

US EPA ARCHIVE DOCUMENT

**TESTIMONY OF
STEPHEN L. JOHNSON
ASSISTANT ADMINISTRATOR
OFFICE OF PREVENTION, PESTICIDES, AND TOXIC SUBSTANCES
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
CONSUMER AFFAIRS, FOREIGN COMMERCE AND TOURISM SUBCOMMITTEE
U.S. SENATE COMMERCE, SCIENCE, AND TRANSPORTATION COMMITTEE
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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 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 efforts, 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 cooperation with stakeholders, including registrants, farmers, and concerned states. International harmonization of pesticide regulation efforts continues to be a key focus for EPA, and these efforts hold 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.