

US EPA ARCHIVE DOCUMENT

**TESTIMONY OF  
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U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
PRODUCTION AND PRICE COMPETITIVENESS SUBCOMMITTEE  
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY  
UNITED STATES SENATE  
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Introduction

Good morning, Madam Chair 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 alleged pricing discrepancies in the near-term. As you know, EPA's legal authority over pesticides is to ensure the protection of public health and the environment; our authority does not extend to pricing. Current U.S. pesticide laws require 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, EPA has worked very closely with congressional staff over the last several

years, as well as with state officials and others, to explore remedies that would help address price 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 potential pricing issues that exist today.

### A Long-Term Solution: Harmonization

First, let me describe some of the longer-term strategic actions that EPA has been taking over the past several years, as well as partnerships that EPA has established, to address this important issue. Under the North American Free Trade Agreement (NAFTA) Technical Working Group on Pesticides (TWG) and other international fora, EPA has been working closely with Canada and other trading partners to break down barriers and facilitate trade and competitiveness. Together, we have developed more consistent regulatory and scientific requirements and registered needed products in support of the principles of sustainable pest management. EPA's work on pesticide harmonization with Canada, which began in earnest in 1993, is providing benefits directly to the American farmer. In the long term, the creation and ongoing support of a North American harmonized market for pesticides will ensure a level playing field across borders while maintaining our high standards of protection for human health and the environment.

Over the years, EPA has achieved numerous successes in facilitating freer trade in pesticides. In December of 1998, for example, the U.S. and Canada signed a formal agricultural trade "Record of Understanding." This agreement included 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 resulted in significant improvements in the approach EPA and the Canadian Pest Management Regulatory Agency (PMRA) pursued toward international harmonization. The Record of Understanding

also led to more frequent and open dialogue among EPA, grower groups, and industry, which in turn, helped accelerate regulatory harmonization. We 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 addition to these efforts, the United States has accomplished several milestones in collaboration with Canada and Mexico on NAFTA pesticide harmonization issues through the NAFTA Technical Working Group on Pesticides. The NAFTA TWG was established in 1996 and is a trilateral extension of the earlier bilateral pesticide forum created by the 1988 Canada-U.S. Free Trade Agreement. The NAFTA TWG recently issued a Five-Year strategy which puts forward goals and objectives to realize the long-term vision of establishing a North American market for pesticides. This vision promotes equal access to pesticides by offering incentives, including a harmonized review process for new pesticide products and work sharing across national boundaries.

The TWG's efforts are helping to break down the regulatory barriers with respect to the delivery and use of pest management tools on both sides of the border. Since 1999, EPA has worked closely with the North Dakota Department of Agriculture, growers, and industry, to prioritize the growers' many pesticide needs. Of their identified priorities, EPA has since issued new registrations and tolerances for at least 15 of these and has work underway for many of the other priorities. Over the years, EPA has reached out to other grower groups as well in an on-going effort to reflect grower priorities in our registration plans. Based on our earlier experience registering products to address grower priority needs, the TWG is pursuing a more streamlined and commodity-specific approach for addressing priority trade irritants through two pilot projects - one for tomatoes and another for "pulse" crops. Pulse crops include dry lentils, beans, chickpeas, and peas (excluding soybeans). Growers from both the United States and Canada are in the process of identifying their top trade concerns, including such issues as differences in tolerances (or maximum residue limits) that have the potential of causing trade barriers, or the lack of a tolerance in either country. The governments are evaluating these priorities and diligently working together to delineate effective strategies for resolving the growers' most

critical trade concerns. The TWG has also launched a new project to develop a statistically-based method for establishing tolerances with the goal of further minimizing or eliminating differences in U.S. and Canadian tolerances for pesticides used on the same crops under the same use patterns.

