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Thinkers

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PROPERTY RIGHTS
ALLIANCE

Importance of Brands and Government Policy

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Building an IPR-Based Economy to Support

Indonesia's Creative Industries

CIPS-PRA-Paramadina Univ. Forum

Paramadina University, Jakarta

October 24, 2019

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Banning Brand: Economic and Consumer Impact of Plain Packaging

Case Study

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Abstract:

... More prohibitions invite the law of unintended consequences. From the experiences of Australia, UK, France and other countries that legislated banning brands, adverse results happened: (1) more smuggling, more consumption of the targeted goods as smuggled products are sold much cheaper than the original products; (2) more funds and profit for illegal suppliers, criminal gangs and terrorist groups; (3) less government tax revenues; and (4) less revenues for legal corporations that comply with government registration, taxation and other regulations.

EARLY PHILOSOPHY OF IPR PROTECTION

“Man... had still in himself the great foundation of property... when invention and arts had improved the conveniences of life, was perfectly his own, and did not belong in common to others.”

— **John Locke**, Second Treatise on Government (1690).

“It is the natural effect of improvement, however, to diminish gradually the real price of almost all manufactures.”

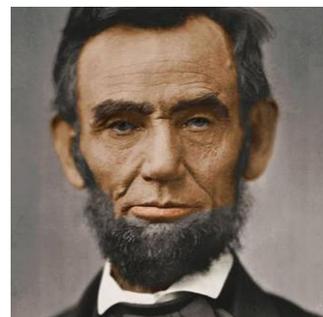
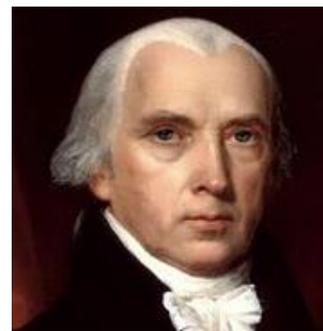
-- **Adam Smith**, The Wealth of Nations (1776), Book I, Chapter XI, Part III.

“A power ‘to promote the progress of science and useful arts, by securing, for a limited time, to authors and inventors, the exclusive right to their respective writings and discoveries.’”

— **James Madison**, The Federalist Papers, No. 43 (1788).

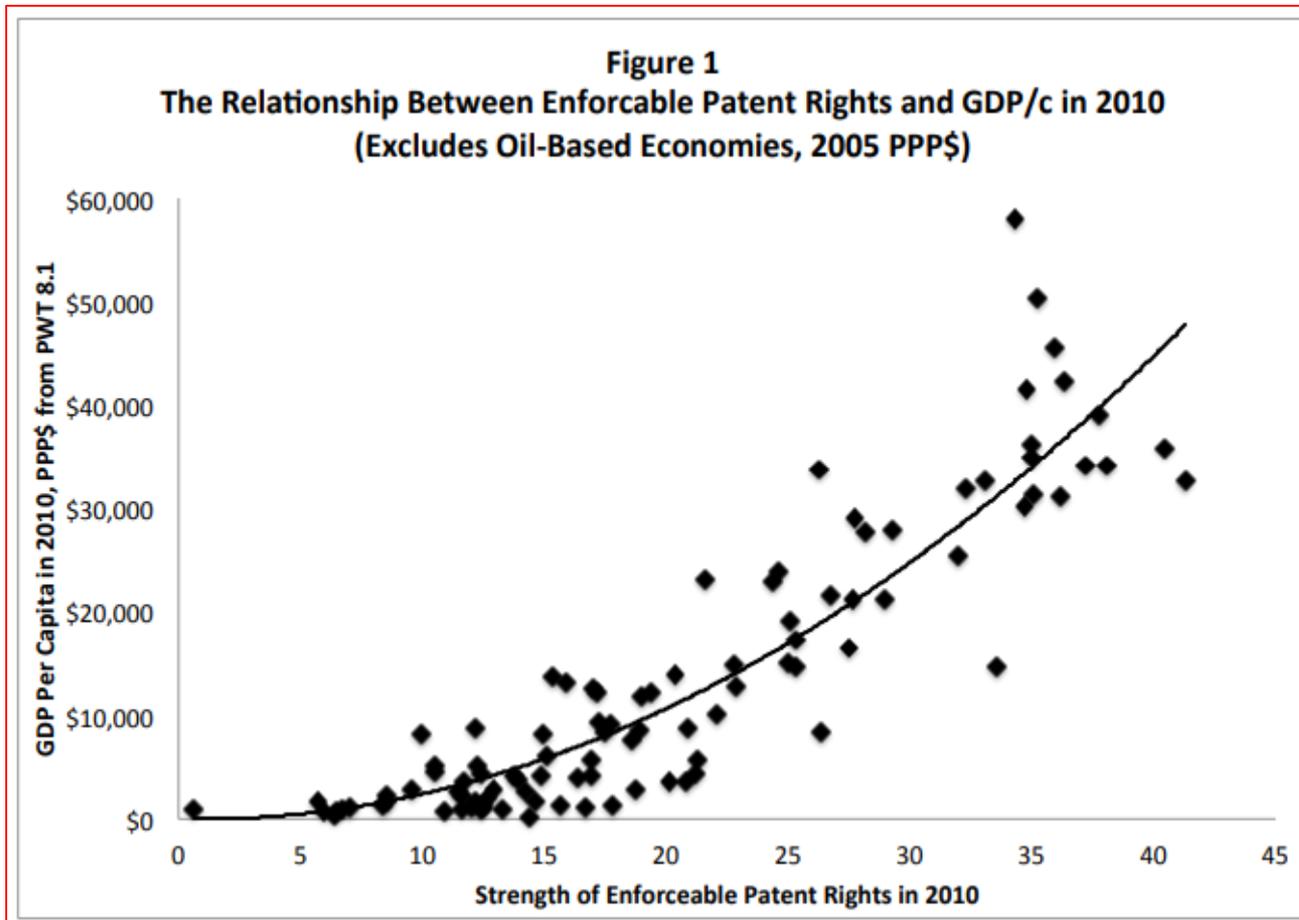
“All creation is a mine, and every man, a miner...In the beginning, the mine was unopened, and the miner stood naked, and knowledgeless, upon it.... improves his workmanship.”

