develop new tart cherry containing products, thereby increasing the availability of new products and permitting retailers to introduce new and increased numbers of tart cherry products as part of their regular year-round product lines. Consumers would not be expected to have to pay more for tart cherry products because much of the anticipated favorable impact on grower returns would be absorbed by tart cherry processors and others in the manufacturing and distribution channels

The USDA's evaluation of the record shows that fluctuating tart cherry prices are inherently harmful to growers and consumers. If the peaks of grower prices were lowered and the production troughs reduced slightly through the operation of the order, consumer prices over a period of years could actually be slightly lower, and additional cherry supplies and products could be made available.

The proponents testified that tart cherry growers could anticipate an average return of ten cents more per pound under the proposed marketing order. An economist for the proponents testified that had the order been in effect for the years 1974 through 1991, grower prices would have increased by an average of ten cents per pound with the year-to-year price variation decreased by 33 cents. If handlers had passed on the cost of the proposed assessment for order operation (approximately .75 cents per pound) to growers, growers would still have received an increase of at least an additional nine cents per pound. Thus, the proponents testified that the beneficial effects of the proposed order would outweigh any

An economist for the proponents testified that the benefit/cost ratio for handlers and processors is also favorable, although less so than for tart cherry growers. The witness testified that their prices would increase, but less in percentage terms than grower prices. Also, volatility in prices and supplies would be significantly reduced. For the period analyzed by the proponent's witness (1974 through 1991), the handler/processor price would have been expected to have increased an average of four cents per pound and the price variation from year to year would have been reduced by approximately ten percent. It was argued that, if the price is increased, handlers/processors would have additional financial resources to develop and expand markets, thereby increasing the demand for tart cherries and tart cherry products.

The proponents testified that the benefit/cost ratio for consumers under

the proposed order would be slightly positive and, to the extent that market supplies and prices are more stable and product development occurs, consumers should benefit. This is because most increases in grower prices would not be likely to be passed on to the consumer, and consumers would benefit with more stable tart cherry prices and supplies. Even if handlers and processors were to pass on some percentage of increased grower prices, consumers would not be likely to notice major differences in the prices that they would have to pay for products that contain tart cherries compared to what they might have paid if an order had not been functional. As in most processed consumer food products, the cost of the primary food commodity ingredient represents a relatively small portion of the consumer price. The proponents estimated the cost of tart cherries in a cherry pie represented about nine percent of the total cost. Therefore, if the presence of an order increased grower prices by ten cents, this could result in a one cent increase in the cost of the ingredient at the retail level. The potential retail price impact of the order would represent a very minor change compared to the wide year to year fluctuations in grower and processor prices. It is, therefore, unlikely that the operation of an order would have much, if any, impact on the pricing strategies of retail operators or the average retail price. Furthermore, most of the evidence of how grocery stores and food service establishments price their products implies that they do not tie the retail price to the cost of the basic raw food ingredient. Two economists that testified at the hearing agreed with an analysis prepared by Mr. Bruce Marion (The Organization and Performance of the U.S. Food System) that states "consumer prices in grocery stores and particularly in food service markets largely do not reflect fluctuations in cherry supplies." Thus, just because there is a price increase to the grower, that increase would not necessarily be passed on to the consumer that buys the cherry pie.

The proponents testified that large swings in prices to food manufacturers inhibit the industry's ability to expand the usage of tart cherries. Manufacturers are reluctant to make product development or marketing investments in products whose supply and price are capricious. The record evidence shows that a major national fast food retailer discontinued making cherry pies for its fast food restaurants because it could not be guaranteed a consistent supply of and stable price for tart cherries.

In its brief, DOJ indicated that growers and handlers can hedge against

fluctuating prices by using the free market mechanisms available. For example, handlers may store low-priced tart cherries for sale in the future when prices are higher, diversify crops, enter into long-term contracts with buyers, or make more extensive use of frost control systems. The Department stated that the proponents ignored these options and never explained why they cannot thus protect themselves from fluctuating prices. However, the evidence showed that some handlers have already tried withholding product from the market. Persons at the hearing testified that this is a regular practice among some handlers, although it has not proven to be beneficial, since handlers acting alone or in small numbers cannot successfully ameliorate the current production variability problem. Growers testified that they have diversified somewhat, but tart cherries require specific growing conditions and substantial investment, so it is difficult for growers to further diversify. Land currently devoted to tart cherry production may be suitable for other tree crops such as apples and pears. However, there is little to no demand for additional supplies of these commodities and costs to convert to such crops are substantial. As there are often no profitable alternative uses for their land resources, Michigan, Utah, and Wisconsin growers' principal crop is often tart cherries. Some growers in other States have been able to diversify their crops and regard tart cherries as a minor crop, or have additional alternative uses for their land. However, the bulk of the production is not in these States.

DOJ took the position that the proposed marketing order should be rejected because the order would increase consumer prices, artificially limit supplies, and result in the destruction of substantial portions of the tart cherry crop. Instead, growers, processors, buyers, and consumers should continue to participate in a free market for tart cherries. Free markets best determine optimal production and price levels and are often the most efficient way to supply all types of goods and services. Regulation should be substituted for a free market only where exceptional circumstances exist. It was further argued by DOJ in its brief that the record established that the tart cherry industry is a competitive marketplace. Every year hundreds of growers sell their crop to numerous processors who sell processed cherry products to many buyers. The Department stated that entry to the industry is easy and market information