



C H I L E
RECOMMENDATIONS
FOOD DONATION
LAW AND POLICY

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Authors

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe in order to help practitioners understand national laws relating to food donation, compare laws across countries and regions, analyze legal questions and barriers to donation, and share best practices and recommendations for overcoming these barriers. The project is a collaboration between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

FLPC serves partner organizations and communities by providing guidance on cutting-edge food system legal and policy issues, while engaging law students in the practice of food law and policy. FLPC focuses on increasing access to healthy foods; supporting sustainable food production and food systems; and reducing waste of healthy, wholesome food. For more information, visit www.chlpi.org/FLPC.



About The Global FoodBanking Network

GFN is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.



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ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN).¹ The Atlas project is an innovative partnership designed to map the laws and policies affecting food donation in 15 countries over the course of two years and to provide a comparative legal analysis based on these findings. For each of these countries, The Global Food Donation Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guides recognize universal issues that impact efforts to reduce food loss and waste and increase food recovery. These issues include food safety, date labeling, liability, taxes, and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guide and revealed priority actions for law and policy change. Based on these findings, FLPC developed specific recommendations for each country. These recommendations are intended to serve as a companion to the Legal Guide, though both documents may stand alone. The purpose of these recommendations is to highlight select actions for improving upon laws, policies, and programs relevant to food loss, waste, and donation.

This document sets forth recommendations focused on Chile, where the best estimates suggest that more than half of the food produced in the country is lost or wasted each year,² and food insecurity impacted 13.6% of the population prior to the novel coronavirus (COVID-19) pandemic.³ The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the Chile Legal Guide. The recommendations included in this report are not exhaustive, but offer select best practices and policy solutions to reduce food loss and waste and combat food insecurity through stronger food donation laws and policies in Chile.



SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document aim to provide a starting point for stakeholders in Chile to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste.

To ensure that food is donated safely and does not pose risks to recipients and to provide clarity to encourage food donors, the government should:

- Amend Chile’s Food Sanitary Regulation or adopt a decree to explicitly state which food safety provisions apply to food donation.
- Produce and disseminate guidance to clarify which food safety requirements apply to donated food.

To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the government should:

- Amend the Food Sanitary Regulation to clearly define the expiration date as a safety-based label that is affixed only to certain foods, consistent with a dual labeling scheme.
- Amend the Food Sanitary Regulation to explicitly permit the donation of food after the quality-based “minimum duration date,” provided the food is still safe for human consumption.
- Promote consumer education and awareness on the meaning of date labels and the application to donated food.

To ensure that liability concerns related to donating food do not deter potential donors, the government should:

- Enact national legislation that establishes clear and comprehensive liability protection for food donors and food recovery organizations that act in good faith.

To ensure that food donors and food recovery organizations are sufficiently incentivized to donate food, the government should:

- Offer clarifying guidance to food businesses on the 2020 tax reform to ensure that safe, surplus food is donated rather than voluntarily destroyed.

To ensure that existing legal frameworks effectively promote food donation as a solution to avoidable food loss and waste, the government should:

- Leverage the REP Law to reduce food waste and promote greater food recovery and donation.

INTRODUCTION

Chile possesses one of the most diverse and fastest-growing agricultural markets in Latin America,⁴ yet it has one of the highest rates of inequality among Organisation for Economic Cooperation and Development (OECD) member countries.⁵ According to the National Statistics Institute, half of Chilean workers earned less than \$550 per month, with the top income bracket earning 13.6 times more than the lowest.⁶ This inequality inspired months of violent protests beginning in 2019,⁷ and which continued after the emergence of the novel coronavirus (COVID-19) pandemic. The pandemic has further highlighted the disparate access to health care and social safety nets.⁸ The pandemic has also exacerbated the serious nutrition and dietary challenges already impacting the Chilean population, especially the lowest socioeconomic groups.⁹

Even before the pandemic, hunger, food insecurity, and rates of obesity in Chile were on the rise. The prevalence of food insecurity in households with children and adolescents increased from 10.2% in 2014-16 to 15.6% in the following two-year period,¹⁰ and in the past decade, rates of overweight, obesity, or morbid obesity steadily increased from 64.4% to 74.2% for individuals over the age of 15.¹¹ Today, one in every four school children and a third of the adult population are obese.¹² Chile has responded to this public health crisis with progressive legislation intended to reduce the sale and consumption of foods high in calories, sugar, and salt.¹³

Ensuring greater affordability and availability of nutritious foods may also help counteract these troubling trends. Unfortunately, safe, nutritious food is often lost or wasted, never reaching the plates of those who need it most. Chile lacks official statistics on the amount of food lost or wasted each year,¹⁴ but preliminary estimates confirm high rates of food loss and waste at every stage of the supply chain.¹⁵ Redirecting this food to those who lack access to affordable food options could enhance the food security and nutrition profile of the population, while also reducing the socioeconomic and environmental costs associated with food loss and waste.

The national government has not adopted specific legislation to promote greater food recovery and donation. However, it has advanced inclusive, multistakeholder solutions to tackle food loss and waste in recent years.¹⁶ In 2014 the Ministry of the Environment (*Ministerio de Medio Ambiente* or MMA) created the Interministerial Committee on Sustainable Consumption and Protection (*Comité Interministerial de Consumo y Producción Sustentables*), tasked with designing the National Program for Sustainable Consumption and Protection and committing to a 17% reduction in food loss and waste by 2022.¹⁷ Three years later, the government established the National Committee for the Prevention and Reduction of Food Losses and Waste (*Comité Nacional para la Prevención de Pérdidas y Desperdicios de Alimentos de Chile*) to develop a normative legal framework relevant to food loss and waste.¹⁸ In 2020 the Ministry of Agriculture (*Ministerio de Agricultura* or MINAGRI) sought to transform the Committee into a National Commission, granting it a more permanent status and access to ministerial resources.¹⁹

EVEN IN THE ABSENCE OF A FOOD DONATION LAW, PRIVATE AND NONGOVERNMENTAL ACTORS HAVE ADVANCED FOOD DONATION AS A CRITICAL SOLUTION TO FOOD INSECURITY AND FOOD LOSS AND WASTE.

Even in the absence of a food donation law, private and nongovernmental actors have advanced food donation as a critical solution to food insecurity and food loss and waste. Since opening its first of two food banks in 2010, the Chilean Food Banking Network (*Red de Alimentos* or La Red), for example, has rescued 43 million kilograms of food and other basic necessities and prevented the release of 98,038 tons of greenhouse gases.²⁰ In 2020 alone La Red served more than 258,771 beneficiaries across its 438 member organizations around the country.²¹

Adopting policy interventions to strengthen these existing authorities will ultimately contribute to greater food recovery and food donation in Chile. The following sections briefly summarize some of the most common legal issues relevant to food donation, as identified and described in more detail in the Legal Guide, and offer policy recommendations to address these challenges.

LEGAL CHALLENGES AND POLICY RECOMMENDATIONS

Food Safety for Donations

Issue Overview

A key barrier to food donation in many countries is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food as opposed to purchased food as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills. In Chile this uncertainty results from the existence of a fragmented food safety framework that is difficult for potential donors to discern and apply, particularly in the context of food donation.

Most food safety rules in Chile are set forth in the Food Sanitary Regulation (*Reglamento Sanitario de los Alimentos* or RSA),²² promulgated under the Sanitary Code (*La Código Sanitario*).²³ Title II of the Sanitary Code does not contain substantive food safety requirements but directs the Ministry of Health (*Ministerio de Salud* or MINSAL) to regulate the conditions that must be met to produce, import, process, package, labeling, distribute, and sell food.²⁴ The RSA offers such requirements, featuring safety standards for the production, importation, containing, storing, distribution, and selling of food for human consumption.²⁵ These rules apply to all persons and legal entities involved in the manufacture, import, sale, distribution, or transfer of food for human consumption.²⁶

The RSA does not, however, feature a donation-specific section or explicitly reference food donation among its many provisions. Accordingly, food donors and food recovery organizations may be uncertain as to which of the RSA's provisions apply to donated food. Identifying relevant food safety standards is made more difficult by the fact that the RSA includes restrictions that do not directly relate to food safety within the scope of the donation process, such as those that relate to product labels and packaging.²⁷ The RSA does not designate these provisions as “nonsafety” or recognize that such rules are only relevant when selling foods. Indeed, sometimes food is donated precisely because labeling flaws render it unsuitable for sale, even though it is still safe to consume.

The inclusions of certain articles that reference the “free” delivery or distribution of food products, but which do not explicitly reference “food donation,” may create further confusion for donors. For example, Article 110-bis states that foods containing calories, sodium, sugar, or saturated fat in amounts exceeding the thresholds established in Article 120-bis of the RSA may not be offered or delivered free of charge to children under 14.²⁸ Food donors and food recovery organizations may reasonably interpret these provisions as prohibiting the donation of certain foods. However, MINSAL has not commented on this interpretation.

Attempting to discern which food safety rules under the RSA apply to donated food can be burdensome and challenging for food donors and food recovery organizations. Without a clear delineation of these rules and an explanation of their application, supply chain actors may refrain from donating surplus food that is otherwise safe for donation and consumption.