— **Abraham Lincoln**, Lecture on Discoveries and Inventions (1858).



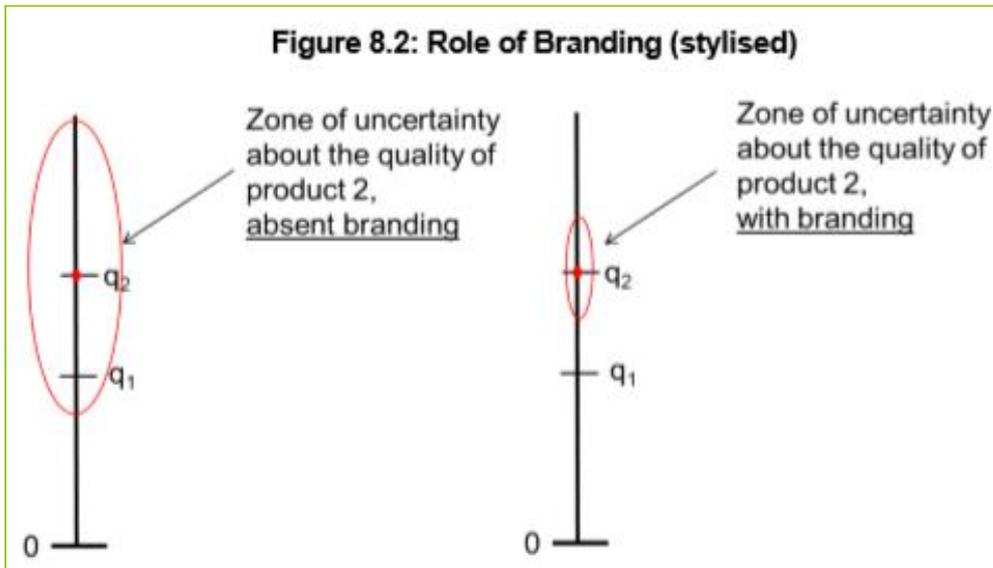
REVIEW OF LITERATURE

Haber (2016): *“There are no wealthy countries with weak patent rights, and there are no poor countries with strong patent rights. Indeed, Figure 1 shows a remarkably tight pattern: as patent rights increase, GDP per capita increases with it. Roughly speaking, for every one-unit increase in patent rights (measured from zero to fifty) per capita income increases by \$780.”*



Lilico, Andrew (Europe Economics),
“**Economic Analysis of a Plain Packs Requirement in the UK**” (June 2012).

