

# Cripps Pink Tree Authorisation & Rosy Glow Declaration Protocols

Chile

August 2018 to December 2019



**starfruits**

## What right is the Authorisation based on?

- ▶ The right to authorise Cripps Pink apple trees in Chile is derived from the Plant Variety Right (PVR) granted in the European Union (CPVR 1640) that is owned by the Western Australian Agriculture Authority (WAAA).
- ▶ Pursuant to European Union (EU) regulation (Council Regulation (EC) No 2100/94 on Community Plant Variety Right), the importation to the EU of variety constituents or harvested material of the protected variety (i.e. fruits) shall require the authorisation of the holder of the CPVR.
- ▶ WAAA is entitled to prevent any person from importing Cripps Pink Fruits into the EU where the Grower has not received an Authorisation from WAAA.
- ▶ Star Fruits is the exclusive licensee of WAAA for Cripps Pink in the EU

## Status of Cripps Pink PVR

- ▶ The validity of the CPVR for *Cripps Pink* has been unsuccessfully challenged and disputed on several occasions in the past and is currently valid and in force and effect. Notably, the Community Plant Variety Office (CPVO) and the Board of Appeal of the CPVO have held the CPVR valid by decisions of 19 September 2016 and 14 September 2017, an appeal against this last decision being still pending. The *Cripps Pink* CPVR that was granted 21 years ago by the Community Plant Variety Office is currently fully valid and in force.

## Why complete the process now?

- ▶ Cripps Pink is a 'free' variety in Chile but there is still significant confusion about its status in regard to export.
- ▶ The history of tree certification in Chile has created an environment of uncertainty and doubt.
- ▶ Former players are no longer involved.
- ▶ Whilst not directly related, issues in regard to licensing of the Pink Lady® trade marks have been resolved.

So...

- ▶ WAAA in conjunction with SF have resolved that there will be a process for authorising Cripps Pink trees in Chile and that this will end at the 31<sup>st</sup> of December 2018. After this date no further Cripps Pink trees would be authorised by WAAA for production of fruit that could be shipped to the EU.

## Process and Next Steps

- ▶ Garry Langford Fruit Product Consulting will coordinate the process on behalf of SF.
- ▶ A service company will be entrusted with a mission in Chile so as to be the contact point for growers and to complete all the administration.
- ▶ Engaging with the industry and then developing and completing a very clear and concise communication to growers.

# Service Company Activities

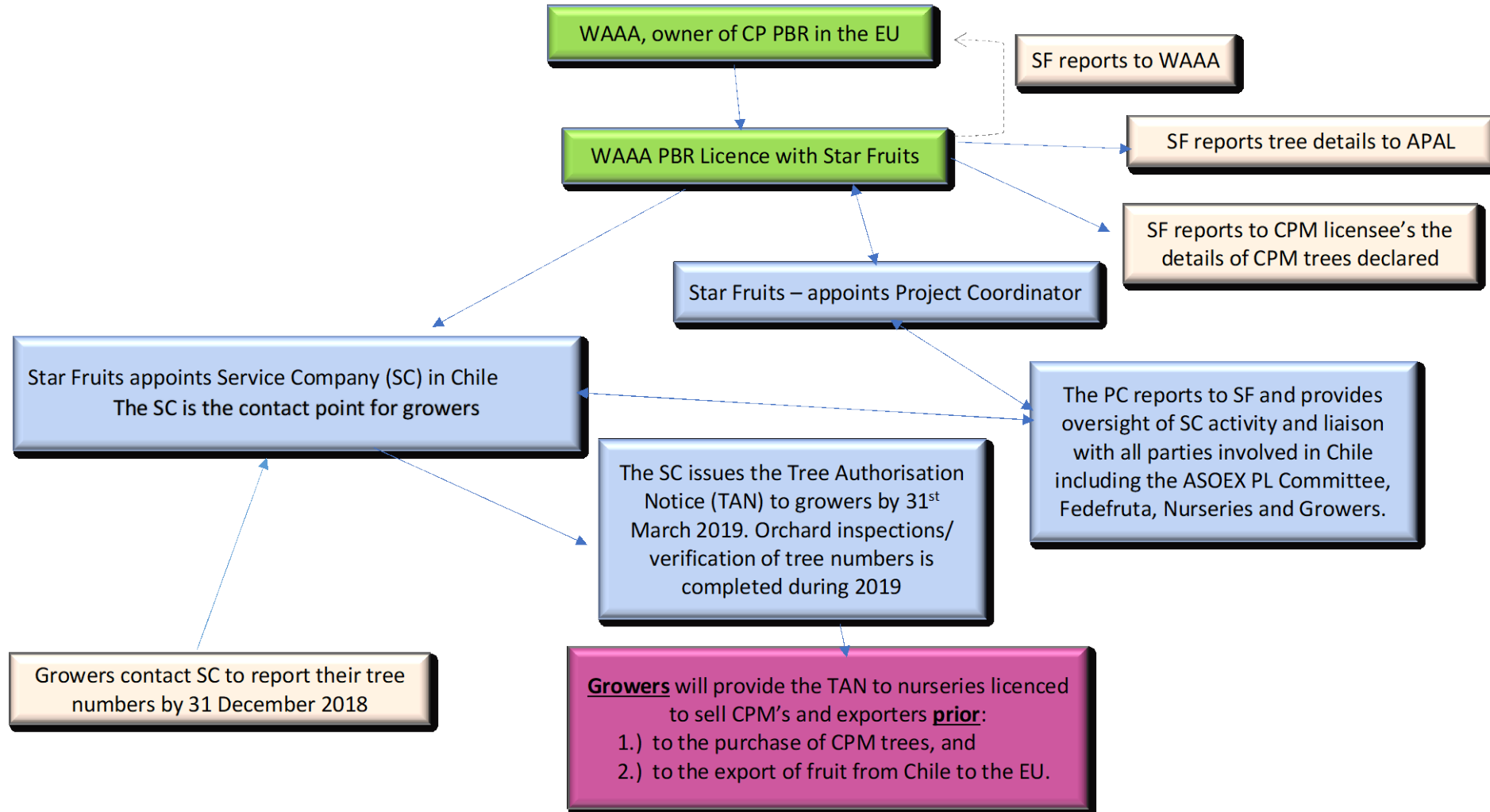
- ▶ Be the contact point for growers from 1 July 2018 to 31 March 2019.
- ▶ Distribute the grower information form on which the growers will record their details (July to December 2018)
- ▶ Collate the grower information and then include the details for each grower into the Tree Authorisation and Non Propagation Agreement (TANPA) (July to December 2018).
- ▶ Distribute the TANPA to the individual growers, follow the growers to ensure that it is signed and returned to them (January to March 2019)
- ▶ Provide the TANPA for signing by Star Fruits or its representative in Chile (January to March 2019).
- ▶ Return a completed copy of the TANPA and Tree Authorisation Notice to the growers (completed by the end of April 2019).
- ▶ **In the period from 1 April to 30 June 2019 there would be verification of some or all the grower declarations.**

**Time Frame and Actions for Cripps Pink Tree Authorisation Process in Chile**

March to June 2018	July to December 2018	January to March 2019	April to June 2019
Consultation with industry in Chile & finalisation of the processes	Announcement and communication of CP process to growers in Chile, via: <ul style="list-style-type: none"> <li><input type="checkbox"/> ASOEX</li> <li><input type="checkbox"/> Fedefruta</li> <li><input type="checkbox"/> Newspapers</li> <li><input type="checkbox"/> Exporters</li> <li><input type="checkbox"/> Orchard Advisors</li> <li><input type="checkbox"/> Nurseries</li> <li><input type="checkbox"/> Visits and meetings with growers and in growers organisations</li> </ul>	Preparation and provision of Tree Authorisation and Non Propagation Agreement plus the Tree Authorisation Notice to each grower  <i>(this action can start by Quarter 4 in 2018 with growers who have completed the Declaration Form)</i>	Fee payments to be in two equal instalments: <ul style="list-style-type: none"> <li><input type="checkbox"/> 50% paid by 30 April 2019</li> <li><input type="checkbox"/> Balance paid by 30 October 2019</li> </ul>
Selection and appointment of Service Company in Chile	Service Company starts issuing Declaration Form to growers to complete	All Tree Authorisation and Non Propagation Agreements and Tree Authorisation Notices to be completed by growers by 31 March.	Random verification of orchards to check grower declarations.
	<b>All growers who wish to have their CP trees Authorised must return their forms declaring all their trees by 31 December 2018</b>	SF or its representative to sign each agreement.	If grower declarations are proven to be false all trees that were authorised become <u>unauthorised</u> .
	The Service Company to collate all grower data into a searchable database	Agreements returned to the growers by the Service Company	



## Flow Chart of Cripps Pink Tree Authorisation in Chile



## Key Points

- ▶ There will be three types of Cripps Pink tree declarations:
  1. Trees that have been declared to VR up until 2008
  2. Trees that have been declared to GLA in the period 2008-2013
  3. Trees that have not previously been declared.
- ▶ Growers will declare all their Cripps Pink trees, even those that have been previously declared to VR and GLA.
- ▶ No fee would apply to trees that have already been declared to VR and GLA.

## Proposed Royalty Fees (will only apply to undeclared trees, not to trees previously declared to VR or GLA)

- ▶ Star Fruits and WAAA are only seeking to ensure that their costs are met in completing the tree authorisation process.
- ▶ a royalty fee of **US\$0.50 per** tree plus IVA will apply. This rate is to encourage growers the last opportunity to participate in the declaration process.

# Grower Obligations

- ▶ Correctly declare all their Cripps Pink trees.
- ▶ Provide any records that they have of prior certification with VR or GLA.
- ▶ Understand that the authorization of their trees will be voided if they:
  - Produce or acquire more Cripps Pink trees in breach of their agreement with SF
  - Make a false declaration of their Cripps Pink trees and this is proven via a verification process.

## Rosy Glow

- ▶ Rosy Glow is a naturally occurring mutation of the Cripps Pink variety, and therefore, considered as an 'essentially derived variety' from this variety. This variety is protected in Chile by provisional plant variety rights (Res. SAG No: 60/06) and in Europe, under CPVR 18127 granted in July 2006, both in the name of Fleming's Nursery Pty. Ltd.
- ▶ Pursuant to European Union (EU) regulation (Council Regulation (EC) No 2100/94 on Community Plant Variety Right), the importation to the EU of variety constituents or harvested material of the protected variety (i.e. fruits) shall require the authorisation of the holder of the CPVR.

## Rosy Glow

- ▶ Andes New Varieties Administration (ANA) is the licensee for Rosy Glow in Chile.
- ▶ ANA is offering the opportunity for growers to declare their Rosy Glow trees as part of the Cripps Pink process.
- ▶ Rosy Glow tree information will be collected by Decofrut and then passed onto ANA.
- ▶ Trees of Rosy Glow that have not been licenced by ANA can be licenced after a licence agreement is completed with ANA and a royalty fee of US\$1.60 plus IVA is paid per tree.

## Rosy Glow (Grower Obligations)

- ▶ The grower commits to no further propagation of Rosy Glow trees or sourcing of Rosy Glow trees other than from nurseries authorised by ANA.
- ▶ The authorisation/licencing of the trees will be void if the grower is found to have made a false declaration.

# Tree Authorisation Notice

- ▶ At the completion of the Tree Authorisation and Non Propagation Agreement a Tree Authorisation Notice (TAN) will also be issued.
- ▶ A TAN will also be issued for Rosy Glow trees.
- ▶ The TAN will be the document that growers would provide to exporters to evidence that their Cripps Pink and Rosy Glow trees are authorized.
- ▶ If a grower sells part or all of his Cripps Pink or Rosy Glow blocks the onus will be on the grower to arrange for a new TAN to be issued in the name of the new owner.
- ▶ Growers will also need to provide the TAN to nurseries that are licensed to sell approved Cripps Pink Mutations (CPM's) in Chile. Without this growers will not be able to purchase trees of a CPM.



# Verification

- ▶ The onus is on growers to correctly declare their trees.
- ▶ As noted a false declaration will void the tree authorisation.
- ▶ Verification will take place after all agreements have been completed.
- ▶ This is likely to be a random process based on a percentage of the total number of growers that complete declarations.
- ▶ The initial verification period will be from April to June 2019 with the focus in April and early May when fruit is still on the trees.
- ▶ There will be ongoing annual verification whilst CP is protected in the EU and for RG as long as the PVR protection is in place in Chile.