



THE GLOBAL
FOOD DONATION
POLICY ATLAS

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CHINA **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 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 the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit www.atlas.foodbanking.org.

About the Harvard Law School Food Law and Policy Clinic

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/food-law-and-policy.



About The Global FoodBanking Network

The Global FoodBanking Network (GFN) supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit www.foodbanking.org.



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INTRODUCTION

PURPOSE OF THIS GUIDE

Food loss and waste (FLW) is one of the greatest food system challenges of this era. 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 landfills.² FLW occurs at every stage of the supply chain for a variety of reasons: during harvest and processing (packaging) due to low market prices, high labor costs and demand for perfect-looking produce; during distribution due to spoilage; during the retail phase due to the over-estimating of customer demand by grocery stores and restaurants; and during the consumption phase due to inefficient shopping and cooking practices and confusion and inconsistency around date labels.³

These inefficiencies have significant environmental, economic, and social consequences. Food that is lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ wasting roughly 28% of agricultural land⁵ and accounting for 8%, 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 efforts to reduce 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 is a popular and logical solution, redirecting 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 provide it to local beneficiary agencies such as soup kitchens, shelters, and community pantries to feed low-income, food-insecure individuals. As food insecurity and FLW continue to rise, new and innovative models of food recovery have emerged around the world.

However, uncertainty surrounds food donation laws and regulations. To help address the most pressing questions, the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN) collaborated to create The Global Food Donation Policy Atlas.¹⁰ This multiyear, innovative partnership maps the laws and policies affecting donations 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.

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 the People’s Republic of China (PRC), where recent studies estimate 27% of food produced annually for human consumption is lost or wasted (roughly 349 million tons), making up approximately one-fourth of the world’s total FLW.¹¹ FLPC and GFN, in collaboration with partners in China,¹² developed this resource to help food donors, food banks, and other intermediaries (hereinafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that influence food waste reduction and food donation efforts. It also serves as a resource for individuals and institutions in other countries that are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in China, this Legal Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections look more closely at the laws generally applicable to food donation: food safety laws and regulations, 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 China has developed and subsequently implemented these legal frameworks compared to other countries may vary.

STATE OF FOOD INSECURITY, FOOD LOSS, WASTE, AND RECOVERY IN CHINA

China feeds 19% of the world’s population (1.4 billion) with only 7% of the world’s arable land.¹³ Yet according to the Global Hunger Index (GHI) of 2020, China was one of only 17 countries worldwide with a GHI score lower than 5 on a 0 to 100 scale that in practice ranges from roughly 5 to 40.¹⁴ According to the World Food Programme, through progress in poverty reduction and social development, China surpassed its Millennium Development Goal of halving hunger by 2015 and reduced the hunger rate by two-thirds.¹⁵ Nevertheless, as China works toward the goal to eliminate poverty, financial disparities and malnutrition remain challenges, particularly due to large gaps in income and nutritional status between urban and rural areas. Despite immense progress in public health and poverty reduction, 150.8 million people are malnourished (roughly 10% of the population), while 19.6% are anemic, and 25% are overweight.¹⁶ Stunting affects 9.4% of children under age 5 in China, a significant reduction from 30% in 1990.¹⁷

The government has recently emphasized population health with the national campaign Healthy China 2030, which focuses on reforming China’s healthcare system.¹⁸ The plan includes 15 goals with specific targets, including reducing obesity, preventing chronic disease, and increasing physical activity. The plan aims to shift the country from a reactive healthcare model to a preventative one that improves economic efficiency and the overall well-being of the Chinese population.¹⁹ Given the rapidly rising incidence of noncommunicable diseases associated with unhealthy diets²⁰—paired with increased exposure to the environmental hazards of industrialization and urbanization—China has started prioritizing nutrition security as well as food security through its National Nutrition Plan (2017–2030).²¹ Research identified myriad challenges to achieving these goals, including environmental pressures (e.g., degradation of land resources, shortage and pollution of water resources, climate change, and natural disasters) and the “triple burden” of malnutrition, food safety issues, and FLW.²² As a result, a major tenet of the government’s attention to food security is mitigating FLW.²³

THE PLAN [HEALTH CHINA 2030] AIMS TO SHIFT THE COUNTRY FROM A REACTIVE HEALTHCARE MODEL TO A PREVENTATIVE ONE THAT IMPROVES ECONOMIC EFFICIENCY AND THE OVERALL WELL-BEING OF THE CHINESE POPULATION.

