

Without Prejudice

{Section D: Geographical Indications}[CL/MX propose; US oppose:[27]]

Article QQ.D.1: {Recognition of Geographical Indications}

The Parties recognize that geographical indications may be protected through a trademark or sui generis system or other legal means.

Article QQ.D.2:

Where a Party provides administrative procedures for the protection or recognition of geographical indications, whether through trademark or a sui generis system, the Party shall with respect to applications for such protection or petitions for such recognition:

- (a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals[28];
- (b) process those applications or petitions without imposition of overly burdensome formalities;
- (c) ensure that its regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;
- (d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow applications, petitioners, or their representatives to ascertain the status of specific applications and petitions;
- (e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and
- (f) provide for cancellation[29] of the protection or recognition afforded to a geographical indication.

[27] [CL/MX propose; US oppose: Section D shall not apply to geographical indications protected pursuant to an agreement with another government or international organization, except for to the extent as are provided for in QQ.D.5.] Negotiator's note: US' opposition is not based on a conceptual difference but on the necessity for this footnote.

[28] Subparagraph (a) shall also apply to judicial procedures that protect or recognize a geographical indication

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Article QQ.D.3 {Grounds of Opposition and Cancellation}[30]

1. Where a Party protects or recognizes a geographical indication through the procedures referred to in Article QQ.D.2, that party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least on the following grounds:

- (a) [VN oppose: the geographical indication is likely to cause confusion with a trademark or geographical indication that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;]
- (b) [VN oppose: the geographical indication is likely to cause confusion with a pre-existing trademark or geographical indication, the rights to which have been acquired in accordance with the Party's law; and][VN propose:[31]]
- (c) the geographical indication is a term customary in common language as the common name [AU/NZ/US propose; CL/MX/PE/JP/VN/MY/CA oppose: [32]] for the relevant goods in that Party's territory.

2. [JP propose: As an alternative to paragraph 1,][33] Where a Party has protected or recognized a geographical indication through the procedures referred to in Article QQ.D.2, that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition

[29] For greater certainty, cancellation for purposes of this Section may be implemented through nullity or revocation proceedings.

[30] A Party is not required to apply Article QQ.D.3 to geographical indications for wines and spirits or applications for such geographical indications.

[31] [VN propose: For the purpose of subparagraphs (a) and (b) of Article QQ.D.3.1, a Party may confine "likely to cause confusion" to cases of foreseeable confusion, which shall include at least the case of a prior well-known protected framework or a prior well-known protected geographical indication.] Negotiator's note: VN will withdraw its opposition to subparagraphs (a) and (b) of Article QQ.D.3.1 as well as proposition of "(c)" if the foregoing FN is accepted.

[32] [AU/NZ/US propose; CL/MX/PE/JP/VN/MY/CA oppose: For greater certainty, where a Party provides for the procedures in QQ.D.2 and QQ.D.3 to be applied to geographical indications for wines and spirits or applications for such geographical indications, this article also applies to a product of the vine for which the relevant indication is identical to the customary name of a grape variety in ~~a~~ that Party's territory.] [CL/SG propose: Nothing in this Article shall require a Party to apply its provisions in respect of a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party as of the date of entry into force of this agreement] Negotiators' note: VN would not support FN 4 and "relevant" va FN 14, because it is appropriate only in case of GI of grape variety, and inappropriate in other cases, eg GI Product is made of grape variety.

[33] Negotiators' note: This is connected to QQ.D.5 issue.

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to be cancelled, at least on the grounds listed in paragraph 1[VN propose: (c)]. A Party may provide that the grounds in QQ.D.3.1 (a), (b) and (c) shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party[34][35]][36]

[US/AU/NZ propose; PE/CL oppose: 2bis. [VN propose; US/AU/NZ oppose: Without prejudice to paragraph 2 above] No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis [VN propose; US/AU/NZ oppose: other than those mentioned in paragraph 1] that the protected or recognised term has ceased meeting the conditions upon which the protection was originally granted [US propose; MY oppose: in the Party].] [CL propose: No Party shall be obliged to protect geographical indications which are not or ceased to be protected in their country of origin, or which have fallen into disuse in that country.][37]

~~[VN propose; US/NZ oppose:~~

~~Alternative 2bis. Without prejudice to paragraph 2 above no [8] Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled,[9] or otherwise cease, at least on the following grounds that the protected or recognised term has ceased meeting the conditions upon which the protection was originally granted in the Party[10][11]
(a) the GI ceased to be protected in the country of origin;~~

[34] ~~[MY/NZ/SG propose:~~ For greater certainty, where the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article QQ.D.2, a Party is not required to apply such grounds for the purposes of paragraph 2 or Article QQ.D.3.4 in relation to such geographical indication.] ~~{No Party shall be required to apply paragraph 2 in respect of geographical indications that are protected or recognized in that Party before this Agreement comes into force. Negotiators' Note: Parties considering the need for the second footnote in view of QQ.A.10bis.3.~~

[35] [JP/PE/VN/MX propose; US oppose: This paragraph does not prevent a Party from limiting the availability of the procedures for cancellation to a certain period after registration.] Negotiators' note: US has proposed the following footnote as a possible alternative to the preceding footnote: [A Party may fulfil the obligation to provide procedures for interested persons to seek cancellation of a geographical indication if the Party provides that, after protection or recognition is granted to a geographical indication, the Party's competent authorities: (a) have the authority to cancel such protection or recognition ex officio; and (b) take into account relevant information submitted by interested persons.]

[36] ~~Negotiators' note: Parties need to reflect on rationale and placement of the last sentence.~~

[37] [JP/VN propose: For greater certainty, this Article does not apply to cases where a GI becomes {generic} after protection or recognition is given.] Drafters note: JP VN to confirm if footnote still needed under new structure.

- VN confirms that FN10 is still needed to accommodate its national policy as well as bilateral policy with EU unless language of para 2bis does not prejudice the last sentence of para 2.

[38] Negotiators note: MX/PE is still reflecting on the application of this provision with regards to its national geographical indications.

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~~(b) the GI ceased to be GI as such due to change of geographical conditions.]~~

3. Where a Party has in place a *sui generis* system for protecting unregistered geographical indications by means of judicial procedures, a Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication where any of the circumstances identified in paragraph 1(i), paragraph 1(ii) and paragraph 1(iii) have been established[39]. Such a Party shall also provide a process that allows interested persons to commence a proceeding on such grounds.

4. Where a Party provides protection or recognition of any geographical indication, pursuant to the procedures referred to in Article QQ.D.2, to the translation or ~~[PE oppose: transliteration]~~ of such geographical indication, the Party shall make available procedures that are equivalent to, and grounds that are the same as, those set forth in paragraphs 1 and 2 with respect to such translation or ~~[PE oppose: transliteration]~~. [40]

Article QQ.D.8: {Guidelines for determining whether a term is the term customary in the common language as the common name for the relevant goods in a Party's territory}

With respect to the procedures in D.2 and D.3 in determining whether a term is the term customary in common language as the common name for the relevant goods in a Party's territory, that Party's authorities shall have the authority to take into account how consumers understand the term in that Party's territory. Factors relevant to such consumer understanding may include:

(a) whether the term is used to refer to the type of product in question, as indicated by competent sources such as dictionaries, newspapers, and relevant websites; and

(b) how the product referenced by the term is marketed and used in trade in the territory of that Party. [41] [AU propose; PE/CA/SG/CL/MX/MY/JP oppose: [42]]

[39] As an alternative to paragraph 3, where a Party has in place a *sui generis* system of the type referred to in paragraph 3 as of *{date x -- already in place pre-TPP}*, that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication where the circumstances identified in paragraph 1(c) have been established. Negotiators' note: MY's removal of opposition at various places in QQ.D.3.1 and QQ.D.3.2 upon acceptance of MY's several proposals in this Section is ad ref.

[40] Negotiators' note: MY has removed its opposition ad ref.

[41] For purposes of subparagraph (b), a Party's authorities may take into account, where appropriate, whether the term is used in relevant international standards recognized by the Parties to refer to a type or class of product in the Party's territory.

[42] [AU propose; PE/CA/SG/CL/MX/MY/VN/JP oppose: For the avoidance of doubt, this paragraph does not preclude a Party's authorities from taking into account how consumers in the Party's territory

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Article QQ.D.9: {Multi-Component Terms}

With respect to the procedures in D.2 and D.3, an individual component of a multi-component term that is protected as a geographical indication in a Party shall not be protected in that Party where the individual component is a term customary in the common language as the common name for the associated goods.

Article QQ.D.6: {Date of Protection of a Geographical Indication}

Where a Party grants protection or recognition to a geographical indication through the procedures referred to in Article QQ.D.2, such protection or recognition shall commence no earlier than the filing date^[43] in the Party or the registration date in the Party, as applicable.

Article QQ.D.11: [CL/SG/BN/MX propose^[44] ; AU/PE/US/NZ/CA/JP/VN/MY oppose: List of Geographical Indications

The terms listed in Annex [...] are recognized as geographical indications of the respective Party, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to domestic laws ^[45], in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territories of the other Parties.]

Article QQ.D.12: {Homonymous Geographical Indications}

[PE oppose: 1. Where a Party provides protection for homonymous geographical indications for spirits, that Party shall determine the practical conditions under which such indications will be differentiated from each other in its territory, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.]

[CL propose; AU/US/PE/NZ/VN/SG/MY/BN/MX/CA/JP oppose: 2. The Parties recognize the geographical indication *Pisco* for the exclusive use for products from Chile and Peru.]

understand how the product referenced by the term is marketed or used in trade outside the territory of the Party.]

[43] For greater certainty, the filing date referenced in this paragraph includes the priority filing date under the Paris Convention, where applicable.

[44] Negotiators' Note: VN supports subject to the list of GIs in the Annex.

[45] [CL/BN/SG propose: For greater certainty, the Parties acknowledge that geographical indications will be recognized and protected in the Parties only to the extent permitted by and according to the terms and conditions set out in their respective domestic laws.]

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[CL/SG/BN/MX propose; AU/PE/US/NZ/CA/JP/VN/MY oppose: Annex [...] Lists of Geographical Indications]

Article QQ.D.13: {Country Names}[46]

Each Party shall provide the legal means for interested parties to prevent commercial use of country names of the Parties in relation to goods in a manner which misleads consumers as to the origin of such goods.

Article QQ.D.5 (International Agreements)[47]

1. Where a Party protects or recognizes a geographical indication other than for wines and spirits pursuant to an {international agreement} ~~{agreement with another government or international organization}~~ ~~{international agreement involving a Party or a non-Party}~~[48], {and} where those geographical indications are not protected pursuant to the procedures in Article QQ.D.2 [MY/SG propose: and QQ.D.3.3], the Party shall [CL/MX/JP propose; US/AU/NZ oppose: endeavor to apply at least procedures set forth in QQ.D.2.(e)]: ~~{CL propose: apply at least procedures in QQ.E.2.(e).}~~

[US/AU/NZ propose; CL/PE/MX oppose:

(a) provide opposition [JP/VN/MY oppose: and cancellation] procedures and grounds equivalent to those set forth in Article QQ.D.2(e) [JP/VN/MY oppose: and (f)] and [VN oppose: Article QQ.D.3, paragraphs 1] [JP/VN/MY oppose: and 2];

(b) [[MY oppose: provide the procedures and grounds described under subparagraph (a) where a Party provides protection or recognition of any geographical indication to the translation or transliteration of such geographical indication; and]

(c) [JP/VN/CA oppose: apply Article QQ.D.3.2bis.]]

[46] Negotiators' note: Legal scrub to determine placement in TM vs GI vs standalone.

[47] Negotiators' note: Parties' attributions with respect to QQ.D.5 does not prejudice its final views on QQ.D.5.

[48] Negotiators' note: Proponents are still considering the most appropriate formulation to capture the type of international agreements they see as falling within the ambit of this provision.

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2. [US/AU/NZ propose; CL/JP/PE/CA/MX oppose: Where a Party protects or recognizes a geographical indication for wines and spirits pursuant to an agreement with another government or international organization, where those geographical indications are not protected pursuant to the procedures in Article QQ.D.2 [MY/SG propose: and QQ.D.3.3], the Party shall provide opposition [JP/VN oppose: and cancellation] procedures equivalent to those set forth in Article QQ.D.2(e) [JP/VN oppose: and (f)]; and]

[JP/VN/MY/CL[49]/MX[50] propose; US/AU/NZ oppose: 2bis. ~~as an alternative to no cancellation in paras. 1 and 2:~~ “With respect to the cancellation procedures referred to in paragraphs 1 and 2 above, a Party may instead provide in such agreement for a possibility of modification or cancellation of geographical indications protected pursuant to the agreement, on a mutual consent of the parties to the agreement.”^{22]}

3. [US/AU/NZ propose; MX oppose: Each Party shall apply Articles QQ.D.8 and QQ.D.9 when [CA/CL propose: determining whether to grant] ~~{CA/CL oppose: granting} protection or recognition~~ protecting or recognizing to a GI pursuant to paragraph 1 and, if applicable, paragraph 2.]