“As brand characteristic awareness degrades, competition initially becomes fixated on one or two brands for most price segments and eventually there is large-scale downtrading into lower-quality products....”



One Hundred Years of Solicitude: Intellectual Property Law, 1900-2000

Robert P. Merges†

Merges (2000):

“A trademark... different sort of thing entirely from a copyright or patent. It was not a reward or inducement for something new and valuable; it was a capstone cementing a tight bond between a trade name and a product...”

Emerging consumer goods giants such as Coca-Cola and Nabisco undertook massive enforcement campaigns even before Congress passed the first effective federal protection in 1905.”

CURRENT SITUATION

Banning brands started with tobacco plain packaging -- removal of all colors, unique product designs, trademarks and logos, replaced by huge graphic warnings, standard colors, and staid generic packaging.

Started in Australia (Dec. 2012), then Europe: France (May 2016), UK (May 2017), Norway (July 2017), Ireland Sept. 2017).

Then banning brands been proposed to extend also to sugar-sweetened food, soft drinks, fatty meals, and alcoholic products.

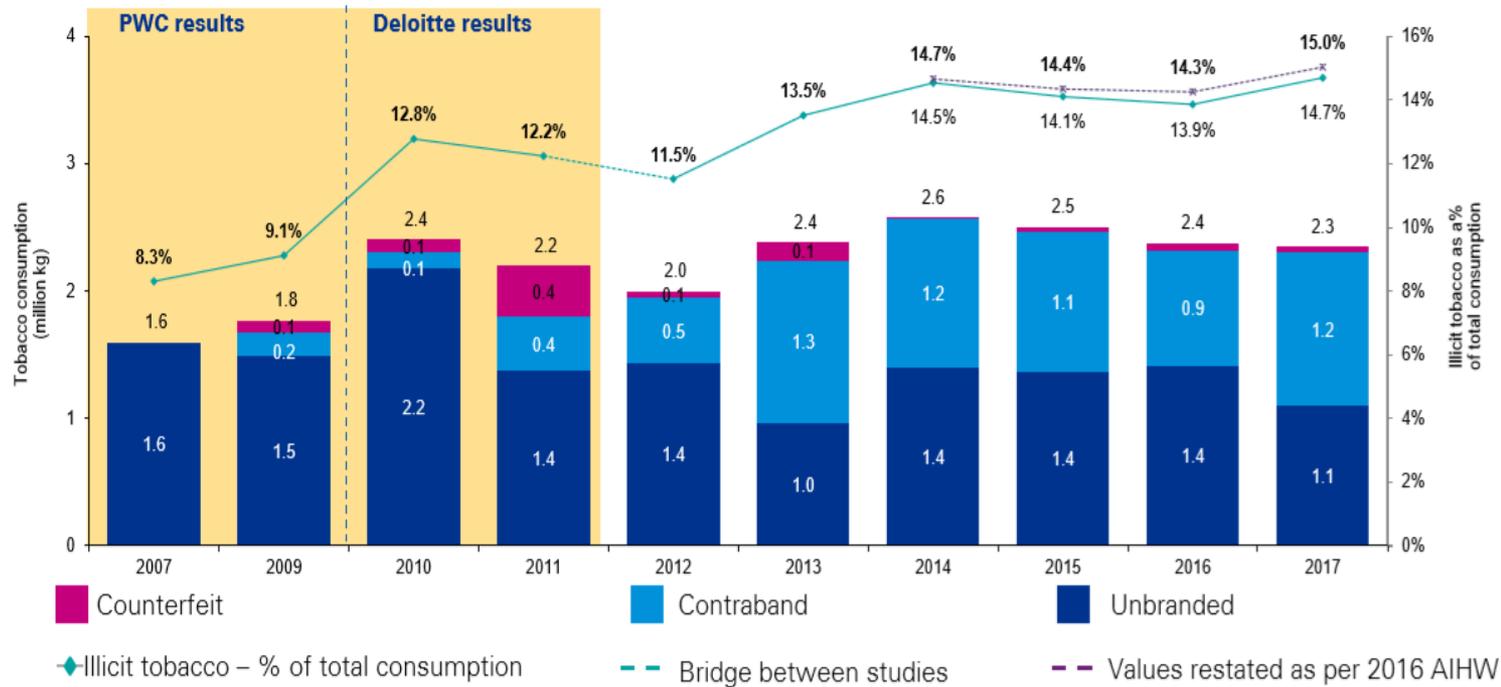
TABLE 2. CONSUMER GOODS TARGET FOR EXTENDED PLAIN PACKAGING (PP)

