

Response ID ANON-JN9Z-F8C9-5

Submitted to P1062 - Defining added sugars for claims
Submitted on 2023-10-03 00:48:08

Complete your submission

Your details

What is your name?

Contact person:

[REDACTED]

What is your email address?

Email address:

[REDACTED]

What is your telephone number?

Telephone:

[REDACTED]

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

Food industry

If other, please specify:

What is the name of your organisation?

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

Bonumose, Inc.

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:

Telephone:

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?:

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)?:

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?:

FSANZ's decision about the labelling of D-tagatose has far-reaching implications for diet-related diseases in ANZ and, frankly, the rest of the world.

Like FSANZ, the health and well-being of consumers drives the mission of Bonumose, Inc. Unfortunately, despite decades of messaging surrounding a relatively consistent set of nutrition guidelines to moderate sugar intake, diet-related chronic disease remains a concern. We believe that consumers will be more proactive in adopting a nutritious diet if it does not require sacrifice of palatability and affordability. Bonumose is committed to providing better-for-you alternatives suited to this approach.

We appreciate that FSANZ has acknowledged the dental and metabolic advantages of D-tagatose. In agreement with other stakeholders, Bonumose recommends that all substances listed in subsection S11—2(3) of Schedule 11 should be exempt from categorisation as 'added sugars'. D-tagatose and the other substances in this list are only partially digested and are not associated with the chronic disease risks that prompted interest in mandatory 'added sugar' labelling. Beyond its lack of association with chronic disease, D-tagatose has been recognized internationally for health claims related to its preservation of dental and metabolic health.

Equally as important is the comparable sweetness, taste and functionality that D-tagatose provides compared to sucrose. These are the technical aspects of D-tagatose that serve as conduits for the health benefits to reach the public in a meaningful way. D-tagatose stands apart from the other substances in subsection S11—2(3) of Schedule 11 in the way it marries metabolic, technical and sensory benefits. Nevertheless, we do recognize the importance of clarity and transparency in both labelling and regulatory policy.

Treating all "low energy sugars" listed in this subsection uniformly not only provides transparency to consumers but also industry partners who need to understand regulations in order to develop better-for-you products. This transparency is not a loophole, but responsible policy-making. It is important to give consumers an opportunity to know the ingredients in foods that may be harmful to health. There is no legitimate public policy, however, to discouraging consumers from consuming D-tagatose, which provides fibre-like benefits for gut health, benefits to the oral microbiome, and a moderation of blood glucose levels. Such transparency is needed for industry's timely identification, development, and marketing of products that are best equipped to reduce the imminent public health burden of chronic disease. In order to extend the viability of such product launches, truthful labelling and marketing are critical for the generation of sales that can offset the costs of reformulation.

Exclusion of these substances from 'added sugars' does not encourage the consumer preference for sweetness – preferences for sweetness are embedded in human biology (REF 1). It is this preference for sweetness and the driving force of taste in consumer decisions that has us still in the midst of a public health crisis despite decades of sugar alternatives and nutrition messaging. Policies that take into account the population they serve are the first steps towards effective solutions. People want sweetness. That probably is true of the members of FSANZ making the decision about D-tagatose labelling. D-tagatose provides sweetness, sugar-like flavour, and sugar-like functionality in food preparation. It does so while removing the negative attributes of traditional sugars and contributing positive health benefits (gut health, metabolic health, oral health, and weight control).

The proposed inclusion of D-tagatose and other low energy sugars as 'added sugars' will drive food manufacturers towards the adoption of high-intensity sweeteners that are not marred by 'added sugars' labelling. The use of such sweeteners in the maintenance of body weight has recently been called into question by the WHO, due to concerns about the role of these sweeteners in chronic disease (REF 2). If there are stakeholders who believe that policy can influence consumer sweetness preferences, would these stakeholders prefer a naturally-occurring sugar that reduces disease risk and is 0.9 times as sweet as sucrose, or an artificial substance whose effects on chronic disease have been called into question by the WHO and is 600 times as sweet as sucrose? Furthermore, if traditional sugars were replaced with high-intensity sweeteners (e.g., aspartame, sucralose, Steviol glycosides (stevia), monk fruit) instead of D-tagatose, a bulking agent would be added to make up for the loss of sugar's bulking properties. Often the bulking agent would be maltodextrin. Though not a "sugar," maltodextrin has the same high calories as sucrose and other traditional sugars and is high glycaemic.

