



6 October 2023

Project Manager
Food Standards Australia New Zealand

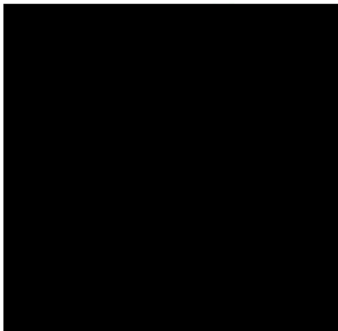
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Tēnā koe

Attached are the comments that the New Zealand Food and Grocery Council wishes to present on the *Call for Submissions: Proposal P1062 – Defining added sugars for claims*.

Ngā mihi nui



[REDACTED]

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Call for submissions: Proposal P1062 – Defining added sugars for claims

**Submission by the New Zealand Food and Grocery
Council**

6 October 2023

NEW ZEALAND FOOD AND GROCERY COUNCIL

1. The New Zealand Food and Grocery Council (**NZFGC**) welcomes the opportunity to comment on the *Call for Submissions: Proposal P1062 – Defining added sugars for claims (the CFS)*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

THE PROPOSAL

3. Food Standards Australia New Zealand (**FSANZ**) has prepared a proposal to clarify the Australia New Zealand Food Standards Code (**the Food Standards Code**) requirements for making voluntary nutrition content claims about added sugars in food. Australian and New Zealand dietary guidelines recommend consumers limit their intake of food and drinks containing added sugar. Consumers need to be able to make informed choices about sugar in their diet in line with these guidelines and this proposal is aimed at delivering consumers the information they need for this purpose.

Assessment by FSANZ

4. FSANZ reviewed the requirements for making voluntary nutrition content claims about added sugars to determine if there was a need to amend the Code to clarify and define added sugars for the purposes of making 'no added sugar(s)' nutrition content claims; and align added sugar claims with dietary guidelines.
5. FSANZ's assessment was that there was a need to amend the Food Standards Code. To reach this position FSANZ assessed the dietary guidelines of Australia and New Zealand as well as international and overseas approaches, Ministerial policy guidance, the prevalence of products carrying claims in the marketplace and the costs and benefits that may arise in relation to the proposal. The proposed amendments would:
 - continue to set 'no added sugar(s)' and 'unsweetened' claim conditions based on the addition of ingredients to foods;
 - provide an express definition of what is 'added sugars' for the purpose of 'no added sugar(s)' claim conditions; and
 - establish conditions for fruit products and food containing sugars produced from hydrolysis during food production.

EXECUTIVE SUMMARY

6. While NZFGC understands the attraction of FSANZ to treating all substances defined as added sugars and products containing sugars that are added to other foods as "ingredients", a slavish adherence introduces illogical outcomes. This will result in confusing consumers by not allowing them to readily identify fruit drinks without added sugar when fruit juice can make this distinction. Fruit drinks, such as diluted fruit juice, may be healthy options as well.
7. Just as exceptions have to be made in other areas of the regulatory system, exceptions that benefit consumers and that send the right signals and the best information should be pursued over slavish adherence to a 'rule'.