Recommended Policy Actions

1. AMEND CHILE'S FOOD SANITARY REGULATION OR ADOPT A DECREE TO EXPLICITLY STATE WHICH FOOD SAFETY PROVISIONS APPLY TO FOOD DONATION.

In order to eliminate the uncertainty regarding which RSA provisions apply to the safety of donated food, MINSAL should update the RSA to feature a donation-specific chapter. Alternatively, MINSAL could issue a decree that enumerates which of the RSA's food safety provisions apply to donated food. MINSAL regularly issues decrees updating the RSA to ensure that the regulations reflect the latest public health findings and legislative changes²⁹ and to ensure consistency with the *Codex Alimentarius*, of which Chile is a member.³⁰ Consolidating these requirements into a distinct section of the RSA would significantly ease the burden on food donors and food recovery organizations seeking to comply to relevant food safety provisions and may ultimately lead to greater food donation.

2. PRODUCE AND DISSEMINATE GUIDANCE TO CLARIFY WHICH FOOD SAFETY REQUIREMENTS APPLY TO DONATED FOOD.

Clear guidance from food safety enforcement agencies on what RSA provisions or other requirements apply to donated food would help ease concerns of food donors and food recovery organizations. Ensuring that these actors understand which sanitary requirements apply to donated food would also support increased and safer donation operations. The Health Services Division (*Servicios de Salud*) within MINSAL could draft such guidance, as the Division is already empowered to identify and assess risks to human health and establish national policies relating to food safety.³¹

This guidance could also adopt a broader interpretation of food “safety” to limit the free donation of certain foods, such as those that exceed nutrient thresholds for sugar, sodium, fat, and calories. The government has restricted the sale of these foods to children under recent legislation and Article 110-bis of the RSA.³² Using this guidance, MINSAL could clarify whether restrictions on the sale of such items have implications for food donors or food recovery organizations. The Health Services Division should coordinate with food donors and food recovery organizations to produce this clarifying guidance to ensure its success in protecting the public, while supporting food donation efforts.

Date Labeling

Issue Overview

A major driver of food waste and an obstacle to food donation is the general misconception about date labels such as “sell by,” “use by,” or “best by” on food products. Many donors and consumers interpret these date labels as indicators of food safety. Yet for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry illnesses over time. A 2011 survey of consumers in Chile found 67.2% of respondents cited confusion surrounding the date label as the primary reason for throwing away food.³³ Chilean consumers are not alone. In the United Kingdom, researchers found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.³⁴ Similarly, 84% of Americans report throwing away food after the expiration date due to safety concerns even if there is minimal risk of a foodborne illness at that time.³⁵ This confusion occurs in the home but also impacts food businesses' willingness to donate and creates a stigma against past-date food among food donation recipients.

Reports of consumer confusion in Chile indicate that the prevailing law does not effectively regulate date labels. Chile's date labeling regime is currently standardized under the RSA and features two distinct labels

consistent with the *Codex Alimentarius*: a required “expiration date” (“*fecha de vencimiento*”)³⁶ and a voluntary, quality-based “minimum duration date” (“*fecha de duración mínimo*”).³⁷ Unlike the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods, however, which clearly defines the “expiration date” as a safety-based label,³⁸ the RSA refers to the “expiration date” as the date or period after which the manufacturer cannot guarantee that a product, having been stored under certain conditions, will no longer retain its expected attributes.³⁹ This definition allows for manufacturers to ultimately choose an “expiration date” that reflects peak quality rather than safety.

The RSA also requires manufacturers to affix an “expiration date” to *all* packaged foods (while use of the “minimum duration date” is voluntary), not just to those that pose an increased health risk overtime.⁴⁰ This means that manufacturers must still label shelf-stable food products as having an “indefinite duration” rather than expiring on a specific day, month, and year.⁴¹ This required use of the “expiration date” also means that manufacturers may affix *both* an “expiration date” and the optional “minimum duration date” on some foods.⁴² The use of both labels is contrary to the *Codex Alimentarius*’ dual date labeling scheme, which advises manufacturers to pick between a quality-based or safety-based label.

The potential use of both labels and the RSA’s failure to clearly define the “expiration date” as a safety-based label that should be used only for perishable food items is likely to perpetuate food waste and create potential barriers to food donation. Notably, the RSA is silent on the issue of donation, stating only that food is no longer marketable after the “minimum duration date” or “expiration date” have passed.⁴³ Without further clarification, food donors and food recovery organizations may be uncertain as to whether unmarketable food that is still safe to consume may also be offered for donation.

Recommended Policy Actions

1. AMEND THE FOOD SANITARY REGULATION TO CLEARLY DEFINE THE EXPIRATION DATE AS A SAFETY-BASED LABEL THAT IS AFFIXED ONLY TO CERTAIN FOODS, CONSISTENT WITH A DUAL LABELING SCHEME.

