



Le Pontet, April 2019, the 24<sup>th</sup>

## **Monitoring of Cripps Pink and Rosy Glow apples exported from Chile.**

### **Questions and Answers memorandum**

Q. Why is the export monitoring process being managed directly by Star Fruits?

A. The export monitoring process is based on the Plant Variety rights in the EU for both Cripps Pink and Rosy Glow. Additionally to this, Rosy Glow is a protected variety in Chile where ANA is the license. Star Fruits is the Rosy Glow licensee in the EU. More than 50% of the Cripps Pink and Rosy Glow apples previously exported from Chile were from unauthorised Cripps Pink or unlicensed Rosy Glow trees. To make sure the Plant Variety rights are respected when the fruits are entering into the EU, Star Fruits and the 2 variety owners have decided to develop a Plant Compliance Program to which the Chilean industry has largely participated.

Q. Who is legally responsible towards Star Fruits for importation and distribution within EU and UK of fruits coming from un-authorized sources?

A. The rights are applicable in the EU when the fruits are cleared from the Custom, and then distributed in the market, the legal entity responsible towards Star Fruits is the entity that holds the fruit when the infringing product is identified in the market. But the entire supply chain from the importer to the actual product holder is legally liable towards Star Fruits. So, the importer's legal responsibility is always engaged wherever the infringing fruit is seized inside the EU.

Q. If Cripps Pink or Rosy Glow apples are respecting EU trade regulations (i.e. regarding fruit quality, biosecurity, etc...) or if the apples are imported under certain norms or licenses established for the distribution of fruits under certain quality obligations (for example, Global GAP, IFS or BRC standards, Pink Lady® import license), does it guarantee the importer that the fruits imported are respecting the Plant Variety Rights regulations into the EU?

A. Respect of Plant Variety Right is a universal obligation for the distribution of fruit. Therefore, it is an obligation by nature. Some licensing arrangements or quality compliance program may include respect of Plant Variety Rights in their obligation. Compliance with Plant Variety rights supersedes any other licencing that may be in place for apples of Cripps Pink and Rosy Glow. Only the Plant Variety owner (or its representative – Star Fruits in the case of Cripps Pink and Rosy Glow) can guarantee the authenticity of the product imported and distributed into the EU.

Q. Why is the control in respect of Cripps Pink and Rosy Glow plant variety rights proposed to be operated at the export level and not at the import level when the fruits are entering into the EU and UK?

A. Since the beginning of the Plant Compliance Program, Star Fruits and the fruit industry in Chile have agreed that it was easier to enforce the Plant Variety Right, at source, at the grower level. This was not only the simplest manner to exercise the rights on the 2 varieties, but the logical one that provided the opportunity for growers to enjoy an irrevocable access to the EU from the fruits obtained from the authorized cultivation of trees of the 2 varieties (for the all life of the trees, the right expiring when the authorized cultivation ceases). Then, as growers are connected to packers and exporters, and as traceability is already operating in the common business practices, notably using the growers unique SAG / CSG number, then it became obvious to operate the certification for compliance with Plant Variety Rights obligations at the exporters' level. Once the control is operated at the exporters' level by engaging in the Export Compliance Plan with Star Fruits, then the all distribution network beyond the exporter (importer, fruit distributor in EU), will be secured regarding the Plant Variety Rights when the fruit arrives into the EU.

Q. How do I know if my grower has completed the authorisation of their Cripps Pink trees and licencing of their Rosy Glow trees?

A. The monitoring system is based on growers making declarations specific to their property CSG numbers. All the authorised CSG numbers can be found on the [www.crippspinktreeschile.com](http://www.crippspinktreeschile.com) website.

Q. What does the importer have to do to be sure that the Cripps Pink and Rosy Glow plant variety rights on apples imported in EU and UK have been correctly respected?

A. The exporter has a fundamental responsibility to make sure that the Cripps Pink and Rosy Glow fruits imported are coming from trees (individual growers) authorized by Star Fruits and ANA in Chile. This is why Star Fruits has suggested a simple method by consulting on line the list of authorized growers (SAG / CSG number). This supposes that the importer has this information from the exporter (packing or pallet list). So, the importer must obtain this information from their exporter, and keep it available in case of control by Star Fruits or the EU Custom authorities. Another way for an importer to secure their position, is that they require their exporter supplier in Chile to engage in the Export Compliance Program with Star Fruits, and require that the exporter provide a signed copy of the Export Certificate signed with Star Fruits.

Q. Is it compulsory for exporters and importers to participate in the Export Compliance Program and in the monitoring program?

A. No, it's a voluntary process. If exporters and importers do not participate they need to be aware that Star Fruits can use its Plant Variety rights in the EU to require that the importer provide appropriate information to justify the authorized origin of the apples imported. Then, Star Fruits may exercise its rights to block shipments, including by enforcing Custom measures, or legally sue the importer, in the case of absence of reply from the importer, or if the information provided can't justify the authorized origin of the fruits, or if the apples are effectively from unauthorised/unlicensed trees.

Q. Are there any additional charges from Star Fruits for the monitoring program?

A. No.

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