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8. NZFGC generally agrees with the dietary guidelines being a sound basis for proceeding but the Guidelines are a guide and not commandments. As we note above, where the logic is faulty, then a practical and consumer-led path should be pursued. We explain this in particular in response to Question 6 but the core issue is, if ingredient A is able to make a 'no added sugars' and ingredient B is able to make a 'no added sugars' then product A+B should be able to make the same truthful claim.
 9. Neither does it make sense to remove the prospect of making a 'no added sugars' claim when a product uses fruit to replace sugar. Since fruit drinks are proposed not to be permitted to make no added sugar claims (even when no sugar is added), then they would be impacted in the same way as many other drinks listed as being in the same category – and consumers lose out.
 10. NZFGC is concerned at losing the differentiation between sugars and foods containing sugar (malt, malt extracts and honey etc). By grouping these products alongside sugars, they are then treated as sugars rather than as products that are added as ingredients which contain sugar. This would be of most relevance under P1058. While these types of ingredients might preclude a 'no added sugar' claim, this should not mean they are declared as added sugars in the NIP alongside sugar.
 11. We are particularly concerned about, and do not agree with, a blanket inclusion of malt and malt extracts. In our view these require further consideration in relation to fermented products particularly beer. We recommend addition of malt and malt extracts to fermented products be exempted from a prohibition on using the 'no added sugars' claim because there are no sugars left in the product as a result of the fermentation process.
 12. NZFGC is concerned at what appears to be an arbitrary threshold for cereal-based plant beverages made using hydrolysis. The threshold allows for only 4 out of 30 oat beverage products that do not contain sugar in the ingredients list to continue on the market. NZFGC suggests that the midpoint of the range of no added sugar oat milks (around 3%) would be a sounder alternative.
 13. In relation to transition, labelling changes have been extensive over the past 2-5 years and many manufacturers have extended product label cycles to offset the costs of recent most significant changes. In this circumstance, recognising that there are multiple regulatory updates happening concurrently, noting the extensive impact of these proposals across many categories in the food supply and that stock in trade could perform a much needed buffer, NZFGC recommends a three year transition plus one year for stock in trade for the proposed changes.
 14. NZFGC does not believe P1058 and P1062 exist in isolation and that whatever is decided for P1062 must impact the thinking and decisions of P1058. This should have been much clearer in the consultation.
 15. The issue of added sugars, as FSANZ and Ministers appreciate is a complex and technically challenging one. We were therefore disappointed at the relatively short period initially allocated for responding but most appreciative of the reconsideration and extension that was undertaken.

COMMENTS

Scope of the proposal

16. FSANZ advises that Proposal P1058, Nutrition labelling about added sugars, is not within the scope of P1062 for the purposes of the definition of 'added sugars'.
17. NZFGC does not believe the two proposals exist in isolation and that whatever is decided for P1062 must impact the thinking and decisions of P1058. We cannot envisage two different definitions in the Food Standards Code for the same ingredient or group of ingredients. For this reason, our comments are intended to apply to both Proposals with additions or exceptions to meet the purposes of each.
18. It is important to note at the outset that, unlike the current Schedule 4, 'ingredients containing sugar' are being treated as sugars in the same way as sugar. This is a change which has not been addressed/identified in the CFS and which will potentially lead to intended/unintended consequences under P1058. Ingredients containing sugar need to be separated from sugars which are sugars so that the treatment of them is different.
19. In Schedule 4, the term 'sugars' is relevant for 'no added sugar(s)' and 'unsweetened' nutrition content claims. It does not include malt or malt extracts or sorbitol, mannitol, glycerol, xylitol, polydextrose, isomalt, maltitol, maltitol syrup, erythritol or lactitol but rather comprises the following:
- | | |
|---|---|
| <i>(i) hexose monosaccharides and disaccharides, including dextrose, fructose, sucrose and lactose;</i> | <i>(iv) products derived at a sugar refinery, including brown sugar and molasses;</i> |
| <i>(ii) starch hydrolysate;</i> | <i>(v) icing sugar;</i> |
| <i>(iii) glucose syrups, maltodextrin and similar products;</i> | <i>(vi) invert sugar;</i> |
| | <i>(vii) fruit sugar syrup;</i> |

International provisions

20. Harmonisation with international standards where possible is particularly important for the import and export trade of Australia and New Zealand since many countries adopt international standards within their own national legislation. As FSANZ identifies¹:
- "Other than Brazil, 'added sugars' is not specifically defined for the purpose of claims."
21. It is therefore of significance that Australia and New Zealand could be a world leader in this area. For this reason, we must be very sure we "get this right".

Extent of use of 'no added sugar' claims

22. FSANZ undertook a scan of three major Australian supermarkets to identify products within selected product categories that currently carry 'no added sugar(s)' and 'unsweetened' claims. 'No added sugar(s)'/unsweetened' claims were most commonly found on fruit juices, fruit and vegetable juice blends, dried fruit, frozen fruit, fruit and nut balls, almond and oat milks, infant/toddler purées/foods and yoghurts, and represented a high proportion of the overall range of products available in these categories. Claims were also found on a range of other foods and beverages such as some breakfast cereals, canned fruits, fruit purées, snack bars/fruit wraps, fruit drinks and mineral waters.
23. For New Zealand, the Ministry for Primary Industries' (MPI) New Zealand Food Safety group (NZFS) provided data from its GS1 On Pack database for products within selected product categories that were purchased in the past 12 months and contained 'no added sugar' or 'unsweetened' in the 'claim' field of the GS1 database. From this, 475 products were identified as carrying a claim, however, the actual number of products may be higher

¹ p11 CFS

as not all 'no added sugars'/'unsweetened' claims may be captured in the claims field. In New Zealand, there are (conservatively) an estimated 20,000 SKUs of packaged products and application of the voluntary claim is therefore around 2% of products in the supermarket.

Consumers

24. FSANZ conducted a literature review on added sugar in 2022 that demonstrated consumers commonly understand 'added sugar' to be sugar that is added during manufacturing or food preparation, rather than being inherent or naturally occurring in the food. The addition of added sugar was often perceived to be done by manufacturers. However, home cooking was also seen as a key way to reduce added sugar intake.
25. The CFS also considers the influence of 'no added sugar claims' on healthfulness perceptions and on purchasing decisions and the perception of 'no added sugar' as meaning no sugar or reduced sugar.

FSANZ's proposals

26. FSANZ makes several proposals that are reflected in the questions it has asked for comment on. These are discussed in the following paragraphs.

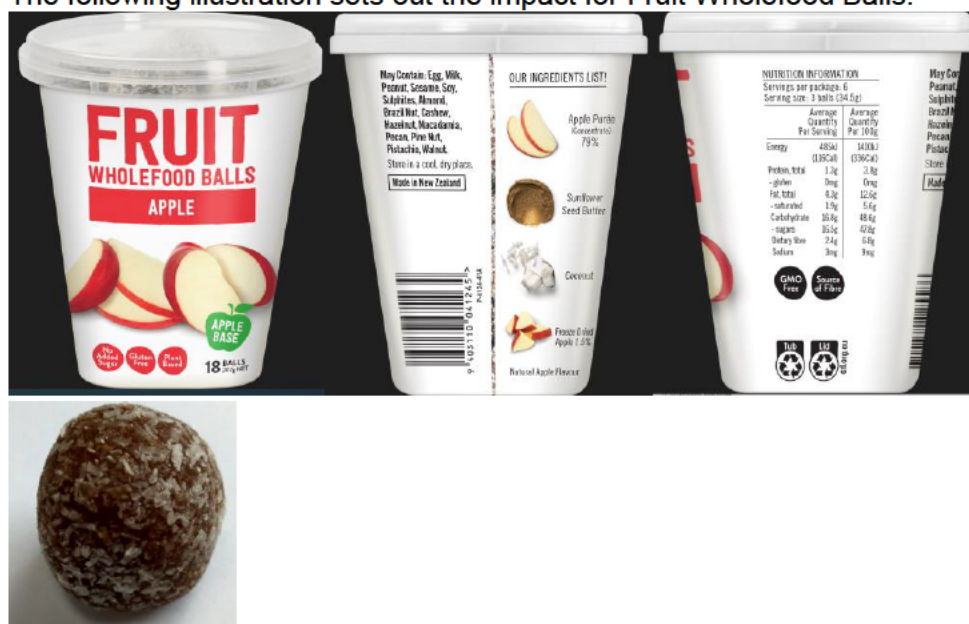
Q1. FSANZ proposes to continue to set 'no added sugar(s)' claim conditions based on the addition of ingredients to foods (see section 5.2 of the Call for submissions document). Do you have any comments on this approach?