According to a study conducted by the Institute of Geographic Sciences and Natural Resources Research (IGSNRR), the postharvest handling and storage stage of the food value chain is the largest driver (45%) of FLW. Consumer-stage waste accounts for 17% of total FLW.²⁴ The study estimates that the resources (i.e., land, water, carbon, nitrogen, and phosphorus footprints) used to produce the food that is lost or wasted in China are similar to the total resource usage of a medium-sized country.²⁵

The food service sector in China is a particularly large driver of consumer FLW. Unlike many other nations where household food waste is the largest proportion of total consumer-stage food waste (e.g., 42% for household versus 14% for the food service sector in the European Union), 90% of consumer-stage food waste in China comes from the food service sector, including mid- to high-end restaurants and canteens or institutional cafeterias.²⁶ The IGSNRR study found that tourist groups, schools, and official banquets are the top three causes of consumer-stage food wastage. Per capita food waste in China is estimated at 93 grams per person per meal, a waste rate of 11.7% on average,²⁷ and 132 grams per person at large banquets, a rate of 38%.²⁸

In 2013 food waste officially became a national priority with the launch of the Clean Plate Campaign 1.0, which focused on officials' extravagant feasts and receptions.²⁹ The Clean Plate Campaign 2.0 in 2018 broadened the effort to public consumers and media. Young consumers, for example, were encouraged to post pictures of empty plates on social media after finishing their meals at restaurants.³⁰ In a 2020 directive, Xi Jinping, president of PRC and the general secretary of the Chinese Communist Party, described the phenomenon of food waste as "shocking and distressing: on the dining plate, every single grain means hardship."³¹ Since then, a campaign against food waste has been implemented in canteens of every central and state organ, setting a party example for the public.³² In 2020, the quantity of food purchased by the state organs' canteens has generally declined, with a more than a one-third decrease in canteen food waste.³³

Following closely behind the launch of the multistakeholder Clean Plate Campaign initiative, 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. Described in further detail in the Legal Framework section of this Legal Guide, the law serves as a foundation for further implementing legislation that would simultaneously encourage food waste reduction and provide avenues for redistribution of safe, surplus food to individuals facing food insecurity.

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.

Alongside government initiatives and legislation, Green Food Bank in Shanghai was founded in 2015 as the first food bank in mainland China. In its first year of operations, it distributed 30 tons, expanding to about 500 tons by 2020.³⁴ As of this writing, Green Food Bank has more than 200 sites across the country, more than half of which are in Shanghai, and operates innovative food refrigerators across cities to increase access to food among vulnerable groups.³⁵ It is the first and only member of The Global FoodBanking Network from mainland China.³⁶

As China seeks to reduce FLW and mitigate food insecurity, food recovery organizations like Green Food Bank and current and potential food donors must recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide provide an overview of China'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 CHINA'S RELEVANT LEGAL FRAMEWORK

The following sections outline the rule of law in China and provide context as to how laws are passed and which bodies have legislative and administrative authority. A few pieces of legislation that are of particular relevance to food donation are also detailed.

CENTRAL LEGISLATIVE AND ADMINISTRATIVE BODIES

The National People's Congress (NPC, 全国人民代表大会) and its Standing Committee (NPCSC, 全国人民代表大会常务委员会)³⁷ exercise the legislative power in China. The full NPC consists of about 3,000 members who are

elected by provincial people's congresses and the army for a five-year term.³⁸ It meets once a year, typically in March,³⁹ and has the power to enact and amend legislation such as criminal laws, civil laws, and laws concerning state institutions.⁴⁰ The NPCSC consists of about 170 members and meets once every two months.⁴¹ It has the power to enact and amend laws other than those that should be enacted by the NPC.⁴² When the NPC is not in session, the NPCSC may also partially supplement and amend laws enacted by the NPC as long as the changes do not conflict with the laws' basic principles.⁴³ The Legislative Affairs Commission (LAC), a staff bureau under the NPCSC, assists the NPC and NPCSC in their legislative functions.⁴⁴ The LAC is divided into different offices, each of which focuses on a particular area of law.⁴⁵

The State Council (often referred to as "China's Cabinet") exercises administrative functions at the central level in China.⁴⁶ It directs various areas of affairs such as economic development, manages the work of ministries and commissions, and reports to the NPC (or the NPCSC when the NPC is not in session).⁴⁷ In addition, the State Council has the power to promulgate administrative regulations (行政法规), decisions (决定), and orders (命令) in accordance with the constitution and laws.⁴⁸ The State Council may also submit bills to the NPC or the NPCSC.⁴⁹ The State Council comprises a premier, vice premiers, state councilors, ministers of the various ministries, chairpersons of the various commissions, an auditor general, and a secretary general.⁵⁰ Appointed by the NPC, these officials serve a five-year term.⁵¹ In 2018 the State Council went through a significant reorganization. For example, the State Council's Legislative Affairs Office, which set the State Council's legislative agenda and drafted bills and regulations prior to the reorganization, was abolished, and the reorganized Ministry of Justice assumed the responsibility of legislative drafting and coordination.⁵² Ministries and commissions within the State Council may not promulgate administrative regulations, but they may promulgate rules (部门规章), which are different from administrative regulations, within their respective power, provided that the rules do not conflict with the constitution, laws, and the State Council's administrative regulations, decisions, and orders.⁵³

LOWER LEGISLATIVE AND ADMINISTRATIVE BODIES

Under the central government, there are four levels of local government: (1) provincial (including four directly governed municipalities—Beijing, Chongqing, Shanghai, and Tianjin), (2) municipal/prefectural, (3) county-level, and (4) township-level.⁵⁴ Local government at every level consists of a local people's congress as well as a local people's government that reports its work to the local people's congress at the respective level.⁵⁵

Provincial-level people's congresses (legislatures) or their standing committees may enact local regulations (地方性法规) to implement laws and administrative regulations enacted by the central government or to regulate local affairs, provided that the local regulations do not contravene the constitution, central laws, and central administrative regulations.⁵⁶ The provincial-level people's government (executive branch) may promulgate local rules (地方政府规章) to implement laws or administrative regulations enacted by the central government or local regulations implemented by the provincial people's congress. It may also promulgate local laws to regulate local administrative matters, provided that the local rules are in accordance with the constitution, central government laws and administrative regulations, and respective provincial regulations.⁵⁷

At the local level, municipal-level people's congresses can only enact local regulations (地方性法规) that relate to urban and rural development and administration, environmental protection, and historical culture protection. The local regulations cannot contravene the constitution, central government laws or administrative regulations, or the local regulations of the province or autonomous region where the city is located.⁵⁸ Similarly, municipal-level people's governments may only promulgate local rules (地方政府规章) on urban and rural development and administration, environmental protection, and historical culture protection. The local rules cannot contravene the constitution, central government laws and administrative regulations, and respective provincial- and municipal-level local regulations.⁵⁹

Aligning with civil law tradition, the courts in China do not establish legally binding precedent. However, in recent years, China has increasingly recognized "guiding cases"⁶⁰ that operate similarly to precedents under common law systems.⁶¹ Apart from guiding cases, the Supreme People's Court announced "typical cases" that

can also guide judges' decisions, but they are less authoritative than guiding cases. As of this writing, there are both guiding and typical cases concerning food safety announced by the Supreme People's Court. Article 12 of the Organic Law of the People's Courts of the PRC divides the people's courts into (1) the Supreme People's Court, (2) the local people's courts at all levels, and (3) the special people's courts. Article 15 thereof stipulates that special people's courts include military courts, maritime courts, intellectual property courts, and financial courts, among others.⁶² However, the Standing Committee of the National People's Congress determines the organization, functions and powers, and appointment and dismissal of judges of special people's courts. Only the Supreme People's Court can issue judicial interpretations. Otherwise, courts do not have authority to interpret laws or declare laws, rules, or regulations invalid; the Standing Committee of the National People's Congress exercises these functions.

ANTI-FOOD WASTE LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Adopted on April 29, 2021, the Anti-Food Waste Law⁶³ strengthens the leadership and supervision of anti-food waste work, invests in analysis and assessment of food waste,⁶⁴ and mandates food waste disclosure for every level of government at or above the county level.⁶⁵ The law requires the State to take multiple measures to reduce food waste, including implementing policies, scientific management, and social cogovernance.⁶⁶

The provisions of the Anti-Food Waste Law aim to encourage food donation, reduce excess food ordering in food service, and prevent waste of agricultural products. Article 23, for example, encourages food donation by requiring local people's governments to establish a mechanism linking food producers and dealers to food donation organizations or other relevant social organizations.⁶⁷ The same article also encourages online information services to build platforms to aid in food donation activities.⁶⁸ Articles 5 and 15 focus on reducing damaged grain and agricultural products by mandating improvements in storage, transportation, and processing.⁶⁹

THE [FOOD AND CATERING] INDUSTRY MUST SELF-REGULATE, IMPLEMENT ANTI-FOOD WASTE STANDARDS, MONITOR AND DISCLOSE FOOD WASTE INFORMATION TO THE PUBLIC, AND SUPPORT GOVERNMENT POLICY DEVELOPMENT.

