Madam Chairwoman and Members of the Subcommittee:

I am Jay Vroom, President and CEO of CropLife America (CLA), a trade association which represents the manufacturers, distributors and formulators of virtually all crop protection chemicals and biotechnology products used by U.S. farmers. I appreciate the opportunity to testify before you today. CLA and our member companies have been monitoring cross-border pesticide issues between the U.S. and Canada and have stood ready to assist farmers by providing the crop protection tools they need to be successful and prosperous. I am pleased to report that many of the conditions that caused pricing disparities in the past have diminished greatly, removing the need for S. 1406. If passed by Congress, this legislation will surely cause more problems through its unintended consequences than it seeks to solve.

Over the last six years that we have been monitoring pesticide prices in the U.S. and Canada, many things have changed. Farm operators' household income has grown steadily for the past three years: 2004 brings the second highest level of farm household income on record. Commodity prices are strong: Since 1998, canola prices are up three percent, barley is up 37 percent, and wheat is up 34 percent. The more balanced exchange rate between the U.S. and Canadian dollar has benefited cross-border trade by improving prices for farmers and bringing parity to their costs (figure 1).

While farm prices are currently generally high, the cost of production is down dramatically according to a recent USDA Annual Report on Cost of Production. The lower cost of production reflects a ten-year trend of the overall leveling out of our domestic market for crop protection chemicals. Between 1998 and 2001, the total U.S. sales for agriculture chemicals suffered a loss of $1,417,000,000 (figure 2). Correspondingly, the number of acres planted with genetically modified varieties of corn and cotton increased by 29 percent and 31 percent, respectively. I highlight these figures to illustrate the fact that the market for crop protection chemicals is mature; while other costs of production may fluctuate and even be on the rise proportionally, such as fuel or biotech, chemical costs have leveled off considerably. In fact, the May 28, 2004, edition of Doane's Agricultural Report indicates that the U.S. Department of Energy forecasts that "fuel costs will trim $1 billion from farm profits" in just one year. Out of all of the costs of production, pesticides account for a very slight portion of a farmer's overall expenditures (figure 3).

Despite this loss to our industry, our member companies have still invested in research and development to improve crop protection products. Since 1997, 149 new active pesticide ingredients and 2,489 new uses have been registered by U.S. EPA, providing greater variety and a more effective array of crop protection tools (figure 4, 5).

While S. 1406 purports to harmonize prices by amending Federal Insecticide Fungicide and Rodenticide Act (FIFRA) and granting new authorities to the Administrator of EPA, a more level playing field should be the goal and the end product of harmonizing pesticide regulations. Regulatory harmonization is within the current authority of EPA through their efforts with the NAFTA Technical Working Group. Since our last hearing on this issue in 2002, progress has been made in the joint review process with varying degrees of success. We are optimistic that our industry, EPA and our farmer customers are on the right track towards addressing the

concerns expressed by proponents of S. 1406.

The unintended consequences of S. 1406 lie in the ambiguities that are created in areas of substantial difference between U.S. and Canadian systems. These differences represent serious obstacles to accomplishing a harmonized process and thus, a more level playing field of product availability and cost: regulatory approval processes, labeling practices, and intellectual property laws. S. 1406 would also result in a host of unintended consequences such as NAFTA violations, user safety, security and minor use registration and state law impacts. Legislation that attempts to harmonize prices without acknowledging these underlying issues will only cause more problems for the farmers that it seeks to benefit.

First, I would like to review the data which was the cornerstone of the hearing in 2002, the USDA report on Pesticide Price Differentials Between Canada and the U.S. Reexamining this data in the context of current conditions reveals that while regulatory harmonization is still a worthy principle to strive towards, American farmers are no longer at the disadvantage that was argued six years ago. In fact, according to a 2003 study conducted by North Dakota State University, North Dakota farmers experience a net benefit by purchasing their products in the U.S. It simply is not worth jeopardizing our steady efforts towards regulatory harmonization to solve a perceived pricing problem that no longer exists, which would be the case if S. 1406 became law.