27. NZFGC generally agrees with the dietary guidelines being a sound basis for proceeding but the Guidelines are a guide and not commandments. We do not agree with this approach where the logic is faulty. We explain this in response to later questions but the core issue is if ingredient A is able to make a 'no added sugars' and ingredient B is able to make a 'no added sugars' then product AB should be able to make the same truthful claim.
28. It also does not make sense to remove the prospect of making a 'no added sugars' claim when a product uses fruit to replace sugar. The following sets out the importance of this consideration in relation to dried fruit. Its important to note, however, that industry uses fruit products for more than to replace sugar such as for colour, taste, texture and to make claims on fruit content.
29. In the CFS section 5.3.1.3² discussion, there is a recognition that consumption of dried fruit is included in dietary guidelines giving consumers advice on how to consume (30g serve, occasionally). Therefore, a "no added sugar" claim would be permitted on dried fruit sold as an individual ingredient in whole or chopped form. Yet, if dried fruit is added to a product with one or more ingredients, a "no added sugar" claim would not be permitted.
30. This proposal would result in fruit bars and fruit ball snacks comprised of no added sugar dried fruit or fruit puree not being able to make a "no added sugar" claim. Given dried whole fruits and fruit pastes are available in forms with or without added sugar, it would limit the ability for companies to differentiate their 'no added sugar' fruit products from other products that add cheaper and less nutritious refined sugar and glucose syrups (without fibre and micronutrients associated with fruit) as an ingredient. NZFGC considers the proposal not to be an accurate reflection of the fact that sugar is not being added.
31. Consumers are likely to understand these types of fruit snacks to be like dried fruit and consume them in a similar way. Serving sizes are responsibly portioned to align with ~30g



² pp23-25 CFS

serving of dried fruit as per the recommendation in dietary guidelines. In addition to this, responsible manufacturers are very careful to not mislead consumers in order to maintain brand integrity.

32. The following illustration sets out the impact for Fruit Wholefood Balls:



33. A “No added sugar” claim would not be permitted on a simple fruit ball product due to having different formats of fruit (puree, freeze dried and dried) in addition to a small amount of sunflower seed butter to bind the product. All fruit ingredients in this illustration use fruit without sugar added.
34. These products are nutritionally similar in dietary fibre but lower in sugar than other common types of dried fruit eg. dried apricots, where a claim would be permitted under the proposal:

		Dried Apricots	Apple Fruit Balls
			
		Per 100g	Per 100g
Energy	kJ	1250	1410
Protein	g	3.4	3.8
Fat - Total	g	<1	12.6
Saturated	g	0	5.6
Carbohydrate	g	66.5	48.6
Sugars	g	66.5	47.8
Dietary Fibre	g	7.4	6.8

Sodium	mg	25	9
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35. Another example is for a simple cold pressed fruit and nut bar. These are very different to muesli bars bound with sugar based syrups and from fruit products using sweetened (added sucrose/glucose) dried fruits. Currently they can make 'no added sugar' claims to provide the consumer with information about this point of difference.
36. These products (including that illustrated below) are essentially dried fruit or dried pureed fruit with a small amount of other nutritious ingredients added to meet consumer needs of convenience, good taste and texture. The differentiation in the proposal between "single ingredient" vs "multiple ingredient" products seems to be an oversimplification and does not make logical sense. The addition of small quantities of other ingredients such as nuts/cacao or a different format of fruit (eg. freeze dried fruit) does not change the fact that sugar is not added to the fruit or the product. Yet, doing so, according to the current proposal removes the ability for a "no refined sugar" claim to be made.



37. We also seek clarification of the treatment of synonyms for 'no added sugar' such as 'no added refined sugar'.

Q2 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)?

FSANZ proposes to define 'added sugars' for the purpose of 'no added sugar(s)' claim conditions to mean the following derived from any source:

- hexose monosaccharides and disaccharides;
- starch hydrolysate;
- glucose syrups, maltodextrin and similar products;
- products derived at a sugar refinery, including brown sugar, molasses, raw sugar, golden syrup, treacle;
- icing sugar;
- invert sugar;
- sugar and sugar syrups derived from plants;
- honey;
- malt;
- malt extracts;
- concentrated fruit juice, unless the food for sale is fruit juice; and
- deionised fruit juice.

