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# Protection of origin in Chile and the European markets: the case of the wine sector

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## ABSTRACT

The aim of this working paper is to conduct a review about protection of origin in Chile and the European markets, specifically the European Union and the European Free Trade Association (EFTA), focusing on its implications for the wine sector. In order to achieve this purpose, the following topics will be covered: (i) protection of origin for producers and consumers, (ii) regulation on protection of origin in Chile, EU and EFTA countries, (iii) the Chilean wine sector and (iv) the chapters on protection of origin in the Free Trade Agreement between Chile-EU and Chile-EFTA, with emphasis on wines.

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## 1. Introduction

Wine has been present since ancient times on Chilean tables. Its arrival to the country dates back to the 16th century, with the advent of the Spanish conquerors to Latin America. Either for ceremonial or simply recreational purposes, its antiquity has made it part of the food and social heritage of Chile (Al Attrach, 2015). Given that the vines adapted so well to the territory, several scientist and entrepreneurs have described Chile's soils as one of the richest *terroirs* for growing wine grapes (Fanet, 2004; Richards, 2006).

These characteristics motivated the establishment of many wineries in Chilean Central and Coastal valleys, producing red and white varieties as well. This has converted Chile in one of the main traders of this beverage. In fact, nowadays wine production is an important activity in the national agroindustry, being the third most exported food commodity after fresh fruit and salmon, in terms of value (ITC, 2017). In fact, Chile is the most important wine exporter in the Southern Hemisphere, and fourth at a world level, only preceded by the traditional producers from the "Old Continent": France, Italy and Spain. Nevertheless, new competitors have appeared. Wines from Napa Valley in California, Australia, New Zealand, Argentina and South Africa – these so called "New World" countries including Chile - have managed to reach the biggest markets (Castillo & García, 2015).

In this sense, wine production and trade is the subject of important concern for most nations, regardless of their character of importer, exporter or both. This concern is reflected, for example, in the special treatment granted by the WTO in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Conceivably, as it is noted by Jackson (2014), wines are subject to more regulation than other commodities because of their diversity and also the tax revenue derived from them. As a consequence, it is relevant to mention that within the main wine traders worldwide, Chile is the country which has the highest number of free trade agreements in force (Ministry of Finance, 2017), even compared with the most powerful economies. Considering the increasing competitors and the tariff advantages that the FTAs offer, it is important to take the opportunity to integrate some differentiating elements, where appellations or designations of origin and

geographical indications appear. Following Jackson (2014), restricting a regional name is a marketing advantage.

Through this research we aim to contribute to a further understanding of how protection of origin works in Chile and how this topic is addressed in the free trade agreements that the country has signed with the most important European economies, i.e. the European Union and the European Free Trade Association (EFTA), focusing on the case of the wine industry. In order to achieve this purpose, the following topics will be covered: (i) protection of origin for producers and consumers, (ii) regulation on protection of origin in Chile, EU and EFTA countries, (iii) the Chilean wine sector and (iv) the chapters on protection of origin in the Free Trade Agreement between Chile-EU and Chile-EFTA, with emphasis on wines.

## **2. Protection of origin for producers and consumers**

Protection of origin is a very important issue for agricultural producers. When they obtain foods or drinks which are part of the culture and heritage of their territories or societies, or even if their production involves high quality inputs, linked to a particular place, protection is essential in terms of preventing adulterations, imitations or counterfeits.

According to Errázuriz (2010), protection of origin was initiated in France after the vineyard destruction by a *Phylloxera* plague, in 1870, which caused a wine shortage. With the aim of protecting trusty-producers from those who used fraudulent techniques, Appellations of Origin (AOs) were developed. In 1887, the first Appellation of Origin was granted to *Champagne* producers, as a way of recognizing the quality of their sparkling wine.

Furthermore, protection of origin is also well appreciated by consumers as a quality guarantee. Nowadays, consumers are more concerned about the traceability of the food they eat, since more transparency is positive for food safety (Españeira & Santaclara, 2016). Thus, the information on the origin of food is a relevant attribute to consider when deciding

to purchase (Bandara et al., 2016). Consequently, according to Durante et al. (2016), a well-defined or recognizable origin is an added value to the product itself. Since consumers appreciate origin, protection allows producers to obtain market recognition and premium prices (Kireeva, 2011), which also constitutes a market advantage. Following the above, several authors (e.g. Guerrero et al., 2009; Pieniak et al., 2009; Verbeke & Roosen, 2009) have described that the consumers' positive attitude toward this kind of product increases if the good has an indication or is sold under collective trademarks.