1999 USDA Study in a 2004 Context

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 during the period of 1996-1999, Canadian farmers actually spent far more on chemical inputs in general than farmers in the U.S. northern plains states. Selective use of the data has misrepresented the author's findings, and we feel it is important to look at the entire picture which illustrates that on the whole, U.S. farmers are better off under the current legislative and regulatory scenario.

Gerald Carlson, the NCSU researcher who coauthored the USDA study, has provided additional insights which shed light on those earlier findings within the current context (attachment 1). According to Carlson, the major economic issue to farmers is not pesticide price differences between the U.S. and Canada for particular pesticides, but rather the per acre cost of pest control. While it is possible to find pesticide products that have higher or lower prices per gallon or other physical measure adjusted for concentration in Canada relative to prices found in the U.S., this is not the correct comparison for examining economic benefit differences between U.S. and Canadian farmers. When examining benefits of a legislative change to farmers, the per acre pest control costs for a given crop is a more complete and better comparison.

In the 1999 U.S. and Canada Pricing Study, researchers found that farmers in two Canadian provinces were spending more per acre for pest control because they used different products and often had higher use rates per acre than the North Dakota/ Minnesota farmers. This was true even when some products with relatively high use rates were higher priced per unit in the

U.S. The use pattern of pesticides is dynamic because of product price changes, changes in availability of substitute products, patent changes, and changes in other factors such as crop prices, pest densities, and pest types. Comparisons of unit prices of a limited set of products without consideration of rates per acre and acre treatment patterns can seriously bias farmer cost comparisons. The direction of the bias will be to overestimate price penalties in the higher-price region.

Other conclusions from the USDA Report that need to be highlighted again are:

? Individual Northern U.S. growers may have higher overall costs of production than Canadian counterparts, but these differences 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 North Dakota. The marketplace factors given for price differentials include: differences in patent protection length; differences in market size and costs; differences in farmer demands; differences in availability of alternative products.
? North Dakota 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 North Dakota or Minnesota.
? There is a difference of U.S. $3 - 4 on a per treated acre basis, with North Dakota growers spending less then growers in Manitoba or Saskatchewan.
? Overall, cost-per-treated acre in North Dakota is significantly lower than in Canadian provinces.
? The percent difference that Manitoba growers spend above North Dakota 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)."

As a supplement to the USDA study, the North Dakota Department of Agriculture published a report in September 2003 that tracked the price differences among 35 different herbicides. This study showed that for many products, U.S. and Canadian prices reached greater parity, while for others, prices continued to diverge. However, the overall net benefit to North Dakota farmers is $1,125,100 (attachment 2).

Despite this apparent savings to North Dakota farmers, some caution must be exercised in relying on the Report's findings. The Report's tables comparing a selective basket of herbicides weighted by herbicide acres treated in 2000 in North Dakota have many shortcomings that bias the estimates of farmer benefits on specific products from a legislative change to facilitate the import of Canadian pesticides.

First, the Report assumes that the 2000 year herbicide treatment pattern in North Dakota and Canada are the same and that they do not change from year to year. The second assumption is that the herbicide treatment pattern in both acres treated by product and the per acre treatment

rates are the same in the U.S. and Canada. This was clearly shown to not be the case in the 1999 USDA Study. Third, it leaves out insecticides and fungicides and non-chemical methods that are often higher priced or sometimes not available in Canada. Similarly, it does not consider pest control costs of the other crops grown.

Another factor to consider when comparing prices in both the USDA and North Dakota Report is that the products that contribute the most to higher expenditures in North Dakota (when the 2000 use rates are assumed) are Roundup (glyphosate-based products), Puma and Liberty. However, U.S. prices of these products have been declining systematically in recent years. For example, independent information on Liberty shows sizeable reductions in U.S.-Canada unit price spreads for 2003 and 2004. These data show higher unit costs in Canada than in the U.S. for 2003 and 2004. It is widely reported that there was decline in price for Liberty by 30 percent in 2003. The reason for the decline of the price of glyphosate products in recent years is two-fold: imports of generic material from China have flooded the markets, increasing supply, and certain formulations went off of U.S. patent protection.

Additionally, unit price comparisons for products must take into account currency exchange rate changes. The U.S. dollar has declined in value relative to the Canadian dollar by approximately 15 percent between 2002 and 2004. This means that Canadian prices of pesticides in U.S. dollars are increasing by about 15 percent.

In addition, any potential pricing benefits of the proposed legislation would need to take into account the additional direct costs of registration, transport and other transaction costs of importing pesticides as envisioned under S. 1406, and these costs would have to be passed on to farmers. Additionally, some of the direct costs of new registrations, monitoring, and enforcement carried out by EPA and state agencies will result in higher public costs, impacting either federal taxpayers or becoming "unfunded Washington mandates" at the expense of state taxpayers.

Regulatory Process Differences Result in Differential Pricing

Regulatory approval process differences between Canada and the U.S. can affect product availability and cost and thereby help result in differential pricing differences in pesticide regulatory processes between the U.S. and its North American trading partners can have differential costs to industry, which affects pricing of pesticide products in respective markets. Although U.S., Canadian, and Mexican systems are moving towards more common practices, significant differences still persist and will for many years ahead.

Before granting registrations for pesticides, national regulatory authorities perform thorough assessments to ensure that unreasonable adverse effects to human health and the environment will not result from approved uses. The processes involved are generally similar between the U.S. and Canada, but actual data requirements vary, which can have a differential effect of registering a pesticide product in one country versus the other. For example, the U.S. may require submission of data on spray drift to support a particular use, while Canada would not. Conversely, Canada may review studies of the efficacy of the pesticide product, while the U.S. would not. These differences can contribute to the unbalanced costs of doing business in the

U.S. and Canada, and thus the need to charge different prices for the products.

Over the past decade, there has also been a significant increase in the amount and complexity of data needed to support registration of pesticides, which has placed extensive burdens on regulators and pesticide manufacturers. As a result, there is great interest among both groups to work toward international harmonization of registration of pesticides. To this end, the most noticeable efforts are occurring in the cooperative government organizations such as the NAFTA Technical Working Group on Pesticides (NAFTA TWG).

Harmonization of NAFTA countries' registration processes for pesticides is a priority for the crop protection industry. CropLife America, along with CropLife Canada and AMIFAC (Mexican Association of Crop Protection Products Companies) has formed an industry working group to work with the NAFTA TWG for achieving mutual goals in harmonization.

Over the past several years, the NAFTA TWG has made significant progress in harmonizing science-based test protocols and test guideline requirements, i.e., what studies need to be conducted and submitted to the EPA, Canada's Pest Management Regulatory Agency (PMRA), and the Mexican regulatory authority "Intersecretarial Comission for the Control of the Process and Use of Pesticides, Fertilizers, and Toxic Substances"(CICOPLAFEST).

However, significant differences in the regulatory approval processes between the national authorities still exist, including:

? registration review time for a new active ingredient or new use of a registered product,
? the ability of a registrant to amend a petition after submission,
? communication between the reviewers and applicants during the review process,
? dietary risk assessment procedures,
? procedures for establishing tolerances or maximum residue levels (MRLs) and the timing of establishing MRLs in relationship to obtaining the product registrations,
? requirements for disclosure of active ingredients,
? the content of the pesticide product labels, and
? the processes for amending pesticide product labels.

Until these differences are resolved, companies will continue to struggle with meeting different demands for each system and incurring differential costs in Canada and the U.S. that are ultimately reflected at the purchaser level.

Labeling Complications Under S. 1406
Labeling differences between Canadian and U.S. versions from the same or affiliated producers will create significant difficulties for EPA and S.1406 registrants in determining the terms of S. 1406 labels. S. 1406 includes a provision whereby the Administrator of EPA must approve a label which would then be affixed over the Canadian label.

However, differences between Canada and the United States such as culture, climate, soil, crops, pests, measurement systems, terminology and agricultural practices must be considered in determining an appropriate U.S. label for Canadian products. There are two practical issues that need to be resolved before a U.S.label can be affixed to product from Canada: what

appears on a product container itself and the label's legibility to the farmer or applicator regarding the products usage.

The label that appears on a container typically includes the product name, formulation type, net contents, hazard symbols, toxicological , disposal and precautionary statements and directions for use. However, there are a number of variables that determine different specifications on a particular product for Canada and the U.S. Formulation specifications of somewhat similar products may differ between the U.S. and Canada, because, for example of the use of different inert components, rendering some Canadian versions of products different enough from U. S. versions to require EPA to conduct time consuming assessments before the Canadian version could be responsibly registered by EPA. Regulations currently require net contents to be listed in both metric and English units, which could complicate the adaptation of the Canadian product label.

Differing criteria for setting hazard symbols in the three NAFTA countries will result in different pictograms on the same container, confusing applicators. This would be especially problematic between Canada and the U.S. because two labels, both in English, would carry different hazard symbols. Canadian labels must be in French as well as English. Different disposal statements would confuse applicators and could ultimately lead to improper disposal. All of these differences need to be resolved before a Canadian product could be registered and relabeled under S. 1406. (Figure 6, 7).

The next set of issues relates to the use aspects of the Canadian product label itself which must be revised to be understood by the U.S. grower.

Terminology for crop names and crop pests would have to be standardized and harmonized in the U.S. vernacular. Application rates would have to be adapted to the U.S. conditions and variations in different parts of the U.S. It would be extremely difficult to harmonize application methods for widely varying local conditions.

Furthermore, there are 16,115 registered pesticide products containing 1,015 active ingredients in the U.S., and 5,274 registered pesticide products containing 525 registered active ingredients in Canada. The universe of labels EPA could be required to review and approve under S. 1406 is immense. Congress would have to appropriate substantial economic resources to support EPA in its new responsibilities under S. 1406.

There are potential benefits to utilizing a single label for pesticides sold in the U.S. and Canada, such as facilitating trade and shipment of products, and the potential for efficiency gains in manufacturing, labeling, distribution and marketing. However, the obstacles are formidable and equal access to and pricing of products is not guaranteed under a common label. Focusing efforts on key prerequisite regulatory harmonization activities that are essential to both growers and registrants are of higher priority and should be addressed first, as they are at present.

Intellectual Property Differences in Canada and the United States May be One Cause of Differential Pricing

On its face, S. 1406 only seeks to address pesticide price harmonization. However, I hope it is becoming apparent that true harmonization is much more far reaching than simple price parity.

When we consider differential prices on both sides of our northern border, we must also consider differences in the regulatory approval process, labeling, and intellectual property laws. U.S. intellectual property law provides a vital safeguard for our industry's proprietary interests and investment in research and product development. Opening markets to the free flow of goods requires the assurance that industry is no less protected from intellectual property pirating or from less protective aspects of Canadian intellectual property law than under our current domestic system of laws.

S.1406 does not speak to which countries' intellectual property laws apply in the event of pesticide harmonization, nor does it result in harmonization of intellectual property laws surrounding pesticide products. Since S.1406 does not address these issues, a number of complex intellectual property legal questions will result from this legislation.

In recent years, steps have been taken to increase similarity of intellectual property systems among numerous countries, including the U.S. and Canada. While significant steps have been made to minimize the differences between the two countries' systems, the following are important distinctions between U.S. and Canadian copyright, patent and trademark laws which currently prevent meaningful harmonization.

In the area of copyright law, moral rights refer to the right of an author to prevent revision, alteration, or distortion of her work, regardless of who owns the work. The U.S. recognizes moral rights as limited to visual works, whereas in Canada this principle applies to all works. Both Canada and the U.S. are party to the Berne Convention for the Protection of Literary and Artistic Works, which established the recognition of copyrights between sovereign nations. However, the U.S. does not consider itself bound by the Article regarding moral rights while Canada does. The U.S. is not a party to the Rome Convention, another international copyright agreement which protects performers, manufacturers of phonograms and broadcast organizations, while Canada is. The U.S. recognizes fair use, which treats scholarship and research as exempt from copyright infringement. Canada's application of the fair use doctrine is known as fair dealing and is far stricter in its application than its U.S. counterpart.