38. NZFGC notes the additions to the current provisions in the Food Standards Code are:

- raw sugar, golden syrup, treacle
- sugar and sugar syrups derived from plants
- honey;
- malt;
- malt extracts;
- concentrated fruit juice, unless the food for sale is fruit juice; and
- deionised fruit juice

39. NZFGC agrees with the clarifications provided with the inclusion of raw sugar, golden syrup, treacle, sugar and sugar syrups derived from plants. However, we are concerned at losing the differentiation between sugars and foods containing sugar (malt, malt extracts and honey etc). The inclusion of these are concerning as these products have now been grouped alongside sugars and are treated as sugars rather than as products that are added as ingredients which contain sugar. This would be of most relevance under P1058 where ingredients which contain sugar (but are not sugar) are being treated as added sugar and as a consequence will be declared as added sugar in the nutrition information panel (**NIP**). While these types of ingredients might preclude a no added sugar claim, this should not mean they are declared as added sugars in the NIP alongside sugar.

40. We are particularly concerned about, and do not agree with, a blanket inclusion of malt and malt extracts. In our view these require further consideration in relation to fermented products particularly beer. NZFGC recommends an exception for the addition of malt and malt extracts to fermented products to be exempted from a prohibition on using the 'no added sugars' claim because there are no sugars left in the product as a result of the fermentation process.

41. The Food Standards Code currently states in Schedule 4—3 that “a ‘no added sugar’ claim can only be made as long as: *The food contains no added sugars*, honey, malt, or malt extracts;*

42. NZFGC agrees with FSANZ that this is ambiguous as it is unclear if it is intended to mean added malt or malt extract or any malt or malt extract used in production.

43. A technical explanation for why malt and malt extracts should not be considered as added sugars for beer is set out below:

- Malt and malt extracts are essential inputs for the production of beer
- When malt is used in beer, sugar content is almost entirely consumed in fermentation and beer is the product of the transformation of malt and /or malt extracts
- any remaining sugars in final product after fermentation will be oligosaccharides (DP4-10) at levels less than 1% by weight.
- Analysis and reporting of these remaining oligosaccharides in beer in a NIP is determined as glucose by high performance liquid chromatography (**HPLC**) even though these are not present in this form in the product
- however, malt or malt extract used as an ingredient for beer should not be considered.

44. The added sugar definition from Brazil shown in Attachments C and D of the CFS captures a more appropriate definition with respect to alcoholic beverages produced by fermentation.

“Added sugars are defined as:, with the exception of polyols, added sugars consumed by fermentation ...”.

45. This position is also relevant for the production of grape wines, fruit wines and ciders based on the same transformation by fermentation of the sugar containing juices.

Q3 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?

46. NZFGC notes that the discussion in 5.2.2 focused on the situation for D-tagatose as a low energy sugar, that it contained 65% of the energy content of other mono- and disaccharides and that it did not contribute to tooth decay. On this basis, the comment was that products containing D-tagatose not be permitted to carry a 'no added sugars claim and that other low energy sugar substances that might come forward would be "assessed on a case-by-case basis" (CFS p21). The proposed provision does not reflect this position.
47. NZFGC considers being specific about D-tagatose, that is naming D-tagatose as an ingredient in foods means they cannot carry a 'no added sugars' claim would be a more accurate and fair way to deal with this low-energy sugar. This would open the way for management decisions concerning the treatment of other low energy ingredients that may come forward for assessment in the future to be considered at that time. For example, we are concerned that under P1058, this sugar will be treated in the same way as other traditional sugars and end up in the NIP as added sugar. They are not the same, and the body metabolises them differently, so they should be treated separately from traditional sugars.
48. Furthermore, there is a black box in terms of how FSANZ plans to treat future non-traditional sugars, in terms of the criteria that will be used to determine if 'no added sugars' claims can be made in the presence of pre-market assessed non-traditional sugars. With D-allulose currently under assessment and with an energy level of 1kJ/g, we expect FSANZ has a position now on the impact of this ingredient to 'no added sugar claims' lending further weight to individual identification in the Food Standards Code. It would be useful for FSANZ to make a clear statement on the guardrails/criteria used to assess future non-traditional sugars.

