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Submitted to P1062 - Defining added sugars for claims

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Contact person:

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Which one of the following groups do you most affiliate with?

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If other, please specify:

Research and Development Corporation

What is the name of your organisation?

Please write N/A if this does not apply.:

Dairy Australia

What is your position title?

Please write N/A if this does not apply.:

[REDACTED]

Are you the contact person for your organisation?

Yes

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:

Email address:

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Position title:

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?:

Dairy Australia supports the continued use of 'no added sugar(s)' and 'unsweetened' claims – on packaging and communication – based on the addition of ingredients to foods.

We believe that Proposal P1062 [Defining added sugars for claims] must be carefully considered alongside Proposal P1058 [Nutrition labelling about added sugars], specifically the definition for added sugars in the Nutrition Information Panel (NIP), and how this will be integrated with P1062.

We therefore request that the definition of added sugar pertains only to claims, and not be automatically adopted for P1058 without further consultation of stakeholders.

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)?:

Dairy Australia seeks clarity on the wording of the proposed definition of 'added sugars' as presented in Table 2. Table 2 indicates 'no change' to honey and malt/malt extracts. However, the proposed wording has been changed from section 1.1.2-2 which may be open to interpretation as to whether these ingredients (which contain sugar) are sugar and subsequently may have unintended consequences to Proposal P1058.

Under Schedule 4 currently, the wording states 'food contains no added sugars, honey, malt, or malt extracts'. This wording clearly separates sugars which are sugars from ingredients that contain sugar.

In the interest of reducing confusion and to prevent interpretational issues, we recommend the following change:

(c) For the purposes of conditions (a) and (e), added sugars means any of the following derived from any source:

- (i) hexose monosaccharides and disaccharides;
- (ii) starch hydrolysate;
- (iii) glucose syrup, maltodextrin and similar products;
- (iv) a product derived at a sugar refinery (including brown sugar, molasses, raw sugar, golden syrup, treacle);
- (v) icing sugar;
- (vi) invert sugar;
- (vii) sugar and sugar syrup derived from plants

and the following ingredients derived from any source:

- (i) malt;
- (ii) malt extracts;
- (iii) deionised fruit juice
- (iv) honey

Dairy Australia also recommends that concentrated fruit juice when added to food or beverages with free water to reconstitute the juice to single strength should not be considered 'added sugar'. However, where there is insufficient free water and sugar is above single strength, only the amount of sugar that is not reconstituted to single strength would be counted as added sugar.

Additionally, fruit juice concentrates are used for colour e.g. blackcurrant concentrate in a flavoured yoghurt. It has no function in the final food other than colouring and contributes negligible nutrients overall, and we therefore request an exemption from being included as an 'added sugar'. There is a risk that if natural fruit-based colours are deemed to be 'added sugars', manufacturers may consider use of artificial colours, which moves away from consumer expectations of naturalness.

Single-strength juice is a term assigned to juice at its natural strength, either directly from the extraction process or in its reconstituted form. Regarding single-strength juices, we request a specific addition to the proposed schedule (Page 39), for condition (e), the list of products that are exempt from the conditions of the claim.

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?:

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?:

Dairy Australia supports that foods containing low energy sugars should not carry an 'unsweetened' claim. This supports consumers expectations that if a food tastes sweet, that it has been sweetened in some way (whether this is with an added sugar or a low energy ingredient).

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?:

The dairy industry does not support the proposed approach that a food displaying a 'no added sugar(s)' claim must not contain the fruit products listed as an added ingredient. (specifically dried fruit, fruit juice, fruit pulp, fruit puree and concentrated fruit puree).

Dairy Australia proposes the following are considered exempt fruit products for the purpose of 'no added sugars' and 'unsweetened' claims, noting the fruit ingredients of interest are used in the manufacture of dairy foods.

Dried fruit

Dried fruit is a core, whole food according to the Australian Dietary Guidelines. While recommendations are to limit intake (30g), it is a five food group food.

Fruit juice

Single strength juice is a term assigned to juice at its natural strength, either directly from the extraction process or in its reconstituted form. Juice is a core, whole food according to the Australian Dietary Guidelines. Current recommendations are to limit intake (125 mL per serve occasionally) and in the amounts used in manufacture of many dairy foods such as flavoured yoghurt, the amount of fruit juice contributed would be well below that of what is currently recommended.

