

MINUTE of MEETING of the "CONDITIONS"
sub-COMMITTEE of the SCOTTISH POTATO
TRADE ASSOCIATION held at 8, Kinnoull
Street, PERTH at 4 p.m. on Friday,
21st. SEPTEMBER, 1979.

PRESENT: Messrs. G. Brass, J. George and R. D. Hunter (Secretary). with
D. Blackmore (Assistant) in attendance.

APOLOGIES: Mr. Blackmore intimated apologies for absence on behalf of
Messrs. J. H. Barr, J. Henderson and D. H. Lindsay.

Mr. Hunter explained that SPTA (and Northern Ireland) objection, at the joint meeting with NASPM in Manchester on 1st. August last, to NASPM's omission of any "mitigation of loss" Condition from its proposed draft revised Conditions of Sale had been endorsed at the meeting on 13th. September when SPTA Council had insisted this Condition (albeit reworded) must be retained. In fact, NASPM had taken the point back to its legal advisors who had now suggested a possible Condition 11 (3), for insertion in the draft Conditions a copy of which suggested Condition (received this morning and worded as follows) was tabled:-

"Without prejudice to the rights of either the seller or the buyer under this condition, any buyer who wishes to reject seed potatoes after their arrival at their destination shall, if reasonably requested to do so by the seller, take delivery of the goods and store them properly, either overnight or for such longer period as may reasonably be requested by the seller, pending resolution of the parties' rights pursuant to this Condition".

Mr. George pointed out that, for want of a clear definition of "destination", the phrase "after their arrival at their destination" created ambiguity. It was agreed this phrase should be excluded from NASPM's draft Conditions but should be included in the Scottish Conditions which, as already agreed, will include a specific definition of "destination".

Mr. Hunter questioned whether "pursuant to this condition" i.e. 11 (3) ought to read "these" (i.e. the whole Conditions). After discussion of the various considerations (including damage and disease, chemical treatments, frost, reasonableness, etc.), it was ^{agreed} either could be right and neither would be wrong and (on balance) "this" be accepted.

Mr. Hunter next reported his telephone discussion with Mr. Christopher Baker in reply to Mr. Baker's personal (telephoned) enquiry for SPTA views on the desirability of standardising "working days" as already agreed for Condition 8 ("Delivery"), with "days" as affecting Condition 9 ("Passing of Risk and Property") and as stated in Condition 11 ("Patent Defects"). as now amended.

Mr. Baker had explained that Mr. Harrison (Chairman of the English NFU's Potatoes Committee) had been somewhat surprised by the ready extension of the number of "days" already written into the amended proposed Condition 11 ("Patent Defects"). In view of the widely-held view (which the sub-Committee endorsed) that, since the "reasonableness/acceptability" of the revised Conditions will be considerably strengthened by it, securing the NFU's "Seal of Approval" is a major objective. In this light NFU acceptance of the inclusion of the proposed revised "mitigation of loss" condition might be encouraged by adoption of standardised "working days" throughout the proposed revised Conditions of Sale. Mr. Baker had added that this course would also effectively co-ordinate the proposed Conditions with the "inspection within 14 days after delivery" period adopted by the Ministry of Food under the Seed Potato Regulations 1978.

Mr. Hunter /

Mr. Hunter pointed out that, effectively, this affected the three-day and ten-day complaints periods under the draft Condition 11 (Patent Defects), any extension of which had been opposed by SPTA Council at its meeting on 13th. September. Mr. Brass explained that in his own experience these periods are not normally rigidly enforced on an "actual days" basis but, in practice, were allowed as "working days". Mr. Blackmore stated Mr. Baker had made precisely this same point and had also defined a "working day" as "any day other than Saturdays, Sundays and Statutory Public Holidays".

The sub-Committee discussed several postulated "worst possible" examples that might arise if the suggestion were to be adopted, arising from which Mr. Hunter enquired if the Scottish Trade would accept provision that if a last day of a permitted period should fall on a Saturday, Sunday or Statutory Public Holiday, that day shall be carried forward to become the next working day. He added that this is the accepted position under Common Law which such provision would merely be spelling out. Mr. Brass thought that it would be acceptable provided that "Saturday, Sunday and Statutory Public Holiday" is included for specific definition purposes.

It was also agreed that if accepted as applicable to Condition 11 ("Patent Defects") the same provision would also be applicable to Condition 8 ("Delivery") but, in respect of Condition 6 ("Protection"), "five working days excluding Saturdays, Sundays and Statutory Public Holidays" should be used, since this Condition (6 "Protection") applied to stocks in a seller's own store (over which he had complete control and therefore responsibility) whereas Conditions 9 ("Passing of Risk and Property") and 11 ("Patent Defects")/which had passed into the buyer's hands (and were thus outwith the full control and responsibility of the seller).

Consideration was also given to whether (to assist both brevity and simplicity) an "Interpretation" paragraph defining, inter alia, working days and non-working days, should be adopted. Mr. Hunter had reservations about using the latter term and this matter was not decided.

In summary the meeting agreed the sub-Committee could not reply to Mr. Baker's suggestion without the express authority of Council. It was decided a special meeting of Council should be arranged as soon as possible to consider the sub-Committee's recommendations that :-

- (a) NASPM's suggested "mitigation of loss" Condition 11 (3) be accepted subject to deletion of the words "after their arrival at their destination", which words being retained in revised Scottish Conditions containing a specific definition of "destination".
- (b) "days" throughout both the English and Scottish versions of the ~~revised~~ Conditions of Sale shall be suitably defined to mean "(all other than Saturdays, Sundays and Statutory Public Holidays) working days".

Mr. George sought clarification of the legal meaning of NASPM's draft proposed Condition 5 ("Title") and Condition 9 ("Passing of Risk and Property") and the effect of the former upon the latter. Mr. Hunter explained that, in general terms, the Sale of Goods Act 1893 ensured that ownership passed from the seller to the buyer at the earliest opportunity. An important exception was that in certain circumstances provision could be made to delay ownership passing and in illustration he read out a brief account of the noted "Rompala" case. Brief discussion agreed that any delay in the passing of ownership of perishable goods should be avoided as far as possible, even though this allows both "risk" and "property" to pass from the seller to the buyer irrespective of whether or not the buyer has made payment to the seller. It is thus of vital importance for a seller to take utmost care to ensure that a buyer is not in a financially-exposed, possible liquidation, position.

The Meeting was thereupon concluded.