

PepsiCo's response to the Department of Finance consultation on a Sugar Sweetened Drinks (SSD) tax

December 2016

PepsiCo welcomes the opportunity to respond to this consultation and on pp.4-7 we have set out our perspective on a number (but not all) of the questions within it.

About PepsiCo

PepsiCo is the second largest global food and beverage company, listed on the New York Stock Exchange with a broad portfolio of brands. These include household names such as; Pepsi, Walkers, Tropicana and Quaker Oats. In Ireland specifically, our 7UP is the second best-selling drinks brand in the country.

PepsiCo owns beverage brands and manufactures beverage concentrate for use in further manufacturing processes. PepsiCo has appointed an unrelated beverage producer (Britvic plc) to perform such further manufacturing processes within Ireland, and to sell and distribute the manufactured beverages in the Irish market.

PepsiCo's strong track record of taking voluntary action to cut Irish Calories

We recognise industry's role in helping to tackle obesity and have a strong track record of taking voluntary steps to transform our beverage portfolio – driven by our vision of *Performance with Purpose*. We have proactively taken action in a number of areas; the product itself – through reformulation and innovation; its availability; and shifting consumer behaviour. For example, we've led the industry on responsible advertising and marketing. For over a decade we've only advertised no sugar cola varieties. We don't market any HFSS products to children under 16 across all channels, from broadcast to digital. This has been a voluntary commitment since 2007.

Turning to products, we reduced sugar in Regular Pepsi by 4% between 2008-2011 followed by a 30% reduction of sugar in Lipton Ice Tea in 2015 (joint venture with Unilever). Global R&D teams continue to work on potential future reformulation. Meanwhile, three quarters of our estimated Pepsi retail sales are now in no-sugar Pepsi MAX and Diet Pepsi, driven by our commitment to only advertising no sugar drinks since 2005 and to focus our commercial plans on no calorie options. All of our product extensions in recent years are in no-sugar (eg. Pepsi MAX Cherry, 7UP Free Tropical Splash and 7UP Free Mojito).

We have also been active members of industry and cross societal initiatives aimed at driving behaviour change by consumers, product reformulation and better information about our products. We've worked with Food and Drink Industry Ireland and the Irish Beverage Council (IBC) to promote a progressive approach. For example, via the IBC we supported the Department of Health's roadmap for reformulation, collectively removing 10 billion Calories from the Irish diet each year between 2005 and 2012. We urge the Government to reconsider the proposal for an SSD tax and instead build on the voluntary approach which the industry has demonstrated to date.

No evidence food and drink taxes reduce obesity

In the light of our progress outlined above, and our demonstrable commitment to taking voluntary action, we are disappointed that the Government has chosen to impose a tax on SSDs. We recognise and share concerns about obesity levels in this country but do not believe that an additional tax on one ingredient or category is an effective way to combat what is a complex and multi-faceted issue.

Evidence from other countries has shown this type of tax does little, if anything, to reduce obesity levels. In 2013, Denmark scrapped its fat tax because of its negative economic impact and abandoned plans for a tax on sugar. The soft drinks tax in Mexico has reduced the average calorie intake by a mere 6 Calories per person per day in a country where the average daily calorie intake is over 3,000. Indeed, the independent Health Impact Assessment of a SSD tax in Ireland failed to find a single real-world evidence based study proving the efficacy of taxation in decreasing national obesity figures. It also acknowledged that further taxation on SSDs may not alter consumption.

So we do not believe the proposed tax will impact obesity levels. If the Government nonetheless does choose to pursue a tax, the nature of the proposed tax, with higher rates for higher levels of added sugar and no tax at all for low or no sugar options, it may incentivise producers and consumers to switch to lower sugar beverages.

In addition, if the sole reason for introducing an SSD tax is to reach stated health targets, it is logical to review the tax and its impact, if any, on the health targets. We recommend that a sunset clause be woven into the tax legislation to ensure its removal should the aims not be met or the proposal prove ineffectual.

'Brexit'

The UK's forthcoming departure from the EU also adds a significant layer of complexity. The north-south dimension of the beverage industry in Ireland means that the industry is particularly sensitive to a UK outside the Customs Union. Without knowing if the UK and Northern Ireland will continue to be part of the Customs Union, it is difficult to ascertain the impact of a SSD tax on cross-border trade.

Executive summary

While we disagree with the principle of discriminatory food and beverage taxation, if the Government does nonetheless choose to pursue a SSD tax, the nature of the proposed tax, with higher rates for higher levels of added sugar and no tax at all for low and no sugar options, may incentivise producers and consumers to switch to lower sugar beverages.