Fruit puree

A fruit purée is of itself single strength unless 'concentrated' is listed in its name. According to the Codex General Standard for Fruit Juices and Nectars, fruit purée for use in the manufacture of fruit juices and nectars is the unfermented but fermentable product obtained by suitable processes e.g. by sieving, grinding, milling the edible part of the whole or peeled fruit without removing the juice. Puree represents a step along the continuum of whole to chopped/sliced to mash, and whole/chopped fruit is not considered 'added sugar'

Concentrated purée

Concentrated puree when added to food or beverages with free water to reconstitute the purée would not be considered 'added sugar'. Where there is insufficient free water and sugar is above single strength, this would be counted as added sugar.

Many of these fruit ingredients are often added for flavour contributions, for colour and to support characterising ingredients in descriptors. If used for the sole purpose of sweetening, the dairy industry would typically opt to use water, sugar and flavours (instead of fruit) due to the lower cost.

Fruit pulp

According to the Codex General Standard for Fruit Juices and Nectars, fruit pulp is the edible part of the whole fruit, if appropriate less the peel, skin, seeds, pips, etc., which may have been sliced or crushed but which has not been reduced to a puree. In the case of dairy foods, fruit pulp would be used for consumer preference (i.e. removal of gritty textures from raspberry or passionfruit seeds from flavoured yoghurt). A fruit pulp is of itself single strength and should not be considered 'added sugar'.

Dietary analysis also indicates that Australians and New Zealanders are not following dietary guidelines and not meeting their recommended serves of fruit (or other food groups). Any type of labelling related to added sugars must avoid risk of consumer confusion and misunderstanding and should align with most consumers' understanding of what the term 'added sugar' means, while supporting ability to choose foods in line with dietary guidelines. Defining fruit ingredients as 'added sugars' is counterintuitive to this and fruit ingredients should therefore be treated the same as those found in whole fruit. We therefore recommend that they be excluded from the definition of 'added sugars'.

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?:

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?:

Review of terminology

Draft variation schedule 4 clause (h)(i) would allow for 'cereal-based plant milks' to create a small amount of sugars after carbohydrate hydrolysis.

However 'cereal-based plant milks' are not defined in the Food Standards Code. As per Standard 1.1.2, 'cereal-based beverage' means a beverage that is based on cereal.

Milk is nutritionally distinct from these products and this term is defined in Standard 2.5.1.

Dairy Australia therefore suggests Draft variation schedule 4 clause (h)(i) is reviewed for consistency with the terminology outlined in Standard 1.1.2.

Hydrolysis threshold

We support the proposal that 'no added sugars' claims are not permitted when the concentration of sugars in the food is increased from hydrolysis. We support that as a consequence, this excludes sugars formed from hydrolysis of lactose on the basis that the total amount of sugar is not increased after lactase hydrolysis. This is also aligned with the approach taken by the FDA when declaring sugars in the NIP.

For the reasons outlined in the consultation paper, we agree that a cereal-based beverage should have a small threshold to allow for incidental production of sugars. We agree with a threshold $\leq 1.5\%$. Some stakeholders have argued that this allowance should be higher, however as outlined in the consultation paper, these products should not be comparable to that of milk or other dairy foods and should not align with the naturally inherent lactose content in these foods or ingredients.

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?:

Dairy Australia supports the approach that the existing condition be maintained for a food bearing an 'unsweetened' claim that it also meet the conditions for a no added sugar claim.

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?:

Dairy Australia supports that products that contain low energy and/or intense sweeteners should not carry an 'unsweetened' claim.

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?:

In recent years, dairy companies have been through mandatory packaging updates (including Country of Origin Labelling) and continues to face further labelling and packaging changes over the next 1-3 years (including Health Star Rating and Plain English Allergen Labelling (PEAL)).

While P1058 is outside the scope of this proposal, we believe it is important to consider the proposed transition period alongside all labelling changes related to added sugars, including if changes will be required to the NIP. While many dairy foods are perishable with shorter shelf lives, others such as UHT milk have a longer shelf life, making it more difficult to comply with the proposed transition period.