The public sector has become involved in this matter through the recognition of Geographical Indications (GIs), which is the main type of protection of origin. They are “names associated with quality products coming from specific places when the geographical origin of the products gives them specific qualities, characteristics and reputation” (Kireeva, 2011, p. 72). GIs are under the regulatory framework of the World Trade Organization, addressed specifically in the Annex 1C, Part II, Section 3 of the TRIPS. This agreement is the first multilateral document that explains the definition of a GI and related aspects (O'Connor, 2004; Rai, 2009; Gervais, 2010; Zografos, 2010; EFOW, 2016), setting a common regulatory framework on protection of origin for WTO Members, since it also aligns the standards of protection and provides access to international dispute settlement mechanisms (ITC, 2009). Nonetheless, despite the importance of including GIs in international regulations on intellectual property, the TRIPS Agreement sets out only the basics of the countries' legislation (Errázuriz, 2010). In this sense, each country has the competencies for protecting their own goods, so as noted in Article 22 on Protection of Geographical Indications, each Member shall provide the legal means for interested parties to prevent, for instance, the use of ‘confusing’ designations which could mislead consumers. As a consequence, each interested party considered in this research has their own regulation on GIs. Details will be discussed in points 3 and 4 of this article.

In the specific case of the wine industry, protection of origin plays an imperative role, since it is not only a ‘labeling’ issue, as wine quality is strongly linked to the place where the grape is harvested (Schäufele & Hamm, 2017) in terms of the *terroir* of the vineyard. *Terroir* is a French term used in this industry, and refers the relationship between a

particular wine and the specific place where it was obtained (Foroni et al., 2017). It involves all the raw materials (wine-grapes) and the environmental and human factors that have an effect on the quality of the final product. As said by Moncayo et al. (2016), the type of grape, geographical origin, harvest, and vintage are parameters that determine the quality of a wine.

The particularity of wines is noted in the TRIPS. In the Agreement – precisely in Article 23 – wines and spirits have a differential treatment, with a considerably higher level of protection regarding the rest of goods, as a result of specific negotiations. This higher protection is granted by a multilateral system of notification and registration of GIs. Nevertheless, this measure has been largely disputed, mainly because some countries have expressed their interest in extending higher protection to other goods, such as crafts or other drinks, while other members argue that the protection given in Article 22 is enough in said cases. The discussion is still being carried out in the Doha Round.

### **3. Protection of origin in Chile, EU and EFTA countries**

In European markets, protection of origin has been developed since a long time ago, but in Chile this issue is relatively new, and it is mainly supported by the wine sector. This industry has been interested in GIs as often they target market niches dominated by highly educated consumers (Cusmano, et al. 2010). In order to understand the purpose of this working paper, it is important to describe the methods used to certify geographical indications in each market of interest. First, Chilean legislation will be defined; secondly European Union legislation and finally, European Free Trade Association legislation.

According to Belmar (2016), regulation on geographical indications in Chile is inserted in a tripartite system, with a ‘general regime’ and another two ‘special regimes’. The general regime is decreed in Title IX, Articles 92–105 of the Industrial Property Law No. 19.039. Two types of protection of origin are defined: Geographical Indications and Appellations of Origin. The definition of the first one is “an indication which is used to identify a product as originating from the country or region or locality in the country, when its quality,

reputation or another given property is fundamentally attributable to its geographical origin”, whilst in an Appellation of Origin the following is added to the above “...taking into account, moreover, other natural and human factors which can impact on the characterization of the product”. This law states that all GIs and AOs are regulated not only by said general legal body, but also by the specific rules approved for each one of them; with the following exceptions: the appellations of origin *Pisco*, *Pajarete*, *Vino Asoleado* (“Sunny Wine”) and the wine-growing areas (e.g. “*Valle de Colchagua*”). In those cases, the specific regulation is in law No. 18.455 on Production, Processing and Marketing of Ethyl Alcohol, Alcoholic Beverages and Vinegars, whose Article 27 establishes that:

“...the President of the Republic, by Supreme Decree issued throughout the Ministry of Agriculture, can establish wine-growing areas and appellations of origin for wines and spirits in determined areas of the country whose climate, soil, grapevines, cultural and oenological practice conditions are homogenous” (Title V of the appellation of origin, para. 1).