4. [JP/MY/VN/CL-/MX/PE propose; US/AU/NZ oppose: No Party shall be required to apply Article QQ.D.5, paras 1 - 3, to geographical indications that are protected pursuant to an ~~{international agreement} {agreement with another government or international organization} {international agreement involving a Party or a non-Party} agreement between that Party and another government, government entity {or international organizations}~~, provided that that agreement includes provisions of procedures to protect geographical indications that are equivalent to those included in the agreements as exempted from the application of Section D pursuant to QQ.D.5.6]

5. [MX oppose: Protection or recognition provided pursuant to paragraphs 1 and 2 shall commence no earlier than the date on which such agreement enters into

[49] [Negotiators note: CL cannot accept obligations with respect to cancellation procedures is still considering the drafting of this provision and is exploring the following language Chile would be able to consider an alternative paragraph 2 Bis worded as follows: A Party may comply with cancellation procedures referred to in paragraph 1 and 2 above, if such agreements permits for the possibility of modification or cancellation of geographical indications protected pursuant to the agreement, on a mutual consent of the Parties to the agreement.].

[50] Negotiators’ note: MX is still considering the drafting of this provision.

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force, or if that Party grants such protection or recognition on a date after entry into force of the agreement, on that later date.}[MY propose: [51]]

6. No Party shall be required to apply QQ.D.5, paras. 1 (non-wines/spirits procedures & grounds), 2 (wines/spirits procedures), 3 (QQ.D.8 and 9 genericness stds) and 5 (commencement of protection), to geographical indications that have been specifically identified in, ~~{or}~~ ~~{and}~~ that are protected or recognized pursuant to, an ~~{international agreement}~~ ~~{agreement with another government or international organization}~~ ~~{international agreement involving a Party or a non-Party}~~ ~~{international agreement}~~ ~~{agreement between that Party and another government, government entity {or international organization}}~~, provided that [CL/PE/MX propose; US/AU/NZ oppose: [52]] [53]

[US propose; JP/VN/MY/MX/CL oppose: Option 1: such agreement was concluded or agreed in principle[CA propose:[54]] prior to 31 December 2013]

[PE/CL propose; NZ/AU/JP/VN/MY/MX oppose: Option 2: such agreement was concluded or agreed prior to entry into force of this Agreement]

[VN/MY/JP/BN/PE/MX propose; NZ/AU oppose: Option 3: such agreement was concluded or agreed prior to three years after entry into force of this Agreement][55]

[51] [MY propose: This paragraph shall not apply to protection or recognition of unregistered geographical indications by means of judicial procedures.]

[52] [CL/PE/MX propose; US/AU/NZ oppose: For greater certainty, this provision applies to any modification made to an existing agreement.]

[53] Negotiators' note: AU/NZ isare still considering its position on the cut off date.

[54] [CA propose: For the purpose of this Article, "agreed in principle" refers to an agreement with another government or government entity or international organization in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically notified/announced.]

[55] Negotiators' note: MX is considering the QQ.D.5 depending on the final outcome of paragraphs 6 and 7.

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7. Notwithstanding paragraph 6, each Party shall apply QQ.D.5, paras. 1, [MX oppose: 2, 3 and 5], to GIs that are protected pursuant to an existing ~~{international agreement} {agreement with another government or international organization} {international agreement involving a Party or a non-Party} {international agreement} {agreement with another government {or international organization}}~~, where such GIs are protected or recognized after the date referenced in paragraph 6 above, [US/AU/NZ propose; CL/MX/PE/JP/MY oppose: {option 1: except to the extent that the existing agreement prevents the Party from complying with}/ {option 2: except to the extent that the existing agreement is in direct legal conflict with} the obligations set forth in QQ.D5, paras. 1 (non-wines/spirits procedure & grounds, 2 (wines/spirits procedures), 3 (QQ.D.8 and 9 genericness stds) and 5 (commencement of protection)][56][CL/CA/PE/JP/MX/BN/MY propose; US oppose: option 3: except to the extent that the obligations set forth in QQ.D.5 1, 2, 3 and 5 are inconsistent with [AU/NZ oppose: or not provided in] the existing agreement][57].