The dairy industry therefore requires a coordinated and flexible approach to avoid prohibitive costs and complexity, whilst upholding sustainability commitments to reduce landfill (a consequence of packaging redesign which may come with a transition period that is too brief).

Given there is no food safety issue associated with this proposal, the dairy industry recommends a five-year transition period, and that this is also aligned with the timing and outcomes of P1058, while also considering the timing of the revised Australian Dietary Guidelines recommendations.

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)?

Yes

If yes, please upload your file here:

q13 P1062.docx was uploaded

Additional comments

Comments and other input

Additional comments and input:

Australian Dietary Guidelines review

The dairy industry is supportive of the work on added sugars labelling and supportive of policy initiatives aimed at improving health being aligned with Australian Dietary Guidelines recommendations.

We however have concerns aligning definitions and recommendations with the Australian Dietary Guidelines that are currently under review by the National Health and Medical Research Council (NHMRC) - and not due to be complete by 2025. The most recent review of the Guidelines commenced in 2009, with the document issued in 2013. This means that the evidence that informs these Guidelines is now 14 years old. It is important that our national eating advice and aligning policy initiatives aimed at improving health reflect the best available evidence.

The results of the NHMRC Stakeholder Scoping Survey from 2021 reported that 41% of stakeholders would like 'sugar' reviewed in the updated ADGs, while the research question prioritisation, tabled added sugar as a 'moderate priority' topic. This suggests there may be new evidence to consider on the topic of sugar/added sugar and health outcomes, and we therefore have concerns aligning with possibly outdated dietary guidelines, with revised ADGs due for release in the coming years.

Consumer education

Australian's diets are out of balance, with discretionary foods currently accounting for over one-third (35%) of daily energy intake for adults and 40% of children's energy intake, nearly double the maximum recommended intakes. As the second most under-consumed food group after vegetables, under-consumption of the dairy food group is a significant problem for the majority of the Australian population.

All types of milk, cheese and yoghurt, regardless of whether these are plain or sweetened are classified as five food group foods and are recommended for consumption by the Australian Dietary Guidelines.

Under P1062 (and P1058), a regulatory change that impacts the label is likely to raise questions for consumers around product formulations, who may then be discouraged from buying five food group foods like flavoured yoghurt.

We therefore support that any regulatory changes be considered alongside a communication strategy to consumers, industry and other stakeholders, in addition to the development of education resources, so as to not discourage intake of foods in line with Australian Dietary Guidelines.

We would appreciate the opportunity to continue to work collaboratively with government on this regulatory reform, noting the technical complexities and far-reaching implications that must be addressed. Importantly, P1062 must be carefully considered alongside P1058.

Please upload additional files here.:

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Feedback

What is your level of satisfaction with using this platform to complete your submission?

Satisfied

Do you have any feedback you would like to provide to FSANZ regarding this new platform?

Yes

If yes, please provide details.:

The platform was very quick and easy to use. It may be useful to have a separate section to upload references. Appreciate that attachments can also be added. Would be great to have a function where you can quickly scan all your responses in one spot at the end, instead of clicking back through.

Using Country of Origin Labelling implementation as an example, we have seen that the costs to Australian dairy manufacturing companies were significant, but varies from company to company, and from product to product. In general, the total cost of implementing the new system was greater for larger companies, but the total average cost per individual product (or SKU) was typically higher for smaller companies. For larger companies the additional packaging cost per SKU was in the range of \$2,500 to \$4,000 while for smaller companies the average cost for a single SKU was estimated to be in the range of \$8,000 to \$10,000. There was also significant variation reported in packaging costs related to the type of packaging, such as pouches, tubs, plastic wraps or sleeves.

The cost of developing and printing new packaging for every individual SKU was also a major component of the total cost of implementing the new system, but it was not the only cost. Examples of other additional costs include product reformulation, ingredient sourcing, additional staff time, staff training, managing general enquiries, and the development and implementation of new company procedures and additional record keeping in order to demonstrate compliance. Companies reported additional costs of at least another \$1,000 per SKU some of which was fixed cost and some of which was ongoing – but again the estimated figure varied depending on factors such as the size of the company.