The Supreme Decree mentioned in the Law is No 464 of 14 December 1994 which establishes wine-growing areas in Chile and regulates their use. In 2012, Decree No 464 was updated through Decree No 22 on Agriculture, which set 6 wine-growing regions, 17 sub-regions, 8 zones and 81 areas (Table 1). Besides, the last update on the rules for using the appellations of origin regarding wine-growing areas was Decree No 7 on Agriculture of 2015. It establishes three categories for the classification of wines with appellation of origin: wines from wine-growing regions (described in Table 1); wines made with specific grape varieties; and wines from the interior rain-fed districts made from the variety *País* (also known as *Mission* and *Criolla*) or *Cinsault*. Furthermore, the Decree noted that a wine can use the appellation if at least 75% of the grapes used for its elaboration come from the indicated place. This protection is accompanied by a pecuniary sanction for those who misuse the appellations of origin regarding wine-growing zoning. In Law 18.455 it is

established that the offender must pay a penalty fee between 1 and 150 *UTM*<sup>1</sup>, and the associated elaborated products could be confiscated.

REGION VITIVINICOLA	SUBREGION	ZONA	AREA		
REGION DE ATACAMA	VALLE DE COPIAPO				
	VALLE DE HUASCO				
REGION DE COQUIMBO	VALLE DEL ELQUI		LA SERENA VICUÑA PAIGUANO		
	VALLE DEL LIMARI		OVALLE MONTE PATRIA PLUNTAQUÍ RÍO HURTADO		
	VALLE DEL CHOAPA		SALAMANCA ILLAPEL		
REGION DE ACONCAGUA	VALLE DEL ACONCAGUA		ZAPALLAR QUILLOTA HUJUELAS PANQUEHUE CATEMÚ LLALLAY SAN FELIPE SANTA MARÍA CALLE LARGA SAN ESTEBAN		
		VALLE DE CASABLANCA			
		VALLE DE SAN ANTONIO	VALLE DE LEYDA	SAN JUAN SANTO DOMINGO CARTAGENA ALGARROBO	
				VALLE DEL MARGA-MARGA	
REGION DEL VALLE CENTRAL	VALLE DEL MAIPO		SANTIAGO PIRQUE PUENTE ALTO BUN ISLA DE MAIPO TALCAGANTE MELIPILLA ALHJE MARIA PINTO COLINA CALERA DE TANGO TIL TIL LAMPA		
		VALLE DEL RAPEL	VALLE DEL CACHAPOAL	RANCAGUA REQUINOA RENGO PEUMO MACHALI COLTAUCO	
			VALLE DE COLCHAGUA	SAN FERNANDO CHIMBARONGO NANCAGUA SANTA CRUZ PALMILLA PERALILLO LOLOL MARCHIGUE LITUECHE LA ESTRELLA PAREDONES PUMANQUE	
		VALLE DE CURICO	VALLE DEL TENO	RAJCO ROMERAL VICHUCUEN	
			VALLE DEL LONTUE	MOLINA SAGRADA FAMILIA	
		VALLE DEL MAULE	VALLE DEL CLARO		TALCA PENCAHUE SAN CLEMENTE SAN RAFAEL EMPEDRADO CUREPTO
				VALLE DEL LONCOMILLA	SAN JAVIER VILLA ALEGRE PARRAL LINARES COLBUN LONQAVI RETIRO
				VALLE DEL TUTUVEN	CAUCUENES
		REGION DEL SUR	VALLE DEL ITATA		CHILLAN GUILLON PORTEZUELO
			VALLE DEL BÍO BÍO		COILEMÚ YUMBEL MULCHEN
VALLE DEL MALLECO			TRAIQUEN		
REGION AUSTRAL	VALLE DEL CAUTIN				
	VALLE DE OSORNO				

Table 1. Chilean wine-growing areas. Source: Supreme Decree No. 464, 1994.

<sup>1</sup> *UTM* is the acronym used for “*Unidad Tributaria Mensual*”, which means Monthly Tax Unit. This is a monetary index used by the Chilean administration for adjusting the prices of goods, services, taxes and fees, among others, because of inflation. Its value is convertible to Chilean pesos.

