

REPORT ON MEETING with N.A.S.P.M. and
NORTHERN IRELAND POTATO MARKETING
ASSOCIATION to discuss the draft Conditions
of Sale prepared by N.A.S.P.M. held in the
Excelsior Hotel, MANCHESTER at 11.30 a.m.
on WEDNESDAY, 1st AUGUST, 1979.

PRESENT: N.A.S.P.M. C.J. Baker (Chairman), E. Sherriff, A.M. Baxter,
M.F. Strickland and F. Trahair.

Northern Ireland Potato Marketing Association. H. Aves and
Wright.

S.P.T.A. D.H. Lindsay, G. Brass and R.D. Hunter.

Irish Potato Marketing. Mr. K. Burke was invited to the meeting
but did not arrive.

Mr. Manton Baxter commenced the meeting by explaining that the new Conditions of Sale had been drafted for the reason that a number of Court cases in recent years had indicated a need for a revision of these Conditions. The N.A.S.P.M. had formed a Sub-Committee with power to take independent legal advice. The Sub-Committee had consulted a firm of London Solicitors (Durant Plessie?) who in turn had consulted Counsel. Mr. Baxter stated that the Sub-Committee had prepared draft Conditions of Sale but Counsel had insisted upon re-drafting them. The present draft was, therefore, prepared by Counsel. His original draft had been slightly amended as a result of observations of the N.A.S.P.M. Council.

Mr. Baxter explained that his Sub-Committee had arranged a meeting with the Potato Committee of the Farmers' Union of England and Wales (Chairman, Mr. Harrison). At that meeting the N.A.S.P.M. had discovered that the English Union had a "Seal of Approval" which they granted to documents, etc. of which they approved. The meeting with the English Union Committee had appeared to be most successful and very few objections were raised. Mr. Baxter and his Committee had gained the impression at that meeting that subject possibly to slight amendments the draft Conditions would receive the Seal of Approval. It was arranged that the N.F.U. would write to N.A.S.P.M. ^{with their comments} ~~confirming their agreement~~. The letter, however, which eventually was received from the N.F.U. was entirely contrary to the attitude/

attitude shown by the N.F.U. Potato Committee. Mr. Baker added that he understood that the letter had been sent by the Secretary of the N.F.U. Potato Committee following a letter received by him from a Solicitor on the staff of the N.F.U. Mr. Baxter stated that if in fact the attitude of the N.F.U. was that contained in their letter then it would be most unlikely that the Seal of Approval could be obtained. It was agreed that Mr. Christopher Baker would speak informally to Mr. Harrison to find out if in fact the letter accurately expressed the opinion of the N.F.U. Potato Committee. There seemed to be some doubt as to whether Mr. Harrison was aware of the terms of the letter. It was also agreed that the N.A.S.P.M. would ascertain whether it was the Potato Committee or the Legal Committee of the N.F.U. who granted the Seal of Approval.

The meeting then commenced to discuss the draft Conditions clause by clause considering the various comments from P.M.B., N.F.U. and S.P.T.A.

Heading. R.D.H. suggested that it would be desirable to include in the heading a reference to the various bodies who had given their approval to the Conditions.

1. Parties. It is the intention of N.F.U. that the firm using the Conditions will insert their own name instead of the words "the person, firm or company selling".
2. Basis and Application. To take account of the comments of the English N.F.U. it was agreed that N.A.S.P.M.'s Solicitors be consulted regarding the addition of the words "may be" in the last line of Paragraph 2 (1) between the words "price" and "quoted".
3. Consumers and Negligence. It was agreed to consult the N.A.S.P.M.'s Solicitors with regard to the words "in the case of a retail sale" being inserted at the beginning of Paragraph 3 (1).
4. Certified and Uncertified Seed Potatoes. It was agreed to add the word "Basic," at the beginning of the heading to read before the word "Certified".
5. Title. The suggestion of N.F.U. that this clause be included in Clause 13 was not accepted.

6./

6. Protection. It was agreed that the N.A.S.P.M.'s Solicitors would be consulted regarding the alteration of this clause to allow a period of "five working days" and also to make provision for an extension of that period in the event of adverse weather conditions.
7. Tolerances for Defects, Disease and Size. Mr. Baker stated that he had received an approach from a S.P.T.A. member suggesting that this clause should be altered to regulate split grading. It was agreed not to make any alteration to this clause.
8. Delivery.
 - (1) The definition of "delivery" was noted.
 - (3) It was agreed alteration of this clause to read "Without prejudice to Condition 16 below loading may be postponed by either party owing to adverse weather conditions."
 - (4) It was agreed to suggest that this clause be altered to ensure that any delay in delivery is "reasonable".
 - (5) There was considerable discussion regarding this clause. It was agreed that the clause referred to both shortages (short delivery) and short weight. What was intended was that in the event of shortages a signature must be obtained acknowledging the actual quantity received (the word "qualified" is to be omitted.) In the event of both shortage or short weight the complaint must be lodged with the seller within three days of the arrival of the seed "at the buyer's premises or in accordance with his instructions".
9. Passing of risk and property. It was agreed that the words "or in accordance with his instructions" be inserted in line three of Paragraph (1) to read after the words "buyer's premises".
10. Germination and Crop Result. It was agreed that this clause must be included unaltered.
11. Patent Defects. After a ^{very} full discussion it was agreed to suggest to the N.A.S.P.M.'s Solicitors that the reference to "skinspot, gangrene and dryrot" should be omitted from Paragraph (1) and a new Paragraph (2) be added to deal with these specific diseases making no reference to the fact that they are discoverable by reasonable inspection/

