



New Zealand Wine
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**NEW ZEALAND WINEGROWERS SUBMISSION TO FOOD STANDARDS AUSTRALIA NEW ZEALAND ON
DEFINING ADDED SUGARS FOR CLAIMS**

OCTOBER 2023

Introduction and summary

New Zealand Winegrowers (NZW) provides strategic leadership for the wine industry and is the body that represents the interests of all of New Zealand's grape growers and wine makers. Established in 2002, NZW is funded by compulsory levies under the Commodity Levies Act and the Wine Act and has approximately 1,400 members. New Zealand is the only major wine producing country to have a single, unified industry body that represents both grape growers and winemakers.

Thank you for the opportunity provide feedback on the Call for Submissions P1062 *Defining added sugars for claims*.

In summary, NZW's view is as follows:¹

NZW reiterates its previous comments to FSANZ that sources of carbohydrate used for the production of grape wine (including grape juice or must, concentrated grape juice and sucrose) should not be considered 'added sugars' - whether for 'no added sugars' claims or for any other purpose. Including these sources within the definition could have broader consequences beyond the scope of this immediate consultation, and has the potential to mislead and confuse consumers in the context of wine.

¹ This submission should be read in conjunction with our earlier submissions on this matter, as well as on P1058, and our paper previously provided to FSANZ on Technical Considerations Related to Sugars in Wine.



NZW is not aware of New Zealand wines currently making, or seeking to make, 'no added sugar' claims. However, it makes this submission because of the broader relevance of the 'added sugars' definition to future regulatory developments and the potential significance to international trade.

NZW also seeks an extension of the transition period and explicit protection of previously labelled stock, as well as alignment with the other proposals underway that may have an impact on wine labelling.

NZW believes that the definition of proposed 'added sugars' for the purposes of 'no added sugars' and 'unsweetened' claims is likely to determine the definition of 'added sugars' for ongoing work by FSANZ under P1058. NZW's view is that the present consultation must be approached from the perspective that it is *de facto* establishing a definition of 'added sugars' that will operate across the Food Standards Code.

Consultation process and interaction with other proposals

NZW is disappointed with the way this consultation has been conducted. There has been a very short time to coordinate responses which has made it difficult to engage. While we appreciate and acknowledge that the consultation period was recently extended by three working days, this was only after it had already been open for two of the initially advertised three weeks.

It is also noted that the notifications by both Australia and New Zealand to the World Trade Organisation about the proposal allow until 10 November 2023 for international responses to that consultation.² It is unclear why the proposals have allowed international replies for a far longer period than the domestic consultation.

Broader relevance of proposed definition of 'added sugars'

It appears that the current Proposal is the first part of a staged process involving:

- incorporating a definition of added sugars in the Code that aligns with dietary guidelines; and
- through appropriate consumer testing, considering whether and how best to incorporate added sugars information in the NIP.

It is clear, therefore, that the definition of 'added sugars' developed for the purpose of P1062 will also form the basis of future work under P1058 and will therefore become the operative definition of 'added sugars' for the whole Food Standards Code. It would be untenable for FSANZ to come up

² See G/TBT/N/NZL/127 and G/TBT/N/AUS/161.

with a definition of 'added sugars' for P1062 and subsequently adopt a different interpretation for a different part of the Code.

That being the case, this definition should be assessed not only in the limited context of 'no added' sugar claims, but also taking into account the wider context, including P1058. While the products directly affected by a change to the parameters for 'no added' sugar claims are comparatively few, a great many more products are likely to be affected by P1058.

Consideration of grape wine in P1062

NZW submits that grape wine must be specifically considered in this consultation, both because it is potentially affected by P1062 and because of the wider implications of P1058.

NZW has made substantial submissions in the context of P1058 and in a separate paper on the particular issues involved with the classifying grape juice, concentrated grape juice and sucrose in grape wine as 'added sugars'. However, these submissions do not appear to have been considered in the development of this call for submissions. "Wine" is not mentioned at all in the consultation document.

It appears that the call for submissions has been prepared on the basis that beverages containing more than 1.15% alcohol by volume are not entitled to make claims related to sugars in Schedule 4-3. The discussion on P1049 on page 8 clearly makes this assumption. In NZW's view, this assumption is incorrect. While an earlier technical assessment by FSANZ concluded that the policy intent of Standard 1.2.7-4(c)(i) was not to permit specific claims about sugar, the wording of that Standard can and has been interpreted by enforcement agencies in Australia and New Zealand as allowing these claims. P1049 has been developed specifically to clarify (not correct) this point.