Other special regimes are in the terms and conditions of the Free Trade Agreements signed by Chile with third parties. This topic will be addressed in point 4 of this article, specifically for the case of European markets.

On the other hand, the European Union's legal framework on geographical indications has different disciplines depending on the product. The first one is Regulation (EC) 1151/2012 of the European Parliament and of the Council of November 2012 on quality schemes for agricultural products and foodstuffs. It covers agricultural products intended for human consumption, and the details are listed in Annex I Part I<sup>2</sup>. Among others, this legislation treats protection of origin by the generic name of Geographical Indications and basically establishes that there are two types of GIs: Protected Geographical Indications (PGI) and Protected Designations of Origin (PDO).

Regarding wine, protection of origin at the EU is covered by Council Regulation (EC) No 479/2008 of April 2008 on the common organization of the wine market. It was included in Regulation (EU) No 1308/2013 of the European Parliament and of the Council of December 2013 establishing a common organization of agricultural markets. Basically, the recognition of the same two types of protection is established for agricultural products, PDOs and PGIs, but referring specifically to wines. Hence, according to Regulation (EC) 479/2008, the definition for a designation of origin is:

“...the name of a region, a specific place or, in exceptional cases, a country used to describe a grapevine product<sup>34</sup> whose quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; the grapes from which it is produced come exclusively from this geographical area; its production takes place in this geographical area; it is obtained from vine varieties belonging to *Vitis vinifera*”

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<sup>2</sup> Details in the latest consolidated version of the Regulation are available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1498082766736&uri=CELEX:02012R1151-20130103>

<sup>3</sup> It refers to the products contained in paragraphs 1, 3 to 6, 8, 9, 11, 15 and 16 of Annex IV of the Council Regulation (EC) No 479/2008.



Meanwhile the definition of a geographical indication is:

“...an indication referring to a region, a specific place or, in exceptional cases, a country, used to describe a grapevine product which possesses a specific quality, reputation or other characteristics attributable to that geographical origin; at least 85 % of the grapes used for its production come exclusively from this geographical area; its production takes place in this geographical area; it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*”.

The basics of the request for protection are explicit in Article 35. Applicants must present a technical file with, among other information, the name to be protected, a specification of the product, containing a description of the wine, in terms of its principal analytical and organoleptic characteristics and, if it is applicable, “the specific oenological practices used to make the wine as well as the relevant restrictions on making the wine”. Additionally, the regulation also specifies that geographical areas in third countries can be eligible for obtaining a PDO or PGI in the Community, but the name must be protected in the country of origin. As is noted by the European Commission (2017), this regulation has three objectives: to make EU producers more competitive by enhancing the reputation of their wines, to make market-management rules simpler, clearer and more effective and finally, to preserve the best traditions of European wines. In this way, the regulation aims additionally to protect not only producers, but also consumers from deceptive practices.

EU legislation on the GI of wine is much more complex than that of Chile. Indeed, according to Thual and Lossy (2011) there are two stages to be followed, a national phase and a European phase, and the whole process can take several years. First of all, there must be a group of producers interested in applying for a PDO or PGI. They have to meet the requirements in Article 37 of the regulation, regarding – for example – the grapevine origin, processing techniques and labeling rules, among others. National authorities examine the application, starting an objection procedure, i.e. a period for at least two months during which any natural or legal interested person may object to the proposal. If applicants are

successful at this stage, the EU Member State has to send the application file, its declaration of approval and the publication reference of the specification to the European Commission. This entire procedure can take more than one year. Then, the Commission examines the proposal, and if it is all in order, it publishes the documents in the Official Journal of the European Union (OJEU). After this, there is a new period for objections lasting two months from any other EU Member or third country. If there are no reasons for rejection, the geographical indication is registered, published in the OJEU and listed in a database called *E-Bacchus*<sup>4</sup>; which contains all the GI records of the Member countries and third countries with which the EU has signed an FTA.

In EFTA's legislation, the topic of intellectual property is minimally addressed in its foundational Convention. In Chapter VII on Protection of Intellectual Property, Article 19, it is mentioned that "Member States shall grant and ensure adequate and effective protection of intellectual property rights [...], in accordance with the provisions of this Article, Annex J and the international agreements referred to therein". In this sense, Annex J on intellectual property rights, in its Article 5, contains the basics on the protection of geographical indications for the Members, noted only that "the Member States shall ensure in their national laws adequate and effective means to protect geographical indications, including appellations of origin, with regard to all products and services".

Three EFTA countries – Norway, Iceland and Liechtenstein – are members of the European Economic Area (EEA). They have assumed the same regulatory system on geographical indications that is applicable in the European Union. However, Switzerland – not in the EEA - has its own regulation on protection of origin. The Ordinance on the Protection of Designations of Origin and Geographical Indications for Agricultural Products [...] of 28 May 1997 (SR 910.12) provides the definitions, provisions and procedures for the registration and recognition of DOs and GIs in Swiss territory.

Wines are excluded from Swiss general regulation on GIs. They are under the Ordinance on Viticulture and Wine Importation of 14 November 2007 (SR 916.140). The chapter on GIs

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<sup>4</sup> Available at <http://ec.europa.eu/agriculture/markets/wine/e-bacchus/>

is in Section 3 on Denominations and Minimum Requirements. Four categories of wines are established; first, wines with Appellation of Origin Controlled (AOC) (Art. 21); which means that such wines are designated by the name of a canton<sup>56</sup> or a geographical area of a canton. Each canton sets the specific requirements for their AOCs, but must provide, at least: the demarcation of the geographical area in which the minimum grape is produced; a list of authorized varieties; a list of permitted harvesting practices; a list of authorized winemaking methods; a system for analyzing and examining organoleptic wine ready for sale; the minimum natural sugar content per authorized grape variety and the maximum yield per authorized grape variety. The ordinance also states that the cantons have to report to the Federal Office for Agriculture (FOAG) regarding all their AOCs. The other types of wine established in the Swiss ordinance are those with typical Geographical Indications (Art. 22), namely, wines designated by the name of the country or a part of it, whose extension exceeds a canton; wines with typical Geographical Indications produced on their territory with its own traditional denomination (Art. 23), i.e. those obtained from grapes from one canton which has a traditional denomination, for example, *Johannisberg du Valais*, *Dôle*, *Fendant*, *Salvagnin* or *Heida*; and finally, Table Wines (Art. 24), namely, wines made with grapes harvested in Switzerland. Although Switzerland is not part of the EEA, it has a bilateral agreement on the protection of geographical indications with the EU. Wines are in Annex 7 of the Agreement on Trade of Agricultural Products of 21 June 1999.

#### **4. The Chilean wine sector**

The wine market is a very relevant economic sector for the Chilean agroindustry. In fact, Chile is the fourth-largest exporter worldwide, only preceded by France, Italy and Spain, and it is ranked first place in the Southern Hemisphere. In 2016, Chile exported 910,966 tons of wine valued at US\$ 1,853,330 thousand, 5.7% of the traded value for that year (ITC, 2017).

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<sup>5</sup> Details of Swiss AOCs per canton are available at <https://www.admin.ch/opc/fr/classified-compilation/20071607/index.html#a20>.

The development of Chile's wine production begins in the 16th century with the arrival of the Spanish conquerors. They brought it with them and established the first strains on Chilean soil, for their own consumption and for religious ceremonies, since -by crown order- one of their main aims was 'to convert' original peoples to Catholicism (Lope, 1999). According to BNC (2016), all the landlords of *Santiago* grew vines and made wine in the first years of the Colonial age, and later, production was extended to *Coquimbo* in the North and *Concepción* in the South. With the growth of the harvested area, production increased, reaching 100,000 *arrobas* per year, i.e. 1.6 million liters, which allowed it to be exported. Wine trade from Chile to New Spain and New Granada continued for two centuries; until in 1794 the Spanish crown forbade it with the aim of protecting its own production.

During the Colonial age the production was carried out using artisanal techniques, and the Spanish systems and technologies for elaborating wines stayed intact until the mid XIX<sup>th</sup> century. According to Müller (2004), it was not until 1830 that Claudio Gay, French researcher and professor at the University of Chile, and some years later, in 1854, the entrepreneur Silvestre Ochagavía, imported the main European varieties, such as *Cabernet Sauvignon*, *Cabernet Blanc*, *Semillón*, *Pinot Noir* and *Riesling*. In those times, most of the vineyards were property of aristocratic families, which became interested in viticulture and started to import European varieties and to hire French oenologists who managed their fields. The vines had an excellent adaptation to Chilean soil, geography and climate, which contributed to the industry's success. In fact, it is believed that Chile had the only pre-*Phylloxera* vine clones, since the country had not had the plague (Al Attrach, 2015); i.e. Chile did not need the *Vitis americana* rootstock for growing *Vitis vinifera* plants (Pita, 2011).

Despite the antiquity of the history of wine production in Chile, its recognition only started around 4 decades ago. During the XX<sup>th</sup> century, this industry had to face several crises, related to high taxes, restrictive alcohol legislation, World War II that affected some imports of machinery and supplies, and the fall of internal prices. Its recovery began in 1974 with the derogation of the vineyard restriction law. A few years after, in the 80's, new

technologies reached the country, which also contributed to the wine industry development. Other relevant factors were the aperture of the new economic system that propelled exports, the transfer from family-owned vinerias to bigger companies and finally, the return to democracy in 1990 (Müller, 2004). It is in this decade that the Chilean wine industry is internationally recognized. The subsequent signing of Free Trade Agreements with the most important economies enhanced exports of this product.

As it was said at the beginning of this paper, Chile is a very active participant in the global wine industry. Although, its harvested area in 2014 was less than a third of French vineyard surface (OIV, 2017), Chile has positioned itself as the fourth largest exporter in the world. According to the last Chilean vineyard register (SAG, 2015), there are 141,918.12 ha planted across 11 of the 15 regions of the country. They are concentrated between the V and the VIII regions, which represent 98% of the national total. In fact, only *O'Higgins* and *Del Maule* regions (VI and VII) have 71% of the planted area. 25.6% of the varieties are white, with 32 different planted varieties, *Sauvignon Blanc* being the most representative with 15,172.99 ha, and *Chardonnay* (*Pinot Chardonnay*) with 11,698.30 ha. The rest of the surface, namely, 74.4% of the planted varieties are red, where there are 73 different strains, *Cabernet Sauvignon* being the most important with 43,211.01 ha, *País* with 12,520.57 ha, *Merlot* with 12,242.78 ha and *Carménère* (*Grande Vidure*) with 10,860.86 ha. This last one is the 'emblem' of the country, since it was believed that it was extinct after *Phylloxera*, but it was re-discovered in Chile in 1991 by the French ampelograph Claude Vallat, who realized the vines that he was studying at Carmen vineyard were not *Merlot*. Three years after, Jean Michel Boursiquot determined that such vines were *Carménère* (Gayani, 2017). Nowadays, Chile is the country with the most hectares of this variety and its wine is recognized for its quality.

Furthermore, Chile is part of the "New World" producers. As is noted by Cusmano et al. (2010), until the end of the 80's, the "Old World" countries, specifically France and Italy, dominated the international wine market. But, since 1990, United States, Australia, Chile, Argentina and South Africa "are recording spectacular performance in terms of both exported volumes and values" (op. cit., p. 1588), making this industry much more

competitive. By 2000, ABARE (2002) noted that the “New World” countries (to those previously named they added Canada, New Zealand and Uruguay) had experimented an increase in their total share of the volume of world exports from 6 per cent in 1990 to over 20%. Nonetheless, nowadays this value is only 10%; while France, Spain and Italy concentrate almost 18% of the international market (ITC, 2017). In this sense, the “Old World” countries maintain their supremacy in terms of export quantities and values, as is noted in Figure 1. Regarding unit prices, France reaches a considerably higher value, even higher than its European competitors, and 2.5 times the average of the “New World” countries, due to French wines targeting *premium* segments (Castillo & García, 2015).

Returning to the case of Chile, it is very striking that its export quantities are notoriously higher than those in other “New World” countries but its unitary values are much lower. Moreover, its prices had a downward trend, in opposition to its main “New World” competitors (except South Africa). This could be explained, *inter alia*, because Chile still holds the image of a varietal wine producer, unlike Argentina, which has developed Malbec as its own “brand” (Fleming et al., 2014). Additionally, each country has different market destinations (Castillo & García, 2015), with divergent export volumes and prices. Besides, it is important to add that the main costs of this industry are workforce and land property. As Chile has a lower income level than its developed competitors, both inputs are cheaper. In this sense, Chilean wines are identified for a high quality/price ratio (Overton & Murray, 2011), which is a problem for companies seeking to sell *premium*.



Figure 1. Trade statistics for wine (HS 2204) for «New World» and «Old World» countries. Own elaboration with ITC data (2017). «New World» countries' export quantity and unit value graphs do not include the data for US in 2014 since there is no information for that year in the Trademap database. Australia was also excluded because the information of quantities is in cubic meters, while the other countries' data is in tons.

A possible solution to the current situation is to enlarge the country-image. The assignation of DOs and GIs could help in this sense. However, for this Chile must define to a greater extent its system for determining the appellations of origin. As suggested by Rojas (2016), Chile does not have a real system of AOs, and in fact, there is a misunderstanding in the

classification of the appellations of origin for wines in Alcohols Law No. 18.455, since the zoning indicated in Supreme Decree No. 464 is much more similar to a set of geographical indications. Indeed, the author states that Chilean AOs exclude the importance of the cultural heritage behind a wine, and even more so, they do not consider the identification of an active and key role of a regulatory board as a fundamental part of any appellation of origin. Therefore, with further development of the designations of origin, Chile could rise as a *premium* wine producer and reach the market niches identified by Cusmano et al. (2010), which finally would impact all their wines and allow producers to achieve better prices (Angostino & Trivieri, 2014).

## **5. Protection of origin in the FTAs Chile – EU and Chile – EFTA**

Chile is one of the countries with the highest number of trade agreements worldwide. Currently, in 2017, it has 26 agreements in force; some of them with the most powerful economies: China, United States, Canada, Japan, India, the EU and EFTA countries, among others.

The Free Trade Agreement between Chile and the European Union was signed in November 2002, but entered into force in February 2003. It is divided in 5 parts, including 206 Articles. Part IV on Trade and Trade-Related Matters includes in Chapter II information on Non-Tariff Measures, Section 6 on Wines and Spirits, one Article (90) where it is noted that there is an extensive Agreement on Trade in Wine, presented in Annex V of the FTA. In that agreement, protection of origin is addressed in several aspects. First of all, it establishes some definitions. For instance, it notes that the description of geographical indication for each part must be the same as the one in Article 22 of the TRIPS Agreement<sup>6</sup>. Title I specifies the intention to protect geographical indications for wines, emphasizing that “the Parties shall take all necessary steps to ensure mutual protection of the names [...] used for describing and presenting wine originating in the Parties”. Likewise, it is noted that the Parties shall use the appropriate legal means

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<sup>6</sup> Article 22 of the TRIPS Agreement noted that GIs are “indications which identify a good as originating in the territory of a (WTO) Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin”.



established in Article 23 of the TRIPS Agreement for ensuring wine GIs protection. In general terms, the protection is against the misuse of a PGI or PDO by producers who are not authorized to use such names, even if they show the origin of the wine, if the name is a translation, or if it is accompanied by terms such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or other words with similar meanings. The agreement also establishes that in the case of homonymous GIs, protection shall be granted to both parts, whilst ensuring that consumers are not misled regarding the real origin of the wine. Protected GIs are specified in the Agreement. According to Article 6, it is indicated that the list of the EU’s GIs is detailed in Appendix I of the Agreement, whilst Chile’s GIs are listed in Appendix II.

Thus, Chilean legislation shall recognize: the protection of origin of German wines produced in 13 specified regions and their respective sub-regions, districts and part of districts, and 21 table wines bearing a geographical indication; French quality wines produced in 11 specified regions, where some *Appellations d'origine contrôlées* contain, moreover, the name of the district of origin, and 165 *vins de pays* (country wines); Spanish quality wines produced in 56 specified regions and their respective sub-regions and districts, and 28 table wines bearing a geographical indication; Greek quality wines produced in 26 specified regions, and 93 table wines; Italian quality wines produced in specified regions separated in wines with ‘*Denominazione di origine controllata e garantita*’ (25) and wines with ‘*Denominazione di origine controllata*’ (originating in 20 regions), and different types of table wines originating in 19 regions; Luxembourg quality wines produced in 34 specified regions; Portuguese quality wines produced in 32 specified regions and their determined sub-regions, and 13 table wines; UK quality wines produced in 2 specified regions and 2 table wines; Austrian quality wines produced in 4 specified wine-growing regions, 4 specified regions, and 18 regions marked as municipalities, parts thereof, *Großlagen*, *Riede*, *Flure* or *Einzellagen*, and 4 table wines bearing geographical indications; and finally, one Belgian wine with an *Appellation d'origine contrôlée*.

On the other hand, EU legislation shall recognize the Chilean appellations of origin *Vino Pajarete*, *Vino Asoleado*, and wines from 5 regions, 13 sub-regions, 7 zones and 44 areas. Nevertheless, in the last update concerning amendment in Appendices I and II of Annex V

of April 2006, the EU recognized some additional appellations, such as the *Valle de San Antonio* sub-region, the *Valle de Leyda* zone and their 2 areas, 5 more areas in the Central Valley, and in the South the *Valle del Malleco* sub-region and the *Traiguén* area.

In the 2006 update, the list of EU wine GIs recognized by Chile also increased. There is a recognition of Czech quality wines produced in 2 specified regions and their sub-regions, and 2 table wines; Cypriot quality wines from 6 specified regions, and 4 table wines; Hungarian quality wines from 22 specified regions and their sub-regions, communes and districts; Maltese quality wines from 2 specified regions and their sub-regions, and 1 table wine; Slovak quality wines from 6 specified regions and their respective sub-regions; and finally, Slovenian quality wines produced in 16 specified regions and 3 table wines.

The FTA between Chile and the EFTA was signed in June 2003 and entered into force in December 2004. It is divided into 12 Chapters, 108 Articles and 17 Annexes. The information regarding GIs is contained in Article 6 of Annex XII on Intellectual Property Rights. Nonetheless, this topic is poorly addressed in the FTA, because it only mentions that Parties must ensure protection in their respective internal legislations on all goods in accordance with the TRIPS Agreement. Following SECO (2008), both parties of the agreement guarantee protection of origin for national and foreign goods. In this sense, the TRIPS reference is particularly important to Chile, since the country does not have a specific national legislation for the general protection of GIs, under a general law on Industrial Property (Law No. 19.049). On the other hand, according to ODEPA (2014), the main Chilean agricultural export to the EFTA is wine with appellation of origin.

## **6. Concluding remarks**

Chile is the fourth largest wine exporter worldwide, and the most important in the Southern Hemisphere (ITC, 2017). The key characteristics that have led Chile to the top of the industry have been its geography, which creates a natural barrier for plagues and diseases, and also its weather, with dry and hot summers and long thermal oscillations between day and night. The above has meant that the vines have an excellent settlement in the fields.

Moreover, its high quality/price ratio (Overton & Murray, 2011) makes many buyers opt for Chile as a commercial partner. Its low prices can be explained, in part, due to the workforce and land costs, which are lower than in developed competitor countries. But, although the numbers for this ratio have been beneficial for the country in terms of entering and conquering the market, it has also been a disadvantage for producers, since buyers see in Chile a country which provides good wines, but above all, affordable prices.

It is difficult to change the market perception of a specific good, but the inclusion of a differentiating element allows to commodities to be converted into special products. In the wine market, protection of origin is one of these differentiating elements. Protection of origin has been widely analyzed. In terms of consumer perception, the quality of a wine is strongly related to the place where it was produced. In fact, the geography and climate of the *terroir* influences positively the taste characteristics of a wine. Furthermore, a wine's DO safeguards that it has been produced using techniques that ensure its quality. And the benefits are not only for the purchasers, but also for the vine-growers and wine producers, as both achieve better prices. For these reasons, GIs are part of a marketing strategy.

Nowadays, in Chile most exported wines have an appellation of origin. Nonetheless, the system for protecting wines is shallow in some aspects. The zoning indicated in Supreme Decree No. 464 and included in Alcohols Law No. 18.455 is much closer to being a Geographical Indication system than an Appellation of Origin. And this is because Chile does not include the active participation of a regulatory board as a fundamental measure of the appellations of origin, as with the European examples. Moreover, the law excludes the importance of the cultural heritage involved behind each wine. Therefore, by ensuring further regulation of wine AOs, Chile could easily re-enter the market with *premium* wines, which would eventually impact both prices and the average unitary value.

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