To ensure that manufacturers are appropriately distinguishing between the “expiration date” and the “minimum duration date,” MINSAL should amend the RSA to better align with the dual date labeling scheme set forth in the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods. Many other countries and the food industry are moving toward this dual date labeling scheme that allows manufacturers to choose between a safety-based label and a quality-based label. For example, the European Union requires manufacturers to select only one of two standard labels. “Best before” is required for foods where the label indicates quality, while “use by” or “expiration date” is required if the food safety risk increases after the date.⁴⁴ The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for a standardized dual date labeling system with separate quality and safety date label phrases.⁴⁵

To implement such a scheme in Chile, MINSAL should update the regulatory definition to clarify that the “expiration date” is a “safety-based label” (i.e., the last date on which the product should be sold or consumed “due to *safety and* quality reasons”)⁴⁶ to be used *only* for foods that are likely to pose an increased safety risk over time. Any foods that have an “indefinite duration” should not feature an “expiration date.” Instead, for these nonperishable food items, MINSAL should allow manufacturers to use the “minimum duration date” label that indicates peak quality rather than safety.

MINSAL should also update the RSA to prescribe approved terms for the “expiration date.” The Chilean government has reported variations in the language to expressed expiration dates, including “consume before” or “date of expiration.”⁴⁷ This lack of standardization can lead to confusion for consumers⁴⁸ who report discarding food after the “consume preferably before” date even though this date indicates quality rather than safety.⁴⁹ MINSAL should amend the RSA to specifically designate “use by” or “expiration date” as terms to

convey the last date on which the food is safe to consume, consistent with the *Codex*.⁵⁰ This will help ensure that manufacturers apply “expiration date” only to convey safety and will better enable consumers to accurately interpret the affixed labels.

2. AMEND THE FOOD SANITARY REGULATION TO EXPLICITLY PERMIT THE DONATION OF FOOD AFTER THE QUALITY-BASED “MINIMUM DURATION DATE,” PROVIDED THE FOOD IS STILL SAFE FOR HUMAN CONSUMPTION.

The government should amend the RSA to permit the donation of packaged foods after the “minimum duration date,” which is intended to convey quality rather than safety, if the food is still safe for human consumption. As mentioned above, the regulatory definitions for both the “minimum duration date” and “expiration date” prohibit the sale of food once the affixed date has passed. However, the “minimum duration date” is a voluntary label that is intended to convey peak quality rather than safety. The RSA does not explicitly prohibit the donation, delivery, or distribution of food once this date has passed; however, donors and food recovery organizations may presume that all unmarketable, past-date food is not safe to donate.

Several EU Member States have addressed this issue through guidance and legislation that explicitly allow for food donation after the “best before” date (but not after the “use by” date).⁵¹ In line with these efforts, MINSAL should amend the RSA to grant food donors clear permission to donate food after the “minimum duration date” has passed but before the “expiration date” (as this latter date should indicate safety, per the recommendation above). Similarly, the amendment should make it clear that food recovery organizations and other receiving institutions may accept and distribute food after this date, provided that the food is still suitable for human consumption. This amendment will not only encourage food donations, but also reduce unnecessary waste of safe, surplus packaged foods.

3. PROMOTE CONSUMER EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS AND THE APPLICATION TO DONATED FOOD.

Given evidence of confusion surrounding Chile’s date labeling scheme, national consumer education is necessary to clarify the existing scheme and to explain any future changes. Education and awareness campaigns may help to inform donors, food recovery organizations, and consumers that “minimum duration dates” are not intended to convey safety, but quality. Joint public- and private-sector initiatives may help to ensure that stakeholders understand that such date labels should not stand as a barrier to donation. Particularly if the RSA is amended to adhere to the *Codex Alimentarius*, as recommended above, such campaigns will be necessary to inform donors, food recovery organizations, and consumers about the revised definitions and applications.

Liability Protections for Food Donations

Issue Overview

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Other countries, including Argentina and the United States, have established comprehensive protections for both food donors and food recovery organizations.⁵² These protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm, provided that they act in accordance with relevant laws. Chile has not developed such comprehensive liability protections for food donors and food recovery organizations, and the law does not clearly address the liability that such actors may face in the event that a beneficiary is harmed.

Chile’s Consumer Protection Act (*Ley de Protección al Consumidor* or CPA) is the most relevant legal framework in the event that a beneficiary alleges harm arising from donated food. The CPA does not explicitly address

food donation but governs the general “consumer-supplier” relationship that may give rise to liability. The CPA explains that a negligent “supplier” of a good or service that causes impairment to the “consumer” due to failures or deficiencies in the quality, identity, substance, or security of the respective good or service may be held liable for the resulting harm.⁵³ In principle, this standard could be used to find a negligent food donor or food recovery organization liable in the event that a beneficiary is harmed by donated food.