The food and catering industry⁷⁰ is a major focus of the Anti-Food Waste Law. The law holds the industry to higher standards and specifications for food waste, with mechanisms established jointly between the commerce authorities and market regulation authorities of the State Council.⁷¹ Under the law, the industry must self-regulate, implement anti-food waste standards, monitor and disclose food waste information to the public, and support government policy development.⁷² Catering providers are required to mitigate over-ordering.⁷³ They are encouraged to serve individual dishes rather than the typical buffet or family-style ordering that results in large amounts of food waste.⁷⁴ They are also permitted to either reward consumers for cleaning their plate or charge them for food that is wasted.⁷⁵ Further, news and media are banned from producing or disseminating any program that "advocates food waste" such as video content of individuals eating excessively.⁷⁶ Network audio and video service providers have the right to cease providing their services to users that violate this rule.⁷⁷ The Anti-Food Waste Law extends to schools,⁷⁸ tourism businesses,⁷⁹ and public or private entities with canteens⁸⁰ as well as official receptions, meetings, and trainings held by government and public institutions.⁸¹ The law also mandates "civilized and healthy catering habits" for gatherings (e.g., weddings, funerals)⁸² and family life.⁸³

Article 5 of the law requires the development and reform authorities under the State Council to make overall food waste reduction plans and adopt guidelines for implementation by designated authorities. For example, in December 2021, the National Development and Reform Commission released a Work Programme on Anti-Food Waste (反食品浪费工作方案) that outlines a strategy for implementation by different agencies. The strategy proposes new guidelines for date labeling in Section 11 (under the jurisdiction of the Ministry of Commerce, State Administration for Market Regulation (SAMR), and other departments as relevant); requires the establishment

of food donation networks in Section 10 (under the jurisdiction of the Ministry of Civil Affairs and SAMR); and introduces a mandate to utilize food scraps productively by strengthening market promotion of kitchen waste recycling products and promoting application of compost, biogas, and other modes of food scrap utilization for agricultural production (under the jurisdiction of the Ministry of Housing and Urban-Rural Development and other departments).⁸⁴

While there are not yet any national administrative implementing regulations for the Anti-Food Waste Law, various ministries have issued rules implementing the law. For example, the State Council's Food Safety Office, the Ministry of Education, the Ministry of Commerce, SAMR, and National Government Offices Administration jointly issued a notice in June 2021 that requires canteens, food-testing agencies, and other entities to take more actions to curb food waste.⁸⁵ The notice contains several specific requirements, such as requiring food businesses to train their staff on preventing food waste.⁸⁶ The National Government Offices Administration issued a notice in July 2021, setting forth food waste prevention requirements for offices in the central government.⁸⁷ The notice requires, for example, government offices to create internal policies to reduce food waste during governmental activities.⁸⁸ Further, the Communist Party has issued an action plan in response to the new legislation.⁸⁹

Galvanized by the national sense of urgency, changing consumer preferences, and the desire to avoid potential penalties, the private sector has responded with new policies to encourage the mitigation of food waste. For example, many supermarkets have adopted practices to sell near-expired food at steep discounts. For example, HotMaxx, a shop that sells exclusively near-expired food with a 50% to 80% discount, has rapidly expanded since 2020, with more than 50 shops in Shanghai alone.⁹⁰ Further, some restaurants have implemented creative measures to abide by the law and reduce food waste. In Shenzhen, six KFC outlets recently unveiled a pilot charity program called "Food Bank" that offers unsold food to people in need for free.⁹¹ The food is stored in freezers and put into small bags with labels stating the product name, storage date, and processing guidelines.⁹² The Anhui Jinling Grand Hotel in Hefei rewards diners who avoid food waste and those who take away their leftovers receive either a 10% discount or a 50 yuan (US\$7.19) coupon.⁹³ Similarly, the Shanghai Kempinski Hotel has introduced a fine of 100 yuan for every 50 grams of food wasted at its "all-you-can-eat" Saturday brunch.⁹⁴

FOOD SAFETY LAW OF THE PEOPLE'S REPUBLIC OF CHINA

The seventh session of the Standing Committee of the Eleventh National People's Congress adopted The Food Safety Law of the People's Republic of China (中华人民共和国食品安全法) on February 28, 2009. In February 2010, the State Council established the Food Safety Committee to analyze the food safety landscape, present policy measures, and supervise food safety law implementation.⁹⁵ The Food Safety Law was revised at the 14th session of the Standing Committee of the Twelfth National People's Congress on April 24, 2015 to highlight the necessity of industry self discipline, requiring that the food industry association improve industry standards, set up procedures for prosecution, and publicize food safety information.⁹⁶ The Food Safety Law was also amended in 2018,⁹⁷ and the most recent implementing regulations were revised in 2019.⁹⁸

The 2019 revised regulations of the Food Safety Law put significantly greater emphasis on consumer safety and raised penalties for food safety violations and false, fraudulent, and/or deceptive marketing. The regulations created a fine of 1 million yuan for offenders who deceive or mislead consumers.⁹⁹ According to the Food Safety Law, the Food Safety Committee of the State Council¹⁰⁰ administers the overall guidance of food safety, SAMR¹⁰¹ handles food safety supervision, and the National Health Commission (NHC) is responsible for risk monitoring and assessment as well as the formulation and promulgation of national food safety standards.¹⁰² The Ministry of Agriculture and Rural Affairs (MARA) is also involved in the regulation planting, breeding, and slaughter.¹⁰³

The development of stronger food safety regulations and guidance has received additional attention from China's NHC with the announcement of its intention to implement a National Food Safety Improvement Project.¹⁰⁴ The project will strengthen food safety regulations, enforcement, and compliance through promoting scientific and evidence-based standards.¹⁰⁵ Implemented on both national and provincial levels by SAMR with cooperation by

various industry associations, testing centers, and other relevant institutes, the project informs actors along the supply chain of proper food handling techniques and means to avoid spoilage. Between educating relevant stakeholders and offering the public more clarity around real versus perceived food safety risks, the project has potential to reduce FLW.¹⁰⁶

OTHER NATIONAL LAWS

In addition to the aforementioned legal frameworks, other national laws directly or impliedly affect food recovery and food donation in China. Important federal legislation includes the Civil Code of the PRC,¹⁰⁷ which houses civil, tort, and contract law; the Criminal Law of the PRC, which houses China's substantive criminal law;¹⁰⁸ the Law of the PRC on Donations for Public Welfare;¹⁰⁹ the Income Tax Act and its Enforcing Rules, which set out the structure for income taxes in China;¹¹⁰ and the Interim Regulation on Value Added Tax.¹¹¹ A few additional laws relate to specific areas of food safety, such as the Law on Quality and Safety of Agricultural Products, which regulates safety and environment on farms.¹¹²

PROVINCIAL AND MUNICIPAL LAW

As noted above, provincial and municipal congresses can pass regulations, and provincial and municipal governments can pass rules, so long as all are aligned with the constitutional, central government laws and administrative regulations as well as any regulations of a higher level of government. However, not many provincial or municipal regulations or rules apply to food donation.

One example of a relevant municipal regulation is in Beijing. In May 2020 the Beijing Municipal Regulation on the Management of Municipal Solid Waste required catering businesses to “remind their customers of possible food waste when they order too much” and even charge a fine for leftovers exceeding a reasonable amount.¹¹³ The regulations guide enterprises' behavior, promote advanced technology, and urge the implementation of relevant regulations on kitchen waste management in the city. In May 2021 Beijing issued a further regulation specific to food waste, which enforces fines of up to 10,000 yuan for catering service providers that allow, encourage, or mislead consumers to over-order and induce food waste.¹¹⁴

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. 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. For example, the law may not allow the food to be sold due to labeling errors—such as labels that are upside-down or list incorrect weight or volume—but the food nevertheless would remain safe for donation and consumption. Due to confusion about food safety requirements for donated food, safe, surplus food that could be redirected to populations in need is often destined for landfills.

Food safety in China is regulated under the Food Safety Law¹¹⁵ and the Regulation on Implementation of the Food Safety Law.¹¹⁶ Both stipulate standards for hygiene, processing, labeling, marketing, utilization of additives, and other food safety-related requirements for those involved in food production, processing, sales, and catering services (called “food trade”).¹¹⁷ Food donation is not specifically mentioned in either, nor do either clarify whether or not the requirements therein apply equally to food that is donated versus sold.

As mentioned previously, China recently enacted an Anti-Food Waste Law. 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. In article 16, the law requires that prevention of food waste be considered when creating national, industry, and local food standards to avoid waste to the highest extent possible, provided that food safety is guaranteed.¹¹⁸ Further, article 23, which outlines the framework for food donation to social welfare organizations, also requires that the relevant civil affairs department, market regulatory department, and local people's governments, at or above the county level, "guarantee food safety" for donations.¹¹⁹ In article 20, the law requires prioritization of conversations around food waste in National Food Safety Publicity Week.¹²⁰ Despite this acknowledgment, at present no government-issued guidance is readily available on necessary food safety considerations when donating food.

DATE LABELING

A major driver of food waste and an obstacle to food donation is the disposal of foods that do not pose a food safety concern due to confusion over date labels—such as "sell by," "use by," or "best by"—affixed to food items. From country to country, many donors and consumers interpret such date labels as indicators of food safety. In reality, 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. Donors and food recovery organizations, however, being cautious about food safety liability, may discard food once the date passes even if the food is perfectly safe to consume. Some countries such as China prohibit the distribution of food past its date label whether the date label indicates safety or quality. Under this policy, donors and food recovery organizations have no choice but to discard food that is past the date on the label.

All prepackaged foods in China are labeled with a "shelf-life" date, which based on its definition is predominately used to indicate food quality. Guidance on food labeling is provided by the Food Safety Law¹²¹ as well as by GB 7718-2011 National Food Safety Standards-General Rules for the Labeling of Prepackaged Food.¹²² promulgated by the National Health Commission, most recently revised in 2021.¹²³ 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. GB 7718-2011 defines the shelf-life date as the "date which marks the end of the period under any stated storage conditions on the label of the prepackaged food during which the quality of the product will be maintained and the product will remain fully marketable and retain any specific qualities for which tacit or express claims have been made."¹²⁴ This definition of 保质期 is confirmed by article 99 of the Chinese Food Safety Law, which defines the shelf-life as the period during which the food remains in good quality so long as the storage conditions indicated on the label are followed.¹²⁵ Neither the Food Safety Law nor GB 7718-2011 contain any provisions regarding food that is past its shelf-life but may remain safe for consumption. They also do not provide any indication of whether a relationship exists between the shelf-life date and food safety.¹²⁶ According to in-country experts, shelf-life dates may indicate food safety risks or declines in food quality. However, it is unclear when the label indicates the former versus the latter.¹²⁷ As a result, food past its shelf-life (quality) date often remains safe for human consumption. Nevertheless, under article 124 of the Food Safety Law, sale or distribution of food with an expired shelf-life is prohibited.¹²⁸ Violating the law may result in the food safety supervision and administration department of the people's government at or above the county level confiscating illegal income, confiscating equipment or raw materials, revoking permits, and/or imposing a fine.¹²⁹ There does not appear to be discussion of whether an expired item can be offered for free. Most commentators, however, seem to agree that freely offering expired items is not allowed.¹³⁰

Article 16 of the new Anti-Food Waste Law includes a consideration of date labels and related food waste, requiring that the shelf-life of food be set up in a "scientific and rational manner, and conspicuously indicated for easy identification."¹³¹ As the Anti-Food Waste Law is implemented, this provision may lead to changes in how the shelf-life label is set and what it signifies. In the December 2021 Work Programme on Anti-Food Waste (反食品浪费工作方案) issued to begin implementing the Anti-Food Waste Law, article 11 establishes guidance for food date labeling. The guidance introduces two different terms for date labeling: "best before" (最佳食用日期)

and “expiration” (保质期), potentially adding nuance to the previously used single term “shelf-life” (保质期).¹³² The guidance also encourages the sale of food near the expiration date at preferential prices.¹³³ This document, however, is only guidance and has not been implemented into law or interpreted or enforced in practice. As such, use of these terms is not yet required.

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 damage). 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.

Currently, China does not have a “Good Samaritan law” specifically protecting food donors or food recovery organizations from civil or criminal liability resulting from food donation. However, China does have a national Good Samaritan law pertaining to situations of emergency assistance.¹³⁴ The law states, “A person who causes harm to any recipient in volunteering to provide emergency assistance shall not bear civil liability.”¹³⁵ Additionally, article 662 of the Civil Code provides that a donor is not liable for any defect in gifted property unless the donor intentionally fails to notify the recipient of the defect or indicates the absence of any defect, thereby causing losses to the recipient.¹³⁶

At the time of this writing, there were no reported cases in which a plaintiff brought a civil claim against a donor or distributor for harm resulting from food received free of charge.¹³⁷ But since there is currently no liability protection related specifically to food donation in China, donors could face civil liability if donated food caused harm to a beneficiary, even if unlikely. Since no formal immunity for food donation exists for either donors or food rescue organizations, it is still important to understand what would constitute liability in a court so donors can limit their potential liability.

Tort law is the most likely cause of action that would arise in a case of donated food causing harm to a recipient. Under China’s tort law, manufacturers in general are strictly liable for the damages caused by any defective products.¹³⁸ This means that a plaintiff does not need to show that manufacturers are negligent or intentional in causing the harms. A plaintiff only needs to show that the product has a defect, that the plaintiff suffered injuries, and that the defective product caused the injuries.¹³⁹ The statutory provision that establishes the strict liability standard for defective products does not distinguish between food products and other products.¹⁴⁰ As a result, manufacturers of donated food could arguably be subject to the strict liability standard for harms resulting from the donated food. By contrast, sellers and other parties in the distribution chain, such as food recovery organizations and grocery stores that donate surplus food, are only liable if they are at fault (i.e., if they negligently or intentionally cause harm).¹⁴¹ Food distributors thus could still be held responsible if they are found to fall short of the standard of care reasonably expected of them and if there was a sufficient nexus between the breach and the plaintiff’s injury.¹⁴² According to article 148 of the Food Safety Law, in addition to claiming damages, a consumer may require a producer of food failing to meet the food safety standards or a trader knowingly dealing in such food to pay an indemnity of 10 times the price paid or three times the loss (a minimum of 1,000 yuan of additional compensation).¹⁴³ This does not apply to defects in the labels or instructions with the food that neither impair food safety nor mislead consumers.¹⁴⁴

