

MINUTE of MEETING of COUNCIL of the
SCOTTISH POTATO TRADE ASSOCIATION
held at 8, Kinnoull Street, PERTH at
3 p.m on Tuesday, 2nd OCTOBER, 1979

PRESENT:

Messrs. J.H. Barr, G. Brass, J.G.H. Penton, J. Fordyce, B. Fulton
J. George, D. Maxwell and J. Waddell, with R. David Hunter (Secretary)
D. Blackmore (Assistant) in attendance.

The President, Mr. J.H. Barr, occupied the Chair

APOLOGIES:

Mr. Blackmore intimated apologies for absence on behalf of J. Cook,
Messrs. D.K. Lindsay, J. Henderson, J.R. McArthur and K.A McKenzie.

MINUTES:

and

MATTERS

ARISING:

It was agreed to defer consideration of the Minute of Meeting of
Council held in Perth on 13th September, 1979 (copies of which had already
been sent to each Member of Council) and the Matters arising therefrom
until the next Meeting of Council to be held in Perth on 25th October,
1979.

CONDITIONS
OF SALE

Mr. Hunter explained that today's Meeting had been called at short
notice specifically to consider two main points referred back to Council
by the "Conditions" sub-Committee at its meeting on 21st September, 1979.
He gave a brief resume of the background involved and explaining that a
further detailed letter and updated draft of the proposed revised
Conditions of Sale had been received from N.A.S.P.M only yesterday.

"days"/"working days" - It had been proposed (under Clause 6 "Protection")
to extend the period after which the seller is not to be responsible
for frost damage at the loading point from three days to five days from
the day appointed for uplifting the seed potatoes, and that the five days
shall be "working days" (i.e. excluding Saturdays, Sundays and Statutory
holidays).

The sub-Committee felt that, in the light that the potatoes remained
under the seller's control during such period and the "working days"
concept was nowadays usual practice, these proposals be recommended
for acceptance. To do so, however, meant that the proposed revised
Conditions would refer to "working days" in this context and "days"
in others (notably three-day and ten-day complaints periods). Mr. Hunter
explained he agreed with Mr. Christopher Baker's view that the English
N.F.U would be sure to pick this point up. Against the importance
of restoring the "mitigation of loss" Condition AND of securing the
N.F.U Seal of Approval it was felt desirable to "give something back to
balance".

On this basis the sub-Committee had examined the possibility of
standardising "working days" throughout the revised Conditions. Within
the context of Clause 8 "Delivery" (notification of claims) it was felt
more appropriate to state that when the third day terminates on a
Saturday, Sunday or Statutory holiday the termination shall be extended
to the first day following which is not a Saturday, Sunday or Statutory
holiday.

Within the context of Clause 11 "Patents Defects", the sub-Committee
had similarly agreed it would be appropriate to state that when a three-
day or a ten-day period terminated on a Saturday, Sunday or Statutory
holiday, the termination shall be extended until the first day following
which is not a Saturday, Sunday or Statutory holiday.

Mr. Hunter explained that, in his view, this was simply spelling
out the Common Law position anyway and gave nothing away which was not
covered elsewhere in the proposed revised Conditions. The sub-
Committee had felt it necessary, however, to seek Council's approval of
these proposed changes.

Among several points to emerge during Council's discussion it was made clear that, although Condition 6 "Protection" specifically covered damage by frost, damage from other causes was covered under Condition 9 "Risk". Mr Hunter also reported an Enquiry from Mr. Barr following proposed re-wording of Clause 9 apparently creating ambiguity in respect of seed loaded "free on rail" in Scotland. Mr. George pointed out that this situation falls within the term "buyer's* transport" but Mr. Hunter preferred a clearer definition (perhaps "buyer-paid transport"). In reply to Mr Waddell he also explained that, although N.A.S.P.M seemed less concerned, the Scottish form of the proposed revised Conditions will clearly define "destination" and thus "delivery", in turn defining the commencement of any three-, five-, or ten-day periods.

It was also agreed that a careful definition of "statutory holiday" was essential, subject to which (and to clarification of the "free on rail" position) Council duly approved the sub-Committee's "working days" proposals.

"MITIGATION
OF LOSS:

Mr Hunter next explained that in implement of Council's earlier instruction the sub-Committee had pressed for restoration of the "mitigation of loss" provisions. N.A.S.P.M's commercial Solicitor had now proposed insertion of a sub-clause (3) under Condition 11 "Patent Defects" as follows:-

"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".

Pointing out that the intention is to guard against irresponsible rejection, Mr Waddell felt that the words "reasonably" should be deleted. Mr Blackmore explained Mr. Henderson had made precisely this same point by telephone and also to insert "inspection by independant inspectors and" before the word "resolution".

Council also considered "this Condition" and agreed it should be changed to "these Conditions", as also that the words "after their arrival at their destination" should be deleted. After further discussion it was also agreed that "off load" be substituted for "take delivery". Council thereupon approved the (now revised) sub-clause (3) and instructed the sub-Committee to meet again as soon as possible to scrutinise the latest revised draft received from N.A.S.P.M, there-after reporting back to Council.

The Meeting then terminated with a vote of thanks to the Chair.