Q4 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

49. NZFGC does not agree with the proposed approach as set out in response to Q3 on the basis that the management decisions for future low energy ingredients should be made on a case by case basis. Taking an approach that names the individual low-energy ingredient achieves two outcomes:
- Continues the provision to prohibit the addition of low energy ingredients until assessed by FSANZ
 - Keeps the way open for technological changes in the future that may address the energy level to minimise impact to very low levels. We would point to advances in detection tools that have advanced significantly in the last 10-20 years as an example of the power of technological advance.

Q5 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 (see below)?

- | | |
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| <ul style="list-style-type: none"> • dried fruit, other than whole, cut or chopped dried fruit; • fruit juice (other than concentrated fruit juice), unless the food for sale is canned fruit or frozen fruit; • fruit juice powder or fruit powder; • fruit purée | <ul style="list-style-type: none"> • fruit pulp; • concentrated fruit purée |
|--|---|

50. NZFGC does not agree with this approach. There are three reasons for this:

- definition of fruit drink is a key factor
- the purpose of addition has been ignored
- there has been no discussion of the notion of normal strength.

51. Definition: If fruit juice is diluted with water, it is required under the Food Standards Code to be called a fruit drink, not a diluted fruit juice and to contain fruit juice at a diluted level between 5% and 96%. A fruit juice that is diluted but has no sugar added to it is treated the same as a sugar-sweetened fruit drink. For the consumer, the diluted, no added sugar product is the healthiest of the three options of fruit juice, diluted fruit juice and sugar sweetened fruit drink. It has the lowest sugar content but still some of the nutritional advantages of fruit juice. Without some mechanism for alerting the consumer to this, the consumer is blind to the advantage.

52. Purpose: This issue is further complicated by the provision that if ‘concentrated’ fruit juice is diluted with water to bring it to single strength fruit juice then it can carry a ‘no added sugars’ claim but a non-concentrated or single strength fruit juice if diluted with water cannot carry a ‘no added sugars’ claim even though the only addition is water. The issue is not about it being called a fruit drink. It is purely about the claim. Adding water to one can claim no added sugars but adding water to the other cannot. There should be no loss of claim.

53. Normal/single strength: We understand that FSANZ considers puree, concentrated puree, pastes and powders to be ‘juice’, if they are reconstituted back to single strength. This derives from the definitions in Standard 2.6.1—2(a) where “liquid portion” can be interpreted as juice or puree and in Standard 2.6.1—2(b) it states “includes a product that results from concentrating juice” which can be interpreted as powders, pastes and concentrated purees. If concentrated juice added to a food can carry a ‘no added sugar’ claim then the question is how a normal/single strength juice defined to differentiate it from a concentrated juice. Without consideration of these issues the provision remains as murky as ever.

54. We also note that Codex Standard for Fruit Juices and Nectars CXS 247-2005 (adopted in 2005 and as amended in 2022)³ references puree in the definition (clause 2.1.1) and further in clause 2.1.4 and 2.1.5, provides that puree and concentrated puree are able to be made into fruit juice. The USFDA also includes puree in the definition of fruit juice.

55. Our recommendation would be to replicate the relevant part of the definition from Brazil which provides an exclusion for powdered, dehydrated, pulps, purées:

Added sugars are defined as: ..., with the exception of... and sugars naturally present in vegetables, including fruits, whole, pieces, powdered, dehydrated, pulps, purées, whole juices, reconstituted juices and concentrated juices;

³ [fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXS%2B247-2005%252FCXS_247e.pdf](https://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252FStandards%252FCXS%2B247-2005%252FCXS_247e.pdf)

Q6 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?