The Dietary Guidelines clearly links 'added sugar' intake with increased risks for weight gain and dental caries. Both US FDA and EFSA have approved health claims for D-tagatose stating that it does not increase risk for dental caries and promotes tooth mineralization. There is no published evidence suggesting that D-tagatose promotes weight gain. In fact, as indicated by the Dietary Guidelines, D-tagatose provides 65% of the calories as traditional sugars. Because D-tagatose is used as a replacement for traditional sugars, this means that the caloric load attributable to sweeteners will be reduced by 35% (or more, as the caloric value may be lower than 11 kJ/g as is recognized in other countries). Not only will there be a reduction in total caloric intake, but the quality of those calories will be improved. The majority of D-tagatose calories are generated by the beneficial bacteria in the large intestine that digest D-tagatose to produce short-chain fatty acids that are associated with reductions in chronic disease risk. In other words, D-tagatose has calories for the same reason fibre has calories. Its consumption should be encouraged, not discouraged.

Other stakeholders have suggested that increased consumption of D-tagatose among consumers could contribute to excessive caloric intake, but this is simply not true. Consumers do not consume better-for-you products in addition to their traditional counterparts. Widespread adoption of better-for-you products with D-tagatose would replace consumption of traditionally-sweetened products and therefore lower daily caloric intakes. P1062 as proposed directly conflicts with the stated goals of the Dietary Guidelines by not only misrepresenting products containing D-tagatose, but also by indirectly

denying consumers access to a much-needed tool in their ability to make sustainable, meaningful improvements in their diet. We say “denying” because food companies are unlikely to replace traditional sugars or high-intensity sweeteners with D-tagatose if D-tagatose is misleadingly burdened with an ‘added sugars’ designation.

As stated in the Rapid Systemic Literature Review for P1058, there is a lot of consumer confusion about ‘added sugar’ labelling. Categorising D-tagatose as an ‘added sugar’ would only increase the confusion. Weight gain and dental caries are the hallmark concerns of ‘added sugars’ according to the Dietary Guidelines. D-tagatose is internationally-recognized for its dental health benefits and would not result in additional weight gain or obesity even if it were consumed at levels comparable to traditional sugar levels. Furthermore, allowing for the case-by-case review of low energy sugars would exacerbate said confusion.

Although FSANZ uses the example of the US FDA to support its proposed inclusion of D-tagatose in ‘added sugars’, such a decision has sparked even more controversy and confusion due to FDA’s exemption of allulose from the same category. What makes one low energy sugar eligible for exemption and not another? What science is this eligibility criteria based upon? (The answer is: none.) The US FDA’s criteria for exempting allulose via “enforcement discretion” – if applied fairly and without bias to D-tagatose – should have resulted in the same exemption for D-tagatose. The May 2022 US FDA decision about D-tagatose was made by an arm of the agency that was in disarray and has been excoriated in the press for massive failures. It was so poorly managed that senior personnel have “retired” and the US FDA Commissioner created a brand new Human Foods Division to fix the mess. The Deputy Commissioner for Human Foods’ first full day on the job was September 25, 2023. The Deputy Commissioner’s assistant contacted Bonumose on September 28, 2023, to say that the Deputy Commissioner is aware of the D-tagatose issue and is reviewing it along with “all matters in front of the agency as he gets up to speed in his new role.”

FSANZ should not rely on the US FDA’s May 2022 decision about D-tagatose as valid precedent. Even if the new Deputy Commission does not reverse the decision, a U.S. federal judge might reverse it due to a lawsuit filed by Bonumose against the US FDA in March 2023. The judge’s decision is expected in December 2023 or soon thereafter.

