

MINUTE of MEETING of the "CONDITIONS"  
sub-COMMITTEE of the SCOTTISH POTATO  
TRADE ASSOCIATION held at 8, Kinnoull  
Street, PERTH at 2p.m. on FRIDAY,  
9th FEBRUARY, 1979

PRESENT: Messrs. J. George, A. D. Williamson and R. David Hunter with  
D. Blackmore (Assistant Secretary) in attendance.

APOLOGIES: Mr. Blackmore intimated apologies on behalf of Messrs. G. Brass  
and J. Henderson

Mr. Hunter explained that a copy of the first draft of NASPM's proposed revised Conditions of Sale had come into his hands. On Council's instructions on 1st February, this had been copied in confidence to each sub-Committee Member and today's meeting arranged as soon as possible. This would provide that, in the event that serious objection be found on any point(s), the sub-Committee's views could be conveyed to Scottish members of NASPM's Council before that Council met to consider the draft on 15th February.

For simplicity the sub-Committee agreed to consider the draft in a paragraph by paragraph sequence and the discussions proceeded as follows:-

1. PARTIES: Although not contained in the present S.P.T.A. Conditions, this definitive paragraph was agreed to be clear and probably necessary.
2. BASIS AND APPLICATION: (1) The first sentence was agreed to be acceptable. Mr. Williamson felt the second sentence could cause a lot of inconvenience but Mr. Hunter's view was that, in a Court action, provision of a right of option to the buyer would give considerable support to the overall reasonableness of the Conditions. (2) It was agreed this paragraph would provide two-way cover for a seller and was therefore acceptable.
3. CONSUMERS AND NEGLIGENCE: (1) Mr. Hunter explained in general terms that the Unfair Contract Terms Act 1977 places a heavier onus of liability on a merchant selling to a consumer (householder) than on a merchant selling to another merchant. There followed a short discussion of some specific examples and Mr. Hunter undertook to ascertain the actual increase in liability to a consumer (Householder). (2) Although not specifically referred to in the present S.P.T.A. Conditions, Mr. Hunter explained this paragraph added nothing to the protection which a buyer would enjoy under the present S.P.T.A. Conditions anyway.
4. CERTIFIED:SEED POTATOES: (1) The sub-Committee felt somewhat surprised to find the content of this proposed paragraph retained so much of what NASPM had formerly indicated would require to be changed. It was agreed this paragraph was acceptable. Mr. Blackmore pointed out that from a Scottish viewpoint the order of "certified" and "basic" emphasis should be reversed and also that in the eventual revised S.P.T.A. Conditions all reference to "certified" should be avoided. (2) It was agreed retention of the content of this paragraph was essential and must be the same as it had always been. (3) This paragraph was agreed to be acceptable, Mr. Hunter preferring that the final wording "unless the context otherwise admits" be amended to read more specifically "unless stated to the contrary".
5. TITLE: Mr. Hunter explained that, in general terms, this paragraph specified acceptance of the seller's obligation that any "attached strings", known to the seller and which may not be reasonably expected to be known to the buyer, must be pre-disclosed to the buyer. The following discussion centred mainly on royalty obligations transmitted to a buyer in the course of any seed sale transaction.
6. PROTECTION: The sub-Committee recognised this paragraph as a straightforward retention of the presently existing S.P.T.A. Condition 3, although omitting that "reasonable arrangements for protecting the seed potatoes" must be "with Straw". Mr. Williamson observed that, from his experience, this Condition had proved very difficult to enforce.
7. TOLERANCES: This proposed paragraph was accepted as updating the existing S.P.T.A. Conditions into line with the new Seed Potato Regulations 1978, it being noted that the Riddle definitions are a "word-for-word" retention of the present S.P.T.A. definitions, with  
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the exception that the existing overall tolerance for errors has been omitted.