[CL Propose: **Annex [...]**

List of Geographical Indications from Chile

Wines	Name of Indication
	Valle de Aconcagua
	Valle del Bío Bío
	Valle del Cachapoal
	Valle de Casablanca
	Valle del Choapa
	Valle de Colchagua
	Valle de Copiapó
	Valle de Curicó
	Valle del Claro
	Valle del Elqui
	Valle del Huasco
	Valle del Itata
	Valle de Leyda
	Valle del Loncomilla
	Valle del Lontué
	Valle del Limarí
	Valle del Maipo
	Valle del Marga-Marga

[56]Negotiators' note: US/AU/NZ are still considering whether to land on option 1 or 2.

[57]Negotiators' note: US/AU/NZ/MY/VN still considering their view with regard to the three options. BN is flexible with either the second or third option.

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Valle del Maule
Valle del Malleco
Valle del Rapel
Valle de San Antonio
Valle del Teno
Valle del Tutuvén
Valle del Cautín
Valle de Osorno
Región de Aconcagua
Region de Atacama
Region de Coquimbo
Región del Sur
Region del Valle Central
Región Austral
Secano Interior -- Rauco
Secano Interior -- Romeral
Secano Interior -- Molina
Secano Interior -- Sagrada familia
Secano Interior -- Talca
Secano Interior -- Penciahue
Secano Interior -- San Clemente
Secano Interior -- San Rafael
Secano Interior -- San Javier
Secano Interior -- Villa alegre
Secano Interior -- Parral
Secano Interior -- Linares
Secano Interior -- Cauquenes
Secano Interior -- Chillan
Secano Interior -- Quillon
Secano Interior -- Portezuelo
Secano Interior -- Coelemu
Secano Interior -- Yumbel
Secano Interior -- Curepto
Secano Interior -- Niquén

Alhué
Buin
Cauquenes
Chillán
Bulnes
San Carlos
Chimbarongo
Coelemu (Treguaco)
Illapel

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Isla de Maipo
Linares Yervas Buenas
Lolol
Maria Pinto
Marchigue
Melipilla (San Pedro)
Molina (Rio Claro Curicó)
Monte Patria
Mulchén (Nacimiento)
Nancagua (Placilla)
Ovalle
Paiguano
Pajarete
Palmilla
Panquehue
Parral
Pencahue
Peralillo
Peumo (Pichidehua)
Pirque
Portezuelo (Ninhue)
Puente Alto
Punitaqui
Quillón (Ranquil, Florida)
Rancagua (Graneros)
Rauco (Gualañe)
Rengo (Malloa)
Requínoa
Río Hurtado
Romeral (Teno)
Sagrada Familia
San Juan
Salamanca
San Clemente
San Fernando
San Javier
San Rafael
Santa Cruz (Chépica)
Santiago (Peñalolen)
Talagante (Peñaflor)
Talca, Maule, Pelarco
Traiguén
Vicuña
Villa Alegre

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Vino Asoleado
Yumbel (Laja)
La Serena
Zapallar
Quillota
Hijuelas
Catemu
Llaillay
San Felipe
Santa María
Calle Larga
San Esteban
Cartagena
Algarrobo
Santo Domingo
Colina
Calera de Tango
Til Til
Lampa
Machalí
Coltauco
Litueche
La Estrella
Paredones
Pumanque
Vichuquen
Empedrado
Curepto
Colbun
Longaví
Retiro

Spirits	Name of Indication	Country
	Pisco	Chile

Other products	Name of Indication	Country
	Limón de Pica	Chile
	Langosta de Juan Fernandez	Chile
	Atún de Isla de Pascua	Chile
	Cangrejo Dorado de Juan Fernandez	Chile
	Dulces de la Ligua	Chile
	Sal de Cahuil, Boyeruca y lo Valdivia	Chile
	Alfarería de Pomaire	Chile
	Chamantos de Doñihue	Chile

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