



THE GLOBAL FOOD DONATION POLICY ATLAS

Executive Summary: Chile

More than enough food is produced to feed every person, yet one-third of all food is wasted. Redirecting safe, surplus food is an effective and compassionate solution, but it can be complicated because food is a heavily-regulated product.

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

CHILE FOOD LOSS AND WASTE

While there are no official estimates for food loss and waste in Chile, reports suggest that more than half of the food produced in the country is lost or wasted each year. Meanwhile, prior to the novel coronavirus (COVID-19) pandemic, an estimated 13.6% of the population was food insecure and nearly 75% of the adult population was overweight or obese. The Chilean government has responded to these complex food system issues, creating a multisectoral National Committee for the Prevention of Food Losses and Waste (*Comité Nacional para la Prevención de Pérdidas y Desperdicios de Alimentos de Chile*) and adopting progressive nutrition legislation in recent years.

The Chilean government has not enacted a national law to reduce food loss and waste or mitigate hunger through greater food donation. However, existing policies and legal frameworks have the potential to support food recovery and donation efforts. Tax reform completed in 2020, for example, may help to better incentivize food businesses to donate rather than discard safe, unmarketable food. Amendments to the food safety and date labeling regulations may also help to advance initiatives of food donation operations, including those of the Chilean Food Banking Network (*Red de Alimentos* or *La Red*).

Chile: By the Numbers

- Population: 18,058,000
- GDP: \$298.2 billion
- Poverty Rate: 8.6%
- Prevalence of Food Insecurity: 13.6%
- Global Food Security Index: 75.5
- FLW Estimates: unknown

CHILE FOOD DONATION POLICY HIGHLIGHTS

DATE LABELING: Chile's Food Sanitary Regulation (RSA) introduced a standard date labeling scheme, which requires manufacturers to affix an "expiration date" to packaged food products and invites the use of a voluntary, quality-based "minimum duration date" label. The Regulation notes a distinction between these two labels and does not expressly prohibit the donation of safe, surplus food after the "minimum duration date," which is intended to convey "peak quality" rather than safety. While opportunities exist to further clarify this scheme, the RSA offers a solid foundation for adopting a dual date labeling scheme, consistent with the *Codex Alimentarius*, of which Chile is a member.

ACTION OPPORTUNITY: While Chile's date labeling regulations do not actively pose a barrier to donation, manufacturers and consumers alike report confusion surrounding the appropriate use and meaning of these labels. This confusion is derived from the current regulatory definitions, which fail to clearly designate the "expiration date" as a safety-based label that indicates the last date on which the food is suitable for human consumption. Therefore, the national government should update the RSA to explain that manufacturers should affix the "expiration date" label only to foods that pose a potential health risk over time and they should not use it in conjunction with the "minimum duration date." The RSA should also state that food may be donated after the "minimum duration date," provided the food is still safe to consume. Consumer education and awareness campaigns may help to clarify the date labeling scheme.

TAX INCENTIVES AND BARRIERS: Chile has established a national income tax regime that serves to incentivize individual and corporate taxpayers that donate rather than discard safe, surplus food. Taxpayers are eligible to claim tax deductions and credits up to 5% of their taxable net income for monetary donations made to a registered nonprofit organization. Food businesses may also deduct the total value of food donated to nonprofit entities that deliver the food free of charge to those in need. Chile's 2020 tax reform confirmed that the voluntary destruction of food that is no longer marketable but still suitable for human consumption is not only ineligible as a deductible expense, but also may be subject to a 40% tax penalty. Chile has also ensured that the value-added tax (VAT), which is generally levied at a standard rate of 19%, does not deter food donations, as food donors are entitled to reclaim the VAT credit on donated food.

ACTION OPPORTUNITY: Chile should seek to ensure that food donors and food recovery organizations understand the existing tax benefits for donated food and the changes to these schemes made through the 2020 tax reform. Circular 53, published in August 2020, clarifies some of these changes; however, the national government should further ensure that tax deductions available for food donations are understandable. Food businesses, in particular, should now recognize donation as an economically beneficial alternative to voluntarily discarding food that has lost commercial value but is otherwise safe for consumption.

