contributions that they make to small towns across America. If this bill is enacted, I believe that the majority of registrants will be chemical distributors who will use the authority in the legislation to access Canadian pesticides from Canadian wholesale markets. Re-labeling for purposes of the bill will still be considered pesticide production, and it must be conducted at registered EPA establishments. Unlike farmers or commodity groups, distributors already have networks to accommodate product movement and registered establishments where re-labeling can occur. Therefore, the majority of Canadian pesticides imported under this bill will most likely move through the existing pesticide distributor/retail networks. The net effect will be a new, competitive market for these products, and manufacturers will be forced to discontinue segmenting U.S. and Canadian pesticide markets.

Recommendations for minor changes in bill draft

I would also like to suggest some minor changes to improve the bill. First, Sections 3(B)(ii), 4(D), and 6(D) of the bill all discuss labels "approved by the Administrator". However, the label referenced in Section 3(B)(ii) is the Section 3 label of the comparable domestic pesticide, while the label referenced in Sections 4(D) and 6(D) is an approved state-specific label for a registration granted under this bill. References to a "label" throughout the bill should clearly make this distinction.

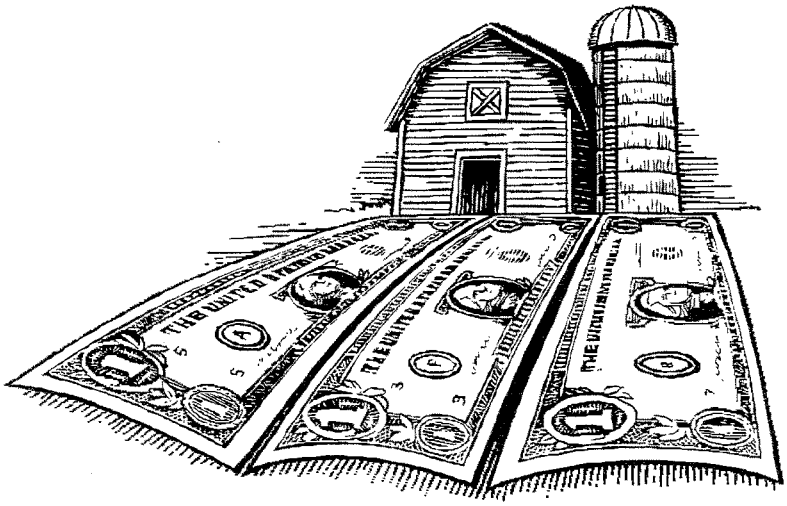
Second, I recommend adding definitions or changing the language throughout the bill to differentiate more clearly *primary registrants* (holders of the Section 3 registration of the comparable domestic pesticide) from *state registrants* of a Canadian product for purposes of this bill.

American farmers have proven repeatedly that they can produce the safest, highest quality food in the world. However, in order to survive economically and compete in today's markets, they need to be able to operate on a level playing field with their competitors. Unfortunately, American farmers are not competing on a level playing field for pesticides. Instead, they compete in a free market with their outputs, while being forced to purchase pesticide inputs in a segmented, unfair and often higher-priced market. This bill provides an avenue for American farmers to purchase pesticides at prices now only available to their Canadian counterparts. Therefore, I would urge you to pass Senate Bill 532.

Agribusiness and Applied Economics Report No. 456 May 2001

United States and Canadian Agricultural Herbicide Costs: Impacts on North Dakota Farmers

Richard D. Taylor
Won W. Koo



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ATTACHMENT 1

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We would be happy to provide a single copy of this publication free of charge.You can address your inquiry to: Carol Jensen, Department of Agribusiness and Applied Economics, North Dakota State University, PO Box 5636, Fargo, ND 58105-5636, (Ph. 701-231-7441, Fax 701-231-7400), (e-mail: cjensen@ndsuext.nodak.edu). This publication is also available electronically at this web site: http://agecon.lib.umn.edu/.

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Abstract

Pesticides have become a major farm production cost over the past 25 years. There are price and label differences for agricultural herbicides between the United States and Canada. Trade names are different in some cases, label restrictions vary, and weights and measures are different. The reasons for the price differences are unclear. Whether they are due to increased costs in labeling requirements, different levels of competition and use, or market segmentation is not determined. The largest total impact of using lower priced Canadian herbicide is on HRSW, followed by durum and corn. The largest per acre impact is for canola, corn, and HRSW. Herbicides with the largest total impact are Puma, followed by Roundup and Fargo. Net farm income for large, medium, and small size representative farms would increase 3.8%, 4.6%, and 5.2%, respectively, if Canadian priced herbicides could be used in the United States. The statewide impact is $1.46 per acre, but regional or individual impacts could be much greater depending on crops grown or the specific weed problem faced by the individual producer.

Key Words: Agricultural Herbicide Costs, Trade Harmonization, North Dakota Representative Farm, Land Value, Pesticides

Highlights

Pesticide expenses in the United States increased from 1.2% of total production expenses in 1965 to 5.1% in 1999. Pesticide expenses in North Dakota increased 1.7% of total production expenses to 8.1% over the same time period.

A controversy between the United States and Canada began in late 1997 when it became apparent that some pesticides were substantially lower priced in Canada than in the United States, and many pesticides that were labeled in Canada were unavailable in the United States.

Many herbicides carry different trade names in Canada than they do in the United States. For example, Basis in the United States is Prism in Canada, Fargo in the United States is named Avadex BW in Canada, and Harmony in the United States is Refine Extra in Canada.

There is a wide range of cost differences between the two countries. Cost per acre for Liberty in the United States is $9.64 higher than in Canada, while that for Pursuit in Canada is $3.63 higher than in the United States. Stinger, Dual, Fargo, and Assert are also higher priced in the United States. Treflan is lower priced in the United States than in Canada, along with Harmony, 2,4-D, and MCPA.

The largest impact of higher herbicide prices in the United States is on hard red spring wheat, $11.6 million, followed by durum, $4.6 million. The impact on corn and canola is $2.9 million and $2.8 million, respectively. The total impact is $23.9 million, or $1.46 per acre.

Puma would have an $11.4 million impact if the price in the United States were lowered to match the Canadian price. Roundup would have almost a $6 million impact. Fargo and Stinger would each have a $4.1 million impact.

The North Dakota Representative Farm Model was used to estimate the impact of different herbicide prices. The savings in herbicide costs are $4,635 for the large size farm, $2,458 for the medium size farm, and $1,341 for the small size farm. As the savings were capitalized into land values, increases in net farm income fell throughout the time period estimated.

Land values were the same until 2001 when the land value under the Canadian herbicide price scenario began to increase. The land value under the Canadian herbicide price scenario increased to $510 per acre in 2009 compared to $488 under the U.S. herbicide price scenario. Cash rents also increased. The average cash rents in North Dakota increased by $2 per acre from 2004 through 2009.

United States and Canadian Agricultural Herbicide Costs: Impacts on North Dakota Farmers

Richard D. Taylor and Won W. Koo[1]

Introduction

Pesticide use became important for U.S. agriculture in the late1960s. In 1965 pesticide use was $5.2 million for North Dakota and $474.1 million for the United States. By 1970 the use of pesticides doubled to $11.2 million for North Dakota and $960 million for the United States and between 1975 and 1999 pesticide use grew 383% for the United States and 588% for North Dakota (Table 1). Pesticide use in North Dakota has followed the same trend as the rest of the United States (Figure 1). In 1965 pesticide expenses were 1.2% of total production expenses in the United States and 1.7% in North Dakota. By 1999, pesticide expenses had increased to 5.1% of the total production expenses in the United States and 8.1% in North Dakota.

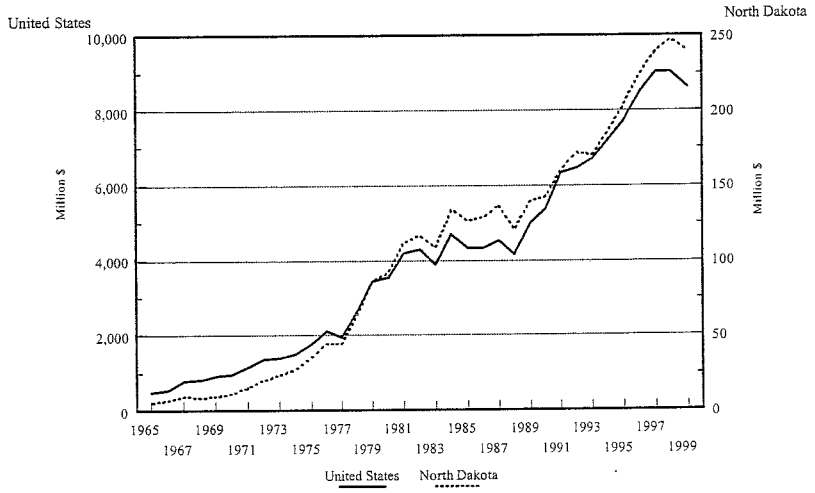

Figure 1. United States and North Dakota Agricultural Pesticide Expense

[1]The authors are research associate and professor, respectively, in the Department of Agribusiness and Applied Economics, North Dakota State University, Fargo. Koo is also Director of the Northern Plains Trade Research Center.

Table 1. Total Pesticide Cost in the United States and North Dakota

Year	United States	North Dakota
	--------- Million $---------	
1975	1,782.5	34.9
1976	2,107.8	44.6
1977	1,938.0	44.0
1978	2,656.3	64.5
1979	3,436.0	86.1
1980	3,538.6	91.3
1981	4,200.8	111.5
1982	4,282.2	116.9
1983	3,870.1	108.0
1984	4,687.8	133.8
1985	4,333.7	126.3
1986	4,323.7	128.7
1987	4,512.2	137.1
1988	4,147.7	120.7
1989	5,011.5	139.6
1990	5,363.2	142.8
1991	6,320.5	160.8
1992	6,470.6	171.6
1993	6,719.7	170.2
1994	7,219.6	185.8
1995	7,718.7	203.7
1996	8,518.4	223.9
1997	9,017.5	239.2
1998	9,017.8	247.2
1999	8,618.2	240.3

Source: USDA, ERS.

A controversy between the United States and Canada began in late 1997 when it became apparent that some pesticides were substantially lower priced in Canada than in the United States. Also, pesticides that were labeled in Canada were unavailable in the United States. There are many possible explanations for the differences. The explanations differ depending whether you are hearing from the chemical industry, state government, political leaders, or farm organizations.

The chemical industry maintains that each country has separate labeling procedures and requirements. The registration process is about twice as expensive in the United States and requires about one more year than in Canada; therefore, the increased fixed cost of labeling plus the one lost year of potential sales must be added to the cost of the herbicide. Another rationale for higher prices

relative to fixed costs in the U.S. market is that the Canadian market for spring grown cereal grains is about twice as large as in the upper Midwest and about seven times larger for canola. Canadian producers also have a larger selection of herbicides than do the U.S. producers, which increases competition in Canada. Therefore, the chemical industry argues that the higher fixed cost of labeling and smaller market for certain crops in the United States and greater competition in Canada, justifies the price differences. Agricultural organizations and political leaders maintain that the chemical companies are using the Canadian border to segment the United States and Canada into two separate markets, allowing them to charge higher prices in the United States.

Another potential problem is that each country uses a different weights and measure system. Canada is on the metric system (liters and grams) while the United States maintains the English system (pints, gallons, and pounds). Application rates and label requirements are different between the two countries and would have to be converted before application.

Pesticides can be divided into three groups based on the target host. Herbicides are directed towards plants. Insecticides are used for insect control, and fungicides are used to control disease on leaves, seed, or final production. This study will examine herbicide costs in North Dakota.

The objective of the study was to estimate the total additional cost paid by North Dakota producers for agricultural herbicides for hard red spring wheat, durum wheat, barley, corn, soybeans, sunflowers, and canola compared to the cost of herbicides in Canada. In addition, the impact of each herbicide was estimated to determine which herbicides had the largest impact on North Dakota producers. The estimated cost saving for a North Dakota producer, if they could use Canadian herbicides, was estimated using the North Dakota Representative Farm Model which is operational at the Northern Plains Trade Research Center at North Dakota State University.

Several internal studies have been conducted by North Dakota farm organizations. The studies estimated the impact of higher herbicide prices on North Dakota producers, but they did not identify the impact on individual crops grown in North Dakota. Data were used from the *1998 Agricultural Chemical Use Estimates for Field Crops* and the *Agricultural Chemical Usage, 1999 Field Crops Summary* (USDA, NASS) along with the NDSU Extension Service publication *Pesticide Use and Pest Management Practices for Major Crops in North Dakota, 1996* to estimate herbicide usage in North Dakota. North Dakota prices were obtained from the NDSU Extension Service Publication *2001 North Dakota Weed Control Guide*, and Canadian prices were obtained from a herbicide cost calculator at the Alberta Agriculture, Food, and Rural Development website.

Method

A spreadsheet was developed to calculate herbicide costs for each county in the state, each crop in the study, and each herbicide with substantial use within the state. North Dakota and Canadian prices were used to estimate differences in herbicide costs. Application rates for Canadian herbicides were adjusted to equal U.S. application rates, i.e., pints per acre, pounds per acre. Canadian prices in Canadian dollars were converted into U.S. dollars using the exchange rate on March 26, 2001, and

Canadian measures were converted into U.S. weights and measures, liters were converted into U.S. gallons.

Herbicides which were not labeled in North Dakota were not part of the study. Also, several herbicides labeled for corn and soybeans were not labeled in Canada. In the second part of the study, the Canadian price of each herbicide was used to estimate the impact of that price on North Dakota herbicide costs.

It was assumed that the usage of agricultural herbicides did not change when the Canadian prices were incorporated into the model. Data that would indicate substitution rates between competing herbicides were not available. The substitution would increase the cost savings under the Canadian scenario because farmers would shift usage towards lower priced herbicides and away from the higher priced herbicides. Also, different herbicides provide different effectiveness for weed control which would change yield potential. It was further assumed that herbicide use was constant throughout the state and between the large, medium, and small size representative farms.

Empirical Results

Analysis of Herbicide Prices

Table 2 shows the herbicide usage in North Dakota for small grains. The 2,4-D herbicide was used on 57% of HRSW acres, 62% of durum, and 45% of barley. MCPA was used on 63% of HRSW acres, 29% of durum, and 47% of barley. These older phenoxy herbicides are still the most widely used post-emergent broad leaf herbicide followed by Express, which was used on 25% of the acres of HRSW, 48% of durum, and 9% of barley. Banvel and bromoxynil were used as tank mixes with other herbicides except in durum. Puma had the largest use of any grass herbicide, 39% of HRSW, 34% of durum, and 18% of barley. Roundup use was minor except for durum (21%).

Table 2. Herbicide Usage in North Dakota for HRSW, Durum Wheat, and Barley

Trade Name	Active Ingredient	HRSW	Durum	Barley
		-------% of acres---------		
2,4-D	2,4-D	0.57	0.62	0.45
MCPA	MCPA	0.63	0.29	0.47
Bromoxynil	Bromoxynil	0.07		0.21
Banvel	Dicamba	0.03	0.09	
Stinger	Clopyralid	0.05		
Harmony	Thifensulfuron	0.09		0.06
Express	Tribenuron-methy	0.25	0.48	0.09
Treflan	Trifluralin	0.04	0.21	0.09
Puma	Fenoxaprop	0.39	0.34	0.18
Fargo	Triallate	0.08	0.07	0.12
Roundup	Glyphosate	0.03	0.21	0.01

Source: USDA, NASS; NDSU Extension Service.

Table 3 shows the herbicide use in North Dakota for corn. Harness is used on 31% of the corn and is the most widely used herbicide for corn followed by Atrazine (23%) and Dual (13%). Accent (22%) is the most widely used post-emergent herbicide followed by Basis (17%) and 2,4-D (12%).

Table 3. Herbicide Usage in North Dakota for Corn

Trade Name	Active Ingredient	Corn
		-% of acres-
Harness	Acetochlor	0.31
Dual	Metolachlor	0.13
Frontier	Dimethenamid	0.11
Eptam	EPTC	0.03
Lasso	Alachlor	0.03
Atrazine	Atrazine	0.23
Python	Flumetsulam	0.05
Bladex	Cyanazine	0.04
Basis	Rimsulfuron	0.17
2,4-D	2,4-D	0.12
Banvel	Dicamba	0.11
Stinger	Clopyralid	0.09
Bromoxynil	Bromoxynil	0.08
Accent	Nicosulfuron	0.22
Beacon	Primisulfuron	0.06
Marksman	Dicamba, Pot.Salt	0.05
Roundup	Glyphosate	0.08

Source: USDA, NASS; NDSU Extension Service.

Table 4 shows the herbicide usage for sunflowers, canola, and soybeans. Sonalan is the most widely used pre-emergent herbicide for sunflowers and is used on 61% of the sunflower acres and 12% of the non-GMO canola acres, followed by Treflan, 28% of sunflowers and 10% of non-GMO canola. Treflan is the most widely used pre-emergent for non-GMO soybeans (23% of all soybean acres) followed by Prowl at 17%. Pursuit is the most widely used post-emergent herbicide on soybeans (60%). GMO seed are planted on 69% of canola acres and 49% of soybean acres. Roundup is used on 55% of the canola acres and 42% of the soybean acres.

Table 4. Herbicide Usage in North Dakota for Sunflowers, Canola, and Soybeans

Trade Name	Active Ingredient	Sunflowers	Canola	Soybeans
		----------% of acres----------		
Sonalan	Ethalfluralin	0.61	0.12	
Prowl	Pendimethalin	0.11		0.17
Treflan	Trifluralin	0.28	0.10	0.23
Assert	Imazamethabenz	0.10		
Poast	Pendimethalin	0.14	0.08	
Muster	Ethalfluralin		0.08	
Stinger	Clopyralid		0.10	
Pursuit	Imazethapyr			0.60
Basagran	Bentazon			0.20
Flexstar	Fomesafen			0.06
Cobra	Lactofen			0.05
Fusilade	Fluazifop-P-butyl			0.08
Classic	Chlorimuron-ethyl			0.09
Roundup	Glyphosate	0.05	0.55	0.42
Liberty	Glufosinate		0.07	
Raptor	Imazamox		0.07	0.07

Source: USDA, NASS; NDSU Extension Service.

Table 5 shows the trade names and typical per acre cost for North Dakota and Canadian priced agricultural herbicides. Many of the herbicides carry different trade names in Canada than they do in the United States. For example, Basis in the United States is Prism in Canada, Fargo in the United States is named Avadex BW in Canada, and Harmony in the United States is Refine Extra in Canada. There is a wide range of cost differences between the two countries. Cost per acre for Liberty is $9.64 higher in the United States than in Canada, while Pursuit is $3.63 higher in Canada than in the United States. Stinger is $7.95 per acre higher in the United States, Dual is $7.71 higher, Fargo is $4.45 higher, and Assert is $3.33 higher. Treflan is $2.02 lower in the United States than in Canada, Harmony, 2,4-D, and MCPA are $0.51, $0.41, and $0.11 lower, respectively.

Table 5. Herbicide Trade Names and Estimated Per Acre Herbicide Costs in North Dakota and Canada

Trade Name			Typical Cost Per Acre		
North Dakota	Canada	Active Ingredient	North Dakota	Canada	Difference
			----------US$/acre----------		
2,4-D	2,4-D	2,4-D	1.40	1.81	-0.41
Assert	Assert 300-SC	Imazamethabenz	7.50	4.17	3.33
Atrazine	Atrazine	Atrazine	2.65	2.53	0.12
Banvel	Banvel	Dicamba	10.30	9.92	0.33
Basagran	Basagran	Bentazon	13.50	12.77	0.73
Basis	Prism	Rimsulfuron	5.45	3.73	1.72
Bladex	Bladex	Cyanazine	15.00	12.27	2.73
Bromoxynil	Buctril M	Bromoxynil	6.90	4.58	2.32
Dual	Primextra Light	Metolachlor	21.90	14.19	7.71
Eptam	Eptam	EPTC	20.30	19.57	0.73
Express	Express Pack	Tribenuron-methy	4.40	3.95	0.45
Fargo	Avadex BW	Triallate	10.00	5.55	4.45
Fusilade	Fusilade II	Fluazifop-P-butyl	9.40	9.49	-0.09
Harmony	Refine Extra	Thifensulfuron	3.15	3.66	-0.51
Liberty	Liberty	Glufosinate	21.90	12.21	9.64
MCPA	MCPA	MCPA	1.75	1.86	-0.11
Poast	Poast	Sethoxydim	8.15	7.43	0.72
Puma	Puma 120 Super	Fenoxaprop	9.00	6.04	2.96
Pursuit	Pursuit	Imazethapyr	9.45	13.08	-3.63
Raptor	Odyssey	Imazamox	14.10	11.26	2.79
Roundup	Roundup	Glyphosate	6.90	4.07	2.83
Sonalan	Edge	Ethalfluralin	9.18	8.59	0.59
Stinger	Lontrel	Clopyralid	24.00	16.05	7.95
Treflan	Treflan	Trifluralin	6.25	8.27	-2.02

Source: NDSU Extension Service; Alberta Agriculture, Food, and Rural Development.

Table 6 shows the impacts of higher herbicide prices on North Dakota producers. The impact was calculated using the USDA's estimated herbicide usage for each crop (% of crop) in the state, times the number of acres of that crop, times the average rates and prices in the two countries. The largest impact is on HRSW, $11.6 million or $1.86 per acre, followed by durum, $4.6 million or $1.45 per acre. The impact on corn and canola is $2.9 million and $2.8 million, respectively. Herbicide costs for soybeans are lower in the United States than in Canada. The total impact is $23.9 million, or $1.46 per acre, for these seven crops.

Table 6. Impacts of Higher Herbicide Prices for North Dakota on Herbicide Costs for Various North Dakota Crops

Crop	Total Herbicide Costs U.S. Prices	Total Herbicide Costs Canada Prices	Total Difference	Per Acre Difference
	US$			
HRSW	58,693,633	47,047,332	11,646,301	1.86
Durum	31,626,330	26,954,510	4,671,820	1.45
Barley	11,193,188	9,054,548	2,138,640	1.28
Corn	24,256,999	21,325,461	2,931,538	2.84
Soybeans	26,478,663	27,514,851	(1,036,189)	-0.70
Sunflowers	18,977,556	18,217,330	760,225	0.41
Canola	8,606,524	5,783,256	2,823,268	3.30
Total	179,832,891	155,897,288	23,935,603	1.46

Table 7 shows which herbicides have the largest potential for cost savings if U.S. prices were lowered to match Canadian prices. Puma, which is a post-emergent grass herbicide, would have an $11.4 million impact if the price in the United States were lowered to match the Canadian price. Roundup, which is a non-selective herbicide, would have almost a $6 million impact. Fargo and Stinger would have a $4.1 million impact.

Table 7. Impacts of Higher Herbicide Prices for Individual Herbicides on North Dakota Total Herbicide Costs

Trade Name	Total Herbicide Cost	Impact
	US$	
Base	179,832,891	
Puma	168,482,564	11,350,327
Roundup	173,878,416	5,954,475
Fargo	175,709,699	4,123,192
Stinger	175,722,208	4,110,683
Bromoxynil	178,002,643	1,830,248
Express	178,365,243	1,467,648
Dual	178,797,665	1,035,226
Sonalan	179,168,156	664,735
Assert	179,217,840	615,051
Liberty	179,256,274	576,617
Raptor	179,378,594	454,297
Poast	179,506,991	325,900
Basis	179,530,886	302,005
Basagram	179,618,030	214,861
Banvel	179,675,194	157,697
Bladex	179,720,104	112,787

Representative Farm Analysis

The impact on individual North Dakota farms was estimated using the Representative Farm Model. Two scenarios were evaluated, (1) the base model where U.S. herbicide prices were used and (2) Canadian herbicide prices were used. Table 8 shows those impacts on state net farm income for small, medium, and large size farms. The net income differences for large, medium, and small size farms for 1999 were $4,635, $2,458, and $1,341, respectively. This implies that savings in herbicide costs are $4,635 for the large size farm, $2,458 for the medium size farm, and $1,341 for the small size farm. The increases in net farm income fell throughout the estimated time period because the herbicide cost savings were capitalized into land values. This implies that while the cost savings of lower priced herbicides remained the same, increased land values raised cash rents which offset some of the herbicide cost savings. The average increases in net farm income for the large, medium, and small size farm over the time period was $3,712, $2,084, and $1,232, respectively.

Table 8. State Average Net Farm Income for Representative Farms with U.S. and Canadian Herbicide Prices

	U.S.	Canadian	Diff	U.S.	Canadian	Diff	U.S.	Canadian	Diff
	Large			**Medium**			**Small**		
	US$								
1999	119,811	124,446	4,635	52,965	55,423	2,458	25,705	27,046	1,341
2000	101,296	105,977	4,681	45,420	47,903	2,483	15,282	16,637	1,354
2001	91,521	96,272	4,751	36,401	38,920	2,520	6,809	8,183	1,375
2002	97,347	101,696	4,349	40,533	42,881	2,348	8,962	10,277	1,315
2003	101,455	105,265	3,810	46,919	49,037	2,117	11,978	13,213	1,235
2004	103,601	106,780	3,179	47,205	49,051	1,845	11,811	12,950	1,139
2005	107,114	110,140	3,026	50,065	51,851	1,787	11,792	12,918	1,126
2006	110,184	113,188	3,003	51,460	53,245	1,785	12,562	13,695	1,133
2007	113,229	116,286	3,057	53,244	55,061	1,817	13,127	14,282	1,155
2008	114,830	117,960	3,130	54,483	56,340	1,858	13,485	14,663	1,178
2009	114,403	117,619	3,216	54,293	56,198	1,905	13,979	15,183	1,204
Average	106,799	110,512	3,712	48,453	50,537	2,084	13,227	14,459	1,232

Table 9 shows the estimated land values for North Dakota Representative Farms under the two different scenarios. Land values were the same until 2001 when the land value for the Canadian herbicide price scenario increased to $430 per acre compared to $415 per acre for the U.S. herbicide price scenario. By 2009 the land value for the Canadian herbicide price scenario increased to $510 per acre compared to $488 for the U.S. herbicide price scenario. Cash rents also increased. The average cash rents in North Dakota increased by $2 per acre by 2004.

Table 9. North Dakota Land Prices and Cash Rents for Representative Farms with U.S. and Canadian Herbicide Prices

	U.S.	Canadian	Diff	U.S.	Canadian	Diff
	----------U.S.$/acre----------					
1999	435	435	0	35	35	0
2000	427	427	0	34	34	0
2001	415	430	15	33	33	0
2002	406	425	19	32	33	1
2003	404	425	21	32	33	1
2004	409	431	22	31	33	2
2005	431	453	22	31	33	2
2006	450	472	22	33	34	1
2007	464	486	22	34	36	2
2008	473	496	23	35	37	2
2009	488	510	23	36	38	2
Average	437	454	17	33	34	1

Conclusions

Pesticides have become a major part of agriculture over the past 25 years. North Dakota producers used more pesticides on average than do producers in the rest of the United States. There are price and label differences for agricultural herbicides between the United States and Canada. Trade names are different in some cases, label restrictions vary, weights and measures are different. The reasons for the price differences are unclear. Whether they are due to increased costs in labeling requirements, different levels of competition and use, or market segmentation is not determined.

Liberty, Stinger, and Dual have the largest price differences between the two countries while prices of Pursuit, Treflan, and Harmony are higher in Canada than in the United States. The largest total impact is on HRSW followed by durum and corn. The largest per acre impact is for canola, corn, and HRSW. Herbicides with the largest total impact are Puma, followed by Roundup and Fargo.

Net farm income for large, medium, and small size representative farms would increase 3.8%, 4.6%, and 5.2%, respectively, if Canadian priced herbicides could be used in the United States. Through the time period of the estimation, some of the cost savings would be capitalized into land values in North Dakota. In 2009 with Canadian priced herbicides, land value would increase 4.5% over land values with U.S. priced herbicides.

The statewide impact is $1.46 per acre for the 1999 crop year, but regional or individual impacts could be much greater depending on crops grown or the specific weed problem faced by the individual producer.

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CHAPTER 624

HOUSE CONCURRENT RESOLUTION NO. 3042

(Representatives Lemieux, Brandenburg, D. Johnson)

CANADIAN CROP PROTECTION PRODUCT USE AUTHORIZATION URGED

A concurrent resolution urging Congress to ensure the economic viability and competitiveness of American farmers by adopting legislation that would grant states the authority to issue state registrations to parties who wish to import Canadian crop protection products that are identical or substantially similar to products registered with the Environmental Protection Agency for use in the United States.

WHEREAS, agriculture plays an important role in the economic viability and culture of the state of North Dakota; and

WHEREAS, crop protection products are used to produce high-quality and safe commodities marketed nationally and internationally; and

WHEREAS, farmers in this state use crop protection products in a safe and responsible manner; and

WHEREAS, farmers need access to crop protection products as those available to Canadian producers to be competitive and economically viable; and

WHEREAS, North Dakota farmers are prohibited by federal law and regulations to import and use Canadian crop protection products without the consent of the product registrant;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:

That the Fifty-seventh Legislative Assembly urges the Congress of the United States to adopt legislation granting states the authority to issue state registrations to parties who wish to import Canadian crop protection products that are identical or substantially similar to products registered with the Environmental Protection Agency for use in the United States; and

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the chairmen of the Senate and House Agriculture Committees, and to each member of the North Dakota Congressional Delegation.

Filed April 9, 2001

June 29, 2000

VIA FACSIMILIE (202) 501-1450 & U.S. MAIL

The Honorable Carol M. Browner, Administrator
1101A
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Ms. Browner:

We respectfully request EPA to take action on pesticide harmonization, specifically to identify, modify, or eliminate administrative and legislative roadblocks and loopholes that may allow registrants of pesticides, whether intentionally or not, to operate a dual pricing structure. These actions specifically relate to the sale of products sold on both sides of the Canada-United States border.

As a result of NAFTA and EPA's own directives, the harmonization of pesticide labeling in North America has become a high priority for your agency, and we appreciate your efforts in this area. We, as agricultural leaders in our respective states, are aware of the many complicated facets surrounding this issue.

It is our understanding that EPA's current priority with respect to pesticide harmonization deals with the registration and labeling of new products and compounds. We are also aware that EPA is working with Canada's Pest Management Regulatory Agency (PMRA) on review processes and equivalency issues with respect to toxicity, efficacy, and other technical matters.

While good work and progress is proceeding on these issues, the EPA must give greater attention to existing, registered products that are available in one country and not in the other. EPA should not allow its rules and regulations to be used as a tool by pesticide companies to disrupt market forces. Free trade economics should result in equal pricing on both sides of the border where identical or near identical pesticide products are being sold.

A study released by USDA last year confirmed our economic concerns. For certain pesticides, American farmers pay 40% more than the cost of Canadian products with virtually identical composition, after taking exchange rates into account. This economic disadvantage is damaging U.S. producers, especially in our states that border Canada. The present system allows Canadians to ship their commodities to the U.S., get paid in U.S. dollars, pocket the savings on lower chemical prices, and compete for our own domestic markets with U.S. farmers who now incur higher chemical costs.

ATTACHMENT 3

The Honorable Carol M. Browner
June 29, 2000

We recognize that EPA does not control the pricing of chemicals. However, EPA should be working to change and eliminate federal laws, regulations and policies that allow the distortion of chemical prices in North American markets. An interim alternative is to allow the states and EPA to issue "market" registrations of pesticides for pesticides registered in Canada for which the active and inert ingredients are registered in the U.S. under different formulations. This interim policy would allow products to be purchased on either side of the border and used in the states and is needed until harmonization issues are resolved between the U.S. and Canada allowing equivalent registrations on either side of the border.

As the commissioners, secretaries, and directors of agriculture in the states bordering Canada, we ask that EPA work with us to resolve this issue. Pricing issues are at the heart of pesticide harmonization, and we must all recognize that this issue needs to be addressed.

We thank you for your consideration and hope to work with you on this issue.

Sincerely,

Roger Johnson
Commissioner of Agriculture
North Dakota

Ralph Peck
Director of Agriculture
Montana

Gene Hugoson
Commissioner of Agriculture
Minnesota

Leon Graves
Commissioner of Agriculture
Vermont

Larry Gabriel
Secretary of Agriculture
South Dakota

Stephen Taylor
Commissioner of Agriculture
New Hampshire

Nathan Rudgers
Commissioner of Agriculture
New York

Robert Spear
Commissioner of Agriculture
Maine

Fred Dailey
Director of Agriculture
Ohio

Ben Brancel
Secretary of Agriculture
Wisconsin

Pat Takasugi
Director of Agriculture
Idaho

Jim Jesernig
Director of Agriculture
Washington

The National Association of State Departments of Agriculture

President Billy Ray Smith, Kentucky • *President-elect* Sheldon Jones, Arizona
Vice President Gene Hugoson, Minnesota • *Secretary-Treasurer* Nathan Rudgers, New York
Past President Leon C. Graves, Vermont

July 12, 2002

Members of the Senate Agriculture Committee

Dear Senator:

The National Association of State Departments of Agriculture (NASDA), representing the commissioners, secretaries, and directors of agriculture in the fifty states and four territories, urges you to support the "Pesticide Harmonization Act" currently before Congress.

Estimates show that our farmers pay 40 to 50 percent more than their Canadian counterparts for identical crop protection products. This disparity exists, even though these farmers are competing in the same marketplace.

The "Pesticide Harmonization Act" (H.R. 1084 and S. 532) amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to grant states the authority to issue state registrations for certain Canadian pesticides. The Act will only apply to pesticides whose composition is identical or substantially similar to a U.S. domestically-registered pesticide.

This legislation was written with the cooperation of the Environmental Protection Agency, who administers FIFRA. It will not weaken or endanger the current registration process for domestic pesticides nor will it allow unsafe pesticides to enter our markets.

The Pesticide Harmonization Act will provide our farmers with a level playing field and equal access to crop protection products currently available to their counterparts in Canada. We urge you to cosponsor this important legislation.

Sincerely,

Billy Ray Smith

Billy Ray Smith
President

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NASDA is a nonprofit association of public officials comprised of the Commissioners, Secretaries, and Directors of agriculture in the fifty states and four territories

ATTACHMENT 4

Saskatoon, Saskatchewan
Canada
July 27-29, 2000

Tenth Meeting of the States/Provinces Agricultural Accord

JOINT COMMUNIQUÉ

Saskatoon, Saskatchewan
July 28, 2000

Senior agricultural officials from 11 Mexican states, 24 U.S. states, and 6 Canadian provinces met in Saskatoon, Saskatchewan from July 27 - 29, 2000. This was in the tenth of a series of rotating annual conferences intended to improve understanding and strengthen collaboration among the agricultural sectors of three neighboring countries. The meeting included an intensive focus on biotechnology issues. Delegates took advantage of the opportunity to study Saskatchewan's advanced public-private sector partnership in agricultural science.

The Mexican Delegation was headed by Hon. Clemente Mora Padilla, Secretary of Agricultural Development of the State of San Luis Potosi and President of the Mexican Association of Secretaries of Rural Development. The U.S. Delegation was led by Hon. Fred L. Dailey, Director of Agriculture for the State of Ohio and President of the U.S. National Association of State Departments of Agriculture. Hon. Clay Serby, Minister of Agriculture and Food for the Province of Saskatchewan, headed the Canadian delegation and served as host for this year's conference.

At the meeting, delegates reviewed accomplishments of the bilateral working groups established under a new Accord structure adopted in Salt Lake City, Utah in 1999 and agreed to continue utilizing bilateral working groups as the principal means of assuring substantive progress takes place on matters raised during annual meetings.

The delegations recognized biotechnology as an important tool to enhance the productivity and competitiveness of the agri-food industry. Delegates also recognized that consumers need greater access to balanced information on biotechnology and related issues. To continue work in this important area, Mexico is prepared to host a high level, trilateral forum on biotechnology in January or February, 2001. Delegates also agreed on the importance of clarifying organic standards, considering various settings in which this topic might be pursued.

U.S. and Mexican state leaders recognized the importance of including industry and producer interests in bilateral discussions of trade issues, and agreed on specific plans for interchanges regarding bean quota administration, specialty crops, organics, and other matters. Information exchanges regarding meat anti-dumping procedures, the efforts of the national associations of state leaders to influence national agricultural policy, and legal restrictions to cooperation on marketing issues among producers of the same crop in the U.S. and Mexico will take place in the near future. Arizona has offered to host a border meeting focusing on the issue of where physical inspections take place for a number of agricultural products. The U.S./Mexico working group will monitor progress of the electronic inspection document pilot project and the grain quality monitoring project which have resulted from last year's working group meetings. Both delegations will cooperate in publicizing the alternate crop exposition scheduled to take place in Veracruz Oct. 6 - 8, 2000.

The Canadian and U.S. delegates agreed to continue regional cross border exchanges with a second Montana/Alberta Opportunities Conference, a second Northern Plains Producer Conference, and to continue working on plans for a border cattle trade meeting in Vermont, a Northeast/Eastern Canada farm leadership meeting, further meetings of state and provincial agricultural officials, a meeting to exchange information on state and provincial food safety program initiatives, and a northern plains meeting on financing new generation cooperatives. Information will be exchanged concerning measurement of domestic support. States will work with their nursery and landscape industries with Canadian assistance to further investigate nursery certification for export trade. North Dakota and Saskatchewan will further examine suggestions for cooperation in durum wheat marketing.

Canadian and U.S. delegates agreed on the importance of harmonization in the area of agricultural chemicals and livestock drugs, including expanding joint registration and pursuing joint labeling of those products available in both countries to permit producers to purchase these products from the neighboring country. Delegates also agreed to continue working towards animal health regulation harmonization.

The Mexican and Canadian delegations agreed to solidify their bilateral exchange by setting up a network of staff contacts and other mechanisms to assure prompt communication and exchange of proposals for commercial collaboration and information of mutual interest.

The U.S./Canadian Working Group, which also functions as the Provinces-States Advisory Group (P-SAG) to their federal governments' Consultative Committee on Agriculture (CCA), met with the chairpersons of the CCA to discuss issues carried forward from the March 2 P-SAG meeting. Delegates reiterated the states and provinces interest in federal input on the issues of seed laboratory certification and regional animal health issues. Other areas of concern, including phytosanitary issues with regard to nursery product trade, will be communicated to the CCA in the near future.

At the close of the Saskatoon meeting, the Mexican delegation extended an invitation to their U.S. and Canadian colleagues to come to Manzanillo, Colima, for the Eleventh Meeting of the States/Provinces Agricultural Accord in July, 2001.

SPANISH AND FRENCH VERSIONS TO FOLLOW

Eleventh Meeting of the Tri-National Agricultural Accord
JOINT COMMUNIQUE
September 7, 2001
Manzanillo, Colima

Senior officials from 15 Mexican States, 19 U.S. States and 9 Canadian provinces met in Manzanillo, Colima from September 6-8. This was the eleventh in a series of rotating annual conferences intended to improve understanding and strengthen collaboration among the agricultural sectors of three neighboring countries. The meeting included an intensive focus on the state and provincial relationships in the areas of agricultural policy formation, and preventing foot and mouth and other communicable agricultural diseases. Delegates took advantage of the opportunity to view Manzanillo's advanced port infrastructure.