Harmonization of copyright laws could disrupt the U.S. defense of fair use that allows considerable latitude for the flow of scholarship and research that development of our products depends on. Beyond our industry's interests, reforming copyright law has long-ranging implications for other American literary, artistic, dramatic, musical and intellectual works.

In the U.S., a patent protects an inventor's right to exclude others from making, using, selling or importing their invention. The American system of "first to invent" establishes priority by allowing the first inventor who has not suppressed, abandoned or concealed his invention to obtain a patent. Canada follows the "first to file" system, which awards priority to the first inventor that files a patent application. Almost every country other than the United States follows this system.

Novelty and obviousness are also distinguished between the two systems. Under the American patent system, novelty and obviousness are assessed as of the date of the invention while the critical date for assessing obviousness and novelty in Canada is either the filing date or the Paris Convention priority date. In the U.S., novelty may be questioned by showing that the

invention was in "public use or sale" more than one year before the filing date while in Canada, novelty may be attacked by showing that the invention was disclosed in such a manner that the subject matter became available to the public, anywhere in the world, prior to the application date. Obviousness is more vulnerable to question in the U.S. because there must be some suggestion or motivation to modify or combine the references to the invention in question, a reasonable expectation of success, and prior art reference or combined references must teach or suggest all of the claim limitations. The Canadian standard for obviousness is whether the subject matter of the patent would be obvious to a technician who has no scintilla of inventiveness or imagination, and is wholly devoid of intuition. This standard makes obviousness a more difficult element to attack under Canadian law.

In its 1992 Report to the Secretary of Commerce, The Advisory Commission on Patent Law Reform stated that it is likely that "harmonization" would force the U.S. to abandon the "first to invent" system and follow the widely accepted "first to file" system. The U.S. has been hesitant to change systems because it is widely believed that the "first to invent" system provides better protection to individual inventors. Again, our industry is only one of many involved in the processing, manufacturing and production that relies on constant improvement to ensure efficiencies and product development. The continued protection and reliability of patent law is vital to continued innovation.

The Paris Convention was the first major attempt to "harmonize" trademark laws on an international level. The U.S. and Canada have both agreed to be bound by the Paris Convention, which requires that well known trademarks in foreign countries be protected. However, interpretation of certain provisions differs between the two countries. The question of what constitutes a "well known trademark" has been the topic of much debate. In Canada, a foreign trademark is protected so long as the trademark is known over a substantial part of Canada, regardless of whether the trademark is actually used in the country. The U.S., on the other hand, requires that the trademark actually be used in the U.S. before it will be protected under U.S. law.

Despite these international attempts to harmonize trademark laws, there are many differences between the U.S. and Canadian systems that concern owners of trademarks. A trademark in the U.S. protects words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by other others. In Canada, a trademark is only used to identify wares or services. In the U.S., the registrant of the trademark does not gain a right to use the mark; they merely obtain the right to exclude others from using the mark. In Canada, the registrant of a trademark obtains an affirmative right to use the trademark as well as being permitted to exclude others from using the mark. Trademarks in the U.S. can be renewed forever, as long as they are being used in commerce, while registration of a trademark gives an individual an exclusive right to use the mark across Canada for 15 years, renewable every 15 years thereafter.

Trademarks are particularly important to name brand identification. Our industry, among others, has invested a great deal of time and resources into building recognizable and reputable brand-name identifiers for our products. Trademark protection is key to maintaining the integrity of branding, and any harmonization effort must include provisions which maintain

American standards.

These differences in intellectual property laws between Canada and the U.S. can have a significant effect on prices for the same or similar products in the two countries. For example, if no Canadian patent exists on the Canadian version of a U.S. product that is protected by a patent, the price of the Canadian product might well be lower than the U.S. version. The same might be true if products competitive to the Canadian version have gone off patent while the U.S. version of those competitive products is still protected by a U.S. patent. Allowing the Canadian version of the original product to be imported at the lower Canadian price would undermine the patent protection to which the U.S. version of the product is entitled to under U.S. law. This could be a serious unintended consequence on intellectual property protection and the incentive to research and development in the crop protection industry in the United States.

NAFTA Trade Concerns from S. 1406
Since S. 1406 is specifically focused on opening the U.S. market to Canadian pesticides, possible trade implications must be examined.

Based on three different analyses (attachments 3, 4, 5) on S. 1406 provided by NAFTA experts, S. 1406 appears to be inconsistent with U.S. commitments under various provisions of the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) Agreements.

First, S. 1406 appears to be inconsistent with the Objectives and Scope of NAFTA, which are delineated in Article 105: In order to achieve harmonization, the federal authorities are responsible for the international treaty obligations throughout its territory, including state and provincial governments. Under S. 1406, the Administrator of EPA can delegate registration authority to state officials, resulting in a chaotic patchwork of registration requirements rather than national and ultimately tripartite harmonization that is the goal of the Agreement. Steps towards harmonization must be made at the federal level, and all actions by states and territories must be consistent with these actions. S. 1406 focuses only on accomplishing harmonized prices in a piecemeal and uneven fashion, while possibly compromising international harmonization efforts.

Second, S. 1406 creates a special privilege for Canadian pesticides to avoid normal pesticide registration requirements under FIFRA that no other country is allowed. This discriminatory process violates provisions under NAFTA and the WTO. Under Article 904.3 of NAFTA, the U.S. is obligated to treat goods of other NAFTA countries with the same treatment it gives to like goods of any other country. Because S. 1406 specifically singles out Canadian pesticides for a regulatory short-cut, other North American countries will be accorded less favorable treatment by having to go through the existing FIFRA process. Additionally, under the WTO Technical Barriers to Trade (TBT) Agreement, the U.S. must ensure that all countries are treated equally under all U.S. technical regulations. The goods of one country must be treated no less favorably than those of another.

Third, S. 1406 appears to implicate Sanitary and Phytosanitary Measure provisions (SPS) under NAFTA and the WTO. NAFTA Article 712.2 provides that parties will ensure that SPS

measures will not arbitrarily or unjustifiably discriminate between goods of other NAFTA parties where similar conditions prevail. Similarly, The WTO SPS Agreement also requires that regulations do not discriminate between countries where like conditions prevail. Under S. 1406, Canadian pesticides are given special access to the U.S. market that is not afforded to any other country. This access is unrelated to any objective standard and results in discrimination among member countries. The benefit S. 1406 bestows upon Canada cannot be justified under U.S. WTO or NAFTA obligations.

Fourth, the special privilege afforded to Canada raises a problem with the most favored nation principle of GATT. Under Article 1, the same advantages, favors, privileges, or immunities must be granted to all member countries. Again, the short-cut through the U.S. pesticide registration process created by S. 1406 is only afforded to Canada; no other countries benefit.

Lastly, Delegation of authority to states also raises data confidentiality issues under NAFTA. Article 717 requires each signatory country to "accord confidential or proprietary information arising from, or supplied in connection with, the procedure conducted for a good of another Party." Such confidential or proprietary information shall be given "treatment no less favorable than for a good of the Party," and "in any event, treatment that protects the applicant's legitimate commercial interest, to the extent provided under the Party's law."

Since NAFTA is an agreement involving the federal governments of Canada, U.S. and Mexico, ensuring confidentiality as required by Article 717 is the responsibility of federal authorities. Delegating registration responsibilities to the states raises a host of confidentiality questions that would likely be inconsistent with Article 717.

S. 1406 exposes the U.S. to numerous violations under NAFTA and the WTO Agreements. These international trade quagmires created by S. 1406 are potentially the most troublesome of all of the many unintended consequences of S. 1406.

User Safety May be Compromised by S. 1406

An immediate concern to user safety is the confusion created by the uncertain and complicated labeling scheme proposed in S. 1406. Some Canadian labels are printed in French, hazard symbols are different, and measurements are listed in metric units versus English. Some Canadian labels have "help" or "emergency" 800 numbers printed on their labels that are accessible only from Canadian telephone exchanges. If a farmer in the U.S. were in an emergency situation, they could be precluded from vital information or assistance at a critical time. Furthermore, an applicator unfamiliar with Canadian labeling could misapply the product, jeopardizing human health, the environment and at the very least, the viability of the crop it is applied to. These risks also raise the issue of liability for the adaptation of the Canadian label to make it applicable to the U.S. and the adoption of proper stewardship practices by the S. 1406 registrant.

Another concern is for the licensing of applicators. In order to purchase a pesticide in the U.S. that has been classified as a restricted use product, the buyer must have an applicators license, whether they are a retailer or private individual. In applying for an applicator's license, the individual or retailer is educated in the proper and safe use and handling of the pesticide

product.

Although there are similar licensing programs in Ontario, Canada, there is not a comparable system in place in Manitoba, directly across our northern border from our plains states where most interest in S. 1406 has emanated. In Manitoba, there are three categories of toxicity under which pesticides are classified. For the two most toxic classes of chemicals, it is up to a Manitoba dealer's discretion to ensure that the purchaser of a product is aware of safe handling procedures.

Any individual or retail pesticide purchaser who has had their license revoked or who has not obtained an applicators license could exploit this loophole, intentionally or unintentionally, causing damage to their crops, or injuring themselves or unsuspecting farm workers in the process.

We all agree that applicator education and safety is necessary to the safe and effective use of our products. EPA has worked hard to implement this program; it is important to recognize that compromising applicator safety is one of many potential unintended negative consequences of S. 1406.

Security of Imports May be Undermined by S.1406

Many of our member companies participate in C-TPAT (Customs-Trade Partnership Against Terrorism), a joint government-business initiative to build cooperative relationships that strengthen the overall supply chain and border security. Through this voluntary initiative, the U.S. Customs Service asks business to ensure the integrity of their security practices and communicate their security guidelines to business partners within the supply chain.

In order to participate, businesses must conduct a comprehensive self-assessment of supply chain security which encompasses procedural, physical, personnel, and conveyance security measures; education and training; access controls and manifest procedures. Aside from the benefits inherent to national security and a safer supply chain for the protection of employees, suppliers and customers, Customs officials are better able to target their inspection efforts and ensure the orderly processing and movement of crop protection chemicals across the border.

S. 1406 jeopardizes these efforts by allowing individuals to cross borders while carrying quantities of chemicals with uncertain labels. Our companies work closely with Customs to ensure the safe movement of chemicals in international commerce. Customs has an increasingly difficult job scrutinizing every article that passes through U.S. borders. While the C-TPAT partnerships serve to facilitate Customs' work, S. 1406 not only undermines those efforts but will add to their responsibilities by requiring Customs officials to sort through American labels, Canadian labels, and the third label proposed by S. 1406 as well as identifying the contents of the containers, which could be uncertain as well.

Minor Use Registration Impacts from S. 1406

Forced price harmonization under S. 1406 could lead to loss of some pesticide registrations for minor crops. For example, a Canadian version of a pesticide could be registered for use on broad-acre commodity crops in Canada, but due to different soil, climate or pest conditions is only registered for use on minor crops in the U.S., with another formulation by the same

producer registered for commodity crops. Under S. 1406, the fact that the producer has a similar registered pesticide in the U.S. for commodity crops, allows a third party to apply for registration for the pesticide sold in Canada, and bring it in to the U.S. for use on a major commodity crop. If the Canadian formulation is not intended for use on that particular crop under U.S.-specific conditions, the possibility of damage to that crop is significant. The registrant might choose to discontinue the registrations for the minor crops that represent small markets, rather than risk the increased liability for injury to a major crop on which the product was never intended to be applied. Minor crop commodity groups have cause for concern regarding this legislation.

State Law Implications

All state governments have various forms of state sunshine laws that require public disclosure of data held by public agencies. Under S. 1406, any state agency can be delegated the authority to process registrations and/or compare product formulations of Canadian products. If sued under their respective State sunshine laws, those state agencies could be required to disclose those confidential statements of formula, as well as other sensitive information gathered in the course of their registration/comparison activities. Anyone can sue a state agency for such information. In this situation, competitor companies could easily access private commercial information that is the product of a registrant's investment of more than $100 million in research and development and more than a decade of work. Additionally, disclosing such confidential information would again raise federal and international intellectual property law issues. This is one of the reasons most state governments do not conduct this type of data review, particularly relating to chemical products.

Most Northern U.S. border states do not have adequate statutory protections against state agencies having to disclose confidential business information; state legislation would be necessary to fully implement these provisions of S.1406. In order to be in compliance with federal and international intellectual property laws, state laws would also need to be amended to prohibit formulaic disclosures. State legislatures along the Northern border would have to pass legislation creating exemptions for state agencies from sunshine law-related disclosures for patented formulas. Opening up pesticide laws in states such as Washington, Minnesota or any New England state (none of which have these protections for statements of formulation), could be very harmful for growers, as well as industry. These are states where anti-pesticide activism has been growing and attempts to curtail or ban pesticide use is highly prevalent. Revising those state's pesticide laws, in whole or in part, will raise the opportunity to introduce onerous and ill-conceived bans or restrictions on pesticide use that could impact crop protection options currently available to growers in those states. Rather than helping growers in those parts of the country gain better access to pesticides, a result from this scenario could ultimately be wholesale losses of tools important to U.S. agriculture.

Confusing the U.S.-Canada Pesticide Issue with the Prescription Drug Issue

According to recent news reports, Sen. Dorgan has stated that his bill is aimed at reducing pesticide prices for U.S. farmers, similar to efforts to permit drug reimportation from Canada where prescription drug costs are lower. The only similarity between pesticides and pharmaceutical drugs in this context are the two countries in question, the U.S. and Canada.

Beyond that, it is a mistake to claim parallels.

Pesticide marketing structures in the U.S. and Canada are quite similar. In both the U.S. and Canada, pesticides are sold by manufacturers mainly through a network of wholesale and retail business partners. Also, many of the products in question are recommended and applied by professional applicators at the retail dealer level in both countries.

In contrast, pharmaceutical drugs have vastly different marketing and distribution systems in the U.S. and Canada. In the U.S., pharmaceuticals are sold via commercial drug stores and mail-order drug stores as retail price-establishments and service providers. In Canada, the federal government is the sole purchaser for distribution throughout the country, giving the government a great deal more negotiating clout when it comes to pricing than the individual purchasers for retail distribution in the U.S.

Lastly, the physical characteristics of pesticides and pharmaceuticals invalidate the comparison between pharmaceutical drugs and pesticides. Most quantities of farm pesticides are delivered in truck loads while pharmaceutical products are small enough to be mailed to a foreign purchaser. Further, pesticides must be scientifically developed and regulated, taking into account vastly different weather and natural environment conditions between the U.S. and Canada. Such differences are not a factor for pharmaceutical products.

Comparison between pharmaceutical drug sales and pesticide sales is inappropriate and misleading. These two product categories are vastly different and their respective issues should not be confused for the sake of superficial and convenient comparison.

Additional Committees of Jurisdiction Must Consider the Potential Impacts of S. 1406
Because this legislation has far reaching potential impacts, other committees may be important to a thorough examination of S. 1406. As this bill inappropriately circumvents and undermines U.S. intellectual property law via pesticide regulations, the Judiciary Committee may have jurisdiction. The Foreign Relations Committee has jurisdiction over international law as it relates to foreign policy, measures to foster commerce with foreign nations and relations of the U.S. with foreign nations. All of these issues are raised by S. 1406, since it seeks to regulate trade between the U.S. and Canada. Finally, S. 1406 impacts customs practices, NAFTA and the transportation of dutiable goods, raising the possibility that the Finance Committee may also have an interest in this bill.

Conclusion
The changes proposed to FIFRA under S.1406 will not do anything to hasten harmonization efforts under NAFTA, which is the proper forum to achieve international regulatory and thus pricing, harmonization. Harmonization must be aggressively pursued at an international level, and cannot be properly effected through an individual state or pesticide product basis. S. 1406 jeopardizes the consistency of state registration programs, the sovereignty of U.S. intellectual property laws, our domestic regulatory approval process and labeling practices, and raises NAFTA concerns, and user safety issues. S. 1406 should not be advanced further because it raises significant and complicated unintended consequences in an attempt to solve a problem that does not exist.