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Submitted to P1062 - Defining added sugars for claims
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Consumer NZ

What is your position title?

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Are you the contact person for your organisation?

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If you are not the contact person for your organisation, please provide an alternative contact and details. If not applicable, please leave blank.

Contact person's name:

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Have you read the P1062 – Defining added sugars for claims call for submission paper?

Yes

Confidential information

All submissions will be published, including redacted versions of confidential submissions. We will not publish material that we accept as confidential. Does your submission contain confidential information?

No. My submission does not contain confidential information.

Proposed changes to 'no added sugar(s)' claim conditions

1 FSANZ proposes to continue to set 'no added sugar(s)' claim conditions based on the addition of ingredients to foods (see section 5.2 of the Call for submissions document).

Do you have any comments on this approach?:

We strongly disagree.

The Communique from the Food Ministers Meeting on 28th July 2023 noted that Food Ministers discussed:

- the incorporation of a definition of added sugars into the Food Standards Code as a matter of priority, to ensure added sugar claims align with dietary guidelines; and
- the identification of the best way to incorporate information about added sugars into the Nutrition Information Panel (NIP) and on front-of-pack labelling, through appropriate consumer testing.

As part of a staged approach to delivering this work, P1062 does not adequately satisfy the above. It fails to establish a definition of added sugars that ensures relevant claims align with the Australian and New Zealand dietary guidelines. It also fails to establish a definition that can be used to quantify added sugars information into the NIP and for front-of-pack labelling. This is because the food components that are necessary to enable these changes are not included in the proposed definition but are instead listed separately in the claim conditions or left out of the proposal entirely.

Consumer NZ has two overarching concerns with P1062:

1. The definition of added sugar is not comprehensive or fit for purpose:

- o FSANZ acknowledges there are certain food components that consumers should not be misled about and therefore should not be eligible to carry a 'no added sugar' claim. We support this premise, however, failing to include the food components set out in claim conditions (a)(ii)-(ix) in the added sugar definition only perpetuates existing confusion about these food components and the health halo that surrounds them. It is also misaligned with the Food Ministers' intent.
 - o With regard to the proposed conditions for 'no added sugar' claims, a number of food components are missing from claim conditions (a)(i)-(ix). More detail on this is discussed in question 2 below.
 - o P1062 was initiated in response to Food Ministers asking for work on P1058 to be staged. A definition must be fit for that purpose also.
2. That claim conditions are based on the addition of ingredients to foods – we do not agree with this basis:
- o 'No added sugar' claims should not be permitted on single ingredient foods that, when added to other foods, would make that food ineligible to display a 'no added sugar' claim (i.e. on fruit juice). More detail on this is discussed in question 6 below.
 - o This is inconsistent with draft claim condition (g) which clearly restricts claims on foods with sugars from processing, rather than solely from the addition to foods.

We strongly support the view that 'No added sugar' claim conditions should simply ensure that no food that

- 1) contains 'added sugars' as defined; OR
- 2) is an 'added sugar' as defined and is sold as a single ingredient food, should be able to carry a 'no added sugar' claim.

2 FSANZ proposes a food displaying a 'no added sugar(s)' claim must not contain an 'added sugars' as an added ingredient including an ingredient of a compound ingredient. FSANZ proposes defining 'added sugars' for this claim condition (see section 5.2.1.4 of the Call for submissions document).

Do you have any comments on this approach or the defined added sugars (see below)?:

We do not support this approach.

A food displaying a 'no added sugar(s)' claim should not contain, or be as a single ingredient, 'added sugars' as that term is defined in the regulation. A comprehensive definition of 'added sugar' is required for this purpose.

We do not support that these sugars need to be physically added as an ingredient for claim conditions to apply. For example, sugars that are created through processing are not physically added.

To be fit for purpose and meet the Food Ministers intent, claim condition (c), the definition of 'added sugar', must include:

□ all sugars listed in (a)(i) of the draft variation to the Food Standards Code in the Call for Submissions Attachment A. Comments on food components listed in condition (c) of the draft variation to the Food Standards Code in CFS Attachment A:

- (c)(i) - For completeness we recommend that additional examples are added to the list of examples for condition (c)(i) in section 8 of the Draft Explanatory Statement as follows: lactose in whey powder, isomaltose, sugar alcohols
 - (c)(iv) - For completeness we recommend that additional examples are added to the 'including' list for condition (c)(iv) as follows: cane sugar, beet sugar, white sugar, granulated sugar, fruit sugar
 - (c)(vii) - For completeness we recommend that additional examples are added to the list of examples for condition (c)(vii) as follows: high fructose corn syrup, tapioca syrup, maple syrup, rice and rice malt syrup
 - (c)(xi) - We do not agree that fruit juice should be able to carry a 'no added sugar' claim and the words 'unless the food for sale is fruit juice' should be removed from condition (c)(xi). See our response to question 6 for more details.
- We strongly recommend that the words 'and concentrated vegetable juices' are added to condition (c)(xi).
- (c)(xii) - We strongly recommend that the words 'or vegetable juice' are added to condition (c)(xii) after the words 'deionised fruit juice'. Whilst deionised vegetable juice is not currently used in the food supply, excluding it from the definition will result in an opportunity for this exclusion to be exploited in future.

□ We recommend the following additional sugars are added to the definition:

- concentrated vegetable juice (as noted in relation to (c)(xi) above). See our additional comments below under 'Vegetable products'.
- deionised vegetable juice (as noted in relation to (c)(xii) above). See our additional comments below under 'Vegetable products'.
- whole, cut or chopped dried fruit. See our additional comments below under 'dried fruit'.
- canned fruit or frozen fruit that contains fruit juice - we do not support the exclusion in condition (a)(iii). Fruit juice should always be considered an

added sugar.

□ vegetable juice powder; vegetable powder; vegetable pulp; vegetable puree; concentrated vegetable puree; a blend or combination of any two or more of the fruit or vegetable ingredients listed above. See our additional comments below under 'Vegetable products'.

□ monosaccharides and disaccharides formed or residual from processing, including from hydrolysis and fermentation during the production of a food. See our response to question 7 for more detail.

□ low energy sugars (monosaccharides and disaccharides) listed in subsection S11—2(3) of schedule 11. See our response to question 4 for more details.

Vegetable products

FSANZ considers processed vegetable products, such as vegetable juice, pulps or purées, should not be captured in the claim conditions as they are not discussed in the dietary guidelines as being of public health concern in relation to sugar. We strongly disagree.

There is no technical or physiological reason to consider that sugar from fruit and vegetable products would be processed differently by the body and therefore they should be treated the same. In the FSANZ background paper to P1058 it was consistently recognised that fruits and vegetables should be treated the same and the acknowledgment in P1062 that fruit products are sugars should extend to the equivalent vegetable products. This is consistent with other jurisdictional determinations such as Public Health England (1) and the US Food and Drug Administration (2).

Failure to include vegetable products would see the growth of high sugar vegetable products such as beet juice concentrate which is already in the food supply for the purposes of sweetening.

(1) Swan GE, Powell NA, Knowles BL, Bush MT, Levy LB. A definition of free sugars for the UK. *Public Health Nutr.* 2018;21(9):1636–8.

(2) Food and Drug Administration. Added Sugars: Now Listed on the Nutrition Facts Label and How Are They Different. *New Nutr Facts Label* [Internet]. 2020:1–3 [cited 2022 Oct 11]. Available from: <https://www.fda.gov/food/new-nutrition-facts-label/added-sugars-new-nutrition-facts-label>.

Dried fruit

We strongly recommend that a clear and precise definition of dried fruit (whole, cut or chopped) is included in the Food Standards Code. Across the processed fruit sector, there are now a number of products on the market that do not represent traditional dried fruit products. These include 100% fruit straps, fruit bites and baked fruit pieces.

While these products are technically 100% fruit and therefore eligible to carry 'no added sugar' claims under the proposed changes, these products are highly processed and contain higher levels of sugar than both whole fruit and traditionally dried fruit, a definition of dried fruit should specifically exclude these types of fruit products.

There is mixed evidence on the health impacts and benefits of dried fruit. We feel it important to take a precautionary approach and include dried fruit in a comprehensive added sugars definition. This aligns with dietary guideline recommendations in Australia and New Zealand which recommend these are limited in the diet, due to their very high sugar content and the ease with which they can be overconsumed.

3 FSANZ proposes 'no added sugar(s)' and 'unsweetened' claims are not permitted on foods containing the hexose monosaccharide D-tagatose, as an ingredient, consistent with existing claim conditions in the Code. As D-tagatose is a hexose monosaccharide, it is captured in the definition of 'added sugars' (see section 5.2.2 of the Call for submissions document).

Do you have any comments on this approach?:

We support that foods containing D-tagatose should not be eligible to carry 'no added sugar' or 'unsweetened' claims.

However, we do not think this should be limited to D-tagatose. It should extend to all low energy sugars, and we do not think this should be noted as a separate claim condition. D-tagatose and all other low energy sugars (monosaccharides and disaccharides) listed in subsection S11—2(3) of schedule 11, should be included in the definition of 'added sugar' in condition (c).

4 FSANZ proposes foods containing low energy sugars (mono- and disaccharides), as ingredients, listed in subsection S11—2(3) of Schedule 11 not be permitted to display 'unsweetened' claims (see section 5.2.2 of the Call for submissions document).

Do you have any comments on this approach?:

We support this approach.

There should be consistency between 'no added sugar' and 'unsweetened' claims and accordingly, low energy sugars (monosaccharides and disaccharides) listed in subsection S11—2(3) of schedule 11, should be in the 'added sugar' definition. In addition, no foods containing low energy sugars should be permitted to make 'no added sugar' claims. See our response to question 3 above.

5 FSANZ proposes a food displaying a 'no added sugar(s)' claim must not contain the fruit products listed below as an added ingredient (including as an ingredient of a compound ingredient). FSANZ proposes to exempt fruit products which are lemon or lime fruit (see section 5.3 of the Call for submissions document).

Do you have any comments on this approach or the fruit products listed?:

Consumer NZ strongly agrees that a food containing the fruit products listed should not be permitted to carry a 'no added sugar' claim and strongly recommend that the vegetable equivalents are treated the same, see our response to question 2. However, we strongly disagree with the mechanism for this.

All food components listed in claim conditions (a)(ii)-(ix), and their vegetable equivalents, should be included in the 'added sugar' definition in claim

condition (a)(i) and NOT as separate components for the purpose of the claims criteria, as currently proposed. Please see our response to question 1 for more details on why this is necessary.

Across the food supply, it is observed that foods containing fruit and vegetable sugars are more likely to use 'no added sugar' claims than those that do not contain these sugars. Examples include fruit purees, fruit bites, fruit straps and pressed fruit products; and baby and toddler foods.

In relation to fruit juice specifically:

- ☐ we strongly recommend that any reference to fruit juice should clearly state this includes blended, reconstituted, full strength and diluted juices
- ☐ we strongly disagree that canned and frozen fruit with added fruit juice should be able to make 'no added sugar' claims. Where fruit juice is added there should be no claim permitted.

6 FSANZ proposes a fruit product which is the food for sale (e.g. fruit juice) be permitted to make a 'no added sugar(s)' claim. This includes when the food is sold as a singular fruit (e.g. apple juice) or a blend of different fruits (e.g. blend of fruit juices), providing the food contains no 'added sugars' or other products identified in claim conditions, as added ingredients. A blend or combination of different fruit products (e.g. fruit juice and fruit purée) will not be permitted to make the claim. FSANZ also proposes to clarify that fruit does not include legumes, fungi, herbs, nuts and spices for the purpose of the claim conditions (see section 5.3 of the Call for submissions document).

Do you have any comments on this approach?:

We strongly disagree.

Allowing fruit products to carry a 'no added sugar' claim when sold as single-ingredient foods but disallowing other products from making the same claim when these fruit products are added to them, gives these foods a health halo and perpetuates consumer beliefs that these fruit products are healthier than they are. It is also inconsistent with both Australian and New Zealand dietary guidelines which recommend limiting fruit juice consumption.

This proposal is also inconsistent with the key outcomes of the FSANZ Consumer Evidence Summary on no added sugar claims which states:

- ☐ 'No added sugar' claims appear to modify consumer perceptions of the food products they are applied to in terms of healthfulness, naturalness and taste. The majority of studies looking at healthfulness perceptions indicate that 'no added sugar' claims increase how healthy consumers perceive food products to be."
- ☐ 'No added sugar' claims were found to have an influence on purchasing decisions in studies relating to toddler and infant foods, fruit beverages and fruit juices."

This evidence clearly shows that allowing 'no added sugar' claims on single-ingredient fruit products will increase how healthy consumers perceive these food products to be. This misinformation is in direct conflict with dietary guideline recommendations that people only consume fruit juice occasionally and in small amounts.

The issue with single-ingredient foods is especially problematic in the case of fruit juices.

'No added sugar' claims on fruit juice would be inconsistent with the New Zealand Eating & Activity Guidelines which state: "Sugary drinks include fruit juice, fruit drinks, powdered drinks, cordial, carbonated or fizzy drinks, energy drinks, sports drinks and flavoured waters." The guidelines also emphasise that fruit juice is a major source of added sugars in New Zealanders' diets.

Consumers often think of juice as a healthy alternative to sugar-sweetened beverages like soft drinks and energy drinks, despite containing similar sugar levels. It is time for fruit juice to lose its health halo. Prohibiting these products from voluntarily displaying 'no added sugar' claims can help to reduce the risk of consumers being misled into thinking these juices are nutritionally equivalent to whole fruit.

The FSANZ Consumer Evidence Summary highlights how influential 'no added sugar' claims are in relation to fruit juice specifically, noting in relation to specific studies:

- ☐ "These results suggest that a 'no added sugar' claim is important in driving purchases for fruit juices, and is relatively more important than other information about juice processing and formulation." (see page 21 FSANZ Consumer Evidence Summary)
- ☐ "For fruit juice, 'no added sugar' was the most influential factor when compared with other information about juice processing or formulation." (see page 22 FSANZ Consumer Evidence Summary)

Allowing 'no added sugar' claims will also perpetuate consumer misunderstanding about sugars in fruit juice. As highlighted in the FSANZ Literature review on consumer knowledge, attitudes and behaviours relating to sugars and food labelling (completed as part of the work on P1058) there is some evidence that consumers underestimate the sugar content of beverages containing fruit, with key points in that paper noting:

- ☐ "Consumers understanding of the sugar content of beverages containing fruit may be poorer than for other beverages. One study found that consumers tend to underestimate the sugar content of beverages containing fruit (but do not underestimate the sugar content of carbonated beverages). Another study found that around a quarter of consumers do not believe that 100% fruit juice contains naturally occurring sugar."
- ☐ Consumers believe that beverages containing fruit are healthier than beverages with a similar sugar content that do not contain fruit.
- ☐ Consumers' perceptions of fruit beverages may be related to consumers' beliefs that fruit is healthy and/or the belief (reported in section 2) that the sugar in fruit is less fattening than sugar in other foods."

We support the FSANZ proposal that legumes, fungi, herbs, nuts and spices should not be considered fruits for any definition of added sugar or for 'no added sugar' claim conditions.

7 FSANZ proposes 'no added sugar(s)' claims are not permitted when the concentration of sugars in the food is increased from the hydrolysis of carbohydrates during food manufacture, except when the sugars concentration in cereal-based plant milks made using hydrolysis is $\leq 1.5\%$

(and the product otherwise meets claim conditions) (see section 5.3.2 of the Calls for submissions document).

Do you have any comments on this approach?:

We support FSANZs proposal that foods containing sugars from hydrolysis should not be permitted to make 'no added sugar' claims. However, we do not support:

- (1) the exclusion of other processing techniques from this definition;
- (2) the exemption for products that contain less than $\leq 1.5\%$ sugars;
- (3) that sugars from hydrolysis are treated differently to other 'added sugars' - these sugars should be 'added sugars' as defined.

1 Processing: We recommend FSANZ adopt a forward-thinking approach for sugars that are produced by processing methods and include all sugars that are produced or residual as a result of any processing method which results in the end product containing more sugars than the original raw ingredients. This should be drafted to capture any existing and new processing techniques, including hydrolysis and fermentation. This would ensure a consistent approach to sugars that are the result of processing and ensure new processes are captured to ensure the 'no added sugar' labelling remains both current and is future proofed.

2 Exemption: We do not support the exemption for foods containing $\leq 1.5\%$ sugars - any food containing sugars should not be permitted to carry a 'no added sugars' claim. We do not think a threshold to 'level the playing field' between milk alternatives is appropriate. Consumers should be able to rely on a 'no added sugar' claim meaning that there are no added sugars in a product.

3. Definition: The sugars resulting from processing should simply be included in the definition of 'added sugars' not set out in a separate claim condition. A food displaying a 'no added sugar(s)' should simply not contain any 'added sugars'. A comprehensive definition of 'added sugar' is required.

8 FSANZ proposes to maintain the existing condition that a food displaying an 'unsweetened' claim must meet the conditions for a 'no added sugar(s)' claim, noting that the amended 'no added sugar(s)' claim conditions will apply (see section 5.4 of the Call for submissions document).

Do you have any comments on this approach?:

We strongly support this approach.

We note that all proposed amendments to 'no added sugar' claim conditions in our submission should apply to 'unsweetened' claims also.

9 FSANZ proposes to maintain the existing condition for intense sweeteners, sorbitol, mannitol, glycerol, xylitol, isomalt, maltitol syrup or lactitol. FSANZ proposes a food containing low energy sugars (mono- and disaccharides) listed in subsection S11—2(3) of schedule 11, as an ingredient (including an ingredient of a compound ingredient), not be permitted to display an 'unsweetened' claim (see section 5.4 of the Call for submissions document).

Do you have any comments on this approach?:

We strongly support the position that a product containing sweeteners should continue to be unable to carry an 'unsweetened' claim.

We strongly disagree with the terminology used. The phrase "intense sweeteners" is not defined in the Foods Standards Code nor consistently in literature and does not capture all sweeteners used in the food supply.

We recommend the terminology "non-sugar sweetener" should be used instead of "intense sweetener" and a definition added to the Food Standards Code as per the World Health Organization definition of this term. This would ensure all low and non-calorie sweeteners are captured within the definition including acesulfame K, aspartame, advantame, cyclamates, neotame, saccharin, sucralose, stevia and stevia derivatives.

See: Use of non-sugar sweeteners: WHO guideline. Geneva: World Health Organization; 2023. Licence: CC BY-NC-SA 3.0 IGO.

10 FSANZ is proposing a two-year transition period to allow producers, manufacturers and importers time to make any required labelling changes for products carrying 'no added sugar(s)' or 'unsweetened' claims to comply with the new claim conditions (see section 7 of the Call for submissions document).

Do you have any comments on this approach?:

We support this approach.

A two-year transition period is consistent with previous mandatory labelling changes and with FSANZ cost modelling on a reasonable period to enable industry to update labels within the normal cycle of label updates.

Data and evidence

11 Do you have any data or are you aware of published data on the number of products with 'no added sugar(s)' or 'unsweetened' claims in Australia and/or New Zealand (see data used for this proposal at section 3.1 of the Call for submissions document)?

No

If yes, please upload your file here.:

No file uploaded

12 Do you have any evidence or are you aware of published literature on consumer understanding of and responses to 'no added sugar(s)' or 'unsweetened' claims on food products (see evidence used for this proposal at section 3.2 of the Call for submissions report and Supporting Document 1)?

No

If yes, please upload your file here.:

No file uploaded

13 Do you have any data or know of any published data on the costs of labelling changes per stock keeping unit or package type (see data used for this proposal at Attachment E to the Call for submissions document)?

No

If yes, please upload your file here:

No file uploaded

Additional comments

Comments and other input

Additional comments and input:

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