8. DELIVERY: (1) Although already implied in the presently existing S.P.T.A. Conditions, the clause "and failure to make any instalment delivery shall not entitle the buyer to repudiate the Contract" was agreed to be an acceptable addition. (2) The sub-Committee agreed that the present S.P.T.A. Conditions contained a better stated and more practical form of this point. It was agreed the S.P.T.A. should try to retain its present form and essentially, to retain the use of the expression "time being the Essence" (3) It was recognised that this clause now incorporated "force majeure" which, it was agreed was no bad thing and acceptable. Following discussion of a more precise definition of "adverse weather conditions" it was agreed this was, perhaps, better left somewhat vague (4). Discussion of this clause revealed a preference that it should be re-worded "Any SPECIFIC time or date ARRANGED .....", Mr. George pointing out that "delivery" is used in different senses at various places throughout the proposed new Conditions. (5) (a) There was discussion of the meaning of "qualified" signature in this clause, it being agreed this referred to the quantity involved and not to the qualifications of the person providing the signature. Similarly, it was agreed the term "quantity actually received" be taken to imply the number of bags and not the actual weight (of either individual bags or the total consignment) received. (5) (b) In the sense that the "buyer" may never (in actual practice) physically receive any particular consignment, the sub-Committee agreed it to be essential to define "receipt" as used in this clause. (PROVIDED THAT) - the sub-Committee recognised that while this rider allowed for a possible extension of the three-day period, it enhanced the "Court of Law" reasonableness of the whole Conditions overall and agreed, therefore that this rider is acceptable.

9. PASSING OF RISK AND PROPERTY: (1) It was the sub-Committee's view that the present existing S.P.T.A. Conditions are much more specifically detailed in respect of the "passing of property" than the NASPM proposal but take no account of separating out of the "passing of risk". It was felt the proposals should be expanded to take account of all forms of transportation. It was agreed that passing of risk "at delivery to the Buyer's premises" should be expanded to include "or order", and that this clause should also define at what point "failure to take delivery" occurs. (2) In the sub-Committee's view "property" cannot always be said to have passed even although "possession" may have passed to the buyer and there was some discussion as to whether passing of property could (or should) occur before actual payment has taken place. In view of the fact that perishable commodities involved extra risks in these respects, the sub-Committee felt that clear definition of these points is necessary.

10. GERMINATION AND CROP RESULT. After discussion of the various aspects of this clause, the sub-Committee agreed the proposal wording to be acceptable.

11. PATENT DEFECTS. While accepting this proposed clause the sub-Committee agreed unanimously that definition of "time of arrival at destination" must be specified and incorporated into this clause. It was also agreed that the presently existing S.P.T.A. provisions in respect of "mitigation of loss" should be retained and incorporated into this Condition and also that no change in the seller's "right to replace" should be allowed to occur.

12. LATENT DEFECTS. The sub-Committee's discussion of this clause recognised that its content was an entirely new introduction into the ambit of Conditions and possibly intended to take account of the concept of "daughter crop" performance. In view of the far-reaching effects of such an extension of the sellers liability, the sub-Committee withheld its recommendation pending further clarification of the intention of this Condition.

13. EXCLUSION OF LIABILITY. The sub-Committee found the proposed clause to be acceptable.

14. COMPENSATION AND DAMAGES. (1) In discussion of this Condition it was borne in mind that it had failed to provide the intended protection to the seller in the Strathallan Growers case for Fundamental Breach of Contract reasons (and probably also in the recent decision at Bodmin), (2) The sub-Committee felt this clause ought to be read along with/

with 3(2), instead of 4(1) as stated, even although a connection with 3(2) was not easy to establish. It was questioned whether 4(1) does, in fact, have a bearing on 14(2) which itself favours the seller. In view of the need to avoid anything that a Court might regard as unreasonable, the sub-Committee agreed this Condition requires further thought.

15. PAYMENT. It was agreed this clause is acceptable, the sub-Committee preferring to omit the words "at any time".

16. FORCE MAJEURE. The sub-Committee considered whether this Condition provides for cancellation of a contract. Arriving at an affirmative view the Condition was agreed to be acceptable.

17. CONSTRUCTION. It was obvious that the S.P.T.A. version of the whole revised Conditions must be "subject to and construed in accordance with" Scottish Law.

18. DISPUTES. It was agreed that, ideally, NASPM and SPTA Arbitration procedures ought to be the same but, as long as differences existed, this clause will require to be re-drawn in the SPTA version of the whole revised Conditions.

In Summary, the sub-Committee agreed the discussions had not indicated any points requiring contact to be made with the Scottish members of NASPM Council. Mr. Hunter felt he should try to arrange contact with NASPM's Solicitors to discuss several of the points and to seek clarification of their thoughts, views and intentions. It was agreed he should contact the NASPM Secretary in the first instance to this end, whereupon the meeting was formally concluded.