Timescale

- We ask for as much notice as possible to plan for the impact of the tax, specifically on the rates to be applied at each of the bands.
- We ask for any legislative proposal to include a review and sunset clause to enable a repeal if the aims are not met.

Scope

- We urge the Government to set out clear, measurable and specific definitions. Eg. For 'added sugar' the definition should be consistent with existing regulations. All non-caloric sweeteners should be exempt, including those derived from sugar, as these ingredients are critical in providing soft drinks with fewer Calories.
- We recognise the nutritional contribution of milk-based drinks but believe there should be a high threshold to ensure that only those drinks that truly deliver nutritional benefit are exempt.
- We welcome the exclusion of 100% pure juice. A 150ml portion of 100% pure juice can count as one of your five-a-day and can deliver positive nutrition such as vitamin C, folate and potassium.
- We recommend the exemption of sports drinks as they are designed for elite performance and not for general refreshment and are formulated specifically to meet the performance requirements of sports persons which in some cases includes particular levels of sugar above 5g per 100ml.

Administration

- Without knowing if the UK and Northern Ireland will continue to be part of the Customs Union following 'Brexit, it is difficult to address the impact of a SSD tax on cross-border trade. It could increase the attractiveness of cross-border shopping or smuggling, detrimentally impacting the Irish economy.
- The tax could incentivise grey and black market activity.
- The tax would need to apply equally and consistently to all producers/ importers to ensure it's not anti-competitive.

PepsiCo's response to specific consultation questions

Question 1

The tax will apply to water-based and juice based drinks with an added sugar content of above 5 grams per 100ml. It will not apply to milk-based drinks. Are there drinks on the market which do not fit neatly into these categories, which may be of concern for producers from a compliance point of view?

In the absence of a detailed definition of added sugar, pre-packaged drinks and where / who the tax will be levied, it is challenging to give a detailed answer.

However, we recognise the nutritional contribution of milk-based drinks but believe there should be a high threshold to ensure that only those drinks that truly deliver nutritional benefit are exempt.

Furthermore, sports drinks, which are specifically designed for elite performance, not for general refreshment, are not mentioned in the consultation document. We recommend that they be excluded from the scope given their purpose; limited adult target market and the very specific formulation of high glycaemic carbohydrates and electrolytes needed to deliver functional performance. In some cases this includes particular levels of sugar above 5g/100ml.

Question 3:

It is intended that the tax will be collected at first point of import or production. What compliance issues does this present for producers?

Given the uncertainty around the UK's future trading relationship with Ireland, and indeed its membership of the Customs Union, it is extremely challenging to explore all the compliance issues.

While totally against the principle of a SSD tax, our position is that should the tax be introduced, it should apply equally and consistently to all producers and importers to ensure that it is not anti-competitive.

Question 4:

The tax will apply to pre-packaged drinks products only. This presents difficulties in relation to drinks which are intended to be consumed as a diluted level. Is there scope to declare the sugar contents of these particular products at their intended consumption levels, at the early point of import or production?

We support the use of recommended dilution rates as a basis for the tax but there needs to be consumer acceptance for changes in the dilution rate. Allowing gradual movement of a recommended dilution rate would deliver a simple way to encourage less sugar consumption by increasing and advertising this new dilution rate – effectively a 'DIY' reformulation. The initial design of the tax indicates this may be seen negatively, when it could actually assist in achieving the sugar-reduction policy objective.

Question 5:

What do respondents consider to be an 'added sugar'? What would they define as necessary to include in this definition in order to cover the types of sugars typically added to soft drinks?

Any definition should be consistent with existing regulatory definitions. We support the view that the definition for sugar in Regulation (EU) No 1169/2011 should form the basis of a definition for "added sugar" as all monosaccharides and disaccharide present in food, but excluding polyols.

For a more detailed definition, we recommend considering as reference the description included in the Codex Alimentarius Guidelines for use of Nutrition and Health Claims (CAC/GL 23-1997) for Non-addition of Sugars Claims:

"7. NON-ADDITION CLAIMS

7.1 Non-Addition of Sugars Claims regarding the non-addition of sugars to a food may be made provided the following conditions are met.

(a) No sugars of any type have been added to the food (Examples: sucrose, glucose, honey, molasses, corn syrup, etc.);

(b) The food contains no ingredients that contain sugars as an ingredient (Examples: jams, jellies, sweetened chocolate, sweetened fruit pieces, etc.);

(c) The food contains no ingredients containing sugars that substitute for added sugars (Examples: non-reconstituted concentrated fruit juice, dried fruit paste, etc.); and

(d) The sugars content of the food itself has not been increased above the amount contributed by the ingredients by some other means (Example: the use of enzymes to hydrolyse starches to release sugars)."