It is unlikely, however, that the CPA would effectively impose liability on food donors and food recovery organizations for harm arising from donated food. This is because the CPA defines “supplier” as natural or legal persons, public or private, who *regularly* charge a consumer for goods or services (emphasis added).⁵⁴ Most food donors and food recovery organizations offer donated food free of charge and therefore are unlikely to qualify as “suppliers” under the CPA. Even if food donors and food recovery organizations do qualify as “suppliers,” Article 47 of the CPA offers a broad defense: producers, importers, and distributors are exempted from responsibility for harmful or unsafe products if they comply with applicable law and other prevention measures.⁵⁵

The CPA’s narrow scope and defense limit the risk of liability associated with donated food; nevertheless, in the absence of clear and comprehensive liability protections for food donation, supply chain actors may perceive food donation as a potentially risky endeavor and thus prefer to discard rather than donate safe, surplus food.

Recommended Policy Actions

1.

ENACT NATIONAL LEGISLATION THAT ESTABLISHES CLEAR AND COMPREHENSIVE LIABILITY PROTECTION FOR FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS THAT ACT IN GOOD FAITH.

Chile should enact new legislation that enumerates robust liability protections for food donors and food recovery organizations. In Argentina, for example, comprehensive liability protections apply so long as donations are made in accordance with conditions set forth in the country’s Food Donation Law (i.e., donations are made free of charge to a qualified intermediary and benefit populations in need).⁵⁶ Argentina affords donors and food recovery organizations a presumption of good faith (*buena fe*) absent any willful misconduct or negligence resulting in harm to a beneficiary.⁵⁷ Chile could adopt similar legislation that provides food donors with a broad and clear grant of protection. This protection should not be absolute; the law could maintain that food donors are not shielded from protection if they demonstrate gross negligence or willful misconduct when handling the donated food prior to distribution. The expanded protections should also cover food recovery organizations that comply with the same requirements imposed on food donors.

Chile could also expand protections to exceed those currently offered in Argentina, permitting intermediaries to charge a small fee for donated food. Often, countries will impose a “no charge” requirement (i.e., food donors and food donation intermediaries lose liability protection if they charge final recipients even a small or nominal fee for the donated food). This “no charge” restriction ultimately hinders food recovery efforts, as it eliminates a potential funding source for food recovery organizations that could be used to support operations or develop innovative models of food recovery and donation. Finally, consistent with recommendations above, Chile should extend liability protection to the donation of food after the quality-based “minimum duration date” has passed, provided the food is still safe for human consumption.

Tax Incentives and Barriers

Issue Overview

Food donation helps mitigate the costs of hunger and stimulate the economy, but it can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise

would be discarded, usually at no cost. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier, contributing to greater food loss and waste. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics. Chile is one of the few countries to offer multiple tax benefits to support food donation and remove the potential barrier of the value-added tax.⁵⁸

Under Law 19.885 (*Ley de Donaciones Sociales* or Law of Social Donations), for example, individual and corporate taxpayers are eligible to claim a tax credit for up to 50% of monetary donations⁵⁹ made to registered nonprofit organizations, including those devoted to hunger and poverty alleviation.⁶⁰ Business donors may also deduct the remaining 50% of the monetary donation from their taxable income.⁶¹ These benefits are subject to certain limits and cannot exceed 5% of the donor's taxable net income (i.e., total amount of income on which the business can be taxed) or 0.16% of the donor's net worth.⁶²

For in-kind donations, Article 31 of Chile's Income Tax Law permits companies engaged in manufacturing, importing, or selling food to deduct the total value of food donated, provided the following conditions are met: (1) that the donated food has lost its commercial value to the company due, for example, to poor, damaged, or defective packaging, bad labeling, or the proximity of the expiration date; and (2) that the company has donated the food (a) free of charge (b) either directly or through an intermediary nonprofit institution (c) to another nonprofit institution that distributes the food (d) to people with limited resources.⁶³ Such institutions include those that are registered with the SII's "Special Registry of Nonprofit Organizations Donating or Receiving Unmarketable Products" ("Registro de Instituciones sin Fines de Lucro Distribuidoras y/o Receptoras de Productos cuya Comercialización se ha Vuelto Inviabile").⁶⁴