56. NZFGC agrees with the proposal that *fruit* does not include legumes, fungi, herbs, nuts, spices or seeds for the purpose of the claim conditions.

57. NZFGC considers the balance of the proposal in this question does not make logical sense and that fruit juice is not an ingredient in diluted fruit juice but rather a food (meeting the requirements of Standard 2.6.2) to which water has been added. Even as an ingredient, the logic is flawed:

Step 1: 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 singular fruit (e.g. apple juice) and 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.

Step 2: Fruit juice can claim no added sugar; fruit puree can claim no added sugar

Step 3: Nothing has been added to the fruit juice and nothing added to the fruit puree

Step 4: The juice and puree are combined and magically they cannot make a no added sugar claim.

58. In our view any fruit juice which meets the compositional requirements of Standard 2.6.1 claim so long as that product can also make a no added sugar claim. We consider this could be addressed by providing an exemption along the following lines:

"Where two or more fruit products are each individually able to make a 'no added sugars' claim, then any combination of those fruit products, with or without water, is also able to make a 'no added sugars' claim."

59. We also suggest that consideration be given to expand this to provide that any fruit products and non-fruit product which can individually claim 'no added sugars' should be able to make a 'no added sugars' claim when combined.

Q7 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?

60. The CFS at section 5.3.2 does not discuss the threshold level proposed by FSANZ in cereal-based plant beverages made using hydrolysis is $\leq 1.5\%$. NZFGC is concerned at what appears to be an arbitrary threshold. We note that, for example, of the 33 oat beverages identified, 21 (64%) made 'no added sugar' claims and that "very few oat milk products have sugars listed in the statement of ingredients." (CFS p27). Since testing showed sugars present (ranging 0.9%-4.5%), manufacturers have interpreted a 'no added sugars' claim to mean no sugars were added during manufacture and that therefore the level of sugar on testing is natural in other ingredients or is the result of a technological process. The level proposed recognises sugar is product of the process and that 1.5% allows for variation in production processes.

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61. In fact the variation allows for only 4 out of 30 oat beverage products that do not contain sugar in the ingredients list to continue on the market. NZFGC suggests that the midpoint of the range of no added sugar oat milks (around 3%) would be a sounder alternative.

Q8 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?

62. Currently the presence of fruit juice in the beverages listed in the next paragraph (including fruit juice) does not impact an unsweetened claim. Under the new proposal which is expansive (being 2+ pages long) all conditions need to be met and therefore if we understand this correctly, unsweetened claims are still permitted in fruit juice (where conditions have been met) but no other beverage.

63. Since fruit drinks are not permitted to make no added sugar claims, then they would be impacted in the same way as other drinks listed below and would not be able to continue making unsweetened claims. For a no added claim the current conditions are: the food contains no added sugars, honey, malt or malt extracts and the food contains no added concentrated fruit juice or deionised fruit juice, unless the food is any of the following: a brewed soft drink, an electrolyte drink, juice blend, a formulated beverage, a fruit juice, a fruit drink, a vegetable juice a mineral/spring water or a non-alcoholic beverage.

Q9 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?

64. NZFGC agrees mostly to this because, consistent with our response to Q3 above, we do not support non-traditional sugars being counted as added sugar in the NIP (under P1058), in the same way as traditional sugars.

Transition

Q10 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?

65. Labelling changes have been extensive over the past 2-5 years and many manufacturers have extended product label cycles to offset the costs of recent most significant changes. In this circumstance, recognising that there are multiple regulatory updates happening concurrently, noting the extensive impact of these proposals across many categories in the food supply and that stock in trade could perform a much needed buffer, NZFGC recommends a three year transition plus one year for stock in trade for the proposed changes.

Q11 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)?

66. NZFGC does not hold any additional data to that which has already been sourced.

Q12 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)?

67. NZFGC has no further evidence but would refer FSANZ to the overarching policy intent that food labels provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns. Parts of the proposed amendments, as noted in response to preceding questions, do not enable consumers to make informed food choices particularly between full strength fruit juice and diluted fruit juice (that is fruit drink). The diluted fruit juice would be the healthier option but the proposals would prevent this information being conveyed to consumers.

