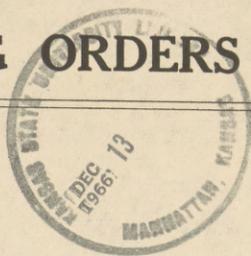


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HEARING BEFORE THE SUBCOMMITTEE ON DOMESTIC MARKETING AND CONSUMER RELATIONS OF THE COMMITTEE ON AGRICULTURE HOUSE OF REPRESENTATIVES EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

H.R. 15959

OCTOBER 12, 1966

Serial AAA

Printed for the use of the Committee on Agriculture



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CHERRY MARKETING ORDERS

WEDNESDAY, OCTOBER 12, 1966

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC MARKETING AND
CONSUMER RELATIONS OF THE COMMITTEE ON AGRICULTURE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 1301, Longworth House Office Building, Washington, D.C., Hon. Harlan Hagen of California (presiding).

Present: Representatives Hagen of California, Greigg, Teague of California, Mrs. May, and Burton.

Also present: Representative Joseph P. Vigorito; Jane Wojcik, staff; Hyde H. Murray, assistant clerk, and Harker Stanton, counsel.

Mr. HAGEN (presiding). The meeting will come to order.

This meeting was called for the purpose of holding a hearing and getting testimony on H.R. 15959, introduced June 27, 1966, by Mr. Vigorito, a member of the House Agriculture Committee.

As I understand it, the import of this bill would amend the Agricultural Adjustment Act of 1937, as amended, to eliminate with respect to marketing orders for processing or manufacturing purposes the requirement that the processors participate in a referendum.

Is that correct, Mr. Vigorito?

Mr. VIGORITO. Yes, Mr. Chairman.

Mr. HAGEN. Do you want to appear as the first witness?

Mr. VIGORITO. Yes; however, it would not matter if the Department of Agriculture witness would rather appear first. That is all right with me.

Mr. HAGEN. We will recess momentarily.

(Short recess.)

Mr. HAGEN. We are back in session now, after a brief recess.

I would like to ask the clerk of the committee, have all the members of this subcommittee been notified?

Miss WOJCIK. Yes, sir. I think there are three that are out of town.

Mr. HAGEN. Will there be any others present?

Miss WOJCIK. That, I do not know.

Mr. HAGEN. Our colleague, Mr. Vigorito, is the author of this bill, H.R. 15959, and we will hear Mr. Vigorito ahead of the other witnesses. However, beforehand, we will place H.R. 15959 in the record.

(H.R. 15959 follows:)

[H. R. 15959, 89th Cong., 2d sess.]

A BILL To amend the Agricultural Adjustment Act as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, so as to eliminate certain requirements with respect to effectuating marketing orders for cherries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the second sentence of section 8c(2) of the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, is amended by striking out "cherries, apples, or "cherries, apples, or cranberries" and inserting in lieu thereof "apples or cranberries".

Mr. HAGEN. You may proceed, Mr. Vigorito.

**STATEMENT OF HON. JOSEPH P. VIGORITO, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF PENNSYLVANIA**

Mr. VIGORITO. Mr. Chairman, I greatly appreciate the opportunity you have offered me today to testify on behalf of my bill, H. R. 15959, a bill which would allow cherry growers to vote on whether or not they desire to come under a Federal marketing order for cherries.

Mr. HAGEN. May I interrupt?

Mr. VIGORITO. Yes.

Mr. HAGEN. They already have that authority, do they not? They already have that authority, do they not, under the present law?

Mr. VIGORITO. They—what?

Mr. HAGEN. They already have that authority under the present law, do they not?

Mr. VIGORITO. They have, except that the processors also have the right to vote.

Mr. HAGEN. However, with respect to the marketing orders on fresh cherries, the processors do not participate in the referendum.

Mr. VIGORITO. I am not sure I understand your question.

Mr. HAGEN. Please proceed.

Mr. VIGORITO. A similar measure, S. 3420, cosponsored by Senator Philip Hart of Michigan and Senator William Proxmire of Wisconsin, has been introduced in the Senate. Just yesterday the Senate Committee on Agriculture and Forestry held hearings on this legislation following the receipt of an extremely favorable report from the Secretary of Agriculture, Mr. Freeman.

At the end of my statement, Mr. Chairman, I wish to put into the record a letter from the Secretary of Agriculture, Mr. Orville Freeman, in reply to a request from the Senate Committee on Agriculture and Forestry for a report on S. 3420.

Mr. HAGEN. If there is no objection—and I hear none—that letter from the Secretary of Agriculture will be made a part of the record at the conclusion of your statement.

Is that favorable?

Mr. VIGORITO. Yes, sir, it is favorable.

Mr. HAGEN. Thank you. Please proceed.

Mr. VIGORITO. It is highly favorable.

As it stands now, growers are unable to decide their own future because the Agricultural Marketing Agreement Act of 1937, as amended, stipulates that processors of cherries must be included in any vote for a marketing order. Most cherry growers will have little

or no income this year because of having been frozen out this spring. In 1964 and 1965 they had no income because of very large crops.

The processors have shown quite clearly that they will not vote for a marketing order. On the other hand, a recent survey by Michigan State University indicates that growers are in favor of a marketing order. In any case, I believe we should give the growers a fair chance to vote one way or the other on a matter which will have a great impact on their economic future.

I wish to point out one very cogent paragraph of Secretary Freeman's report on S. 3420 which I have received permission to include in the record following my statement. This paragraph reads:

"We" (the Department of Agriculture) do not believe there is any cogent reason for providing cherry processors with authority to decide whether or not a marketing order may be established for cherries for canning or freezing. The act has for its purpose the establishment of the economic status of producers. Thus, it seems that the producers should be the ones to determine whether a marketing order should be made effective * * *.

That section of Pennsylvania bordering along Lake Erie is blessed by a combination of suitable soils and excellent weather which has enabled the growth of a substantial cherry-growing industry.

I would like to say, Mr. Chairman, that this bill, and the companion measure in the Senate, have the complete endorsement of the National Council of Farmer Cooperatives and the Cherry Producers Marketing Cooperative which represents cherry producers from Pennsylvania, Michigan, Wisconsin, and New York, the major cherry producing States of the country.

I believe that we have here today gentlemen representing these organizations and I know that they would be happy to present to the committee the viewpoint of cherry growers on this bill.

Thank you, Mr. Chairman.

(The Department of Agriculture report on S. 3420, signed by Orville L. Freeman, Secretary, dated September 23, 1966, follows:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., September 23, 1966.

HON. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate.

DEAR MR. CHAIRMAN: This is in reply to your request of May 27, 1966, for a report on S. 3420, a bill to amend the Agricultural Marketing Agreement Act of 1937, as amended, so as to permit the issuance of marketing orders for cherries for canning or freezing without the presently required approval of the processors of cherries.

This Department favors enactment of S. 3420.

Marketing orders may be made effective only after the requirements of the act as to producer approval have been met. Also, for most commodities for which an order may be issued, provision is made in the act for the issuance of a marketing order without the approval of the handlers if the Secretary of Agriculture determines that (1) the failure of the handlers to approve the proposed marketing agreement and order program tends to prevent the declared policy of the act from being carried out, and (2) the issuance of the order is the only practical means of advancing the interests of the producers. In the case of cherries for canning or freezing, however, a marketing order may not be issued unless it is approved by the processors of at least 50 percent of the volume of cherries canned or frozen during the selected representative period.

We do not believe there is any cogent reason for providing cherry processors with authority to decide whether or not a marketing order may be established for cherries for canning or freezing. The act has for its purpose the establishment of more orderly marketing conditions and the improvement of the economic status of producers. Thus, it seems that the producers should be the ones to determine

whether a marketing order should be made effective, providing the interests of all parties are protected. The procedures set forth in the act for the promulgation of a marketing order are designed for this purpose.

The promulgation procedure requires that a public hearing be held on the proposed program, after due notice to interested parties. At the hearing, all parties are given an opportunity to state their views, offer modifications of the proposed order, and submit facts in support of their position. Any order that is finally submitted to the industry for approval must be based on the evidence presented at the hearing. Before any cherry marketing order could be issued it must have been approved by at least two-thirds of the cherry growers, by number or volume, voting in a referendum.

All marketing orders for fruits and vegetables provide for an administrative committee to make recommendations with respect to regulatory activities and to administer the program locally. Usually the administrative committee consists of both growers and handlers, or if of growers only, an advisory committee of handlers generally is provided for. The composition of the committee or committees is considered at the hearing and any interested party may present evidence thereon the same as on any other provision.

We believe that the procedures for the promulgation and approval of a marketing order are such that the interests of all affected parties are protected.

New orders resulting from the enactment of the proposed legislation would cost about \$25,000 each.

The Bureau of the Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of this report.

Sincerely yours,

ORVILLE L. FREEMAN.

Mr. HAGEN. Any questions? There are no questions.

We again thank you.

Mr. VIGORITO. Thank you.

Mr. HAGEN. I may say that the National Canners Association has asked to be placed at the end of the witness list.

The next witness is Mr. Paul A. Nicholson, Deputy Director of the Fruit and Vegetable Division, Consumer and Marketing Service of the U.S. Department of Agriculture, who is accompanied by Mr. J. Charles Krause, who is Director, Marketing Division, Office of General Counsel, U.S. Department of Agriculture.

Do you have a prepared statement?

Mr. NICHOLSON. Yes, sir; I do.

Mr. HAGEN. Before you proceed to read your statement, without objection—and I hear none—your statement will be made a part of the record at this point.

PREPARED STATEMENT BY PAUL A. NICHOLSON, DEPUTY DIRECTOR, FRUIT AND VEGETABLE DIVISION, CONSUMER AND MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

H.R. 15959 is a bill to amend the Agricultural Marketing Agreement Act of 1937, as amended, so as to permit the issuance of marketing orders for cherries for canning or freezing without the presently required approval of the processors of cherries.

The Department recommends that H.R. 15959 be passed.

The Agricultural Marketing Agreement Act of 1937 authorizes marketing orders for the commodities specified in Section 608(c)(2) of the Act. The purpose of a marketing order is to assist agricultural producers in the orderly marketing of their crop. The Act authorizes varying types of regulations in order to improve returns to producers.

Marketing orders may be made effective only after the requirements of the Act as to producer approval have been met. For most commodities provision is made in the Act for the issuance of a marketing order without the approval of the handlers if the Secretary of Agriculture determines that (1) the failure of the handlers to approve the proposed marketing agreement and order program tends to prevent the declared policy of the Act from being carried out and (2) the issuance of the order is the only practical means of advancing the interest of the producers.

In the case of cherries for canning or freezing, however, a marketing order may not be issued unless it is approved by the processors of at least 50 percent of the volume of cherries canned or frozen during the selected representative period.

We are not aware of any compelling reason for providing cherry processors with authority to decide whether or not the marketing order may be established for cherries for canning or freezing. Marketing orders for cherries would regulate only the raw cherries for canning and freezing and would not regulate the finished canned and frozen products. Thus, it seems that the producers should determine whether a marketing order should be made effective.

The procedure set forth in the Act for the promulgation of a marketing order provides for the consideration of the views of all segments of the industry. This procedure requires that a public hearing be held on the proposed program, after due notice to interested parties. At the hearing, all parties are given an opportunity to state their views, offer modifications of the proposed order, and submit facts in support of their position. Any order that is finally submitted to the industry for approval must be based on the evidence presented at the hearing. If H.R. 15959 were enacted, before any cherry marketing order could be issued, it must be approved by at least two-thirds of the cherry growers, by number or volume, voting in a referendum.

All marketing orders for fruits and vegetables provide for an administrative committee to make recommendations with respect to regulatory activities and to administer the program locally. Usually the administrative committee consists of both growers and handlers, or if of growers only, an advisory committee of handlers generally is provided. The composition of the committee or committees is considered at the hearing and any interested party may present evidence thereon the same as on any other provision.

We believe that the procedures for the promulgation and approval of a marketing order are such that the interests of all affected parties are given consideration.

New orders resulting from the enactment of the proposed legislation would cost about \$25,000 each.

Mr. HAGEN. I would like to ask you a question now to straighten out something in my own mind.

Mr. NICHOLSON. Yes, sir.

STATEMENT OF PAUL A. NICHOLSON, DEPUTY DIRECTOR, FRUIT AND VEGETABLE DIVISION, CONSUMER AND MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY J. CHARLES KRAUSE, DIRECTOR, MARKETING DIVISION, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF AGRICULTURE

Mr. HAGEN. As I understand it, what this bill seeks to do is to change the marketing order law on cherries that are designed for processing; is that correct—change the voting pattern requirements on cherries for processing, and does it also relate to cherries designed for fresh sale?

Mr. NICHOLSON. It does not relate to cherries designed for fresh sale; it relates only to cherries designed for canning and freezing, and it would change, as you say, the voting pattern by providing that it would not be necessary for the processors of cherries for canning and freezing outlets to vote on a proposed marketing order for cherries.

Mr. HAGEN. Thank you very much.

You may proceed in any way that you want.

Mr. NICHOLSON. You have already made my statement a part of the record, so I will not go over that. I think that copies are available, in this room, for every member of the subcommittee.

I would like to add one thing: I think there is a typographical error in the bill before the subcommittee. In line 6 of the bill, the fifth, sixth, and seventh words should be deleted from the bill. It is simply a needless repetition there.

Mr. HAGEN. That is on line—what?

Mr. NICHOLSON. Line 6, and it is to delete the fifth, sixth, and seventh words in the line there and the punctuation relating to it.

Mr. HAGEN. To delete "cherries, apples, or"—that goes out?

Mr. NICHOLSON. Exactly right.

Mr. HAGEN. You say that is surplusage?

Mr. NICHOLSON. That is a typographical error.

Mr. HAGEN. I assume that your statement is in support of this bill; is that correct?

Mr. NICHOLSON. Yes, it is, sir.

Mr. HAGEN. And the reasons for the support are stated therein?

Mr. NICHOLSON. That is right. We feel that there is no compelling reason that cherry processors should vote on a marketing order for canning and freezing cherries, inasmuch as in most other cases under the Marketing Agreement Act, it is not required that handlers vote on marketing orders in most instances.

Mr. HAGEN. Can you cite any specific examples where you are dealing with a farm commodity, eligible for a marketing order, that is going into processing which is covered by the Marketing Agreement Act where the processors are not allowed to vote?

Mr. NICHOLSON. Well, these are the exceptions under the act. There are only about six commodities, as I recall, in the case of canning and freezing commodities that can be covered by marketing orders under the act.

Mr. HAGEN. Will you name them?

Mr. NICHOLSON. They are asparagus, olives, cherries, apples grown in certain States, cranberries, and grapefruit. It is provided now in the case of four of these that processors will vote on the order.

Mr. HAGEN. Which four are those?

Mr. NICHOLSON. Those are cherries, the apples grown in certain States, grapefruit, and cranberries.

Mr. HAGEN. Which two—you listed six—are not?

Mr. NICHOLSON. The asparagus and olives.

Mr. HAGEN. So that Mr. Vigorito's bill is intending to put cherries for canning and freezing in the same position as olives for canning and asparagus for canning?

Mr. NICHOLSON. Insofar as voting by the canners and the freezers is concerned; yes, sir.

Actually, in the case of olives and asparagus, the act permits coverage of the finished product, the canned and frozen product. In the case of the cherries, the act only permits the coverage under a marketing order of the raw product for canning and freezing, and not the finished product. So that there is a difference.

Mr. HAGEN. One more question: As I understand it, a referendum was held with respect to cherries destined for processing, and it failed because of the vote of the canners; is that correct?

Mr. NICHOLSON. Well, a referendum was held on a proposed order in May of 1965, and this failed to carry by the vote of the processors, when 26 percent of the processors voted for the proposed order with over 50 percent being required. However, the referendum also failed to carry in the case of the vote of the growers, too.

Mr. HAGEN. Do you have a separate vote for the growers and the processors?

Mr. NICHOLSON. Only 26 percent of the processors voted for it, and in the case of the growers—

Mr. HAGEN. What kind of majority do you have to have?

Is there any requirement of volume involved, or what is the processor referendum?

Mr. NICHOLSON. It has to be at least 50 percent by volume of those voting.

Mr. HAGEN. How about the numbers of those voting?

Mr. NICHOLSON. In this case it is by volume.

Mr. HAGEN. Purely by volume?

Mr. NICHOLSON. Yes; it is by volume of those voting in the case of the processors, and in the case of the growers the act requires a 66% percent of favorable vote by those voting by number or by volume.

Mr. HAGEN. Thank you, very much.

Are there any questions?

Mr. TEAGUE of California. In this referendum that was held, what was the percentage of the growers; was that by volume or by numbers of those who favored it?

Mr. NICHOLSON. It was about 57 percent by number and about 58 percent by volume—about that—which failed to carry by the two-thirds necessary vote.

Mr. TEAGUE of California. Thank you.

Mrs. MAY. Mr. Nicholson, what has been the cherry market by and large—I do not know that I have the exact figures here today; that is, the price of the cherries in the various areas over the past 5 years?

Mr. NICHOLSON. Of course, that is a good question. We have been talking here, primarily, about the red tart cherry industry and, in addition to those, we have the sweet cherry industry which, of course, are grown in your State, Mrs. May.

In the case of the tart cherry industry, the production has been increasing over the years. It has been going up quite rapidly. In many years the production has exceeded the demand for the cherry crop, and in some of these years the price for the large crop of cherries has been in the neighborhood of 5 cents per pound. This is a very low price for cherries. Parity is close to 10 cents a pound.

In the case of the sweet cherries, they have fared somewhat better over the years.

Mrs. MAY. They still process some of those sweet cherries, do they not? And if this marketing order would cover sweet cherries, they would be covered, would they not?

Mr. NICHOLSON. This would cover sweet cherries; however, the big percentage of sweet cherries do not go into canning and freezing. Only probably about 15 percent go into canning and freezing, and about in the neighborhood of 40 percent go into the brining part which is not visualized under this bill here.

Mrs. MAY. Cherries for brining are not covered under this?

Mr. NICHOLSON. Well, cherries for brining are already covered under the act. Processors do not vote on whether or not an order would be issued for cherries for brining.

Mrs. MAY. Back to the statement you made that the production of tart cherries, in recent years, exceeded the domestic demand. What factors have entered into that, in your viewpoint, Mr. Nicholson? Is it just a case of more being produced from the trees, or are more people going into the production of tart cherries, or has the de-

mand been unfavorable, because there has not been the demand for the use of the product?

Mr. NICHOLSON. Well, there have been more ups and downs in the cherry production. I do not mean to imply that all these years we have had these 5 cent prices. The fact is that in the past year we had a freeze in the cherry areas in the spring and prices were quite high. That is, much higher than 5 cents. I do not know the exact price this past year; Mr. Freeman and some of these other industry people can tell you when they testify. Of course, this is for a much reduced production. I think that the demand for cherries has held up well; that is, over the years, but the production has been at a greater rate than the demand. However, cherries, as you know, are very susceptible to weather, and any year that the cherry crop is what you might call in the neighborhood of a 100-percent crop—in a nearby year—we will probably have too many tart cherries. I think it is safe to say that we would have too many. But if we have a spring freeze, the crop is much reduced, and we will not have too many.

Mrs. MAY. Is the price reflected in the year that you have a big crop or when you have a small crop?

Mr. NICHOLSON. It goes up when you have a small crop. In the hands of the freezers, oftentimes, there has been quite a big supply from the big year, and this accounts for the price not going up as much, probably, as it otherwise would.

Mrs. MAY. Where does the demand mostly come from for this type of legislation?

Mr. NICHOLSON. For this type of legislation?

Mrs. MAY. Yes.

Mr. NICHOLSON. It is from the cherry growers.

Mrs. MAY. I might say that, by way of explanation, in my own State I have talked to the cherry growers, and they were surprised that the legislation was even pending. We do have a regional cherry organization. I wondered if this came from other parts of the country more than from our part of the country?

Mr. NICHOLSON. It comes mostly from the tart cherry people in the Eastern and Midwestern States. I do not think there is much interest—at least, I have not heard of much interest—in your part of the country. Of course, we do have a Federal marketing order in the State of Washington on fresh sweet cherries, as you know.

Mrs. MAY. Yes.

That is all, Mr. Chairman. Thank you.

Mr. HAGEN. Mr. Nicholson, pursuing some of the questions that Mrs. May asked, for the purpose of clarifying my own mind and perhaps that of others, from what you said, as I understand, the present provisions of the law relate to all types of cherries? Is that correct? Whether they are sour or sweet or wherever they are grown?

Mr. NICHOLSON. That is right.

Mr. HAGEN. It is a blanket coverage?

Mr. NICHOLSON. That is right. The term "cherries" covers all cherries; yes, sir.

Mr. HAGEN. And the change in the law would, likewise, affect all cherries wherever grown and of what character?

Mr. NICHOLSON. That is right. I do think, however, that probably the sweet cherry people are less interested in the change, because a rather small percentage of sweet cherries are canned or frozen.

Mr. HAGEN. My final question. If I understand you correctly, there was a referendum approved by the Department of Agriculture and it was rejected by the vote. What States and what types of cherries were proposed to be covered by that proposal?

Mr. NICHOLSON. This proposal on which the referendum was held in 1965 covered only tart cherries, and it covered eight States. The States were: Wisconsin, Michigan, New York, Pennsylvania, Ohio, West Virginia, Virginia, and Maryland.

Mr. HAGEN. As I understand it further, the approval was rejected by the processors voting separately and by the growers voting separately; is that correct?

Mr. NICHOLSON. That is correct. The processors' rejection, you might say, was very decisive, in that only 26 percent favorably voted on it. The grower rejection was less decisive, in that it was 57 or 58 percent.

Mr. HAGEN. As you recall, by States, which growers in which States voted approval, and in which States did they vote nonapproval?

Mr. NICHOLSON. I do not recall that, Mr. Chairman. Our rules provide a secret ballot, and we are unable to say how particular people voted.

Mr. HAGEN. I am interested in the geographic areas, like in the cotton referendum it is announced that California did not carry it and Alabama did. In which instances did States carry it and States did not? Were there any States that carried it?

Mr. NICHOLSON. I think some States did, but I really do not recall.

Mr. HAGEN. Will you supply that information for the record?

Mr. NICHOLSON. If we can do it, I will, sir. It is very confidential.

Mr. HAGEN. I do not want to know how the individuals voted. I mean, what percentage of each State was for it. That is the information I am seeking.

Mr. NICHOLSON. I don't think we published that.

Mr. HAGEN. If you can secure that, and if there is no objection, and hearing none, you will be authorized to supply this for the record.

Mr. NICHOLSON. If we can furnish it, we will do so.

(The information follows:)

DEPARTMENT OF AGRICULTURE,
Washington, D.C., October 26, 1966.

HON. HAROLD D. COOLEY,
Chairman, Committee on Agriculture,
House of Representatives.

DEAR MR. CHAIRMAN: We were asked to supplement the record of the hearing of October 12, 1966, held on H.R. 15959 by the Subcommittee on Domestic Marketing and Consumer Relations, with a breakdown by State of the results of the May 1965 grower referendum held on a proposed marketing order for red tart cherries grown in the area comprised of the States of Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland.

Consistent with requirements of the Agricultural Marketing Agreement Act of 1937, as amended, this area was determined to be the smallest regional production area practicable to be covered under the proposed order. In keeping with this determination, the results of the referendum were initially analyzed and announced on the basis of the entire region since the requisite majority of all growers voting within such area must favor issuance of the order before it can be issued.

To provide the committee with the information it requested, we have analyzed the results of the voting by States. The results are as follows:

| State | Percent of growers voting | |
|--|---------------------------|------|
| | Yes | No |
| Michigan..... | 58.0 | 42.0 |
| New York..... | 38.5 | 61.5 |
| Pennsylvania..... | 77.9 | 22.1 |
| Wisconsin..... | 65. | 34.2 |
| Ohio..... | 80.0 | 20.0 |
| Virginia, West Virginia, Maryland ¹ | 50.0 | 50.0 |
| Regional average..... | 57.0 | 43.0 |

¹ Only 6 growers voted, hence these States were considered together.

Since the requirements of the act were not met with respect to requisite grower and processor approval, the order was not issued.

Sincerely yours,

RODNEY E. LEONARD,
Deputy Assistant Secretary.

Mr. HAGEN. Mr. Vigorito, do you have any questions?

Mr. VIGORITO. No questions. Thank you.

Mr. HAGEN. We thank you, Mr. Nicholson.

Mr. NICHOLSON. Thank you.

Mr. HAGEN. The next witness is the National Canners Association, but, as I mentioned, they desire to be placed at the end, and now we will hear from Mr. Robert N. Hampton, director of marketing services of the National Council of Farmer Cooperatives.

Mr. Hampton, you can proceed as you wish. You may submit your statement and comment on it, or read it.

At this point, I will ask unanimous consent that Mr. Hampton may insert his statement at the conclusion of his remarks in the record—
hearing no objection, that may be done.

Mr. HAMPTON. Thank you, Mr. Chairman. I will read excerpts from my statement, if I may.

Mr. HAGEN. Your entire statement will be included in the record.

STATEMENT OF ROBERT N. HAMPTON, DIRECTOR OF MARKETING SERVICES, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. HAMPTON. Mr. Chairman and members of the subcommittee, I am Robert N. Hampton, director of marketing services of the National Council of Farmer Cooperatives. The national council is a nationwide federation of farmers' business associations engaged in the marketing of agricultural commodities or purchasing of farm production supplies or both, and of State cooperative councils. The membership includes a large number of the major federated and regional farmer cooperatives of the country. The organizations making up the council are owned and controlled by farmers as the off-farm departments of their overall farm business operations.

The national council firmly supports H. R. 15959, which is intended to give cherry producers the opportunity to develop an industrywide program for more orderly marketing which would benefit producers, the processing industry and the public as well.

The current policies of the national council on marketing agreements and orders includes the following statements:

The National Council favors legislation for the continuation and liberalization of the marketing agreement and order authority to provide for inclusion of additional commodities under the marketing agreement and order authority; and to specifically provide that fruits and vegetables for processing now excluded may make use of federal marketing orders and agreements whenever such orders or agreements affect the farmer-producers primarily and are approved by a majority of these producers affected. Whenever they regulate the processed product, such orders or agreements may become effective only upon the voluntary assent of a majority of the handlers affected, and should be administered jointly by producers and handlers * * *.

These programs are to be based on producer initiative and approval through referendum by the farmer-producers of the commodities affected, before the order can be adopted.

All regulations and projects initiated by these programs are to be effective up to that point where the producer makes delivery of his product to a handler. Such orders and agreements should enable producers to develop marketing programs in the following categories:

1. Grade, size and quality standards,
2. Container standards,
3. Promotion-advertising,
4. Market service-merchandising,
5. Research:
 - (a) market statistics,
 - (b) economic price analysis,
 - (c) production problems,
 - (d) handling and engineering problems,
 - (e) new product development,
6. Third party grading,
7. Surplus control.

The recent report of the National Commission on Food Marketing has recognized very clearly that improving farmers' negotiating strength in the marketplace is by no means inconsistent with better quality, better flow of product and other improvements in marketing coordination which benefit all. In its June 1966 report "Food from Farmer to Consumer," the Commission said:

The marketing and pricing problems in agriculture differ, sometimes dramatically, from those found in food processing and distribution. Contributing to the difference are the large number of farmers, the lack of product differentiation, the frequent oversupply resulting in part from rising farm productivity, unplanned, variations in yields arising from weather and other natural hazards, and the extreme perishability of many products. Farm markets lacking the firm influence of group action are volatile, often depressed, and highly sensitive to downward pressures originating further along in marketing channels. Farmers as independent operators have not been able to coordinate quality improvement programs or to schedule more even flows of products to the extent demanded by today's food industry.

We believe, therefore, that there is frequent need for group action by farmers to adjust sales more uniformly to market demands at reasonable prices, to improve product quality and uniformity, to negotiate with buyers, and to protect themselves against trade practices and abuses of market power to which they are otherwise vulnerable.

Producers' marketing cooperatives and bargaining associations * * * already play a prominent part in food marketing. We believe that farmers do not yet fully appreciate the importance of cooperative action in marketing their products. We support all assistance government can reasonably give to producer cooperation * * *. Federal marketing agreements and orders should be authorized for any agricultural commodity produced in a local area or regional subdivision of the United States.

The Commission report also endorsed the principle of a marketing order authority to be established by a vote of producers only, but with administrative representation for handlers. It praised group

action by farmers for its benefits not only in production planning, but for giving greater assurance of the right supply, lowered procurement costs, better delivery scheduling, and in general, less disorganized marketing than now exists.

Without a rational, industrywide program for orderly diversion or storage of their highly perishable product, the cherry producers have had difficult problems in recent years, particularly because of erratic output due to weather. Frequent heavy crops have brought unduly low prices. A smoother flow of product is vitally needed in years of both heavy and light supply, and processors cannot provide the answer to this need.

With a marketing order, processors would be represented on the administrative committee, and thus would have the opportunity for an industrywide exchange of views and problems with growers. Moreover, it would obviously be shortsighted for farmers to produce the kind or quality of products which was not consistent with consumers' and processors' needs. It is also widely recognized that marketing orders can be successful in improving marketing and raising farm income only if price demands carried on within the scope of those orders are within the limits which the supply-demand situation dictates.

Contrary to the impression some processors have, it would be self-defeating for farmers to develop grade, quality or container standards, or research or promotional programs which reduced processors' selectivity or worked against processors' efforts to build markets through new products or other activity. Historically, the best program for farmers through marketing orders have been, not in conflict, but complementary to processors' marketing actions.

The need for this program is acute. Farmers who grow commodities used primarily for processing have just as great a need to organize as do fresh produce farmers, in order to deliver their products on an orderly, equitable basis. This type of marketing order proposed would not extend grower control to any phase of marketing of the processed cherries and therefore would not infringe upon processors' legitimate areas of management.

I would like to insert an additional comment on that point. I would like to expand on this to point out that due to the practice of administering certain provisions of marketing order regulations at thousands of farm points, the mechanics of the administration of the marketing orders are sometimes frequently carried out through the additional costs involved in such regulations, which is intended to apply to the farmers rather than to the processed product.

In spite of some misunderstanding on this point, several processors have already indicated through public referendum their approval of a cherry marketing order. This is evidence that at least part of the processing industry realizes that such an order would not infringe on their operations and would be limited in scope to that which is economically desirable for both grower and processor, to assure profitable selling of cherries to the consumer.

The cherry producers recognize that the only effective, permanent way for them to improve their market strength and their income is through the kinds of improved marketing coordination which serve to reflect consumer wants all the way back to the farm. Such improvements as sought by this legislation, can benefit all. As for other

commodities where marketing orders have been used, processor opposition is likely to fade out when a sound marketing order program has been shown to have these benefits. May I refer to an old, well-tested business adage which says that the best suppliers, as well as the best customers, are those which are well organized, well coordinated, and financially sound.

We appreciate the opportunity to appear before the subcommittee and present these views.

Mr. TEAGUE of California (presiding). Thank you very much. We have a most unusual situation here, having a Republican member of the committee acting as the chairman. Mr. Hagen had to leave. Mr. Vigorito does not happen to be on this particular subcommittee. I hope that the absence of the Democrats and the presence of the Republicans does not indicate that Mrs. May and I do not have reelection problems, because we do.

Are there any questions, Mrs. May?

Mrs. MAY. Just briefly this, Mr. Republican Chairman.

I might say that I am in complete agreement with your statement, Mr. Hampton, particularly on pages 3 and 4 where you point out that we in agriculture need to work closely with our middlemen, the processors and handlers in bringing about an exchange of industrywide views and ideas. Certainly, I have always felt for many years that agriculture producers need to become much more market oriented. I believe that it is a responsibility of the processors, the handlers and the retailers, who have access to much more marketing information, to share this information with them. They should be working much more closely together, for their own good as processors and handlers, and, certainly, to help our farmers improve their low-man-on-the-totem-pole position.

Mr. Hampton, perhaps this does not go to the merits of the bill itself, but we may not be able to pass legislation like this successfully. We recognize that we always run into objections from other agencies of Government, the Department of Justice and the Department of Commerce, because they are not enthusiastic about marketing orders. Do you think that we can within agriculture achieve the very goal that you have outlined here without a marketing order? Is there any hope for us in any other way?

I would like for you to comment on this.

Mr. HAMPTON. Mrs. May, I think that you go to the heart of an issue that was dealt with rather succinctly and rather specifically by the Food Marketing Commission's report in which the Food Marketing Commission expressed the viewpoint—of which you were a member, of course—that in many cases, farmers were not taking adequate steps through their cooperatives to achieve this kind of better information and the sophisticated marketing that relates more clearly to the needs of the consumers and that some kind of additional action might be needed in the way of governmental action which would speed up or help them to make this transition more rapid. And the tone of this Food Marketing Commission report is very specific that such programs might often be considered to be only transitional, and, perhaps, temporary, to enable the farmers to take the first step which is so badly needed.

Their own voluntary efforts, such as the cherry producer organizations which will appear here and testify this morning, are sometimes

greatly hampered by the difficulties of not having full 100 percent cooperation. And this problem can be so damaging in situations such as that of the cherry industry where fluctuations in output are very severe that these voluntary programs may not have a chance to accomplish what is necessary without authority to bring all farmers into joint program activities.

Mrs. MAY. I would assume then that the implication of your remarks is that you do not believe that the main consideration for imposing marketing orders is price, that there are other considerations.

Mr. HAMPTON. I might say that the policy of our own organization, specifically omits reference—and I believe that this is indicated in the testimony part—omits reference to price controls. Yes, our position is that many, many useful programs can be carried out without these getting into this even more difficult area of price controls.

Mrs. MAY. Sometimes these policy controls have effect on the price.

Mr. HAMPTON. All of these regulatory areas do have impact on the price. We recognize this. But we feel that there are plenty of areas for us to work with and to learn more about in improving the marketing problem without imposing price controls on these various industries which are very difficult to analyze. The difficulty of establishing prices by Government agencies or by any such body is a very controversial issue.

Mrs. MAY. It is one of the biggest hurdles that we have to overcome. Admittedly, they have to have education on marketing orders. In the case of marketing orders, in other agricultural areas it seems to me that we have built this wall because of the improper use of marketing orders in some areas. As a result of that, it seems to be more difficult to get a closer working relationship between our growers and the processors and the handlers, yet they could not exist without each other.

I regret it as much as you do. I wish that there were a way without having to try the controversial marketing order procedure.

Mr. HAMPTON. I would like to point out and emphasize again, if I may at this time, Mrs. May, that our concern about this matter of price is one in which we feel that there is a situation in marketing order approach in which a group which asks for excessive prices will induce other people to come into the industry or will induce other things, such as the reduction of the market, which is not to their own long-term interest, and we feel that their marketing associations, such as the bargaining associations which will be represented here this morning, are very well aware of this and recognize that if they do operate and have their effects on price and ways which are outside the realm of this supply-demand relationship, that they are not only going to damage the processes but themselves as well, and we think that this is a very strong factor in the way of an automatic restriction on the length to which a marketing order might go.

Mrs. MAY. What we both are saying here is that an effective marketing order agreement or a marketing order agreement is just as effective as the persons that are involved in the administration of it.

Mr. HAMPTON. I might also say, if I can simplify it, that a good marketing order for farmers is only one which really in the long run is good for the processor as well.

Mrs. MAY. Right. We can be sure that if it were handled that way, everyone would benefit.

That is all.

Mr. TEAGUE of California. My tenure of acting chairman is very short.

Would you not like to be chairman?

Mr. GREIGG. It is not necessary, thank you, Mr. Teague. You may go ahead.

Mr. TEAGUE of California. Do you have any questions, Mr. Vigorito?

Mr. VIGORITO. No questions.

Mr. TEAGUE of California. Thank you very much, Mr. Hampton.

Mr. HAMPTON. Thank you.

Mr. TEAGUE of California. One of our regular customers is Mr. Graham, who is next.

I see that his statement is delightfully short.

You can introduce it into the record or proceed in any way that you desire.

Mr. GRAHAM. With your permission, I will just file my statement and state it very briefly.

Mr. TEAGUE of California. Without objection, your statement will be made part of the record at the conclusion of your remarks.

STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE, NATIONAL GRANGE, WASHINGTON, D.C.

Mr. GRAHAM. Mr. Chairman, and members of the subcommittee, I do not think that there has ever been a time when a commodity group has come before the Congress asking for a marketing order but what the Grange has supported it. If there has been such a time, I do not know when it was. So, our record is pretty consistent on this, for about 100 years. We support this one, as we have previously supported others, and we would hope that this legislation could be passed.

It seems to us a bit unreasonable that those whose direct interest is in the matter of purchasing the commodity as cheaply as possible should have a veto power over the producer. I have tried to think of a good analogy, and about the best I could think of would be that of when the Democratic Party had a two-thirds vote rule in the convention to get a nominee for President and to ask for a 50 percent or better vote from the Republicans before they could get a nominee. And this is somewhere in the same general area.

The processors are not left out in any market order. They have the right to testify as anybody knows who has experienced the functioning of the milk market orders, of which I know a good deal more than I do about the cherry orders, recognizing that not only do they have an opportunity to testify, but that they do it, and under the law their testimony has to be considered a part of the market order that eventually is promulgated and voted on.

But this is one side of the coin. The other side is, why do we have to pick up a few pressure principles and say the processors have to agree on these?

If we did that in milk and in many of the other commodities that are under marketing orders, we would not have any marketing orders anywhere.

The experience within this area indicates that that is true. If market orders are desirable for other commodities and are helpful—and we believe they are—then, we believe that the legislation as it is written today simply prohibits the market order in these areas that we are talking about, especially here in the case of cherries.

So, our approach is on the basis of the experience that it works and on the basis of fairness that it ought to be passed, and on the basis of making the total legislation a little less ridiculous, and that we ought—frankly, I think that we ought to do so—to take out the exemptions, not only on cherries but on the rest of the commodities at the present time that require processor approval before marketing orders can be effective.

I think that we ought to go further than that. I think that the time has come when we have to recognize that the producers have certain rights in the bargaining and that it ought to be made patent to them just as we have in the field of labor, that we not only ought to say that the processors should not veto but they should not be engaged in a referendum in an attempt to get the producers to veto it. This is another matter.

What I am saying is that we need considerable more study in this kind of thing. I know of these cherry growers. The biggest membership we have in our country is in three of the States that are most vitally involved, Ohio, Pennsylvania, and New York. Our total membership in these 3 States is over 225,000. Our membership in Michigan is not so large, although some of our members are in the cherry-producing area in Michigan, and we have a very keen interest in this among our own members. I am not talking in terms of some philosophical term, I am talking about this, because of the fact that the people that produce cherries in these three States are members of the Grange. We think we know what they want. This is consistent with every program we have ever adopted in the National Grange. Thank you.

(The prepared statement submitted by Mr. Graham follows:)

PREPARED STATEMENT OF HARRY L. GRAHAM, LEGISLATIVE REPRESENTATIVE,
THE NATIONAL GRANGE

Mr. Chairman and members of the subcommittee, my name is Harry L. Graham, and I am the Legislative Representative of the National Grange.

The bill before you today, H.R. 15959, represents one more phase of the long-range effort to reduce farmers' historic weakness in the marketplace—an effort in which the Grange has been vitally involved for nearly a hundred years.

The producers of cherries, primarily centered around the Great Lakes area, have in recent years suffered greatly from extreme year-to-year fluctuations in output, largely because of weather conditions beyond their control. Such wide variations in supply have intensified the need for programs of orderly marketing requiring a fully coordinated program on the part of all producers.

Even though the short supply of cherries in 1966 has given momentary relief, the market position of cherry producers in 1967 could prove to be more precarious than ever before. Programs of effective self-help by producers will be possible only if this subcommittee recognizes this danger and approves H.R. 15959, the enabling legislation to permit farmers to hold a referendum to determine their willingness to work together for more efficient as well as more orderly marketing of cherries.

The National Grange sees no reason why cherry processors should have the authority to veto the establishment of a marketing order, as is the case at the present time. The interests of the processors would be sufficiently protected by the promulgation procedures of a marketing order.

Since this bill refers solely to cherries for canning or freezing, it applies primarily to tart cherries. Only about 15 percent of the sweet cherries are processed for

canning or freezing. However, as stated, this bill would permit marketing orders for sweet cherry producers if and when it was considered desirable and approved in referendum by those growers.

The National Grange respectfully urges that this bill be approved. It appears to us to be in the best interest of farmers, the cherry industry, and the consumer who benefits as well from more orderly marketing of food products.

Mr. TEAGUE of California. Thank you. You always make your position very clear.

Mrs. MAY?

Mrs. MAY. Mr. Graham, have you seen a persistent pattern of processors and canners paying too low a price for cherries over the past years?

Mr. GRAHAM. Yes, ma'am. I think there is a very simple reason for it. The farmers, because of extremely wide variations in production—and the same is true in peaches in the areas where they are subject to frost and weather conditions. When you get a year like this year, when you have a very low crop, with the price high, it is meaningless if you do not have anything to sell at the high price. It is meaningful, however, to the processors, because they do have something to sell. It has been carried over from the previous years; so, they are in the position to take advantage of the market. But the producer cannot possibly take advantage of the market.

At the same time, in years like there has been testimony about, where the production is 82 percent above normal, they buy on the basis of the market that year without any consideration being given to the marketplace or what they are going to get for these cherries the first year that there is a short supply.

So, somewhere, somehow or other, we should be able in a market order to level off this so that 5 cents per pound will not be given in a good year, but something more consistent with the total price available over the spread of years in which this product is marketed. Five cents is simply ridiculously low.

I know that in the State of New York, they simply did not pick them at that price. They let the birds eat them.

Mrs. MAY. How do you envision a marketing order that would be helpful over a period of years?

Mr. GRAHAM. This is the kind of thing that you develop in your years. But, generally, this is not necessarily a part of the bill. I should think that it should be worked out on the basis of some kind of recognition that these extremely large supplies are placed on the market in years when there is very little production. The only other way out of this would be for the farmers to organize in such a way as they do in some other areas where in times when there is an oversupply they simply knock off a percentage of the peaches that are not needed for the market. The farmers might do it this way. Of course, that is not in the interest of the public, and I think that you would agree with that, especially if there is a chance that the next year there will not be any cherries available, but if it can be managed in carrying these over to the market the following year by the processors, somehow we ought to be able to figure ways for carrying these over for the farmers. If they are not going to be marketed in the particular crop-year to the consumers, the price that ought to be paid should not be at a depressed price then obtaining. This is the kind of thing that market orders can work out in cooperation with the industry, the producers, and the processors.

Mrs. MAY. When industry is questioned on why they do this, I am sure you have heard as to what their attitude is, as to why they have these higher pricing policies for the lower producing years and the lower prices in the big production years. What is the reason?

Mr. GRAHAM. I think that I would prefer not to answer that.

Mrs. MAY. So far as we know from the figures that were developed from the National Food Marketing Commission studies, processors are not running a huge profit—it is about 1½ percent. I think we can agree that that is not excessive.

Mr. GRAHAM. That is right.

Mrs. MAY. Farmers are not going into production of anything unless they can get a sufficient price for their production. I can see where a market order might have a helpful effect, and in other cases it would have other effects. This has worried me. This is why I want your reaction. You and I are in enthusiastic agreement that what we want is to help our farmers to receive equitable prices. Whether a marketing order is the way it should be done, or not, I do not know.

Mr. GRAHAM. May I say that we have been criticized a couple of times for our approach to this, and that we have suggested there are responsibilities on the part of the bargaining organizations and the cooperatives. We can only go so high until we develop pressures that make our position impossible to sustain. I think that in general the cooperatives are in agreement with this. There may be some exceptions where they try to bleed the situation for all it is worth. I do not think that there is too much of that. There is not too much profit. We agree with this, but the processor does have a chance to hold that which he has processed, either canned or frozen, until such time as the market improves. The producer of cherries has no chance at all. He is going to pick those cherries and get them off the trees when they are ripe. He may probably get a little hail or even a small rain, or birds. It is a very hazardous crop, in the first place. So he has to carry all of the responsibility, and his chances of recovery from those bad years are nil. He has no way of recovering from a bad year.

With the experience we are having in milk at the present time where we watch milk prices go down and down and down, and stay down for much longer than they should, where we have had an attrition of 70 percent of our dairy farmers, and we have had a much lessened production than in the previous year, which has been going on and on. In my judgment the trend of milk has been and is much greater downward than we are recognizing. This is the kind of thing that happens after about so long a period where the farmer simply produces at a loss, and if he sees no other way out, he will do what they have done in many areas: They have simply knocked down the trees, and have plowed up the ground and put it into something else. They cannot go on forever. It is only when you get some kind of decent marketing system, whether it is in apples, cherries, cling peaches, oranges, or grapes—as in northwestern New York on grapes, and northeastern Pennsylvania—wherever it is and whatever it is—unless there is a reasonably good return for the producer and a very fair consistent return, so that in some way he can have his share in the crop that in the production of these commodities simply goes out the window. I am surprised that the production of cherries has stayed up as high as it has with the price they have received.

Mrs. MAY. Thank you, Mr. Graham.

Mr. TEAGUE of California. Mr. Greigg, any questions?

Mr. GREIGG. No.

Mr. TEAGUE of California. Mr. Vigorito?

Mr. VIGORITO. No questions.

Mr. TEAGUE of California. Our next witness is Mr. Freeman, secretary-manager of the Great Lakes Cherry Producers Marketing Cooperative.

Without objection, if you wish to do so, you may insert your written statement into the record in its entirety, and if you can conveniently give us excerpts from it rather than reading it all, we will appreciate it. I am going to have to cut you off at about 11:30 to allow time for questioning. We have limited time, as you know.

Mr. FREEMAN. I am very well aware of that.

I will be happy to submit my statement for the record,

Mr. TEAGUE of California. Without objection it will be made a part of the record in its entirety at the conclusion of your extemporaneous remarks.

**STATEMENT OF BERKLEY I. FREEMAN, SECRETARY-MANAGER,
GREAT LAKES CHERRY PRODUCERS MARKETING COOPERATIVE**

Mr. FREEMAN. Mr. Chairman and members of the committee, my name is Berkley I. Freeman. I am secretary-manager of the Great Lakes Cherry Producers Marketing Cooperative, a nonprofit marketing cooperative engaged in the sale of its members' cherries to processors. The association has approximately 1,500 members distributed throughout the cherry-growing regions in the States of Michigan, New York, Ohio, Pennsylvania, and Wisconsin. Our members grow approximately 45 percent of the red cherries in the United States and 50 percent of the red cherries grown east of the Mississippi River. I am here on behalf of our members to support H.R. 15959.

Together with my prepared statement, I would like to submit copies of about 40 telegrams from members and nonmembers and cherry growers throughout the 5-State area we represent. This being the peak of the apple-harvest season—and they are all fruitgrowers—they could not be here, but they want this committee and the Congress to know of their keen interest in the bill. So, I have these to submit for the record.

Mr. TEAGUE of California. These are letters and telegrams from cherry producers?

Mr. FREEMAN. Producers and growers.

Mr. TEAGUE of California. In support of this.

They are not big documents and tables, are they?

Mr. FREEMAN. No, they are telegrams and short letters in support of this legislation.

Mr. TEAGUE of California. Without objection, your statement will be made a part of the record and the communications will be made a part of the files of this committee.

(The prepared statement submitted by Mr. Freeman above referred to follows:)

PREPARED STATEMENT BY BERKLEY I. FREEMAN, SECRETARY-MANAGER GREAT LAKES CHERRY PRODUCERS MARKETING COOPERATIVE

My name is Berkley I. Freeman. I am secretary-manager of the Great Lakes Cherry Producers Marketing Cooperative, a nonprofit marketing cooperative engaged in the sale of its members' cherries to processors. The association has approximately 1,500 members distributed throughout the cherry growing regions in the States of Michigan, New York, Ohio, Pennsylvania, and Wisconsin. Our members grow approximately 45 percent of the red cherries in the United States and 50 percent of the red cherries grown east of the Mississippi River. I am here on behalf of our members to support H.R. 15959.

If enacted by Congress, H.R. 15959 will make it possible for cherry growers to develop and adopt a Federal marketing order for cherries without the approval of over 50 percent of the processors by volume that can or freeze red cherries—all in accordance with the Agricultural Marketing Agreement Act of 1937.

The history of processor opposition to the use of marketing orders by the growers of fruits and vegetables for processing is well known. In the case of cherries this committee in 1962 approved legislation proposed by Senator Philip A. Hart to include cherries for processing under the Agricultural Marketing Agreement Act of 1937. Under the provisions of that amendment, processors were given the privilege of voting on any marketing order relating to cherries for freezing and canning. Before an "order" could be adopted by the cherry industry, processors—processing over 50 percent of the cherries—had to vote in favor of the order. In the 4 years that have passed since cherries were allowed to come under the act and processors have had the privilege of voting on orders, processors have proven by their actions that they have no intention of working with growers to develop a sound marketing order. They have in fact proven that they will do everything possible to defeat any attempts by growers to develop and use marketing order programs to improve grower returns by better management of the quality and quantity of red cherries marketed.

After two years of industry meetings, a marketing order for cherries was submitted to the Secretary of Agriculture in the Spring of 1965. Hearings were held in March and a Referendum was held in May. Throughout the industry meetings, and the hearings, processors testified against the marketing order and did everything possible to defeat the passage of the order. The result was that this order was defeated by a 7 percent margin at the grower level and a 35 percent margin at the processing level. This opposition by processors was forthcoming in spite of the fact that in 1964 with a crop 82 percent over average, growers received a price of 5 cents per pound—reflecting less than the cost of harvest and production.

In the face of record supplies carried over, another large crop in 1965, and another year of even lower prices for growers (4.8 cents), another attempt was made by growers and their organizations to write and adopt a revised marketing order for cherries in 1965. On January 7, 1966 a revised order to control the supplies of cherries was submitted to the Secretary of Agriculture for holding hearings and a referendum. Mr. George Meheren—speaking for the Secretary—stated by letter that it was useless to hold further hearings on a marketing order for cherries since processors indicated that they would not support the revised marketing order for cherries.

As manager of the grower's association, I was given authority to seek the advice and consent of processors in revising the most recent marketing order attempt by the industry. Our board, the directors of the National Cherry Producers Council, the U.S. Department of Agriculture, and myself availed ourselves of every opportunity to include all processor ideas, requests and requirements on the revised order. Yet processors still indicated by informal poll of the U.S. Department of Agriculture and a survey by Michigan State University that they were not in favor of a marketing order for cherries.

The lesson is clear. As long as processors have the option of taking an advantage of growers when they have a surplus of cherries, they will not support an order giving growers the necessary controls to maintain reasonable supplies and profitable prices. Attached to this statement and as a part of this testimony is a table and list of all processors, grouped by their volume of sales and normal processing capacity. There are approximately 63 processors of cherries and 6,000 growers in the cherry growing areas. This means it takes an average of 100 growers to supply one processor. The market power of the one in dealing with the many in years of over supply is clearly demonstrated. To complicate the matter even further in favor of the processors, is the fact that the six largest processors process 24 percent of all the cherries and exceed the sales volume of the remaining 57

processors by over \$250 million per year or more on an individual company comparison.

Also attached to this testimony is Table II, entitled "Supply and Demand History of Red Cherries." This table clearly shows that the present instability of cherry volume and prices have resulted in lower incomes to growers. New fungicides, new growth hormones, and improved horticultural methods all insure continued increase in the production of cherries despite the fact that bearing acreage is now remaining constant and new plantings for the past five years are not sufficient to maintain the present bearing tree numbers. Actual experience during the past three years has proven that in any one year, such as 1964, the cherry crop can be 82 percent over average, or 45 percent over average, as in 1965, or 50 percent under average, as in 1966.

The arguments most often put forth by processors against the objectives of H. R. 15959 are well known. For purpose of brevity and as a summary of the pros and cons for H. R. 15959, I hereby will enumerate arguments used by processors against this bill and attempt to answer them from the growers and the consuming public's point of view.

1. Processors state that in the previous bill, Congress gave them a provision requiring processor agreement because 85 percent of the cherry crop is processed.

Answer. It cannot be denied that 85 percent of the crop of red cherries are processed. However, the growers contend that since they own the cherries before they are sold to the processors, they have invested large sums of money in growing the crop to maturity and that processors have no money invested in the raw fruit. Therefore, as is the case in any normal business transaction, the seller should be in an independent position to make decisions affecting his income without having to receive the buyer's approval to make those decisions.

The committee should also give weight to the fact that processors since being given the prerogative of voting on a grower marketing order for cherries, have used that privilege to block any attempt by growers to work out a reasonable marketing order that will assist the growers in increasing their incomes.

2. Processors have claimed that the processing industry has firmly established a substantial *consumer* market for its products and has involved itself in considerable investment in plant and equipment.

Answer. Red cherries were popular with American and European consumers long before they were industrially canned or frozen. As processed foods become the normal method of preparation and distribution of the cherry crop under present market demand, the investment of processors becomes necessary to take advantage of existing markets and to make a profit on those investments.

The cherry grower has a much greater capital investment per unit of crop than the processor in the raising, harvesting and growing of cherry trees and cherry fruits. It is estimated that a processor with \$600,000 of cherry processing equipment requires 12,000,000 pounds of cherries per season to process at maximum efficiency. It thus would require an average of 2,000 acres of cherries to supply that plant or \$2 million capital investment. In addition to 3½ times more capital invested, the grower has \$400 per acre invested in operating capital to bring the year's crop to harvest or another \$800,000. Whereas, if the processor decides not to process cherries that year, he has no additional operating capital involved since he can use his plant and his salesmen to sell other commodities.

It should also be noted that processors have not established enough substantial consumer demand to pay growers the cost of production on any recent crop that has exceeded 300,000,000 pounds of cherries and have provided no logical approach to the problem of what growers are to do if their crop exceeds the demand established by processors. In the fruit business low prices and the bankruptcy of individual growers does not solve the production-demand relationship problem.

3. The Department of Commerce states that the views of processors should be considered along with those of growers in determining the need for and in formulating a cherry marketing order.

Answer. Processors have had ample opportunity to have their views considered in the formulating of a cherry marketing order. While paying growers prices below the cost of production, they have refused to cooperate with growers in developing a satisfactory marketing order. The question here is not whether processors should be consulted, it is whether processors should have the power to implement their decisions by vote as growers do. These are numerous protections for both processors and consumers that will still be a part of the Agricultural Marketing Agreement Act of 1937 when processors do not have the right to vote in a marketing order for cherries. These provisions must be abided by in any program developed by growers.

4. The Department of Commerce states that any marketing order for cherries could be adverse for processors and result in their paying higher prices, with less selection and a smaller supply available.

Answer. It is questionable whether paying prices that reflect a reasonable profit to growers will adversely affect processors. On the contrary, when uncontrolled production suddenly forces grower prices to ruinous levels, the capital and management needed to maintain desired levels of cherry production may be permanently impaired or destroyed. Although processors and their spokesmen seem to be afraid of the problem of smaller supplies, they ignore the problem of oversupply and fail to relate the one to the other.

5. Processors have claimed that marketing orders oriented primarily to the advantage of processors could limit the markets for the producers for their commodity.

Answer. The concern of processors for the farmer limiting his own market when he has the right and the ability to limit his production is indeed well intentioned but unnecessary. Cherry growers are well aware that any attempt on their part to use the power of marketing orders to exert pressure on markets by monopolistic practices are illegal and in the long run impossible. There are too many substitutes for cherry pies to ever have a meaningful monopoly in cherries. There are too many farmers that can raise cherry trees if profits in cherries become artificially enhanced. As a matter of fact, I have been authorized by my board of directors to invite processors to plant their own orchards and raise their own cherries if they feel that the availability of marketing orders to cherry growers will make that occupation too profitable.

In conclusion, I would like to urge the immediate enactment of H.R. 15959. The Senate held hearings on the companion bill to this legislation October 11, 1966. The danger to growers if market order legislation is not available to them is real and present. The 1967 crop of cherries will be ready for harvest and sale to processors by July 1, 1967, a short eight months from now. This year's cherry crop was 50 percent destroyed by early Spring frosts. This is a clear indication that next year's crop could once again be of record proportions and once more plunge growers into economic chaos and the industry into another year of ruinous prices and unwanted supplies. Congress is hastening to adjourn. Let them take the moment to pass this legislation for the benefit of the many fruit growers who affirm their need for this legislation. I enclose as part of my testimony, letters from the following growers and grower organizations throughout the United States. These letters are a clear indication that growers throughout the growing areas are aware of this needed legislation and urge you to approve H.R. 15959.

Raymond Nordeen, Green Valley Orchards, Sister Bay, Wis.

Edgar Rudolph, Sturgeon Bay, Wis.

Earl Beachum, Hart, Mich.

David J. Gamble, Hart, Mich.

Keith Shugart, Traverse City, Mich.

John B. Peters, Gettysburg, Pa.

Mac Lott, Bonnie Brae Fruit Farms, Gardners, Pa.

Dale E. Seaquist, Orchard Hill Farm, Sister Bay, Wis.

P. E. Herkner, Traverse City, Mich.

Arthur Kramer, Traverse City, Mich.

Dave, Roena, and Van Moore, Van-O-Farms, Hartford, Mich.

John J. Miller, Great Lakes Cherry Prod., Arcadia, Mich.

William B. Wilson, Gettysburg, Pa.

Lloyd Benner, El Vista Orchard, Fairfield, Pa.

Glen H. Fagerstrom, Sister Bay, Wis.

Burton Hills, Michigan Peach Sponsors, Bangor, Mich.

Carroll A. Trommater, Hart, Mich.

Bill E. Turner, Hart, Mich.

Bruce D. Lyon, Traverse City, Mich.

William M. Lott, R & L Orchards, Biglerville, Pa.

Alfred J. Pero, North East, Pa.

John M. Phillips, North East, Pa.

Richard Trostel, Biglerville, Pa.

Stephen M. Nikitas, Lockport, N.Y.

Richard B. Rose, Jr., Lockport, N.Y.

Fred M. Pugsley, Michigan Cherry Commission, Michigan Assoc. Cherry Producers, Paw Paw, Mich.

Hilltop Orchards and Nurseries, Hartford, Mich.

R. S. Kill, Lockport, N.Y.

Everette Wiles, Bangor, Mich.
 George L. Baugher, Gettysburg, Pa.
 James L. Oakes, Lyn Oakes Farms Inc., Lyndonville, N. Y.
 D. A. Burrows, Wilson, N. Y.
 John Curtis, Hart, Mich.
 Harry Overhieser, Preso Michigan Assoc., South Haven, Mich.
 Pete Nesbit, Albion, N. Y.
 Burton Hills, Michigan Peach Sponsors, Bangor, Mich.
 Thomas E. Lamont, Albion, N. Y.
 W. G. Mohlar, Lockport, N. Y.

Mr. FREEMAN. I also have accompanied my statement with a membership manual from our organization which gives the statistical tables which are included in part of my testimony.

Mr. TEAGUE of California. You are not asking that this be made a part of the record?

Mr. FREEMAN. This should be submitted and included in the record, because there is reference to the tables in my testimony.

Mr. TEAGUE of California. All right, without objection, it will be included in the record at this point.

(The document entitled "Membership Manual" follows:)

GREAT LAKES CHERRY PRODUCERS MARKETING COOPERATIVE, INC.

MEMBERSHIP MANUAL

Joining the Association

This pamphlet contains the necessary contracts for signing as a member of the Great Lakes Cherry Producers Marketing Cooperative.

Joining Great Lakes is not a decision to be taken lightly. As the only existent organization that can speak for Cherry growers in all areas east of the Mississippi River, it covers a great many differences of opinion and circumstances. It bridges gaps between geographic areas, growers who own their own processing facilities and those who do not—growers in good locations and growers in poor locations; growers who are diversified and growers who specialize only in Cherries. It sells to processors who are listed on the New York Stock Exchange and sell a billion dollars worth of products and to small individually owned processing companies who sell only \$100,000 worth of processed Cherries.

The Association's only purpose is to increase the income and profits of farmers who own Cherry orchards. In the midst of all of the diversities between markets, processors and producers, one hard fact remains self-evident—all Montmorency Cherry trees produce the same variety of fruit and this raw material is the unifying force that makes the market a single market and every grower effected by the supply available from all growers. Some growers may have old orchards with low productivity, some may have orchards effected by winds that cause poor quality but all growers contribute to the total supply of Montmorency Cherries and all buyers are affected by the total supply of Montmorency Cherries. As for quality, the Association has accepted the U.S.D.A. grade standards as uniform for the industry and all growers are paid in accordance with the quality of Cherries they deliver to processors.

In recent years, problems created by a sudden increase in the supply of Montmorency Cherries have resulted in prices to growers below the cost of production. Many growers are in danger of losing their life-long investments and financial security. The Great Lakes Cherry Producers is a voluntary organization and has been trying to cope with the situation with the limited means at its disposal. A voluntary organization is under the very great handicap that any grower who chooses to do so may avoid the responsibility and cost necessary to correct a problem that affects all growers. The situation becomes hopeless when only a small percentage of growers bear the costs of an organized effort and the solution of the problem is beyond the ability of individual growers. Crops and carryovers in 1961, 1962, 1963, 1964 and 1965 have been greater than the historic demand for Montmorency Cherries and the processors ability to increase the market for Cherries. Members of the Association have become more and more discouraged as they have been asked to bear the burden of surpluses with no help from processors. It is the old story of the willing horse in a team of horses that is forced to pull a load that could only be moved if all horses pulled equally.

At the Annual Meeting of the Association in Grand Rapids, Michigan on March 31, 1966, the Delegates and Directors of the Association met to consider this problem. The results of their deliberations are provided in this pamphlet, a new Grower Agreement that has been approved for the signature of all members of Great Lakes. It is based on the following facts:

I. The Association is supporting a Federal Marketing Order to control supplies.

(a) Since processors have not cooperated in developing a Marketing Order, the Association is working with legislators to pass a law making it possible for growers to develop their own Marketing Order without approval of processors. We have supported the letter sent us by Senator Philip A. Hart as shown here.

II. The Association will no longer be dependent upon the total supply of Cherries for pricing its members' Cherries. It will price them on the amount of Cherries that can be profitably sold on a historic basis at a price that will return growers the highest possible income.

(a) In 1966 the Board of Directors has determined that a volume of 310,000,000 pounds to 320,000,000 pounds will return the highest possible gross income to the Cherry Industry. A supply of this size can be processed and sold by canners at prices that reflect 7¢ per pound to growers. If the total supply (carryover plus new crop) is less than 310,000,000 pounds, the Association will determine a higher price based upon developing the greatest profit to growers without too great a risk of creating an unsold carryover.

(b) It will not undertake this new program unless growers who grow 60% of the free tonnage available to processors belong to the Association and share the costs of supporting the Association and the risks of withholding their Cherries from the market unless these prices are accepted by processors and buyers.

(c) It has created a new fund of ½¢ per pound that will be used to maintain equity between growers and between areas in the event that some growers will not pick their crop because of withholding while other growers are successful in selling their crop because of the success of the program.

(d) In the event of a short crop that will make it necessary for the Association to announce higher prices all members will be given a chance to resign from the Association after hearing what the Association's price and estimate of the supply is for 1966. Below are some of the more common questions and answers growers have asked before joining the Association under its new program:

Question. Will the Association ever process its members' Cherries under the new program?

Answer. No. The only reason the Association has ever processed Cherries is that there was no fund established to pay members whose processor refused to buy them. Under the terms of our old contract, the Association could not tell one member to pick his crop and another to leave his. In 1964, with insufficient funds to maintain equity, the Association used bank financing to give members as much chance as possible to get equal returns. This will no longer be necessary because of the new equalization fund of ½¢ per pound. It will not be necessary if and when the industry adopts a Marketing Order to control inventories.

Question. Why did the Association sell Cherries to Europe in competition to processors?

Answer. Forced to process its members' Cherries to maintain equity, it sold them in a new market it helped establish, so that the excess supplies would not be a carryover to hold the normal U.S. market down. Since domestic customers normally dealt with established processors, new European customers were more easily developed by the Association.

Question. Why didn't the Association raise its price in 1965 when the crop estimate in Southern Michigan fell short?

Answer. Unless the Association uses a schedule of prices based upon how the crop actually picks out, the danger of a poor crop estimate is always present. In 1961 and 1964, the crop picked over the estimate and the Association did not revise its price down. Therefore, when it picked short in 1965, it could not revise its price up. Processors—especially freezers have resisted a schedule of prices claiming their buyers insisted on an established price. It is hoped that this can be changed in the future.

Question. Can you sell more Cherries at cheaper prices?

Answer. Yes—but only a limited amount. In 1964 a supply of 436,000,000 pounds priced at below 5¢ per pound failed to increase sales to the point where

there was no carryover. In 1965 prices below 4.8¢ per pound failed to increase sales of frozen Cherries.

Question. If the Association's new policy of pricing is successful, will we still need a Marketing Order?

Answer. Probably. As long as less than 100% of the growers support a voluntary program some sort of legal restraint is needed to make everyone share the cost of supply control, promotion and research programs that are designed to help the entire industry. Equity is based on fairness to all and this is best done by law.

Question. Can processors help growers make a profit?

Answer. As Table I shows the 63 processors in the Cherry Industry have greater diversity than growers. Processors have their hands full competing with one another and trying to please their customers. When growers are disorganized, it is only natural for processors to try and use this disorganization to improve their own competitive position with other processors and buyers. Smaller processors who depend upon large buyers to pay cash at harvest time have very little control of the market.

Question. Why can't each grower have his own way and the better ones survive while the inefficient grower is forced out of the business?

Answer. The consumer and the large institutional buyer are far away from the grower. They judge all growers by the image of the entire industry. When the market is weak, when prices fluctuate widely, when quality is variable, when there is no promotion or public relations program, both efficient and inefficient growers suffer. When rules are established that provide programs that improve the image and the profit ability of the entire industry, competition between growers for survival of the fittest still goes on but in a more orderly fashion and in a manner that doesn't let an inefficient minority ruin the industry for everyone in it.

TABLE I.—Red cherry processors, east of Mississippi, grouped by sales volume¹ and normal² processing capacity and type of pack as of 1964

| Group | Number of firms | Percent capacity | Percent juice | Percent frozen | Percent hot pack | Percent pie mix |
|------------|-----------------|------------------|---------------|----------------|------------------|-----------------|
| I..... | 6 | 24 | 0 | 16.5 | 26 | 64 |
| II..... | 6 | 14 | 30 | 11.0 | 15 | 30 |
| III..... | 3 | 9 | 20 | 5.0 | 14 | 0 |
| IV..... | 23 | 38 | 40 | 50.0 | 30 | 0 |
| V..... | 25 | 15 | 10 | 17.5 | 15 | 6 |
| Total..... | 63 | 100 | 100 | 100.0 | 100 | 100 |

¹ Estimated on 1964 record.

² 8-hour shifts.

DESCRIPTION OF GROUPINGS TABLE I

Group I—Publicly Owned Corporations With Over \$200,000,000 on Sales in 1965

Comment: This category of processors represents purchases or mergers of Cherry processors that have all taken place in the last 5 years. They are listed on the N.Y. Stock Exchange and have permanent corporate management and broad and diversified interests in the growing and processing of foods. They have authorized retail brands established but also sell institutionally.

Group II—Closely Held Corporations Not Listed on N.Y. Stock Exchange With Sales from \$10,000,000 to \$35,000,000

Comment: The corporations are either cooperatively owned or family dominated. In every case they have diversification of product, professional management and a history of growth. They have established a brand name.

Group III—Individually Owned Companies With Sales of From \$5,000,000 to \$10,000,000

Comment: Owned individually or in partnership these corporations are well diversified but often undercapitalized. They have little brand identification.

*Group IV—Individually Owned and Managed Companies or Small Cooperatives
With Sales Volume From \$1,000,000 up to \$5,000,000*

Comment: This group comprises 38% of all Cherry processors who process 38% of the tonnage. In comparison to Groups I and II they are privately financed and process primarily on the basis of commodity loans for immediate sales. They have little brand identification and retail items are sold on a private label basis to chain stores and wholesalers. Red Tart Cherries are an important segment of their volume.

*Group V—Small Companies, Privately Owned Having a \$1,000,000 or Less Annual
Sales Volume*

Comment: This group comprises 40% of the number of Cherry processors who process 15% of the Cherries delivered to processors. Capable of processing 57,000,000 pounds of Cherries, they are the source of constant market instability as some of them move in and out of the cherry market trying to capitalize on local opportunities. They are the equivalent of the Mom and Pop grocery store.

List of cherry processors by grouping in table I

| Name | City and State | Grouping |
|-------------------------------|-------------------------------|----------|
| Albion Agway | Albion, N. Y. | 4 |
| Bordon Co. | New York, N. Y. | 1 |
| Comstock Inc. | Newark, N. Y. | |
| Burnette Farms | Hartford, Mich. | 4 |
| Cherry Growers, Inc. | Traverse City, Mich. | 4 |
| Bailey. | | |
| Ludington Fruit Exchange. | | |
| Clermont Fruit Packers. | Hudson, N. Y. | 4 |
| Coloma Cooperative | Coloma, Mich. | 4 |
| Consolidated Foods | Chicago, Ill. | 1 |
| Michigan Fruit Canners. | Fennville, Mich. | |
| Benton Harbor | South Haven, Mich. | |
| Curtis-Burn, Inc. | Rochester, N. Y. | 2 |
| Eau Claire, Packing | Eau Claire, Mich. | 4 |
| Elberta Packing Co. | Elberta, Mich. | 4 |
| Elk Rapids Packing | Elk Rapids, Mich. | 4 |
| Food Industries of America | Shelby and Saugatuck, Mich. | 4 |
| Food Corp. of America | Minneapolis, Minn. | 2 |
| Wisconsin Foods | Sturgeon Bay, Wis. | |
| Frigid Foods | Detroit, Mich. | 2 |
| Plant No. 1. | Suttons Bay, Mich. | 5 |
| Fruit Belt Canning | Paw Paw, Mich. | |
| Fruit Belt Preserving | Williamson, N. Y. | 4 |
| Fruit Growers Cooperative | Sturgeon Bay, Wis. | 5 |
| Funk Fruit Farms | Boyetown, Pa. | 5 |
| Goldman Foods | Sturgeon and Sister Bay, Wis. | 5 |
| Haserot Co. | Cleveland, Ohio. | 3 |
| Northport Cherry Factory | Northport, Mich. | |
| Gypsum Canning Co. | Clyde, Ohio. | |
| Hart Cherry Packers | Hart, Mich. | 5 |
| Heinz, H. J. Co. | Pittsburgh, Pa. | 1 |
| Ore-Ida Division | Greenville, Mich. | |
| Hilton Packing Co. | Hilton, N. Y. | 5 |
| Honee Bear Syrup & Preserving | Lawton, Mich. | 5 |
| Hudson Valley Apple Products | Milton, N. Y. | 5 |
| Howell, Earl T. and Sons | Newfane, N. Y. | 5 |
| Jebavey-Sorenson Orchard | Manistee, Mich. | 4 |
| Kay Foods | Baltimore, Md. | 3 |
| | Benton Harbor, Mich. | |
| Keystone Corp. | Northeast, Pa. | 4 |
| Knouse Foods | Peach Glen, Pa. | 2 |
| Lake Erie Canning | Sandusky, Ohio. | 5 |
| Lake Shore Packing | Waterport, N. Y. | 5 |
| Lustig Foods | Brockport, N. Y. | 4 |
| Martin Orchards | Sturgeon Bay, Wis. | 5 |
| Morgan-McCool | Traverse City, Mich. | 3 |
| Murch, A. F. | Paw Paw, Mich. | 4 |
| National Fruit Products | Winchester, Va. | 2 |
| | Kent City, Mich. | |
| New Era Canning Co. | New Era, Mich. | 4 |
| North East Packing | North East, Pa. | 5 |
| Oceana Packing & Canning | Shelby, Mich. | 5 |
| Parma Canning Co. | Parma, Mich. | 5 |
| Pearl Grange | Benton Harbor, Mich. | 4 |
| Penn-Rox Canning | Franklin County, Pa. | 5 |

List of cherry processors by grouping in table I—Continued

| Name | City and State | Grouping |
|---------------------------------|-------------------------------|----------|
| Pet Milk Co. | St. Louis, Mo. | 1 |
| Musselman Co. | Biglerville, Pa. | |
| Musselman-Dwan | St. Joseph and Paw Paw, Mich. | |
| Pet-Ritz Co. | Frankfort, Mich. | |
| Plainwell Canning | Plainwell, Mich. | 5 |
| Quality Brands, Inc. | Cleveland, Ohio | 4 |
| Monroe Frozen Foods | Middleport, N. Y. | |
| Michigan Quality Frozen | Lawrence, Mich. | 5 |
| Ranson Fruit Co. | Ranson, W. Va. | |
| Samary Fruit & Vegetable | Coopersville, Mich. | 5 |
| Sawyer Fruit & Vegetable | Bear Lake, Mich. | 4 |
| Sherman Bros. Canning Co. | East Jordan, Mich. | 5 |
| Sill Farm Market | Lawrence, Mich. | 5 |
| Smeltzer Orchard Co. | Frankfort, Mich. | 4 |
| Silver Mills Frozen Foods, Inc. | Eau Claire, Mich. | 4 |
| Sodus Fruit Farm | Sodus, N. Y. | 4 |
| Stokely-Van Camp | Indianapolis, Ind. | 1 |
| Plant No. 1. | Onekema, Mich. | |
| Plant No. 2. | Hart, Mich. | 5 |
| Traverse City Canning | Traverse City, Mich. | |
| United Foods | Houston, Tex. | 2 |
| Sodus Fruit Exchange | Sodus, Mich. | 1 |
| United Fruit Co. | Boston, Mass. | |
| Waterman Fruit Prod. | Ontario Center, N. Y. | 5 |
| Victor Preserving Co. | Ontario, N. Y. | |
| Wayne Packing Co. | Sodus, N. Y. | 5 |
| Wolcott Evaporating To | Wolcott, N. Y. | 5 |
| Zeropack Co. | Cincinnati Ohio | 4 |
| Plant No. 1. | Winchester, W. Va. | |
| Wilson Canning Co. | Wilson N. Y. | 5 |

TABLE II.—Supply and demand history red tart cherries

[Raw product basis]

| Crop year | Production trees | Production processed | Canned and frozen carried over | Total supply processed | Grower price per pound | Gross income for growers | U.S. per capita consumption in pounds |
|------------------|--------------------|----------------------|--------------------------------|------------------------|------------------------|--------------------------|---------------------------------------|
| | Millions of pounds | Millions of pounds | Millions of pounds | Millions of pounds | Cents | | |
| 1938 | 129,700 | 82,140 | 13,128 | 95,268 | 3.4 | \$2,792,760 | 0.66 |
| 1939 | 193,540 | 146,644 | 11,184 | 157,828 | 2.1 | 3,079,524 | 1.12 |
| 1940 | 209,380 | 165,756 | 11,444 | 177,200 | 2.9 | 4,806,924 | 1.29 |
| 1941 | 162,800 | 50,918 | 80,720 | 131,638 | 4.6 | 2,342,228 | .88 |
| 1942 | 210,580 | 160,710 | 14,790 | 175,500 | 5.0 | 8,035,500 | 1.25 |
| 1943 | 81,680 | 46,086 | 7,146 | 53,232 | 8.6 | 3,963,396 | .35 |
| 1944 | 224,800 | 174,674 | 6,202 | 180,876 | 7.8 | 13,624,572 | 1.24 |
| 1945 | 91,520 | 70,172 | 10,672 | 80,844 | 14.7 | 10,315,284 | .48 |
| 1946 | 232,100 | 201,538 | 13,592 | 215,130 | 14.9 | 30,029,162 | 1.34 |
| 1947 | 181,940 | 151,376 | 28,602 | 179,978 | 9.6 | 14,532,096 | 1.17 |
| 1948 | 263,580 | 215,104 | 13,158 | 228,262 | 9.1 | 19,574,464 | 1.45 |
| 1949 | 216,580 | 192,972 | 18,360 | 211,332 | 9.1 | 17,560,452 | 1.33 |
| 1950 | 310,480 | 284,272 | 15,344 | 299,616 | 6.5 | 18,477,680 | 1.83 |
| 1951 | 313,520 | 267,912 | 25,126 | 293,038 | 6.9 | 18,485,928 | 1.71 |
| 1952 | 234,100 | 196,874 | 31,852 | 228,726 | 6.0 | 11,812,440 | 1.41 |
| 1953 | 262,980 | 248,364 | 9,876 | 258,240 | 8.8 | 21,856,032 | 1.48 |
| 1954 | 212,640 | 192,704 | 25,310 | 218,014 | 11.0 | 21,197,440 | 1.21 |
| 1955 | 299,040 | 280,114 | 23,410 | 303,524 | 6.1 | 17,086,954 | 1.64 |
| 1956 | 199,880 | 179,636 | 30,796 | 210,432 | 7.5 | 13,472,700 | 1.14 |
| 1957 | 294,200 | 275,172 | 17,494 | 292,666 | 6.6 | 18,161,352 | 1.51 |
| 1958 | 207,840 | 190,062 | 32,086 | 222,148 | 8.3 | 15,775,146 | 1.09 |
| 1959 | 276,120 | 262,156 | 29,796 | 291,952 | 6.3 | 16,515,828 | 1.51 |
| 1960 | 232,280 | 217,790 | 20,156 | 237,946 | 7.7 | 25,245,220 | 1.25 |
| 1961 | 330,740 | 313,860 | 11,752 | 325,612 | 8.4 | 26,364,240 | 1.45 |
| 1962 | 353,480 | 315,318 | 58,126 | 373,444 | 5.0 | 15,765,900 | 1.70 |
| 1963 | 162,220 | 147,952 | 54,400 | 202,352 | 9.7 | 14,341,344 | .98 |
| 1964 | 548,480 | 430,138 | 13,266 | 443,404 | 0.5 | 21,506,900 | 1.89 |
| 1965 (estimated) | 356,000 | 293,000 | 84,000 | 377,000 | 4.8 | 14,064,000 | 1.68 |

TABLE III.—Comparing red cherry industry with three competitors

| | Red cherries | California cling peaches | Cranberries | Florida oranges |
|---|----------------|-----------------------------|-------------|--------------------|
| Average tons raw fruit produced..... | 150,000..... | 870,000..... | 70,000..... | 3,850,000. |
| Estimated number of commercial growers..... | 6,500..... | 3,500..... | 2,500..... | 10,000. |
| Number of States where grown..... | 5 east, 6 west | 1..... | 5..... | 1. |
| Number of processors..... | 63..... | 17..... | 5..... | 27. |
| Percent cooperatively processed..... | 15..... | 30..... | 80..... | 60. |
| Percent sold under nationally advertised brands..... | 10..... | 60..... | 80..... | 30. |

MARKETING TOOLS USED

| | Yes..... | Yes..... | No..... | Yes..... |
|---|----------|----------|----------|----------|
| Voluntary bargaining cooperative..... | Yes..... | Yes..... | No..... | Yes..... |
| Marketing order for fresh shipments volume..... | No..... | No..... | No..... | Yes..... |
| Marketing order to control volume processed..... | No..... | Yes..... | Yes..... | No..... |
| Marketing order to control grades processed..... | No..... | Yes..... | Yes..... | Yes..... |
| Marketing order to collect dollars for advertising promotion and research..... | No..... | Yes..... | No..... | Yes..... |

PERFORMANCE 1964

| | | | | |
|--|-------------------|-------------------|-------------------|----------------|
| Total raw fruit production (tons)..... | 270,000..... | 870,072..... | 68,125..... | 3,916,410. |
| Total raw fruit processed (tons)..... | 217,000..... | 789,408..... | 67,225..... | 3,133,125. |
| Value of crop to growers..... | \$21,700,000..... | \$60,142,000..... | \$19,137,000..... | \$213,848,750. |
| Gross income per grower..... | \$3,492..... | \$17,183..... | \$7,655..... | \$21,835. |

Mr. FREEMAN. I would also like to include a statement from the president of our association, who is in the peak of the apple harvest and who had to fly home unexpectedly last night, which is with reference to and supporting H.R. 15959.

This is a statement by John Handy, president of the Great Lakes Cherry Producers Marketing Cooperative.

Mr. TEAGUE. Without objection, it will follow your complete presentation.

Mr. FREEMAN. I thank you very much, Mr. Chairman. I would like to speak on the urgency and the necessity to the cherry growers in this bill being enacted, which, in fact, allows them to develop and organize a marketing order which bears upon them and their raw fruit without first getting the approval of the processors' vote.

I have been in the Yakima Valley in Washington and have worked on the west coast with the pear crop, so that I think that I can give you the basic context of the red tart cherry situation as it relates to the total cherry industry. Ninety-five percent of the red tart cherries are grown east of the Mississippi River, which is an exception in the fruit industry.

Also, almost 100 percent of these red tart cherries are processed, because, unlike the sweet cherry, being somewhat a tart and soft, they are highly desirable in the making of preserves, in the baking industry, in pies, and so forth, and they are not available for sale on the fresh market, so that the entire production goes into that part of the industry.

The income to the farmers from this crop varies, based on actual money basis, from about \$14 million to as high as \$26 million, which as you see, shows a great variation. This is the gross amount. It cost about 3 to 3½ cents per pound to harvest them.

The need for a marketing order to maintain equity in the industry, when we are faced with supplies beyond what can be processed or consumed is very apparent.

The Senate in 1961 and the Congress in 1962 passed enabling legislation allowing cherries for processing to come under the Agricultural Agreement Marketing Act. At that time the provision was included that processors would vote on any marketing order developed by the industry. As has previously been mentioned, a bill was developed, a marketing order was developed and submitted for vote in May of 1965, and it was defeated.

The processors at that time—and as manager of a large cooperative grower, I was involved intimately in working with all of the growers and processor groups in developing that marketing order—the processors participating in that development were very minimal. However, the processor testimony against the market order was maximal through publicity and releases, talks to growers—they did everything possible to discourage the growers and to discourage the adoption by the industry of that bill and, as has been related here, they defeated it.

Faced with the fact that this whole development of the marketing order, which occurred in the year 1964, when the cherry crop was 82 percent over average—there were 500 million pounds of cherries on the trees, with a normal production of about 275 million pounds on the average—the highest previous record being around 320 million pounds of cherries. With this kind of production you can readily imagine the local prices that were received.

And the primary problem, regardless of good intentions, was what to do with this surplus and how to dispose of it equitably.

There was no solution to the problem.

The growers got 5 cents a pound that year.

Our association, when the processors refused to pay 5 cents a pound, processed some of our members' cherries. In that year, we also estimated about 100 million pounds were left unharvested on the trees. But we did manage to maintain a 5 cent price, although we had to process 26 million pounds of our members' cherries.

The ruinous prices to growers in 1964 are well remembered.

The reason that we were here in Congress earlier asking for enabling legislation is that we also had ruinous prices in 1962 of 5 cents a pound under similar circumstances. Only that year, the chaos was created by a crop of 350 million pounds of cherries.

Mr. TEAGUE of California. As I understood you, you said that you were here in 1961 because the prices were low in 1962.

Mr. FREEMAN. We were here in 1961 and 1962—in both years, the crop exceeded 300 million pounds for the first time. So, we could see what was wrong; we could see the danger. I might add that one of the real reasons for this crop increase, based on the experience that many good horticulturists had, was that a new spray which controlled the lace bug was used. This spray had developed a greater bearing surface on all then present acres. This did not come with any tremendous planting of new cherry trees.

So, getting on with the history, we went back to the processors and said: "You went against us. We want to write some equitable, legal approach that the industry can participate in, to meet the situation in the cherry industry."

We met with them here in Washington in the Department of Agriculture, but the growers' committees met with them in all States and areas involved east of the Mississippi. We got a pretty good accord from the 63 processors in the cherry business. There are 6,000 growers. We devised the most simple, easily administered, least costly method of controlling an oversupply of cherries. On January 7, 1966, we submitted this proposition to the Secretary of Agriculture—who had, of course, gone through the experience of the previous order that had been defeated. And George Meheren, Assistant Secretary, wrote a letter stating that the Department felt that it was not feasible to hold another hearing, because, although the grower sentiment was in favor of the move, more favorable than the previous one, the processors indicated that they would not go along with it.

This year, we had a short crop, in 1966.

In 1965, there was an 85-million-pound carryover of unsold cherries, of the 1964 crop, and a crop of about 375 million pounds on the trees. And, as a result, the price to the growers was 4.8 cents.

This year the crop is less than half. The supply is the lowest in 21 years. The price is high. Even so 75 percent of our growers will lose money this year, because they had so little to sell.

And just as sure as we are sitting here, the conditions are set up for another big crop in 1967.

There have to be logical answers to this problem.

In Northern Wisconsin, in Door County, they are primarily dependent upon sour cherries. That is the major crop in many communities. These farms are going heavily in debt. The farmers are, in almost 80 percent of the cases working in the shipyards, and so forth.

So we bring this before your committee noting the urgency of the situation, and we feel that if the growers had the opportunity to develop effective and equitable marketing programs, and if the processors would through the administrative committees contribute their share so that an equitable marketing order for the growers can be developed, the problem could be solved. But as long as the processors have the privilege of voting it out when these large crops result in tremendous losses to the growers—not to the processors who, as businessmen—and I worked for Libby's for 5 years—they will not vote any marketing order, it being a distinct economic advantage to them when large crops are processed and they can buy their supplies at the depressed price. If they limit their purchases accordingly, as they have in the last 2 years, it is also clear that they are not prepared to develop an industry program to meet the situation. If the growers are given the opportunity, if they can vote on an order that affects them and the product that they own, the relationship within the industry would then be much more healthy. When a father is talking to his son, generally he knows he has the whiphand and he gets his way, but when two men are talking together, both equally strong and equal before the law, they have a much better chance of coming out with an equitable arrangement.

Thank you.

Mr. TEAGUE of California. Mrs. May.

Mrs. MAY. May I say certainly all of us are concerned about this problem in every part of the country.

You have indicated in your statement that you do anticipate, that with this improved horticultural method you anticipate, even on the present acreage, there is going to continue to be an increase in the production of cherries, and that this production will occur over a cycle of years, even though there may be some weather factors that will cut back the crop at times.

What about the increase in the consumption of cherries?

Does your association do anything in the promotion of cherries for consumption?

What have the processors been doing so that we can meet some of this increase in the years of high production?

Mr. FREEMAN. The actual census indicates that in the past 5 years there has not been enough plantings of cherry trees to replace the present acreages. So, our problem is, primarily, more tons offered for sale from that acreage.

The National Red Cherry Institute was created by processors and growers back in 1940, and is one of the oldest fruit promotional organizations in the country, but the growers have contributed in the past 10 years about 75 percent of the funds spent for this promotional effort. Our own organization, which has all of the difficulties of a voluntary cooperative organization—anybody can drop out in any one year—has developed a European market program wherein we, in cooperation with the Foreign Agricultural Service of the U.S. Department of Agriculture have set up displays and arranged for distribution in Europe. I, myself, made two trips to Europe. We sent a survey man over there, who could speak six languages, to send back to the processors all of the best contacts for cherries. I am happy to say that in 1965, Europe took about 48 million pounds of cherries, 17 percent of our entire crop.

The average sale of cherries since the growers stimulated this has been good. I might say that when we went into it, there was a lot of pooh-poohing on the part of the processors. This 17 percent represents a large expansion, compared to pre-1960 European exports, of only about 1 or 1½ percent of total cherry sales. I do not know what the future holds. The sales to Europe this year will be minimal, because of the short crop.

Our organization and our growers have been sophisticated in approaching the market, in trying to develop consumer demand.

Mrs. MAY. Does that apply domestically as well as foreign?

Mr. FREEMAN. That is one of the oldest domestic commodity groups in the country, this institute.

Mrs. MAY. I am well aware of that. I am only asking whether this has resulted in increased domestic consumption as well as consumption in Europe, in the export?

Mr. FREEMAN. Yes, ma'am. I do not have the figures with me, although they are in the table that I presented. But, actually, when I first came to the industry in 1958, the average sales were about 240 million pounds of cherries. This past year, about 325 million pounds of cherries were sold. The year before, when we had this huge crop, 340 million pounds, we greatly increased the consumption of cherries.

Mrs. MAY. Is this because of lower prices at the retail level or because of a new demand; which is it?

Mr. FREEMAN. Well, I think that some of it can be attributed to the grower activities at home and abroad. There has been the intro-

duction of cherry-pie mixes. One of our primary outlets is the Knouse process. They have put cherries in a much better consumer-demand situation. Cherry-pie mix is accountable for part of the increase in consumption. However, 70 percent of tart cherries are sold institutionally in frozen form and to the baking industry.

The consumer part has been neglected by the processors. They have been trying to sell the public water-pack cherries which are sour and relatively colorless and in No. 303 cans. These are not good for pies. They have been doing that for a long time. Of course, the growers really cannot do much about this.

Mrs. MAY. In other words, the processors have not made an equal effort of their own to increase the consumer markets for their products.

Mr. FREEMAN. That is correct. I am not accusing them. I think that part of the basic problem is the instability with the product. An unstable supply tends to make those who use cherries gamblers.

Mrs. MAY. How about the processor; doesn't he have to take a gamble on them, too?

Mr. FREEMAN. He becomes a gambler, too.

Mr. TEAGUE of California. I am going to have to interrupt you now, because the proponents have had an hour and a half, and I am sure that they would agree it is only fair to give the opponents the remaining one-half hour, unless there are further questions.

Mr. Greigg?

Mr. GREIGG. I have one more question.

On page 3 of your statement you say:

"The lesson is clear. As long as processors have the option of taking an advantage of growers when they have a surplus of cherries, they will not support an order giving growers the necessary controls to maintain reasonable supplies and profitable prices."

How do you account for the 7-percent mark at the grower level in the 1965 referendum?

Mr. FREEMAN. Part of it was a question of education. The growers in the Midwest have been very reluctant to accept Government controls. There has been a great propaganda that marketing orders were a form of Government control. That had to be overcome.

Secondly, I think that the processors themselves have a very great influence on the growers, and I think that they use their influence to talk down marketing orders.

I might say that a survey made by the Michigan State University, which is about to be released in the next 30 days—made in the past spring, in four States—indicates that 58 percent of the growers voted for it the last time. It indicates that for the revised marketing order or provisions relating to the control of the surplus and promotion, and so forth—that 70 percent or more of the growers would support that type of legislation.

Mr. GREIGG. Thank you. That is all.

Mr. TEAGUE of California. If there are no further questions, we thank you, Mr. Freeman.

(The prepared statement of John Handy, president, Great Lakes Cherry Producers Marketing Cooperative, submitted by Mr. Freeman, follows:)

PREPARED STATEMENT BY JOHN HANDY, PRESIDENT GREAT LAKES CHERRY PRODUCERS MARKETING COOPERATIVE

I am John Handy of Sodus, Michigan. Fruit growing is my only occupation and source of income, with apples and cherries my leading products. I have 50 acres of red tart cherries. I am President of Great Lakes Cherry Producers Marketing Cooperatives, Inc. with 1,500 members.

Today I appear before this Subcommittee to support H.R. 15959. This bill would permit growers of red tart cherries to adopt or amend marketing orders for this crop by a 66 $\frac{2}{3}$ percent majority, or reject an order by a 51 percent majority. As amended in 1962, the Agricultural Marketing Agreement Act of 1937 now requires that in addition to these grower requirements, processors must show a 51 percent favorable vote on a marketing order. In effect, this gives processors a veto power over grower marketing orders. Processors exercised this veto power in 1965 in a vote, and again in 1966 when their expressed opposition to a proposed order caused the Department of Agriculture to refrain from holding hearings, a necessary first step. As I understand it, the Agricultural Marketing Agreement Act of 1937, with its later amendments, intended to give agricultural producers the right to conduct a broad range of programs in an equitable manner to increase their incomes. To give another group who may or may not be directly affected by these programs a veto power over them is to nullify the act. Speaking for myself, and as President of Great Lakes Cherry Producers Marketing Cooperative, I ask you to support and pass S. 3420.

Some light on the situation in the cherry industry could be given by a survey in depth of four states in the Lakes area conducted by Michigan State University in 1966, which will soon be published.

The survey indicated that growers would support by 70 percent or more the following programs: collection and use of advertising and promotion funds, collection and use of research funds, quality control, and quantity control provisions in large crop years. These programs would be financed by growers and borne by growers.

Processors gave none of these programs a majority in the survey. Further evidence that processors will deny growers the use of marketing orders is provided by the Department of Agriculture, which refused to even hold hearings on a proposed marketing order for cherries in 1966 because, as the Department said, processors were opposed.

I indignantly protest the power given to processors to interfere with and to prevent action by growers on their own business.

Agriculture is the most depressed section of the national economy. Michigan State University conducts a computerized farm accounting program, which reported an average wage in 1965 for 1,200 Michigan farmers of \$1.16 per hour. I participate in this accounting program, and testify that my lack of profits is real.

I have also participated in every organized effort to improve the position of growers in the cherry industry. These efforts do not have the structure and general support to improve our position.

I believe that federal marketing orders could be very helpful to us. I do not believe that any other group, especially processors, should be in a position to deny us the use of the marketing order program.

These processors would like producers to remain passive and unstructured, a great lump of dough to be molded as they desire, a cow to be milked, a cherry crop to be delivered regardless of its profitability to the grower. We demand the right to use freely the market order programs designed by past Congresses.

Passage of S. 3420 is necessary to secure that right for cherry producers.

Mr. TEAGUE of California. Our next witness is Mr. Dunkelberger, representing the National Cannery Association.

Mr. DUNKELBERGER. If we may, we would like to have our statement printed in full in the record.

Mr. TEAGUE of California. Without objection, since it is short and you want to read it, you have time to do so, and you may.

Mr. DUNKELBERGER. Thank you very much. I think what I will do is to read excerpts from it and add certain additional comments if I may, in answer to the issues that have been raised by other witnesses today.

Mr. TEAGUE of California. You may do so. Please proceed.

STATEMENT OF EDWARD DUNKELBERGER, OF THE LAW FIRM
OF COVINGTON & BURLING, WASHINGTON, D.C., ON BEHALF
OF THE NATIONAL CANNERS ASSOCIATION

Mr. DUNKELBERGER. Mr. Chairman, and members of the subcommittee, at the beginning, we would like to make it clear that there has been an awful lot of discussion about the merits or the demerits of the marketing order for cherries. The committee should not be led away from the fact that there is one issue—and one issue only—that is raised by this bill, and that is the very simple one of the right to vote. We are talking about nothing but the right of the processors to vote on the marketing order that affects their operations.

We really are somewhat surprised that this right can be questioned.

In our statement we suggest that the proposal to disenfranchise the processors and the freezers as was suggested in a particular bill which would override Congress prior determination that both grower and processor approval should be required.

In the prior session, the proponents of the bill found that the processors did not believe that the proposed marketing order in 1965 was to the interest of the industry. A large number of the growers agreed. Neither group gave the necessary approval, and yet that failure was the basis for taking the canners' rights away from them.

We do not believe that Congress is about to disenfranchise the canners and the freezers, to turn over the operation, in effect, in many aspects of the business, to the suppliers, and to tell the canners that they cannot vote on this matter.

You understand, this committee knows better than most Members of the Congress, certainly, that a marketing order is not a regulation of the raw product, it is not a regulation of the grower; it is purely and simply a regulation of the canner and the freezer. The directions that are adopted in the marketing order affect the canners and the freezers. It tells him what to do. He tells him how much he can buy and how much he can set aside, what he must do, and what he must not do.

The act says, in so many words, that it will not apply to the producers in their capacity as a producer. The grower is specifically exempted from the coverage of the act. The act is for the benefit of the producer. It is the processor who would be regulated. It is of interest to note that it is the processor who pays for it. It is directly on the processor who pays for the marketing order.

So, we are not talking about a group of processors setting back wishing to control the producers and the handling of the raw product.

The producer has the Capper-Volstead Act which permits him the right to organize cooperatively, has a special antitrust exemption. They have it within their power to organize the cooperatives that control 50 percent of the growers in the area, if it is to the advantage of the growers to do so.

What they are asking here, apparently, is the right that if the growers do not agree that it is a good idea to operate a certain way, that they should, also, be compelled to come along with the way that the growers who do believe that certain types of control are advantageous. They not only want to control the dissenting growers, but the processors. We do not believe that this is fair. We do not think that is the issue before the subcommittee.

One of the witnesses pointed out that 26 percent of the processors approved the proposed order, and suggested that it cannot be all bad. Of course, more growers disapproved the proposed order than there were processors who approved it, so that perhaps that is their basis for questioning the validity of the proposed order.

Another witness suggested that there is a study about to be released by Michigan State University that says that growers have changed their mind, that they now think it is a wonderful idea and that they would wholeheartedly approve a marketing order. The preliminary draft that we have been given an opportunity to examine, by the man who is preparing that study, giving us the same opportunity as will be given the proponents to look at the preliminary draft of that, said that if the same order that was proposed in 1965 were proposed, that 60 percent of the growers would favor it—that is, if they were asked to do that. That 57 percent favored it the last year, and that 60 percent would favor it this year, in 1966, and two-thirds would be for approval under the Marketing Agreement Act.

Perhaps of even greater interest is the point that although on a specific question, the growers, 74 percent of the growers, believed that some commodity crop control provision might be desirable, only 30 percent of the growers approved of the principal commodity control provisions contained in the 1965 legislation. That was a set-aside program under which the surplus of the cherries would be frozen and canned and maintained for sale in later years. And that 30 percent of the growers would approve that provision in the new order.

Some of the other points that were raised by the witnesses is that the cherry-producing area is a disaster area, and that no one in his right mind in those circumstances would be a cherry producer. But they continue to plant trees. Mr. Freeman suggested that the tree plantings have not been very close to the amount necessary to maintain the continued acreage or production, but if the present acreage is in excess of the market demand, as I believe most of the people in the industry would say, and if the growers are doing so poorly under the present market-supply situation and price situation, why do they continue year after year to plant new cherry trees? We believe this is a question that this subcommittee, certainly, would want answered before it would proceed further on this legislation.

Another point is the letter from the Secretary of Agriculture. I imagine it was to the Senate subcommittee on this bill. It was included in the record. I do not have before me a copy of the letter that was written by the Department of Commerce which said that the Department of Commerce recommends against the enactment of this legislation. We think it would only be fair if in some appropriate manner that letter could be included in the record of these hearings.

Mr. TEAGUE of California. Certainly, I think that it should be. I have not seen any such letter. I will ask the clerk to obtain one.

Mr. STANTON. The Senate Agriculture Committee has received this letter and I will place a copy in the record.

Mr. TEAGUE of California. All right. Without objection, we will put a copy of it into the record at this point.

(The letter referred to follows:)

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., October 6, 1966.

Hon. ALLEN J. ELLENDER,
Chairman, Committee on Agriculture and Forestry,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: There is now pending before your committee a bill, S. 3420, to amend the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended, so as to eliminate certain requirements with respect to effectuating marketing orders for cherries.

This Department offers for your consideration the following comments with respect to this bill.

The changes involved would permit the issuance of marketing orders for cherries for canning or freezing without the presently required approval of the processors of cherries.

The Department of Commerce recommends against the enactment of S. 3420. A marketing order as authorized by the Agricultural Marketing Agreement Act of 1937 can be issued only by the Secretary of Agriculture, who is charged with the responsibility for its administration. Such an order regulates the handling and marketing of a commodity for the purpose of improving returns to producers (growers). A commodity under the Act can be regulated in interstate or foreign commerce; it also can be regulated in intrastate commerce if conditions exist which burden, obstruct or affect interstate commerce.

The Agricultural Marketing Agreement Act of 1937, as amended, currently includes cherries among those commodities which can be regulated, but a marketing order on cherries must be approved by two-thirds of the producers, and by processors of more than one half of the processed crop. This requirement is different from that for most commodities, which generally require approval of only the producers.

The special provision requiring processor agreement was written into the Act because the Congress recognized that a substantial part of the marketed cherry crop was being processed. In the last two crop years, over 85 percent of the total United States cherry crop was processed. The following tabulation provides data on the total farm production of cherries for 1964-65 and indicates the percentage bought by each type of processor as well as the amount sold as fresh fruit to nonprocessors.

*U.S. cherry crop and markets 1964 and 1965*¹

| | Sour | | Sweet | |
|------------------------|----------|----------|----------|---------|
| | 1965 | 1964 | 1965 | 1964 |
| Total crop (tons)..... | 274, 240 | 177, 540 | 119, 400 | 85, 210 |

PERCENTAGE OF TOTAL CROP

| Markets: | 1965 | 1964 | 1965 | 1964 |
|-----------------------|------|------|------|------|
| Fresh..... | 3 | 3 | 33 | 40 |
| Processed..... | 97 | 97 | 67 | 60 |
| Frozen..... | 53 | 52 | 1 | 1 |
| Canned..... | 43 | 44 | 15 | 15 |
| Brined and other..... | 1 | 1 | 52 | 44 |

¹ "Crop Production," Crop Reporting Board, U.S. Department of Agriculture.

The cherry processing industry has firmly established a substantial consumer market for its products. Identifying, developing, and supplying this consumer market demand has involved a considerable investment in plant and equipment by the cherry processing industry.

Since, as noted previously, 85 percent of the U.S. cherry crop is sold to processors, the views of processors should be considered along with those of the growers in determining the need for and in formulating a cherry marketing order. The impact of any marketing order for cherries to which the processors had not been party could be adverse for the processors, resulting in their paying higher prices, with less selection and a smaller available supply.

Marketing orders oriented primarily to the advantage of producers (growers), such as might be permitted under pending legislation, could limit markets for the producers themselves, and result in the substitution of other products by consumers. Such results would, of course, affect the operations of processors. The Department of Commerce is opposed to any legislation which would prohibit or restrict the opportunity for processors to service their markets or develop new products and new markets with the expectation of a reasonable return on their investment.

For the above reasons, the Department of Commerce considers that the pending bill S. 3420 is not in the public interest.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report to the Congress from the standpoint of the Administration's program.

Sincerely,

ROBERT E. GILES, *General Counsel.*

Mr. DUNKELBERGER. Thank you very much.

Another point that, perhaps, deserves mention:

The proponents have made much of the fact that the processors will have representation—could come to the hearing and present their points of view. We did that in 1965, and every proposal that we made was ignored. We do believe that if that is satisfactory representation, that this would be entirely a different type of hearing than it is today. We do not believe that a chance to come to a hearing to present your argument and then have the proponents, indeed the Department of Agriculture, act on them is really fair and can be described as adequate representation. We think that the right to vote is fundamental in a democracy. It is fundamental to the Agricultural Marketing Agreement Act.

One final point: The act was enacted in 1935 and contained a general exemption for all canning crops except olives and asparagus. The act has been amended twice since that time to ask for additional commodities to be added, as Mr. Nicholson testified, cherries, cranberries, certain apples, and grapefruit. And everytime Congress has amended the Agricultural Marketing Agreement Act to permit marketing orders to be applicable to fruits or vegetables for canning or freezing, it has deemed it necessary, advisable, and equitable, to provide for approval by processors who had more than 50 percent of the total volume before it can become effective.

So the proposal here would be an exception to the rule rather than correcting the exception or correcting the inequities as the proponents would suggest.

I think, with that, I will close my oral argument. I will be happy to answer any questions.

(The prepared statement submitted by Mr. Dunkelberger reads in full as follows:)

PREPARED STATEMENT OF EDWARD DUNKELBERGER ON BEHALF OF THE NATIONAL
CANNERS ASSOCIATION

My name is Edward Dunkelberger. I am an attorney with the firm of Covington & Burling, which is counsel for the National Canners Association, a non-profit trade association of almost 600 members who have canning operations in 44 States and the Territories. Members of the Association pack approximately 85% of the entire national production of canned fruits, vegetables, specialties, meat and fish. A number of these members pack red tart cherries, and would thus be very directly affected by the proposed legislation.

We are appearing today in opposition to H.R. 15959, under which canners and freezers of cherries would be denied the right to approve or disapprove the issuance of a marketing order that might have substantial impact upon their processing.

operations. The stated purpose of the proponents is to enable growers of red tart cherries to obtain the issuance of a marketing order without the necessity of processor approval. They argue that although the referendum on a proposed marketing order for red tart cherries in 1965 failed to obtain the required approval from both processors and growers, a new proposal would be approved by growers but not by processors.

It is thus necessary, they maintain, to disenfranchise the processors, and to override Congress's prior determination that both grower and processor approval should be required before the Secretary of Agriculture can issue a marketing order that would regulate the purchase of raw product by processors from growers. This proposal may be compared to a suggestion that a particular bill should become law without a vote by the House because in a prior session the House has refused to vote its approval.

