

## CHANGE OF GEOGRAPHICAL INDICATIONS UNDER THE ASSOCIATION AGREEMENT WITH THE EU: A RETROSPECTIVE, ECONOMIC CONSEQUENCES AND OPPORTUNITIES FOR UKRAINE

*The article analyzes retrospective preconditions, identifies possible economic consequences and summarizes the possibilities of Ukraine from changing geographical indications due to the ratification of the Association Agreement with the EU. It is established that one-fifth of the profits from the sale of agricultural products and beverages, the names of which are protected in the list of «Geographical Indicators» of the European Union, are the result of exports of these products outside the European Union. According to the study, sales of goods with protected geographical names are on average twice as high as those of similar goods without proper certification. EU experience indicates that geographical indications not only protect intangible assets in the form of intellectual property, but also are carriers of cultural values for nation, which promotes them in the international community and leads to increased sales. Ratification of the Association Agreement between Ukraine and the EU has identified both long-term (10-year) and medium-term (7-year) requirements for banning the use of a number of geographical indications of European products and identifying their production in Ukraine, which requires research to establish retrospective preconditions for such joint expression of will of the EU and Ukraine. Currently, Ukraine has no experience in developing its own geographical indications, their legal protection and competitive positioning in international markets. The advantages of the introduction of geographical indications in Ukraine at the levels of «consumer», «producer», «region» are established. It is proved that the initiated process of harmonization of national legislation with EU standards initiated the adaptation of domestic legislation in the field of intellectual property to EU law and the provisions of the Association Agreement between Ukraine and the EU. Approximation of Ukrainian legislation to the EU norms on protection of geographical indications allows to harmonize the national system of their protection in the process of foreign economic activity with relevant EU regulations, which will promote competitive domestic geographical indications and their effective entry into the European market in the form of regional brands.*

*Key words: geographical indications, origin of goods, intellectual property, manufacturer, product brand, region, marketing.*

ДУМАНСЬКА І. Ю.  
Хмельницький національний університет

## ЗМІНА ГЕОГРАФІЧНИХ ЗАЗНАЧЕНЬ ВІДПОВІДНО ДО УГОДИ ПРО АСОЦІАЦІЮ З ЄС: РЕТРОСПЕКТИВА, ЕКОНОМІЧНІ НАСЛІДКИ ТА МОЖЛИВОСТІ ДЛЯ УКРАЇНИ

*Проаналізовано систему нормативно-правових актів в сфері географічного зазначення походження продукції в ЄС, прийнятих до підписання Угоди з ЄС, виявлено їх протиріччя з законодавством України. Визначено можливі економічні наслідки від гармонізації національного законодавства зі стандартами ЄС в сфері охорони інтелектуальної власності. Встановлено, що обсяги продажів товарів із захищеними географічними назвами в середньому вдвічі вище, ніж у подібних товарів без відповідної сертифікації. Встановлено переваги від можливості впровадження географічних зазначень в Україні на рівнях «споживач», «виробник», «регіон».*

*Ключові слова: географічні зазначення, походження товару, інтелектуальна власність, виробник, бренд продукції, регіон, збут.*

**Introduction.** Hutsul sheep bryndza, Zinkiv sausage, Podilsky bread, Zakarpattia wine are not only roadmaps of the producer region, but have now become or will become official geographical indications in the near future, such as geographical indications for food products from the EU: cheese «Brie», «Parmesan», «Champagne», «Madeira», «Cognac». This is a consequence of the signing in 2014 of the Association Agreement with the EU, which obliged Ukraine to abandon the use of protected geographical indications for domestic products in harmonization of national legislation with international standards, the introduction of appropriate mechanisms to implement legal provisions to ensure effective protection of intellectual property rights.

The EU's experience points to the fact that geographical indications not only protect intangible assets in the form of intellectual property, but also carry the nation's cultural values, which promote them in the international community and increase sales. For Ukraine, these are new realities that create both difficulties and prospects and opportunities for domestic producers, so the study of retrospective preconditions, economic consequences and potential opportunities of Ukraine from changing geographical indications due to ratification of the Association Agreement with the EU is becoming relevant.

**Analysis of research and publications.** The signing of the Association Agreement between Ukraine and the EU has led to a number of publications in online newspapers and on social media pages such as Facebook and Twitter, which contain elements of psychological suggestion to Ukrainian citizens of negative consequences of changing geographical indications to certain EU products and criticism of the European vector of development of Ukraine.

The position of scientific thought is currently in the process of formation and is considering the requirement of EU regulations on Ukraine to change geographical indications mostly on the positive side. There are numerous publications on the existing experience of legal protection of geographical indications of European countries before the signing of the Association Agreement between Ukraine and the EU in the works of

G. Androschuk, M. Arkhipov, A. Afyan, Y. Boshytsky, R. Humenny, D. Krysanov, V. Matveev, V. Ocheretnaya and other scientists.

The available scientific achievements are significant and valuable, but need to modernize the study on the implementation of the already ratified Agreement with the EU and analyze the possible economic consequences and disclose prospects for Ukraine from changing geographical indications in today's conditions.

**Selection of previously unresolved parts of the problem.** Today's need to change geographical indications due to the ratification of the Association Agreement between Ukraine and the EU has identified both long-term (10-year) and medium-term (7-year) requirements to prohibit the use of certain geographical indications of European products (Champagne, Cognac, Madera, Porto, Parmigiano Reggiano, Roquefort, Feta) and identification of their production in Ukraine, which requires research on the formation of retrospective prerequisites for such a joint expression of the will of the EU and Ukraine. At present, Ukraine has no experience in developing its own geographical indications, their legal protection and competitive positioning in international markets, so this issue needs further study on the economic consequences for businesses in Ukraine.

**Setting objectives.** Analyze retrospective preconditions, identify possible economic consequences and summarize Ukraine's opportunities to change geographical indications as a result of ratification of the Association Agreement with the EU.

**Presentation of the main research material.** The European Union earns almost 75 billion euro a year in trade in goods with a geographical indication [1]. The Association Agreement regulates the recognition and protection of geographical indications originating in the territories of Ukraine and the EU, in the territory of Ukraine and the EU, respectively. This Agreement establishes separate standards that supplement and clarify the rights and obligations of the parties under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other international agreements in the field of intellectual property, including geographical indications. The Annexes to the Association Agreement contain lists of geographical indications for agricultural products and foodstuffs (ANNEX XXII-C), as well as geographical indications for wines, aromatized wines and spirits (ANNEX XXII-D) of Ukraine and the EU.

The number of geographical indications of Ukraine that are subject to protection in the EU is insignificant in comparison with the corresponding geographical indications of the EU that are subject to protection in Ukraine. The «closedness» of the USSR from the outside world contributed to this to some extent. Even when Ukraine became a party to the TRIPS Agreement in 2008, which provides for certain procedures for the protection of geographical indications, cases of illegal use of geographical indications (including through trademark registration) have not stopped.

As before, and nowadays, most cases of unfair use by Ukrainian producers of geographical indications of other countries most often relate to alcoholic beverages, the most common of which are geographical indications Champagne, Cognac, Bordeaux, Madeira, but there are also lesser known – Provence, Saint Emilion and others [2]. For example, in Ukraine after 01.01.2016 was registered a mark for goods and services «Vina Saint Million» (33 class MKTP), which is so similar that it can be confused with the geographical indication «Saint-Emilion», which is the name of the corresponding ancient wine region in France [3].

International legislation in the field of intellectual property protection, patenting, ownership and use, legal protection and liability for infringement or misappropriation of use developed in the late 90's due to intensification of integration processes and foreign economic activity, increasing cases of counterfeiting and consumer deception. This problem is especially relevant for countries that produce products of the same name: fruits, vegetables, wines, alcoholic beverages, dairy and meat products and more. The legislative base in the field of geographical indications and protection of intellectual property has gained special development in the European Union in connection with its active expansion and entry of products of new member states into European markets [4].

A retrospective analysis of the formation of EU legislative initiatives in the field of regulation of geographical indications of origin is presented in Table 1.

We emphasize that according to the Law of Ukraine «On protection of rights to indicate the origin of goods» [6], Article 1 in the definitions of «place of origin» and «geographical indication of origin» of the goods, the difference is not clear even to professionals, and therefore it would be appropriate to detail the distinctive features and disclose them in the specifications of agricultural and food products. Since qualified indications of origin of goods are the object of intellectual property, in this regard, there are rights to use them. It is important to emphasize the fact that the domestic legislation distinguishes between two concepts [7]: a simple indication of the origin of goods (not subject to registration); for example: sausage «Ukrainian», cheese «Pyriatyn classic»; qualified indication of origin of goods combines two terms: name of the place of origin (MP) of the goods + geographical indication (GZ) of the origin of the goods subject to registration; for example: cognac «Tavria»; dry wines «Balaklava», «Magarach», «Meganom»; sparkling wines «New World»; Myrhorodska mineral water.

Thus, Ukraine has undertaken from 01.01.2016 to refuse registration as marks for goods and services of designations that are identical or similar so that they can be confused with the geographical indication of the EU. For a transitional period of 10 years from the date of entry into force of this Agreement, the protection of such geographical indications under this Agreement shall not preclude the use of those geographical indications for the designation and presentation of certain such products originating in Ukraine: Champagne, Madera, Porto, Jerez / Xeres / Sherry, Calvados, Grappa, Anis Portugues, Armagnac, Marsala, Malaga, Tokaj.

Table 1

**Retrospective of regulations in the field of geographical indication of origin of agri-food products in the EU**

Year of adoption	Legal act	Scope of regulations and direction of its action
1883	Paris Convention for the Protection of Industrial Property (Ukraine has not signed it)	Preventing counterfeiting of goods by geographical indication, quality, ie key (consumer) characteristics, their perception by specific consumers, the development of rules of application and protection
1891	Madrid Agreement on the Cessation of False or Misleading Goods Receipts	
1958	Lisbon Agreement on Appellations of Origin and International Registration	
1994	Agreement on Trade-Related Aspects of Intellectual Property Rights («TRIPS Agreement»)	
90 pp. XVIII century	Multilateral agreements: a) free trade area; b) a deep and comprehensive free trade area	The need to develop international legislation in the field of protection of intellectual property, its patenting, property rights and use, legal protection and liability for infringement or misappropriation of use
1991	Council Regulation (EEC) № 1601/1991 «On general rules for the definition, description and presentation of aromatized wines, aromatized wine drinks and aromatized wine cocktails and rules for its use»	
1992	Regulation of the Council of the EU № 2081/1992 «On the protection of geographical indications and designations of origin for agricultural products and foodstuffs»	
1999	Regulation of the Council of the EU № 1493/1999 «On the common organization of the market in wine»	
2006	Council Regulation № 510/2006 «On the protection of geographical indications and designations of origin for agricultural products and foodstuffs and rules for their application»	
2007	Regulation of the Council of the EU № 1234/2007 «On the establishment of a common organization of agricultural markets and the specific provisions relating to certain agricultural products and the rules for its application in the light of amendments to Council Regulation 494/2009»	
2008	Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labeling and the protection of geographical indications for alcoholic beverages and repealing Council Regulation (EEC) No 1576/1989 and its rules of application	
2011	Regulation of the European Parliament and of the Council № 1169/2011 «On the provision of consumer information on gluten-free and low-content foodstuffs, amending Regulations (EU) № 1924/2006 and № 1925/2006 of the European Parliament and of the Council»	
2012	Regulation of the European Parliament and of the Council № 1151/2012 «On the definition, description, presentation, marking and protection of geographical indications»	
2013	Regulation of the Council of the EU № 1308/2013 «On the definition, description, presentation, labelling and protection of geographical indications of wine»	

Source: formed by the author on the basis of consolidation [5]

At the same time, according to the official translation of the Association Agreement Of the International Obligations and generally accepted standards in the field of protection of geographical indications. Ukraine-EU, goods with a geographical indication are not just a brand or a registered trademark, but a protected name used to protect a product, the quality, reputation, traditions or other properties of which are determined by its geographical origin and provided that at least one from the stages of its production is carried out in this geographical area. Yes, cognac should be produced only in the city of Cognac, and champagne - only in the Champagne region. There are three types of geographical indications – protected designation of origin, protected geographical indication, guaranteed traditional feature. Among the countries using the above-mentioned objects of industrial intellectual property, on the 1st place France (450 units – 33.7 %), then - Italy (412 units – 30.9 %), Spain (111 units – 8.3 %), Portugal (69 units – 5.2 %). In addition, 327 GZ (8 % of the total number of registered) were registered, which relate to alcohol-based alcoholic beverages [9].

One-fifth of the profits from the sale of agricultural products and beverages, the names of which are protected in the list of «Geographical Indicators» (GIs) of the European Union, are the result of exports of these products outside the European Union. According to the results of the study, sales of goods with protected geographical names are on average twice as high as those of similar goods without appropriate certification [9]. In total, as of March 2020, the list of «Geographical Indicators» of the EU included 3322 product names. The first geographical indication of «Hutsul sheep bryndza» cheese has already been registered in Ukraine, and other officially registered geographical indications are to appear soon. «Kherson» watermelon, «Melitopol» cherry, «Transcarpathian» wine will cease to be only definitions of their region, and will become almost such as champagne, cognac and brie [10]. It should be noted that such changes create additional benefits for producers, consumers and the region itself (Table 2).

Table 2

**Advantages of introducing geographical indications in Ukraine**

Consumer level	Manufacturer level	Region level
1) guarantee of quality of goods with special regional characteristics; 2) protection against forgery; 3) the naturalness of the product and its components; 4) acquaintance with the culinary heritage of a region	1) confirmation of high quality, uniqueness and traditional products; 2) the ability to increase sales by entering new markets 3) increase the competitive advantage of products; 4) indicator of belonging to the premium segment; 5) protection against counterfeiting	1) preservation of local traditions; 2) increasing the tourist attractiveness of the region; 3) growth of employment of the local population; 4) business development and filling local budgets

Source: formed by the author on the basis of consolidation [11]

Thus, Ukraine should standardize its geographical indications and develop them. A geographical indication is a specific collective brand used to indicate a product that can be identified by place of origin and that meets certain criteria of quality, tradition, uniqueness, which creates special competitive advantages in international markets.

**Conclusions.** The results of the study show that the initiated process of harmonization of national legislation with EU standards has initiated the adaptation of domestic legislation in the field of intellectual property to EU law and the provisions of the Association Agreement between Ukraine and the EU. Approximation of Ukrainian legislation to the EU norms on protection of geographical indications allows to harmonize the national system of their protection in the process of foreign economic activity with relevant EU regulations, which will promote competitive domestic geographical indications and their effective entry into the European market in the form of regional brands.

The subject of further research should be the development and construction of specific marketing mechanisms for the formation of brands of regional products of domestic manufacturers in order to expand their sales and promote Ukraine in international markets.

### References

1. Geographical Indications – a European treasure worth €75 billion. European Commission. URL: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_683](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_683)
2. Ukrayinski vyrobnyky dosi ne mayut nalezhnogo dosvidu vykorystannya geografichnyx znanachen na rynku YeS. Nacionalna Akademiya agrarnykh nauk Ukrainy. URL: [http://naas.gov.ua/newsall/newsukraine/?ELEMENT\\_ID=5987](http://naas.gov.ua/newsall/newsukraine/?ELEMENT_ID=5987)
3. Krysanov D. Geografichni znachennya poxodzhennya agropodovolchoyi produkciyi: yevropejskyj dosvid i vitchyznyani perspektyvy / D. Krysanov // Ekonomist. – 2014. – Vol. 10. – S. 18–24. URL: <http://ua-ekonomist.com/archive/2014/10/Krysanov.Pdf>
4. Oficijnyj portal parlamentu Ukrainy. Verhovna Rada Ukrainy. Rozdil «Zakonodavstvo Ukrainy». URL: <https://zakon.rada.gov.ua/laws/main>
5. Rozvytok zakonodavstva u sferi oxorony geografichnyx znanachen. Ministerstva yustyciyi Ukrainy. URL: <http://www.minjust.gov.ua/4495>
6. Zakon Ukrainy «Pro oxoronu prav na znachennya poxodzhennya tovariv» vid 16.06.1999 № 752-XIV. URL: <https://zakon.rada.gov.ua/laws/show/752-14#Text>
7. Ugoda pro asociaciyu mizh Ukrainoyu, z odniyeyi storony, ta Yevropejskym Soyuzom, Yevropejskym spivtovarystvom z atomnoyi energiyi i yixnimi derzhavamy-chlenamy, z inshoyi storony. Ratyfikovano iz zayavoyu Zakonom № 1678-VII vid 16.09.2014. URL: [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text)
8. Androshhuk G. Ugoda pro asociaciyu z YeS: naslidky dlya instytutu geografichnyx znanachen v Ukraini / G. Androshhuk, A. Afyan // Teoriya i praktyka intelektualnoyi vlasnosti. – 2014. – Vol. 6. – S. 48–59. URL: [http://nbuv.gov.ua/UJRN/Tpiv\\_2014\\_6\\_8](http://nbuv.gov.ua/UJRN/Tpiv_2014_6_8)
9. Koptilin S. Zaxyst geografichnyx znanachen zgidno z Ugodoyu pro asociaciyu mizh Ukrainoyu ta YeS / S. Koptilin // Yurydychna Gazeta Online. URL: <https://yur-gazeta.com/publications/practice/zahist-intelektualnoyi-vlasnosti-avtorske-pravo/zahist-geografichnih-znanachen-zgidno-z-ugodoyu-pro-asociaciyu-mizh-ukrainoyu-ta-es.html>
10. Alberto Ribeiro de Almeida. EU Legal acts – PDO, PGI and TSG // TAIEX-2. URL: <https://www.agroosvita.com/>
11. Infografika pidgotovlena spilno z proektom YeS «Pidtrymka rozvytku systemy geografichnyx znanachen v Ukraini». Predstavnyctvo YeS v Ukraini. URL: <https://eu-ua.org/digest/2484>

Paper received: 23.08.2020

Paper Printed : 30.09.2020