Comprehensive tax reform completed in 2020 is likely to further encourage food donation as an economical alternative to throwing away food that has lost commercial value but is still safe to consume.⁶⁵ Prior to the reform, taxpayers could claim a full deduction on unmarketable food, regardless of whether it was donated or thrown away.⁶⁶ This option undermined food recovery and donation, as many donors preferred to simply discard safe, surplus food. Through Law 21.210, however, Chile amended Article 31 of the Income Tax Law to only allow this deduction if the safe, unmarketable food is donated.⁶⁷ Taxpayers are precluded from claiming the deduction if food that is still suitable for human consumption is voluntarily destroyed, and they must pay a 40% single tax in the event that such food is destroyed.⁶⁸ Businesses may still claim a deduction for the destruction of food that has lost commercial value due to a defect, expiration, or substantial market changes.⁶⁹

The Chilean government has acknowledged that the purpose of this amendment was to create a disincentive for destroying goods that are necessary for social assistance;⁷⁰ however, it is not clear whether the changes are widely understood and are driving greater food donation. Chile's Internal Revenue Service (*Servicio de Impuestos Internos* or SII) published Circular 53 in August 2020 to help clarify the amendment, yet questions may remain.⁷¹

Recommended Policy Actions

1. OFFER CLARIFYING GUIDANCE TO FOOD BUSINESSES ON THE 2020 TAX REFORM TO ENSURE THAT SAFE, SURPLUS FOOD IS DONATED RATHER THAN VOLUNTARILY DESTROYED.

The recent amendments to the Income Tax Law offer a necessarily distinction to "business losses," confirming that donating food that is still suitable for human consumption is a deductible expense, but voluntarily destroying such food is not. Moreover, food businesses may now be subject to a 40% penalty for discarding safe, surplus food. The SII's Circular 53 offered clarification on this amendment. However, the SII should continue to liaise with food businesses and food recovery organizations to ensure that the amendments are clear. Additional guidance may also be necessary to confirm which of the SII's previous circulars that address food donation remain in effect and relevant to food donors.⁷²

Miscellaneous

Issue Overview

Even though Chile has not developed a national law that specifically addresses food loss, waste, or recovery, Law 20.920 on waste management, the promotion of recycling, and the extension of producer responsibility (*Ley de Responsabilidad Extendida del Productor* or REP Law) demonstrates the government’s commitment to promoting environmental sustainability.⁷³ Adopted in 2016, the REP Law grants MMA the authority to develop processes to prevent waste and promote its recovery, including through ecodesign and separation mechanisms.⁷⁴ It also imposes accountability measures on producers or importers of “priority products” that pollute the environment, including lubricating oil, car batteries, electrical and electronic products, tires, batteries, and packaging materials.⁷⁵

The REP Law does not list “food waste” among these “priority products,” and food loss and waste are not addressed in the framework. However, a provision in Article 4 states that MMA may establish measures to “prevent products suitable for use and consumption” from becoming waste.⁷⁶ It also allows MMA to expand the list of “priority products” for which extended liability of the producer applies through a decree. At the time of this writing, MMA had not taken such action and the REP Law was not interpreted as extending to food waste or food recovery efforts.

Recommended Policy Actions

1. LEVERAGE THE REP LAW TO REDUCE FOOD WASTE AND PROMOTE GREATER FOOD RECOVERY AND DONATION.

Extending the REP Law to address food waste would align with the Law’s goal of promoting greater sustainability and would be a positive step toward promoting greater food recovery and donation. MMA should therefore adopt a decree that lists “food waste” among the “priority products,” to which the Law applies and attaches liability. Recognizing that food supply chain actors may be wary of this liability, the decree should also carefully detail protections from liability under conditions. Specifically, the decree should explain that producers of food waste are *not* subject to liability if they discard food that is no longer safe for human consumption or if they made a good-faith effort to donate the food to a food recovery organization or another intermediary serving individuals in need. The decree should reiterate the tax incentives available to taxpayers that donate safe food that has lost commercial value. The Chilean government should also examine opportunities under the Law to allocate additional funding and programmatic support for food recovery organizations and food donation operations that help to reduce food waste and support supply chain efficiency.

