

MINUTE of MEETING of the "CONDITIONS"
SUB-COMMITTEE of the SCOTTISH POTATO
TRADE ASSOCIATION held at 25 South
Methven Street, PERTH at 4 p.m. on
Tuesday, 2nd APRIL, 1985.

PRESENT: Messrs. J.O. Robertson (Convenor) and R.D. Hunter (Secretary) with J.H. Barr by invitation, and with D. Blackmore in attendance.

APOLOGIES: Apologies for absence were submitted on behalf of Messrs. J. Henderson and G. Smillie.

ARBITRATIONS PROCEDURES: The sub-Committee considered and discussed the pre-circularised draft revisions of the Association's Arbitration Procedures referred to it by Council. Mr. Hunter explained these are, in essence, "guidance notes" in support of the Disputes provisions of the Association's Conditions of Purchase and Conditions of Sale. They were thus "recommendations", not Rules (which could not be imposed unless incorporated into the Conditions). The two draft forms of Procedures took account of the differences applying in (A) Arbitrations between Association Members and (B) Arbitrations between a member and a non-member of the Association. Messrs. Robertson and Barr agreed this distinction to be necessary.

In discussion of (A), it was agreed para. (3) be revised to make clear that the legal action referred to would be to enforce an Award and not to re-open the dispute in a Court, thus reinforcing para. (2)(f) and the Conditions themselves. In respect of paras. (7) and (9)(e), it was also agreed that to clarify that the "fees of skilled advisers" referred to therein were those incurred by the "Arbiters, Oversman, Clerk" themselves (not by the parties to the dispute), the word "their" be inserted before "skilled".

During full discussion of para. (9)(c), Mr. Hunter confirmed that parties to the dispute are not barred from being accompanied by their legal representatives at any hearing. Messrs. Robertson and Barr felt that "proof" was a legal term and it was agreed that it would be replaced with wording which would be more readily understood by a layman.

There was careful consideration of para. (9)(e). It was agreed that awarding of expenses must depend on the circumstances of each case but that some guidance for Arbiters would be helpful. Mr. Barr pointed out that the purpose of Arbitration is to provide equitable, speedy and inexpensive resolution of disputes and that, in awarding expenses, the Arbiters should take due regard of the willingness of the parties to comply with these objectives. It was agreed para. (9)(e) be suitably amended along these lines.

Subject to the foregoing changes it was agreed that "between Members" Procedures would be acceptable and that (where appropriate) the same changes should be made to Procedures between a member and a non-Member (B).

Before turning to detailed consideration of (B), Mr. Barr pointed out that the principal difference herein lay in the procedure for appointment of Arbiters. Notwithstanding the Arbiters should be objectively impartial (Mr. Hunter quoted NASPM Rules "Arbiters shall act as Judges, not Advocates"), it is in the nature of things that each Arbitrator is regarded as being concerned for one party. It thus becomes even more important to try to ensure that the Oversman is guaranteed to be impartial. Mr. Robertson felt it might be helpful to point out that the Oversman need not necessarily be a member of the Trade.

This led to consideration in these circumstances of any increased possibility that such Arbiters may be unable to agree on the appointment of/

of an Oversman and/or their Clerk. Mr. Hunter undertook to check the statutory procedure for resolving such a difficulty and to amend (B) if appropriate. It was later agreed to incorporate a recommendation that the Clerk be a practising member of the Scottish legal profession. It was further agreed that copies of all Submissions etc., be sent to both Arbiters and the Oversman simultaneously and that the Oversman should be present at any "hearing" that takes place.

Mr. Barr suggested inclusion of a requirement that a copy of the Award in each Arbitration involving an Association Member be sent to the Association Secretary for archive purposes. He also expressed concern that the financial scale of disputes would continue to increase, particularly when chemical problems are involved, which would bring special difficulties in its train.

In conclusion Mr. Hunter undertook to prepare revised drafts of (A) and (B) and to submit these to the sub-Committee Members shortly. It was agreed that when finalised, a copy of each Procedure would be sent to every Member of the Association.

The meeting thereupon concluded.