



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: China

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

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This multi-year innovative partnership maps the laws and policies affecting donations in dozens of countries worldwide. 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.

### CHINA FOOD LOSS AND WASTE

Each year, approximately 27% of all food in China is either lost or wasted along the supply chain, making up approximately one-quarter of the world's total food loss and waste (FLW). The land, water, carbon, nitrogen, and phosphorus footprints of China's food waste alone are comparable to those of an entire medium-sized country. Much of this food is still safe for human consumption and suitable for redistribution to those experiencing hunger and chronic malnutrition throughout the country.

Reducing FLW is a priority in China. The recent Clean Plate Campaigns 1.0 and 2.0 focus on imbuing anti-food waste rhetoric into the culture of extravagant feasts and consumer-targeted media, respectively. Following closely behind the launch of the multi-stakeholder Clean Plate Campaign initiatives, the government enacted the 2020 Anti-Food Waste Law, which launched initiatives to fight food waste in the catering sector, establish a food donation system, and develop further rules to govern expired foods, among other food waste mitigation strategies. In addition to government attention to reducing FLW and increasing food security, private actors in the food system, including food banks and other food recovery organizations, are leveraging food donation to mitigate food loss, food waste, and food insecurity in China.

**China: By the Numbers**

- Population: 1.412 billion
- GDP: \$17.73 trillion
- Poverty Rate: 10.8%
- Prevalence of Food Insecurity: 2.5%
- Global Food Security Index: 74.2
- FLW Estimates: 349 million tons/year

### CHINA FOOD DONATION POLICY HIGHLIGHTS

**TAX INCENTIVES AND BARRIERS:** Under Chinese law, businesses may deduct their charitable donations up to 12% of the annual profit from their taxable income. If the charitable donation exceeds 12% of the company's profit in a given year, the excess amount may carry over for deduction within three years.

**ACTION OPPORTUNITY:** Because Chinese tax law treats donation as a sale for VAT purposes, the tax obligation on the donor and/or the food recovery organization poses a barrier to food donation. To improve the tax landscape

and remove barriers to donation the government should exempt food donation from the list of transactions that are VAT-taxable to remove the fiscal burden on donors or food recovery organizations. Further, the tax code should allow food donors to reclaim VAT credits accrued during the production of donated food.

**DONATION REQUIREMENTS & FOOD WASTE PENALTIES:** China's Anti-Food Waste Law is a novel approach to minimizing national FLW and modulating behavior around food waste. Articles 27 to 30 of the Anti-Food Waste Law require warnings and corrective action for violators of the law's food waste mitigation provisions. If violators refuse to take corrective action, they can be fined anywhere from ¥1,000 to ¥100,000 depending both on the type of violator and the type of violation. These articles penalize wasteful behavior such as misleading consumers into ordering excessive amounts of food and failing to implement food waste prevention measures.

**ACTION OPPORTUNITY:** While China's Anti-Food Waste Law provides a framework for both donation requirements and food waste penalties, it does not require either one. It neither directly penalizes food disposal into landfill or destruction of food, as an organic waste ban would nor does it specifically mandate food donation. To strengthen the legislation, the government should adopt a policy that would impose monetary penalties for food sent to landfills that is still suitable for human consumption, through either a disposal fee or a tax. To ensure that surplus food that remains safe for redistribution is directed towards its highest and best use, the government should complement the policy with a donation requirement and implement a food waste recovery hierarchy, which outlines best practices for repurposing food, from donation, to animal feed, to industrial uses. In the alternative, a food waste and food donation reporting requirement should be adopted through the implementing regulations of the Anti-Food Waste Law to encourage businesses to adhere to waste-reduction measures.

## **CHINA FOOD DONATION POLICY OPPORTUNITIES**

**FOOD SAFETY:** Food safety in China is regulated under the Food Safety Law and the Regulation on Implementation of the Food Safety Law. Food donation is not specifically mentioned in either, nor do either clarify whether the requirements therein apply equally to food that is donated versus sold. As such, 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.

**ACTION OPPORTUNITY:** While there is no specific mention of food donation or food offered for free within the Food Safety Law or implementing regulations, food safety is referenced three times in the Anti-Food Waste Law, which mandates the consideration of food safety when drafting food waste prevention standards and developing food donation frameworks. As the relevant government departments draft implementing regulations for the law, they should be sure to include clear and specific guidance on which food safety provisions apply to donated food. In addition, government guidance tailored to specific stakeholders will also reduce confusion around safety for food donations and instill confidence in donors and recipient organizations, thereby increasing rates of donation.

**LIABILITY PROTECTION:** China currently lacks comprehensive national liability protections for food donors and food recovery organizations. As a result, such actors may perceive food donation as an unnecessarily risky endeavor and elect to discard rather than donate safe, surplus foods.

**ACTION OPPORTUNITY:** To ensure that food donors and recovery organizations are adequately protected against potential legal liability arising from claims of harm, China should adopt legislation that protects those that act in "good faith" and adhere to relevant laws, similar to protections offered in the United States, Brazil, and Argentina.

**DATE LABELING:** All prepackaged foods in China have a "shelf-life" date, which, based on its definition, predominately indicates food quality. Guidance on food labeling is provided by the Food Safety Law as well as by GB 7718-2011 National Food Safety Standards-General Rules for the Labeling of Prepackaged Food promulgated by the National Health Commission. Both the law and the national standard require prepackaged items be labeled with 保质期, which directly translates as the "shelf-life" but is also translated as "best before date" or "date of minimum durability" in some documents, therefore causing confusion among stakeholders as to the relationship between the shelf-life date and food safety. Further, because it is illegal to donate foods past the date on the label, much food that remains safe for consumption cannot be redistributed and is, instead, discarded.

**ACTION OPPORTUNITY:** To remedy the issue of date labels, the government should set labeling standards that differentiate between the language used for safety-based and quality-based date labels and permit the donation of food after the shelf-life date where the date relates to quality. Policymakers in China have already indicated a likely change in the date labeling scheme to align with national FLW goals. The Work Programme on Anti-Food Waste (反食品浪费工作方案), issued in December 2021 by the National Development and Reform Commission to begin implementing the Anti-Food Waste Law, established guidance for food date labeling, introducing two different terms for date labeling: “best before” (最佳食用日期) and “expiration” (保质日期). Implementing this new date label scheme would add helpful nuance to the previously used single term “shelf-life” (保质期). The guidance also encourages the sale of food near the expiration date at preferential prices, but when policymakers adopt the new scheme, they should also explicitly permit donation after quality-based dates to optimize the redistribution of safe surplus food. These measures should be accompanied by a robust consumer education campaign about the meaning of date labels and their application to donated food.

**GOVERNMENT GRANTS & INCENTIVES:** Government grants and incentive programs at the national or local level can be an important resource for food donation initiatives, especially as an alternative or supplement to tax incentives. Government funding can be particularly helpful in China, where interviewed stakeholders often cited the lack of food donation infrastructure as a factor that limits food recovery. To date, however, China has yet to offer national grant or incentive programs for food donation.

**ACTION OPPORTUNITY:** The recently enacted Anti-Food Waste Law provides several opportunities for creating grant and incentive programs: the law designates specific departments to establish a mechanism to connect surplus food to areas of need and guide food businesses to donate food to social organizations;<sup>1</sup> it requires government support for scientific research, technological development, and other activities to prevent food waste;<sup>2</sup> and it mandates government procurement to be beneficial to preventing food waste.<sup>3</sup> In order to maximize these opportunities, the government should, therefore, create grant opportunities for food donation infrastructure and implement government procurement policies that support food donation and food waste mitigation.

## CHINA FOOD DONATION POLICY: HOW DOES IT COMPARE?

China’s recent adoption of a national food waste law demonstrates momentum for further policy change in alignment with FLW goals, with ample opportunity to strategically integrate practices that advance food donation activity. China already has robust consumer engagement and education campaigns around food waste mitigation, as well as modest donor incentives through the tax code, all aligned with its national FLW reduction goals.

While China works toward this comprehensive, national framework, it should pursue targeted improvements to existing law and regulations that impact food donation. In particular, introducing a dual date labeling scheme, setting liability protections for donors and food recovery organizations, investing in donation infrastructure, and removing VAT barriers may significantly increase food donations in China.

Food Safety for Donations	Date Labeling	Liability Protection for Food Donation	Tax Incentives	Tax Barriers	Donation Requirements or Food Waste Penalties	Government Grants and Incentives	National FLW Law or Policy?
No Policy	Limited Policy	No Policy	Strong Policy	Yes	Moderate Policy	No Policy	Yes

<sup>1</sup> Anti-food Waste Law of the People’s Republic of China (中华人民共和国反食品浪费法) (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021, art. 23 (China).

<sup>2</sup> Anti-food Waste Law of the People’s Republic of China (中华人民共和国反食品浪费法) (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021, art. 26 (China).

<sup>3</sup> Anti-food Waste Law of the People’s Republic of China (中华人民共和国反食品浪费法) (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021, art. 26 (China).

For more detail on how China measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org). For more information about the food donation legal framework in China and policy recommendations for strengthening this framework, check out the Ecuador Food Donation Legal Guide and the Ecuador Food Donation Policy Recommendations.

## BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

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

**Date Labeling:** Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. Most food donors and food recovery organizations are appropriately cautious about donating food that may no longer be safe, but it is not always clear whether the date label accompanied by language such as “sell by,” “expires on,” or “best by” relates to food safety. In fact, date labels are generally intended to reflect freshness or quality rather than safety for the vast majority of foods.

**Liability Protection for Food Donations:** 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. Some countries have adopted liability protections to mitigate this concern. However, many food donors and food recovery organizations are uncertain as to whether they are eligible for this protection, whether there are actions required to maintain the protection, and what limits, if any, apply.

**Tax Incentives and Barriers:** Transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food. Tax incentives, including deductions and credits, can help to offset these financial inputs and help make donation a more attractive, affordable option. The application of certain taxes to donated foods, such as the value-added tax, however, can also create a barrier to donation.

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

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

**National law or policy on food waste:** Adopting a national food loss and waste or food donation framework can help governments ensure policy coherence and advance food recovery efforts along the supply chain. Offering a unified and comprehensive framework may better enable governments to 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.

## THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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