The U.S. Delegation was headed by Hon. Leon Graves, Commissioner of Agriculture, Food and Markets for the State of Vermont and President of the National Association of State Departments of Agriculture (NASDA). The Canadian delegation was led by Hon. Paul Robichaud, Minister of Agriculture, Fisheries and Aquaculture for the Province of New Brunswick. The Mexican delegation was headed by Hon. Dr. Enrique Salinas Aguilera, Secretary of Agricultural Development for the State of Coahuila and President of the Mexican Association of Secretaries of Rural Development (AMSDA). The meeting was hosted by Hon. Ing. Lorenzo Hernandez Arreguin, Secretary of Rural Development for the State of Colima.

During the meeting, delegates reviewed accomplishments of the bilateral working groups established under the Accord structure adopted at Salt Lake City, Utah, in 1999, and established bilateral work plans for the coming year.

U.S. and Canadian leaders received a detailed report on progress made by the Federal Consultative Committee on Agriculture (CCA) since it met with the U.S./Canada Working Group in its capacity as the Province-State Advisory Group (P-SAG) to that body in February 2001. They reviewed progress in harmonizing trade in live cattle achieved through state, provincial and federal cooperation, and recognized that this will continue to be an important area for future bilateral efforts. The Canadian delegation raised concerns about levels of domestic support in the United States and current controversies over tomato trade. It was agreed to determine an approach for a presentation from federal officials on these domestic supports to be made at the next working group meeting. The working group agreed to continue exchanging positions on biotechnology, seed certification, and towards achieving balanced regulation and pricing for pesticides between the two countries.

The Mexican and Canadian Delegations discussed mutual concerns respecting trade distorting subsidies, and the misuse of phytosanitary issues and anti-dumping measures as barriers to trade. Two working groups were established to exchange information and develop possible joint recommendations in these areas for the future. Both delegations also agreed that differences in climate could offer seasonal trade opportunities and agreed to exchange information on dried beans as a pilot approach. The Mexican delegation advocated a meat certification program to resolve transhipment problems. Canadian and Mexican concerns regarding seed potatoes were discussed as were Mexican proposals regarding food quality and safety, organic product certification processes and a scientific approach to the labelling of genetically modified products. Both delegations agreed that these issues require further work.

Eleventh Meeting of the Tri-National Agricultural Accord
JOINT COMMUNIQUÉ
September 7, 2001
Manzanillo, Colima

The Mexican delegation suggested that these issues could be further considered through the North American Plant Protection Organization (NAPPO).

U.S. and Mexican state leaders reviewed successful collaborations over the past year, including work on foot an mouth disease and other issues under the auspices of the Border Governors Conference, the biotechnology forum in Jalisco, and the meeting of bean producers in December, 2000. The Mexican delegation presented its concern about the different levels of subsidies in the three countries. Issues proposed for bilateral study included identification of genetically modified organisms, a new mechanism for studying border operation issues, and the certification of organic products. The delegations agreed to present to federal authorities issues such as: trade in live animals, meat and meat products; the use of science to establish quarantine requirements for such agricultural products as potatoes and other specialty crops; and the mutual recognition of quality and food safety certification systems.

At the close of the Manzanillo meeting, the U.S. delegation extended an invitation to their Mexican and Canadian colleagues to come to Tucson, Arizona for the Twelfth Meeting of the Tri-National Agricultural Accord. The next meeting will have a particular focus on improving border operations as a means of strengthening agricultural trade in the North American Region.

Hon. Paul Robichaud, Coordinator
Canadian Delegation

Hon. Leon Graves, President
NASDA

Hon. Dr. Enrique Salinas Aguilera, President
AMSDA

tri-national agricultural accord

Twelfth Meeting of the Tri-National Agricultural Accord

JOINT COMMUNIQUE

May 17, 2002
Nogales, Arizona

Senior officials from 8 Canadian provinces, 15 Mexican states and 23 U.S. states met in Nogales, Arizona from May 15-17, 2002. This was the twelfth in a series of rotating annual conferences intended to improve understanding and strengthen collaboration among the agricultural sectors of the three countries. Delegates took advantage of the opportunity to tour the Nogales border operations. The meeting included a one-day conference on Biosecurity, Borders and Trade, addressed by U.S. Secretary of Agriculture, Ann M. Veneman; Javier Usabiaga Arroyo, Secretary of Agriculture for Mexico and other senior officials from the three NAFTA countries, as well as prominent private sector and academic specialists on border trade issues. The biosecurity conference was opened with words of welcome from Hon. Jane Dee Hull, Governor of Arizona, and Hon. Armando López Nogales, Governor of the State of Sonora.

The Canadian Delegation was headed by the Hon. Ernest Fage, Minister of Agriculture and Fisheries, for the Province of Nova Scotia. The Mexican Delegation was headed by Hon. Dr. Enrique Salinas Aguilera, Secretary of Agricultural Development for the State of Coahuila and President of the Mexican Association of Secretaries of Agricultural Development (AMSDA). The U.S. Delegation was headed by Hon. Billy Ray Smith, Commissioner of Agriculture for the State of Kentucky and President of the National Association of State Departments of Agriculture (NASDA). The meeting was hosted by Hon. Sheldon R. Jones, Director of Agriculture for the State of Arizona.

During the meeting, delegates reviewed accomplishments of the bilateral working groups from the past year, and set plans for cooperative efforts over the coming year.

The Mexican and Canadian delegations discussed at length, their shared concerns regarding the high subsidy levels and potential trade impediments contained in the U.S. Farm Bill. The escalation in subsidies is seen as a major setback to international efforts to reduce agricultural subsidies and to liberalize trade. It was noted, among other implications, that the lower commodity prices resulting from the new subsidies will worsen the adjustment difficulties facing Mexican agriculture when NAFTA tariffs are eliminated next year.

It was agreed that the Canadian provinces and states of Mexico would encourage their respective national governments to closely examine the consistency of all relevant

aspects of the Farm Bill with the obligations contained in the NAFTA and the WTO agreements.

Joint Canadian-Mexican task groups were established to cooperate on appeals for the U.S. to recommit to a positive role in agricultural reform, as well as advocate that the implementation of new U.S. regulation on labeling and certification of Country of Origin occur in a manner which is least disruptive to continental trade. In other business, a report was received from the Mexico-Canada Agricultural Consultative Committee. This covered the eighteen element Work Plan signed in February 2002. Updates were also received on provincial/state projects related to beans and to phytosanitary and anti-dumping provisions under NAFTA. A new project aimed at facilitating hay trade was agreed upon.

The U.S. and Mexican delegations received a report on the newly formed U.S.–Mexico Consultative Committee on Agriculture (CCA) and the sixteen items in the 2002-2003 Action Plan. The delegates endorsed the proposal to establish an advisory group to the CCA formed from the U.S.-Mexico Accord Working Group. The Mexican delegation expressed its concerns with aspects of the recently passed U.S. Farm Bill, noting high expenditure levels and the expansion of commodity coverage, and suggested that the CCA might be asked to examine the Bill's repercussions.

It was agreed that automation of export and import documentation offers the promise of more efficient trade and improved documentary security. New rules requiring physical inspection of meat cargoes on the Mexican side of the Mexico/U.S. border present implementation challenges, as well as opportunities to review and improve current procedures. The pilot project in automating both countries' export certificates, initiated in an earlier Accord meeting, offers a model for progress. Animal health cooperation under the auspices of the Border Governors Agriculture Working Table offers a model for cross-border solutions to sanitary and phytosanitary problems. The U.S. Animal Health Safeguarding Review also indicates areas where trade surveillance can be improved. Both delegations consider a joint effort to address farm labor and related migratory issues a high priority.

United States and Canadian delegates received reports from federal officials regarding the activities and accomplishments of the United States/Canada Consultative Committee on Agriculture (CCA) and on an analysis of comparative levels of domestic support for agriculture indicating that the aggregate subsidy levels for the U.S., Canada, and Mexico are at similar levels. However, large disparities prevail in the grains and oilseeds sectors. Reports were received on joint state/provinces work items involving a number of cross-border regional conferences, positions on biotechnology, animal health issues affecting trade, seed certification and achieving harmonized regulation and pricing for pesticides between the two countries.

Joint projects were established on Country of Origin Labeling, the northwest nursery and floriculture products trade, and on common challenges facing northeastern apple production and marketing. The Canadian provinces expressed concerns with the new U.S. Farm Bill, especially the expansion of potentially trade distorting support to lentils, dry peas and small chick peas and apples, and fears that world agriculture reform efforts would be seriously compromised. Representatives of the United States federal government stated that the U.S. position at the World Trade Organization has not changed and that their WTO subsidy commitment levels will be respected. A Joint

State/Provinces Working Group was established to address concerns that the new country of origin labeling regulations could disrupt mutually beneficial trade flows and impose higher costs for consumers and businesses on both sides of the border.

At the close of the Nogales meeting, the Canadian delegation extended an invitation to their Mexican and U.S. colleagues to come to Quebec, for the Thirteenth Meeting of the Tri-National Accord, in 2003.

Hon. Ernest Fage, Coordinator
Canadian Delegation

Hon. Enrique Salinas Aguilar, President
AMSDA

Hon. Billy Ray Smith, President
NASDA

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DEPARTMENT OF AGRICULTURE
State of North Dakota
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Section-By-Section Analysis of Senate Bill 532
July 18, 2002

Summary

If enacted, Senate Bill 532 would eliminate the current barriers that prevent U.S. farmers, dealers, and distributors from accessing pesticides from Canadian sources. The bill would amend FIFRA to grant states the authority to issue state registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products registered with EPA for use in the United States. By eliminating access barriers, the bill would essentially create a free market for pesticides, and allow U.S. and Canadian farmers to compete on a level playing field.

Section 1: What Canadian pesticides could be registered and subsequently imported?

- Products that are registered for use in Canada
- Products that are identical or substantially similar to comparable domestic pesticide currently registered with EPA
- Products that are registered in Canada by registrant of comparable domestic pesticide or affiliated entity

Section 2: Who is the product registrant for purposes of this bill?

