



GUATEMALA

GUATEMALA **RECOMMENDATIONS** 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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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 Policy 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 program.

In-country stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guides 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 Guatemala, where an estimated 14% to 16% of all food is lost or wasted,² while 45.2% of the population was food insecure 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 Guatemala 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 Guatemala.



SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document provide a starting point for stakeholders in Guatemala 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 the Health Code and its Food Safety Regulation (RSA) to further explain the food safety requirements applicable 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:

- **Coordinate with the Secretariat for Central American Economic Integration (SIECA) to introduce a standardized dual date labeling scheme in the Central American Technical Regulation for the General Labeling of Prepackaged Foods.**
- **Amend the RSA to define the “expiration date” as a safety-based label and to permit the donation of food prior to this date.**
- **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:

- **Adopt 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:

- **Increase the tax deduction available for qualifying food donations and expand the benefit to include associated expenses.**
- **Offer tax credits for donations made to food recovery organizations and other intermediaries that distribute donated food to food-insecure populations.**

To ensure that food donation is prioritized as a solution to hunger, food insecurity, and food loss and waste, particularly in the most remote communities, the government should:

- **Adopt a national law or policy for the prevention of food loss and waste and the promotion of food donation.**

INTRODUCTION

Policies designed to both prevent food loss and waste and promote food donation are critical for countries responding to simultaneous burdens of poverty, malnutrition, and food insecurity. Such is the case in Guatemala, where the latest reports show that 59% of the population is living below the poverty line,⁴ 47% of children are malnourished, and more than 45% of the population is food insecure.⁵ Such conditions disproportionately impact rural and indigenous populations,⁶ as frequent droughts and natural disasters have diminished harvests, labor opportunities, and household incomes within these communities.⁷ While the pandemic's full impact on food security and hunger in Guatemala remains unknown, evidence indicates it may be quite severe. By September 2020, the World Bank predicted that an additional 1 million people would slip into poverty as the crisis persists.⁸

Prior to the pandemic, Guatemala demonstrated awareness of widespread food insecurity, malnutrition, and hunger and sought to respond accordingly. The 2006 Law for the National System of Food and Nutritional Security (*Ley del Sistema Nacional de Seguridad Alimentaria y Nutricional*),⁹ for example, not only seeks to reduce food insecurity and malnutrition, but also recognizes that food donation may be critical to this effort.¹⁰ The Law established a national Food and Nutritional Security Policy (*Política Nacional de Seguridad Alimentaria y Nutricional* or SAN Policy) featuring nine “programmatic axes,” the first of which explicitly addresses food donation as necessary to ensure that food is available to the entire population.¹¹ The 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.”¹²

PRIOR TO THE PANDEMIC, GUATEMALA DEMONSTRATED AWARENESS OF WIDESPREAD FOOD INSECURITY, MALNUTRITION, AND HUNGER AND SOUGHT TO RESPOND ACCORDINGLY.

This attention to food donation reflects the direction of the Central American Economic Integration System—a trade bloc that includes Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama.¹³ In 2005 the Secretariat for Central American Economic Integration (*Secretaría de Integración Económica Centroamericana* or SIECA), which helps facilitate trade and economic unity among member countries, issued a broad statement of support for food donation laws and policies.¹⁴ SIECA Resolution No. 145-2005 outlines key principles and objectives for leveraging food donation as a development tool.¹⁵ In 2018, consistent with this Resolution, Congress considered adopting a food donation law (*Iniciativa que Dispone Aprobar Ley para la Donación de Alimentos* or Food Donation Bill).¹⁶ The Food Donation Bill was evaluated by the Commission for Health and Social Welfare and the Commission for Food Security, which recommended against adoption of the proposal as written.¹⁷

In October 2019 the Congressional Food Safety Commission introduced an initiative to approve 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).¹⁸ The Food Loss and Waste-Prevention Bill recognizes the reduction of food loss and waste as a strategic component to combating hunger as well as food and nutrition insecurity.¹⁹ At the time of this writing, this proposed Law was still pending consideration in Congress.

Even without a national framework controlling food loss, waste, or recovery, 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.²⁰ In 2019 the organization reportedly redistributed nearly 590,000 kilograms of donated food to over 170,000 beneficiaries.²¹ 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.²²

Adopting policy interventions to strengthen these existing authorities will ultimately contribute to greater food recovery and food donation in Guatemala. 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 Donation

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 Guatemala this uncertainty results from insufficient detail within the country's food safety legal framework, which includes the Health Code (*La Código de Salud*)²³ and its Food Safety Regulation (*Reglamento para la Inocuidad de los Alimentos* or RSA).²⁴ Both the Health Code and the RSA feature sections that directly address food donation, but fall short of providing tailored or specific guidance for food donors and food recovery organizations.²⁵

Chapter V of the Health Code, for example, only offers general commentary on donated food and the mechanisms for government oversight. Consistent with SIECA Resolution No. 145-2005, which requires member countries to designate a public entity to oversee donation operations,²⁶ the Health Code designates the Ministry of Public Health and Social Assistance (*Ministerio de Salud Pública y Asistencia Social* or MSPAS) as the primary agency for confirming the safety and quality of donated food.²⁷ It further defers to MSPAS and other relevant agencies such as the Ministry of Agriculture, Livestock and Food (*Ministerio de Ganadería y Alimentación* or MAGA) to issue a regulation elaborating on the safety standards for donated food.²⁸ The Health Code offers minimal guidance for these agencies, merely suggesting 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.²⁹ The Health Code does not further define this minimum food safety 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 a few donation-specific articles, but these scant provisions do not explain safety rules for donated food or define the food safety standards set forth in the Health Code.³⁰ Instead, the RSA's donation-specific provisions clarify that MSPAS and MAGA are responsible for coordinating the timely importation and distribution of donated food.³¹ The provisions also permit the health authorities to confirm that donated food is suitable for human consumption.³² The RSA does not explain how the health authorities should make this determination, nor does it identify relevant food safety rules for food donors and food recovery organizations.

Attempting to discern which food safety rules apply to food donation is a burdensome and challenging task, especially since the government has not provided guidance on this issue. Food donors may, therefore, avoid donating surplus food, and food recovery organizations may refuse to accept certain donations that are otherwise safe for consumption. Understanding which food safety requirements apply to donated food is important for minimizing potential harm to donation recipients and ensuring that food safe for consumption is donated rather than discarded. However, the current system lacks clarity for food donors and food recovery organizations as to the applicable provisions.

Recommended Policy Actions

1. AMEND THE HEALTH CODE AND ITS FOOD SAFETY REGULATION (RSA) TO FURTHER EXPLAIN THE FOOD SAFETY STANDARDS APPLICABLE TO FOOD DONATION.

To eliminate the uncertainty about which food safety standards apply to donated food, MSPAS and MAGA should expand upon the RSA's existing donation-specific provisions. As written, the RSA fails to identify which regulatory provisions or food safety rules apply to food donors and food recovery organizations. The RSA also fails to elaborate on the Health Code's requirement that all donated food must be in "good condition," a term that does not have a transparent and unequivocal definition.³³ Consistent with their delegated authority, MSPAS and MAGA should amend the RSA to define this minimum suitability standard, further explain the "acceptance criteria" and "quality and safety" terms featured in the Health Code, and clarify which pertain to donated food.³⁴ The RSA should offer clear and specific guidance on food safety standards for transporting and distributing donated food that is not only imported but also recovered from the domestic food supply chain.³⁵ Further, since the RSA contains certain provisions that impact marketability but not safety (e.g., rules on packaging), the Regulation's donation-specific section should clearly enumerate which of its provisions are relevant to food donors and food recovery organizations.

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

Clear guidance from MSPAS and other relevant agencies on which food safety provisions apply to donated food would ease concerns of food donors and food recovery organizations. Ensuring that these actors understand that sanitary requirements apply to donated food would also support increased and safer donation operations. MSPAS, which is tasked as the primary agency to confirm the safety and quality of donated food,³⁶ should draft this guidance consistent with its delegated authority under the Health Code. As referenced above and discussed in greater detail in the Guatemala Legal Guide, Article 146 of the Health Code tasks MSPAS and other related institutions with formulating food donation policies within the nation's food security framework.³⁷ Agency guidance provides a relatively quick and less formal vehicle through which MSPAS could carry out this responsibility and provide much-needed clarification to food donors and food recovery organizations.

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 foodborne illnesses over time. Cautious donors and food recovery organizations, however, may discard food after the date even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels with indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.³⁸ 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.³⁹ 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.

This cycle of confusion and waste occurs in Guatemala under the current date labeling regime, which is loosely regulated at the national level under the RSA.⁴⁰ The RSA itself does not elaborate on the date labeling scheme but instead refers to the “regulations in force” (i.e., the Central American Technical Regulation for the General Labelling of Prepackaged Foods (*Reglamento Técnico Centroamericano, RTCA 67.01.02:10, Etiquetado General de los Alimentos Previamente Envasados (Preenvasados)*)).⁴¹ This Technical Regulation is intended to harmonize standards under the Central American Economic Integration System and is designed to conform with 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 in 1999, 2001, 2003, and 2005).⁴² Consistent with previous versions of the *Codex Alimentarius* General Standard, the Central American Technical Regulation requires that most prepackaged foods⁴³ feature an “expiration date” (“*fecha de vencimiento o caducidad*”).⁴⁴

Unfortunately, the Central American Technical Regulation does not align with the most recent update to the *Codex Alimentarius* General Standard, which recommends a dual date labeling scheme. The 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods 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;⁴⁵ for all other food items, the *Codex Alimentarius* suggests that manufacturers may affix a “best before” date to indicate peak quality.⁴⁶ By contrast, the Technical Regulation does not introduce distinct labels or 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).⁴⁷ Manufacturers in Guatemala may therefore use this label to indicate peak quality rather than safety.

However, despite saying this label applies to quality, the Central American Technical Regulation states that past-date food is no longer marketable.⁴⁸ Even though food may be safe to consume after this affixed date (since it is a quality indicator), cautious donors and food recovery organizations are likely to presume that the “expiration date” is an indication of safety, consistent with the *Codex Alimentarius*. As a result, food donors may be inclined to throw away past-due food, and food recovery organizations may refuse to accept the food donation once the affixed date has passed, regardless of whether the food is still safe for human consumption.

Recommended Policy Actions

1. COORDINATE WITH THE SECRETARIAT FOR CENTRAL AMERICAN ECONOMIC INTEGRATION (SIECA) TO INTRODUCE A STANDARDIZED DUAL DATE LABELING SCHEME IN THE CENTRAL AMERICAN TECHNICAL REGULATION ON GENERAL LABELLING FOR PREPACKAGED FOODS.

To eliminate confusion surrounding the application of date labels in Guatemala, the government should propose amending the Central American Technical Regulation to fully align with the 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods. Specifically, the Technical Regulation should redefine the “expiration date” as a safety-based label that may be affixed to foods only if the food safety risk increases over time. The Technical Regulation should also offer an alternative quality-based date that manufacturers may elect to use instead of an “expiration date” such as a “best before” label.

Many other countries and the food industry are moving toward this dual date labeling scheme as a way to reduce unnecessary food waste. 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.⁴⁹ Several EU Member States have also issued guidance clarifying the impact of these dates on food donation, and others have introduced legislation that explicitly allows for donation after the “best before” date (but not after the “use by” date).⁵⁰ 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.⁵¹

The Guatemalan Standards Commission (*Comisión Guatemalteca de Normas* or COGUANOR) within the Ministry of Economy (*Ministerio de Economía* or MINECO) is responsible for overseeing the harmonization of technical regulations with national standards. It should propose this update to SIECA members.⁵² MINECO should coordinate with other agencies that comprise the Subgroup of Standardized Measures for the Central American Region (*Subgrupo de Medidas de Normalización de la Región Centroamericana*) and that adopted the Technical Standard.⁵³ Any proposed amendments to the Technical Regulation would require ultimate approval from the Council of Ministers for the Central American Economic Integration (*Consejo de Ministros de Integración Económica Centroamericana* or COMIECO).⁵⁴ Approving such an amendment may involve an iterative process, but it is not unprecedented. SIECA continually discusses potential updates to existing technical regulations and the adoption of new regulations relevant to food safety and labeling.⁵⁵

2. AMEND THE FOOD SAFETY REGULATION (RSA) TO DEFINE THE “EXPIRATION DATE” AS A SAFETY-BASED LABEL AND TO PERMIT THE DONATION OF FOOD PRIOR TO THIS DATE.

The RSA currently offers minimal guidance on the appropriate meaning and application of date labels, requiring only that manufacturers affix “expiration dates” as appropriate.⁵⁶ If the Central American Technical Regulation is amended to feature a dual date labeling scheme consistent with the *Codex Alimentarius*, per the recommendation above, MSPAS and MAGA should also update the RSA to clearly detail this dual date labeling scheme. Consistent with this dual date labeling scheme, the RSA should clarify that the “expiration date” is intended to convey the date by which the product should be sold or consumed due to “safety and quality reasons” and should be affixed only to foods that pose an increased health risk after that date.⁵⁷ The RSA should permit manufacturers to instead utilize a quality-based “best before” date to indicate peak freshness for foods that do not pose such a risk. MSPAS and MAGA should further amend the RSA to explain that food may still be safe to donate after a quality-based date (or before the “expiration date”) even if the food is no longer marketable.

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

Given that most Guatemalans (and people worldwide) erroneously perceive minimum duration dates as indicators of safety, increasing the sale, consumption, or donation of food after this date will require a change in behavior.⁵⁸ Joint public- and private-sector initiatives may help to ensure that stakeholders understand that quality-based date labels should not be a barrier to consumption or donation. In the United Kingdom, for example, the Waste and Resources Action Program (WRAP) partnered with the Food Standards Agency and the Department for Environment, Food and Rural Affairs to promote the redistribution and consumption of food after the “best before” date.⁵⁹ Any clarification or standardization of Guatemala’s date labeling regime, such as the introduction of a dual date labeling requirement, could benefit from a similar education and awareness campaign for donors, food recovery organizations, and consumers.

Liability Protection for Food Donation

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.⁶⁰ These protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm, provided they act in accordance with relevant laws. Guatemala has not developed such comprehensive liability protections for food donors and food recovery organizations, and Guatemalan laws do not clearly address the liability that such actors may face in the event a beneficiary is harmed.

Guatemala's Consumer Protection Law (*Ley de Protección al Consumidor y Usuario* or CPL) is unlikely to impose liability on food donors and food recovery organizations, but does not explicitly address or offer protection for food donations.⁶¹ The CPL governs the “supplier-consumer relationship” generally⁶² and explains that a negligent “supplier” selling goods that are flawed, deficient, or unsafe, and that cause harm to a consumer may face monetary penalties.⁶³ It is unlikely that the CPL would effectively impose liability on food donors and food recovery organizations for harm arising from donated food. This is because liability is based on the negligent “sale” of harmful goods, and most donated food is offered free of charge. Further, the CPL defines “suppliers” as those who charge a price or fee for a good, and most food donors and food recovery organizations deliver food free of charge.⁶⁴ As a result, these actors are unlikely to face liability pursuant to the CPL.

Even though food donors and food recovery organizations are unlikely to face liability, supply chain actors may perceive food donation as a potentially risky endeavor and prefer to discard rather than donate safe, surplus food.

Recommended Policy Actions

1.

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

Guatemala should adopt legislation that offers robust liability protection for food donors and food recovery organizations. In Argentina, for example, the national Food Donation Law not only facilitates greater recovery of safe, surplus foods, but also features comprehensive liability protections for food donations that meet all safety rules and are made free of charge to a qualified intermediary that benefits populations in need.⁶⁵ Guatemala has previously considered a national Food Donation Law, and a Food Loss and Waste-Prevention Bill is currently pending consideration. However, neither of these proposed laws featured liability protections that would extend to food donors and food recovery organizations acting in good faith (*buena fe*).

Guatemala's Congress should enact legislation similar to Argentina's Food Donation Law, providing food donors and food recovery organizations with a broad and clear grant of protection from liability.⁶⁶ The legislation should reflect the general objectives and instructions set forth in SIECA Resolution 145-2005. It should also delegate to MSPAS regulatory and oversight authority to ensure that food donors and food recovery organizations meet the minimum requirements for receiving liability protection. As in Argentina, Guatemala could afford donors and food recovery organizations a presumption of good faith absent a showing of willful misconduct or negligence resulting in harm to a beneficiary.⁶⁷

Guatemala could also expand upon the protections offered in Argentina and permit intermediaries to charge a small fee for donated food. Argentina conditions liability on 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).⁶⁸ However, 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, such as nonprofit “social supermarkets.”⁶⁹

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. While Guatemala currently offers limited tax benefits to incentivize this donation, such benefits are generally perceived by donors as insufficient for food recovery and donation.

Under the Tax Law (*Ley de Actualización Tributaria*), which amended the income tax regime in 2012, 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.⁷⁰ Such institutions include nonprofit organizations and foundations primarily engaged in charitable activities or social assistance (among others)⁷¹ that are legally registered as tax-exempt with the governmental tax authority (*Superintendencia de Administración Tributaria* or SAT).⁷² The charitable deduction is capped at 500,000 quetzales (approximately US\$65,000) per year.⁷³ For in-kind donations, the deduction may not exceed the "basis value" (i.e., the cost of acquiring or producing the donated good as valued on the date of donation).⁷⁴

Food donors and food recovery organizations in Guatemala have expressed concern that these deductions are not sufficient to incentivize donation,⁷⁵ yet efforts to increase the benefit have not been successful. The Food Donation Bill introduced in 2018, for example, proposed increasing the deduction 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.⁷⁶ As previously noted, Congress had not approved this proposed legislation at the time of this writing, so food donations remain eligible only for the modest benefits set forth in the Tax Law.

Recommended Policy Actions

1. INCREASE THE TAX DEDUCTION AVAILABLE FOR QUALIFYING FOOD DONATIONS AND EXPAND THE BENEFIT TO INCLUDE ASSOCIATED EXPENSES.

As recent efforts to increase the tax benefits available for donated food demonstrate, the existing tax scheme fails to sufficiently incentivize food donations. According to stakeholders surveyed in Guatemala, donors quickly reach the annual 500,000 quetzales limit placed on in-kind donations.⁷⁷ Once this limit is reached, donors may be more likely to discard rather than donate safe, surplus food. To ensure that donors are sufficiently incentivized for the duration of the taxable period, the government should amend the Tax Law to offer more competitive benefits for food donation. Specifically, Congress should expand the charitable deduction to allow donors to recover the costs of transportation, storage, and other associated expenses. Congress should also raise the deduction cap currently placed on in-kind donations made to qualifying nonprofit entities.⁷⁸ Congress can offer this higher deduction for all in-kind charitable donations or offer an enhanced deduction only for in-kind food donations made to food banks and other food recovery organizations.

Tax schemes in other countries may offer models for this change. In Chile, for example, a 2020 tax reform clarified that companies engaged to manufacturing, importing, or selling food may deduct the total value of food donated, provided the food has lost commercial value and is still safe for consumption.⁷⁹ In the United States, food donors may claim an "enhanced tax deduction" of up to 15% of their taxable income for qualifying food donations.⁸⁰ This deduction also allows donating businesses to deduct the lesser of (a) twice the basis value of the donated food or (b) the basis value of the donated food plus one-half of the food's expected profit margin (if the food were to be sold at a fair market value).⁸¹ This is in contrast to the general deduction allowed for other in-kind donations aside from food for which donors are only able to claim the basis value of the donated goods. Offering more substantial benefits such as these may help Guatemala position food donation as a competitive alternative to simply throwing away food.

2.

OFFER TAX CREDITS FOR DONATIONS MADE TO FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES THAT DISTRIBUTE DONATED FOOD TO FOOD-INSECURE POPULATIONS.

Amending the Tax Law to also provide tax credits for qualifying food donations may encourage smallholder producers or farmers to donate safe, surplus food. Local producers in Guatemala may not generate enough net taxable profit to benefit from a tax deduction or to offset the associated expenses of on-farm recovery and donation. Congress should therefore amend the Tax Law to offer a tax credit for qualifying food donations.⁸² Compared with a tax deduction, which reduces a taxpayer's taxable income and is then used to determine the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed. Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-revenue businesses than a tax deduction.

Miscellaneous

Issue Overview

While countries are increasingly supporting food donation through a myriad of policy interventions, adopting a national framework has the potential to significantly advance this effort. A national food law or policy can help create a more unified and comprehensive approach to preventing food loss and waste and to promoting food recovery and donation. Specifically, such a framework can help clarify food safety rules, standardize date labels, define liability protections for food donors and food recovery organizations, and set forth additional tax benefits to which donors may be entitled under relevant law. A national law or policy can also serve as a foundation for government grant programs and awareness campaigns focused on food system sustainability and food security.

In the past few years, Guatemala has sought to adopt such a framework, consistent with SIECA Resolution No. 145-2005⁸³ and its SAN Policy.⁸⁴ At the time of this writing, however, Congress had not passed a national law on food donation or food loss and waste prevention.

In the absence of such law or policy, Guatemala's attention to food loss, waste, and donation has been decentralized and fragmented. Food recovery organizations and private food system actors have collaborated to address widespread food insecurity and malnutrition, particularly among the most rural and remote populations. These stakeholders have critiqued the Food Donation Bill proposed in 2018 and the 2019 Food Loss and Waste-Prevention Bill pending before Congress at the time of this writing, citing the need for a more comprehensive and inclusive approach to *both* issues of food loss and waste as well as food insecurity and hunger.⁸⁵ However, if embedded within a national initiative, components of these initiatives could increase the visibility and resources of food donation operations and ensure that the law effectively supports greater donations.

Recommended Policy Actions

1.

ADOPT A NATIONAL LAW OR POLICY FOR THE PREVENTION OF FOOD LOSS AND WASTE AND THE PROMOTION OF FOOD DONATION.

The government should aim to adopt a comprehensive national law or policy focused on leveraging food donation as a solution to hunger and food loss and waste. If adopted, the Food Loss and Waste-Prevention Bill would appear to serve this purpose. As written, however, the proposal does not adequately address all of the legal issues set forth in this document and described further in the Legal Guide. For example, the proposal does not introduce a dual date labeling scheme consistent with the *Codex Alimentarius*, does not offer comprehensive

liability protections for food donors and food recovery organizations, and does not offer a more competitive tax benefit for qualifying food donations. If the current proposal is enacted, Congress should consider making legislative amendments or relevant agencies should take regulatory action to account for the recommendations contained in this document.

For any national food donation law or policy, Guatemala should ensure that the framework reflects the general objectives and principles set forth in SIECA Resolution 145-2005 and supports increased access to nutritionally adequate food, consistent with the 2006 Law for the National System of Food and Nutritional Security.⁸⁶ A national law or policy should seek to reconcile the environmental concerns associated with food loss and waste with the high rates of malnutrition, particularly among the most rural populations. For example, the initiative could offer a higher tax benefit for donated food that conforms to the Guatemalan dietary guidelines,⁸⁷ thus ensuring that food donations are not only safe for human consumption in the most literal sense but also meet minimum nutrition standards.

The government should also guarantee participation and transparency in the legislative and policy design process. Several government agencies and nongovernmental organizations helped inform the 2018 Food Loss and Waste-Prevention Bill;⁸⁸ the proposal further calls for the creation of a National Commission for the Supervision of Food Loss and Waste, which would comprise representatives from several government ministries.⁸⁹ Many countries are forming intergovernmental commissions and public-private partnerships to develop national strategies on food security and food loss and waste.⁹⁰ Accordingly, Guatemala should ensure that private-sector actors such as food recovery organizations and committed food donors have an opportunity to help develop and implement relevant programs and policies.

CONCLUSION

While these policy recommendations are intended to help strengthen food donation in Guatemala, 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 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>.
- ³ 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>.
- ⁴ *Guatemala: Poverty headcount ratio at national poverty lines (% of population)*, 2014, THE WORLD BANK, <https://data.worldbank.org/indicator/SI.POV.NAHC?locations=GT> (last visited Jan. 12, 2021).
- ⁵ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *supra* note 3 at 171.
- ⁶ 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>.
- ⁷ US AGENCY FOR INT'L DEV., FOOD ASSISTANCE FACT SHEET – GUATEMALA 1 (2019), https://www.usaid.gov/sites/default/files/documents/1866/FFP_Fact_Sheet_Guatemala.pdf.
- ⁸ *The World Bank in Guatemala: Overview*, THE WORLD BANK (Sept. 4, 2020), <https://www.worldbank.org/en/country/guatemala/overview>.
- ⁹ 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”].
- ¹⁰ *Id.* art 22(l),(m).
- ¹¹ Law for the National System of Food and Nutritional Security, art. 7.1.
- ¹² Law for the National System of Food and Nutritional Security, art. 7.1.
- ¹³ 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).
- ¹⁴ 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”].
- ¹⁵ *Id.*
- ¹⁶ 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”].
- ¹⁷ *Id.* 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.
- ¹⁸ 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”].
- ¹⁹ Food Loss and Waste-Prevention Bill, art. 2.1.
- ²⁰ *Quienes Somos*, DESARROLLO EN MOVIMIENTO, <http://www.desarrolloenmovimiento.org> (last visited Jan. 12, 2021).
- ²¹ *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>.
- ²² DESARROLLO EN MOVIMIENTO, <http://www.desarrolloenmovimiento.org> (last visited Jan. 12, 2021).
- ²³ Código de Salud, Decreto Número 90-97, 3 noviembre 1997, Lib. II, Tít. I, Cap. V [hereinafter “Guatemala Health Code”].
- ²⁴ Reglamento para la Inocuidad de los Alimentos, Acuerdo Gubernativo Número 969-99, 30 diciembre 1999 [hereinafter “RSA”].
- ²⁵ See Guatemala Health Code, ch. V; RSA, title IX, ch. II.
- ²⁶ SIECA Resolution No. 145-2005, General Principles E & F.
- ²⁷ Guatemala Health Code, capítulo V, sec. III, art. 149.
- ²⁸ *Id.* art. 146.
- ²⁹ *Id.* art. 148.
- ³⁰ RSA, title IX, ch. II. art. 68-69.
- ³¹ *Id.* art. 68.
- ³² *Id.* art. 69.
- ³³ Guatemala Health Code, ch. V, sec. III, art. 148.
- ³⁴ *Id.*
- ³⁵ RSA, title IX, ch. II.
- ³⁶ Guatemala Health Code, ch. V, sec. III, art. 149.
- ³⁷ Guatemala Health Code, ch. V, sec. III, art. 146.
- ³⁸ 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>.
- ³⁹ 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/files/dont-waste-donate-report.pdf>.
- ⁴⁰ RSA, art. 54.1. The RSA only explains that the manufacturer is responsible for setting the “expiration date.”
- ⁴¹ Reglamento Tecnico 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 “RTCA on Labeling”].
- ⁴² *Id.*
- ⁴³ See RCTA on Labeling, art. 5.8.3(vi) (explaining that products from bakeries or pastry shops are exempted 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).
- ⁴⁴ *Id.* art. 5.8.1, 5.8.2. The regulations allow for a variety of phrases and abbreviations to be used on date labels, including “expiration date (*fecha de vencimiento*),” “consume before... (*consumir antes de...*),” “expiry date (*fecha de caducidad*),” “expires on... (*expira el...*),” among others.
- ⁴⁵ 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%252F>

52FCXS%2B1-1985%252FCXS_001e.pdf.

46
47 *Id.*

RCTA on Labeling, art. 5.8.

48
49 *Id.*

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

50 See EUROPEAN COMMISSION, MARKET STUDY ON DATE MARKING AND OTHER INFORMATION PROVIDED ON FOOD LABELS AND FOOD WASTE PREVENTION: FINAL REPORT (2018), https://ec.europa.eu/food/sites/food/files/safety/docs/fw_lib_srp_date-marking.pdf.

51 *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>.

52 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). Other country members involved in SIECA are Costa Rica, El Salvador, Honduras, and Nicaragua.

53 See RCTA on Labeling.

54 See RCTA on Labeling.

55 *Technical Regulations: Under Discussion*, SIECA, <https://www.sieca.int/index.php/economic-integration/economic-integration/free-trade/technical-regulations/?lang=en> (last visited Jan. 12, 2021).

56 RSA, art. 54.1. The RSA only explains that the manufacturer is responsible for setting the “expiration date.”

57 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%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf.

58 Roni A. Neff et al., *Misunderstood food date labels and reported food discards: A survey of US consumer attitudes and behaviors* 86 *Waste Management* 123, 123 (2019).

59 WRAP, FSA & DEFRA, REDISTRIBUTION LABELLING GUIDE: DATE LABELS, STORAGE ADVICE AND FREEZING FOR FOOD SAFETY (2020), https://wrap.org.uk/sites/files/wrap/Surplus_food_redistribution_labelling_guide_May_2020_0.pdf.

60 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].

61 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”].

62 CPL, art. 2.

63 *Id.* art. 3.

64 *Id.* art. 3.

65 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).

66
67 *Id.*

Id.

68 Decree No. 246/2019, Art. 3, April 3, 2019. [34088] B.O. 2 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/320000-324999/321761/norma.htm> [https://perma.cc/AG6A-DDCX].

69 In Europe, for example, nonprofit grocery stores known as “social supermarkets” sell donated food at a significantly reduced price.

70 Ley de Actualización Tributaria, Decreto Número 10-2012, art. 21(22) DIARIO DE CENTRO AMÉRICA [D.C.A.] [hereinafter “Tax Law (Update)”]. *Id.*

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

72
73 *Id.*

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

74
75 *Id.*

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

76 Food Donation Bill, art. 19.

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

78
79 *Id.*

Chile modernized its Income Tax Law via Ley No. 21.210, Moderniza La Legislación Tributaria, art. 31, Feb. 24, 2020 DIARIO OFICIAL [D.O.] (Chile).

80 See I.R.C. § 170(e)(3)(C)(ii) (United States).

81 See I.R.C. § 170(e)(3)(B); 26 C.F.R. § 1.170A-4A(b)(4) (United States).

82 HARV. L. SCH. FOOD L. & POL’Y CLINIC & NAT. RESOURCES DEF. COUNCIL, *supra* note 39 at 19.

83 SIECA Resolution No. 145-2005.

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

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89 Law for the National System of Food and Nutritional Security, art. 25.

90 See, e.g., Colombia’s Intersectoral Commission of Food and Nutritional Security (Comisión Intersectorial de Seguridad Alimentaria y Nutricional, CISAN); *Minsalud entrega presidencia de la CISAN*, MINSALUD (Aug. 19, 2020), <https://www.minsalud.gov.co/Paginas/Minsalud-entrega-presidencia-de-la-CISAN.aspx>; and Costa Rica’s Costa Rican Network for the Reduction of Food Loss and Waste (Red Costarricense para la Disminución de Pérdidas y Desperdicio de Alimentos), *Red Costarricense para la Disminución de Pérdidas y Desperdicios de Alimentos*, TECNOLÓGICO DE COSTA RICA (last visited Jan. 25, 2021), <https://www.tec.ac.cr/red-costarricense-disminucion-perdidas-desperdicios-alimentos>.



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