Target sectors for PP	Month reported
1. High calorie foods to beat obesity	March 2017
2. Banks and financial PP to fight debt addiction in Australia	July 2018
3. Junk foods, red meat – by Lancet Commission on Obesity	January 2019
4. Confectionery, crisps and high-sugar drinks – by IPPR, UK	June 2019
5. Cars' ads to fight traffic, climate change	August 2019

More taxes & prohibitions, more smuggling & consumption.

1. Australia.
KPMG data-smuggled products rose from 2012: 11.5%, 2013: 13.5%, 2017: 15.0%.

Consumption of illicit tobacco products by category and as a percentage of overall consumption, 2007 – 2017^{(1)(2)(3)(4)(a)(b)}

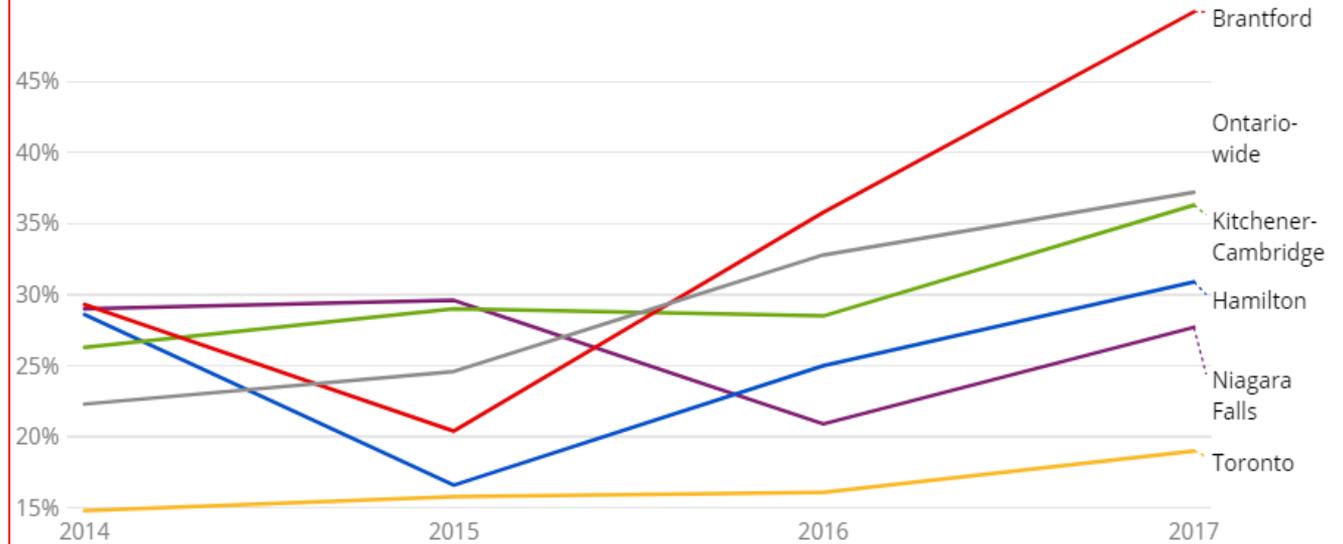


2. UK.
smuggling apprehended by govt has not waned

Cigarette Seizures	April 2016 to March 2017	April 2017 to March 2018	April 2018 to March 2019
Volume (sticks)	1.35 B	1.48 B	1.33 B
Revenue value	£447.4 M	£519.5 M	£ 480.7 million

3. Canada. Even before tobacco banning brand policy...

Contraband cigarettes smoked in southwestern Ontario



Source: WrightOn Field Marketing/Ontario Convenience Store Association



4. Philippines

<https://www.bworldonline.com/do-f-warns-cigarette-smuggling-may-be-helping-finance-terrorism/>

BusinessWorld

DoF warns cigarette smuggling may be helping finance terrorism

May 1, 2018 | 9:21 pm

“Illegal money can end up funding terrorist activities,” Finance Secretary Carlos G. Dominguez said Thursday, without providing details of a definite link to terrorist groups.... Customs Commissioner Caesar R. Dulay has said that smuggled cigarettes are currently



P2.5-billion fake cigarettes seized in Pangasinan

Eva Visperas (The Philippine Star) - November 30, 2018 - 12:00am

June 2019...