Therefore, the provisions on Schedule 4-3 relating to claims about sugars do apply to grape wine at the present time in the eyes of the relevant regulatory authorities. This should not be ignored in the context of this consultation. Consequently, the particularities of grape wine should be taken into account when considering the definition of 'added sugars' in this proposal.

Grape wine and 'added sugars'

The proposed definition of 'added sugars' in P1062 takes the position that concentrated fruit juice is added to fruit juice is not an 'added sugar'. The rationale for excluding fruit juice is that "claim conditions will continue to be based on addition to a food. As such, fruit juice which is sold as the food will continue to be able to make a 'no added sugar(s)' claim."³ This rationale should equally

³ See page 24 of the call for submissions.

apply to grape wine. Wine is made from the fermentation of grapes, grape juice and/or grape juice concentrate. The use of such inputs is not an addition and should not be considered 'added sugars'.

Additionally, as outlined in NZW's earlier submissions, a small amount of sucrose may also be used to support the fermentation of wine, including the secondary fermentation of sparkling wine.

Defining sucrose used for such a purpose as 'added sugar' is problematic for a number of reasons.

First, it is largely converted into alcohol and carbon dioxide by fermentation, so it contributes no, or only a negligible amount, of free sugars to the product as sold. The total residual sugar level in wine would typically be well below the threshold for a 'low sugar' claim.⁴ To the extent that there is residual sugar after fermentation, the contribution of sucrose cannot be distinguished from the contribution of grape juice which is not considered 'added sugar'. A definition of 'added sugars' that includes sucrose used in the production of wine is therefore potentially misleading and confusing to consumers. For example – a sweet wine made from naturally overripe grapes may have higher residual sugar content than a wine that has had sucrose added prior to fermentation.

NZW makes two additional points regarding defining grape juice concentrate and sucrose used in wine production as 'added sugars'. First, as discussed in detail in NZW's submission on P1058, defining juice (including concentrated juice) and sucrose used in the production of wine was not contemplated in either the Australian or New Zealand Dietary Guidelines. Therefore, it is not necessary to consider grape juice, concentrated grape juice or sucrose used in wine production as 'added sugars' in order to align the definition of 'added sugars' with the Dietary Guidelines.

NZW notes by analogy the approach taken with regard to fruit products,⁵ where such products (which are - unlike wine - high in sugar) were not considered in the Dietary Guidelines as being 'added sugars'. Consequently, fruit products were not defined as 'added sugars' for the purposes of P1062 and FSANZ noted that: "this approach recognises food labelling standards are part of the broader food regulatory system and that other public health measures, including consumer education and promotion activities, are also important to enable consumers to make food choices in support of dietary guidelines." Wine as a product is already subject to additional labelling and public health measures, and defining sucrose (or indeed grape juice concentrate) added during production contributes nothing more to these existing measures.

Second, as per previous submissions, NZW is concerned that a definition of 'added sugars' that includes concentrated grape juice or sucrose could contravene international treaties to which New

⁴ The threshold for a 'low sugar' claim for a liquid beverage is 2.5g per 100 mL. A typical dry white table wine would have up to 0.6g per 100 mL of residual sugar.

⁵ See 5.3.1.3 of the call for submissions.

Zealand is a party if it was attached to mandatory 'added sugars' labelling. For example, under the World Wine Trade Group Agreement on Requirements for Wine Labelling, parties are not permitted to require producers to disclose oenological practices on a wine label,⁶ and requiring the labelling of "added sugars" is a disclosure of an oenological practice. NZW also understands that added sugar labelling is on the agenda of the Codex Committee on Food Labelling, and FSANZ proceeding with changes now may create inconsistencies with the eventual results of that work.

Therefore, in order to correctly align the definition of 'added sugars' with the Dietary Guidelines and the approach taken in P1062, as well as to avoid the risk of misleading labelling or breaches of international obligations from future regulatory developments based on this definition, NZW requests that the proposed variation to Schedule 4, section S4—3 (table entry dealing with "Sugar or sugars") be amended as follows:

- point (c)(xi) of the proposed definition of 'added sugars' be amended to read "concentrated fruit juice, unless the food for sale is fruit juice or wine";
- point (c)(i) and (iv) of the proposed definition of 'added sugars' be amended to include the words "except sucrose used in the production of wine";
- point (e)(i) be added to include a new sub-point "(l) wine".