CONCLUSION

While these policy recommendations are intended to help strengthen food donation in Chile, they are not exhaustive. Those committed to reducing food loss and waste and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

ENDNOTES

- ¹ The Global Food Donation Policy Atlas project would not be possible without the support of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice. Those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- ² See PILAR EGUILLOR RECARBARREN, PÉRDIDA Y DESPERDICIOS DE ALIMENTOS: DICIEMBRE DE 2017, OFICINA DE ESTUDIOS Y POLITICAS AGRARIAS (ODEPA) (2017), <https://www.odepa.gob.cl/wp-content/uploads/2017/12/residuosFinal-1.pdf>.
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- ⁵ OECD Data: *Income Inequality*, OECD, <https://data.oecd.org/inequality/income-inequality.htm> (last visited Dec. 24, 2020).
- ⁶ See Aislinn Laing, et al., *Explainer: Chile's inequality challenge: What went wrong and can it be fixed?* REUTERS (Oct. 23, 2019), <https://www.reuters.com/article/us-chile-protests-explainer/explainer-chiles-inequality-challenge-what-went-wrong-and-can-it-be-fixed-idUSKBN1X22RK>.
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- ¹⁰ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World: Transforming Food Systems for Affordable Healthy Diets* 172 (2020), <http://www.fao.org/3/ca9692en/CA9692EN.pdf>.
- ¹¹ FAO AND PAN AMERICAN HEALTH ORG. QUESTIONS AND ANSWERS ABOUT THE CHILEAN FOOD ACT 2 (2019), <http://www.fao.org/3/ca1314en/CA1314EN.pdf>.
- ¹² JUNTA NACIONAL DE AUXILIO ESCOLAR Y BECAS, INFORME MAPA NUTRICIONAL 2017: SITUACIÓN NUTRICIONAL DE LOS PREESCOLARES Y ESCOLARES DE ESTABLECIMIENTOS MUNICIPALIZADOS Y PARTICULARES SUBVENCIÓNADOS DEL PAÍS (2017), <https://www.junaeb.cl/wp-content/uploads/2018/12/Informe-Mapa-Nutricional-2017.pdf>.
- ¹³ Ley No. 20606, Ley sobre composición nutricional de los alimentos y su publicidad, Julio 6, 2012, DIARIO OFICIAL [D.O.] (Chile) *modified by* Ley No. 20869, Ley sobre publicidad de los alimentos, Noviembre 6, 2015, DIARIO OFICIAL [D.O.] (Chile).
- ¹⁴ See PILAR EGUILLOR RECARBARREN, PÉRDIDA Y DESPERDICIO DE ALIMENTOS EN EL SECTOR AGRÍCOLA: AVANCES Y DESAFÍOS: FEBRERO DE 2019 OFICINA DE ESTUDIOS Y POLITICAS AGRARIAS (ODEPA) (2019), https://www.odepa.gob.cl/wp-content/uploads/2019/02/articulo-perdida_desperdicios.pdf.
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- ¹⁶ See Asia-Pacific Economic Cooperation (APEC), APEC Survey Report on Feasible Solutions for Food Loss and Waste Reduction 13, 53, 61-65 (2018), <https://www.apec.org/Publications/2018/09/APEC-Survey-Report-on-Feasible-Solutions-for-Food-Loss-and-Waste-Reduction>.
- ¹⁷ *Id.* at 13.
- ¹⁸ *Pérdida y Desperdicio de Alimentos*, OFICINA DE ESTUDIOS Y POLÍTICAS AGRARIAS, <https://www.odepa.gob.cl/temas-transversales/agricultura-sustentable/perdida-y-desperdicio-de-alimentos> (last visited Dec. 24, 2020). The Committee is chaired by the Office of Agricultural Studies and Policies (*Oficina de Estudios y Políticas Agrarias* or ODEPA) within the Ministry of Agriculture (*Ministerio de Agricultura* or MINAGRI). It comprises members from MINAGRI's Agricultural Research Institute (INIA) and the Chilean Agency for Food Quality and Food Safety (*Agencia Chilena para la Inocuidad y Calidad Alimentaria* or ACHIPIA); the Ministry of the Environment; the Chilean Food Bank Network (*Red de Alimentos* or La Red); the University of Santiago Chile; and the Sustainable Value Chains organization (*organización Cadenas de Valor Sostenibles*).
- ¹⁹ Jorge Molina Alomar, *Desperdicio de alimentos: cuánto ha avanzado Chile para evitar que millones de toneladas de comida terminen en la basura*, PAIS CIRCULAR (Jan. 15, 2020), <https://www.paiscircular.cl/industria/desperdicio-de-alimentos-cuanto-ha-avanzado-chile-para-evitar-que-millones-de-toneladas-de-comida-terminen-en-la-basura>.
- ²⁰ RED DE ALIMENTOS, <http://www.redalimentos.cl> (last visited Dec. 24, 2020).
- ²¹ *Chile*, THE GLOBAL FOODBANKING NETWORK, <https://www.foodbanking.org/stateofglobalfoodbanking/chile.html> (last visited Dec. 24, 2020).
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- ²³ Decree No. 725, *La Código Sanitario*, Enero 31, 1968, DIARIO OFICIAL [D.O.] (Chile) [hereinafter "CÓD. SANIT."].
- ²⁴ *Id.* arts. 102-105.
- ²⁵ RSA, article 102.
- ²⁶ *Id.*
- ²⁷ See e.g., RSA, arts. 227 and 540 offering standards of identity and certain nutrient content and labeling requirements.
- ²⁸ *Id.* art. 110-bis.
- ²⁹ Note that MINSAL amended the RSA following the adoption of Ley No. 20606, Ley sobre composición nutricional de los alimentos y su publicidad, Julio 6, 2012, DIARIO OFICIAL [D.O.] (Chile) and Ley No. 20869, Ley sobre publicidad de los alimentos, Noviembre 6, 2015, DIARIO OFICIAL [D.O.] (Chile).
- ³⁰ See *The CCLAC Region-Regional Coordinator Chile*, CODEX ALIMENTARIUS: INTERNATIONAL FOOD STANDARDS, <http://www.fao.org/fao-who-codexalimentarius/committees/codex-regions/cclac/about/en> (last visited Dec. 24, 2020). The Chilean Agency for Food Quality and Safety (*La Agencia Chilena para la Calidad e Inocuidad Alimentaria* or ACHIPIA), a Presidential Advisory Commission under the Ministry of Agriculture (*Ministerio de Agricultura* or MINAGRI), oversees the harmonization of Chile's food laws with the *Codex Alimentarius*.
- ³¹ RSA, art. 4.
- ³² *Id.* art. 110-bis.
- ³³ CENTRO DE ESTUDIOS DE OPINIÓN CIUDADANA Y LA UNIVERSIDAD DE TALCA, CUÁNTO ALIMENTO DESPERDICIAN LOS CHILENOS 6 (2011), <https://studylib.es/doc/4834182/cu%C3%A1nto-alimento-desperdician-los-chilenos>.
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- ³⁵ HARV. L. SCH. FOOD L. & POL'Y CLINIC & NAT. RES. DEF. COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017).
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- ³⁷ *Id.*
- ³⁸ FAO and WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS, CXS 1-1985 2 (Rev. 2018), <http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?Ink=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%2>