Another important piece of the TWG's 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 Review program for simultaneously registering pesticides in two or more of the NAFTA countries. The joint review program has resulted in the simultaneous registration of 18 new pesticide products in the U.S. and Canada, with 12 additional products currently under review. The governments are also sharing resources and scientific expertise, or "work sharing," in reviewing data on several other pesticide products. In 2001, the U.S. and Canada worked together on a pilot NAFTA label for use on northern crops under the joint review process. The governments identified some label differences and were in the process of resolving them when the registrant decided to move ahead with separate U.S. and Canadian labels due to timing concerns. In another example, the governments developed a NAFTA label for a bio-fungicide. However, due to registrant concerns about future label amendments, the registrant opted to use the NAFTA label in Canada, but not the United States. More recently, the non-agricultural sector is actively pursuing a NAFTA label and the U.S. pulse crop growers have identified eight candidates for previously registered products that could benefit from the development of NAFTA labels. Of these eight, one product was jointly registered by Canada and the United States. The governments will be evaluating the feasibility of developing NAFTA labels for these in consultation with registrants who are interested in pursuing them. Through the NAFTA TWG forum, and in our domestic outreach efforts, we continue to encourage registrants to submit candidates for NAFTA labels in order to help break down potential trade barriers. Such harmonization efforts will facilitate the development of a NAFTA label as well.

Overall, the NAFTA pesticide working 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 working 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. The submission procedures and formats have also been harmonized, resulting in significant efficiencies for both the registrants and the government reviewers. Specifically, three major submissions have been made recently in electronic, dossier format to both Canada and the United States for joint review, which are likely to result in further time and cost savings in registering products and promote harmonization. As a result of work sharing and joint reviews of recent pesticide registration submissions, the harmonization of risk assessment procedures between the United States and Canada has advanced significantly as well. 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 Canadian farmers.

#### A Near-Term Solution

EPA stands ready to continue 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 were introduced in 2001, S.532 and H.R. 1084, and more recently in 2003, S. 1406 and H.R. 3319, which would amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to permit Canadian products that are substantially similar to U.S. registered products to be imported and registered in the U.S. The intent of this legislation is to help alleviate as quickly as possible the inequities U.S. farmers may be experiencing today as a result of pricing differences.

EPA's understanding of the most recent legislation is that in general, if passed, the legislation seeks to authorize registration of certain Canadian pesticides to allow such pesticides to be imported into the United States. Any person 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 food or feed 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 any information that is necessary to make the determinations required for registration. As drafted, the registrant of the Canadian pesticide could not seek compensation for data supporting the registration of such pesticide.

EPA understands that this legislation is intended to create a structure where 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 and implementation 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 scope that is limited to one country alone, may raise broader trade issues.

Another area of potential concern is that of implementation issues. For example, there are important questions regarding an individual registrant's ability to assume the legal, financial, reporting, and other requirements of FIFRA. Also, given the data compensation section of the current legislation, there is a concern that it seeks to insulate registrants from data compensation, potentially denying manufacturers their rights to be compensated for the use of their data to support registration. We must also ensure that intellectual property rights are protected. Also, implementation would require involvement of U.S. Customs and Border Protection for the registrant's importation of Canadian products. Furthermore, any legislation should not place



unreasonable resource burdens on EPA's pesticide registration program, or cause any unintended consequences on other priorities in regulating pesticides. Finally, impacts associated with the recently enacted Pesticide Registration Improvement Act (PRIA) on pesticide fees would also need to be considered. Again, EPA will work closely with your staff to help determine if these types of implementation concerns can be addressed.

### Conclusion

In conclusion, again, I would like to emphasize that EPA has worked very closely with congressional staff over the last several years, as well as with state officials, growers, industry, and others, to explore remedies that would help alleviate the concerns of U.S. farmers 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 working group in cooperation with stakeholders, including registrants, growers, 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 alleged pricing issues.

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 understands the interest in seeking an appropriate legislative solution to this problem. However, although the legislation as drafted does not directly compromise protection of human health or the

environment – EPA's principal criterion – there are numerous implementation issues and potential international trade concerns that EPA will continue to address, working closely with congressional staff and other relevant agencies.

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.