- "Any person or State may seek registration of a Canadian pesticide"
- Goal is to have dealers and distributors serve as registrants as much as possible
- The importer is the registrant

Section 3: What is the state registant's role and responsibilities?

- Provide State with PMRA label for Canadian pesticide and EPA label for comparable domestic pesticide
- Demonstrate to State that U.S. & Canadian are identical or substantially similar
- Import, label, and distribute the Canadian pesticide

ATTACHMENT 8

Section 4: What is the State's role and responsibilities?

- Obtain Confidential Statement of Formula (CSF) for Canadian pesticide from primary registrant
- Obtain CSF for domestic product from EPA
- Determine that the Canadian and domestic products are identical or substantially similar
- Determine adequate tolerances or exemptions from tolerances exist
- Work with EPA to draft an approved label
- Issue registration for Canadian pesticide to importer (registrant)
- Submit registration package to EPA

Section 5: Right of EPA to disapprove

- EPA has the authority to disapprove registrations within 90 days

Section 6: Labeling

- Each Canadian container must bear an EPA label
- The original Canadian label must remain intact under the EPA label
- Labeling is still considered production and must therefore take place at registered EPA establishments

Section 7: Revocation

- EPA may revoke state registrations if Administrator learns that Canadian and domestic products are no longer identical or substantially similar (ie. if manufacturer changes either formulation)
- Defines terms of such an order, procedures for a hearing and judicial review

Section 8: Suspension of State authority

- EPA may suspend a State's authority to issue these types of registrations if the State does not use the authority in a responsible manner
- Defines terms and rights of State to respond before authority suspended

Section 9: Registrant liability

- State registrant would be liable for only those parts of "production" that are directly under their control or for which they had knowledge
- Tort liability waived for adulteration or compositional alterations of product if registrant could not have had knowledge or control of this part of "production"

Section 10: Disclosure of confidential information by EPA

- Gives EPA the authority to disclose CSF for domestic product to a State

Section 11: Disclosure of CSF of Canadian product by registrant

- Describes penalties if primary product registrant does not disclose CSF for Canadian pesticide to a State

Section 12: Disclosure of confidential information by a State

- Describes penalties if a State discloses CSF for either the Canadian or comparable domestic product

Section 13: Data compensation

- Person or state serving as state registrant of a Canadian pesticide would not be liable for compensation of data

Section 14: Formulation changes

- Mandates that the primary product registrant (manufacturer) inform EPA if they change the formulation of either the Canadian pesticide or comparable domestic pesticide

Statement of the American Farm Bureau Federation

TO THE
SENATE AGRICULTURE, NUTRITION AND FORESTRY
PRODUCTION AND PRICE COMPETITIVENESS SUBCOMMITTEE
REGARDING
THE PESTICIDE HARMONIZATION ACT, S. 532

Presented by

Barry Bushue
President
Oregon Farm Bureau Federation

July 18, 2002

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As the national voice of agriculture, AFBF's mission is to work cooperatively with the member state Farm Bureaus to promote the image, political influence, quality of life and profitability of the nation's farm and ranch families.

FARM BUREAU represents more than 5,000,000 member families in 50 states and Puerto Rico with organizations in approximately 2,800 counties.

FARM BUREAU is an independent, non-governmental, voluntary organization of families united for the purpose of analyzing their problems and formulating action to achieve educational improvement, economic opportunity and social advancement and, thereby, to promote the national well-being.

FARM BUREAU is local, county, state, national and international in its scope and influence and works with both major political parties to achieve the policy objectives outlined by its members.

FARM BUREAU is people in action. Its activities are based on policies decided by voting delegates at the county, state and national levels. The American Farm Bureau Federation policies are decided each year by voting delegates at an annual meeting in January.

STATEMENT OF
THE AMERICAN FARM BUREAU FEDERATION
TO THE
SENATE AGRICULTURE, NUTRITION AND FORESTRY
PRODUCTION AND PRICE COMPETITIVENESS SUBCOMMITTEE
REGARDING
THE PESTICIDE HARMONIZATION ACT, S. 532

Presented by

Barry Bushue
President
Oregon Farm Bureau Federation

July 18, 2002

Good morning Mr. Chairman and committee members. I am Barry Bushue a farmer from Boring, Oregon, where I operate a family nursery stock and berry operation. I am also the president of Oregon Farm Bureau and a member of the board of directors of the American Farm Bureau Federation. I am testifying today on behalf of the American Farm Bureau Federation.

Farm Bureau is the nation's largest farmer and rancher organization with over 5.1 million member families in all 50 states and Puerto Rico. As you know Mr. Chairman, farmers and ranchers in all 50 states have been facing some rather hard times these past few years. These difficult times have forced those of us in production agriculture to take a closer look at our bottom line and attempt to do whatever we can to reduce any unneeded costs and hopefully realize a profit, or simply break even. This has been hard to achieve in recent years. This examination has exposed a number of increasing costs that farmers are now voicing concern about and attempting to mitigate. Such expenditures include ever increasing environmental regulation costs, labor costs, energy costs and agricultural chemical costs, which is what we want to focus on today.

Let me begin by saying that Farm Bureau strongly supports S. 532, the Pesticide Harmonization Act, sponsored by Senator Dorgan.

This legislation will allow farmers, cooperatives and farm supply stores access to lower-priced Canadian agricultural chemicals that are identical or "substantially similar" to those sold in the United States. The high cost of some pesticides in the U.S. is contributing to the current farm crisis by inflating agricultural producer input costs. Producers in other nations, such as Canada, use pesticides substantially similar in content to those used in the U.S., but the foreign products are often less expensive. Under current law, U.S. producers cannot import those pesticides from other nations.

We farm in a global market. Our competitors are not just down the road but around the world. To remain competitive and hopefully profitable, we must constantly search for ways to reduce our production costs. From the producer's point of view, there is a price disparity among some agricultural chemicals in the U.S. and Canada that impedes our competitiveness and profitability. We believe that this legislation will work to remove that disparity.

Under the Pesticide Harmonization Act, states could petition the Environmental Protection Agency to issue pesticide labels that can be placed on Canadian products when the only "significant difference" between the products is the price. The U.S. product label would allow our farmers to buy the Canadian pesticide for use on their farms in the U.S.

Farm Bureau believes this legislation is a significant step toward achieving the goals of gaining access to affordable and needed products for U.S. farmers while at the same time maintaining U.S. standards designed to protect consumers, farmers and the environment. Farmers in this country need a level playing field to compete with foreign growers and having equal access to less expensive crop protection materials will improve the competitive position of U.S. producers.

Studies have been conducted on cost differences by USDA and others, and the results demonstrate that similar compounds used on both sides of the border can be priced differently. Sometimes these price differences are significant. Senator Baucus has stated that recent surveys have found that U.S. farmers can pay as much as 117 percent to 193 percent more than farmers in Canada for virtually the same product. A USDA study puts this in perspective by stating that "although pesticide expenditures are not high for the study crops in the Canadian/U.S. prairie area compared with some crops and areas, they are relatively high compared with per acre profits. A few dollars of extra cost can make the difference between a profitable and an unprofitable year."

The American Farm Bureau and the Canadian wheat pools have sponsored producer meetings for the last three years. This effort has resulted in forming the Canada/U.S. Producer Consultative Committee on Grain. These exchanges have resulted in the identification of issues that are important to grain producers in Canada and the United States. We reached consensus that harmonization of pesticide registration and labeling was desirable. If we can solve this trade or border irritant, perhaps we can solve other issues.

I applaud EPA's efforts to work with our international trading partners to promote consistency in the various regulatory and scientific requirements regarding pesticides, such as the work being conducted with the Technical Working Group for Pesticides developed under NAFTA. However, while the administration's actions are helpful, they have not resolved the issue.

Farm Bureau does understand that because pesticides must be registered in the U.S. before they can be sold and distributed, there are certain limits on EPA's involvement in this issue. But EPA must continue to work within current authorities to find solutions.

We were pleased to hear the statement of EPA Assistant Administrator Steve Johnson during his confirmation hearing regarding the need for legislation to address this problem and I quote: "I believe that legislation is needed because there does not appear to be adequate administrative or regulatory solutions."

Thank you Mr. Chairman and committee members for the opportunity to comment. I'll be happy to address any questions you may have for me following the testimony of the other panelists.

North Dakota Farmers Union

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July 16, 2002

Senator Kent Conrad
530 Hart Office Building
Washington DC 20510-3403

Dear Senator Conrad:

Thank you for holding the hearing on S.532, The Pesticide Harmonization Bill. Intended to remedy problems that have occurred due to the differential pricing between U.S. and Canadian agricultural inputs, North Dakota Farmers Union registers its strong support for this legislation.

Differential pricing of farm chemicals between the U.S. and Canada has been a significant problem for U.S. producers, particularly those farmers who live along the Canadian border. A recent incident in North Dakota illustrates how these differences can negatively impact U.S. farmers. Six farmers have found themselves in trouble with the law after purchasing herbicide in Manitoba that they mistakenly believed was legal to import into the United States.

The chemical the farmers purchased in Manitoba sold for half the price in Canada as it did in the United States. The farmers actions were based on economic preservation, not criminal intent. In these times of tight margins, decreasing the cost of agricultural inputs can mean the difference between profit and loss for many farmers.

It is an outrage that these law abiding citizens now find themselves on the other side of the law for buying what they believed to be a legal product at a better price.

The problem, in part, is that the Canadian version of the product, although believed to be essentially the same as the U.S. chemical, is not approved in the United States. Because the manufacturer of the chemical will not say whether the two chemicals are the same, they effectively force U.S. farmers to buy the more expensive U. S. product and, therefore, extract twice the profit from American farmers.

A twist to this case is that even though the Canadian product is illegal to use in the U.S., it is perfectly legal for Canadian crops treated with these same chemicals to be imported into the United States to compete with U.S. farmers' commodities.

The intent of our labeling restrictions and registration procedures is supposed to be consumer and food safety. However, it is clear that differential pricing between the U.S. and Canada of similar or identical farm chemicals is based more on price gouging than product safety.

North Dakota Farmers Union urges Congress to act expeditiously in ending this unfair practice. Passage of S.532 will help to achieve that goal.

Sincerely,

NORTH DAKOTA FARMERS UNION

Robert L. Carlson, President

MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.

STATEMENT OF

MR. DAVID J. FREDERICKSON

PRESIDENT
NATIONAL FARMERS UNION

BEFORE THE

SUBCOMMITTEE ON PRODUCTION AND
PRICE COMPETITIVENESS

OF THE

SENATE AGRICULTURE, NUTRITION AND
FORESTRY COMMITTEE

JULY 18, 2002

400 North Capitol Street, N.W. • Suite 790 • Washington, D.C. 20001 • Phone (202) 554-1600

Chairman Conrad, Members of the Subcommittee, I am David Frederickson, President of the National Farmers Union. On behalf of our 300,000 family farmer and rancher members it is an honor to appear before you today to discuss S. 532, the Pesticide Harmonization Bill and the effect of our current pesticide regulations that allow differential pricing between the U.S. and Canadian agricultural input markets. In addition, I would like to submit a separate statement on behalf of the North Dakota Farmers Union and request that it also be made part of the hearing record.

Mr. Chairman, the NFU commends you, and Senators Burns, Baucus, Daschle, Dorgan and Johnson for the introduction S. 532. This legislation will amend the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) to establish conditions that would allow a state to register a Canadian pesticide for use within that state if the product is substantially similar or identical to one already registered in the U.S. We fully support this legislative initiative.

Since the ratification of the Canada-U.S. Trade Agreement (CUSTA), North American Free Trade Agreement (NAFTA) and the Agreement on Agriculture in Uruguay Round of the World Trade Organization (WTO); U.S. grain farmers, particularly those in the northern tier of states, have been frustrated by a number of trade issues with Canada due to provisions of the agreements. Since adoption of the agreements, Canadian exports of wheat and barley to the U.S. have increased many-fold even though the U.S. is a large surplus producer of these crops. This has resulted in clogged transportation and warehousing facilities near the border, increased competition for sales in our own domestic market and reduced producer prices for wheat and barley.

There are numerous reasons why the open border with Canada, that was created by trade agreements, has harmed U.S. producers. These include Canada's regulated marketing and transportation system, which are beyond the scope of this hearing. However, one key economic issue that has served to disadvantage U.S. farmers relative to our Canadian neighbors is the effect of our own pesticide labeling regulations on production costs. U.S. pesticide product labeling requirements have clearly provided pesticide manufacturers the opportunity to engage in differential pricing for similar or identical products between the U.S. and Canadian markets in ways that generally advantage Canadian farmers over U.S. producers without a further contribution to food, consumer, worker or farm operator safety.

It is hypocritical, that under the guise of free trade, we allow the import of food products from other countries that may be produced with pesticides that are illegal to use in this country or applied in a manner that may well be outside the strict limitations established under U.S. regulations. At the same time U.S. farmers are prohibited from the opportunity to purchase pesticide products in Canada that are identical to those registered for use in this country.

The purpose of FIFRA, administered by the Environmental Protection Agency (EPA), is to utilize the best available science in registering pesticide products to assure consumer safety of the food products to which they are applied as well as ensure their safe and effective use by producers and farm workers. I do not believe it was the intent of Congress to provide a shield for the manufacturers and marketers of pesticides so they could "gouge" their U.S. customers. Unfortunately that is exactly the experience we face under current U.S. regulations.

The environmental and agronomic factors that affect most farming operations in the Northern Plains states are comparable to those experienced by farmers in the Canadian prairies. However, the Canadian input-cost structure is significantly different than that of U.S. producers. Part of this difference is related to the type and level of federal and provincial programs available to farmers when compared to those in the U.S. A significant difference in farming costs, however, can be directly attributed to the wide differential in the cost of pesticides that U.S. producers pay versus those paid by our Canadian neighbors who are also our competitors in the U.S. and global agricultural markets.

Last year we developed a comparison of the per-acre costs for a variety of registered pesticides for the wheat and barley crops typically produced in both the U.S. and Canada. A table listing a sample of the information is attached at the end of this testimony. Although the data is based on last year's prices, it remains valid today in demonstrating the significant differences in producer costs for crop protection products. The U.S. pricing information was obtained from a local dealer located in Montana. A Canadian farm input supplier, whose business is located just across the border from the U.S. dealer, provided the Canadian price information.

For a typical 1500 acre wheat and barley farm that produces crops on 1200 acres and maintains 300 acres of summer fallow each year, the bill for crop pesticides is about $13,400 per year greater for the U.S. producer than his Canadian counterpart. This is serious money, and represents 12-15 percent of a farm's total gross crop income assuming average yields and current market prices. The impact of differential pricing of pesticides results in a significant competitive advantage for Canadian producers in both the domestic and global markets and results in a further reduction in U.S. producer market opportunities and income.

Under the proposed legislation, a state, farm organization or a farm-supply company could serve as the U.S. registrant for Canadian pesticides if they are identical or substantially similar to U.S. registered products. Many of the pesticides normally used by U.S. producers fit within this requirement and would therefore be eligible for purchase and use on U.S. farms after applying the appropriate U.S. registration label to the product container. While the opportunity for producer savings would be reduced somewhat by the additional inconvenience, transportation and re-labeling costs, the impact on most farms would still be substantial. The potential access to less costly pesticides provided by this legislation should result in more consistent regional and nationwide pricing policies by the manufacturers that will benefit all producers who utilize products that are registered in both countries.

The NFU is not seeking to reduce the level of regulation or oversight provided by the EPA to ensure the safety of agricultural pesticides. In fact, we support a more globally harmonized system of regulation based on scientific principles and risk assessment for these products that is comparable to those established in the U.S. This legislation does not weaken that objective. It simply provides the opportunity for economic relief from an artificially maintained pricing system affecting products that have been approved or are comparable to those registered by the EPA.

We support this legislation because it engenders fair market conditions and competition between the U.S. and Canada by reducing the potential for differential pricing by pesticide manufacturers. Additionally, it can provide greater equity and economic opportunity for U.S. agricultural producers by eliminating the ability of pesticide manufacturers to hide behind a U.S. regulatory technicality.

Mr. Chairman, I appreciate the opportunity to appear before the subcommittee today and offer the support of the National Farmers Union for the pesticide harmonization legislation you and many of your colleagues have introduced. We look forward to working with you to achieve passage of this important bill as expeditiously as possible. I will be pleased to respond to any questions you or your colleagues may have.

Comparison of Canadian and U.S. Pesticide Costs per Acre

		Canada		U.S.	
Chemical	**Pesticide Type**	**Price/A (Cdn $)**	**Price/A (US $)^**	**Price/A (US $)**	**Difference U.S. - Canada**
Assert	Herbicide	15.91	10.31	13.72	3.41
Banvel	Herbicide	2.99	1.94	1.41	-0.53
Curtail	Herbicide	10.55	6.84	9.53	2.69
Puma Super*	Herbicide	15.96	10.34		
Puma + Bronate	Herbicide			17.02	6.68
Tilt	Fungicide	13.76	8.92	10.87	1.95
Round Up	Herbicide	4.50	2.92	5:10	2.18

^Canadian dollar = .6480 U.S. dollars

*Pre-mixed with Bronate, adds about U.S. $2.77 per acre to cost of Puma

TESTIMONY OF JAY VROOM
PRESIDENT
CROPLIFE AMERICA
BEFORE THE SUBCOMMITTEE ON PRODUCTION AND PRICE COMPETITIVENESS
JULY 18, 2002

Mr. Chairman and Members of the Committee:

I am Jay Vroom, President of the CropLife America (CLA). CLA is a national trade association representing the manufacturers, distributors and formulators of virtually all crop protection chemicals and crop biotechnology products used in the United States. I appreciate the opportunity to testify before you this afternoon on pesticide harmonization issues.

Producing and marketing crop protection and the new array of biotechnology products involves a complex matrix of factors, including crops, competitive chemicals, soil/climate conditions, geographic region, dealer and distributor incentives, volume discounts, patent life, liability costs, minor use considerations, regulatory compliance, regulatory delays, transition to and reinvestment in reduced risk products, research and development costs, the state of the farm economy and a multitude of other considerations, not the least of which is the impact of the uncertain and inconsistent implementation of the Food Quality Protection Act (FQPA).

CLA member company investments in research and development have provided a vast arsenal of insect, disease and weed control tools for American farmers. Yields of many crops in the U.S. have doubled and tripled since the introduction of modern pesticides and much of this increase is due to the effectiveness of these tools in controlling crop pests. We are committed to serving the American farmer by providing the best technology at the farm gate and supporting their farm and rural policy objectives in the legislative and regulatory arenas.

I believe it is important to recognize the benefits of the U.S. crop protection industry and some of our major accomplishments. First and foremost is the vast array of tools we provide the American farmer. Today we have more than 9,000 product tolerances on crops from wheat, soybeans, cotton, rice and canola to sunflowers, barley, flax, and kiwi. We understand that some growers, especially minor use farmers, would like to have additional registrations and we'll continue to work closely with growers, USDA, EPA and the NAFTA Technical Working Group to accommodate these needs when economically possible and feasible under the prevailing regulatory regime. For the last several years, for example, we have worked very closely with the canola growers in their quest for more pesticide tools in the U.S. Since this crop is comparatively new in the U.S.

compared to Canada, and the U.S.-planted acreage is considerably smaller than in Canada, U.S. growers are eager to gain access to products, which have already been registered across the border.

Our work with the growers and EPA is beginning to pay off. Since 1995, a significant number of new pesticide uses have been registered for use on canola. In addition, credit is due to USDA's IR-4 program for its attention to and actions that have contributed solutions in this minor use area.