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39 RSA, art. 106.15.

40 *Id.* art. 107 (g).

41 *Id.*

42 *Id.* art. 106.15.

43 *Id.*

44 Commission Regulation No. 1169/2011, 2011 O.J. (L 304) 18 (EC).

45 *Release: Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste*, WRI (Sept. 20, 2017), <https://www.wri.org/news/2017/09/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste>.

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47 MINAGRI & UNIV. DE CHILE, MANUAL DE PÉRDIDAS Y DESPERDICIOS DE ALIMENTOS 53 (2018), http://fucoa.cl/manual_residuos.

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49 *Id.*

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52 See The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c)(1) [United States]; Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina].

53 *Id.* art. 23.

54 See *Id.* art. 1.2 (defining “suppliers” as “*las personas naturales o jurídicas, de carácter público o privado, que habitualmente desarrollen actividades de producción, fabricación, importación, construcción, distribución o comercialización de bienes o de prestación de servicios a consumidores, por las que se cobre precio o tarifa*”). Note that food donation beneficiaries likely fall within the broad definition of “consumer or user” pursuant to art. 1.1.

55 *Id.* art. 47.

56 Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina] <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [<https://perma.cc/ED5J-EE4H>] amended via the National Plan for Food Loss and Waste (Law No. 27454).

57 *Id.*

58 While Chile applies a standard VAT rate of 19% to most food items, it permits taxpayers to reclaim the VAT credit on food donations offered free of charge pursuant to the Income Tax Law. Decree No. 825, Ley Sobre Impuesto a las Ventas y Servicios, art. 8(d), Diciembre 31, 1974 (updated Sept. 2, 2020), DIARIO OFICIAL [D.O.] (Chile).

59 Ley No. 19.885, Incentiva y Norma el Buen Uso de Donaciones que dan Origen a Beneficios Tributarios y los Extiende a Otros Fines Sociales y Públicos, art. 1.10, Aug. 6, 2003 DIARIO OFICIAL [D.O.] *modified by* the Law Modernizing the Income Tax Law.

60 *Id.* art. 2.1 (Donation-receiving organizations include those that provide direct services to respond to immediate needs, such as food.)

61 *Id.* art. 10.

62 *Id.*

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67 Income Tax Law art. 31.

68 *Id.* art. 21.

69 *Id.* art. 31.3.

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73 Ley No. 20.920, Establece Marco para la Gestión de Residuos, la Responsabilidad Extendida del Productor y Fomento al Reciclaje, Junio 1, 2016, DIARIO OFICIAL [D.O.] (Chile) [hereinafter “REP Law”].

74 *Id.*

75 *Id.*

76 *Id.* art. 4(f).



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