CHILE FOOD DONATION POLICY OPPORTUNITIES

FOOD SAFETY FOR DONATIONS: Despite introducing food safety standards in the RSA, Chile has not elaborated on the specific safety regulations that apply to food donation. Existing food safety rules in the RSA are broad in scope and presumably apply to food donation operations; however, food donors and food recovery organizations may face uncertainty when attempting to ensure that all food is donated safely and in accordance with relevant law.

ACTION OPPORTUNITY: To clarify which food safety provisions apply to donated food, the national government should update the RSA to include a donation-specific section or adopt a decree that clearly sets forth the food safety provisions relevant to donated food. The Ministry of Health (*Ministerio de Salud* or MINSAL) should offer clarifying guidance that addresses whether prohibitions or restrictions on the sale of foods high in sugar, salt, fat, or other nutrients may also impact donations.

MINSAL should ensure that food safety requirements provide necessary safeguards for donation beneficiaries but do not unduly burden food donors or food recovery organizations.

LIABILITY PROTECTION FOR FOOD DONATIONS: Chile currently lacks comprehensive national liability protections for food donors and food recovery organizations. As a result, such actors may perceive food donation as an unnecessarily risky endeavor and elect to discard rather than donate safe, surplus foods. The Consumer Protection Act (*Ley de Protección al Consumidor* or CPA) is unlikely to impose liability on food donors or food recovery organizations that offer donations free of charge and comply with relevant law, even if such actors are negligent. However, the CPA’s scope and application to food donation operations require further clarification.

ACTION OPPORTUNITY: To ensure that food donors and recovery organizations are adequately protected from potential legal liability arising from claims of harm, Chile should adopt legislation that protects food donors and food recovery organizations that act in “good faith” and adhere to relevant law, similar to protections offered in Argentina. Comprehensive liability protections should extend to donations offered for a nominal fee and to donors who directly donate to final recipients.

CHILE FOOD DONATION POLICY: HOW DOES IT COMPARE?

Chile has demonstrated political commitments to improving the general health and safety of food systems as well as reducing food loss and waste. There is a need, however, to execute legal and policy solutions through legislation and regulatory reform to advance these agendas and position food donation as a necessary tool to success. Clarifying food safety requirements, standardizing date labels, and adopting comprehensive liability protections for both food donors and food recovery organizations may help toward this goal.

Food Safety for Donations	Date Labeling	Liability Protection for Food Donation	Tax Incentives	Tax Barriers	Donation Requirements or Food Waste Penalties	Government Grants and Incentives
No policy	Weak Policy	No Policy	Weak Policy	No	Weak policy	No Policy

For more detail on how Chile measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out atlas.foodbanking.org. For more information about the food donation legal framework in Chile and policy recommendations for strengthening this framework, check out the Chile Food Donation Legal Guide and the Chile Food Donation Policy Recommendations.

BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

Food Safety for Donations: A key barrier to food donation is lack of knowledge regarding safety procedures for donated food. All donated food should be safe for consumption and comply with applicable food safety laws. Potential donors, however, are often uncertain which food safety regulations apply to donated food and the steps necessary to comply.

Date Labeling: Date labels, such as “use by,” “best before,” “sell by,” and “expires on,” are a major driver of food waste and obstacle to donation. For the majority of foods, date labels are used by manufacturers to reflect freshness or quality rather than safety, yet without standard labels delineating safety versus quality, safe food often goes to waste rather than being donated.

Liability Protection for Food Donations: A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Many countries are moving to adopt liability protections to mitigate this concern. In such countries, donors and food recovery organizations may still face uncertainty as to the parameters of this protection.

Tax Incentives and Barriers: Donating surplus food can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax incentives (deductions or credits), can help offset these costs and make donation a more attractive option. In some countries, such as several countries with a value added tax, tax schemes are themselves a barrier to donations.

Donation Requirements or Food Waste Penalties: Some countries have employed food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) in order to influence business behavior and promote more sustainable solutions such as food donation and recovery.

Government Grants and Incentives: Grants and incentive programs funded at the national or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts.

THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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