“We must reduce the visibility and availability of harmful food products whilst increasing relative cost.

“Plain packaging for confectionery, crisps and high-sugar drinks: This would level the playing field between confectionary products and fruit and vegetables which do not benefit from the same level of branding and product recognition. This mirrors the action taken against smoking without reducing the availability of confectionary....”

Make all confectionary, crisps and sugary drinks have plain packaging like tobacco, says IPPR

<https://www.ippr.org/news-and-media/press-releases/make-all-confectionary-crisps-and-sugary-drinks-have-plain-packaging-like-tobacco-says-ippr>

Institute for Public Policy Research



ENDING THE BLAME GAME

THE CASE FOR A NEW
APPROACH TO PUBLIC
HEALTH AND PREVENTION

<https://www.ippr.org/files/2019-06/public-health-and-prevention-june19.pdf>

*“From the smoking ban in 2007 to the introduction of plain packaging a decade later... there are signs sugar is heading the same way... now a leading think tank has even suggested **sweets, snacks and sugary drinks should be wrapped in plain packaging** to make them less appealing...”*

“major brands... be compelled to use a uniform drab design intended to put off consumers. This would be in line with the greeny brown colour – chosen for its ugliness – seen on cigarette packs.”

bbc.com/news/health-48499195

Is it time to treat sugar like smoking?



Nick Triggle
Health correspondent
@nicktriggle

🕒 4 June 2019 | 🗨️



<https://www.bbc.com/news/health-48499195>

Sweets, crisps and fizzy drinks could soon be sold in cigarette-style plain packaging under latest plans to tackle Britain's obesity epidemic

- The plans were backed by Dame Sally Davies, England's Chief Medical Officer
- Chief executive of the NHS said that obesity is becoming the 'new smoking'
- Plans also include a daytime ban on television adverts for junk food

By SIMON WALTERS FOR THE DAILY MAIL

PUBLISHED: 22:01 BST, 3 June 2019 | UPDATED: 16:09 BST, 4 June 2019

<https://www.dailymail.co.uk/news/article-7100797/Sweets-fizzy-drinks-sold-cigarette-style-plain-packaging.html>

Think tank calls for sweets, snacks, sugary drinks plain packaging

IPPR says sweets, crisps and sugary drinks should be wrapped in plain packs to reduce the numbers of people whose health is believed to be jeopardised by the products.



“SWEETS, crisps and sugary drinks should be in plain packaging to reduce ‘pester power’ from kids, health campaigners say....

Critics say plain packaging, like with cigarettes, will make shops “grey and boring” and do nothing for waistlines.”

<https://www.thesun.co.uk/news/9216714/sweets-crisps-sugary-drinks-should-plain-packaging/>

CHEWING GLUM Sweets, crisps and sugary drinks should be in plain packaging to reduce ‘pester power’ from kids, health campaigners say

Shaun Wooller

4 Jun 2019, 2:13 | Updated: 4 Jun 2019, 2:14

October 2019...

Independent report

Time to solve childhood obesity: CMO special report

An independent report by former Chief Medical Officer (CMO) Professor Dame Sally Davies.

<https://www.gov.uk/government/publications/time-to-solve-childhood-obesity-cmo-special-report>

Published 10 October 2019

From: [Department of Health and Social Care](#)

An Independent Report by the Chief Medical Officer



The principles to underpin actions are:

- **Rebalance the food and drinks sold to favour healthy options, through regulation.**
- **Allow children to grow up free from marketing, signals and incentives to consume unhealthy food and drinks.**
- **Introduce innovative policies that find the win-wins for children's health and the private sector:** E.g. continue private sector sponsorship of major sporting events, facilities and stars, but only allow advertising and sales of their most healthy products on site.