Q13 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)?

68. NZFGC does not hold additional data on costs but recent information from individual companies to FSANZ would be available.

Draft variation

69. The CFS includes a proposed variation to the Food Standards Code at Attachment A. Most of our concerns about various aspects of the variation have been covered in the foregoing. However, the current claim conditions for no added sugar are very long and unnecessarily complicated. This will lead to interpretational issues without a supporting guidance document to provide explanatory notes. Ideally, guidance prepared in collaboration with industry to ensure it is helpful to suppliers would be welcomed.

70. In any case, the proposed lengthy conditions should be simplified to mitigate unintentional mistakes in interpretation. In any case and for clarity, we recommend that in relation to Schedule 4 Nutrition, health and related claims and under [1] Table to section S4—3 (table entry dealing with “Sugar or sugars”) the proposed substitution at (c) should treat (i)-(vii) separately from the products listed at (vii)-xii).

71. As well, we note clause (h)(i) reads:

“the food for sale is a cereal—based plant milk manufactured using hydrolysis of carbohydrates; and”.

72. NZFGC recommends that the terminology concerning ‘cereal—based plant milk’ be amended to ‘cereal—based beverage’. This is consistent with the terminology and definition already permitted for use in Standard 1.1.2.

Conclusion

73. While NZFGC understands the attraction of FSANZ to treating all substances defined as added sugars and products containing sugars that are added to other foods as “ingredients”, a slavish adherence introduces illogical outcomes that confuse consumers by not allowing them to readily identify fruit drinks without added sugar when fruit juice can

make this distinction. Fruit drinks, such as diluted fruit juice, may be healthy options as well.

74. Just as exceptions have to be made in other areas of the regulatory system, exceptions that benefit consumers and that send the right signals and the best information should be pursued over slavish adherence to a 'rule'.
75. The issue of added sugars, as FSANZ and Ministers appreciate is a complex and technically challenging one. We were therefore disappointed at the relatively short period initially allocated for responding but most appreciative of the reconsideration and extension that was undertaken.
76. We are sure FSANZ is aware of a potential issue with WTO expectations but it is not clear to us how FSANZ is accommodating the WTO comment period. According to the timeframe in the Administrative Assessment, FSANZ was proposing to take P1062 to the FSANZ Board for approval 'late October' (we understand the next Board meeting is 25 October) and then notify the Food Ministers' Meeting early November 2023. If that is still the timeframe, then with WTO notification period concluding on 10 November, the decisions on this matter would have been made before the WTO comment period concluded.
77. Finally, it will be important for the Food Standards Code to be clear that carry-over ingredients that may contain very small/ insignificant sources of sugar (eg vitamin D spray dried onto a maltodextrin base) are excluded from consideration for the purposes of 'no added sugars' and 'no sugar claims. Carry-over ingredients are often processing aids and would not be listed in the ingredients list and because the Food Standards Code does not currently explicitly mention carry-over ingredients which are considered added sugar, an exemption would be important. Incidental sugars were discussed extensively under P1058. Currently any amount of sugar no matter how incidental, prevents no added sugar and no sugar claims. The inability to make a claim due to incidental sugar presence is disadvantageous for consumers. This is because the manufacturer cannot make a claim, despite the fact that the sugar amount is minute and does not influence the ingredient statement or the NIP.
78. It has been proposed previously that a threshold value for the treatment of incidental sugar e.g. 0.05g per 100mL would allow manufacturers to use ingredients which contain an insignificant amount of sugar without impacting 'no added sugars' or 'no sugar' claims. Incidental amounts equal to or less than 0.05g per 100mL would therefore not be counted under 'total sugars' or 'added sugars'. If a threshold was applied that resulted in an 'added sugar' value rounded down to zero, then the zero value would apply equally to both added sugars and total sugars. This would enable a product to maintain a 'no added sugar' and 'no sugar' claim