The purpose of claims as well as the NIP is to provide consumers with truthful information about the contents of a food and how that food contributes to their overall dietary well-being. Data suggesting that consumption of foods with excessive amounts of added traditional sugars increases risk for chronic disease has prompted FSANZ and other national regulatory bodies to mandate labelling of ‘added sugar’ content. While it is perhaps easy to define ‘added sugars’ as all “hexose monosaccharides and disaccharides”, this oversimplification neglects established and accepted nutritional science that indicates that all monosaccharides and disaccharides are not equal. Furthermore, what makes “hexose monosaccharides and disaccharides” the appropriate arbitrary chemical classification? This term effectively includes low energy sugars and excludes polyols and high-glycaemic tri-saccharides. Removal of the term hexose and literal interpretation of “monosaccharides” would encompass both low energy sugars and polyols, as ketones and alditols, respectively, two different types of compounds that are both considered monosaccharides (REF 3). Bonumose suggests that a better definition that would exclude both low energy sugars and polyols from the definition of ‘added sugars’ would be, “monosaccharides and disaccharides composed of glucose, fructose, and/or galactose.” Another alternative would be “hexose monosaccharides and disaccharides except those with beneficial effects on human health, such as D-tagatose.” If FSANZ seeks a definition of ‘added sugars’ that most closely aligns with the Dietary Guidelines, that is, sugars that have been shown to increase risk for weight gain and caries when consumed in excess, one of our proposed definitions would be the most suitable.

Bonumose disagrees with FSANZ’s proposal that the “no added sugar(s)” claim would be ineligible for foods containing D-tagatose because, for the rationale described above, inclusion of D-tagatose in the definition of ‘added sugars’ is erroneous. We recommend that D-tagatose and the other substances in subsection S11—2(3) of Schedule 11 be excluded from the definition of ‘added sugars’ and therefore be permitted for use in products with “no added sugar(s)” claims.

If FSANZ believes that substances added during processing must be distinguished from those inherent in the food via the NIP and its eligibility for “no added sugar(s)” claims, Bonumose would alternatively suggest that the NIP for products containing D-tagatose and the other substances in subsection S11—2(3) of Schedule 11 contain a separate listing under ‘carbohydrates’ as ‘low energy sugars’ or the name of the sugar itself. These products would be eligible for “no traditional added sugar(s)” or “sweetened with low energy sugars” or “sweetened with [name of sugar]” claims.

We agree with FSANZ’s proposal that products containing any of the substances listed in subsection S11—2(3) of Schedule 11, including D-tagatose, would not be permitted to use the “unsweetened” claim.

We thank you for your consideration. The proper, accurate, non-misleading labelling of D-tagatose is a crucial decision. D-tagatose – unlike any other sugar alternative – has the ability to enable better-for-you foods that people will want to eat and can afford (REF 4). Food should be nourishing; at the very least it should do no harm. D-tagatose can play a pivotal role in reversing the scourge of diet-related diseases. Adverse labelling for D-tagatose would run contrary to that shared goal.

REF 1. Ventura AK and Mennella JA. 2011. “Innate and learned preferences for sweet taste during childhood.” *Curr Opin Clin Nutr Metab Care*, 14(4):379-84.

REF 2. Use of non-sugar sweeteners: WHO guideline. Geneva: World Health Organization; 2023. Licence: CC BY-NC-SA 3.0 IGO.

REF 3. Mcnaught, Alan D. 1996. “Nomenclature of Carbohydrates.” *Pure and Applied Chemistry* 68 (10):1919–2008. <https://www.iupac.org/publications/pac/1996/pdf/6810x1919.pdf>.

REF 4. Bonumose’s unique production method results in a high-purity D-tagatose at a cost that is orders of magnitude lower than lactose-based production methods.

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?:

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?:

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?:

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?:

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?:

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?:

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:

Please upload additional files here.:

No file uploaded

Feedback

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

Very satisfied

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

No

If yes, please provide details.: