



GUATEMALA

GUATEMALA
**LEGAL
GUIDE**
FOOD DONATION
LAW AND POLICY

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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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INTRODUCTION

Purpose of this Legal Guide

Food loss and waste is one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain;¹ this amounts to approximately 1.3 billion tons of food each year that ends up in the landfill.² Food loss or waste occurs at every stage of the food system: during the initial harvest due to low market prices, because of high labor costs and demand for perfect-looking produce; by grocery stores and restaurants overestimating customer demands; and by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land⁵ and accounting for eight percent, or 70 billion tons, of total global greenhouse gas emissions.⁶ Collectively, this damage costs approximately US\$940 billion per year.⁷ Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.⁸ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁹

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, nongovernmental organizations that recover surplus, wholesome food and redirect it to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food-insecure persons. As food insecurity, food loss, and food waste continue to rise, new, innovative models of food recovery have emerged around the world.

However, uncertainty surrounds the laws and regulations most relevant to food donation. To help address the most pressing questions, 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.¹⁰ This innovative partnership maps 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.

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.

This Legal Guide focuses on Guatemala, where an estimated 14% to 16% of all food is lost or wasted,¹¹ while 45.2% of the population was food insecure prior to the novel coronavirus (COVID-19) pandemic.¹² FLPC and GFN, in collaboration with partners in Guatemala,¹³ developed this Legal Guide to help food donors, food banks, and other intermediaries (hereafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that impact food waste and donation efforts in Guatemala.¹⁴ This Legal Guide also serves as a resource for individuals and institutions in other countries that are looking to inform their own local food donation laws and policies.

After providing initial commentary on food loss and recovery in Guatemala, this Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections look closely at the laws generally applicable to food donation: food safety laws and regulations, food

date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, and waste diversion laws that penalize food waste or require recovery. The extent to which Guatemala has developed and subsequently implemented these legal frameworks compared to other countries may vary.

State of Food Insecurity, Food Loss, Waste, and Recovery in Guatemala

Policies to prevent food loss and waste and promote food donation gain new importance when a country’s socioeconomic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in Guatemala, which, despite possessing Central America’s most stable and largest economy, continues to battle pervasive poverty and food insecurity.¹⁵ Between 2017 and 2019 more than 16% of the population was undernourished and more than 45% was moderately or severely food insecure.¹⁶ Chronic malnutrition and stunting further affect 47% of all children under the age of five, giving Guatemala the sixth highest level of chronic malnutrition worldwide and the highest in Latin America and the Caribbean.¹⁷ Rates of poverty, food insecurity, and malnutrition are higher among rural and indigenous populations,¹⁸ as frequent droughts and natural disasters have diminished harvests, labor opportunities, and household incomes within these communities.¹⁹

WHILE THE PANDEMIC’S FULL IMPACT IS NOT YET KNOWN, EVIDENCE AVAILABLE AT THE TIME OF THIS WRITING SUGGESTS THAT IT MAY BE SEVERELY EXACERBATING ISSUES OF POVERTY AND FOOD INSECURITY ACROSS GUATEMALA.

Such conditions have only worsened as a result of the COVID-19 pandemic. While the pandemic’s full impact is not yet known, evidence available at the time of this writing suggests that it may be severely exacerbating issues of poverty and food insecurity across Guatemala. By June 2020 the pandemic had eliminated nearly 500,000 jobs and left 1.2 million people in need of emergency food assistance.²⁰ By September 2020 the World Bank predicted a 3% market contraction and expected 1 million people to fall into poverty, a 6% increase to the country’s poverty rate.²¹

Guatemala by the numbers

Population 17,247,807	Prevalence of food insecurity 45.2%	World Bank classification Upper middle income
Median age 21.3 years	Global Food Security Index 60.6	Human Development Index 0.651
GDP \$78.46 billion	GINI Index 48.3	FLW estimates 52 million tons
Poverty rate 59.3%	Food Sustainability Index N/A	

Source: The Global FoodBanking Network, 2020.

Before the pandemic, Guatemala demonstrated awareness of widespread food insecurity, malnutrition, and hunger and sought to respond accordingly. For example, the government adopted the Law for the National System of Food and Nutritional Security (*Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional*)²² in 2005 and issued accompanying regulations in 2006.²³ This Law aims to reduce the levels of food insecurity

and malnutrition in Guatemala, thereby guaranteeing the right to food, with an emphasis on supporting the country's most vulnerable people.²⁴ In doing so, the Law acknowledges the potential contribution of food donation,²⁵ but it does not elaborate on food donation efforts to explicitly address food loss or waste.

THE GOVERNMENT HAS SHOWN HEIGHTENED INTEREST IN FOOD LOSS AND WASTE IN RECENT YEARS AND HAS SOUGHT TO ADOPT NATIONAL LEGISLATION ON BOTH FOOD DONATION AND THE PREVENTION OF FOOD LOSS AND WASTE.

The government has shown heightened interest in food loss and waste in recent years and has sought to adopt national legislation on both food donation and the prevention of food loss and waste. Pursuant to Guatemala's participation in the Central American Economic Integration System, discussed below, in 2018 Congress considered an initiative to approve a law for food donation (*Iniciativa que Dispone Aprobar Ley para la Donación de Alimentos* or Food Donation Bill).²⁶ The Food Donation Bill sought to promote, orient, and regulate the donation of food suitable for human consumption as a solution to food loss and waste; to foster collaboration between the public and private sector in promoting a culture of food donation; and to contribute to the food security of the most economically and socially vulnerable populations.²⁷ The Food Donation Bill elaborated on specific sanitary and date labeling requirements relevant to food donors and food recovery organizations and introduced additional tax benefits as a means to incentivize greater donation. Upon evaluating the proposal, however, the Commission for Health and Social Welfare and the Commission for Food Security recommended against its adoption. Thus, the Food Donation Bill did not advance through Congress.

In October 2019 the Congressional Food Safety Commission proposed a law against food loss and waste (*Iniciativa que Dispone Aprobar Ley de Prevención de Pérdidas y Desperdicios de Alimentos* or Food Loss and Waste-Prevention Bill).²⁸ The Food Loss and Waste-Prevention Bill recognizes the reduction of food loss and waste as a strategic component to combatting hunger, food insecurity, and nutrition insecurity.²⁹ Accordingly, the Bill features several articles explaining the process for donating food through charitable organizations that distribute food to beneficiaries or through food banks (i.e., nonprofit organizations dedicated and authorized to receive private donations and distribute the food to food-insecure populations).³⁰ After the third congressional debate on the proposal in March 2020, the Bill was still pending consideration at the time of this writing.³¹

Even though Guatemala has not adopted a national law to govern food donation or food loss and waste, private-sector actors have helped accelerate the recovery and redistribution of safe, surplus food. Desarrollo en Movimiento is a nonprofit organization that partners with Guatemalan businesses to rescue and recover food and other essential products, which are then redistributed to community-based organizations.³² In 2019 the organization reportedly redistributed nearly 590,000 kilograms of donated food to over 170,000 beneficiaries.³³ With increased demand due to the COVID-19 pandemic, the organization's impact intensified in 2020, receiving nearly 450,000 kilograms of food and benefiting 225,000 people between January and July of 2020 alone.³⁴

As Guatemala responds to this rising demand and seeks long-term solutions to food loss and waste and food insecurity, relevant actors must recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide provide an overview of Guatemala's food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF THE FOOD DONATION LEGAL FRAMEWORK IN GUATEMALA

The Constitution of Guatemala establishes a constitutional, democratic republic based in civil law.³⁵ The Constitution delegates power across three branches of government: the executive, headed by a democratically elected president and featuring specialized ministries;³⁶ the legislative, comprising a unicameral Congress;³⁷ and the judicial branch, which hierarchically comprises the Supreme Court of Justice, the Appellate Court, Tribunals of First Instance, and Justices of the Peace.³⁸ Food regulation is primarily shaped through acts of Congress, which has the authority to adopt Constitutional Laws (e.g., the Electoral and Political Parties Law) and Ordinary Laws (e.g., the Civil Code, the Commercial Code). The executive branch's administrative bodies further shape the food regulatory framework through Regulations and Individualized Norms (e.g., sentences, administrative resolutions, contracts) that elaborate on or clarify national legislation. These national authorities apply across Guatemala's municipalities, which are otherwise granted full autonomy within constitutional limits.³⁹

Finally, Guatemalan laws and regulations should align with relevant international and regional standards and free trade agreements such as the *Codex Alimentarius*,⁴⁰ and those negotiated by the Central American community, which are discussed below.

The Central American Economic Integration System

Many of Guatemala's national legal frameworks reflect principles negotiated under the General Treaty on Central American Integration (*Tratado General de Integración Económica Centroamericana*)⁴¹ and its Protocol (Guatemala Protocol),⁴² which formalized a Central American Economic Integration System. This system comprises several legal frameworks intended to better facilitate trade and economic unity among its member countries: Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.⁴³ The Secretariat for Central American Economic Integration (*Secretaría de Integración Económica Centroamericana* or SIECA) provides technical support for this integration and promotes coherence with other international standards (such as those contained in the *Codex Alimentarius*⁴⁴) through resolutions, regulations, and agreements.⁴⁵ The *Guatemalan Standards Commission* (*Comisión Guatemalteca de Normas* or COGUANOR) within the Ministry of Economy (*Ministerio de Economía* or MINECO) is responsible for proposing food standards that harmonize these frameworks.⁴⁶ Other ministries may choose to adopt these proposed standards as enforceable regulations.⁴⁷

RELEVANT TO FOOD DONATION, SIECA RESOLUTION NO. 145-2005 APPROVES FOOD DONATION IN THE CENTRAL AMERICAN CUSTOMS UNION AND SETS FORTH THE PRINCIPLES THAT EACH MEMBER COUNTRY MUST FEATURE IN ITS RESPECTIVE NATIONAL FOOD DONATION LAW OR POLICY.

Relevant to food donation, SIECA Resolution No. 145-2005 approves food donation in the Central American Customs Union and sets forth the principles that each member country must feature in its respective national food donation law or policy.⁴⁸ The Resolution stipulates broad principles and objectives for food donation laws and policies, recognizing, for example, that such initiatives may support national development projects and those targeted at a specific population.⁴⁹ The Resolution requires all food donations conducted under the national law and policy to comply with the respective national health regulations of Central American Customs Union member countries.⁵⁰ Furthermore, the Resolution obligates countries to align national legislation on food donations with the stipulated objectives (but does not require the adoption of such legislation); establish minimum requirements for donation-receiving entities and create a public registry of these organizations; and maintain an updated registry of donations.⁵¹

While the Resolution sets forth binding general principles and objectives to which member countries must adhere, whether it is effectively implemented at a national level depends on the legal landscape in each country. To date Guatemala has not enacted a national food donation law or policy consistent with this Resolution. As previously noted, in 2018 Guatemala considered an initiative to approve a law for food donation consistent with SIECA Resolution No. 145-2005.⁵² However, this proposed law was not approved. The Food Loss and Waste-Prevention Bill pending at the time of this writing would similarly promote the donation of food via charitable organizations or a food bank, which would then distribute donations to beneficiaries.⁵³ While Guatemala is still expected to facilitate food donations in accordance with the Resolution, it has not adopted national legal frameworks specifically designed for this purpose.

In addition to SIECA Resolution No. 145-2005, several regional regulatory frameworks directly address or are relevant to food donation. For example, as discussed later in this Legal Guide, the Central American Technical Regulation for the General Labeling of Prepackaged Foods (*Reglamento Técnico Centroamericano, RTCA 67.01.02:10, Etiquetado General de los Alimentos Previamente Envasados (Preenvasados)*)⁵⁴ mandates the inclusion of an “expiration date” and provides some explanation as to the meaning and conveyance of the date label.⁵⁵ This Technical Regulation is intended to reflect the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods (Codex Stan 1-1985) (Rev. 1-1991 and as amended at its 23rd, 24th, 26th, and 28th sessions 1999, 2001, 2003, and 2005).⁵⁶ Other technical regulations apply to nutrition labeling, additives, sanitary licenses and product registration, dairy and cheeses, and oils and fats.⁵⁷ These regulations may also impact Guatemala’s legal framework relevant to food donation.

The Law for the National System of Food and Nutritional Security

While Guatemala has not adopted a national law specifically focused on food donation, the Law for the National System of Food and Nutritional Security (*Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional*) offers a foundation for promoting greater food recovery of safe, surplus food.⁵⁸ The Law establishes a national Food and Nutritional Security Policy (*Política Nacional de Seguridad Alimentaria y Nutricional* or SAN Policy) to guarantee “the right of all persons to have physical, economic, and social access, opportunistically and presently, to food that is adequate in quantity and quality, with cultural relevance, preferably of national origin, as well as to its adequate biological use, to maintain a healthy and active life.”⁵⁹ The Law’s Regulation (*Reglamento de la Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional*) confirms that such access includes the capacity of the population to acquire food via “production, purchase, transfers, and/or donations.”⁶⁰

To guarantee such access and establish strategies designed to ensure food and nutritional security, the Law places the SAN Policy within a broader System of Food and Nutrition Security (*Sistema Nacional de Seguridad Alimentaria y Nutricional* or SINASAN).⁶¹ SINASAN is an organizational framework for policies, plans, and actions related to food security and nutrition. The National Council for Food and Nutritional Security (*El Consejo Nacional de Seguridad Alimentaria y Nutricional* or CONASAN), the members of which are from various government ministries, and the Secretariat for Food and Nutritional Security (*Secretaría de Seguridad Alimentaria y Nutricional* or SESAN) are tasked with overseeing SINASAN’s implementation.⁶² For example, CONASAN recently developed and monitored the country’s Strategic Plan for Food and Nutritional Security 2016-2020 (*Plan Estratégico de Seguridad Alimentaria y Nutricional* or PESAN).⁶³

The Law reiterates the importance of food donation to its objectives through supportive provisions in the SAN Policy. Specifically, the Policy features nine “programmatically axes,” the first of which explicitly addresses food donation as necessary to ensure that food is available to the entire population. This axis calls for the establishment of a “normative, institutional, and operational framework for the management of food contingents and donations, when it is necessary to resort to these sources to overcome critical stages of food shortages.”⁶⁴ This framework for food donations is relatively narrow, given that it only applies to “critical stages of food

shortages” and not to more general initiatives. At the time of this writing, the Guatemalan government had not yet adopted such a framework.

The Law also calls upon SESAN to coordinate with the Planning Secretariat (*Secretaría de Planificación de la Presidencia de la República* or SEGEPLAN) on any offers or donations that fall within policies or programs related to food and nutritional security as well as to document and regulate any relevant donations.⁶⁵ Whether this applies to food, monetary donations, or both, however, is not addressed.

Guatemalan Health Code and Food Safety Regulation

FOOD DONATIONS ARE SUBJECT TO GUATEMALA'S FOOD SAFETY LEGAL REGIME, WHICH IS BASED IN THE GUATEMALAN HEALTH CODE (LA CÓDIGO DE SALUD) AND ITS FOOD SAFETY REGULATION (REGLAMENTO PARA LA INOCUIDAD DE LOS ALIMENTOS OR RSA).

Food donations are subject to Guatemala's food safety legal regime, which is based in the Guatemalan Health Code (*La Código de Salud*)⁶⁶ and its Food Safety Regulation (*Reglamento para la Inocuidad de los Alimentos* or RSA).⁶⁷ The Health Code establishes the overarching framework for food safety rules across different phases of the national food production and commercialization chain.⁶⁸ It features a donation-specific section in Book II, Chapter V.⁶⁹ The articles contained in this section are quite general and do not clearly delineate the food safety standards or requirements to which food donors or food recovery organizations must adhere.⁷⁰ Rather, the provisions serve to mostly reinforce government oversight, which is delegated to the Ministry of Public Health and Social Assistance (*Ministerio de Salud Pública y Asistencia Social* or MSPAS) for processed food products and to the Ministry of Agriculture, Livestock and Food (*Ministerio de Ganadería y Alimentación* or MAGA) for the regulation of fresh, refrigerated, or unprocessed frozen food products.⁷¹

MSPAS and MAGA also have the authority to issue and oversee food safety norms and regulations, such as the RSA, consistent with the Health Code.⁷² The RSA applies to all national, foreign, and international public and private legal and natural persons who produce, process, transform, pack, import, export, store, transport, distribute, and sell food in Guatemala.⁷³ Similar to the Health Code, the RSA also features a brief, distinct chapter that applies to food donation, yet offers few details on the application of food safety standards to donated food.⁷⁴ The RSA also covers several issues that are relevant to food donation, including the granting of sanitary licenses for food-related businesses,⁷⁵ the transportation of food,⁷⁶ safety certification for processed foods,⁷⁷ safety inspections for food businesses,⁷⁸ food labeling and truthful advertising,⁷⁹ and food importation (including the importation of donated foods from overseas) and exportation.⁸⁰

Both the Health Code and the RSA address the liability of producers and distributors of food.⁸¹ These liability considerations may provide a basis for compensation to consumers that allege harm arising from unsafe food, but they do not clearly apply to food donors or food recovery organizations.

Other National Law

While the aforementioned frameworks provide the most direct guidance for and regulation of food recovery and donation, other national laws and programs are also relevant. For example, the Consumer and User Protection Act (*Ley de Protección al Consumidor y Usuario*) introduces the controlling liability scheme that ordinarily applies to exchanges of goods, including food, but which may have limited application to food donation.⁸² The updated Tax Law (*Ley de Actualización Tributaria*)⁸³ and the Value Added Tax Law (*Ley del Impuesto al Valor Agregado*)⁸⁴ also detail the tax regime that influences whether food donation is perceived as an economically viable alternative to discarding safe, surplus food.

Municipal Law

While most food laws and regulations are administered at the national level, local governments in Guatemala have the legal authority to supplement national laws within the scope of their jurisdiction and delegated power. The national territory of Guatemala is hierarchically organized into 8 administrative regions, 22 departments, and 340 municipalities. Several local governments have enacted municipal ordinances consistent with national food standards. At least 13 municipalities, including Nueva Concepción, San Benito, and San Rafael Pie de la Cuesta, for example, have established local licensing systems for businesses that sell food and beverages.⁸⁵ These municipal ordinances do not directly address the issues of food donation and the mitigation of food loss and waste. However, local governments may adopt such measures as food recovery and donation gain importance at the national level.

LEGAL ISSUES RELEVANT TO FOOD DONATION

Food Safety for Donations

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. All donated food should be safe for consumption and comply with applicable food safety laws and regulations. Potential donors, however, are often uncertain about which food safety regulations apply to donated food as opposed to purchased food and about 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 Guatemala, there is still uncertainty surrounding food safety rules for food donation, despite relevant provisions contained in the Health Code and its Food Safety Regulation.

Guatemala's Health Code introduces a food safety standard that applies broadly and presumably extends to donated food.⁸⁶ The Health Code explains that all food establishments or outlets (including any location at which food is manufactured, marketed, distributed, or consumed) must adhere to a general suitability standard.⁸⁷ Since food donors and food recovery organizations are engaged in these aforementioned activities, they are impliedly subject to this requirement. While the Health Code does not define the safety standard, it does recognize the principle that all inhabitants in Guatemala have a right to consume safe food that is of acceptable quality.⁸⁸ The Health Code further states that “altered food,” “contaminated food,” “adulterated food,” and “counterfeit food” are not safe or suitable for human consumption.⁸⁹

As noted above, Book II, Chapter V of the Health Code directly applies to food donation, but only offers general commentary on donated food and the mechanisms for government oversight. Article 146 tasks MSPAS and other related institutions with formulating food donation policies within the nation's food security framework.⁹⁰ It appoints MSPAS as the primary agency to confirm the safety and quality of donated food.⁹¹ This delegation is consistent with SIECA Resolution No. 145-2005, which requires countries to designate a public entity responsible for overseeing donation operations.⁹² However, as discussed earlier in this Legal Guide, Guatemala has not developed national food donation laws or policies, as prescribed under SIECA Resolution or Article 146 of the Guatemalan Health Code.

The Health Code's donation-specific provisions confirm that donated food must be safe and suitable for human consumption. However, the provisions do not clearly identify the food safety standards or requirements to which food donors or food recovery organizations must adhere. The Health Code instead defers to MSPAS and other relevant agencies to issue a regulation defining this safety standard,⁹³ stating only that donated food must have a “shelf life” (“*período de conservación*”) that allows for the distribution and consumption of food that is in good condition.⁹⁴ The Health Code does not define the “shelf life” or further elaborate on this standard.

Consistent with the delegated authority under the Health Code, MSPAS and MAGA issued the RSA to explain several of the Health Code’s provisions. The RSA features two donation-specific articles, but these provisions do not explain safety rules for donated food or define the food safety standards set forth in the Health Code.⁹⁵ Instead, the RSA’s donation-specific rules focus on the administration and facilitation of donated food, with a particular focus on imported food. Article 68 calls for MSPAS, MAGA, the donor agencies, and the recipient organizations to coordinate and expedite the importation and distribution of donated food;⁹⁶ and Article 69 permits health authorities to sample food that is destined for donation to determine if it is suitable for consumption.⁹⁷ The RSA does not elaborate on these requirements. As a result, the RSA offers minimal guidance for food donors and food recovery organizations seeking to safely donate food consistent with Guatemala’s Health Code or relevant food safety regulations.

Date Labeling

Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. And, while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the “expiration date” has passed; intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the time frame for label dates, all of which are intended to reflect when the food will be at its “peak quality.”⁹⁸ Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.⁹⁹ Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is a minimal risk of foodborne illness at that time.¹⁰⁰

Food donors and food recovery organizations may encounter similar challenges discerning the appropriate meaning and application of date labels in Guatemala, which are loosely regulated at the national level. The RSA requires all packaged foods to feature appropriate labeling, but it does not actually explain the country’s date labeling scheme.¹⁰¹ Instead, for all food and beverage labeling, the RSA refers to the “regulations in force,” and, in the absence of such regulations, to the *Codex Alimentarius*, of which Guatemala is a member.¹⁰² Accordingly, date labels in Guatemala should adhere to the Central American Technical Regulation for the General Labeling of Prepackaged Foods, which is intended to correspond with the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods adopted in 1985 and subsequently revised.¹⁰³

Unfortunately, the Central American Technical Regulation does not fully align with the most recent update to the *Codex Alimentarius* General Standard in 2018, which endorses a dual date labeling scheme.¹⁰⁴ The 2018 update to the *Codex Alimentarius* designates the “expiration date” as a safety-based label that may be affixed only to foods that pose an increased health risk once the date has passed; for all other food items, manufacturers may affix a “best before” date to indicate peak quality.¹⁰⁵ The Central American Technical Regulation similarly requires many prepackaged foods to feature an “expiration date” (“*fecha de vencimiento o caducidad*”)¹⁰⁶ and any special instructions for preservation.¹⁰⁷ The Consumer Protection Law (*Ley de Protección al Consumidor y Usuario*), which is discussed later in this Legal Guide, also requires perishable foods to feature an “expiration date.”¹⁰⁸

However, contrary to the 2018 update to the *Codex Alimentarius*, the Central American Technical Regulation does not clearly define the “expiration date” as a safety-based label. Instead, the Technical Regulation defines

the expiration date as the last date on which manufacturers guarantee that the product's *quality* will be of that normally expected by consumers as long as it has been stored according to the indicated conditions (emphasis added).¹⁰⁹ Manufacturers adhering to the Technical Regulation and selecting the “expiration date” pursuant to the RSA may therefore use this label to indicate peak quality rather than safety. As the Technical Regulation states that past-date food is no longer marketable,¹¹⁰ affixing an “expiration date” that indicates quality rather than safety may cause unnecessary food waste because it limits the ability to sell food past a date that is not based on safety risk.

The potential use of the “expiration date” to indicate quality rather than safety may also create a barrier to donation. The Central American Technical Regulation is silent on whether food may be donated after the affixed date has passed. However, under the *Codex Alimentarius*, which defines the “expiration date” as a safety-based label, food is deemed unsafe and thus unsuitable for donation once the date passes. By contrast, food is presumed safe to consume and donate after the quality-based “best before” date.¹¹¹ Cautious donors and food recovery organizations in Guatemala may presume that the “expiration date” indicates safety (consistent with the *Codex Alimentarius*) rather than quality (as currently defined under the Central American Technical Regulation). Accordingly, these actors may discard rather than donate past-date food that is still safe for consumption.

In an attempt to clarify the date labeling scheme in the context of donation, the Guatemalan government sought to introduce restrictions on past-date donations under both the 2018 Food Donation Bill and the 2019 Food Loss and Waste-Prevention Bill. The latter proposal, pending before Congress at the time of this writing, would clarify that the “expiration date” is the last date on which food should be consumed for reasons of safety and quality,¹¹² consistent with the *Codex Alimentarius*' definition. However, the proposed Bill does not provide for a distinct quality-based label, such as “best before,” that may be used instead of an “expiration date” for certain foods. Pending the approval of the Food Loss and Waste-Prevention Bill, manufacturers must use an “expiration date,” and food may not be sold after that date. Whether food may be donated past that date is not addressed under current law.

Liability Protections for Food Donation

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. This fear is particularly heightened when the applicable law provides for “strict liability” (i.e., a donor or food recovery organization that did not act maliciously or intend to inflict harm may still be held legally and financially responsible for any resulting injury). Other countries, including Argentina and the United States, have established protections for both food donors and food recovery organizations to limit the likelihood that these actors will be held responsible for harm.

National law in Guatemala does not provide comprehensive legal protections for food donors and food recovery organizations or specifically address liability imposed on these actors. However, under existing frameworks, food donors and food recovery organizations are unlikely to face liability in the event that a beneficiary alleges harm arising from donated food. In the event of such a claim, Guatemalan courts may consider actions of food donors and food recovery organizations under the Consumer Protection Law (*Ley de Protección al Consumidor y Usuario* or CPL). However, as explained below, this Law is unlikely to apply in the case of donated foods. Consistent with obligations set forth in the Guatemalan Constitution,¹¹³ the CPL governs the “supplier-consumer relationship” generally. The CPL explains that a negligent “supplier” selling goods that are flawed, deficient, or unsafe and that cause harm to a consumer may face monetary penalties.¹¹⁴

In principle, this standard could be used to find a negligent food donor or food recovery organization liable for providing a beneficiary with food that does not meet applicable safety standards. In practice, however, food donors and food recovery organizations are unlikely to face liability under the CPL. This is because liability is based on the negligent “sale” of harmful goods, and most donated food is offered free of charge. Similarly, the CPL defines “suppliers” as those who charge a price or fee for a good.¹¹⁵ Since food donors and food recovery organizations usually deliver donated food free of charge, they would not qualify as “suppliers” under the CPL.

As a result, food donors and food recovery organizations would not be held liable for harm to beneficiaries even if the harm resulted from a donor's or intermediary's negligence in handling the donated food.

Even though Guatemala does not offer comprehensive protections, the narrow scope of the CPL's liability provisions should therefore give food donors and food recovery organizations some peace of mind about the potential risks of liability stemming from food donation.

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food banks and intermediaries provide jobs or sponsor community development, while recipients of donated food are able to spend limited financial resources on other basic goods and services. But food donation can also be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food rather than donate it. Some countries are addressing this issue by offering tax incentives and removing financial barriers to food donation.

Incentives

Tax incentives can significantly support food donation and help reduce food loss and waste. For example, corporate donors may be more likely to donate surplus food if they receive a charitable deduction or credit to offset the cost of transportation and logistics. These tax incentives could help reduce the burden of the income tax or other taxes levied on businesses. Most corporate taxpayers in Guatemala, for example, are subject to a steep income tax rate of 25% that is levied on net profits from trade or business activities.¹¹⁶

Guatemala currently offers limited tax benefits for donation pursuant to the Tax Law (*Ley de Actualización Tributaria*), which amended the income tax regime in 2012.¹¹⁷ Under the Tax Law, individuals and businesses may claim a tax deduction of up to five percent of the donor's annual gross income for monetary or in-kind donations made to qualified receiving institutions.¹¹⁸ Such institutions include nonprofit organizations and foundations primarily engaged in charitable activities or social assistance (among others)¹¹⁹ and that have legally registered as tax-exempt with the governmental tax authority (*Superintendencia de Administración Tributaria* or SAT).¹²⁰ These organizations are permitted to generate income or accumulate assets, but must do so only through donations or fees and must exclusively apply these funds to support the organization's primary objectives.¹²¹

The Tax Law imposes stringent limits on this income tax benefit, capping the available charitable deduction at 500,000 quetzales (approximately US\$65,000) per year.¹²² For in-kind donations of food (and other goods) the deduction also cannot exceed the cost of acquiring or producing the donated good as calculated at the date of donation, sometimes known as the "basis value."¹²³ This restriction is unique to Guatemala, as many countries will limit the deduction to the market value of the donated food but not to the "basis value."¹²⁴

Food donors and food recovery organizations in Guatemala have expressed concern that these restrictions undermine the incentive to donate,¹²⁵ prompting the government to consider potential adjustments. The Food Donation Bill introduced in 2018, for example, proposed an increased deduction cap of up to 7.5% of the donor's gross income, not to exceed 750,000 quetzales (approximately US\$97,500) per year, subject to certain restrictions.¹²⁶ As previously noted, Congress had not approved this proposed legislation at the time of this writing, so food donations remain eligible only for the benefits set forth in the Tax Law.

Barriers

While certain tax schemes may encourage food donations, they may also be potential deterrents. In many countries the value-added tax (VAT), in particular, presents a financial barrier to donating food. The VAT is levied on goods at each stage of the supply chain, often through a system of debits (an output VAT) and credits (an input VAT). The VAT debit is the amount that a VAT-registered business will charge on its own sale of the good, whereas the VAT credit is the amount invoiced to the VAT-registered business upon the good's purchase. In Guatemala “small taxpayers” (*“pequeños contribuyentes”*) making less than 150,000 quetzales (approximately US\$19,500) per year are required to pay a five percent VAT on taxable goods each month,¹²⁷ and “general taxpayers” exceeding this income threshold are required to pay the standard 12% VAT applied through this system of debits and credits.¹²⁸

Many countries have designated food donation as a nontaxable event, meaning that donation-receiving entities do not have to pay a VAT debit on donated foods. This VAT exemption benefits donation-receiving entities, but shifts the financial burden onto food donors that are often unable to reclaim the VAT credit on the donated food as they normally would at the point of sale. As a result, donors are left with a technical balance in favor (a VAT credit that exceeds the VAT debit) that may accumulate to a substantial amount. If a country's tax authority does not allow donors to reclaim the VAT credit on donating surplus food, the tax owed seems like a penalty for donating the surplus food—particularly if the country otherwise permits donors to reclaim the VAT for unmarketable food that is thrown away.

The Guatemalan government has constructed the VAT Law to ensure that donors are not left with a technical balance in favor so that the VAT is not a potential barrier to donation. Chapter IV, Article 7 of the VAT Law exempts all contributions and donations made to legally registered nonprofit educational, social assistance, or religious associations, foundations, and institutions.¹²⁹ This exemption means that donors do not owe the outstanding VAT credit on food that has been donated, provided the donation is made to a food bank or other food recovery organization that has registered as a social assistance organization with the SAT.

Donation Requirements or Food Waste Penalties

Some countries have created food donation requirements or impose monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes) to influence business behavior and promote sustainable food systems. At the time of this writing, no laws had been enacted in Guatemala that would require food donation or penalize food waste. However, if enacted, the Food Loss and Waste-Prevention Bill would prohibit restaurants from disposing unsold, cooked food and require them to donate the food to “people in situations of food insecurity.”¹³⁰ Only food that retains its “physical and nutritional integrity”¹³¹ would be donated. The Bill allows for the imposition of monetary sanctions for violating provisions, which may include failure to donate safe, surplus food.¹³² If enacted, this donation requirement may help promote food security and mitigate unnecessary food waste.

Grants and Government Incentive Programs

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 insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support new innovations and emerging technologies that will make food donation more efficient and sustainable. While Guatemala does not currently administer grants or incentives related to food recovery or donation, such initiatives could fall within the scope of the SAN Policy, discussed previously in this Legal Guide.¹³³

CONCLUSION

This Legal Guide is intended to identify Guatemala's current laws, policies, and programs that relate to food waste or food donation. While the government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net that reaches the most remote and food-insecure communities. The Guatemalan government has considered proposed legislation focused on food loss, waste, and donation, but had not adopted such frameworks at the time of this writing. Nevertheless, laws and regulations relating to food safety, date labeling, liability protection, and taxes continue to impact food recovery and food donation operations around the country.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for dialogue about food loss and waste prevention and the value of food recovery to Guatemala's food security, economic stability, and environmental sustainability. A separate document produced under the Global Food Donation Policy Atlas project sets forth policy recommendations specific to Guatemala to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies, and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in Guatemala, donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

ENDNOTES

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- ² *Id.*
- ³ HARV. L. SCH. FOOD L. & POL’Y CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 1 (2016), https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf.
- ⁴ FOOD & AGRIC. ORG. OF THE U.N., FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES: SUMMARY REPORT 6 (2011), <http://www.fao.org/3/i3347e/i3347e.pdf>.
- ⁵ *Id.*
- ⁶ FOOD & AGRIC. ORG. OF THE U.N., FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015), <http://www.fao.org/3/a-bb144e.pdf>.
- ⁷ *Id.*
- ⁸ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World 2019: Safeguarding Against Economic Slowdowns and Downturns* 6 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf>. This number has likely increased due to the novel coronavirus (COVID-19) pandemic. Projections indicate that the crisis may add between 83 and 132 million people to the total number of undernourished in the world in 2020. FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World 2020: Transforming Food Systems for Affordable Healthy Diets* 3 (2020), <http://www.fao.org/3/ca9692en/CA9692EN.pdf>.
- ⁹ G.A. Res. 70/1 at 22 (Oct. 21, 2015). “By 2030, to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.”
- ¹⁰ 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.
- ¹¹ FOOD & AGRIC. ORG. OF THE U.N., *The State of Food and Agriculture 2019: Moving Forward on Food Loss and Waste Reduction* 142 (2019), <http://www.fao.org/3/ca6030en/ca6030en.pdf>.
- ¹² FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World 2020: Transforming Food Systems for Affordable Healthy Diets* 171 (2020), <http://www.fao.org/3/ca9692en/CA9692EN.pdf>.
- ¹³ FLPC would like to express its gratitude to Desarrollo en Movimiento for its contribution to this Legal Guide as well as to many other NGOs, businesses, and government agencies that shared input with the FLPC team.
- ¹⁴ FLPC and GFN recognize that the legal and policy landscape relevant to the prevention of food loss and waste and promotion of food donation is changing rapidly. According, the contents of this Legal Guide reflect the state of the landscape at the time of research (February to December 2020).
- ¹⁵ *The World Bank in Guatemala: Overview*, THE WORLD BANK (Sept. 4, 2020), <https://www.worldbank.org/en/country/guatemala/overview>.
- ¹⁶ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *supra* note 12 at 171.
- ¹⁷ US AGENCY FOR INT’L. DEV., GUATEMALA: NUTRITION PROFILE 1 (2018), <https://www.usaid.gov/sites/default/files/documents/1864/Guatemala-Nutrition-Profile-Mar2018-508.pdf>.
- ¹⁸ WORLD FOOD PROGRAMME, WFP GUATEMALA COUNTRY BRIEF 2 (2019), https://docs.wfp.org/api/documents/WFP-0000112440/download/?_ga=2.40022818.1697814950.1585270635-568814590.1585270635.
- ¹⁹ US AGENCY FOR INT’L. DEV., FOOD ASSISTANCE FACT SHEET: GUATEMALA 1 (Updated Apr. 7, 2020), https://www.usaid.gov/sites/default/files/documents/1866/FFP_Fact_Sheet_Guatemala.pdf.
- ²⁰ *Number of people facing hunger in Guatemala doubled due to COVID-19*, ACTION AGAINST HUNGER (June 15, 2020), <https://www.actionagainsthunger.org/story/number-people-facing-hunger-guatemala-doubled-due-covid-19>.
- ²¹ *The World Bank in Guatemala: Overview*, THE WORLD BANK (Sept. 4, 2020), <https://www.worldbank.org/en/country/guatemala/overview>.
- ²² Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional, Decreto No. 32-2005, 6 abril 2005, DIARIO DE CENTRO AMÉRICA [D.C.A.] [hereinafter “Law for the National System of Food and Nutritional Security”].
- ²³ Reglamento de la Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional, Acuerdo Gubernativo No. 75-2006, 28 marzo 2006, DIARIO DE CENTRO AMÉRICA [D.C.A.].
- ²⁴ See Law for the National System of Food and Nutritional Security, art. 1.
- ²⁵ *Id.* art 22(l),(m).
- ²⁶ Congreso de la Republica Guatemala, C.A., Dirección Legislativa No. 5424, Iniciativa que Dispone Aprobar Ley para la Donación de Alimentos, 12 abril 2018, https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/1523976189_5424.pdf [hereinafter “Food Donation Bill”]. See also Congreso de la República de Guatemala, Dictamen en Conjunto de la Iniciativa de Ley Número 5424 que Dispone Aprobar “Ley para la Donación de Alimentos” (November 6, 2018), https://www.congreso.gob.gt/detalle_pdf/iniciativas/5457#gsc.tab=0. In November 2018 the Commission for Health and Social Welfare and the Commission for Food Security issued a report recommending against adopting the Law in its present form, citing certain gaps and areas of discrepancy with existing legal frameworks.
- ²⁷ Food Donation Bill, art. 2.
- ²⁸ Congreso de la Republica Guatemala, C.A., Dirección Legislativa No. 5633, Iniciativa que Dispone Aprobar Ley de Prevención de Pérdidas y Desperdicios de Alimentos, 22 Octubre 2019, https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/b16e5-5633.pdf [hereinafter “Food Loss and Waste-Prevention Bill”].
- ²⁹ Food Loss and Waste-Prevention Bill, art. 2.1.
- ³⁰ Food Loss and Waste-Prevention Bill, arts. 8.1, 8.2.
- ³¹ See *Información iniciativa 5633*, CONGRESO DE LA REPÚBLICA, https://www.congreso.gob.gt/detalle_pdf/iniciativas/5620 (last visited Dec. 30, 2020). If adopted, this proposed Law could significantly alter the food donation legal landscape. Nevertheless, at the time of this writing, this Bill was still pending before Congress. This Legal Guide sporadically references this Bill where relevant, but it focuses predominantly on the legal frameworks in effect in Guatemala as of December 2020.
- ³² *Quienes Somos*, DESARROLLO EN MOVIMIENTO, <http://www.desarrolloenmovimiento.org> (last visited Dec. 30, 2020).
- ³³ *Desarrollo en Movimiento: 1 Millón 500 mil libras de alimentos donados*, CRN NOTICIAS (October 15, 2019), <https://crnnoticias.com/desarrollo-en-movimiento-1-millon-500-mil-libras-de-alimentos-donados>.
- ³⁴ DESARROLLO EN MOVIMIENTO, <http://www.desarrolloenmovimiento.org> (last visited Dec. 30, 2020).
- ³⁵ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA.
- ³⁶ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, Ch. III.
- ³⁷ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, Ch. II.
- ³⁸ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, Ch. IV.

³⁹ CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, Ch. IV, art. 253.

⁴⁰ *Codex Alimentarius: International Food Standards*, FOOD & AGRIC. ORG. OF THE U.N., WORLD HEALTH ORG., <http://www.fao.org/fao-who-codexalimentarius/en> (last visited Jan. 11, 2021).

⁴¹ TRATADO GENERAL DE INTEGRACIÓN ECONÓMICA CENTROAMERICANA, 13 diciembre 1960, https://www.sica.int/documentos/tratado-general-de-integracion-economica-centroamericano_1_449.html [hereinafter “General Treaty on Central American Integration”].

⁴² PROTOCOLO AL TRATADO GENERAL DE INTEGRACIÓN ECONÓMICA CENTROAMERICANA (PROTOCOLO DE GUATEMALA), 29 octubre 1993, https://www.sica.int/documentos/protocolo-al-tratado-general-de-integracion-economica-centroamericana-protocolo-de-guatemala_1_116843.html.

⁴³ *See Legal Framework of Central American Integration*, SICE FOREIGN TRADE INFO. SYS., ORG. OF AM. STATES, http://www.sice.oas.org/sica/instmt_e.asp (last visited Jan. 11, 2021).

⁴⁴ FOOD & AGRIC. ORG. OF THE U.N. AND WORLD HEALTH ORGANIZATION, *CODEX ALIMENTARIUS: INTERNATIONAL FOOD STANDARDS* (2020), <http://www.fao.org/fao-who-codexalimentarius/en> (last visited Jan. 6, 2021).

⁴⁵ *Resolutions*, SIECA & SICA, <https://www.sieca.int/index.php/economic-integration/legal-instruments/administrative-acts/ministers-council-of-economic-integration/resolutions/?lang=en> (Resolutions are compulsory acts that establish broad principles and objectives for regional policymaking); *Regulations*, SIECA & SICA, <https://www.sieca.int/index.php/economic-integration/legal-instruments/administrative-acts/ministers-council-of-economic-integration/regulations/?lang=en> (Regulations are technolegal frameworks that cover subject areas relevant to trade); and *Agreements*, SIECA & SICA (Context agreements are instruments that set forth terms for specific actions or missions, articulate strategies for cooperation, or memorialize an agreed interpretation of resolutions or regulations).

⁴⁶ Ley del Sistema Nacional de la Calidad, Decreto No. 78-2005, 8 diciembre 2005, DIARIO DE CENTRO AMÉRICA [D.C.A.]; MINISTERIO DE ECONOMÍA, <https://www.mineco.gob.gt> (last visited Jan. 22, 2021).

⁴⁷ *Id.*

⁴⁸ Resolución No. 145-2005 (COMIECO-XXXII) Principios Generales para la Administración de Donaciones de Alimentos e Insumos Agropecuarios, en el Marco de la Unión Aduanera Centroamericana, 26 septiembre, 2005, <http://web-sieca.s3.amazonaws.com/actos%20administrativos/resoluciones/comieco/145-2005%20.pdf> [hereinafter “SIECA Resolution No. 145-2005”].

⁴⁹ *Id.* Principios Generales C.

⁵⁰ *Id.* Principios Generales D.

⁵¹ *Id.* Obligaciones básicas.

⁵² Food Donation Bill *supra* note 26.

⁵³ Food Loss and Waste-Prevention Bill, art. 8.1.

⁵⁴ Reglamento Técnico Centroamericano, Etiquetado General de los Alimentos Previamente Envasados (Preenvasados), RTCA 67.01.02:10, 14 junio 2018, <http://web-sieca.s3.amazonaws.com/actos%20administrativos/resoluciones/comieco/280-2012ANEXO.pdf> [hereinafter “SIECA Technical Regulation on Labeling”].

⁵⁵ *Id.* art. 5.8.4.

⁵⁶ *Id.*

⁵⁷ *See Reglamentaciones Técnicas*, SIECA, <https://www.sieca.int/index.php/integracion-economica/integracion-economica/libre-comercio/reglamentaciones-tecnicas> (last visited Jan. 11, 2021).

⁵⁸ Law for the National System of Food and Nutritional Security, art. 1.

⁵⁹ *Id.*

⁶⁰ Las siguiente reformas al Reglamento de la Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional, Contenido en Acuerdo Gubernativo Numero 75-2006, de fecha 23 de febrero de 2006, Acuerdo Gubernativo No. 100-2008, art. 23, 10 marzo 2008.

⁶¹ Law for the National System of Food and Nutritional Security, art. 6.

⁶² *Id.* ch. III.

⁶³ CONSEJO NACIONAL DE SEGURIDAD ALIMENTARIA Y NUTRICIONAL (CONASAN), PLAN ESTRATÉGICO DE SEGURIDAD ALIMENTARIA Y NUTRICIONAL 2016-2020 (2016), <http://www.sesan.gob.gt/wordpress/wp-content/uploads/2017/07/PESAN-2016-2020.pdf>.

⁶⁴ Law for the National System of Food and Nutritional Security, art. 7.1.

⁶⁵ *Id.* at Art. 22(l) & 22(m).

⁶⁶ Código de Salud, Decreto Número 90-97, 3 noviembre 1997, Lib. II, Tít. I, Cap. V [hereinafter “Guatemala Health Code”].

⁶⁷ Reglamento para la Inocuidad de los Alimentos, Acuerdo Gubernativo Número 969-99, 30 diciembre 1999 [hereinafter “RSA”].

⁶⁸ Guatemala Health Code, Ch. V.

⁶⁹ *Id.* sec. III.

⁷⁰ *Id.* arts.146-149.

⁷¹ *Id.* sec. I.

⁷² *Id.* sec. III.

⁷³ RSA, art. 3.

⁷⁴ RSA, Title IX, Ch. II, Art. 68, 69.

⁷⁵ *Id.* Title III.

⁷⁶ *Id.* Title IV.

⁷⁷ *Id.* Title V.

⁷⁸ *Id.* Title VI.

⁷⁹ *Id.* Title VIII.

⁸⁰ *Id.* Title IX.

⁸¹ *See, e.g.*, Guatemala Health Code, sec. IV, arts. 102, 185; RSA art. 55.

⁸² Ley de Protección al Consumidor y Usuar, Decreto No. 06-2003, 11 febrero 2003, DIARIO DE CENTRO AMÉRICA [D.C.A.]; Reglamento de la Ley de Protección al Consumidor y Usuario, Acuerdo Gubernativo Número 777-2003, 28 noviembre 2003 [hereinafter “CPL”].

⁸³ Ley de Actualización Tributaria, Decreto Número 10-2012, DIARIO DE CENTRO AMÉRICA [D.C.A.] [hereinafter “Tax Law (Update)”].

⁸⁴ Ley del Impuesto al Valor Agregado, Decreto No. 27-92, 7 Mayo 1992 DIARIO DE CENTRO AMÉRICA [D.C.A.] [hereinafter “VAT Law”]; Reglamento del Libro I de la Ley de actualización tributaria que establece el Impuesto Sobre La Renta, Acuerdo 213-2013, 8 Mayo 2013, DIARIO DE CENTRO AMÉRICA [D.C.A.].

⁸⁵ *See e.g.*, Acta Municipal No. 68-2019.4, Reglamento para la Autorización Municipal de Licencias para el Funcionamiento de Establecimientos Dedicados al Expendio de Alimentos y Bebidas, Hospedaje, en el Municipio de Nueva Concepción, Departamento de Escuintla (October 22, 2019); Acta Municipal No. 64-2017.3, Reglamento para el Registro y Autorización de Licencia Municipal para Establecimientos Comerciales, de Servicio, Industriales, Diversiones, Expendio de Alimentos y Bebidas, de Arreglo Personal, Hospedaje y Espectáculos Públicos (November 7, 2017); Acta Municipal No. 41-2013.6, Reglamento para Autorizar el Funcionamiento de Establecimientos de Expendio de Alimentos y Bebidas, Hospedaje, Higiene o Arreglo Personal, Recreación, Cultura y Otros que por su Naturaleza se Encuentren Abiertos al Público, en el Municipio de San Rafael Pie de la Cuesta (July 12, 2013).

86 See RSA Tit. I, Art. 3 (subjecting all public and private legal and natural persons who produce, process, transform, pack, import, export, store, transport, distribute, and sell food in Guatemala to the standards contained therein).

87 Guatemalan Health Code, ch. V, sec. III, art. 139.

88 *Id.* art. 128.

89 *Id.* art. 127.

90 *Id.* art. 146.

91 *Id.* art. 149.

92 SIECA Resolution No. 145-2005, General Principle E & F.

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96 *Id.* art. 68.

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98 HARV. L. SCH. FOOD L. & POL'Y CLINIC & NAT. RESOURCES DEF. COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY, 19 (2017), <https://www.nrdc.org/sites/default/les/dont-waste-donate-report.pdf>.

99 U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-19-407, DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION (2019), <https://www.gao.gov/assets/710/701238.pdf>.

100 HARV. L. SCHOOL FOOD L. & POL'Y CLINIC & NAT. RESOURCES DEFENSE COUNCIL *supra* note 95 at 19.

101 RSA, art. 54.1. The RSA only explains that the manufacturer is responsible for setting the "expiration date."

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103 SIECA Technical Regulation on Labeling.

104 See 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/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf.

105 *Id.*

106 SIECA Technical Regulation on Labeling, art. 5.8. This date may be expressed as "expiration date (*fecha de vencimiento*)," "consume before... (*consumir antes de...*)," "expiry date (*fecha de caducidad*)," "expires on... (*expira el...*)," among others. Products from bakeries or pastry shops are exempt from the date labeling requirements for prepackaged foods, based on the assumption that these items are generally consumed within 24 hours from their time of production. For products that have an expiration date of less than three months, the day, month, and year must be included; meanwhile, for products that have an expiration date of more than three months, the month and year must be included.

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108 CPL, Article 42.

109 SIECA Technical Regulation on Labeling, art. 5.8.

110 *Id.*

111 See EFSA PANEL ON BIOLOGICAL HAZARDS (BIOHAZ), SCIENTIFIC OPINION: GUIDANCE ON DATE MARKING AND RELATED FOOD INFORMATION: PART 1 (DATE MARKING), EFSA J. 4 (2020).

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113 See CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE GUATEMALA, arts. 96, 99, 119, and 130 (collectively establishing the obligation of the country to protect consumers from food that fails to meet minimum health or safety requirements and to intervene in the event that consumers are harmed).

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118 *Id.* at Art. 21(22).

119 See *Ley de Organizaciones no Gubernamentales para el Desarrollo*, Decreto No. 02-2003, art. 2, 3.

120 *Id.*

121 Income Tax Law Art. 6.

122 Tax Law (Update), art. 21(22).

123 *Id.*

124 In Peru, for example, taxpayers are prohibited from claiming a deduction for donations that exceeds 1.5% of the taxpayers' net food sales for the fiscal year. See Informe No. 140-2019-SUNAT/7T0000, octubre 4, 2019, <http://www.sunat.gob.pe/legislacion/ocios/2019/informe-ocios/140-2019-7T0000.pdf>.

125 Input from stakeholders in Guatemala, on record with FLPC (October 2020).

126 Food Donation Bill, art. 19.

127 VAT Law, art. 47.

128 *Id.* Arts. 10, 45.

129 *Id.* art. 7(9).

130 Food Loss and Waste-Prevention Bill, art. 21.

131 *Id.*

132 *Id.* art. 27.

133 See Law for the National System of Food and Nutritional Security, art. 7.1.



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