Outside of tort law, contract law is an unlikely basis for liability. This is because, in general, the end recipients do not pay for the donated food, which is a requirement for the formation of a contract that would then be the basis for potential liability.¹⁴⁵ Another possible avenue is consumer protection. Under the Consumer Protection Law (CPL), a food donor or recovery organization may be liable if it fails to fulfill the obligation of safety owed to consumers.¹⁴⁶ However, while the CPL provides for an express cause of action under product liability for harm caused by defective products, it appears that a prerequisite for such cases is the sale of a product, as

article 2 frames the rights of consumers in “purchasing and using” commodities.¹⁴⁷ Thus, because complaints are limited to paying customers, the CPL is unlikely to apply to food donation.

Finally, it would be highly unlikely for a donor or food recovery organization to face liability under criminal law. To be liable under criminal law, a donor or food recovery organization would need to intentionally violate food safety standards or the Food Safety Law.¹⁴⁸ Criminal liability would only result in cases of intentional noncompliance with food safety standards or gross negligence that would sufficiently give rise to food poisoning.¹⁴⁹ Thus, except in the most egregious cases, criminal liability is unlikely for food donors or distributors.

In summary, no liability protection created in law offers immunity for food donors and food recovery organizations if someone were to fall ill from donated products. As described above, tort law could present a potential avenue of liability, and this risk is highest for food manufacturers. Other causes of action outside of tort are unlikely in the case of food donation.

TAXES

Reducing FLW results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding ultimately uneaten food. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs or sponsor community development, and recipients of donated food are able to spend limited financial resources on other basic goods and services.

Yet food donation can 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 individuals to throw away food instead of donating it. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation.

Article 26 of the 2020 Anti-Food Waste Law of the People’s Republic of China provides that the state will implement tax policies to help prevent food waste. However, as of the time of writing, China has not passed implementing regulations that expand upon this requirement of the law.¹⁵⁰

INCENTIVES

Tax incentives can provide significant support for food donation efforts and for the reduction of FLW. For example, corporate donors may be more likely to donate surplus food if they receive a charitable deduction to offset the cost of transportation and logistics.

Under Chinese law, businesses may deduct their charitable donations up to 12% of the annual profit from their taxable income.¹⁵¹ If the charitable donation exceeds 12% of the company’s profit that year, the amount may carry over and be deducted within three years.¹⁵² Additionally, from 2019 to 2025, an enterprise’s donation for poverty alleviation purposes to targeted poverty-stricken areas can be fully deducted from an enterprise income tax perspective,¹⁵³ and an enterprise’s or individual’s donation to enterprises or individuals in targeted poverty-stricken areas for poverty alleviation purposes can be exempt from value-added tax (VAT).¹⁵⁴

In order for a business to claim tax deductions, the donation has to meet three requirements. First, the donation must be made for “charitable activities,”¹⁵⁵ which includes a broad range of activities as defined in article 3 of the Charity Law.¹⁵⁶ Second, the donation must be made through eligible charitable organizations or governments at or above the county level.¹⁵⁷ Eligible charitable organizations are those that are registered and not for profit as well as meet all other requirements set forth in article 52 of the Regulations on the Implementation of the Enterprise Income Tax Law.¹⁵⁸ Additionally, the charitable organization must be evaluated and granted tax-deductible status in accordance with the criteria set forth in Announcement No. 27 [2020] of the Ministry of Finance, the State Taxation Administration, and the Ministry of Civil Affairs on Matters Concerning Pre-tax

Deduction of Charitable Donations.¹⁵⁹ Third, the enterprise must obtain an invoice proving the fair market value of the donated goods from the charitable organization to which it donates.¹⁶⁰

Although national tax rules do not define the “fair market value of a donated item,” in accordance with the Circular of the Ministry of Finance on Issuing the Accounting System for Non-governmental Non-profit Organizations it shall be determined in the following order: (i) where there is an active market for identical or similar assets, the fair market value shall be determined according to the market price for the identical or similar assets; and (ii) where there is no active market for identical or similar assets, or it is impossible to find any identical or similar assets, the fair value of the asset shall be determined by using a reasonable pricing method.¹⁶¹ Moreover, the definitions of the “market price” and a “reasonable pricing method” are further clarified by the Circular on Issuing the Interpretations of Several Issues concerning the Accounting System for Non-governmental Nonprofit Organizations. “Market price” generally refers to (i) the ex-factory price of the donated item produced by the donor that is the manufacturer, (ii) the sales price of the donated item sold by the donor that is the distributor, (iii) the government guidance price, and (iv) the price of similar commodities on well-known, large-scale e-commerce platforms. “Reasonable pricing method” includes the valuation by a third party.¹⁶²