Questions for submitters

NZW's comments on some of the questions for submitters are also set out below.

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?

NZW agrees with the general approach of continuing to set 'no added sugars' claim conditions based on addition. However, it does not believe that this objective has been fully achieved because the use of concentrated grape juice and sucrose for the production of wine are captured by the definition of 'added sugars' when they are not additions because wine is made from grape juice and because they do not result in a substantive addition of free sugar to the final product.

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

⁶ See article 5(5).

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)?

NZW notes that fortified wine may include the addition of brandy or other spirits (e.g. grape spirits). These products are produced from a wine base, which means that concentrated grape juice or sucrose may have been used in their production. Therefore, NZW considers that if spirits are added to wine, the use of concentrated grape juice or sucrose should be excluded from the definition of 'added sugars' for the same reasons as for wine.

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.***

As above, NZW submits that this definition should be amended to exclude concentrated grape juice and sucrose used in the production of wine from the definition of added sugars, since these are not additions, and their inclusion is not required by the Dietary Guidelines.

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?

As set out above, NZW submits that fruit juice and concentrated grape juice used in wine production should not be considered an addition.

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?

NZW submits that wine should be considered as a fruit product which is the food for sale.

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?

NZW supports 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?

NZW notes that it is unaware of any New Zealand wine producers making 'no added sugar' claims that may be required to change their labelling. However, NZW notes that in general a two year transition period is not considered to be sufficient for wine producers due to the long shelf-life of the product and high cost of label changes. A minimum of three years' transition is typically required for label changes for wine.

We also ask that FSANZ consider the relationship between this proposal and any others that may impact alcoholic beverages in the foreseeable future (eg P1049, P1058 and P1059). Any transition period should be aligned between these measures to minimise cost and administrative burdens for producers. A two year transition period is not sufficient when these other changes have uncertain timeframes.

Lastly, we strongly support a grandfathering/stock in trade protection. This is particularly important for products that have a long shelf-life (such as wine). Section 7.1 of the call for submissions is not entirely clear – it says that “at the end of the transition period, all food products making these claims would need to comply with the variation.” It is unclear whether this is referring to products *sold* after the end of the transition period, or products *labelled* after the end of the transition period. We emphasise that should be the latter (ie date of labelling rather than transition), as has been the case with the recent pregnancy warning labelling changes.

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)?

NZW does not have any additional data on this point.

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)?

NZW does not have any additional evidence or published literature on this point.

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)?

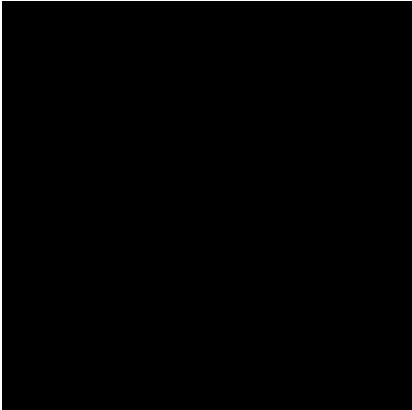
NZW refers to the Marsden Jacob report of the cost of label changes for alcoholic beverages which provides a robust basis for calculating the cost of such changes; however, we note that the copy of the report we have been able to locate on FSANZ’s website is marked as a draft, and we would appreciate a final copy being published. We also note that in our earlier submissions⁷ that any costs associated with labelling for alcoholic beverages will fall disproportionately on the wine sector,

⁷ See New Zealand Winegrowers’ previous submission on P1059, dated March 2023.

which accounts for more than 80% of the alcoholic beverage SKUs in the Australia and New Zealand markets.

Conclusion

Thank you for taking the time to consider our submission. We would be happy to discuss any of the points raised in this submission in more detail.



Response ID ANON-JN9Z-F83T-G

Submitted to P1062 - Defining added sugars for claims
Submitted on 2023-10-07 06:34:24

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.:

New Zealand Winegrowers

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?:

Please see the attached written submissions.

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)?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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?:

Please see the attached written submissions.

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)?

Not Answered

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)?

Not Answered

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)?

Not Answered

If yes, please upload your file here:

No file uploaded

Additional comments

Comments and other input

Additional comments and input:

Please see the attached written submissions.

Please upload additional files here.:

NZW Submission Defining Added Sugars for Claims - October 2023.pdf was uploaded

Feedback

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

Not Answered

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

No

If yes, please provide details.: