2018

Chilean Wine Law

Nathan Wages

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INTRODUCTION

Chilean winemaking began with the Spanish conquistadors,[1] but it was not until the late 20th century that Chile emerged as a wine exporting powerhouse. Despite its tremendous distance from most major markets, Chile has been able to become one of the leading exporters of wine. In 2016, Chile was the eighth largest producer of wine and the fourth largest exporter.[2] Consequently, the wine industry is very important to Chile because it represents the country to millions of consumers around the world. A robust wine industry not only strengthens Chile's economy, it has an opportunity to associate Chile with quality. Thus, the Chilean government has taken and continues to take steps to support the industry and help it grow.

Although Chile has a great climate for wine production, the meteoric rise of Chilean wine exports is a result of Chile's return to democracy, regulations, and open market policies. These factors contribute to Chile's disproportionate share of global wine exports. They enabled the wine industry to take advantage of recent rises in consumer demand and rapidly expand wine exports into new foreign markets. This paper examines the laws and foreign policies that govern the Chilean wine industry, as well as the way that these regulations may account for the successes and failures of the wine industry over time.

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[1] Tim Knowles, *The History and Development of Chilean Wines*, International Journal of Wine Marketing, 3 (2002).

[2] Daniel Workman, *Wine Exports by Country*, World's Top Exports, 2018, http://www.worldstopexports.com/wine-exports-country/ (last visited May 18, 2018).

THE CHILEAN WINE INDUSTRY

A. HISTORICAL BACKGROUND

To understand the modern Chilean wine industry, it is necessary to study its origins. The long and volatile history of Chilean wine production dates back to the sixteenth century. Spanish conquistadors and missionaries brought *Vitis vinifera* vines to Chile in the 16th century.[3] These early vineyards were cultivated by Catholic priests using Spanish artisanal techniques for religious purposes.[4] During this time, vineyard production was restricted because Spain wanted Chile to import Spanish wines. But Spanish wines did not handle the transatlantic voyages very well, often resulting in a vinegary wine. So, many Chileans preferred their better tasting domestic wine and some winemakers began regional exports. This led to a successful wine trade for Chile until Spain banned Chilean wine imports because Spain wanted to protect its own wine industry. The ban was so devastating that it almost destroyed the Chilean wine industry and it might have been if it were not for the *phylloxera* plague.

During the nineteenth century, Europe's wine production was devastated by the *phylloxera* plague. However, the pest never made its way to Chile due to Chile's isolated geography, which made Chile an ideal destination for Europeans to bring their varietals. Europeans introduced Merlot, Cabernet Sauvignon, Sauvignon Blanc and Pinot Noir, which are still fundamental to Chilean wine production. Because of the *phylloxera* plague, Chile had an opportunity to expand its wine production and exportation. Chilean wine producers began hiring displaced French oenologists to oversee their vineyards.[5] While it took Europe years to graft their vines with *phylloxera* resistant American rootstock, Chile's wine industry began to grow

[3] Knowles, *supra* note 1, at 3.
[4] *Id*.
[5] *Id*. at 5.

with the only pre-*phylloxera* vines. However, this success would once again be short lived. As the world's wine production recovered, Chilean wine exports declined and the Chilean wine industry was forced to focus on its small domestic market.

Furthermore, the wine industry experienced another crisis due to the enactment of the Alcohol Law of 1938, which greatly restricted the industry.[6] It capped the maximum allowable amount of wine produced to 60 liters per capita and prohibited the planting of new vineyards.[7] The purpose of this law was to combat alcoholism by regulating domestic consumption and limiting the number of acres of vineyards. Additionally, import controls were introduced due to World War II, which essentially cut the industry off from global advances in technology.[8] Consequently, the industry shrunk as investment dried up due to these regulations.

However, the Chilean wine industry would soon expand to become a major player on the world stage after these regulations were reversed. In 1973, Pinochet successfully organized a coup and established a military dictatorship in Chile.[9] His regime was responsible for many alleged human rights violations, but it is also responsible for introducing neoliberal policies to Chile. Furthermore, in 1974, the Alcohol Law of 1938 restricting wine production and trade was repealed.[10] Yet, the effects of the open market system and deregulation were not immediately felt. In part, because the dictatorship had a negative image around the world and foreign investors were reluctant to invest in Chile.

[6] Chilean Law No. 17,989 (1938).
[7] Gerald Asher, *The Pleasures of Wine*, Chronicle Books LLC, 298 (2002).
[8] *Id*.
[9] Fulvia Farinelli, *Quality Improvements and International Positioning of Chilean and Argentine Wines*, Academy of Wine Business Research, 8 (2014).
[10] Knowles, *supra* note 1, at 7.

However, once Chile transitioned to democracy, foreign investments returned and the industry began to grow.[11] As a democratic country, Chile was seen as a safe foreign investment because of its political stability and lower incidence of corruption. Chile began to develop an export-led economic model to promote economic recovery. Eventually, Chile's open market policies helped resurrect the Chilean wine industry, which had suffered from a century of underinvestment. Free trade policies and deregulation allowed wine producers to improve their processes and led to Chile's development as a producer of quality wines. For the first time in Chile's long history of wine production, it has been able to sustain this success by coordinating efforts between the public and private sectors.

B. THE EMERGENCE OF CHILE'S MODERN WINE INDUSTRY

The Chilean wine industry has undergone major changes in each of the last forty years, which resulted in its emergence as a major wine producer and exporter. In the 1980s, new technology led to a revolution in Chilean wine quality.[12] In the 1990s, Chile completed its transformation from a protectionist regime to a liberal one. Furthermore, Chile's transition to democracy, open foreign policies, and increased foreign investments led to an export boom.[13] In the 2000s, new plots of land for vineyards were developed to expand the industry.[14] Together, these innovations helped Chile become the eighth largest wine producer and fourth largest exporter of wine.[15] Chile is the largest wine exporter in the Southern Hemisphere and it is only surpassed by France, Italy, and Spain in the world. Moreover, Chile has the most globalized wine

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[11] Farinelli, *supra* note 9, at 9.
[12] Christian Felzensztein, *The Chilean Wine Industry: New International Strategies for 2020*, Emerald Emerging Markets Case Studies, Vol. 1 No. 1, 1 (2011).
[13] *Id*.
[14] *Id*.
[15] Workman, *supra* note 2.

industry, exporting 70 percent of its wine production.[16] In 2016, Chile exported almost one million tons of wine valued at nearly two billion dollars.[17] The wine industry has become Chile's modern ambassador to international consumers. Because Chilean wine has become integral to the country's global image, the Chilean government wants to continue to expand its wine industry.

Before Chile's export boom in the 1990s, the Chilean government began supporting the wine industry with favorable policies that encouraged innovation and collaboration between the public and private sectors. The Chilean government funded international travel for wine producers to learn about new winemaking practices and technology.[18] Also, Chile created export subsidies to stimulate trade and stabilized interest rates and inflation to promote investment.[19] Additionally, Chile reduced logistics costs by privatizing and modernizing many of its ports.[20] Furthermore, Chile's membership in multinational organizations and free trade agreements paved the way for wine exports to expand into the global market. These initiatives and policies created a competitive advantage for Chile by reducing costs and giving wine exporters access to millions of international consumers. Because of these domestic and foreign policies, the Chilean wine industry began to boom and it has sustained this success for nearly forty years.

Over this same period of time, the global wine trade has also grown in terms of volume and value, resulting from increased consumer demand and increased supply from new wine producers. "Old World" producers, such as France, Italy, and Spain used to have more than a 90

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[16] Farinelli, *supra* note 9, at 19.
[17] Workman, *supra* note 2.
[18] Monica Hadarits, *The Sensitivity and Adaptability of the Grape and Wine Industry in the Maule Region of Chile to Climate Change*, 68 (2009).
[19] Farinelli, *supra* note 9, at 9.
[20] Karina Fernandez-Stark & Penny Bamber, *Wine Industry in Chile,* Asia-Pacific Economic Cooperation, 364, 371 (2016).

percent market share.[21] However, their market dominance has diminished some with the emergence of "New World" producers, such as Chile, Australia, New Zealand, and the United States. As consumer demand expanded from Europe to the United States and Asia, New World producers responded by focusing on popular varietals and marketing to attract these new consumers.

Chile captured a large portion of these consumers by utilizing a "value for money" wine model. Chile's "value for money" model means that its wines try to establish a good quality-to-price ratio. However, this model has limited wine producers' profits and could prevent future industry growth unless Chile is able to increase revenues. One possible solution is to develop a premium wine model. However, a premium wine model will require Chile to improve its consumer perception as a producer of fine wines. Consumer perception is always difficult to change, but it will be particularly difficult for Chile because it has such a strong reputation as a producer of value wines.[22] Nevertheless, Chile may be able to improve its image and develop a premium wine model by modifying its domestic regulations, continuing its collaboration between the public and private sectors, and by expanding and maintaining existing international relationships.

WINE REGULATION

In *Wine Law in America: Law and Policy*, Richard Mendelson says, "[w]inery owners, when given any encouragement, will speak endlessly about the plethora of rules that they must follow."[23] This is because wine is subject to more regulation than most products. Wine laws control the harvesting, production, labeling, sale, trade and taxing of wine. Compliance with

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[21] Fernandez-Stark, *supra* note 20, at 364.
[22] *Id*. at 373.
[23] Richard P. Mendelson, *Wine Law in America: Law and Policy*, Aspen Publishers, 74 (2011).

these regulations is complicated and creates a significant cost for wine producers. Governments justify this level of regulation based upon public health concerns and the negative social stigma often associated with alcohol. However, in addition to protecting consumers, wine laws can also benefit wine producers. For example, establishing protection by origin laws can help wine producers build stronger brands and wine production laws can help to ensure the quality of a country's wine.

A. LEGISLATION

Chile has a civil law tradition that was modeled after the French civil law tradition. In a civil law regime, codified statutes are the predominate type of law. "Ordinary laws" are laws that originate from the Legislature and deal with specific subjects. Approval of an ordinary law requires a simple majority of both houses of the Legislature. Additionally, the Legislature can delegate power to the President to issue a "decree." Decrees are used to establish or clarify regulations with respect to a specific ordinary law. Furthermore, administrative authorities can issue "resolutions" that relate to compliance with ordinary laws and decrees. Unlike the United States, Chile's judiciary has not played a large role in the development of wine laws. In Chile, wine laws take the form of ordinary laws enacted by the Legislature, Presidential decrees, and administrative resolutions.

In Chile, wine is primarily governed by three regulations. Law No. 18,455 of 1985 establishes the laws for wine production, processing, and trade.[24] It was enacted to ensure the quality of Chilean wine, the safety of wine imports, and to strengthen the *Servicio Agricola y Ganader*o ("SAG"). The Agriculture Decree No. 464 of 1994 establishes Chile's wine-growing

[24] Chilean Law No. 18,455 (1985).

zones and provides rules for their use with the intention of signaling quality.[25] Decree No. 78 of 1986 contains an exhaustive list of authorized oenological practices and processes for wine production.[26] It establishes limits for a number of wine additives, including heavy metals and mycotoxins.[27] Any practice or process that is not listed in Decree No. 78 is forbidden. If a producer wants to incorporate a new oenological technique, it must submit the process to the Advisory Commission of the Directorate National in Vitivinicultural Matters of the SAG for approval. This commission includes wine producers, government experts and academics who decide whether to allow the new practice.

Furthermore, Resolution No. 2,388 of 2013 establishes the requirements for the import of alcoholic beverages into Chile.[28] First, importers must register as an importer with Chile's *Servicio de Impuestos Internos* ("SII"). Within 30 days of registering with the SII, the importer must next register with the SAG. Additionally, the importer must prepare several additional forms. Chile requires a certificate of origin, certificate of free sale, certificate of customs destination, certificate of analysis, commercial invoice, bill of lading, insurance certificate, packing list, and pro-forma invoice.[29] The certificate of free sale must be issued by the relevant agency in the country of origin, such as the Alcohol and Tobacco Tax and Trade Bureau in the United States. While, the certificate of customs destination is obtained from SAG officials at the port of entry.

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[25] Chilean Decree No. 464 (1994).
[26] Chilean Decree No. 78 (1986).
[27] Chilean Decree No. 78 (1986).
[28] Chilean Resolution No. 2,388 (2013).
[29] *International Trade Resources for Chile*, Alcohol and Tobacco Tax and Trade Bureau, https://www.ttb.gov/itd/chile.shtml#STANDARDS (last visited May 18, 2018).

B. LABELING LAWS

Veronica Cousino, a commercial manager of a large Chilean vineyard, spoke at length about the numerous regulations faced by producers during a presentation at Vina Cousino.[30] She said that for large wine exporters, the labeling and packaging requirements are the most difficult to comply with because each country has their own system and many require different warning labels. For example, the USA requires "GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."[31] In contrast, Chile does not have any mandatory warning labels. In the United States, mislabeled wines are sometimes allowed to be temporarily sold with a disclaimer; however, Chile does not have a similar law. Consequently, a labeling mistake can be quite costly for producers because the mislabeled wine might have to be shipped back or destroyed.

Wine labels are important because they inform consumers about the product and help to prevent counterfeits. Consequently, wine labels are heavily regulated and must not contain words or graphics that could result in misunderstandings about the product. Chilean wine labels are enforced by the SAG under Article 35 of Law No. 18,455 and Article 63 of Decree No. 78.[32] In Chile, for a wine to be commercialized, its label must include the following: product name and type, country of origin, bottler's name and address, distributor's name and address (if different from importer), alcohol content (in degrees Gay-Lussac), net volume (in metric units).[33]

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[30] Veronica Cousino, *Presentation for the University of Chicago's International Immersion Program* (2018).
[31] 27 C.F.R. § 16.21.
[32] Chilean Law No. 18,455 (1985).
[33] Chilean Decree No. 78 (1986).

Although not required, the labels may include the appellation of origin, varietal, quality mentions, and vintage dates.[34] For each requirement, at least 75% of the grapes used in the making of the wine must satisfy the label's description.[35]

In addition to meeting the above requirements, imported wines are subject to further labeling requirements. The purpose of these additional requirements is to prevent consumer confusion by distinguishing imported wine from domestic wine. If the wine is imported, the label must include the country of origin, as well as the name and address of the importer.[36] This information can be printed on the primary label or contained on a complementary label. Furthermore, the label must be in Spanish, except for the brand name and the importer's name and address.

C. PRODUCTION

Under Chilean law, there are few restrictions on oenological practices. However, not every kind of grape can be used to produce wine. For a product to be called wine, it must be the result of alcoholic fermentation of *Vitis vinifera* grapes and it must have a minimum alcohol content of 11.5 percent.[37] If the grapes come from a non-*Vitis vinifera* strain or hybrid strain, the product cannot be called wine and must be marketed under a different name. Furthermore, the product label must indicate that it is an alcoholic product of hybrid vines.[38] In this way, Law No. 18,455 protects the quality of Chilean wine by discouraging the use of hybrid strains in winemaking.

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[34] Chilean Decree No. 78 (1986).
[35] Chilean Decree No. 78 (1986).
[36] Chilean Decree No. 78 (1986).
[37] Chilean Law No. 18,455 (1985).
[38] Chilean Law No. 18,455 (1985).

Additionally, Law No. 18,455 establishes the substances that can be added or manipulated during the winemaking process. Wine producers cannot use practices, additives, or substances that are not expressly authorized by the law. The use of alcohol, sucrose, sugar, and artificial sweeteners is explicitly forbidden.[39] However, all other oenological restrictions come from Chile's membership in the International Organization of Vine and Wine ("OIV"). Among other things, the OIV regulates the manipulation of acidity, yeast growth, and maximum acceptable limits for many compounds.

D. PROTECTION BY ORIGIN

Protection by origin is arguably the most important type of regulation to the global wine industry. Because the quality and unique characteristics of wine are often associated with the place and people that produce it, protection by origin laws allow producers to develop better branding and provide consumers with a signal of quality. Protection of origin laws add value to wine by creating market recognition and allows producers to charge premium prices.[40] Furthermore, protection by origin is essential in preventing imitation and counterfeit wines. However, some countries have tried to use protection by origin laws to insulate their markets from foreign wine. Veronica Cousino said, "protectionism is the worst scenario for wine producers because other countries want to protect their own wine."[41] She said that some South American countries will change their wine law requirements daily. Consequently, it is common for wine shipments to be delayed for two weeks or more until you engage in diplomatic talks to get your wine through customs.[42]

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[39] Chilean Law No. 18,455 (1985).
[40] Irina Kireeva, *How to Register Geographical Indications in the European Community*. World Patent Information, 33, 72–77 (2011).
[41] Cousino, *supra* note 30.
[42] *Id*.

Protection by origin laws first appeared after the *phylloxera* plague in France and then spread to neighboring countries, such as Spain and Italy. The idea of a protection by origin system was developed to protect producers and consumers from those that would use fraudulent techniques and product names during the wine shortage.[43] Historically, protection by origin included both natural and human factors. Today, there are two competing protection by origin systems, but one of them ignores human factors entirely.

Europe uses an appellation of origin standard, while the United States uses a geographic indication standard. The Old World, where wine production and regulation has been around longer, has stricter laws designed to ensure quality. In the Old World, appellation laws typically regulate wine production, varietals, and agricultural practices. Alternatively, in the New World, appellation control is often more narrow and typically limited to aspects geographic indications and varietal authenticity.

As previously discussed, Chile has a civil law tradition, with legal rules modeled after the French civil law code. However, unlike its legal tradition, Chile's protection by origin system is much more akin to the United States' geographical indication system.[44] Chile's general protection by origin regime is found in Title IX, Articles 92-105 of the Industrial Property Law No. 19,039.[45] It defines both geographical indications and appellations of origin. A geographical indication is defined in Article 92 as "an indication identifying a product as originating from a country, region or locality in the national territory where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin."[46] And

[43] Cristina Errázuriz Tortorelli, *Indicaciones Geográficas y Denominaciones de Origen: Propiedad Intelectual en Progreso*, *Revista Chilena de Derecho*, *37*(2), 207–239 (2010).
[44] Farinelli, *supra* note 9, at 3.
[45] Chilean Law No. 19,039 (2007).
[46] Chilean Law No. 19,039 at § 92(a).

appellations of origin is defined as "an indication identifying a product as originating from a country, region or locality in the national territory where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin, and also taking into consideration other natural and human factors that have an impact on the characteristics of the product."[47] Unlike the European system, Chile's law lacks a regulatory board for appellations. Also, it does not include cultural characteristics, which are central to the European appellation of origin system.

Additionally, Law No. 18,455 delegates power to establish appellations of origin to the President.[48] Law No. 18,455 states, "...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."[49] As a result, Decree No. 464 of December 14, 1994 was issued to establish and regulate the wine-growing areas in Chile.[50] This decree was updated in 2012 and established six wine-growing regions, 17 sub-regions, 8 zones and 81 areas.[51] The six wine-growing regions of Chile are the Atacama region, Coquimbo region, Aconcagua region, Central Valley region, Southern region, and Austral region (Table 1).[52] Additionally, Decree No. 464 was modified again in 2015 by Decree No. 7 on Agriculture, which establishes three separate categories of wine based upon wine-growing areas, varietal type, and special interior rain-fed districts.[53]

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[47] Chilean Law No. 19,039 at § 92(b).
[48] Chilean Law No. 18,455 (1985).
[49] Chilean Law No. 18,455 at § 27.
[50] Chilean Decree No. 464 (1994).
[51] Chilean Decree No. 22 (2012).
[52] Chilean Decree No. 22 (2012).
[53] Chilean Decree No. 7 (2015).

E. TAX

The Chilean government has indirectly encouraged wine exports by its high domestic tax scheme. The same bottle of Chilean wine is often more expensive in Chile than it is in the United States. Despite the costs associated with shipping wine thousands of miles, it can still be cheaper to buy Chilean wines in the United States because wine sales in Chile are subject to very high taxes. Chile has a 19 percent value-added tax and a national 20.5 percent liquor tax for all wine sales in Chile.[54] This results in all domestic sales of Chilean wines being taxed at approximately 35 percent. Although Chile is not a large consumer of wine, high taxes may dissuade consumers and diminish domestic demand. Consequently, wine producers may be incentivized to export more of their wine, which corresponds with the fact that Chile exports more than 70 percent of its wine.[55]

Additionally, Chile has implemented tax policies that incentivize human capital development, which has been key to the wine industry's growth. The tax incentives are headed by the National Training and Employment Agency ("SENCE"), which incentivizes wine producers to develop specialized training programs to meet the needs of the wine industry.[56] Because Chile has a shortage of agricultural workers, these incentives have been important for training efforts to improve the productivity of the industry.

CHILEAN AGENCIES

Chile has a long tradition of public-private partnerships ("PPP"), which are cooperative arrangements between the public and private sector. For example, a long-term governmental

[54] Luis Hennicke, *Chilean Wine Production 2015*, GAIN Report, Mar. 4, 2015, https://gain.fas.usda.gov/Recent GAIN Publications/Wine Annual_Santiago_Chile_3-4-2015.pdf (last visited May 18, 2018).
[55] Farinelli, *supra* note 9, at 19.
[56] Fernandez-Stark, *supra* note 20, at 372.

contract for a private company to build and operate a highway. Although the wine industry does not have any PPPs, it does recognize the benefits of collaboration and cooperation between the public and private sectors. By working together, the Chilean government and wine producers have been able to encourage innovation and promote the industry globally.

A. *SERVICIO AGRICOLA Y GANADERO*

The SAG is the governmental agency in charge of wine certification and control. It ensures the safety and compliance of both domestic and foreign wines with Chilean laws relating to wine production, labeling, and trade. The SAG enforces compliance by issuing penalties and fines. Because Chile does not have any agricultural pests or diseases, the SAG is very strict on the importation of agricultural items. The fines for bringing banned agricultural items into the country can be enormous. Furthermore, the SAG oversees the industry from the planting and harvesting of the grapes to the production of the wine. The SAG keeps a record of all alcoholic beverages, vineyards and wineries, and it supervises all liquor stores, distributors and importers. Also, it certifies the condition of exported Chilean wines meet the requirements of the target market.

The SAG ensures compliance with field visits and random samplings. During field visits to vineyards, the SAG inspects for pests that could impact the national production. Furthermore, the SAG can sample wines at retail stores, wineries, and at the time of importation. These samples are then submitted for a detailed analysis report, which determines if the wine is apt for human consumption based upon strict limits on the permissible components in wine. Before any wine can be sold in Chile, it must first be registered with the SAG and pass sample testing to ensure that it is compliant with Decree No. 78, which establishes the authorized practices and processes for wine production. While the results are pending, the wine cannot be traded or removed from storage. If the wine satisfies Decree No. 78, it will be certified as apt for human consumption. However, if the wine fails to comply with Decree No. 78, it will be labeled not apt for import and it will either be destroyed or sent back to its country of origin.

B. WINES OF CHILE

Wines of Chile ("WOC") is an industrial association that represents 90% of all Chilean wine exports and is funded by wine producers.[57] The WOC has played a major role in the success of the Chilean wine industry by advancing many initiatives. Successful WOC initiatives include establishing stations to monitor the climate, scientific studies, and identifying appellations of origin. [58] The WOC has achieved these results by working as part of a joint program with the government and universities. By collaborating with the public and private sectors, the WOC has been able to foster research and development.

Furthermore, several grants are available to fund research and development in the wine industry. In 2012, the Chilean government created a consortium for wine research and development.[59] It is a joint venture between the *Fondo de Inversion para la Competitividad* ("InnovaChile") and the WOC.[60] The goal is to encourage collaboration between the wine sector and research institutions, in order to generate useful information for wine producers.[61] One of the major research partners is the University of California – Davis ("UC Davis").[62] Chile and UC Davis have a long history of working together and have been collaborating for approximately

[57] Fernandez-Stark, *supra* note 20, at 373.
[58] *Id*.
[59] *Id*. at 372.
[60] *Id*.
[61] *Id*.
[62] Mitchel Benson, *Chilean President and Schwarzenegger Preside Over Signing of Landmark Agreements at UC Davis*, UC Davis, June 12, 2018, https://www.ucdavis.edu/news/chilean-president-and-schwarzenegger-preside-over-signing-landmark-agreements-uc-davis/ (last visited May 18, 2018).

four decades.[63] Less infamous than the "Chicago Boys," more than 50 Chileans studied agriculture at UC Davis and are referred to as the "Davis Boys."[64] They are credited with successfully revolutionizing the Chilean fruit industry.[65] Now, Chile and UC Davis are partnering again with a focus on research and development for the Chilean wine industry, as well as to educate and train Chileans on the latest viticulture technologies.[66]

C. PROCHILE

The WOC often coordinates with ProChile, the Chilean government agency that promotes Chilean exports to the world. [67] ProChile operates programs that support Chilean wine exporters by providing them with training on international marketing, as well as funds to do so.[68] As Chilean wine producers try to develop a premium wine model, the WOC and ProChile will need to coordinate an international marketing campaign to improve Chile's image as producers of higher priced fine wines.

In addition to promoting Chilean exports to the world, ProChile helps to find new foreign clients and maintain existing foreign relationships. Recently, ProChile has been targeting Asia as a place for growth.[69] It has established an international office in Asia for Chilean wines. Furthermore, ProChile has helped to successfully negotiate down or eliminate foreign tariffs and quotas. For example, ProChile negotiated the elimination of import tariffs on Chilean wines to

[63] Benson, *supra* note 62.
[64] *Id*.
[65] *Id*.
[66] *Id*.
[67] Fernandez-Stark, *supra* note 20, at 373.
[68] *Id*.
[69] *Id*. at 371.

China.[70] Because of these efforts, China has become the fourth-largest importer of Chilean wine.[71]

D. CHILEVALORA

Additionally, the ChileValora program, a joint program between the private sector and the Ministries of Economy, Education, Labor, and Social Security, is a competency certification that certifies the skills needed by workers in the wine industry.[72] This program has been in place for more than 15 years and has certified more than 4,500 workers.[73] This system ensures a uniform competency of skills, helps to establish a career culture in the industry, and makes the hiring process more efficient. Furthermore, flexible labor regulations permit the subcontracting of labor and temporary contracts to meet the seasonal demands of the wine industry. This has allowed Chile to maintain lower labor costs that most of its international competition and establish its value model for wine.

FOREIGN POLICY

Because the wine trade is important to many of the world's largest economies, it is the subject of many international agreements. For example, geographic indications are specifically addressed in the WTO's Trade-Related Aspects of Intellectual Property Rights agreement ("TRIPS").[74] And multinational organizations, such as the OIV, operate to standardize wine production and protect the industry's interests.

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[70] Fernandez-Stark, *supra* note 20, at 371.
[71] *Id*.
[72] *Id*. at 372.
[73] *Id*.
[74] Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).

Furthermore, trade agreements and other foreign policies influence importers and exporters of wine around the world. Among all of the major wine producers, Chile has the most free trade agreements, which gives Chile a competitive advantage. Chile's open market policies trace their roots back to the Chicago Boys of the 1970s and 1980s. Today, the Chicago Boys contributions are somewhat controversial; however, the benefits of Chile's free trade agreements are undeniable for the wine industry. These policies gave Chile access to more international consumers and allowed enterprising wine producers to rapidly expand exports in response to rising global demand. Consequently, Chile became one of the largest exporters in the world and has been able to sustain its success by continuing to join free trade agreements and multinational organizations.

A. FREE TRADE AGREEMENTS

Chile is an example of free trade agreements leading to increased exports and economic growth. Álvaro Jana, director general of international economic relations in Chile's ministry of economic relations ("DIRECON"), spoke about Chile's commitment to free trade in a 2013 interview with ProChile. Java explained, "[t]he Chilean foreign trade policy aims to deepen the inclusion of Chile in the world, combining export development with the promotion and protection of investment, and improving competitiveness in a context of stable business rules and policies to strengthen their impact on social equity."[75] He said, "[a]s of June 2013, Chile had 22 [free trade agreements] with 60 countries, which allows privileged access to a market of 4.3 billion people, which constitutes over 60% of the global population and accounts for over 80% of world GDP. Currently, over 90% of Chile's global exports go to countries with which it has [free

[75] Neil Murray, *Free Trade*, Food News, 2013, http://www.direcon.gob.cl/wp-content/uploads/2013/12/Oct5_DG-Food-News_Chilealimentos_Anuga.pdf (last visited May 18, 2018).

trade agreements].”[76] The countries that Chile has free trade agreements with include Australia, Brunei, Canada, China, Colombia, Costa Rica, Ecuador, El Salvador, the European Union, Guatemala, Honduras, Japan, Mexico, New Zealand, Nicaragua, Panama, Peru, Singapore, South Korea, Turkey, and the United States. Notably, Chile was the only member of the Trans Pacific Partnership that had existing trade agreements with every other participating country. Jana credits trade liberalization and these free trade agreements for Chile’s eightfold increase in exports since the 1990s.[77]

Given Chile’s geological isolation, these free trade agreements allow Chile to build relationships and strengthen ties to foreign countries that otherwise might be less likely to materialize. Without these trade agreements, it likely would have been impossible for Chile to become a major wine exporter. While describing how important these free trade agreements are to Chile’s economy, Jana said, “[i]n a competitive world like today, not having [free trade agreements] involves competing at a disadvantage.”[78] He continued, “[openness] has been fundamental to the development and economic growth of the country, and has resulted in a direct benefit to the export sector and has attracted investors to sectors that have become the main drivers of the Chilean economy.”[79]

But the government’s goal of generating new market opportunities for Chilean exports, does not stop there. Jana explained, “[t]he [DIRECON] has understood this goal as the need to seek such opportunities not only in new markets, for example by negotiating [free trade agreements] with new countries, but also to deepen existing agreements, generating new

[76] Murray, *supra* note 75.
[77] *Id*.
[78] *Id*.
[79] *Id*.

opportunities for Chilean exports and attracting investment."[80] By expanding its agreements, Chile will be able to reinforce existing foreign relationships and create opportunities for further expansion of exports.

B. MULTINATIONAL ORGANIZATIONS

Chile has a long history of joining multinational organizations. Chile has been a member of the OIV for more than 60 years. The OIV is an intergovernmental organization that deals with viticulture and winemaking. OIV members account for 85 percent of the world's wine production and 92 percent of wine exports.[81] Among other things, its main objective is to standardize international winemaking and production.[82] The OIV adopts production restrictions that its members must abide by, such as prohibiting the addition of sugar to wines. As a major exporter in the global wine market, Chile fully supports the OIV and strictly abides by its regulations.

In 2001, Chile joined the Mutual Acceptance Agreement on Oenological and Winemaking practices with the United States, Canada, Australia, and New Zealand.[83] The Mutual Acceptance Agreement on Oenological Practices is an agreement that the countries will allow wine produced in another country to be sold in their markets, even though the wine is produced through different oenological practices. This agreement provided Chile with better access to these markets because they are now allowed to export wines that conform to Chile's wine production laws, rather than the destination country's production laws. However, this

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[80] Murray, *supra* note 75.
[81] Mendelson, *supra* note 23, at 397.
[82] Agreement Establishing the International Organization of Vine and Wine, art. 2, April 3, 2001.
[83] Mutual Acceptance Agreement on Oenological Practices, 2001, https://www.trade.gov/td/ocg/maa.pdf

agreement does not trump differing labeling requirements, so exporters must abide by the destination country's labeling laws.

ROLE OF WINE IN CHILE'S FUTURE

Chile is trying to avoid the "resource curse," by transforming to a knowledge economy. The resource curse is the idea that having a lot of natural resources can be a curse because the country has nothing left once it runs out of natural resources. Chile is the largest exporter of copper in the world and copper represents approximately half of all Chilean exports. Rather than being dependent on the abundance and price of copper, a knowledge economy would allow Chile to utilize expertise to generate value. The wine industry is an example of generating value from knowledge and expertise. Additionally, wine production is a major source of employment, professional development, and tax revenue for the Chilean government. Furthermore, Chile is trying to expand its international image as the most developed country in South America. Chilean wine presents an opportunity for Chile to derive additional value from its winemaking knowledge, as well as create an iconic product to represent Chile globally. Because Chilean wine reaches millions of international consumers, it has the opportunity to associate Chile with quality. Consequently, the stability and profitability of the wine industry is important to Chile's future.

The global wine industry is very competitive and Chile faces several issues that could be obstacles to the sector's growth. Because Chile is already one of the largest exporters of wine, it might be difficult to gain any additional market share. So, if the Chilean wine industry is going to continue to grow, it must maximize its competitiveness. Karina Fernandez-Stark and Penny Bamber, researchers at the Center on Globalization, Governance, and Competitiveness at Duke University, said, "[w]hile natural endowments such as climate and *terroir* remain the most important factors for success, the ability to innovate in production, consistently achieve economies of scale and align research and development strategies with marketing goals have become essential drivers of competitiveness."[84] Thus far, Chile has been able to achieve this level of competitiveness by having public and private organizations collaborate together. For example, the WOC and ProChile work together to provide funding for research, marketing strategy, and negotiate trade agreements with foreign markets. Their continued collaboration will be vital if the Chilean wine industry is going to continue to grow.

Furthermore, despite Chile exporting higher quality wine than other New World countries, the average price of Chilean wine is much lower. Lower prices helped Chile grab a large market share, but it also means that profit margins have suffered. Presently, it is unclear whether Chile's low profit margins are sustainable. Christian Filzensztein, a professor in the School of Business at Universidad Adolfo Ibanez, said, "[m]aking decisive progress toward positioning Chile as a world-class appellation for the production of premium and superior wines, gaining additional image and value is the only possible response to the competitive challenges the industry face today."[85] However, it is not enough that Chile merely begin producing higher quality wines, the international market must perceive such improvements. Before Chile can charge higher sales prices, it must improve its reputation to international consumers. Fortunately for Chile, the WOC is uniquely positioned to oversee this transformation.

By 2020, the WOC's goal is that Chile will be the top producer of premium wines in the New World and increase the average price of wine exports.[86] To accomplish this, Chile needs to

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[84] Lucia Cusmano, Andrea Morrison and Roberta Rabellotti, *Catching Up Trajectories in the Wine Sector: A Comparative Study of Chile, Italy, and South Africa*, World Development, 38(11): 1588-1602 (2010).
[85] Felzensztein, *supra* at 12.
[86] *Id*.

grow and improve its image amongst global consumers. Because premium wines are often associated with appellation of origin schemes, strengthening Chile's appellation of origin system is one way that it can increase its market recognition and enable producers to sell premium wines. This is because premium wine is often not only associated with high quality oenological practices, but also with the concept of *terrior*. *Terrior* is a French term used to describe viticultural sites and the way that the sites characteristics contribute to the unique qualities of wine.

As previously discussed, rather than an appellation of origin system, Chile has a protection by origin scheme that is more akin to geographical indications. This is because Law No. 18,455 reads more like a set of geographical indications due to Decree No. 464.[87] It does include cultural heritage or a regulatory review board. Instead of being based upon winemaking criteria, Chile's geographical areas have been identified based on political and administrative reasons. Furthermore, Chile's protection by origin system does not include agriculture or winemaking regulations. Thus, redefining its protection by origin and production regimes to create an association between Chilean wine and appellations, could increase Chile's brand recognition and international image. This would enable Chile to expand its reputation as a producer of premium wine and allow wine producers to charge higher prices.

Additionally, Chile is seen as a varietal wine producer, which has led to its reputation as value wine. However, this reputation can make it difficult on wine producers to market premium wine. Although, it is good that Chile is able to produce many different varietals, the industry would be better served if Chile could develop a stronger brand. The Argentinian Malbec is a

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[87] Gonzalo Rojas, *About the Need to Move Towards a DO's System on Chilean Wine*, RIVAR, 3(8), 145–173 (2016).

great example of a country successfully developing its own brand. And Chile has a great opportunity to duplicate that success with Carménère.

Although it produces more Merlot and Cabernet Sauvignon, Carménère is becoming a signature wine for Chile. The Romans brought Carménère from Spain and spread it throughout Italy and France. Carménère grew in these regions for nearly two thousand years before the vines were devastated by *phylloxera* in the 1800s. After the *phylloxera* epidemic, wine producers only replanted their favorite varietals, such as Merlot and Cabernets. Consequently, Carménère was thought to have gone extinct. That was until the 1990s, when it was discovered that Chilean producers had been mislabeling Carménère as Merlot for almost two centuries. Carménère made its way to Chile via European winemakers that immigrated and brought vine cuttings with them during the *phylloxera* plague. As the only country not hit by the *phylloxera* plague, Carménère was able to survive in Chile.

However, when Carménère was re-discovered, many Chilean wine producers were concerned that it was going to hurt their blended Merlot sales. But others realized that Carménère could become the "wine of Chile." According to SAG data, Carménère represents almost 25 percent of Chilean wine exports.[88] Furthermore, within the next decade, SAG believes that Carménère will become the country's iconic product.[89] If Chile is able to develop a strong brand of Carménère, like Argentina did with Malbec, it could be essential in establishing a premium wine industry.

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[88] Farinelli, *supra* note 9, at 14.
[89] *Id*.

CONCLUSION

Over the last thirty years, Chile has emerged as one of the most dominant exporters of wine. It is the eighth largest producer of wine and the fourth largest exporter. While Chile's geography and climate helps to explain how Chile became a major wine producer, it is Chile's regulations and free trade policies that enabled it to become the largest New World wine exporter. Chile's transition to democracy led to an influx of investment that allowed it to compete on the international stage. Furthermore, Chile's low labor and land costs, compared to its competitors, allowed it to achieve a higher quality-to-price ratio and develop a reputation for producing affordable wines. Although this allowed Chile to expand to more international markets, it has also suppressed wine producers' profits and has been a hindrance to Chile becoming a producer of premium wine. Changing the wine consumer's market perception of Chilean wine will be difficult, but a stronger appellation of origin system and developing the Carménère brand could enable Chile to improve its image. If Chile is successful, the production and exportation of premium wines will improve the value of Chilean exports and allow producers to become more profitable.

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
			PUNITAQUI
			RIO HURTADO
	VALLE DEL CHOAPA		SALAMANCA
			ILLAPEL
REGION DE ACONCAGUA			ZAPALLAR
	VALLE DEL ACONCAGUA		QUILLOTA
			HIJUELAS
			PANQUEHUE
			CATEMU
			LLAILLAY
			SAN FELIPE
			SANTA MARIA
			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
			BUIN
			ISLA DE MAIPO
			TALAGANTE
			MELIPILLA
			ALHUE
			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	RAUCO
			ROMERAL
			VICHUQUEN
		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
			LONGAVI
			RETIRO
		VALLE DEL TUTUVEN	CAUQUENES
REGION DEL SUR	VALLE DEL ITATA		CHILLAN
			QUILLON
			PORTEZUELO
			COELEMU
	VALLE DEL BIO BIO		YUMBEL
			MULCHEN
	VALLE DEL MALLECO		TRAIGUEN
REGION AUSTRAL	VALLE DEL CAUTIN		
	VALLE DE OSORNO		

Table 1. Chilean Wine-Growing Areas.[90]

[90] Chilean Decree No. 464 (1994).