

Chairman Dole and members of the Subcommittee, I am Jim Gray, Pesticide Registration Coordinator for the North Dakota Department of Agriculture and I am here to testify in support of S.1406, the Pesticide Harmonization Act. I speak on behalf of the National Association of State Departments of Agriculture (NASDA), which represents the commissioners, secretaries, and directors of the state departments of agriculture in the fifty states and four territories. Our members are partners and co-regulators with the Environmental Protection Agency (EPA) as the lead state agencies responsible for administering, implementing, and enforcing federal pesticide laws and regulations. There are numerous pesticide related functions that states perform, and we support efforts to ensure that pesticide use does not cause unreasonable adverse effects to human health and the environment.

S.1406 deals with the issue of pesticide price harmonization with Canada, a pressing issue in northern border states with nationwide impact. By granting EPA the authority to issue registrations to those parties that wish to import certain Canadian pesticides, the bill de-segments the U.S. and Canadian pesticide markets, thereby eliminating significant pesticide price disparities.

Access barriers create pesticide price disparities

Barriers currently exist in federal statutes that prevent American growers from legally importing and using Canadian pesticides without the consent of the product registrant, even if the products are identical in composition to pesticides registered with the U.S. Environmental Protection Agency (EPA) for the desired use. As a result, product registrants have been able to use the U.S./Canada border as an artificial barrier to create two separate pesticide markets.

Similar to the situation with pharmaceuticals, these artificially-segmented pesticide markets can cause significant price disparities, forcing U.S. farmers to pay substantially higher pesticide prices than their Canadian counterparts.

I have included a copy of a 2001 Northern Plains Trade Research Center report by Richard Taylor and Won Koo that determined North Dakota farmers would save approximately \$24 million if they could purchase pesticides at Canadian prices (Attachment 1 - page 8, table 6). Furthermore, the authors concluded that net farm income for large, medium, and small farms would increase 3.8%, 4.6%, and 5.2%, respectively, if Canadian priced pesticides could be used in the United States.

In a 2003 report from Center for Agricultural Policy and Trade Studies tracking the prices of 35 common herbicides used in both the U.S. and Canada, it was concluded that the existing system of segmented pesticide markets cost North Dakota farmers \$17.8 million in 2000, \$15.2 million in 2001, and \$14.8 million in 2002 (Attachment 2). Furthermore, the authors concluded that markets must be artificially segmented if different prices are to be charged for pesticides, and the U.S./Canadian markets must be de-segmented to eliminate these price disparities.

This system of segmented pesticide markets and the resulting price disparities is simply unfair to U.S. farmers, especially since Canadian grain treated with lower-cost Canadian pesticides

travels south of the border to compete with domestic grain on the open market. We cannot continue to ask U.S. farmers to compete on such an uneven playing field.

Furthermore, the current system is a clear violation of Article 102 of the North American Free Trade Agreement (NAFTA) which states that the participating parties shall, "...eliminate barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the Parties." It is evident that existing federal statutes pertaining to pesticide labeling create a barrier to the free trade in and cross-border movement of pesticides.

This is a national problem

This not an issue confined to a handful of northern border states. NASDA policy identifies pesticide harmonization as a priority issue. In addition, I have included copies of "Joint Communiqué(s)" from the Tenth, Eleventh and Twelfth Meetings of the States/Provinces Agricultural Accord (Attachment 3). In the communiqué(s), senior agricultural officials from Canada and the United States agreed on the importance of allowing farmers to purchase pesticides from neighboring countries.

S.1406 would solve the problem

S.1406 amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to grant EPA the authority to issue registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products already registered for use in the United States. By eliminating access barriers, the bill would de-segment U.S. and Canadian pesticide markets, and allow U.S. farmers to pay the same pesticide prices as their Canadian counterparts.

The ability to issue registrations for Canadian pesticides without the consent of primary registrants is a critical component of this bill. State pesticide regulators and farmers have attempted repeatedly to work with product registrants to import Canadian pesticides for use in the U.S. For example, the North Dakota Department of Agriculture 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. This lack of support from the pesticide industry was not surprising. From their point of view, there is no logical reason to de-segment the U.S./Canadian pesticides markets, because doing so would directly reduce profitability. 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.

S.1406 Sustains high safety and environmental standards

A second major issue addressed in this bill deals with access to proprietary chemical composition data. To prevent unreasonable adverse effects to humans or the environment and to ensure a safe and high-quality food supply, 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 EPA to compare the

Confidential Statement of Formula (CSF) for 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.

The bill only allows access to Canadian pesticides that are identical or substantially similar to pesticides already registered in the U.S. for given uses. In addition, the bill would not result in a pesticide being used in a manner that has not already been approved by EPA. Because of this, I am confident that the mechanism created by S1406 does not increase the risks of adverse effects to human health or the environment.

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 envision that very few farmers will serve as registrants. Instead, the majority of registrants will most likely be chemical distributors who will use the authority in the legislation to access Canadian pesticides from Canadian wholesale markets. Relabeling 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 relabeling 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, free market for these products, and manufacturers will be forced to discontinue segmenting U.S. and Canadian pesticide markets.

Recommendations for minor changes to the bill draft

I would like to recommend two changes to improve the bill. These changes are suggested in an effort to focus efforts on those pesticide users that are most affected by disparate prices and to provide a long-term solution to the current system of segmented pesticide markets.

First, the issue with disparate pesticide prices between the U.S. and Canada is most prominent in the agricultural sector. To focus attention on the most pressing needs of the pesticide user community, I recommend that the scope of S.1406 be limited to agricultural pesticides.

Second, while S.1406 is a critical need to address pesticide price harmonization, it is not a long-term solution to the problem of segmented markets and disparate pesticide prices. Instead, the long-term solution to desegment pesticide markets is to label pesticides with joint labeling that meets the requirements of both the U.S. EPA and Canada's Pest Management Regulatory Agency (PMRA). Because relabeling would not need to occur prior to importation and use, use of joint labeling would negate the need for registrant consent to access Canadian pesticides. Instead, products labeled with joint labeling could cross the U.S./Canadian border freely based solely on market forces.

The EPA and PMRA have devoted significant time and resources to develop joint pesticide

labeling, and feedback from the Agencies indicates that regulatory barriers to creation of joint labeling have been largely resolved. However, use of joint labeling is currently a voluntary option for pesticide registrants. Because registrants continue to see an economic advantage to keep their markets segmented, use of joint pesticide labeling has been extremely limited. In fact, not a single agricultural pesticide is currently labeled with joint labeling. It is apparent that we will see negligible use of joint labeling unless registrants are compelled to use this option.

I suggest that language be added to S.1406 mandating the use of joint U.S./Canadian pesticide labeling in those situations where an identical or substantially similar pesticide is registered for use in both the U.S. and Canada. However, such a requirement for use of joint pesticide labeling should become effective only when a similar mandate exists in Canada. With this contingency, we can be assured that jointly-labeled pesticides will be available to customers in both countries.

Such language requiring joint pesticide labeling would be a logical compliment to the existing bill. While the existing S.1406 language provides a short-term solution to de-segment U.S./Canadian markets, mandatory use of joint pesticide labeling provides the ultimate long-term solution.

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. I urge you to pass S.1406 and look forward to working with the Committee