Principle 1: Rebalance food sold to favour healthy options through regulation.

	Recommendation	Who
1.1	Extend the Soft Drinks Industry Levy to sweetened milk-based drinks with added sugar.	HMT
1.2	Accelerate the reformulation programme (PHE), If sufficient progress is not made, the government should apply either: a. A fiscal lever or b. Standardised packaging, (as for tobacco). Planned timings; a. Sugar – to be reviewed in 2021. b. Calories – to be reviewed in 2024.	DHSC with support from PHE

Ban eating on public transport to tackle obesity, urges outgoing chief medic

Dame Sally Davies says government must put children's health before company profits

Sarah Boseley Health editor

Thu 10 Oct 2019 06.43 BST



“Among the recommendations are bans on promoting and advertising junk food... ban on eating and drinking on urban public transport ... option of plain packaging as there is for cigarettes.”

<https://www.theguardian.com/society/2019/oct/10/childrens-health-england-must-be-put-ahead-of-profits-says-chief-medic>

“She wants the Government to threaten the food industry with 'cigarette style' plain packaging for sweets and chocolates if they fail to meet sugar reduction targets.”

<https://www.dailymail.co.uk/health/article-7554765/Ban-snacks-buses-says-outgoing-nanny-chief-Dame-Sally-Davies.html>

BAN eating on public transport, says nanny-in-chief Dame Sally Davies in radical plan to fight obesity

- Dame Sally is nicknamed 'nanny-in-chief' for her bold public health interventions
- She stepped down as chief medical officer last week, before her 98-page report
- Dame Sally wants eating and drinking prohibited on all forms of public transport
- Her report also recommended a calorie cap on restaurant and takeaway meals

By BEN SPENCER MEDICAL CORRESPONDENT FOR THE DAILY MAIL

PUBLISHED: 00:01 BST, 10 October 2019 | UPDATED: 08:52 BST, 10 October 2019

*“The UK’s Nanny-in-Chief – the outgoing Chief Medical Officer, Dame Sally Davies – has called on the Government to **threaten the food industry with ‘cigarette style’ plain packaging for sweets and chocolates** if they fail to meet sugar reduction targets.”*

<https://www.packagingnews.co.uk/features/comment/ron-cregan-plain-packs-confectionery-leave-bitter-taste-14-10-2019>

PackagingNews

By Tony Corbin 14 October 2019

Ron Cregan | Plain packs for confectionery could leave a bitter taste

Endangered Species’ Ron Cregan responds to the UK’s ‘Nanny-in-Chief’ and Food Ethics Council call for Plain Packaging for sweets and chocolates.



“The report should have the food and drink’s packaging industry contemplating the worst because it could happen sooner than we think. Lawmakers often take their lead from public health bodies like the Food Ethics Council and supranational organisations like the World Health Organisation (WHO), who wield the ban hammer in the name of protecting public health.

Simplifying the design, construction and manufacturing of consumer packaging effectively lowers, and even removes, the barriers to entry for counterfeiters. Without this complexity, plain packaging allows criminal gangs to copy and reproduce authentic and legitimate products with relative ease.”

SINGAPORE: As part of the war on diabetes, a new colour-coded “front-of-pack” nutrition label will be made mandatory for pre-packaged beverages that are high in sugar, announced the Health Ministry on Thursday (Oct 10).

CNA Lifestyle CNA Insider Singapore Asia World Business Sport Commentary News Clips Video on Demand Podcasts

Singapore

By Ang Hwee Min

10 Oct 2019 12:39PM
(Updated: 10 Oct 2019 02:00PM)

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New mandatory nutrition labels, advertising ban for pre-packaged drinks high in sugar



<https://www.channelnewsasia.com/news/singapore/high-sugar-drinks-new-nutrition-labels-advertising-ban-11987416>

*A **total ban on advertising** will also be imposed on beverages that are deemed the most unhealthy and graded the lowest on the nutrition label. The ban will apply across all local mass media platforms, including broadcast, print, outdoor advertising and online channels such as social media websites.... The label will apply to all pre-packaged sugar-sweetened beverages, **including soft drinks, energy drinks, juices, malted drinks, flavoured milk and cultured milk drinks.***

Is there “health emergency” to warrant and justify these seemingly health panic over obesity, diabetes and other NCDs?

APPENDIX 10. LIFE EXPECTANCY AT BIRTH, YEARS

From 1970 to 2017:

JP: 72 to 84
 SG: 68 to 83
 KR: 62 to 83
MY: 64 to 75
 TH: 59 to 75
 ID: 54 to 69
 PH: 61 to 69

Freedom and prosperity leads to healthier, wealthier, longer lives.

Economy	1970	1980	1990	2000	2010	2017
Australia	71.0	74.3	77.0	79.2	81.7	82.5
Canada	72.7	75.1	77.4	79.1	81.2	82.5
France	71.7	74.1	76.6	79.1	81.7	82.5
United Kingdom	72.0	73.7	75.9	77.7	80.4	81.2
Germany	70.6	72.7	75.2	77.9	80.0	81.0
United States	70.8	73.6	75.2	76.6	78.5	78.5
Hong Kong	71.4	74.7	77.4	80.9	83.0	84.7
Japan	72.0	76.1	78.8	81.1	82.8	84.1
Singapore	68.3	72.2	75.3	78.0	81.5	82.9
S. Korea	62.2	66.0	71.6	75.9	80.1	82.6
Vietnam	59.6	67.6	70.5	73.3	75.1	76.5
China	59.1	66.8	69.3	72.0	75.2	76.4
Malaysia	64.4	68.0	70.7	72.8	74.2	75.5
Thailand	59.4	64.4	70.3	70.6	73.9	75.5
Indonesia	54.5	59.6	63.3	66.3	68.2	69.4
Philippines	60.8	62.2	65.3	67.2	68.3	69.2
India	47.7	53.8	57.9	62.6	66.6	68.8

Banning brands is a historic policy reversal from upholding private property rights and protecting IPR. Increased property protections and economic freedom coincided with advances in science that allowed people across the world to live longer, wealthier, and healthier lives. Data from the Maddison Project:

TABLE 5. REAL GDP PER CAPITA IN 2011 US\$, MULTIPLE BENCHMARKS

Economy	1700	1800	1900	1913	1950	1980	2000	2016
United States	1,375*	1,980	6,252		15,241	29,613	45,887	53,015
Germany	912	958	4,596		5,536	22,053	33,975	46,841
Australia		679*	5,992		13,542	22,883	36,001	44,783
Canada		1,545*	4,630		12,022	24,988	37,446	42,969
United Kingdom	1,591	2,205	5,608		9,441	20,593	34,390	39,162
France	1,350	1,442*	4,214		6,869	22,713	31,771	38,758
Japan	840	856	1,575		2,519	20,408	33,294	36,452
Singapore				1,237	2,439	9,287	39,287	67,180
Hong Kong		1,113*		2,314	4,013	16,216	38,153	47,043
Taiwan		907*		1,207	1,393	9,615	31,937	42,304
S. Korea		477*		690	1,122	5,645	22,930	36,151
Malaysia				1,539	2,667	7,011	12,269	22,687
Thailand				1,020	991	3,327	6,921	14,341
China				881	757	1,690	4,071	12,320
Indonesia				1,267	1,175	2,578	3,472	10,511
Philippines				1,210	1,310	3,043	4,187	7,223
Vietnam				983	890	1,076	2,243	6,031
India	1,200	1,067		1,340	1,417	1,143	2,003	5,961

APPENDIX 7. FAMOUS GLOBAL BRANDS, GLOBAL RANK AND BRAND VALUE

2010	Brand	\$ bill.	2014	Brand	\$ bill.	2018	Brand	\$ bill.
1	Coca Cola	70.45	1	Apple	118.86	1	Apple	214.48
2	IBM	64.73	2	Google	107.44	2	Google	155.51
3	Microsoft	60.90	3	Coca Cola	81.56	3	Amazon	100.76
4	Google	43.56	4	IBM	72.24	4	Microsoft	92.72
5	GE	42.81	5	Microsoft	61.15	5	Coca Cola	66.34
6	McDonalds	33.58	9	McDonalds	42.25	10	McDonalds	43.42
18	Marlboro	19.96	24	Pepsi Cola	19.12	22	Pepsi Cola	20.80
23	Pepsi Cola	14.06	32	Kellogg's	13.44	33	Budweiser	15.63
27	Nescafe	12.75	34	Budweiser	13.02	37	Nescafe	13.05
30	Budweiser	12.25	38	Nescafe	11.41	53	Kellogg's	10.63
35	Kellogg's	11.04	54	Nestle	8.00	57	Starbucks	9.62
46	Heinz	7.53	65	Shell	6.29	62	Nestle	8.94
57	Nestle	6.55	68	KFC	6.06	84	Jack Daniels	5.64
61	Sprite	5.78	72	Sprite	5.65	85	Corona	5.52
78	Jack Daniels	4.04	76	Starbucks	5.38	86	KFC	5.48

APPENDIX 8. TOP 15 BEER BRANDS, 2019

Global rank		Brand name	Country	Value, \$ bill.	
2019	2018			2019	2018
1	2	Budweiser	US	7.52	7.08
2	1	Bud Light	US	6.98	7.38
3	3	Heineken	Netherlands	6.77	6.09
4	5	Harbin	China	5.18	3.54
5	8	Kirin	Japan	4.08	2.78
6	6	Corona	Mexico	4.01	3.42
7	11	Snow	Hong Kong	3.67	2.42
8	4	Brahma	Brazil	3.64	3.72
9	7	Skol	Brazil	3.43	3.32
10	10	Guinness	Ireland	2.88	2.53

APPENDIX 9. MOST VALUABLE CONSUMER BRANDS IN GLOBAL 500, 2019.

Global rank		Brand name	Country	Value, \$ bill.	
2019	2018			2019	2018
38	37	Coca Cola	US	36.19	30.38
39	36	Marlboro	US	33.57	30.51
43	44	McDonalds	US	31.49	24.87
45	54	Moutai (spirits)	China	30.47	18.61
84	68	Nestle	Switzerland	19.64	19.37
90	61	Pepsi	US	18.52	20.03

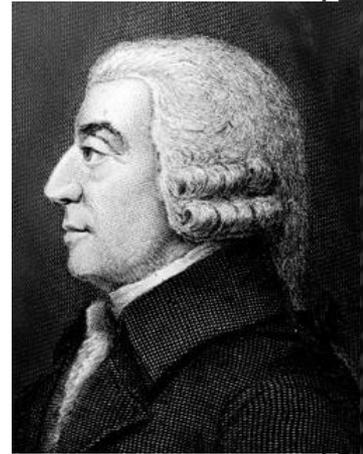
CONCLUSIONS AND RECOMMENDATIONS

- Banning brands will result in a soured investment environment: danger that one's corporate brand built over many decades can be forfeited and discarded by government dictate.
- The law of unintended consequences: Unintended beneficiaries -- smugglers and producers of illicit products, criminal gangs and terrorist groups that are anonymous rather than earn reputation. Plus corrupt government officials.
- Unintended victims – consumers, fewer or zero brand choices, just pick the cheapest among generic-branded products without regard to their reputation. They will continue their consumption of “sin” products but will choose the cheaper, illicit products. And govt tax revenues -- decline.
- Public health is not really in danger to warrant radical measures like banning brand -- people are living longer and healthier.
- IPRs like trademarks and brands should be protected -- for consumer choices, for investment protection, even for government taxation and battling criminality and terrorism – and not prohibited.

Cental planning and over-reaching regulation is wrong

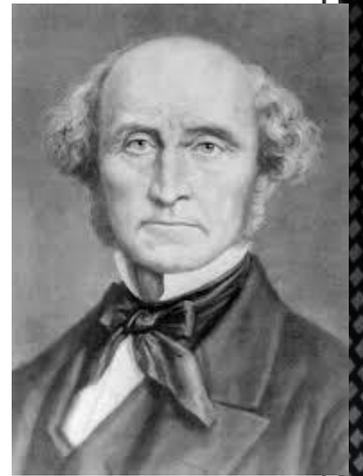
“The man of system... is apt to be very wise in his own conceit; and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it.”

-- **Adam Smith**, Theory of Moral Sentiments (1759), Part VI, Section II, Chap. II.



“The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”

- **John Stuart Mill**, On Liberty (1859), Ch. 1: Introductory



“The curious task of economics is to demonstrate to men how little they really know about what they imagine they can design.”

-- **Friedrich Hayek**, The Fatal Conceit (1988)