Recent years have certainly taken a toll on U.S. agriculture, with declining farm prices, natural disasters, and distressed world economies. Many U.S. farmers are experiencing serious financial problems. Congress has provided emergency assistance to farmers, but the pain continues to ripple throughout the farm economy, with CLA members included in the economic-pain quotient. In recent year, sales from CLA member companies declined to reflect the economic hardships in the farming community. The CLA 2001 industry survey shows that U.S. sales from the top six industry leaders declined by 9.84 percent in 2001, reflecting a continuing decline over the last several years. Add to this the pressures in our markets from the addition of new technology shifts and you can begin to understand that our industry's challenging economics track closely with the American farmers'.

Relative to the subject of this hearing, I would like to address some of the key variables related to pesticide product pricing.

U.S./Canada Registration Processes

An important factor in pricing differentials results from the significant differences in product testing and registration standards between the United States and Canada. At our own initiative, CLA formed a special Industry Working Group to help move the regulatory harmonization process forward. We have been working with EPA and their Canadian counterpart PMRA for the last several years to harmonize some of these requirements so that products on both sides of the border would be more equally available, and therefore likely to be more evenly priced.

Given two developed countries sharing a common border, there is no logical reason to have separate processes and reviews, and not to mutually accept scientific study reviews or even ultimate tolerance decisions. On one hand, our industry is criticized for having different prices in the U.S. and Canada, but on the other hand, we have to deal with two separate, autonomous regulatory systems. (Several years ago, Canada adopted an "Own-Use" program because prices were lower in the U.S. Now we hear from unhappy U.S. farmers that prices are cheaper in Canada.) Although frustrated, we continue to press the two governments through the NAFTA Technical Working Group for a more harmonized regulatory approach. We would further ask that Congress address

this slow bureaucratic process in legislation that would mandate deadlines for completion the harmonization processes, including additional resources, if necessary. It is my understanding that legislation has been introduced in Canada, and is now working its way through Parliament, that increases PMRA' s regulatory harmonization efforts through the NAFTA.

There are potential and historic differences in protection of intellectual property protection between two sovereign countries like the U.S. and Canada. Certainly, even after the WTO TRIPS agreement latest amendments, real opportunities for patent life to be on different timetables exist between the U.S. and Canada. And proprietary registration data can be accorded different protection schemes and time frames—all challenging basic economic drivers.

There also marked differences in the current review times between the U.S. and Canada. For a non-reduced risk chemical in Canada, review times are 18 months plus screening time, whereas the EPA review times are running some 40-46 months. The unusually longer review times delay market entry, reduce the patent life and affect market decisions.

In the U.S., fewer than 1 in 20,000 compounds will make it from the discovery laboratory to the farm field; and only after that one chemical passes at least 120 or more federally mandated tests during a period of 10 years or more at a total invested cost in the product's development of upwards of $150 million. This time and cost is borne completely by the initial registrant before one cent can be generated in revenue.

EPA implementation practices on FQPA are being exported to Canada where worst cased default decisions may be adopted in the name of harmonization. This regulatory approach, if adopted, will reduce the number of products available to growers on both sides of the border, and will undoubtedly impact the prices of remaining products. The registration processes in Canada including, testing and data requirements, can be significantly different, sometimes resulting in lesser cost and time between laboratory development and ultimate marketplace sales.

NAFTA Technical Working Group

Under the North American Free Trade Agreement (NAFTA), the governments of Mexico, Canada and the United States formed the Technical Working Group (TWG) on Pesticides in 1996. The scope of work for the TWG has been to develop a coordinated pesticides regulatory framework among NAFTA partners to address trade irritants, build national regulatory/scientific capacity, share the review burden, and coordinate scientific and regulatory decisions on pesticides. We support the goals of NAFTA TWG which include: 1) Sharing the work of pesticide registration; 2) Harmonizing scientific and policy considerations for pesticide regulations; 3) Reducing trade barriers; and 4) Maintaining current high

levels of protection of public health and the environment while supporting the principles of sustainable pest management.

We believe that through this process, new product registrations can be expedited and duplication of studies and analysis can be reduced, ultimately providing greater market competition in both availability and pricing. In order to get there, however, we need to continue working through the TWG to harmonize guidelines, define the "common data requirements," streamline the EPA registration process and achieve mutual acceptance of tolerances. Congressional oversight and mandated deadlines would help to bring new life to the governmental harmonization body.

We are concerned that some proposals currently under U.S. consideration could have an unintended consequence of inhibiting the long term objective of registration harmonization—and we hope that remedies for the near term price issues can be adopted that do not reverse the long term harmonization accomplishments already achieved.

"Pesticide Pricing Study on Differentials Between Canada and the United States"

In 1999 USDA and Agri-Food Canada conducted a comprehensive study of products and price differentials between the two countries, as mandated in the U.S.-Canada Record of Understanding. The study was conducted by expert researchers at the North Carolina State University and University of Guelph in Ontario, Canada. The conclusions of the study show that on a cost-per-treated acre basis, Canadian farmers spend far more on chemical inputs in general than farmers in the northern plains states. Selective use of the data may misrepresent the author's findings, and we feel it is important to look at the whole picture.

We believe that this governmental report reflects an accurate snapshot of pricing between the two countries, concluding that some pesticides are higher in the U.S., while others are higher in our neighboring country. Some of the key conclusions from the 1999 Report are summarized below:

- Individual Northern U.S. growers may have higher costs of production than Canadian counterparts, but these have much more to do with non-chemical issues such as land, labor and management costs.
- Some pesticide products have lower prices in Canadian provinces than similar products in North Dakota. Conversely, others are listed as being the opposite: lower priced in ND. The marketplace factors given for price differentials include: differences in patent protection length; differences in market size and costs; differences in farmer demands; differences in availability of alternative products.
- ND growers generally spend less on weed control products than their northern counterparts.

- Frequently used products in Manitoba and Saskatchewan differ from those frequently used in ND or MN.
- There is a difference of US $3 – 4 on a per treated acre basis, with ND growers spending less then growers in MB or SK.
- Overall, cost-per-treated acre in ND is significantly lower than in Canadian provinces.
- The percent difference that Manitoba growers spend above ND growers by crop was: +209 percent for wheat, +169 percent for barley, +41 percent for canola, +29 percent for potatoes.
- "The estimated impact of purchasing lower priced pesticides in either Manitoba or North Dakota using existing herbicide market shares is small on a per treated acre basis (usually less than US $0.50 per acre)."

We would support this data being updated by a credible governmental body, or its contractors, so a current and accurate assessment can be conducted. We are aware that various price studies have been circulated by different interest groups, but feel that the U.S./Canada joint study was more comprehensive, reflecting an unbiased look at prices in both countries. I would also refer the subcommittee to the February 26, 1999 GAO report on pesticide pricing in Canada and the U.S., which addresses the marketing complexities both within the U.S. and between the two countries.

Security

The security concerns of all Americans have escalated in the last ten months, as they should. Congress should take care in any legislative consideration to ensure that any action improves our domestic security and does not create unintended opportunity for "evil-doers." Pesticides are highly regulated and are securely managed today and we encourage that any proposed FIFRA changes keep security considerations in mind.

Cost of Liability

It is important to recognize what a litigious society the U.S. has become and how this burden is factored into market strategies in response to frivolous lawsuits. U.S. agrochemical manufacturers understand these conditions all too well. Our companies face a literal barrage of threatened or formal legal actions covering the full range of liability exposures: product performance, environmental damage, personal injury, and so on. Having to defend the underlying business – whether through rigorous court action or out of court settlement – is a real and growing cost of our U.S. business. Some states are home to courts that encourage or allow more frivolous litigation than others, accounting for different underlying cost assumptions in different parts of our domestic markets.

Different crops vary widely in their overall per acre value. The potential liability that accompanies the marketing of pesticides on high-valued crops forces

registrants to pay special attention to conditions that might cause crop damage. These factors increase the costs of products on some crops. Highly competitive marketing strategies, including rebates, must also be accounted for in the pricing of products to growers.

CLA Proposal: Supplemental Own-Use Label for Trade Irritants

Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act governs ways by which state governments can address special local needs (SLN) of an existing or imminent pest problem for which there is no available federally registered pesticide product. In fact, a few years ago, the ND Department of Agriculture contacted several crop protection manufacturers to see if there was interest in applying for 24(c) SLN for products they marketed in Canada, which had same or similar formulations in North Dakota at different prices.

CLA would support an interim legislative program that would bridge the gap until full regulatory harmonization takes effect, allowing farmers to import substantially similar Canadian pesticides for their own-use on the same crop. Given EPA's expertise and experience under FIFRA, we believe it is critical that EPA be the lead agency, ensuring pesticide safety and making determinations of substantial similarity. New heightened border security concerns would also indicate that EPA control and oversee the import of Canadian pesticides under this new authority, and that imports be limited to own-use, not distribution. We anticipate that this interim authority would phase out as regulatory harmonization is put into place. To ensure that pesticide registration harmonization becomes a reality and doesn't stall, we would support legislation to mandate deadlines for completion of the registration harmonization processes between the U.S. and Canada. Our regulatory bodies have an obligation to promulgate clear federal government rules and guidelines, so as to avoid confusion and disruption in the marketplace. And they have an obligation to implement those rules and guidelines in a way that will reduce or eliminate the trade irritant issues that have caused us all such unnecessary political strife in recent years.

Summary

The deepening frustrations around the pesticide price issues demonstrate the need to aggressively pursue government-to-government harmonization. Pricing and availability issues cannot be adequately solved by individual state actions on individual products, as mandated in S. 532. This bill would create a patchwork of differing state pesticide registration programs, in addition to other problems dealing with national security, intellectual property, liability and confidential business information.

In addition to the longer-term regulatory harmonization, CLA would support new trade irritant authority to relieve some of the immediate price and availability concerns while we move to a fully harmonized registration system.

The most important factor in our marketplace is a healthy customer. We hope that the issues at this hearing can be properly put in the larger and long term context—that we have a regulatory system that has enabled development and marketing of crop technology products over the last several decades that have contributed to the U.S. agricultural system being the envy of the world.

Thank you again for the opportunity to share our views with the Subcommittee. We look forward to working with the Chairman and other Senators to address the U.S./Canada harmonization concerns discussed here today.

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