A detailed definition consistent with this guidance would be as follows:

(a) Sugars of any type have been added to the soft drink (Examples: sucrose, glucose, honey, molasses, corn syrup, etc.);

(b) The soft drink contains one or more ingredients that contain sugars as an ingredient (Examples: jams, jellies, sweetened chocolate, sweetened fruit pieces, etc.);

(c) The soft drink contains one or more ingredients containing sugars that substitute for added sugars (Examples: non-reconstituted concentrated fruit juice, dried fruit paste, etc.); and

(d) The sugars content of the soft drink itself has been increased above the amount contributed by the ingredients by some other means (Example: the use of enzymes to hydrolyse starches to release sugars)."

We would urge that any legislative proposal expressly states that all non-calorific sweeteners are exempt from consideration, including those derived from sugar, to indicate the permissibility of these ingredients which are a critical tool in providing soft drinks with fewer Calories.

Question 7:

In relation to milk-based drinks, should there be a minimum milk content in order for a drink to be defined as milk-based?

We recognise the nutritional contribution of milk-based drinks but believe there should be a high threshold to ensure that only those drinks that truly deliver nutritional benefit are exempt.

Question 8:

Are there particular cross-border issues that you envisage will exist if the Irish SSD tax does not closely align with the UK soft drinks industry levy?

Without details of the UK's future trading relationship with Ireland and the EU post 'Brexit', it is difficult to envisage all the issues that will arise. Adding an extra layer of administration such as registering for export credit to avoid double SSD taxation as well as registering and reporting for a SSD tax itself before it is even known if the UK will continue to be part of the Customs Union, poses a significant threat to cross-border trade. Should the tax be introduced, it should apply equally and consistently to all producers and importers to ensure equal burdens of compliance and a continued level playing field of internal-market competition. For it to be effective there needs to be an adequate and proportionate enforcement regime and anti-avoidance measures.

As the consultation document does not set out compliance and enforcement details, it is difficult to answer the cross-border aspect of this question. There is a risk of counterfeit, recipe fraud and imports of product that do not meet the aims of the tax. Were the tax to be introduced, there would be a significant incentive for retailers to source product from cross-border wholesalers for onward sale at increased margin. With 231 entry points between the Ireland and Northern Ireland and no customs controls at these points, any imports of soft drinks by wholesalers would have to be subject to voluntary declaration and self-assessment. This presents a real risk of cross-border smuggling and a risk of non-controlled products entering the market. The proposals have the potential to open up a grey and black market for soft drinks through imports without a clear and adequate system of checks and balances.

Question 11:

More broadly, do you have any concerns from a health perspective about which products are included and excluded by the scope of the tax?

Sports drinks, which are specifically designed for elite performance and not for general refreshment, are not mentioned in the consultation document. We recommend that they be excluded from the scope given their purpose; limited adult target market and the very specific formulation of high glycaemic carbohydrates and electrolytes needed to deliver functional performance.

We welcome the exclusion of 100% pure juice with natural sugars as it's a convenient way of consuming one of your five-a-day and delivers positive nutrition such as vitamin C, folate and potassium.

Question 14:

Are there circumstances where soft drinks may become spoiled or unfit for use after the bottling process and if so, can producers advise the extent that this occurs and the quantities involved?

While the overall proportion of impacted products is small, a product may become spoiled throughout the logistics process – when it is packed together in multipacks, transported around the site, in labelling or indeed in the delivery process. Issues of quality control and faulty packaging will often be found post bottling. Occasionally recalls of products can happen due to a variety of circumstances – in this case significant volumes of product may be unfit for use.

Question 16:

What “black-market” or other tax evasion activity do you consider might be directly caused by introducing a SSD tax?

The proposals have the potential to open up a grey and black market for soft drinks through imports without a clear system of checks and balances. An adequate and proportional enforcement regime is required and it is critical that the appropriate funding be granted to the enforcement authorities.

There is a risk of counterfeit, recipe fraud and imports of product that don't meet the aims of a SSD tax. Were the tax to be introduced there is a significant incentive for retailers to source product from cross-border wholesalers for onward sale at increased margin. With 231 entry points between the Ireland and Northern Ireland (before we consider ferry ports and connectivity with the rest of the EU) and no customs controls at these points, any imports of soft drinks by wholesalers would have to be subject to voluntary declaration and self-assessment. This presents a real risk of cross-border smuggling and a risk of non-controlled products entering the market.

ENDS