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CHEMICAL HARMONIZATION

HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

JULY 26, 2001

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ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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CHEMICAL HARMONIZATION

Thursday, July 26, 2001

U.S. SENATE,
SUBCOMMITTEE ON CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 9:08 a.m. in room SR–253, Russell Senate Office Building, Hon. Byron L. Dorgan, Chairman of the Subcommittee, presiding.

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

Senator DORGAN. I call this hearing to order.

My name is Senator Dorgan. I chair this Subcommittee, and Senator Burns is on his way. I believe he had a previous engagement this morning and should be here shortly. I believe Senator Ensign will also be with us this morning.

The point of this hearing is to examine S.532, introduced by myself and Senator Burns, co-sponsored by Senators Baucus, Cleland, Conrad, Daschle, Dayton, and Johnson. S.532 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.

The point is that there are significantly higher prices being charged to U.S. farmers than Canadian counterparts for exactly the same pesticides. We will be taking testimony today from a number of witnesses on this subject. I look forward to hearing their comments.

Let me describe just for a moment why I introduced the legislation and describe the pricing differential with just a couple of visuals. Pesticides that are identical or substantially similar that are being sold in both the United States and in Canada can cost U.S. farmers considerably more money than their counterparts in Canada. Let me hold up a box of Folicur. This box contains chemicals. This is a unique box because it was originally marketed in the United States, but because this company was short of this chemical in Canada this box went to Canada and a Canadian label was slapped on it. So you have a box with both a U.S. and a Canadian label.

The difference? It is the same chemical sold to farmers in the United States and in Canada. Only one difference: $500 cheaper for this box in Canada. The only difference in the marketing of this chemical to a Canadian farmer and a U.S. farmer is the U.S. farm-

er is charged $500 more for this box and the chemicals that are in this box.

Now, is there justification for that? In my judgment the answer is no.

Let me give you another example. I will use a chart. This chart is a chart that describes the chemical Puma Super, and in this circumstance you have exactly the same quantity, the same chemical, with a difference in cost. The U.S. farmer pays $9.61 an acre to apply this chemical—excuse me. The U.S. farmer pays $15 an acre, the Canadian pays $9.61 an acre. So that is the difference in price. The U.S. farmer is charged substantially more for the identical chemical.

We have a box of Achieve. This is a chemical that is sold in both the U.S. and in Canada. The difference with respect to Achieve is only in price. For example, the price differential is $6.34 an acre more for a U.S. farmer to apply this chemical than for a Canadian farmer.

These are just three examples of chemicals that are either identical or substantially the same that are priced dramatically different for a U.S.farmer versus a Canadian farmer. The question, is there justification for that, especially inasmuch as the U.S.–Canada Free Trade Agreement and NAFTA promise harmonization of chemical prices? My response is there is no justification for it. My response is that this represents overcharging of U.S. farmers and U.S. consumers for essentially the same chemical.

How does it happen? Because it can happen, and we want to change that with legislation. I know there are differences of opinion with respect to this subject, but, as you might know from my opening statement, I already have an opinion. I would like us to see passage of the legislation that I have introduced with Senator Burns. We will have both pros and cons examined today on that subject.

Let me welcome my chemical Congressman Pomeroy and let me also ask Commissioner Johnson to join him, and we will hear from the first two witnesses. First, my colleague from the U.S. House, Congressman Pomeroy, who has been very active on this issue and has introduced legislation and been very involved in writing legislation on this subject over the last couple of years. Congressman Pomeroy, welcome.

STATEMENT OF HON. EARL POMEROY, U.S. REPRESENTATIVE FROM NORTH DAKOTA

Mr. POMEROY. Mr. Chairman, thank you very much. It is with great pleasure that I say, "Mr. Chairman." Farmers are hit with low prices and farmers are hit with high prices: low prices for the commodities they grow, high prices for the inputs it takes to grow them. Hopefully, today it will be a banner day to address those problems on both fronts.

As we meet here in the Senate, the House Agriculture Committee begins its markup of the new farm program, adding income support when prices collapse, something that should never have been removed from the farm program in the first place. On this side, this hearing, Mr. Chairman, advances the Pesticide Harmonization Act, to allow our farmers to access chemicals at the best

available price irrespective of which side of the border they are marketed on when there is no issue of public health or safety presented.

The heart of the matter is whether chemical companies should be allowed to hide behind EPA red tape and prevent farmers from buying chemicals and pesticides at lower prices than those available to Canadian farmers when there is no issue of public health or safety presented. The current disparate pricing system is based on the ability of chemical companies to tightly control the distribution of their products and segment the U.S.–Canadian market under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

The proposed legislation that would amend FIFRA would guarantee, that the government retain control of the production and distribution of potentially harmful chemicals and allows, I believe, us to move in a very measured and prudent way to address this problem. It is unfortunately at present being used as a barrier to cross-border trading in chemicals, which allows the discriminatory pricing strategies of the chemical companies, inuring almost inevitably to the disadvantage of the United States farmer.

In 1998, a survey conducted by the North Dakota Agricultural Statistics Service showed that farmers in North Dakota were paying between 117 percent and 193 percent higher prices for pesticides than Canadian farmers. A more recent study conducted this year by researchers at 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 harsh impact the two-tiered pesticide pricing structure has on our farmers.

Now, the Pesticide Harmonization Act, if enacted, 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, this act would essentially create a free market for pesticides and allow U.S. and Canadian farmers to compete on a much more level playing field. 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, it is also important to know what it would not do. It would 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 would have to certify that the pesticide is substantially identical to the domestic pesticide already registered for use in the United States, and that the pesticide meets the strict standards of the EPA under FIFRA.

Given our proximity to the Canadian border, Mr. Chairman, you know and I know that the disparate pricing is a very substantial

problem for farmers and a considerable aggravation to the whole free trade environment. We have got to compete with Canadian farmers post-harvest as their product comes flooding into our market, diminishing the price our farmers can get for their products. But pre-harvest the industry continues to segment and price discriminate.

It is interesting to note the record of the industry, the chemical and pesticide producers, on the NAFTA legislation. They were all for it. They wanted a blended post-harvest marketplace. Well, if they are going to have the post-harvest market blended, they are going to have to be subject to more of a blending pre-harvest as well. Their price discriminating strategies simply cannot stand.

This legislation, Mr. Chairman, introduced in the Senate, identical to what I have introduced in the House, was developed over considerable negotiations between the North Dakota Agriculture Department and the Environmental Protection Agency under the prior administration. It is not entirely clear what the position of the new administration is on this bill, but the record of our President I think is very clear in terms of not having a whole lot of patience for bureaucratic red tape not related to health or safety disrupting normal market activity, especially in a free trade environment. I do not think that the President would want to assert EPA requirements not related to health or safety that stop our farmers from getting the best price.

In conclusion, I would just say that registrants simply are able to sell pesticides at higher prices in the United States than Canada because of differing regulatory schemes. This runs contrary to the intentions 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 on the input side.

Your bill, Mr. Chairman, addresses that very directly. I congratulate you for introducing this legislation, for having this hearing, and I look forward to working with you and the administration to have this matter enacted.

Senator DORGAN. Mr. Pomeroy, thank you. Are you able to stay for a few moments?

Mr. POMEROY. Yes, I am.

Senator DORGAN. Why do we not hear from Commissioner Johnson? Let me say, Commissioner Johnson, I think you have done more work than anyone in State government in America on this issue. The Committee thanks you very much for your efforts. It would be very happy to hear your testimony.

STATEMENT OF ROGER JOHNSON, COMMISSIONER, NORTH DAKOTA DEPARTMENT OF AGRICULTURE

Mr. ROGER JOHNSON. Thank you, Mr. Chairman, and thank you for all the work that you do on behalf of farmers across this country, and in particular thank you for your efforts in supporting this bill and in holding this hearing.

I am going to summarize my testimony. You have a written copy and there are copies provided for others as well, I believe. I am going to glance quickly through it and just hit the highlights if I can.

Every day—and I think Congressman Pomeroy made this point—every day Canadian grain moves freely across our border, and it directly competes with wheat that we produce, grain that we produce in North Dakota, in our domestic market as well as in the international market. We have to face the same market prices the Canadian grain faces with the products that we produce in agriculture.

The difference, however, is that the costs of production in our country are substantially higher, particularly as they relate to pesticide prices. That is the central issue that we are attempting to get at in this bill. The reason that prices are higher here is because even though grain can move freely south across the border and compete into our markets, pesticides cannot. The border serves as an imaginary, and in fact a substantial, barrier so that companies can in fact segregate the market that would otherwise be one market into two separate markets and charge different prices in the respective markets.

Let there be no mistake about the central issue. The central issue is that U.S. farmers pay substantially more for farm chemicals than do our Canadian counterparts. Pricing studies have repeatedly shown this to be the case.

Attached to my testimony in attachment 1,* I give you detailed numbers that were generated about a year ago by the Minnesota Association of Wheat Growers. They show that, for example, in cereal grain production our producers pay as much as 40 percent more than their Canadian counterparts.

I have also included as attachment 2* in my testimony the complete study done by Richard Taylor and Won Koo, researchers for the Northern Plains Trade Research Center located at NDSU that Congressman Pomeroy earlier cited. That study demonstrates that there is about a $24 million disadvantage to the American producers.

If you look at page 2 of my testimony,* I included a chart. We just pulled out a handful of products in North Dakota. We serve as sort of the clearinghouse through which pesticides must go before they are allowed to be used in North Dakota, and we listed there about 10 or 12 different products, the approximate acreage that these products are used on, and the price differences that apply.

The results show something more than a $32 million disadvantage to our producers. Let there be no question about the direct link between pesticide prices and net farm income, either. The study I cited earlier, done by Koo and Taylor, demonstrates clearly that there is a direct link, that in fact just North Dakota hard red spring wheat producers alone face an $11.6 million annual disadvantage.

This has been a large concern in the public in North Dakota. I have included as attachments, in attachment 3,* a copy of a resolution that was passed by the North Dakota legislature. In the description of the resolution, it describes it as being a 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 registration to parties who wish to import Canadian crop protection products that are identical or

substantially similar to products registered with EPA for use in the United States.

That language sounds an awful lot like the language that is included in your bill, Mr. Chairman. In fact, this resolution was specifically written and passed to express the support of the North Dakota legislative assembly for this piece of legislation.

But this is not just a North Dakota problem. It is a national problem. I have included for you as attachments 4, 5, and 6* different pieces of evidence suggesting that the problem goes much beyond North Dakota. First, about a year ago we had a little issue—you talked about it in your opening remarks—with a product called Achieve. I am not here to talk about any one particular product because it is an issue that is systemic, I think, through all the products.

But we had an issue with this product and on raising the issue I wanted to send a letter to EPA saying: EPA, please help us address this pricing problem that we have with pesticides in North Dakota. What I did was I contacted a dozen of my colleagues all along the border States with Canada. Within 5 days, 11 of the 12 signed onto a letter that went to EPA. That is included as an attachment to you.*

Furthermore, a resolution expressing support for this bill was presented by the National Association of State Departments of Agriculture. All the 50 States are well on board with this proposal. In attachment 6,* I give you language that was adopted at the Agricultural Accord, a meeting of NAFTA partners, both the Canadian ministers as well as our partners.

This act would solve the problem. We have approached this problem from the administrative perspective, and I think you will be hearing from Steve Johnson from EPA. In a moment we will talk about what we have been trying to do there. We have approached it from the judicial perspective and we are approaching it from the legislative perspective. There are no other ways to do this and this is the final, the ultimate fix to this problem.

With that, Mr. Chairman, I see my time is up. I am strongly in support of this legislation and urge the Committee to give it a do-pass.

[The prepared statement of Mr. Roger Johnson follows:]

PREPARED STATEMENT OF ROGER JOHNSON, NORTH DAKOTA AGRICULTURE COMMISSIONER

Good morning. Chairman Dorgan and Members of the Sub-Committee, 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 the issue of pesticide price harmonization, a pressing issue in northern border states with nationwide impact.

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 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

*The Information referred to has been retained in the Committee files.

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 table of U.S. and Canadian pesticide prices recently compiled by the Minnesota Association of Wheat Growers (Attachment 1).* In cereal production, for example, herbicide prices are approximately 40 percent higher for American farmers than for their Canadian counterparts.

I have also included a copy of a recent 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 2—page 8, table 6).*

Internal estimates at the North Dakota Department of Agriculture show this cost disparity to be even higher. Conservative estimates, using only a handful of common herbicides, indicate that North Dakota farmers would save over $32 million per year if they could pay Canadian prices.

Table 1. 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 "2001 North 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.

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, 475 non-Red River Valley farms from North Dakota enrolled last year 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 2—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 2—page 7).*

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 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 (Attachment 3).*

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 4). 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 5).* In addition, I have included a "Joint Communiqué" from the Tenth Meeting of the States/Provinces Agricultural Accord held in July of 2000 (Attachment 6).* In the communiqué, 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 7 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

*The Information referred to has been retained in the Committee files.

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.

Third, I recommend removing Section 6(F) of the bill that eliminates the reporting requirements of EPA establishments that re-label Canadian pesticides for purposes of the bill. We must ensure that importation of Canadian pesticides for purposes of this bill is conducted in a controlled, responsible, and trackable manner. Therefore, it is prudent to require state registrants under this bill to track and report the quantities of Canadian pesticides they import and re-label.

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.

Senator DORGAN. Mr. Johnson, thank you very much.

Let me put in the record the statement from Governor Hoeven from North Dakota.

[The prepared statement of Governor Hoeven follows:]

PREPARED STATEMENT OF JOHN HOEVEN, GOVERNOR OF NORTH DAKOTA

Chairman Dorgan, thank you for the opportunity to submit a written statement in support of Senate Bill 532.

The facts of North Dakota's agricultural economy and the variety of crops produced in the state will be well established by others testifying before you today. It is also acknowledged by witnesses appearing before you that our 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.

North Dakota farmers have been challenged by low-priced commodities, higher input costs, and adverse long-term weather conditions leading to increased disease, weed, and insect pressure. These factors contribute to a the 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, I support legislation which can help make more crop protection products available to farmers at costs that are comparable to those paid by their Canadian neighbors.

It is simply unfair that farmers, especially in a border state like North Dakota, are placed at a competitive disadvantage to Canadian 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 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 I am encouraged by the EPA and PMRA's progress regarding harmonization of new product registrations, 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. With my support, the legislature recently created the Crop Protection Product Harmonization and Registration Board. 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.

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. Senate Bill 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.

Let me ask a couple questions. One, obviously the first question is, are you convinced that there is not a safety issue? Some would allege, particularly from the chemical industry, you know, there is a safety issue, that is why have these registrations and so on. Congressman Pomeroy, is there a safety issue here?

Mr. POMEROY. Well, we have made certain in the legislation that there is not a safety issue. The only products to be allowed for purchase under this bill would be products that have been registered in both countries. What would be required is a State agriculture department to make a finding that the product is identical or substantially similar in order to allow the State-based registration. So we are talking about those products which have already gone through the rigorous EPA review and approval process.

I believe, Mr. Chairman, more needs to be done to harmonize the way we register chemicals and pesticides on both sides of the border. I think EPA and its Canadian counterpart have really not stepped up to their assignment under NAFTA to bring in place harmonized regimes of registration. Undoubtedly, that has caused additional costs for the chemical pesticide companies. I am sure they will tell you about that later in this hearing.

But that is just tough. That should not in any way justify this price discriminating practice that charges our farmers more in a free trade environment where in the end they have got to compete with that Canadian-harvested product grown cheaper.

Senator DORGAN. Let me also ask, Congressman Pomeroy, why is this hard to do? One would think that with the story of Achieve or other chemicals that we would just have a farmer go up and purchase the chemical for the lower price and come back down. What do we need from the EPA to make this happen?

Mr. POMEROY. Well, I am very pleased that EPA has approached this issue with an open mind, that they have not in any way wanted their requirements that are related and based in public health and safety to be used in a way that has nothing to do with public health and safety, just to basically facilitate price discrimination. They do not want chemical companies hiding behind them so that they can charge U.S. farmers more where there is not a public health or safety issue.

As a result of that, the prior administration engaged in negotiations to produce this bill and signed off on this legislation. Again, it is unclear what the position of this administration is. It is my sense that they would view this in exactly the same sphere or maybe even be more impatient with the practice of price discrimination by chemical companies than the prior administration.

Senator DORGAN. Mr. Johnson, respond to the assertion by the chemical industry that they pay more for testing and more rigorous registration requirements in the U.S., therefore they have justified charging higher prices in the U.S.?

Mr. ROGER JOHNSON. Mr. Chairman, all the evidence that I have seen suggests that the testing requirements are substantially harmonized, that they are very close to identical to the degree that they can be between the United States and Canada. There is just no evidence that I am aware of that it costs a lot more to register a product in the United States.

I expect that perhaps Steve Johnson from EPA could add more to that, but that has certainly been my sense over the last several years as I have studied this issue in some detail. I have had extensive discussions with PMRA in Canada, which is sort of the EPA equivalent, and with EPA down here and I am just not aware that there is any validity to that argument.

Mr. POMEROY. Mr. Chairman, I would just add to that. Even if the costs are different, I believe in a free trade zone there is not a rationale for price discrimination. For example, doing business across the United States costs vary, but you do not see marketing strategies placing on North Dakotans significantly higher or lower costs than the prices charged in Florida. You harmonize prices. You cost it out over the entire market.

Well, now we are in our free trade zone with Canada and we sure know that post-harvest. So pre-harvest if the costs are different, that is just tough. You blend the costs over the market and you are not allowed to price segment any more.

Senator DORGAN. Let me ask Commissioner Johnson to correct. You indicated that the NDSU trade study described $24 million, $23.9 million, increased costs for U.S. farmers. That is actually just for North Dakotan farmers?

Mr. ROGER JOHNSON. Yes, yes.

Senator DORGAN. Second and finally, the final question will be just for the two of you. Can you describe for the record the Achieve issue? We had a farmer in North Dakota that was going to move to Canada—was going to go to Canada and bring Achieve back. Would you describe that circumstance for the record, because that is in many ways what kicked off a lot of this activity.

Mr. ROGER JOHNSON. Mr. Chairman, I would be glad to. I have also copies of a time line of events that I will submit for the record that sort of describes in more detail.

Mr. ROGER JOHNSON. But very briefly, what happened is we had a North Dakota farmer who went to Canada and bought some Canadian Achieve, brought it across the border. We knew in advance that he was going to do it. In fact, he told us. We said: Well, you cannot do that; it would be illegal; and besides, you will never get it through Customs.

Well, he called a couple days later and said: Guess what, I am going to Canada. Well, in fact, I went up, I sent my wife to Canada with the pickup truck. She came back with a load of Achieve, got it through Customs, declared it in fact, and for whatever reason it managed to get through.

I said to him at that point: Well, for God's sakes do not use it, because if it does not have an EPA label it is a violation if you use it.

Well, he used it. In fact he said it worked pretty good. We then had a real issue and I had a number of conversations with management in Zeneca, both in Canada and the U.S., to try and figure out what we should be doing with this, because if in fact it was an illegal product and it was different than what was registered in the U.S. I had a legal obligation as the enforcing agency of EPA laws in this case to quarantine that farm, to destroy the grain, because it may be unfit for human consumption.

So I called EPA, or the Achieve manufacturer, Zeneca. In the end they confirmed that the Canadian product in fact was absolutely identical and that in fact the product that was used, the only difference was that it was twice as concentrated as the U.S. version. But the Canadian version in fact had also been registered at EPA, though it was not marketed here.

So, based on that, I said, okay, the product is legal, it is the same. Zeneca told me it is the identical product that is registered at EPA called Achieve 80DG. The one that is marketed here is Achieve 40DG. So I got a copy of the registration for 80DG, which included the label, by the way, which is what's required to be on a product in order for it to be used and U.S. producers must follow that EPA-approved label.

I got a copy of the label, posted it to the Internet site, provided directions for farmers to make sure they printed the label off, went to Canada, purchased the product, applied the label, brought it back, and used it according to the label instructions. That is what they did.

What happened following that is the border got closed because EPA had to require that Customs no longer allow the product to cross the border, arguing that the labels were attached in a fashion that was illegal, that being they were taped to the box by a pro-

ducer instead of being fastened by a producer of the chemical product at a location with an EPA establishment number.

So you know, the difference here is $10 an acre, is what this farmer paid for the Canadian product, $16 an acre is what he would have paid for the U.S. product. One thousand acres, $6,000.

Mr. POMEROY. Mr. Chairman, I want to commend Commissioner Johnson from constructively responding to a situation that faced him. I used to be a State regulator. Your responsibility is to the public. The Agriculture Commissioner's responsibility is to the public and to all farmers, not necessarily to make certain that the optimal pricing strategies of the chemical companies are adhered to.

So when there was no public health issue, no public safety issue, a much cheaper product just across the border, I believe the creative solution that he advanced should have been allowed to continue; and that basically, when there is no dispute about the content of the chemical or its approved status in the United States, to have this stopped because of who is applying the label is simply bureaucratic red tape at its worst, that should not be permitted to prevent our farmers from getting their best deal.

I really do think that the efforts of the North Dakota Agreement Department, Roger Johnson and his staff, in advancing this make a very compelling test case as to why the bill that you have introduced should move forward.

Senator DORGAN. I think it would be helpful to have the Achieve story's time line put in the record. If you would submit it, we would have it included in the record.

Mr. ROGER JOHNSON. I would be happy to do that.

[The material referred to follows:]

TIMELINE OF NDDA EFFORTS ON PESTICIDE HARMONIZATION

February, 1997

Roger Johnson submitted a policy amendment to NASDA encouraging EPA to increase resources and efforts in US/Canada Technical Working Group on pesticides to harmonize pesticide regulations in the two countries. More effort also needs to be focused on establishing tolerances for pesticides registered in Canada and not in the US.

October 27, 1997

Roger Johnson submitted a letter to EPA Region VIII Administrator encouraging EPA to step up its efforts toward "harmonization of data requirements in the registration of pesticides."

February 25, 1998

Roger Johnson submitted an amendment to NASDA policy encouraging EPA to disallow imports of Canadian commodities unless adequate progress is made by the Technical Working Group to obtain registrations in the US of Canadian registered pesticides.

March 2, 1998

NASDA approved a resolution submitted by North Dakota Agriculture Commissioner Roger Johnson calling for harmonization of pesticide regulations between the US and Canada.

May 6, 1999

Roger Johnson attended the North American Market for Pesticide meeting in Washington DC. The purpose was to foster a dialogue among stakeholders on issues related to pesticide harmonization and joint registration of products. Specifically related to the differences in product availability and to identify opportunities for enhancing cooperation on pesticide harmonization issues (section IV A, E, and F of handout).

May 17, 1999

Roger Johnson submitted a policy amendment to MASDA encouraging EPA for international harmonization of data requirements, the presentation of data and its interpretation, and risk assessment methodologies. Harmonization must be to the highest possible standards.

May 24, 1999

Jeff Olson attended the Technical Working Group meeting in San Antonio between EPA, PMRA, and the Mexican delegation. This was the first meeting attended by Mexico. The North American Initiative (NAI) provides for the conceptual framework for the work of the Technical Working Group (TWG) to develop a North American market for pesticides and to establish joint reviews and work sharing as routine by 2002.

The NAFTA Industry Work Group (IWG) reported on the outcome of a NAFTA label and concluded that the creation of the NAFTA label for an end product was impractical. The NAFTA IWG proposed the creation of a container label for country specific directions for use.

June 28, 1999

Jeff Olson attended the first meeting dealing with the issue of seed treatments with EPA and PMRA officials in Washington DC. There was discussion on the timeline for reducing the use of Lindane in Canada and the progress towards registration of Helix and Gaucho.

July, 1999

Roger Johnson submitted an action item to MASDA, urging NASDA to organize a meeting with the officials from EPA, FDA, USDA, and USTR to harmonize policies regarding chemical use and allowance on domestic and imported food production.

September 15, 1999

Roger Johnson attended a meeting held with the Congressional delegation and representatives from the EPA, USDA, FDA, and USTR to discuss the differences in policies for allowing import of commodities with residue from products not registered in the U.S.

October 1999

USDA releases report on "Pesticide Price Differentials Between Canada and the United States."

October 16, 1999

Letters sent to four pesticide manufacturers, including Zeneca Agro, requesting permission to add a Special Local Needs label to Canadian pesticides.

October 26, 1999

Zeneca responded in a letter, saying Achieve® 80DG will be discontinued worldwide over the next two years and would only be available "in the distribution channels" until the stock runs out. Zeneca said it will not produce an U.S. label for this reason.

October 27, 1999

Attended the first Harmonization Committee meeting at Minot. The Department presented the Committee a copy of all the activities the Department has participated in dealing with the pesticide harmonization and price differential issues. The Committee suggested the Department pursue EPA funding for harmonization efforts.

November 15–17, 1999

NDDA sponsored the Northern Plains Producer Conference attended by 400 to 500 U.S. and Canadian Producers in Fargo.

March 8, 2000

Jim Gray attended the second Harmonization Committee meeting in Washington D.C. where the Committee met with ACPA to discuss pesticide harmonization efforts by the industry.

April 14, 2000

Jeff Olson attended the North American Market for Pesticides in Ottawa, Canada. Representatives from USEPA, USDA, Pest Management Regulatory Agency (PMRA), Agriculture and Agri-Food Canada (AAFC), Grower Associations, Industry

Representatives, State, and Provincial representatives to discuss the continued process toward pesticide harmonization and joint registration of pesticide products.

May 2, 2000

NDDA received a request for a Special Local Needs label from Norac Concepts, Canada for DCT seed treatment on dry beans. Need to overcome the following issues to meet EPA requirements that are not friendly to Harmonization: (1) EPA registered or approved sources; (2) EPA approved label; (3) use and distribution restricted to MD; (4) acute toxicity data even though it was not being "used" in the U.S.

May 25, 2000

NDDA was informed that a ND producer brought Achieve® 80DG down from Canada and declared it at U.S. Customs. Customs allowed the product to pass through the border into North Dakota.

May 26, 2000

Commissioner Johnson wrote a letter to EPA Region 8 regarding potential enforcement action against the producer who brought Achieve® 80DG into the US. NDDA had a phone conversation with a Zeneca employee and was informed that Achieve® 80DG was already registered in the U.S., but not marketed here.

May 30, 2000

EPA confirmed that Achieve® 80DG was registered in the U.S.

May 31, 2000

Commissioner Johnson held a press conference announcing his plan to post the label, with the registration number, for Achieve® 80DG on the NDDA website. The label, along with instructions for importing the herbicide, was posted the same day. EPA was notified of the action taken.

June 1, 2000

NDDA learned of the first load of Achieve® 80DG crossing the border into the United States, minus the import form 3540–1. "Notice of Arrival of Pesticide and Devises". NDDA was unaware of this form. Zeneca contacted Commissioner Johnson asking for a meeting to discuss his action. Jim Gray had a meeting with U.S. Customs at the Pembina office.

June 2, 2000

Zeneca representatives flew to Bismarck to meet with Commissioner Johnson, Attorney General Heitkamp, and staff members and express an interest in resolving the situation. Johnson asked the company to publicly approve North Dakota's action, and they refused. Zeneca argued three reasons why the product was less expensive in Canada: (1) exchange rate (2) Canadian farmers aren't making much money (3) coagulation problems. During the same meeting, Zeneca confirmed that there is no danger to human health or the environment with the use Achieve® 80DG and that the coagulation problems with Achieve® 80DG were resolved in the mid 90's. Zeneca also promised a formal written response to North Dakota's action.

June 5, 2000

Instead of providing North Dakota with a formal written response, Zeneca wrote EPA asking it to take action against North Dakota for FIFRA violations and also asked for a meeting to discuss the matter.

June 8, 2000

After learning of Zeneca's letter and request for a meeting, Commissioner Johnson asked to participate in the meeting. NDDA was notified that EPA Region 8 had approved two 3540–1 forms. Commissioner Johnson also attended the Harmonization Committee meeting in Northwood and presented the Committee a detailed description of the Achieve/Zeneca issue.

June 9, 2000

Zeneca met with EPA in Washington, DC to discuss the situation. Commissioner Johnson and Attorney General Heitkamp joined the meeting via telephone. Heitkamp promised to issue a formal written response to EPA to address Zeneca's complaint. EPA notified NDDA that a decision would be forthcoming by early the following week after EPA received North Dakota's written response. That same day, EPA Region 8 stopped issuing the form 3540–1, based on a directive from EPA in Washington.

June 12, 2000

Commissioner Johnson and Attorney General Heidi Heitkamp wrote EPA to refute Zeneca's arguments raised in the June 5 letter.

June 13–14, 2000

Commissioner Johnson and Jeff Olson attended the Technical Working Group conference at Ottawa, Canada. Attendants included EPA, PMRA, and Mexico Agriculture representatives.

June 29, 2000

Top agriculture officials from the 12 border-states joined Johnson in a letter asking EPA Administrator Carol Browner to help U.S. farmers obtain pesticides at the same prices as Canadian farmers. On the same day, the House Agriculture Committee held a hearing on agricultural input issues. Among those testifying were Zeneca Ag Products Inc. president, Robert Woods.

July 5, 2000

EPA sent a letter to NDDA responding to their action with Achieve® 80DG and stated that placing a label on a pesticide is considered "producing" and those labelers would need an EPA "Establishment Number."

July 7, 2000

US Senator Byron Dorgan blocked approval of two EPA nominees until the matter is resolved.

July 12, 2000

NDDA sent a letter to EPA with recommended language and reasoning for proposed federal legislation to facilitate Canadian pesticide importation and use.

July 13, 2000

Commissioner Johnson sent a letter to EPA requesting their legal position on affixing labels in regard to emergency exemptions and special local needs (SLN) registrations. EPA sent NDDA reworked draft legislation. The language stated that North Dakota needs to be listed as the registrant. During phone conversations following receipt of the EPA letter, NDDA stated that this requirement was unacceptable.

July 24–25, 2000

Commissioner Johnson, Assistant Attorney General Paul Germolus, and NDDA Registration Specialist Jim Gray met with EPA attorneys and staff to work on finalizing draft legislation.

July 26, 2000

The Midwestern Association of State Departments of Agriculture adopted a resolution authored by Commissioner Johnson in support of chemical price harmonization.

July 28, 2000

Tri-National Accord members supported harmonization efforts by including language in their "Joint Communiqué." The Accord is an annual meeting of Commissioner Johnson's agricultural counterparts in the U.S., Canada, and Mexico.

August 2, 2000

NDDA and EPA reached agreement on draft federal legislation.

August 11, 2000

Attorney General Heitkamp and Commissioner Johnson filed a lawsuit against EPA regarding their interpretation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

August 11, 2000

NDDA met with representatives of commodity groups, chemical dealers, and distributors to seek input on the draft legislation. Input from the meeting participants was then used to revise the draft legislation.

August 25, 2000

Commissioner Johnson sent a letter to Jay Vroom, ACPA requesting a meeting between ACPA and Commissioner Johnson to discuss how the Department can help the industry in the registration process.

September 8, 2000

Draft legislation was forwarded to Congressman Pomeroy's office.

September 14, 2000

Congressman Earl Pomeroy introduced the "Pesticide Harmonization Act" (H.R. 5187).

September 28, 2000

Commissioner Roger Johnson and staff attended the Harmonization Committee meeting in Bismarck. Johnson briefed the Committee on the lawsuit with EPA and other harmonization activities.

October 4, 2000

Roger Johnson received award from EPA for "Exemplary State-EPA teamwork in pesticide harmonization" from Bill Yellowtail, EPA Region VIII Administrator.

November 2, 2000

Jeff Olson and Jim Gray held a meeting with all commodity groups and extension personnel to determine emergency exemption needs for the 2001 growing season.

November 28, 2000

Commissioner Roger Johnson, Jeff Olson, and Jim Gray presented an open forum at the Agriculture Association annual meeting to discuss the "Pesticide Harmonization Act" and other avenues to achieve pesticide harmonization.

December 1, 2000

U.S. Department of Justice filed a "Motion to Dismiss and Memorandum in Support of Motion to Dismiss" in response to the lawsuit filed by the State of North Dakota and the North Dakota Department of Agriculture against EPA on August 11, 2000.

February 2, 2001

The State filed with the Federal Court its response brief in opposition to the EPA's motion to dismiss. Lawsuit caption updated to reflect present agency officials (Stenehjem, et al. v. Whitman, et al). The Attorney General argued that the State has *parens patriae* standing because the State is not questioning the validity of a federal statute. Rather, the State was relying on the validity of a federal statute to challenge the EPA's violation of the statute. Second, the State was well within the 6-year statute of limitations since the State's "right of action" did not accrue when the EPA exceeded its authority in promulgating the regulations; the State's right of action accrued only after the EPA applied the regulations in question against the State. The State conceded to the dismissal of the Agriculture Commissioner as a party to the action.

February 8, 2001

Commissioner Roger Johnson and Representative Earl Pomeroy sent a letter to Jay Vroom, President of ACPA. In the letter, Johnson and Pomeroy presented two proposals that would expedite pesticide registrations and directly address the market access component of pesticide harmonization. Johnson and Pomeroy also asked for ACPA's assistance in drafting federal legislation to implement the proposals.

March 12–14, 2001

Jim Gray attended the AAPCO meeting in Washington DC While there, Gray co-moderated a meeting of border state representatives, ACPA, and industry representatives to discuss harmonization issues from the industry perspective. Gray also presented the two proposals outlined in the February 8, 2001, letter to ACPA, and asked for proposals to address the market access component of pesticide harmonization.

April 10–11, 2001

Jeff Olson and Jim Gray attended a workshop on NAFTA Pesticide Registration Issues sponsored by the NAFTA Industry Working Group. Issues were centered around concerns by the pesticide industry. Six topics for further research were drawn-up at the end of the workshop. Jim Gray volunteered to lead the group to look at barriers and solutions to product assess across international borders. Results of their findings will be presented the full NAFTA Working Group in November, 2001.

June 20, 2001

US District Judge Webb granted EPA's motion to dismiss ND's lawsuit regarding Achieve.

July 26, 2001

Testifying in Washington DC, Commissioner Roger Johnson urged the Senate Subcommittee on Consumer Affairs, Foreign Commerce, and Tourism to pass the Pesticide Harmonization Act.

Senator DORGAN. Your testimony has been very helpful in both cases. Congressman Pomeroy, you have introduced legislation, I believe, and worked on this legislation in the U.S. House.

Unless Senator Burns has questions for this panel, I would release the panel and then call on Senator Burns for a statement.

Senator BURNS. Can I ask a question?

Senator DORGAN. Yes, of course.

STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Senator BURNS. With the Chairman's permission, it would seem to me that we are dealing with a situation here. You said do not use it because the crop—the wheat might not be acceptable or there would be some public risk in the safety of that crop, the health of the public.

We take their wheat. It is used on theirs, and it comes ripping across that border like you cannot believe. Now, somewhere we have got to level this out. We have been trying to deal with this normalization, but I will tell you, my friend, our dear friends to the North—and I have had meetings up there with them; we have met all over about this—They can dream up more non-tariff barriers than anybody in the world and sit there and be holier than thou. Then we come down here and our chemical companies are not any better.

Now, I will tell you this. We have a circumstance that in this country, the cost may not be in the testing or the labeling of the product, but we have got other costs in that we produce a product that is not safe for the public and it gets through both—it flies—by both EPA and the company. We have got that cost to look at because we do more things in the preventative nature down here that are very costly than we do in the actual testing of the product. I think we will talk about that with another panel.

If you want to excuse these, then I have got a short statement.

Senator DORGAN. We appreciate very much your testimony and thank you for being here, Congressman Pomeroy and Commissioner Johnson.

Why do we not ask Stephen Johnson, Assistant Administrator for the Office of Pollution, Pesticides, and Toxic Substances at the EPA, to come forward.

Before I call on Mr. Johnson for his testimony, let me welcome Senator Burns. As I indicated when I started this hearing, Senator Burns and I worked together with a number of our colleagues to jointly introduce S.532. He has been very instrumental in helping put that legislation together and I welcome him here.

Senator BURNS. Thank you, Senator Dorgan. This is not the first year we have done this. We have been down this trail. You know, there are a couple of things that we think about in this town that

really do not make headlines and are not the sexy issues, and this is one of them. Then you want to go around the corner and talk about weeds, and that does not go over very big in these fancy, foo-foo, white wine and Grey Poupon parties here in town. That is not a great subject to talk about, either. So we will get that out of the way.

Mr. Chairman, thank you for holding this hearing, because I think it is very important, and we want to welcome a couple of my good friends from Montana: Dave McClure from Lewistown, the President of the Montana Farm Bureau; and Hank Zell. I do not know—Hank—oh, you are sitting back there hidden—Hank farms up there on the high line and has been instrumental in a lot of history along the Montana-Canadian border.

I am going to submit my statement, but I do want to bring up the fact, what you mentioned a while ago, it just seems like when we are dealing with the same chemicals, with the same chemical properties and makeup, and then we have got that border that seems like is a barrier, and sometimes it is used as a price barrier and sometimes it is used as a trade barrier, and it all depends what fits the situation, I guess, how we apply it.

So I am looking forward to the testimony today and working with the EPA and working with the Canadians. I think this is a problem that we have to address on both sides, and I am not really sure that our representative—that we should have a representative here today from the ITR, the International Trade Representative's office, because I think they have a stake in this, too, because that is probably where it will be resolved finally, by our Trade Representative and how we conduct ourselves on that border, and especially the movement of farm chemicals back and forth across that line.

So I will just put my statement in the record and I am looking forward to the testimony today, especially Mr. Johnson and the rest of the panel. I thank the Chairman.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Thank you, Mr. Chairman, for holding this hearing on an issue of great importance to the people of my home state of Montana and to the rest of the country. I would also like to thank the witnesses for being here, particularly the two men from Montana, Mr. Dave McClure, President of the Montana Farm Bureau and Mr. Hank Zell of the Farmers Union.

In the past, I have sponsored pesticide harmonization legislation. Last year, Senator Dorgan sought to address this problem in the VA/HUD Appropriations Conference. At that time, I committed myself to work with him and move this legislation this year. I am a cosponsor of this bill because of this commitment and to even out a serious trade imbalance facing the agriculture industry in our country.

In my home state of Montana and many other western and mid-western states, we have faced a number of trade disputes between Canada and the United States. One of the most glaring discrepancies deals with pesticides. Chemicals that are sold for one price just across the border in Canada are sold at a considerably higher cost to American producers. Why does this happen you may ask? The EPA places strong regulations on chemicals used in the United States and therefore, the chemical companies believe they should hike up the prices to pay for their trouble.

The chemicals in Canada and the United States, in most cases, have the exact same chemical properties and make up. The same company manufactures them, but often gives them a different name and nearly always prices the American chemicals higher. The crops treated with chemicals our farmers are not allowed to use are easily imported into the United States. These crops were developed at a lower produc-

tion cost and are now competing with American products. I am a strong believer in fair trade, but for free trade to actually occur, this problem must be addressed.

Currently, American farmers are facing a serious economic recession. Prices are the lowest they have been in a number of years and there does not appear to be a light at the end of the tunnel. Additionally, the West is facing yet another year of severe drought. Fertilizer costs are sky-rocketing with the high cost of fuel and energy. Compounding their problem is being forced to pay twice as much for nearly the same chemicals as their foreign neighbors.

If enacted, this bill would eliminate many of the current obstacles and I would anticipate it leveling the playing field for our farmers. It would allow states or individual producers to seek a registration for a Canadian pesticide. This could only be done if, upon request by the State, the pesticide is found to be identical or substantially similar to the U.S. pesticide. The EPA still has final authority to disapprove the registrations within 90 days. Once the pesticide is found to be the same or similar and the EPA approves, the state or individual can travel to Canada and purchase the chemical.

Our farmers and ranchers have been paying too much for their pesticides and chemicals for too long. From my years as a football referee, I learned everyone needs to follow the same rules to play the game. We need to make sure Canadian farmers and U.S. farmers are playing under the same rules and we are not making criminals out of honest, hardworking farmers who cross the border to buy chemicals.

Senator DORGAN. Senator Burns, thank you very much.

Mr. Johnson, welcome from the EPA. We appreciate your being here and why do you not proceed.

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

Mr. STEPHEN JOHNSON. Good morning, Mr. Chairman, Senator Burns, and thank you for the opportunity to appear before this Subcommittee to discuss the concerns of American farmers concerning pesticide pricing between the United States and Canada. Roger Johnson of North Dakota and I have a long personal relationship on this issue and I am very glad to testify with him today.

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 moves to remedy these pricing discrepancies in the near term.

As you know, EPA's legal authority over pesticides is to ensure public health protection and environmental protection. Our authority does not extend to pricing. Current U.S. pesticides laws require an extensive scientific evaluation and a pesticide registration before it can be sold and distributed in the United States.

EPA is not aware of any evidence that indicates that national pesticide registration 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 that EPA has worked very closely with Congressional staff over this last year as well as State officials and others to explore remedies that would help address pricing differences that U.S. farmers are experiencing.

EPA has made significant progress on a variety of administrative and regulatory approaches to help facilitate equal access and harmonization. However, long-term approaches will not fully resolve this issue in the near term. Although these efforts over time should

significantly help alleviate some of the pricing issues that exist today, let me describe this morning some of the longer term, more strategic actions that EPA is taking and partnerships that EPA has established to address this important issue.

EPA is working closely with Canada and other trading partners to break down barriers and to 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 is beginning to provide 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 standard of protection for human health and the environment.

This effort is 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 work is the creation of a NAFTA label which will enable the sale and distribution of a pesticide acrossNorth America, thereby guaranteeing its availability at the same time in the U.S. and Canada. One of the products under joint review, which will be for use on northern crops, will serve as a pilot for introduction of the NAFTA label. We believe expansion of products under NAFTA labels will help break down potential trade barriers.

The NAFTA pesticide group has enabled EPA and Canada to work together on the entire range of pesticide regulatory requirements, review procedures and programs. 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 the work-sharing and joint reviews of recent pesticide registration submissions, the harmonization of risk assessment procedures is well under way 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. You have our commitment to continue to work within our current authorities to promote a level playing field for U.S. and Canada farmers.

Now, regarding a near-term solution, 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 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 are 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 broad trade ramifications. 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 secret information. Any legislation should also not place unreasonable resource burdens on our pesticide registration program or cause unintended consequences on other priorities and regulated pesticides. Again, EPA will work with you closely and your staff to help address these types of implementation concerns.

In conclusion, EPA has worked very closely with Congressional staff over this last year, as well as with State officials here today, to help alleviate the concerns of U.S. farmers that they have regarding differences in pesticide price. 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 the near term, with no adequate administrative or regulatory option available to address the potential pricing disparity between the U.S. and Canada, EPA supports seeking an appropriate legislative solution to this problem.

However, although the legislation as drafted does not compromise protection of human health or the environment, which is EPA's principal criterion, there are some implementation issues and potential international trade concerns that we will have to continue to address. If these issues are resolved, EPA will 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. I look forward to working with you and other members of the Congress and other affected stakeholders on this important issue.

I will be pleased to address any questions you may have.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF STEPHEN L. JOHNSON, ASSISTANT ADMINISTRATOR, OFFICE OF POLLUTION, PESTICIDES, AND TOXIC SUBSTANCES, ENVIRONMENTAL PROTECTION AGENCY

Introduction

Good morning 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 with pesticide pricing between the U.S. and Canada. The U.S. Environmental Protection Agency (EPA) is 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. 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 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 acknowledged, this is a highly complex issue.

That said, I know EPA has worked very closely with congressional staff over the last year, as well as with state officials and others, to explore remedies that would help address prices differences that U.S. farmers may be experiencing. EPA has made significant progress on a variety of administrative and regulatory approaches that help facilitate equal access and harmonization. However, these long-term approaches will likely not fully resolve this issue in the near-term, although these ef-

forts, over time, should significantly help alleviate some of the pricing issues that exist today.

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 is working 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 beginning to provide 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 recent successes in facilitating free trade. 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. Subsequently, two public meetings, co-chaired by the Deputy Secretary of the U.S. Department of Agriculture (USDA) and the Deputy Minister of Agriculture and Agri-Food Canada (AAFC) were held in May 1999 and April 2000. These discussions 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.

In April 2001, EPA, together with representatives from industry and North American grower groups, participated in a tri-national workshop on North American Free Trade Agreement (NAFTA) pesticide registration. Participants identified, deliberated, and agreed to a number of priorities for harmonization targets. As a result of this meeting, a working group on equal access and joint labeling was established, with officials of EPA and PMRA serving as a resource. EPA strongly supports these broad-based efforts, which will 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.

This recent effort is 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 have already made strides in putting this into practice, building on the existing Joint Registration Review program. The joint review program has resulted in the simultaneous registration of nine new pesticide products in the U.S. and Canada, with eight additional products currently under review. The governments are also currently sharing 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, will serve as a pilot for introduction of a NAFTA label. We believe expansion of products under NAFTA labels will help break down potential trade barriers.

Overall, the NAFTA pesticide group has enabled 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. 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 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, two bills have been introduced, S.532 and H.R. 1084, which would amend 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 help 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 are 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 broad trade ramifications. 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 which 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. We also must 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 year, 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 coopera-

tion 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 significant 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 to this problem. 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.

Senator DORGAN. Mr. Johnson, thank you very much for your testimony. Let us go to the last page of your testimony and see if we can dig into some of these issues. You said: "However, the legislation as drafted does not compromise the human health or environment." So you are saying there is not a safety issue from the standpoint of EPA?

"There are some implementation issues and potential international trade concerns that EPA will need to address." Let us just deal with these implementation issues. My view is that EPA is not really an agency that is terribly concerned about trade issues. We are working on that with USTR. Frankly, I do not think there are any trade issues here, but that is just a difference between us.

Let us talk about any concerns that EPA has. If you eliminate health and safety, which I think you have done in your statement, what additional implementation concerns exist?

Mr. STEPHEN JOHNSON. Let me mention a few, Mr. Chairman. One is access and the use of confidential business information. For example, in order for a State to receive the 24D registration and be able to make the determination that the products are identical or substantially similar across the borders, they have to have access, the States have to have access, to this confidential or trade secret information in order to make that determination.

The current legislation allows that. We are aware of some States that have either public disclosure policies or laws in place that require a State certainly as a policy to release that information. Well, obviously it cannot be maintained confidential at the same time it is going released. So we need to address—and it is very State-specific. I am aware, I believe the State of Washington as well as Vermont either have a policy and-or a regulation in place.

So we would have to work through that, because a State has to have the access to confidential business information and at the same time they have to have the ability to protect that confidential business information.

Senator DORGAN. But we could simply limit the legislation so that the States could make a choice. They could either access that information by passing a law—if for example the State of Washington has a disclosure law that would compromise this proprietary information, this legislation when passed would essentially give rise to the choice: Do you want to pass State legislation that allows the State regulatory authority here to keep that proprietary infor-

mation private? If you do, you can take advantage of this legislation that we have passed here in Congress. If not, you are out of luck.

It would seem to me that one is easy to deal with and we can deal with that, which is a line or two in our bill to provide that in only States in which they can maintain the proprietary records in a private manner would it be effective. So that is one; we can solve that.

Mr. STEPHEN JOHNSON. Well, I believe that we can work our way through and solve all of these. Let me just mention a couple of others.

Senator DORGAN. All right.

Mr. STEPHEN JOHNSON. One involves data compensation. As you are well aware, under the current legislation States seeking to register a Canadian pesticide would need the information, as I have just mentioned. Current legislation allows the State to acquire that data from manufacturers, but insulates the State registrants from data compensation.

What has been characterized to me is that this potentially denies manufacturers their rights to be compensated for use of their data, and certainly some attorneys have advised us that it is sort of unclear what a court would ultimately do, given this situation, because it feels that their intellectual property rights have been infringed. Again, I flag this as an issue.

Senator DORGAN. I am not understanding that. Would you explain more simply for me?

Senator BURNS. Down on our level.

Mr. STEPHEN JOHNSON. Well, let me try to rephrase that. The current law, pesticide law, allows for—the company has to provide literally millions of dollars worth of testing data to the agency.

Senator DORGAN. To the EPA?

Mr. STEPHEN JOHNSON. To the EPA.

Senator DORGAN. Right.

Mr. STEPHEN JOHNSON. So we receive probably somewhere between 30 and $50 million worth of test data to license a product. The current law says that if someone wants to use those data to get a similar product registered, then those companies have data compensation rights. In other words, they have spent these millions of dollars and it is sort of only fair that if somebody is going to use it that they have the ability to be compensated.

So that is what the current law is. The legislation as drafted protects the State or it says the State does not have to compensate the companies.

Senator DORGAN. Does our legislation not only deal with pesticides that are registered here? If that is the case, if they have registered the pesticide, the company itself has made a decision. They are not selling it here, they are just registering it here and then withholding the sale. So I do not understand why this would be an issue at all. The chemical companies themselves would have made a decision to register, but then withhold from sale.

If the State regulator certifies that it is essentially the same chemical, it has been registered here and therefore there are no safety issues. I do not understand what this issue is, honestly.

Mr. STEPHEN JOHNSON. Well, I think that it probably gets to more of a case where there is substantially similar, where it may be a little slightly different product, but it is pretty much substantially similar. So there may be some additional data that would be necessary, but different than what the U.S. registration was based upon. So again, I flag this as an area that I am aware of that we need to work through on data compensation.

Senator DORGAN. Excuse me. That is not typically an EPA issue or an EPA concern, is it?

Mr. STEPHEN JOHNSON. Well, in one sense it is not. Our responsibility is to make sure that when those instances happen where there is data compensation rights, first of all, we have to identify what data we used to make our decision for somebody else, and if indeed we used that then the primary registrant or chemical company has data compensation rights. So our responsibility is first to say what we have done to make our decision.

Second, the law requires that that company that used the other data make an offer to pay. So as long as they have made an offer to pay, then they have fulfilled their obligations under EPA.

Senator DORGAN. I want to call on my colleague. Before I do, I want to ask you one final question. If I might have that box of Folicur one more time. Mr. Johnson, the current situation I believe is this, and correct me if I am wrong. This Folicur box contained a chemical that was marketed in both the United States and Canada. This box actually was owned by a U.S. farmer, but this is an unusual box in the sense that it was a chemical that was being sold in the U.S., it was shipped by the chemical company to Canada because they were short up in Canada of this chemical, so that they also slapped a Canadian label on it.

The only difference between the U.S. and Canada, the same chemical, the same box, the U.S. farmer was charged $500 more for the identical product than the Canadian farmer. If the chemical company had decided, we are registered in both countries with this product, but we now decide not to market it in the United States anymore, we will just market it in Canada, is it not the case that the U.S. farmer would be unable to access this chemical despite the fact that it has been registered in this country?

You say there are no safety issues, but the chemical company controls, (A), the price, in this circumstance charging the U.S. farmer a much higher price; and (B), the decision of whether they will even market it in this country.

I guess my question is, because you come from a regulatory agency dealing with health and safety, is there any justification, on behalf of consumers now, U.S. consumers—that is who we represent—is there any justification at all for the chemical companies to have that capability?

Mr. STEPHEN JOHNSON. Again, our concern is the public health and safety. In that case and in the other cases that you mentioned, there was no concern over public health and safety. We do not want, I do not want, our American farmers to be disadvantaged and having to pay more than others. We believe and I believe that there needs to be a level playing field.

Senator DORGAN. So there is no health or safety issue, but the reason a chemical company could market this in Canada and not

in the U.S. and therefore prevent the U.S. farmer from acquiring it, is they could hide behind the EPA even though there is no safety issue at the present time, is that correct?

Mr. STEPHEN JOHNSON. That is a way of putting it, yes, that is correct.

Senator DORGAN. Is that not using EPA as an unwitting shield here, in a manner not intended by Congress?

Mr. STEPHEN JOHNSON. Well, I would rather not be in the position that we are, but you are correct.

Senator DORGAN. I do not mean to use the term "unwitting" in an incorrect way.

You have been very helpful to us. I hope that we can expect even more assistance to right a wrong. Clearly what is happening here is wrong and we do not want in any way to raise public safety questions. But nor do we want the chemical industry to be able to use the EPA to describe prices on the U.S. side of the border at a much higher level than prices they charge on the Canadian side. It is just unfair for that to continue to happen.

Let me call on my colleague Senator Burns.

Senator BURNS. I have just a couple of questions. The NAFTA label intrigues me. You will have to do some business with the ITR's office, though.

Mr. STEPHEN JOHNSON. Well, actually we have, and they are as well very excited about the NAFTA label. There is a chemical company who has now submitted a NAFTA label for registration. It is the first one that we have received. What it does—and actually both Canada and the United States are both reviewing the licensing application at the same time and looking at, if you will, the one label that fits both of our needs.

As I said, this is the first time. We are very excited about it because from a licensing standpoint, from a grower's standpoint, from a health and safety standpoint, it just makes good sense.

Senator BURNS. Tell me about the attitude of our trading partners to the South?

Mr. STEPHEN JOHNSON. They also would very much like to participate in this kind of a process. They do not at this point have a registration program quite as sophisticated as both Canada and the United States does, but we are working with them very cooperatively to allow free trade and to make sure that what they are doing in Mexico is not in conflict with what the U.S. is doing as well.

Senator BURNS. Can this be—now, I have already answered one question because you have a fungicide that was up here. This is also extended to herbicides and fungicides?

Mr. STEPHEN JOHNSON. That is correct. It is all pesticides, which includes insecticides, fungicides, rodenticides.

Senator BURNS. Okay. Now, can you extend that also into the animal health?

Mr. STEPHEN JOHNSON. Animal health as far as a pesticide, that is correct.

Senator BURNS. Because I can see as we expand the free trade zone or the free trade talks going further into South America, Argentina, Chile, and the chemicals that are used to produce table grapes, strawberries, and melons of all shapes, sizes, and descrip-

tions, and also in livestock, and how they take care of their livestock, would also—I can see this, this NAFTA label, or a label that pertains to a trading agreement being very beneficial.

Now, a while ago you said the business information and the protection of intellectual properties. Can you be more specific on that as far as your responsibility or the States' responsibility in the licensing and testings of a product?

Mr. STEPHEN JOHNSON. Yes. When a company submits a pesticide registration application to us, as I said, there is literally millions of dollars worth of information. A portion of that information is considered trade secret or confidential information, typically the kind of information that is how the product is actually developed, the synthesis procedure, and things like that, that they have a great deal of patent both responsibility and protection.

So that information is submitted to us. We have to go through very rigorous procedures within the agency to ensure that that trade secret data are maintained as trade secrets. So in the case of the proposed legislation, in order for a State to be able to make a determination that the product across the board is identical or substantially similar they, the State, would need to have access to this confidential information. Of course, with the access also is the responsibility to make sure the trade secret for confidential business information is protected or is maintained.

My point earlier was that I am aware that some States have some other laws and-or policies in place, which this kind of information would be in conflict. So it is an issue that we just have to resolve.

Senator BURNS. Well, I am going to footnote. This is just sort of a statement. Now, we know now doing business with economies of scale there are going to be some differences. There always are, and the translation or the exchange rate in the moneys that are used.

But I will tell you, Mr. Johnson, we would not be here having this hearing today if we had five dollar wheat. I will guarantee you that, because the economy right now on the farm is not in great shape.

I think what the American farmer right now is really feeling, and this is the reason that we are trying to find ways to run our operations more efficiently and probably do it on less money, is that the American processor and the American public still do not have a good idea of how we get more dollars, more percentage of the consumer dollar, back on the farm.

For years and years we operated around 15 to 17 cents and it kind of fluctuated and agriculture did pretty good. Now we are down around 9 or 10 and probably worse than that if you are buying Wheaties by the pound in the grocery store. So that is what is driving these issues, and our government has to be responsive to those things and get aggressive with our trading partners and find out how we can deal with the irritants on the border, how maybe we can elevate the standard of living both in agriculture on both sides of the line.

The Canadian farmer is not in any better shape than we are, and I will say right now that the farm economy is what is driving these issues, because I just have an idea that there are going to be dramatic changes in the next 4 to 5 years in agriculture that we have

never seen before, and some of it I am afraid will be on the negative side. That is what is driving this dialogue.

So I thank you for coming today. I appreciate—and by the way, I have got one thing. You said you are working very closely with Congressional representatives up here. Your shadow has never darkened my door. So give me a call.

Mr. STEPHEN JOHNSON. Senator, I would be happy to.

Senator BURNS. Thank you very much.

Senator DORGAN. Mr. Johnson, just one or two final questions. You indicate EPA is working closely with Canada and other trading partners to break down barriers and facilitate trade and competitiveness.

Mr. STEPHEN JOHNSON. Yes.

Senator DORGAN. Frankly I have been concerned about harmonization efforts. I think we are much more interested in doing new trade agreements than following up on requirements from old agreements. We have, for example, this notion now that we need to provide fast track authority. Well, my reaction is maybe we should provide some requirements that we fast track a few solutions to the problems created in the old agreements before we give anybody fast track to go make new agreements.

But one of the issues in the NAFTA agreement was chemical harmonization, and I know you say you are making some progress, but I must confess to you I see precious little evidence of that. Let me ask this question. Assuming this legislation does not pass, let us assume this legislation does not move, is there any expectation on your part that 2 years from now, 4 years from now, that our farmers will be able to access the substantially similar chemicals from Canada and bring them across the border?

Mr. STEPHEN JOHNSON. In the short term, I do not believe that we do have a solution other than legislation.

Senator DORGAN. So you believe the legislative solution is the only mechanism to address this issue?

Mr. STEPHEN JOHNSON. Certainly in the short term.

Senator DORGAN. And you believe, from your testimony, that there is a problem here with respect to equity and fairness?

Mr. STEPHEN JOHNSON. Yes.

Senator DORGAN. You do not believe there is a problem with respect to safety, public safety, as the legislation is drafted, is that correct?

Mr. STEPHEN JOHNSON. That is correct.

Senator DORGAN. And you will continue to work with us as we strive to perfect this legislation? You have raised, I think, for example in the issue with respect to proprietary information some fair points. I do not know that that is an EPA issue so much. It is more a corporate issue. But I think we should probably add a very brief provision to this legislation saying that those States in which the information would not be held proprietary will not be able to participate until the State legislatures make that judgment. That is an easy thing to do.

I think if you would be willing to give us a list of the things you think need to be done to improve this legislation, as far as I am concerned—and I would hope to speak on behalf of Senator Burns and the other co-sponsors—I think we would want to make the

changes, improve this legislation, and then we would like to move it with the support of the EPA.

Mr. STEPHEN JOHNSON. I would be happy to do so.

Senator DORGAN. I would say that Administrator Whitman has been extraordinarily helpful on a range of issues and, while I do not know her well and have not worked with her a great deal, those issues that we have worked with her on tell me that she is somebody that wants to do the practical thing, figure out what the problem is, find some solutions, and take practical steps to solve some problems.

I like that attitude. I like an Administrator who does that. That is a refreshing thing, because every agency has so many attorneys telling the administrator of the agency why they cannot do something. I think it is refreshing to find administrators who say, let us solve problems. I think Administrator Whitman is someone who wants to do that.

Senator BURNS. Mr. Chairman, I also want to interject. There have been two or three meetings already between the EPA Administrator and the Secretary of Agriculture. That is unheard of since I have been here, because we cannot get agencies to talk to one another. They do not want to give up any of their turf; we do not want to give away any of our secrets here in this town. So that contributes to 17 square miles of logic-free environment.

We are all in this thing together and the dialogue between the agencies is going to have to be increased.

Senator DORGAN. Is that sound that you made a cutback or a callas bell sound? I was trying to figure that out.

[Laughter.]

Senator BURNS. I picked it up in Regent, North Dakota.

Senator DORGAN. You picked it up, but you did not keep it long.

Mr. Johnson, we deeply appreciate your testimony, and not just today, but we appreciate the work that you have done and have been willing to do with us. We look forward to meeting with you again, perfecting this legislation, getting the EPA's written support, written unconditional support. We will try to move that through the Congress.

Thank you very much.

Mr. STEPHEN JOHNSON. Thank you, Mr. Chairman. Thank you, Senator Burns.

Senator DORGAN. Let me, while I excuse Mr. Johnson, call the next panel forward: Mr. Ron Fitchhorn, President of the Illinois Corn Growers Association, of Bloomington, Illinois; Mr. Dave McClure, President of the Montana Farm Bureau. Mr. Art Purdue was going to be with us, General Manager Cenex Minot, North Dakota. He is not here because of a medical situation, so he has submitted a statement. Mr. Jay Vroom, President of the American Crop Protection Association; and Hank Zell, National Farmers Union.

If you all would come forward and take a seat, we would appreciate it.

Mr. Fitchhorn, you are President of the Illinois Corn Growers. We will begin with you. Your entire statement will be made a part of the record and we would ask you to summarize, and we welcome you here today.

STATEMENT OF RON FITCHHORN, PRESIDENT, ILLINOIS CORN GROWERS ASSOCIATION

Mr. FITCHHORN. Thank you, Chairman Dorgan and Senator Burns. Thank you for this opportunity to appear before you today on this very important issue. My name is Ron Fitchhorn and I grow 2,000 acres of corn and soybeans in central Illinois, and I also serve as the Illinois Corn Growers Association President this year.

The issue of price disparity that the Committee is addressing today has plagued U.S. farmers for many years. However, awareness of these inconsistent pricing schemes is at an all-time high. Increasing competition amongst the world's farmers means U.S. growers are now keenly aware that unfair agricultural input pricing subsidies are subsidizing the inputs of our competitors. This puts America farmers at a disadvantage.

Senator Dorgan's bill focuses on chemical inputs. However, the same issue exists with seed pricing, both conventional and in new seed varieties developed through biotechnology. Farmers deal with many factors outside of their control in raising a crop. Unlike the weather, I think we can have a positive impact in addressing the issue of price disparity of inputs like chemicals and seed.

Other panelists have noted the recently completed North Dakota State University study which shows U.S. farmers were paying substantially more for chemical inputs, specifically herbicides, than farmers in neighboring Canada. Researchers found that the net income for large, medium, and small sized representative farms would increase 3.8, 4.6, and 5.2 respectively if Canadian priced herbicides could be used in the United States.

The study went on to note that the total impact on U.S. agriculture would be quite substantial, at least $1.46 per acre in the herbicide industry alone.

These numbers are alarming, especially given the current poor state agricultural economy in the United States. Pesticide expenses in the United States increased from 1.2 percent of the total production expenses in 1965 to 5.1 percent in 1999. Today this means U.S. farmers are paying $6 million more for the widely used herbicide called Roundup alone.

Although the study focused on North Dakota farmers for much of the information, it can be applied to farmers in any State. For example, in my home State of Illinois the price of Atrazine, the most widely used herbicide in the State, was $3.17 per pound during the time that the data was collected for the North Dakota study. In Canada the same product sold for $2.53. The same situation also exists for most of the other chemical inputs used in Illinois. I would be happy to supply the Committee with further data if necessary.

The Illinois Corn Growers Association has had many discussions with input providers on the price disparity of needed chemicals, but with limited response.

But two-tiered pricing does not stop with chemicals. In January of 2000, the Government Accounting Office released a study in which they found that the prices American farmers were paying for biotech seed and conventional seed are likewise distorted. The study looked at prices being paid by U.S. farmers and those in Argentina.

The study found that U.S. farmers paid within the range of 20 to $23 for a 50-pound bag of Roundup Ready soybeans, while the farmers in Argentina paid 12 to $15 for the same bag. For BT corn seed this disparity also exists, with U.S. producers paying 83 to $122 per 80,000-seed bag and Argentina's prices ranging between 75 and $117.

Even this small margin is costing me approximately $5,000 on my operation this year. If you add in the $1.46 with the herbicide, we are getting up toward $8,000 on my own operation.

Conventional seed is also more expensive in the United States. Conventional soybean seed in the United States will cost a grower 13 to $17 per bag and the Argentina farmer pays 8 to 10 for the same product.

In total, U.S. farmers pay much more for the inputs than our competitors.

I commend you, Senator Dorgan, for your attempt to shed light on this important issue. However, I would suggest that we consider a further step to assure pricing fairness. It has been difficult to monitor global price disparities because there is no centralized recording requirement. I would urge Congress to consider requiring USDA's Economic Research Service to publish input prices every 2 years. This publication would be a useful tool, especially if it includes the prices being paid by our major competitors.

The Illinois Corn Growers Association believes it is neither prudent nor logical to shackle U.S. farmers with higher chemical prices than our competitors.

Thank you for your time and your consideration on this matter.

[The prepared statement of Mr. Fitchhorn follows:]

PREPARED STATEMENT OF RON FITCHHORN, PRESIDENT, ILLINOIS CORN GROWERS ASSOCIATION

I would like to thank Chairman Dorgan, Ranking member Fitzgerald, and the rest of the Committee for the opportunity to appear before you today on this very important issue. My name is Ron Fitchhorn. I grow 2,000 acres of corn and soybeans on my Central Illinois farm. I also serve as Illinois Corn Growers Association president.

The issue of price disparity that the Committee is addressing today has plagued U.S. farmers for many years. However, awareness of these inconsistent pricing schemes is at an all-time high. Increasing competition amongst the world's farmers means U.S. growers are now keenly aware that unfair agricultural input pricing subsidizes the inputs of our competitors. This puts American farmers at a disadvantage. Senator Dorgan's bill focuses on chemical inputs; however, the same issue exists with seed prices for both conventional and new seed varieties developed through biotechnology.

Farmers deal with many factors outside of their control in trying to raise a crop. Unlike the weather, I think we can have a positive impact in addressing the issue of price disparity of inputs like chemicals and seed. Other panelists have noted the recently completed North Dakota State University study (*United States and Canadian Agricultural Herbicide Costs: Impacts on North Dakota Farmers*) which showed U.S. farmers were paying substantially more for chemical inputs—specifically herbicides—than farmers in neighboring Canada.

Researchers found that "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 study went on to note that the total impact on US agriculture is $23.9 million, or $1.46 per acre in the herbicide industry alone. These numbers are alarming, especially given the current poor state of the agricultural economy in this nation.

Pesticide expenses in the United States increased from 1.2% of total production expenses in 1965 to 5.1% in 1999. Today this means U.S. farmers are paying $6 million more for the widely used herbicide called Round-up alone.

Although the study focused on North Dakota farmers, much of the information can be applied to farmers in any state. For example, in my home state of Illinois the price for Atrazine, the most widely used herbicide, was $3.17 per pound during the time the data was collected for the North Dakota study. In Canada the same product sold for $2.53. The same situation also exists for most of the other chemical inputs used in Illinois. I would be happy to supply the Committee with this data if necessary.

The Illinois Corn Growers Association has had many discussions with input providers on the price disparity of needed chemicals, with limited response. And this two-tiered pricing does not stop with chemicals. In January 2000, the Government Accounting Office (GAO) released a study (*Information on Prices of Genetically Modified Seeds in the United States and Argentina*) in which they found the prices American farmers are paying for biotech seed and conventional seed are likewise distorted. The study looked at prices being paid by U.S. farmers (specifically Iowa and Illinois farmers) and those in Argentina.

The study found U.S. farmers pay within a range of $20–$23 per 501b bag of Roundup Ready soybean seeds. Farmers in Argentina pay only $12–$15 for same bag. For BT corn seeds, the disparity also exists—with U.S. producers paying $83–$122 per 80,000 seed bag and Argentina prices ranging between $75–$117. Even this small margin is costing me approximately $5000 on my operation this year.

Conventional seed is also more expensive in the U.S. Conventional soybean seeds in the U.S. will cost a grower $13–$17 per 80,000 seed bag. Argentina's farmers pay $8–$10 for the same product.

In total, U.S. farmers pay much more for inputs than our competitors. I commend Senator Dorgan for his attempt to shed light on this important issue. However, I would suggest that we consider a further step to assure pricing fairness. It has been difficult to monitor global price disparities because there is no centralized recording requirement. I would urge Congress to consider requiring USDA's Economic Research Service (ERS) to publish input prices (chemical and seed) every two years. This publication would be a useful tool, especially if it includes the prices being paid by our major competitors.

Illinois Corn Growers Association believes it is neither prudent nor logical to shackle U.S. farmers with higher chemical prices than our competitors. Thank you for your time and consideration on this matter.

Senator DORGAN. Mr. Fitchhorn, thank you very much.

Why do we not just go down the row. Let me ask Mr. Jay Vroom, President of the American Crop Protection Association, to testify.

STATEMENT OF JAY VROOM, PRESIDENT, AMERICAN CROP PROTECTION ASSOCIATION

Mr. VROOM. Thank you, Mr. Chairman, Senator Burns. We appreciate the opportunity to be here today. We have submitted a written statement and ask that that be entered into the record. I would like to summarize a few thoughts if I might in the time allotted for oral remarks.

No doubt that this is an important issue, both in terms of the reality of the actual disparities in terms of product availability and the unevenness that that has created in the marketplace for my industry's crop protection products and biotechnology products across this particular border. But it, as it has been said earlier here by other witnesses and by yourselves, this is not an issue just confined to the U.S.–Canada border.

Likewise, there is a substantial perception problem that we also think needs to be addressed, and more transparency and information about what costs really are and what kinds of inequities there might actually be in the marketplace is appropriate.

For those who may be here today listening that are not acquainted with the agricultural community, I think it is important for this opportunity for me to point out that ACPA and our member companies that we represent and their customers, which are in

some cases not members of ACPA, distributors of agrichemicals in the United States and biotechnology seed products, and the independent dealers across this country, have worked extensively throughout the duration of our opportunity to be in this marketplace for more than 40 years with our farm customers.

I know of no one that actively participates in the United States marketplace for these technologies that intentionally discriminates against the American farmer. That is contrary to everything that we do, including the advocacy for support of farm programs that provide essential safety nets for the American farmer, as well as advocacy for more free trade for agricultural output, and also the fundamental positions that we have taken and energy and resources that we put into advocating for harmonization of rules and regulations and legislation that govern our industry's products.

As I have thought about some of the remarks that have been made here so far this morning, particularly around the requirements of U.S. EPA and the Pesticide Management Regulatory Authority in Canada, both are interesting case studies in the old adage that, at least in terms of American democracy, it is imperfect, it is ugly, it is run by human beings, but it is the best system in the world and it is the best system that has ever been implemented in the world.

Can it be better? Can our regulation of pesticides be better, more fair or harmonized? And can we lower that barrier that is the Canadian–U.S. border to create a more unitized market for our industry products? Absolutely, and we commend the things that EPA has done and achieved already, even working with our industry and many grower groups on both sides of the border, to effect some progress.

But let me tell you that, while the progress that has been made, particularly in the last year or two, is substantial, when put into context with the fact that we have been working on this since 1988—even before there was a NAFTA, there was a U.S.–Canada Free Trade Agreement, as those of you along the northern tier States know all too well. We have been actively investing in trying to move this ball forward in terms of greater harmonization.

If you put it in the context of 12 to 13 years, the success that we have got to show in terms of progress in harmonizing and joint reviews and now on the verge of maybe having the first NAFTA-labeled pesticide product available for U.S. and Canadian and Mexican farmers, it is a pretty dismal record. So we would like to go faster. We would like to see more progress in that regard.

But we also commend the fact that we have a pretty good system that has established an ability for my industry to have incentives to innovate and develop billions of dollars worth of products that have been very effectively used by American farmers and farmers around the world. We are in favor of greater harmonization and we look forward to working with you, Mr. Chairman, and other Senators who are interested in this issue, as well as our grower customers that are absolutely at the forefront of this issue.

We recognize the fact that there is economic strife in the farm economy. We feel it directly. As was reflected in my written testimony, my industry's sales in the United States have come down substantially in the last 3 years, even more dramatically when

measured against our peak sales years 1995 and 1996 in the United States. So we are suffering along with our farm customers. I know that most personally because I am from Illinois and I am still engaged in the family farm operation with my cousins and brothers-in-law and I hear regularly from them about the difficulties that are being experienced by family farmers back in Illinois. So I understand personally as well as professionally on behalf of representing ACPA here today that these are issues that need to be addressed.

We do have some serious concerns with some of the provisions that are in your bill, Mr. Dorgan. But we would commit ourselves to continue to work with your staff and EPA and the grower interests to see if we can find some common ground and move forward here.

With that, in conclusion, I thank you again for the opportunity to be here and look forward to responding to any questions.

[The prepared statement of Mr. Vroom follows:]

PREPARED STATEMENT OF JAY VROOM, PRESIDENT, AMERICAN CROP PROTECTION ASSOCIATION

Mr. Chairman and Members of the Committee:

I am Jay Vroom, President of the American Crop Protection Association (ACPA). ACPA 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 morning on pesticide and biotech seed 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).

We are pleased that our 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. 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, canola, barley to sunflowers, flax, zucchini 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 possible. For the last few 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.
- We are pleased that 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 canola. EPA's current FY 2001 work plan includes nine such uses, of which five have been registered. 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.

There are multiple challenges to the crop protection and biotech industry. 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. The Senate Agriculture Committee is addressing many of these issues and we encourage Congress as they consider the current Farm Bill to help increase exports, build domestic demand, reduce agriculture's regulatory burden and provide affordable, workable risk management tools to growers.

Recent years have certainly taken a toll on U.S. agriculture, with declining 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 ACPA members included in the economic-pain quotient. Doane Agricultural Service reports that total agricultural pesticide sales for all U.S. crops for all pesticide types (including herbicides, insecticides, miticides, fungicides, plant growth regulators, and nematicides) dropped by nearly 10 per cent from $7.410 billion in 1998 to $6.691 billion in 1999. When the agriculture economy is stressed, our member companies are negatively impacted also. Our own association sales survey data shows that the total U.S. sales of ACPA member companies declined from $8.327 billion in 1998 to $7.837 billion in 2000. Even more dramatic declines in our total sales can be found if we go back to earlier years for comparison.

Relative to the subject of this hearing this morning, I would like to address some of the key variables related to crop protection and crop biotech product pricing.

1. Pesticide Registration Regulatory Processes/United States vs. Canada

The most 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, ACPA 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. It seems reasonable that the U.S. and Canada could mutually accept pesticide tolerances, rather than have separate processes and reviews. Although frustrated, we will continue to press our regulatory bodies to move more expeditiously toward harmonization.

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. In Canada, a similar chemical would have to undergo sometimes very different batteries of tests and procedures.

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.

2. Harmonization

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 regulation; (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 "core regulatory data set," and streamline the EPA registration process.

3. "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. We would support this data being updated by a credible governmental body, or its contractors, so a current and accurate assessment can be conducted. 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 in-

clude: 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)."

I would also like to 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.

4. 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. Much attention has been paid to the notion of tort reform, but little has been accomplished in changing the law or the practice of 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.

5. Labeling Issues of FIFRA and N.D. Department of Agriculture

Section 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act governs ways by which state governments can address special local needs of an existing or imminent pest problem for which there is no available federally registered pesticide product. The N.D. Department of Agriculture has 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. If legislation is considered, a minor change to FIFRA Sec 24 (c) might give EPA additional authority to address the concerns we are discussing this morning.

6. Biotech Seeds

Specific to the issue of biotech seed sales, our biotech member companies market seeds on a global basis. Considering their substantial investment in agricultural research, we strongly support protection of their intellectual property rights. The ability to recoup their investment costs based on the market value of their discovery is a right, long championed in the U.S. The January 2000 GAO Report issued last year comparing prices of biotech seeds indicated that a key reason that the price of biotech soybeans was lower in Argentina than in the U.S. was the lack of patent and other intellectual property protection for these products in Argentina, including the lax enforcement of seed laws there. The pricing differential between the two countries is a result of weak controls that encourage black market seed sales, not marketing practices by the technology providers. In the WTO dispute settlement proceedings against Argentina last year, we were pleased that members of Congress and the U.S. Special Trade Representative urged the inclusion of intellectual property protection for biotechnology.

Last month one of our technology providers announced the elimination of separate technology fees for corn and soybean seed. Starting with the 2002 planting season, growers will make a single payment to the seed company for technology and seed, rather than separate payments to the seed company and the technology provider for the patented technology. This independent decision by one technology company is an illustration of the fact that this market is rapidly evolving and that market forces are functioning.

Summary

The frustrations around all these issues demonstrate the need to aggressively pursue government-to-government harmonization. Pricing and availability issues cannot be solved by individual state actions on individual products. Our regulatory bodies have an obligation to promulgate clear federal government rules and guidelines, so as to avoid confusion and disruption in the marketplace.

The pricing of pesticides and biotech products takes into account many factors that encompass research and development costs, distribution and marketing costs, crop value and related liability, availability of competitive products, state of the farm economy and available patent life. The most important factor in our marketplace, however, is a healthy customer. As stated earlier in this testimony, our U.S. farmer customer is in dire economic straights, and so is our industry. We hope that the issues of concern at this hearing can be properly put in the larger 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. Inadvertently compromising the positive strength of this system could have profound, long term negative impacts on our entire technology innovation system.

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.

Senator DORGAN. Mr. Vroom, thank you very much.

We are joined by Senator Fitzgerald. Would you like to make a statement? We have two additional witnesses to testify.

STATEMENT OF HON. PETER FITZGERALD, U.S. SENATOR FROM ILLINOIS

Senator FITZGERALD. I want mainly to thank Mr. Fitchhorn. He is the President of the Corn Growers in Illinois, the new President. I would like to welcome him, my constituent, here, and Mr. Vroom, who indicated he was born and raised in Illinois. I guess you are from Bureau County, is that right?

Mr. VROOM. Yes.

Senator FITZGERALD. So you are still an honorary constituent, I guess. Welcome.

Senator BURNS. He still votes there.

Senator DORGAN. Pardon?

Senator BURNS. He still votes there.

Senator FITZGERALD. Do you still vote there?

Mr. VROOM. No, sir. I vote in the Commonwealth of Virginia.

[Laughter.]

Senator FITZGERALD. I want to thank you for being here.

I have not heard much on this issue from Illinois farmers. I think it probably more pertains to the farmers along the border in Senator Burns' and Senator Dorgan's states. But it is a legitimate issue and I hope we can find out some solution that helps the farmers in the northern tier of states around the country.

I appreciate you all being here and thank the Chairman for holding this hearing.

Senator DORGAN. Senator Fitzgerald, thank you very much.

Next we will hear from Mr. McClure. Mr. McClure, would you proceed.

STATEMENT OF DAVE McCLURE, PRESIDENT OF THE MONTANA FARM BUREAU, AMERICAN FARM BUREAU FEDERATION

Mr. McCLURE. Good morning, Mr. Chairman and Committee members. I am Dave McClure, a farmer and rancher from Lewistown, Montana. I raise wheat, barley, cattle and hay. I am also the President of the Montana Farm Bureau and a member of the board of directors of the American Farm Bureau Federation. I am testifying today on behalf of both the American Farm Bureau and the Montana Farm Bureau.

The Farm Bureau is the Nation's largest farmer and rancher organization, with over 5 million members in all 50 States and Puerto Rico. As you know, Mr. Chairman, farmers and ranchers in all 50 States have been facing some rather difficult hard times in 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 to 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 the Farm Bureau strongly supports Senate bill 532, the Pesticide Harmonization Act, which is also cosponsored by both Senators from my State, Senator Burns and Senator Baucus. Mr. Chairman, from your opening comments I realize that you do not have to be convinced on this bill. Thank you for that.

This legislation would allow farmers, cooperatives, 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 their farm 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 this legislation will work to remove that disparity. Under the Pesticide Harmonization Act, States can petition the Environmental Protection Agency to issue pesticide labels to be placed on the Canadian products where the only significant difference between the products is price. The U.S. product label would allow our

farmers to buy a Canadian pesticide for use on their farms in the United States.

The Farm Bureau believes this legislation is a significant step towards achieving the goals of gaining access to affordable and needed products by U.S. farmers while at the same time maintaining U.S. standards designed to protect U.S. 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 production materials will improve the competitive position of U.S. producers.

Studies have been conducted of cost differences by USDA and others and the results do demonstrate that similar compounds used on both sides of the border can be priced differently. While the U.S. grower does benefit by some examples of pesticide cost comparisons, we also pay a much higher cost for a variety of products, such as Roundup, Liberty, Puma, Buctril, all of which are registered for use on U.S. crops such as wheat and barley.

Sometimes these price differences are significant. Senator Baucus has stated that recent surveys have shown that U.S. farmers can pay as much as 117 percent to 193 percent more than farmers in Canada for virtually the same products. Sometimes these cost differences are less so, but 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 3 years. This effort has resulted in forming the U.S.–Canadian Producer Consultative Committee on Grain. I represent the Montana Farm Bureau on that committee. These exchanges have resulted in the identification of issues that are important to grain producers in Canada and the United States.

We reached a consensus that harmonization of pesticide registration and labeling was desirable. There is no dispute on that between producers on both sides of the border. If we can solve this trade or border irritant, perhaps we can solve other issues.

I would like to submit for the record a copy of the committee's joint statement from March of this year.

[The material referred to follows:]

JOINT PREPARED STATEMENT BY CANADA/U.S. PRODUCER CONSULTATIVE COMMITTEE ON GRAIN

The undersigned organization met in Winnipeg on March 30, 2001 in an effort to facilitate dialogue between grain producers in Canada and the United States.

We urge the Governments of Canada and the United States to recognize us as the producer grain consultative group as identified in the 1998 Canada/U.S. Record of Understanding.

The Canada/U.S. Producer Consultative Committee has reached consensus that the following issues require the attention of producer organizations and governments, or require further study:

Issue Categories

1. Current Canada/U.S. Grain Trade Issues that should be considered by producers and their organizations

- Disparities in government support distort production and trade
- Marketing structures differ—a monopoly marketing board is operating in a free trade zone
- Trade actions have broader effects than just the original targets (e.g. Canadian corn countervail hurt Canadian hog industry)

2. Current Canada/U.S. Grain Trade Issues that should be considered by Governments

- Definitions of and conditions for launching of trade actions (CVD, AD, 301)
- Pre-screen potential farm support programs and trade practices for trade acceptability
- Cost of trade actions are borne by producers who must defend against them

3. Current Canada/U.S. Grain Trade Issues that require further research and study

- Disparities in government support distort production and trade
- Marketing structures differ—a monopoly marketing board is operating in a free trade zone
- Cost of trade actions are borne by producers who must defend against them (contingency fund? Pre-screening?)
- Taxation policies kind the services provided from tax dollars, differ between Canada and the U.S.
- Exchange rate impacts input costs, product pxices and trade
- Impact of IMF and the World Bank on trade and markets
- Harmonization of grading systems
- Country of origin labelling

4. General areas identified for proactive cooperation

- Potential for trade actions (CVI), AD, 301) limit ability to design support programs
- WTO Agriculture Negotiations
  - EU Export Subsidies
  - Tariff and non-tariff barrier reductions
  - Domestic support definitions
  - SPS measures (precautionary principle)
  - Non-trade concerns (social, environmental, labor, animal welfare etc.)
- FTAA negotiations
  - Export subsidies
  - Domestic support definitions
  - SPS measures (precautionary principle)
  - Non-trade concerns (social, environmental, labor, animal welfare etc.)
- GMO Wheat—conditions for release
- Foot and Mouth Disease—development of a common plan for the grain industry
- Harmonization of pesticide registration and labelling

5.Other Issues

- Farm support and trade practices are capitalized into land and machinery prices
- US wheat sold into Canadian elevator system for export must be segregated and identitied as US wheat

The Consultative Committee is committed to annual meetings alternating between Canada and the United States to review and update the work plan as a proactive effort to identify, study and resolve potential trade issues.

Supported by:

Agricore Cooperative Ltd.
Idaho Farm Bureau
Keystone Agricultural Producers
Montana Farm Bureau
North Dakota Farm Bureau
South Dakota Farm Bureau
Western Canadian Wheat Growers Association
Wild Rose Agricultural Producers
Grain Growers of Canada
Kansas Farm Bureau
Minnesota Farm Bureau
Nebraska Farm Bureau
Saskatchewan Wheat Pool
Western Barley Growers Association

Wheat Export Trade Education Committee

Mr. MCCLURE. I applaud EPA's efforts to work with our international trade partners to promote consistency in 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.

The Farm Bureau does understand that, because pesticides must be registered in the U.S. before they can be sold or 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 Administrator Steve Johnson during his confirmation hearing regarding the need for legislation, and I quote from Mr. Johnson: "I believe that legislation is needed because there does not appear to be adequate administrative or regulatory solutions."

We encourage the EPA to continue to work closely with the sponsors of bill 532 to address any specific technical concerns that they may have with the bill. I hope that the agency can be very supportive of this legislation, and it appears that they are.

In summary, while the Farm Bureau understands that ag chemical companies do have concerns with certain sectors of the legislation, it is our hope that these issues can be openly discussed and addressed. The Farm Bureau and the crop protection industry have worked very well together in the past and will continue to do so in the future to address our many common concerns. It is our hope that we can work together to achieve passage of this legislation.

Thank you, Mr. Chairman. I see my time is up. I will be happy to answer any questions that you may have.

[The prepared statement of Mr. McClure follows:]

PREPARED STATEMENT OF DAVID MCCLURE, PRESIDENT, MONTANA FARM BUREAU FEDERATION

Good morning Mr. Chairman and Committee Members. I am Dave McClure a farmer/rancher from Lewistown, Montana. I raise wheat, barley, cattle and hay. I am also the president of Montana Farm Bureau and a member of the board of directors of the American Farm Bureau Federation. I am testifying today on behalf of both the American Farm Bureau Federation, and the Montana Farm Bureau.

Farm Bureau is the nation's largest farmer and rancher organization with over five 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, which is sponsored by both senators from my state, Senator Baucus and Senator Burns.

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 do demonstrate that similar compounds used on both sides of the border can be priced differently. While the U.S. grower does benefit in some examples of pesticide cost comparisons, we also pay much higher costs for a variety of products such as Roundup, Liberty, Puma and Buctril, all of which are registered for use in the U.S. on crops such as wheat and barley.

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. Sometimes these cost differences are less so. But, 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. I represent Montana Farm Bureau on that committee. 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 would like to submit for the record a copy of the committee's joint statement from March of this year.

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." We encourage the EPA to continue to work closely with you, Mr. Chairman, to address any specific technical concerns they may have with the Pesticide Harmonization Act. It our hope that the agency can be fully supportive of this legislation.

In summary, while Farm Bureau understands that agricultural chemical companies do have concerns with certain sections of the legislation, it is our hope that these issues can be openly discussed and addressed. Farm Bureau and the crop protection industry have worked very well together in the past and will continue to do so to address many common concerns. It is our hope that we can work together to achieve passage of this legislation.

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.

Senator DORGAN. Mr. McClure, thank you very much. Finally, we will hear from Hank Zell of the National Farmers Union. Mr. Zell, welcome.

STATEMENT OF HANK ZELL, NATIONAL FARMERS UNION

Mr. ZELL. Thank you, Chairman Dorgan and Ranking Member Senator Burns of the Subcommittee. I am Hank Zell, a third generation farmer—

Senator DORGAN. Will you pull the microphone closer, please.

Mr. ZELL. I am Hank Zell. I am a third generation grain and livestock producer from Shelby, Montana. Shelby is a farming community located about 85 miles north of Great Falls, 30 miles south of the Canadian border. I farm 2400 acres of hard red spring wheat each year and also maintain pasture for my livestock herd.

It is a pleasure to be before you today on behalf of 300,000 family farm and ranch members of the National Farmers Union to discuss the impact of differential prices of pesticides between the U.S. and Canadian agricultural markets. Mr. Chairman, the NFU commends you and Senators Burns, Baucus, Conrad, Daschle, and Johnson for introducing S.532, legislation to amend the Federal Insecticide, Fungicide, and Rodenticide Act to establish conditions that would allow a State to register Canadian pesticides for use within the State if the products are substantially similar or identical to the ones already registered in the U.S. We fully support this legislative initiative.

Since ratification of the North American Free Trade Agreement, U.S. farmers, especially those along the northern tier States, have been frustrated with a number of trade issues with Canada due to provisions of the agreement. Since adoption of the agreement, 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 the clogging of our transportation system, warehouse facilities, and border, increased competition for sales in our own domestic market, and reduced producer pricesfor wheat and barley.

There are numerous reasons why the open border with Canada has harmed the U.S. producers that are beyond the scope of this hearing. However, one key issue that has served to disadvantage U.S. farmers relative to our Canadian neighbors is the effect of our pesticide labeling regulations on production costs. U.S. pesticide 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 the U.S. producers without further contribution to the food consumer, worker, or farm operator safety.

It seems 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 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 in this country.

The purpose of FIFRA 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 to ensure their safe and effective use by producers and farm workers. I do not believe it was the intent of Congressto 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 the U.S. current regulations.

The environmental and agronomic factors that affect my farming operation are comparable to those experienced by farmers in the Canadian prairies. However, their input cost structure is significantly different than mine. Part of this difference can be directly attributed to the difference in cost of pesticides that I pay versus my Canadian neighbors who are also my competitors in the agricultural market.

In the attached table I have provided a comparison of the per acre cost of various registered pesticides that I utilize on my farm and are typical for the spring wheat and barley crops produced in the region in both the U.S. and Canada. The U.S. pricing information was obtained from my local dealer. A farm input supplier whose business is located just across the border provided Canadian prices.

At a minimum, I must treat my 2400 wheat and barley acres for two types of weeds, broadleaf and wild oats. In addition, I generally spray two applications of a non-selective herbicide and about 500 acres of fallow. Typically, I would apply Assert to control wild oats and utilize a combination of Puma plus Bronate for broadleaf weeds on my crop acres. My normal practice is to apply Roundup on a portion of my summer fallow to control weeds and conserve valuable moisture for the next year's crop.

Under this scenario, my bill for pesticides will be $26,396 per year greater because I am an American farmer than if I was a Canadian farmer. For me this is serious money. It represents about 10 percent of my farm's total gross income.

Under the proposed legislation, a State such as Montana, a farm organization or a farm supply company could serve as an agent of a U.S. registrant for Canadian pesticides if they are identical or substantially similar to U.S.-registered products. Most, if not all, pesticides that I normally use fit into this requirement and therefore would be eligible for purchase and use on my farm after affixing the appropriate U.S. label, registration label, on the containers.

While my cost of $26,396—while my savings—while my $26,396 savings would be reduced by some additional transportation and relabeling costs, the impact on my farm would still be substantial.

The potential access to less costly pesticides provided by this legislation should result in more consistent nationwide and regional pricing policies by the manufacturers that will benefit all producers who utilize these products that are registered in both countries.

The National Farmers Union is not seeking to reduce the level of regulations or oversight by the EPA for the safety of agricultural pesticides, and this legislation does not weaken that objective. It simply provides the opportunity for economic relief from an artifi-

cially maintained pricing system affecting products that have been approved and are compatible to those registered by our EPA.

We support this legislation because it engenders fair market conditions and competitiveness between the U.S. and Canada by reducing the potential for differential pricing by pesticide manufacturers and limiting their ability to hide behind U.S. regulations.

Mr. Chairman, I appreciate the opportunity to share my personal experiences with the Subcommittee today and offer the support of the National Farmers Union for the pesticide harmonization legislation and you and Senator Burns have introduced. We are looking forward the working with you to achieve passage of this important bill as expeditiously, as soon as possible. I am pleased to respond to any questions you or your colleagues may have.

[The prepared statement of Mr. Zell follows:]

PREPARED STATEMENT OF HANK ZELL, NATIONAL FARMERS UNION

Chairman Dorgan, Ranking Member Fitzgerald, Members of the Subcommittee. I am Hank Zell, a third generation grain and livestock producer from Shelby, Montana. Shelby is a farming community located about 85 miles north of Great Falls and 30 miles south of the Canadian border. I raise about 2400 acres of hard red spring wheat and barley each year in a summer fallow rotation and also maintain pasture for my livestock herd. It is a pleasure to appear before you today on behalf of the 300,000 family farmer and rancher members of the National Farmers Union (NFU) to discuss the impact of differential pricing of pesticides between the U.S. and Canadian agricultural markets.

Mr. Chairman, the NFU commends you, and Senators Burns, Baucus, Conrad, Daschle and Johnson for the introduction S. 532, legislation to 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 products 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, including Canada's regulated marketing and transportation system, that 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 seems 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 my farming operation are comparable to those experienced by farmers in the Canadian prairies. However, their input cost structure is significantly different than mine. 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 I pay versus those paid by my Canadian neighbors who are also my competitors in the agricultural market.

In the attached table, I have provided a comparison of the per acre costs for a variety of registered pesticides that I utilize on my farm and are typical for the spring wheat and barley crops produced in this region, in both the U.S. and Canada. The U.S. pricing information was obtained from my local dealer. A farm-input supplier whose business is located just across the border provided Canadian prices. I believe these pesticide prices are consistent with other information that has also been provided the Subcommittee.

At a minimum, I must annually treat all 2400 of my wheat and barley acres for two types of weeds—broadleaf weeds and wild oats. In addition, I generally spray two applications of a non-selective herbicide on about 500 acres of summer fallow. Typically, I would apply the product Assert to control wild oats, and utilize a combination of Puma plus Bronate for broadleaf weeds on my crop acres. My normal practice is to also apply Roundup on a portion of my summer fallow acres to control weeds and conserve valuable soil moisture for the next year's crop. Under this scenario, my bill for crop pesticides will be $26,396 per year greater because I farm in the U.S., than if I were a farmer in Canada. For me this is serious money, representing about 10% of my farm's total gross crop income.

Under the proposed legislation, a state, such as Montana, a farm organization or a farm supply company could serve as a U.S. registrant for Canadian pesticides if they are identical or substantially similar to U.S. registered products. Most, if not all, of the pesticides I normally use fit within this requirement and would therefore be eligible for purchase and use on my farm after affixing the appropriate U.S. registration label onto the container. While my $26,396 savings would be reduced by some additional transportation and re-labeling costs, the impact on my farm would still be substantial. The potential access to less costly pesticides provided by this legislation should result in more consistent nationwide and regional 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 and oversight provided by the EPA for 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 to extend greater levels of safety to all producers and consumers through regulations that are comparable to those contained in the U.S. system. 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 share my personal experiences with the Subcommittee today and offer the support of the National Farmers Union for the pesticide harmonization legislation you and Senator Burns 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

Chemical	Pesticide Type	Canada		U.S. Price/A (US $)	Difference U.S.–Canada
		Price/A (Cdn $)	Price/A (US $)*		
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

Senator DORGAN. Mr. Zell, thank you very much.

Mr. Fitchhorn, you indicated that this problem exists not just on the border, but around the country. How significant is it in your State that farmers recognize the price disparity? In my State or in Montana, where farmers could easily drive ten miles near the border and go across and get a cheaper chemical, they instantly recognize the unfairness and disparity. Do folks in your State regularly recognize it?

Mr. FITCHHORN. Yes, we do. Even though you are highlighting this up on the border, we for quite some time, quite a few years, have been aware that there was a price disparity in chemicals and seed even in South America and North America. We have, like I said, we had quite a few meetings with seed producers and herbicide companies, with very little being resolved in those meetings.

Senator DORGAN. Mr. McClure, you support the legislation, you indicated in your testimony. You heard the testimony by the EPA. Are you satisfied that we are making progress on chemical harmonization? What is your impression of where we are in that subject?

Mr. MCCLURE. Well, I would hope so. I was pleased to hear that EPA was willing to work with you and the other sponsors to make this thing work. But I also have to recall Mr. Johnson's comments that probably the agency and the regulatory is somewhat limited and legislation may be needed. Hopefully, this will help us.

Senator DORGAN. Mr. Vroom, your organizations represents the chemical manufacturers, is that correct?

Mr. VROOM. That is correct.

Senator DORGAN. Most of the major chemical manufacturers would be in your organization?

Mr. VROOM. Yes.

Senator DORGAN. You heard my questions earlier and I read your testimony last evening and listened to your testimony earlier today. You in your testimony seem to suggest that there is not a price difference. You referred to a USDA study. If there is no price difference—I would contest that, of course. But if there is not a significant price differential that currently exists between the U.S. and Canada and if the EPA says there is no safety issue, why then would a chemical company care whether this legislation is enacted?

Mr. VROOM. Well, let me make clear that I absolutely and my organization completely acknowledges the fact that there are price

differences between different markets for our industry products, both those that are identical and those that are substantially similar. Those that are off patent have generic competition in some countries, not in others. Vast differences, no question about that.

So I want to be clear that if you have misunderstood me to suggest I do not think there is any price difference, that is not what I intended to convey. I do think that some of the arithmetic that has gone into trying to impute sort of an aggregate differential, price and overall cost structure differential disadvantage that might exist between Canada and North Dakota or whatever, probably has suffered from efforts to try to do quick studies.

The reason that I referred in our written testimony to the 1999 study that USDA and Agrifoods Canada jointly did is that we think that that represents a more robust snapshot of the marketplace at that point in time than the data that was used by the State University researchers more recently, which is more current, obviously, but not as robust in terms of an overall look.

For instance, the NDSU study only looked at a handful, 20 different herbicide products. Our industry in the United States markets hundreds of herbicide products. So there is a little bit of out of context arithmetic that comes out of sort of the bottom line of that.

But again, I want to emphasize that there is no question about the fact that there are differences in prices and that is from a manufacturers standpoint solely driven by the fact that we are required, with the very minimal exceptions of those products that are now finally in joint review between the U.S. and Canada regulatory authorities, we are required to approach these markets as distinct and separate markets. Frankly, as I have told your staff and others that we have been visiting with in recent weeks again over this issue, I think that our companies have been so intentionally focused on responding to the discrete regulatory authorities in these two sovereign nations that they frankly have never thought much about the fact, other than the few times that this kind of issue has been discussed in public hearings and in the media and intensely in your home State capital as the legislature and the administrative branch, including Commissioner Johnson, have raised this issue—but our companies have not thought much or very often about the fact that there is a great deal of transparency right along this border.

They price their products in order to be competitive, to gain market share, to serve the farmer, and it has only been recently that we have begun to think about the fact that, oh, yes, there is a need to sort of keep your eyes on that these markets adjoin each other.

Senator DORGAN. Mr. Vroom, I would guess it is not the case, however, that the companies are required to treat these as distinct and discrete markets in a manner that requires them the price the product differently. For example, the Folicur which I held up, there is nothing which would require the manufacturer of Folicur to say to the U.S. producer, you pay $500 more for this box than the Canadian one. There is nothing that requires that.

Mr. VROOM. No. I am glad that you brought that example along this morning because—and I brought along the complete reference guide from about 40 of our member companies' labels in the United

States for 2001. As you can see, this is a hundreds of pages thick book. Folicur is in here. The table that shows how it is registered in the United States indicates that 18 of the 52 authorities, including D.C. and Puerto Rico, that are governed by U.S. EPA for pesticide regulations, 18 of those entities, most of them States, do not have a label for the use of Folicur, either.

So I am really keen to follow up with your staff after the hearing to learn more about this particular instance. Did the farmer in North Dakota that had this particular excess inventory, was he asked by his dealer to sell it back through that chain?

One of the other factors in this pricing mechanism in the United States and almost identically in Canada is that manufacturers publish suggested retail prices, but that is hardly ever the price that the farmer pays. It may be more or less than the farmer pays. The manufacturer almost always sells to the distributor. The distributor then sells to an independent dealer, and the dealer ultimately to the farmer.

Senator DORGAN. Yes, but we know what farmers pay. We are comparing what the farmers can buy the chemical for in North Dakota versus Canada. That is not some theoretical thing, and that is why farmers are upset, because essentially the same chemical is overpriced in the U.S. versus Canada, which is a deliberate attempt by the chemical companies, as I indicated, to use the EPA as a shield when in fact the EPA says there is no safety issue here.

Mr. VROOM. My members, my manufacturers nor our distributors are bound by suggested retail price lists, and the market ultimately impacts what the margins are of profit that are enjoyed by distributors and dealers. Those margins, according to university studies that have been done over the years, range anywhere from 2 or 3 percent markup, profit, gross profit margin, to as much as 20 or 25 percent depending on the product, the market, and the year.

It is another reason I think that the original USDA–Ag Canada study had a lot more depth to it, in that it looked at more than 20 products and over more than one year of price experience.

Senator DORGAN. Except that it looked at the products that were most frequently used. That would be the most logical thing to look at. That is the final question. I will come back in another round, but I still do not understand how the industry opposes this legislation, supports globalization but opposes this legislation, and then says that what is to me discriminatory pricing and not as a result of discrete markets or distinct markets, simply discriminatory pricing practices, how it believes in a global market and can continue to do that and yet take advantage of the global market for the inputs it uses to produce chemicals.

Mr. VROOM. Simply by way of the fact that we are only allowed to sell products that are registered in a country, and that is established by the sovereign nations that control those regulatory authorities. We are seeing some progress finally, as I indicated earlier, over the last 15 years toward some harmonization of regulatory requirements and processes and joint reviews between countries.

Senator DORGAN. This is not about what you are allowed to sell. It is about how you price. You changed the subject. I am talking about how you price, not where you are allowed to sell.

Mr. VROOM. The manufacturers of these products do not set the price that the farmers pay.

Senator DORGAN. Of course they do.

Mr. VROOM. Pardon me?

Senator DORGAN. How do you suggest the manufacturers are not setting price? Clearly the increased price that is charged the U.S. consumer versus Canada is as a result of the manufacturers passing along an increased price to the distributors in both countries. Do you disagree with that?

Mr. VROOM. I do not believe that the studies that you have cited or that I am aware of that have been done around this issue have looked at what manufacturer prices actually are. They look at what the farmer pays, which is, as you just stated, the important point at the end of the day anyway.

Senator DORGAN. Is the villain something other than the manufacturer? Are you just shoehorning this off to a distributor or a retailer?

Mr. VROOM. No. What I am saying, Mr. Chairman, is that the way these products are priced is much more complicated than just a one product manager decision at a manufacturer corporate headquarters. It is a function of not only what the manufacturer's costs are and what they think they can sell their product for at the distribution level, but also what the market evolution is, how quickly can they expand the label's authorized uses from EPA or in Canada from the regulatory authority up there.

Most of the time we get a new chemical compound registered for use, a company has had 10 to 15 years of development and discovery investment before that first label use is authorized by U.S. EPA. Normally they will only give you one or two crop labels initially, when in fact the product was designed for use on dozens or scores of different crops, and it takes years to get those additional crops added to the label.

All of those costs are unknowns because you do not know how quickly EPA will go in terms of making decisions. One of the major herbicides, I might just tell you as an anecdote, that is in the NDSU study that was cited in Commissioner Johnson's testimony this morning is an older product that just came off of patent in the United States last fall, has been off patent for a while in Canada.

But a similar formulation label that will be of important value to fallow wheat farmers in your State and along the northern tier States has been waiting for registration. In other words, another formulation, label expansion, the company has been waiting for EPA to approve for some years, just got approval a couple of weeks ago, and there is a strong correlation between that regulatory decision and the occasion of this hearing.

So all those are factors that go into the embedded costs of these products from the manufacturer's standpoint. The distributors also face a varied marketplace year to year. We all do the best job that we can to support and supply the American farmer. We do the same thing, I am sure, in the Canadian market.

The sooner we get to many more NAFTA labels and greater harmonization of product availability across the board, the more quickly the concerns that you are here to express and are the same in Montana and the other border States will be resolved. Frankly, we

do not think that additional legislation is necessary in order for EPA to make faster and more effective progress along these lines.

Senator DORGAN. I would just observe that the legislation actually is a step toward harmonization. So if your industry supports harmonization, you would want to support the legislation.

Senator Burns.

Senator BURNS. You have got to watch those final shots.

Mr. Vroom, give me your idea, what is your attitude toward a NAFTA label or a label that would be acceptable in a trading agreement?

Mr. VROOM. Well, we think it has a lot of merit as long as it really is a level playing field in terms of being able to get market access for NAFTA countries, for instance, in all three countries simultaneously with the same data set requirements and the same final decisionmaking on the part of the regulatory authorities in all three countries.

If it is only half a loaf, then it can get very complicated and tip the playing field in a direction that would not be comfortable for our industry's economic interests.

One of the other problems with a NAFTA label concept is that most likely it would be applied, as it is so far and currently being entertained and developed, for new products. New products typically are going to come into the U.S. market through EPA approval at the rate of 12 to 15 a year. That is a tiny drop in this overall bucket for a marketplace when you consider that we have over 600 active ingredients currently in the marketplace which are unevenly registered on both sides of the U.S.–Canadian, and I might add also with regard to Mexico's, border.

Another problem we have serious concerns around in terms of the NAFTA label is, once you get past getting the product approved, is regulatory oversight and enforcement. Clearly, as we all know, the regulatory enforcement mechanism in Mexico is far below what we have in the United States and even in Canada. So we do have some concerns about government oversight and enforcement capabilities in a Mexican context when you start to approach a NAFTA label approach.

So there are a lot of other wrinkles that need to be considered in this process. But generally we are very enthusiastic because it can save our industry time and money in terms of getting product to the marketplace.

Senator BURNS. What intrigues me about it is if you say their enforcement is weaker than ours, but once we find a violation in the application or in the properties of the product for application, if that product is kept out of this market and cannot be shipped to this market, would that help those folks in energizing their regulatory oversight?

Mr. VROOM. Yes. We think that once again, especially in the NAFTA context, there are things that are practically achievable with regard to sort of raising the enforcement capabilities of the Mexican authorities. We have seen a lot of progress just in terms of the learning that has been accomplished by way of the meetings and interchanges that have come about through these harmonization discussions with the regulators in all three countries along

with the stakeholders that are allowed to participate in most of those meetings as well over much of the last 10 years.

Senator BURNS. Also now, whenever you start testing a new product and you have got it refined to where you want it and then you start making applications for licenses and the labels, with regard to Canadian and the American situation, are you doing the same exact labeling exercise in Canada as you have to do in the United States?

Mr. VROOM. No, sir.

Senator BURNS. In other words, Canadian authorities accept an EPA label that has been perfected here in the United States carte blanche?

Mr. VROOM. No, absolutely not. That is why this news that we now have conceptual agreement between the United States, Canada, and Mexican governments to proceed with the first NAFTA label compound is almost earth-shattering. It represents a willingness, particularly on the part of the Canadian authorities, to accept some U.S. approaches that heretofore they have been unwilling to reach in terms of accommodation and compromise.

Senator BURNS. But my first question was, do you have to jump through the same hoops in Canada as you do in the United States in order to get a product on the market?

Mr. VROOM. Some of them are the same and many of them are different.

Senator BURNS. Okay. I do not know.

Mr. VROOM. The battery of tests, the sort of baseline set of tests that are required by U.S. EPA, exceed 120 different human health and environmental safety tests. So there is all kinds of detail, as you can imagine. We actually had one of our member companies a few years ago in a House Ag Committee hearing bring the entire data set that was submitted on a new chemical compound. It was 35 to 40 cardboard boxes full of scientific test data. So you can imagine how many variants you can get into even just inadvertently between one regulatory authority sort of parsing through that and setting up the test protocols.

One government might say, well, we need a 90-day acute exposure rat study. The next government might say, well, it needs to be 120 days, and the next might say 180 days. That requires an entirely different set of tests to be run, data to be assembled and submitted.

Senator BURNS. Well, I can see where there would be some differences with regard to the countries and the difference between how you use a chemical in Kansas and how you use it in Montana because of moisture situations of soil types. There is a lot of variables in there that are going to affect the use of the product and I understand that.

I do not know why we are saddled with mostly doing the testing in the United States, but we pay for that testing and that is all paid for by the consumer and the farmer. That cost is finally passed on to them. I have a feeling that sometimes I think we pay—it is like doing business on the forest. If you put up a forest sale and the whole world and the environmental community says, we hate below-cost sales in forestry, when basically a forest will put up a sale and they will pile everything into that sale as far as

their overhead is concerned, so it does look like below-cost. It is unbelievable how we do our bookkeeping on that.

But I appreciate your testimony here, and I understand you were very supportive of an amendment to the Senate education legislation that dealt with pesticides in schools. I would hope that you would work with us with that same attitude. I think we can find common ground here. I do not think that we are going into an area where—I think most of us pretty much understand the variables that we had, but the pricing situation, just like I said, if we had three dollar corn and five dollar wheat, there would not be any of us here today. We would be home plowing corn. Of course, you do not do that much any more.

Mr. FITCHHORN. No, we use chemicals on it.

Senator BURNS. You put chemicals on it. You ought to go home and just hold, just plow and hold. I have been down that track because I was born and raised just across the river from you to the west, so I understand that.

I look forward to working with my colleagues on this legislation and also with all of you, because I think we have possibilities here. I am still intrigued with the label and trading agreements. That may be part of our discussions as we start talking about fast track, how are we going to deal with the situations of how we do business and how we will compete on the production agriculture side. We did not do that in NAFTA and that is the reason I voted against NAFTA. They would not take into consideration the rules and regulations on the exchange of crops, especially the same crop, and that we were operating out of two different rule books or three different rule books and it would not work.

This label idea intrigues me and I think we have to pursue it. If everybody operates out of the same rule book, then we can make it work. But it has to be out of the same rule book.

Thank you, Mr. Chairman.

Senator DORGAN. Thank you.

Mr. Vroom, let me ask you just a couple of more questions. Look, you represent the chemical manufacturers. I happen to think that they are imposing prices on U.S. farmers that are unfair relative to prices they apply to others. I do not think you are a bad guy, but I just think the industry has the opportunity to extract money out of the pockets of American farmers in a way that is unfair.

Let me just ask you, if I can. I mentioned the chemical Achieve. This is what started it all in North Dakota with Commissioner Johnson and a farmer who wanted to put Achieve that he bought in North Dakota on his crops in North Dakota. Now, he went up to Canada and bought this chemical for a much, much lower price than he could buy it in the U.S.

The Canadian farmer will put this on the Canadian farmer's crop and then ship the crop to the U.S., so we are going to get this chemical on their crop anyway, and the EPA says there is no safety issue. The only issue is the chemical companies charge more for this to American farmers than they do to the Canadian farmers, and you are I think trying to tell me that it is really not the manufacturers, it is some amorphous marketing descriptions out there and it is distributors and retailers.

Look. Is it not the case that manufacturers are setting the baseline prices for these chemicals, and they have decided that they can extract a higher price from Americans and therefore they do and they will? Our legislation is going to correct that and you, on behalf of the chemical manufacturers, do not support our legislation because you want to keep charging more to the American consumer. What is wrong with that statement? You disagree with my statement obviously, so tell me what is wrong with the factual base of my assertion?

Mr. VROOM. Well, once again, I respectfully disagree with the notion that manufacturers of agrichemicals are discriminatorily pricing against American farmers. If you look at the aggregate markets for our industry's products in the United States, just in my written testimony, last year it was over $7 billion U.S. currency. The Canadian market is probably no more than $1 billion U.S. currency.

There is just no logic to the notion that we would want to discriminate against the best customer base that we have in the world.

Senator DORGAN. Except, Mr. Vroom, this [indicating] is discrimination. This company with this chemical have said to U.S. farmers: You pay more. Why? Because we insist you do. That is discrimination. I am not talking about theory; I am talking about reality. This is discriminatory. Do you not agree?

Mr. VROOM. No, I do not agree.

Senator DORGAN. Well then, how do you justify the pricing differential?

Mr. VROOM. It is a marketing decision that that company made in terms of the way that they priced it and sent it through the distribution and dealer networks in both countries, and also by way of the fact of how they chose to offer the product in different forms in the U.S. and the Canadian markets. They knew, as I am told, that the higher active ingredient concentration that was and is sold in Canada is much more applicable to ground rig application and that most of the market in the United States would be for aerial or airplane, fixed wing, application, and the higher concentration active ingredient has physical property difficulties in aerial application with regard to clogging the nozzles and pumping mechanisms, and they were fearful of the fact that it would not be effective in that sort of formulation.

So that is the rationale for the two different formulations to be marketed different in the two different countries, in part.

Senator DORGAN. But Mr. Vroom, the only method by which the chemical companies could manufacturer a higher price for American farmers versus the Canadian farmers for the same product is to hide behind the EPA. The EPA is what allows you to prevent an American farmer—I mean, plugging up a nozzle? Well, maybe a farmer says, I am willing to see if a nozzle plugs up, I am willing to go to Canada and bring it down. The only reason they cannot bring Achieve down is because the chemical companies are hiding behind the EPA, when in fact the EPA says there is no safety issue here.

I do not want to be unfair to the chemical manufacturers, but the evidence is overwhelming that there is an approach here to say to the American consumer, you pay the highest prices, and say to oth-

ers, you pay the lower price, and the reason we can extract the higher price from the American farmer and the American consumer is because we have the ability to do it because we can stop it from coming across the border.

We cannot stop the grain. The grain comes across that has the Canadian chemical on it, but we can stop the American farmer from going to Winnipeg and buying the chemical. It seems patently unfair to me. It seems like it is kind of a sweetheart deal for the chemical manufacturers.

Mr. VROOM. Could I make one other point?

Senator DORGAN. Of course.

Mr. VROOM. That is, I am not here to defend any one of my member companies' specific product or pricing strategy. I want to make it clear that it is my view and the association's view that there are lots of examples where there are price differentials, some of them actually where a product that is identical or substantially similar is less expensive in the United States than in Canada.

But if you look again at the vast marketplace that we are talking about, the $7 billion market in the United States and the $1 billion market in Canada, there are many more examples where prices of these kinds of technology are more similar than dissimilar. I think we have focused on a few examples of where there are differentials, and I believe that it is fundamentally a product of a free marketplace where prices will respond to supply and demand.

There is no question but what focusing on those issues in isolation creates the perception of a serious problem. I do not think the problem is as great as some of the data would portray in the way it is taken out of context. But we are committed to working with you on a harmonization approach.

By the way, I think that Mr. Johnson, the new EPA Assistant Administrator who was here earlier, probably has the ability to drive a harmonization process much faster between the U.S. and Canada than his predecessors in the last 8 years of the Clinton Administration were able to do. So even without legislation, I believe that EPA and the Canadian authorities can go faster and address some of these what I would characterize as more isolated problems and get a more level marketplace established in those isolated and limited places where there are trade irritant concerns.

Senator DORGAN. Mr. Vroom, there is no free market when Mr. McClure cannot go to Canada to access the same chemical for a lower price. So this free market stuff does not work with respect to the border. The border is an impediment to free markets.

You are an assertive witness on behalf of your industry. My hope is that, if you support harmonization, that you would support the legislation as a step towards harmonization. I think price disparities that exist are at this point not supportable, and I hope very much that, with the work by Commissioner Johnson and my colleagues, that we can pass legislation.

We have a disagreement here, obviously, and I do not mean to badger you about the disagreement we have. I feel very strongly and passionately that something is happening here that is not isolated, it is not theoretical. It is real and it is pervasive, especially for our farmers.

I must say that I do not agree that if wheat were five dollars a bushel we would not be talking about this. I think price discrimination when it exists is a bur under the saddle of people who I think are the victims of it.

Let me make one additional point. That is, the testimony by Mr. Johnson indicated—and I just want to put it in the record—that EPA "is not aware of any evidence that indicates that national pesticide regulatory requirements contribute significantly to existing price differences," because that has been part of our discussion.

This has been an interesting hearing and the first step of a journey that I hope will result in the passage of legislation. I think the testimony we have received today will be helpful, and this hearing is now adjourned.

[Whereupon, at 11:15 a.m., the Subcommittee was adjourned.]

APPENDIX

PREPARED STATEMENT OF ART PERDUE, GENERAL MANAGER, FARMERS UNION OIL CO.

My name is Art Perdue, and I am the general manager of the Farmers Union Oil Co. of Minot, N.D. We are a farm supply cooperative owned by 4000 farmers in a 10-county area around Minot. Our main product lines are fuels and petroleum products, farm machinery, hardware, and agronomy products, including crop nutrients and crop protection products. Our total annual sales are about $40 million. Our annual sales of crop protection products are about $3 million.

To start, I want to commend Sen. Dorgan and the other cosponsors of S. 532 for your efforts to help provide farmers, cooperatives, and other distributors access to lower cost crop protection products. The problem that this legislation seeks to address is well documented and deserves the attention of policy-makers in Congress.

The producers who are my patrons and the owners of the cooperative are frustrated by the unfair treatment that currently exists. Across the border, Canadian grain growers have access to crop protection products that are identical to, or substantially the same, as products that are offered in the United States. However, the price of these products is less in Canada than the same or equivalent product that's available through my local cooperative.

Even though the products are essentially the same, if they are not labeled for use in the United States, I cannot access them in Canada and distribute them to my patrons. Individual farmers cannot legally buy them in Canada and use them on their North Dakota fields.

The goal of our nation's trade policy is to promote reducing trade barriers and creating a more level playing field for agricultural producers. But the North Dakota grain growers who are my patrons are caught in a lose-lose situation. Canadian grain growers have access to lower-cost production inputs, and our current trade rules allow them to sell their grain in the United States, when the market here is favorable. But U.S. growers cannot buy and use those same lower-cost inputs, and so are put at a cost disadvantage compared to the Canadian grower.

Long term, the solution to this problem must lie in harmonization of product registration rules between the United States and Canada. But we see little progress on that in the near term, so an interim solution must be found. S. 532 offers such a solution.

My understanding of the bill is that it will allow a state to register a Canadian product for distribution and use in that state as long as the product is either identical to or substantially the same as a product that is registered for use in the United States. For my cooperative and my patrons, the bill would establish a procedure by which North Dakota may apply for and receive an Environmental Protection Agency label for agricultural chemicals sold in Canada. Those products must be identical or substantially similar to products used in the United States.

Under the provisions of this bill, my cooperative would gain the flexibility to distribute lower-cost crop protection products. It also would permit North Dakota growers to buy approved products in Canada and use them on their farms.

As I have reviewed this bill and discussed it with other cooperative managers in North Dakota, we have identified some considerations that concern us.

It appears as though if my cooperative wishes to distribute a Canadian crop protection product under the terms of this law, we become responsible for re-labeling the product with a label approved by the EPA. Similarly, if individual farmers choose to buy and use a Canadian product under the terms of this law, they become individually responsible for re-labeling that product.

My observation is that few crop protection product distributors, and even fewer individual farmers, are in a position to handle this responsibility. I would encourage a more active involvement by the state in the actual re-labeling of products under this legislation.

Next, I want to encourage the authors to consider whether you wish to allow individual farmers to seek a state registration.

First, as dealers, we have a concern about loss of business. By making individual farmers eligible to apply for state registration of a Canadian crop protection product, the legislation effectively eliminates the role of the North Dakota dealer. Modern, technology-driven crop production systems rely on a partnership between the grower and a local dealer who assists in identifying appropriate products to deal with site-specific problems in the field. The local dealer also plays a role in assuring that the product is used properly. As dealers, we compete with each other for the grower's business. While S. 532 assures price competition, I am concerned that it will not promote the same level of close working relationship between the local dealer and the grower.

Similarly, I am concerned that S. 532 does not adequately deal with legal liability for either inadvertent or intentional misuse of the product. If an individual grower buys a regulated product in Canada, and sometime in the future there's a problem with the product, it doesn't appear that there is any way to bring the Canadian dealer into our U.S. civil justice system.

Finally, there's a stewardship issue. These registered products require special knowledge for safe transportation and handling. In the United States, people who transport these products are required to have a special drivers license certification. There also are strict requirements and limitations for handling the products, storage, spill clean up, and use. We believe these requirements are best handled by crop protection professionals who have the experience and training to assure sound stewardship of the environment.

In closing, I want to thank you for the opportunity to present my comments on this legislation. I would be pleased to answer any questions about how this bill would affect my cooperative or my patrons. Please direct your questions to me at the Farmers Union Oil Co. My office phone is 701–852–2501, and my e-mail address is aperdue@cenexofminot.com.

PREPARED STATEMENT OF WENDELL STRATTON, CHAIRMAN, AGRICULTURE RETAILERS ASSOCIATION

Mr. Chairman:

Thank you for the opportunity to submit comments on the proposed Pesticide Harmonization Act, S. 532. Agricultural retailers provide many valuable goods and services to our nation's farmers including crop protection chemicals and professional guidance on mixing and application of those chemicals as well as direct custom application.

As retailers we, like the farmers we serve, operate on thin profit margins. Agricultural retailers have to meet many regulatory and quality standards with regard to the U.S. Environmental Protection Agency (EPA), Department of Transportation (DOT) regulations, and Occupational Safety and Health Administration (OSHA) programs. We appreciate the frustration of farmers and our retail members concerning the different pesticide regulations and product testing standards between the United States and Canada. These differences cause what is perhaps the biggest area of frustration—product price differentials.

There are many factors influencing the price of pesticides in the U.S. and Canada. In addition to different regulatory requirements, reviews and timelines between the two countries, there are also different patent periods. For example, when the patent recently expired in the U.S. for glyphosate, we saw U.S. prices decline. Protecting these patent rights is necessary to the manufacturers so they can continue to reinvest in research and new product development, however the eventual maturity of the patents will alleviate much of the price differences. There are others forces at work that contribute to different prices such as exchange rates. Several years ago, Canadian farmers felt disadvantaged by cheaper pesticides in the U.S. and petitioned their government for regulatory changes.

We believe the proposed language of the Pesticide Harmonization Act, S.532 will place the burden of policing the application and stewardship of products not registered or purchased in the U.S. squarely on the shoulders of retailers. This burden would be further increased if producers were able to purchase products in Canada, thus taking away valuable business from Ag Retailers in the United States. While it is true that Ag Retailers would be free to purchase products in Canada as well, we believe that this is unlikely in most cases.

It is important to remember that most farmers rely heavily on their local Ag Retailer for the majority of their information regarding crop protection products. This could also mean that Ag Retailers could be dealing with products using different and unfamiliar percentages of active and inert ingredients, formulas, mixing directions and even basic measurements, thus creating potential for crop injury as

well human exposure problems. Therefore, we believe the proposed language of the Pesticide Harmonization Act, S.532 will add another tier of complexities to the management and potential liability of a retailers' business that is unwarranted at this time.

In addition, we share the concerns about S.532 raised by the American Crop Protection (ACPA) in recent testimony before the Senate Commerce Committee and echo EPA Assistant Administrator's testimony that "international harmonization of pesticide regulation efforts . . . hold significant promise to help alleviate some of the pricing issues that exist today."

We look forward to working with you on expediting U.S.–Canada regulatory harmonization and on any legislation under consideration.

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