

MINUTE OF MEETING of "CONDITIONS" sub-COMMITTEE
of the SCOTTISH POTATO TRADE ASSOCIATION
held at 8, Kinnoull Street, PERTH at 6p.m. on
THURSDAY, 12th OCTOBER, 1978

PRESENT:

Messrs. G. Brass, J. George, J. Henderson, A. D. ^{Williamson} Henderson and R. David Hunter, with D. Blackmore (Assistant Secretary) in attendance.

APPOINTMENT
OF CONVENORS:

Mr. Hunter pointed out that Council's appointment of the sub-Committee had not included appointment of its Convenor. After a brief discussion Mr. A. D. Williamson was formally appointed and accepted office as Convenor.

Opening general discussion covered several aspects including difficulties in retail trade in seed, complaints periods (three days and ten days rules must be differently regarded) admixture problems and the need for protection from "loss of crop" claims. Mr. Hunter explained regarding fundamental breaches of contract and the Unfair Contract Terms Act now placing the onus to prove reasonableness upon the party imposing the condition(s). In reply to Mr. Brass he also explained that no specific changes in the Association's Conditions had been proposed but, knowing the National Association were looking very closely into the matter and that the next Joint Liaison Committee meeting on 18th October is to discuss the subject, the SPTA would listen to hear whatever proposals would come to light for the sub-Committee's consideration. It was agreed to scrutinise the Conditions of Sale, to try to define the "black", "white" and "grey" areas therein, in readiness.

Clause 1 (a) purity and health - it was thought it might be open to the charge this should include a Tuber Index Test but as now, the seller's proof founded on Department labels and proof should present no difficulties. It was agreed this section should be retained intact if possible.

(b) Uncertified seed - Agreed this section will be scrapped after 1st July, 1979.

(c) Warranty of germination or crop result - Mr. Hunter explained that one decided case defeated this section but, in his view, on hypothetical question of law rather than practicalities of actual evidence. The sub-Committee agreed that if all else is right then this section is reasonable except in a case of admixtures. In discussion of skinspot it was suggested this must be reported not later than planting time. This was agreed to be reflected in the present ten day rule and represented a change in degree only and not in the fundamental problem.

Clause 2 - Terms of Payment agreed omit ("interest") sentence and substitute "A credit surcharge will be added at the discretion of the seller". It was suggested that all Association members be recommended to adopt a "cost, plus credit charge, shown totalled" method of Invoicing.

Clause 3 - Protection. This was agreed to be a "warning off" clause, unlikely to attract dispute and should therefore be retained.

Clause 4 - Dressing. It was agreed this clause required to be retained subject only to revision for incorporation of "supervening legislation".

Size (a) and (b) It was agreed to retain these two sections. It was pointed out from experience that the latest bigger machines have a tendency to include too many "thirds" in 32mm seed samples. It was similarly agreed to retain the 4% tolerance if only to protect from inaccuracies due to machinery manufacturers.

Clause 5 - Delivery /

Clause 5 - Delivery. Discussions indicated no foreseeable circumstances requiring revision of this Clause although careful consideration should be given to the final, "supervening legislation", sentence.

Clause 6 - Rejection & Claims. It was agreed that the three day period was reasonable and should be retained, discussion indicating that the term would be interpreted as meaning "working" days. The ten day period, long known to be cause of much questioning, was clearly a different matter altogether and led to long discussion. It was the sub-Committee's general view that when such a complaint arose within time the buyer is the injured party and the seller MUST either settle on the buyer's terms or uplift the consignment. It was also felt the period would eventually have to be extended, the question being by how much which, in turn, would depend on the test of reasonableness. It was also pointed out that certain varieties were more susceptible to gangrene and the time will come, as both farmers and merchants become more aware of this problem, when all crops will be treated against this disease.

It was suggested that 14 days might be allowed for autumn deliveries but only ten days for spring deliveries. This met general support for discussion with NASPM with agreement that an extension to 14 days overall would be reasonable if properly handled after delivery. It was explained that some merchants include a printed "Instruction/Directions for storage" leaflet with each invoice. This was felt to be a good point in support of establishing "reasonableness" but should not be included in the Conditions to this end. Similarly the leaflet could point out that the Implied Terms Act was not applicable to perishable goods.

There was a long discussion of the final sentence of this clause dealing with limitation of liability. On balance it was accepted that this was unlikely to provide watertight protection but that it should be retained for "shelter" in those cases when "reasonableness" can be established.

Clause 7 - Disputes. After due consideration it was agreed that this clause was unlikely to cause contention in joint revision and should be retained.

Clause 8 - Interpretation. The sub-Committee confirmed the desirability of remaining regulated by Scottish law, it being pointed out that, following regionalisation, a minor amendment of the term "Sheriff of the County" had now become necessary.

In Summary it was agreed the meeting had highlighted two main points for further careful consideration, these being:-

- (1) The ten-day period for complaints for latent diseases and
- (2) Limitation of liability

the first of which, from which the second essentially stems, being paramount. Finally, it was agreed that revision of the Conditions of Purchase would follow any revision of the Conditions of Sale, whereupon the meeting was concluded.