

South Africa-based Rossouw Farming Group and Australia-based United Exports have reached an agreement over the OZblu blueberries that were seized on two separate occasions in the EU over recent weeks.

The two shipments of blueberries grown and exported by Rossouw Farming Group's subsidiary Ross Berries were released on Tuesday by Dutch authorities after a deal was reached.

Under the deal, Ross Berries will continue to sell the varieties it grows for the rest of the 2020 season as long as the OZblu trademark is not used.

Ross Berries claimed the agreement as a "victory" for blueberry growers and expected it would become a "landmark case for fruit sales and the correct handling of licensed cultivars".

However, United Exports claimed that it is false to suggest that the interim agreement between the companies is a victory, saying it "misunderstands the legal and commercial consequences of violating United Exports' proprietary rights".

According to Ross Berries, the agreement was made after an investigation concluded that United Exports only has registered plant breeders' rights (PBR) for two of the nine varieties which Ross Berries acquired from United South Africa.

It claimed that United Exports is "being exposed for not having registered all the varieties sold to farmers and having claimed royalties in respect of these plants for many years".

Rossouw says it has instructed Ross Berries' legal team to institute claims against United for the royalties paid to date for "those varieties that the company had Ross Berries believe had registered PBR".

It added that ongoing investigations will further serve to strengthen the case for what it alleged to be uncompetitive pricing in the blueberry sector.

"We are free to market our fruit as we wish, until the dispute pertaining to ownership of the plants is finally determined in March 2021," said Chris Rossouw, director of Ross Berries. "Marketing one's products as one sees fit is the very foundation of a free-market system, which up until now, United Exports has circumvented."

United Exports, meanwhile, said it is pleased to have reached an agreement, under which it said Rossouw Farming Group has recognized its plant-based intellectual property rights. It

also described the move as "an important step forward for the protection of intellectual property rights in South Africa".

It said that its OZblu varieties are the result of significant investment in extensive research and development which has been conducted over more than three decades.

"United Exports has agreed to allow Ross Berries to sell the blueberries from the remaining few weeks of the 2020 season that it produces on its Western Cape farm to avoid unnecessary food wastage," it said. "The sales, however, cannot use or leverage any of United Exports' trademarks, trade names, brands, varieties or any related denomination."

It added: "The suggestion by Ross Berries and the Rossouw Farming Group that the interim arrangement reached with United Exports is a victory for blueberry growers is patently false, and misunderstands the legal and commercial consequences of violating United Exports' proprietary rights.

"These rights will now form the backdrop of further confidential arbitration proceedings between the parties."