inspection at the time of arrival. The present Paragraph (2) will be re-numbered (3).

Mr. Manton Baxter stated that the N.A.S.P.M.'s Solicitors had been approached on at least two occasions by the N.A.S.P.M. to include the clause requiring the purchaser "to clear the goods and take all necessary measures to mitigate damage". The N.A.S.P.M., however, have been advised by their Solicitors that to include such a clause would be likely to render the Conditions "unreasonable". Their principal reason for believing this clause might be considered to be unreasonable is that the Condition also stated that it is not competent for the buyer "to reject claim or complaint unless the seed shall have been properly stored during the period after their arrival at their destination." The Solicitors had pointed out that in any case in practice the clause calling upon the buyer to clear the goods to mitigate the loss was unenforceable. The S.P.T.A. and the Northern Ireland delegates stated that they would require to consult with their respective Organisations before agreeing to this clause being left out.

There was also considerable discussion with regard to the need to include in the Conditions of a definition of "destination". The N.A.S.P.M. representatives considered that there was no need from their point of view of any fuller definition. They pointed out that in their existing Conditions there is no such definition. It was agreed that the S.P.T.A. and Northern Ireland Conditions, when drafted, would require to have the appropriate definition of "destination" included. Mr. Baker expressed the opinion, however, that the definition of destination in the case of road transport as "the first destination of the lorry" as contained in existing S.P.T.A. Conditions was not reasonable. When S.P.T.A. draft their Conditions there will require to be further discussions with N.A.S.P.M.

12. Latent Defects. The N.A.S.P.M. representatives confirmed that this clause was intended to refer to the daughter crop. It was agreed to consider the reference to Insurance (Sub-Clause (3)). It was known that no such insurance was available.

13./

13. Exclusion of Liability. No comments.
 14. Compensation and Damages.
 - (1) It was agreed that this clause must be included in the Conditions although doubt was expressed as to whether the Courts would consider this clause to be enforceable.
 15. Payment. The N.A.S.P.M.'s Solicitors had pointed out that it is essential that the seller has the right to obtain payment before delivery. In practice this means payment before the seed is despatched. This is the reason for the proposed wording. In view of the fact that the English N.F.U. had not raised any complaints regarding this clause it was agreed to leave it unaltered.
 16. Force Majeure. It was agreed to replace the word "Council" with the words "Local Authority". It was also agreed that this clause should be altered to make it also available to the buyer as suggested by the N.F.U.
 17. Construction. Christopher Baker claimed that International Contracts were very often governed by the Law of England notwithstanding the nationality of the parties involved. R.D.H. indicated that this would not be acceptable to S.P.T.A. who in their own Conditions will require that the contract is regulated by the Law of Scotland.
 18. Disputes. It was agreed that at the October meeting of the Joint Liaison Committee discussions would take place with regard to the possibility of introducing common arbitration procedures possibly also to include Northern Ireland. At the present time the English N.F.U. is requesting to see a copy of the N.A.S.P.M.'s Rules in order that they may comment upon them.
- Copyright. The N.A.S.P.M. confirmed that they were agreeable to S.P.T.A. and Northern Ireland re-drafting their own Conditions based on the new Conditions prepared by the N.A.S.P.M. The principal reason for the expression "Copyright N.A.S.P.M. 1979" was an effort to prevent non N.A.S.P.M. members using the Conditions. If S.P.T.A. adopt similar Conditions N.A.S.P.M. would wish the expression "Copyright S.P.T.A./

S.P.T.A." (possibly "N.A.S.P.M." to be included). It is considered that if an effort is made to prevent non-members using the Conditions this may encourage new members to join the respective Associations. Mr. Baker and Mr. Baxter did not indicate that N.A.S.P.M. would wish a financial contribution from the other Associations towards the cost of drafting the Conditions. Mr. Strickland, the N.A.S.P.M. Treasurer, however, suggested that some contribution would be welcome. It would appear that N.A.S.P.M. have expended approximately £1,500 to date on these Conditions.

Timetable for Introduction. Mr. Baxter indicated that he hoped that the N.A.S.P.M. Conditions would be finalised by December, 1979 in order that they may be available for use in connection with the 1980 crop.