This Subcommittee is of course well aware that Congress has refused to eliminate the general exemption in section 8(c)(2) of the Agricultural Marketing Agreement Act of 1937 which precludes the issuance of marketing orders for most fruits and vegetables for canning. The canning industry has for over thirty years opposed the authorization of marketing orders for canning crops, on the grounds that federally-imposed quantity and quality marketing controls for fruits and vegetables for canning are:

1. Unsound economically, in that they would not achieve the stated goals of the proponents;
2. Anticompetitive, in that they prevent the free operation of the market place;
3. Unfair, in that they regulate the canner, for the benefit of the grower, at the canner's expense; and
4. Inequitable, in that the canner, who must provide the capital investment in processing facilities and bear the risk of marketing the canned product, is deprived of the right to run his own business.

The 1937 Act exempted all canning crops, except for olives and asparagus. Although the Act has been periodically amended since that time, the only canning crops that have been added to the list of covered commodities were grapefruit in 1954, and cherries, cranberries and apples in 1961. Both of these amendments provided, however, that no order could be adopted for the canning commodity unless the Secretary found that the order was approved by processors who had frozen or canned more than 50% of the total volume of the commodity during a representative period.

The congressional policy has thus been clear. Marketing orders are not authorized across the board for fruits and vegetables for canning. Any exceptions for particular crops (other than olives and asparagus, which were covered under the Act as enacted) will be made only on the express condition that processors be given the right to approve or disapprove a proposed order.

Quite obviously Congress has concluded that drastic economic controls on canning and freezing operations, at the processor's expense and for the benefit of the grower, should in general not be permitted for canning or freezing crops, and in the few instances when they are authorized, they should be subject to processor approval.

It is now proposed that this consistent congressional policy be rejected, and that the provision for processor approval of marketing orders for cherries for canning or freezing be removed, because processors refused to approve in 1965 a proposed order that the overwhelming majority of processors, and a substantial segment of the growers, believed was economically unsound and not in the interests of the industry. The proponents acknowledge that they wish to override this informed and carefully considered judgment of those who process and market the canned and frozen product.

The canning industry believes that a marketing order for cherries should become effective only if both the growers and the processors can be persuaded that the imposition of Federal economic controls is justified and in the interest of the industry, and only if the particular controls proposed can be expected to achieve their stated purpose. We respectfully urge that this Subcommittee not recommend enactment of H.R. 15959.

Mr. TEAGUE of California. Thank you.

Do you have any questions?

Mr. VIGORITO. No questions.

Mr. TEAGUE of California. Mr. Greigg, any questions?

Mr. GREIGG. I have no questions.

Mr. TEAGUE of California. Mrs. May?

Mrs. MAY. Mr. Dunkelberger, obviously what has brought this before us at this late date is the situation up in Michigan.

Are you at all familiar with what went on? Why the price offered to the growers up there this last season was only 4 or 5 cents a pound. What was the position of the processors and the canners themselves in handling this huge crop in those years? Do you have any knowledge to which you can testify?

Mr. DUNKELBERGER. I am not a cherry canner, and I am speaking only from secondhand knowledge. We have talked to a number of canners. On the Senate side, two processors did testify, but they had to return, as Mr. Handy did, because of the pressure of business, to Michigan. I am not much of an economist either.

As I understand the supply and demand is the basis for any free enterprise system. Inevitably, in high-cost years the price will necessarily have to be higher. Indeed, this is a very fundamental fact that is recognized in the proposal, and they suggested that they could cut back supplies and that the price would rise. Very simply stated, I believe that the 4.8 cents this year and the 5-cent price last year was directly related to the excess supply in those years—excuse me, to the 2 previous years, the 14-cent price, higher this year, related directly to the fact that there are fewer cherries available.

Mrs. MAY. Would you feel that Government action of this sort in the bill before us could in any way help the producers of the cherries or the growers of the cherries? Cherries are a highly perishable commodity which has gone down in price over the years. Would there be any way for the producers of this commodity and the canners to work together to work out a more orderly marketing system that might not be so harsh in one year on the producer, or the next year on the other parts of the industry when there is a huge crop? Do you have any knowledge of any comparable commodity in any other part of the country that has been able to work out something that is not so economically disadvantageous both to the producer and the processor who will have to vote on this?

Mr. DUNKELBERGER. Certainly, one of the proponents said, in effect, that what is good for the grower is good for the processor. Certainly, you can turn that one around. They have a mutuality of interest that must be maintained.

I believe that there was testimony in the 1965 proposal by the cherry processors to the effect that they felt that the only reasonable answer to the problem was one that is basic to our capitalistic system, and, that is, to see the operation of supply and demand work, feeling that excessive planting had been undertaken by the growers, that there were cherry trees planted on marginal acres that should not have been planted.

What we are proposing here is an umbrella to be placed over inefficient growers who do plant on these marginal lands which are not ideally suited for cherry growing, and in the long run the only solution for the cherry growers and the canners must be the same solution that all the rest of the industry operates under, the law of supply and demand. If you try to put an umbrella over one food crop for processing, and establish a price restriction, inevitably it is our belief—and we base this upon studies that we have seen and analyses that we have seen of the marketing orders—inevitably, if you try to artificially raise

the price of one crop over competing crops, it will not, in the long run, be to the interest of either the producer or the processor of that crop. We do not see any easy scheme of Federal regulation. And this is Federal regulation, no matter what the proponents say. We do not see any easy scheme of Federal regulation that will solve the problem. I do believe that the industry people we have talked to feel, perhaps, that the thing most needed is a unified industry promotion effort. Indeed, in 1961 and 1962, when the cherry growers proposed to eliminate the exemptions for cherries for canning and freezing from the act, they were talking at that time of an advertising and promotion campaign. In 1962, when amended, indeed, it explicitly provided for paid advertising to be permitted under a marketing order for cherries, but the proposal they made in 1965, the one we are talking about in 1966, goes far beyond anything like that.

I believe, as we stated, with respect to pears, the position of the National Canners Association is in no sense opposed to the development of an industry promotion program equitably established and equitably operated.

Mrs. MAY. It has been indicated that the efforts of your industry, canners and processors, in the field of promoting a greater demand for cherry products has been less than effective. Are you in a position to comment on that?

Mr. DUNKELBERGER. It is unfortunate that the two processors who were here had to return. I am sure they would respond more meaningfully to your question.

They indicated that they thought that one problem in this area—there are study groups going in different directions: in Michigan, the Cherry Commission and the Red Cherry Institute; Mr. Freeman's association, and there are other producer associations—that to date, all of these various groups, for one reason or another—and I cannot say why—have not been able to get together to develop an effective commodity promotion effort. Beyond that, the Cherry Institute has undertaken in the past 25 years some work.

Mrs. MAY. Thank you, that is all.

Mr. TEAGUE of California. Mr. Dunkelberger, you spoke of your processors who had to leave who stated they desired to submit a brief statement. If so, it will be made a part of the record, unless there is objection.

Mr. DUNKELBERGER. I do not have such written statement. They came down yesterday. They did speak extemporaneously before the Senate subcommittee.

Mr. TEAGUE of California. Mr. Greigg.

Mr. GREIGG. Do the processors take advantage of the growers when there is a surplus of cherries?

Mr. DUNKELBERGER. The evidence that I have seen is that they do not. The processor is faced with marketing a huge amount of cherries. The processor is faced with processing a huge amount of cherries. He is faced with the necessity of storing them, if he had to sell them in future years.

As Mrs. May has indicated, the profit-and-loss statements of the canners and the processors, as found by the Marketing Food Commission, have in the order of 1 and 1½ percent for the overall entity, which is not, to our mind, an indication that they have been exploited. The processor has problems, too, of trying to sell this excess crop. I

believe there are studies that have been undertaken to indicate a direct correlation between supply-demand and price which control, in the economic sense—that really determines what the price will be. It is not a decision by the processors to exploit the growers at all.

Mr. GREIGG. What kind of examples would you cite where the processors have attempted to aid the growers during the surplus periods?

Mr. DUNKELBERGER. Aid in the sense that they purchased from them. It is the canner who is maintaining the surplus at the canner's cost; the canner has it; he has it in his warehouse. He continues to pay for it in storage, and he pays for the risk of marketing it in future years. He is aiding the grower, to our mind, to the same extent that the grower is aiding the canner by making available to him a commodity for processing.

Mr. GREIGG. I can say, as one member of this subcommittee, that I do not want to disenfranchise anyone, but along the same line, do you think that the processor should be allowed to determine the producer's policy?

Mr. DUNKELBERGER. Mr. Congressman, you cannot separate the vote from the fact of what is being voted on. What is being voted on specifically, here, is the regulation that tells the processor what he can buy. This is not an act that tells the producer what he can plant, or tells the producer what he can sell, or penalizes the producer if he does not live up to such a directive. This is an act authorizing controls on the processor, what he can buy, how much he can buy, and we think that to any businessman his buying policy is just as important as his selling policy. It would be quite a different thing if all you were talking about was as to the producers, how many they should grow and sell. That is not what we are talking about at all. We are talking about a regulation which does not apply to the producer; we are talking about a regulation that applies just to the processor, and we do not think that is fair. Every businessman should, if you are going to have some Government regulation, have a vote. He should have every right to that if you are going to have Government control of management and economy.

Mr. GREIGG. I just want to make this observation, and I will then conclude.

While we hear a good deal about Government control, I know where we would be in my home State without the essential feed grains program. That program means a substantial boost in the economy of my region, and I am a strong supporter of that program. I am one who believes that I would like to see grower supported, even if it means some of this type of control.

Thank you.

Mr. TEAGUE of California. Thank you, Mr. Dunkelberger.

Are there any further questions?

If not, I have a note here that Mr. John Peters, of Pennsylvania, to testify.

We will be glad to hear from you now.

STATEMENT OF JOHN PETERS, GETTYSBURG, PA.

Mr. PETERS. Mr. Chairman and members of the committee. I came here this morning without preparing a statement, and if it will be permissible, I will provide a statement for the record.

Mr. TEAGUE of California. If you desire to do so, you have that permission. You can testify any way that you wish now.

Mr. PETERS. I have come here as a farmer. I am a cherry grower. And I am a farmer, because I like to grow things. I do not go out of the country, too far. That is one of the reasons that I came here without a prepared brief. I have been growing cherries for a number of years. I have between 40 and 60 acres of cherry trees. I am growing approximately 200 tons of cherries.

I am a man who does not like Government interference. Historically and proverbially, my people, for 200 years, have been Pennsylvania Dutch, bullheaded people who do not want any interference with themselves in what they do.

I have supported the various efforts of the cherry growers to improve their position. I have tried to be a good grower. I will do everything I know how to produce my crops more efficiently. I have spent my lifetime in doing that. I am growing more cherries per acre constantly.

That has not been enough. I supported our local cherry organization. I have been president of the Pennsylvania Cherry Growers Association. I have been president of the National Red Cherry Industry Council. I have been on the Executive Committee of the National Red Cherry Institute. I have supported and I am a member of the Great Lakes Association. I have followed the cherry business on my own farm. I have followed it into the markets.

I helped to organize, and I am vice president of, the Knaus Food Cooperative, and, as such, I am not only a grower but I am interested in processing, too.

We support, finally, the idea of a marketing order for cherries, and then we observed what happened. I am here this morning to request support for the pending legislation, because it is obvious to me, after years' experience as a grower and as a processor, as a person in both ends of the market, that we need to have this sort of freedom or this sort of protection for the cherry industry.

I am convinced that we have tried a lot of things, and we have gotten help from all of the various activities in attempting to grow better fruit, but it is not enough in our economy, and we need some more help and we should not be stymied as cherry growers by the people on the other side of the fence when we attempt to put our house in order, when we have these fluctuating supplies. We know that the supplies of cherries fluctuate, due to conditions beyond our control, more widely than the supply of any other of the deciduous tree fruits, and we find ourselves in varying degrees of surplus production, caused by things beyond our control, those things being beyond our control, and we find that we are hurting ourselves or we are being hurt, and, actually, the processing industry is not benefiting as it should by this fluctuation in supply.

We feel that it is our business. We are the producers of the cherries. We feel that we should be able to have the support of Government programs that would be acceptable to us and that we would help to develop, to put our own house in order, and we feel that it is not necessary—it is not even proper—for the processor, for the buyer of our product to come in and undertake to tell us what we shall do and what we shall not do.

I do not expect to go to General Motors and to tell them what their policy should be in regard to the commodities that they sell to me;

and I do not see why a canner should come to me and tell me what my program should be in the production and the marketing and the handling of my product, even though it is a raw material.

I think that we might go on at great length on this subject.

Mr. TEAGUE of California. I am sure that we could, Mr. Peters, but, unfortunately, the bells have rung, and you will have to make it short.

Mr. PETERS. I am speaking directly to the point that I think this is a producer problem. The producer should have the right to make the decision, and his decision should not be prevented or interrupted by the buyer, and I stand on that statement.

Mr. TEAGUE of California. Thank you very much, Mr. Peters.

Are there any questions?

I have a letter here from Mr. John C. Lynn, legislative director, American Farm Bureau Federation, which he requests be made a part of the record, and, without objection, it will be made a part of the record.

The letter appears to be in support of the principles involved. I do not believe that you gentlemen would object to it.

(The letter dated October 11, 1966, follows:)

AMERICAN FARM BUREAU FEDERATION,
Washington, D.C., October 11, 1966.

HON. SPARK M. MATSUNAGA,
Chairman, Domestic Marketing and Consumer Relations Subcommittee, House
Committee on Agriculture, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN MATSUNAGA: Our attention has been called to H.R. 15959, a bill to amend the Agricultural Marketing Agreement Act, as amended "so as to eliminate certain requirements with respect to effectuating marketing orders for cherries."

The enactment of H.R. 15959 would eliminate the present requirement that a marketing order for cherries for canning or freezing must be approved by processors who have frozen or canned more than 50% of the total volume to be regulated. This would mean that a cherry marketing order could be made effective if it were approved by at least two-thirds of the cherry growers by number or volume voting in a referendum.

In many respects this would be comparable to the milk marketing order program that requires producer approval, but does not require handler or processor approval before it becomes effective.

The procedure for establishing a cherry marketing order requires that a public hearing be held at which time any interested party may submit his point of view. Any proposed order would reflect the hearing record. We believe this provides adequate protection for the processors and the general public.

Our policy resolutions do not cover this specific proposal; however, we know no reason why processor approval should be required for a marketing order program that is confined to raw farm products, provided there is adequate protection for the processors and the general public.

We would appreciate it if you make this letter a part of the record on H.R. 15959.

Sincerely yours,

JOHN C. LYNN, *Legislative Director.*

Mr. TEAGUE of California. The acting chairman declares the meeting of the subcommittee adjourned, subject to the call of the subcommittee's chairman.

(Whereupon, at 12:05 p.m., the subcommittee adjourned, subject to the call of the Chair.)



and I do not see what a better answer should come to me and tell the what you
regards should be in the picture and the marketing and the
thing is to produce even though it is a new market.

I think that we must be on an exact level on the subject
of the future of California and this thing we could do better
but unfortunately, the help, however, and you will have to make it
your own.

My friends, I am speaking myself to the point that I think this
is a good thing. The product should have the right to make
decision with the business should not be governed by interests of
the public and I expect that we can do it.

We have a lot of things, I think you can find out
the way to do it.

I have a lot of things, I think you can find out
the way to do it.

The new answer would be in support of the government in order to
do as much as you can and you would object to it.

I am sorry that I cannot do more for you.
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