Individuals may deduct charitable donations, such as those made in support of education and poverty alleviation, from their taxable income, subject to a cap of 30% of the individual’s taxable income.¹⁶³ The eligibility requirements for an individual’s donation to be deductible are the same as the requirements for an enterprise’s donation: the donation must be made to an eligible charitable organization, for charitable activities, and the individual must obtain an invoice.¹⁶⁴

BARRIERS

While certain tax schemes may encourage food donations, they may also be potential deterrents. In many countries, VAT presents a financial barrier to donating food. VAT is imposed at every stage of the supply chain through a series of debits (output VAT) and credits (input VAT). The output VAT (debit) is the amount that a VAT-registered business will charge on its own sale of the good to businesses downstream or to the end consumer, whereas the input VAT (credit) is the amount a VAT-registered business paid when it acquired the inputs or ingredients. A VAT-registered business subtracts the input VAT that it paid on products from the output VAT that it charged when selling the product and then pays the balance to the government.¹⁶⁵

In China there are multiple VAT rates applicable to different goods and services. The standard rate of VAT is 13%, and there are reduced rates of 9% and 6% for specific goods.¹⁶⁶ While the first rate of 9% applies to restaurants and catering services, food and beverage services may be subject to 6% VAT as a “lifestyle service.”¹⁶⁷ Under the law, the provision of goods for no consideration (e.g., free gifts) or for an unjustifiably low price will still be a deemed sale for VAT purposes.¹⁶⁸ Therefore, in China, for tax purposes, donating food is regarded the same as selling it and is thus a taxable event.

This means that when a donor donates food to a food recovery organization, the difference between the output VAT (which will be the same as if the donor sold the food for its fair market price) and input VAT (which is the amount the donor pays when it acquires the food from an upstream distributor) shall be paid to the government. Either the donor or food recovery organization has to pay the amount due to the government; the common practice in China is that the donor covers this expense. Except for the scenario where the VAT can be exempt on the donation by enterprises or individuals to enterprises or individuals in targeted poverty-stricken areas for poverty alleviation purposes from 2019 to 2025,¹⁶⁹ food donation is a VAT-taxable event and the food donor will bear the output VAT. As a result, a food donor will at least incur the input VAT on the food and will most likely also bear the cost of the difference between the output VAT and the input VAT when it donates to a food recovery organization. This cost may strongly deter food donation.

DONATION REQUIREMENTS OR FOOD WASTE PENALTIES

Some countries influence business behavior and promote sustainable food systems through food donation requirements or monetary penalties for sending food to landfills (often known as “organic waste bans” or “waste taxes”). The Anti-Food Waste Law in China introduces a framework for food waste penalties—and even donation requirements.

While not technically an organic waste ban (e.g., a law that attaches a penalty to the amount of organic waste produced), the law does penalize behavior that instigates food waste. Articles 27 to 30 of the Anti-Food Waste Law stipulate that violators of the law’s food waste mitigation provisions will be warned and ordered to take corrective action by a designated department.¹⁷⁰ The relevant food waste mitigation provisions include articles 7 and 10 that direct caterers to take steps to prevent excess food; article 15 that directs food producers to improve storage, transport, and processing to reduce food waste; and article 22 that prohibits news media from promoting overeating or any forms of excessive food waste.¹⁷¹ Violators that refuse to take corrective action can be fined (1,000 to 10,000 yuan for catering service providers; 5,000 to 50,000 yuan for food producers or dealers;¹⁷² or 10,000 to 100,000 yuan for radio stations, TV stations, or network audio and video service providers.)¹⁷³ In May 2021, a government supervision team in Nanjing identified a bread shop violating the Anti-Food Waste Law by throwing away bread it had not been able to sell.¹⁷⁴ This was the first instance of enforcement of the law in the city.¹⁷⁵

While article 23 of the Anti-Food Waste Law does not require food donation, it does promote it and encourages the development of food donation infrastructure.¹⁷⁶ The article directs the Ministry of Civil Affairs and SAMR to establish a link between charitable food distribution organizations and food producers and dealers.¹⁷⁷ Such a link would direct food to the relevant social organizations that could then distribute it.¹⁷⁸ Article 23 also recommends the building of online platforms to support food donation services.¹⁷⁹ As relevant agencies and departments begin to enforce the Anti-Food Waste Law, establishing efficient food donation networks recurs as a critical step towards enhancing food redistribution. For example, section 10 of the 2021 National Development and Reform Commission’s Work Programme on Anti-Food Waste (反食品浪费工作方案) directs the Ministry of Civil Affairs and SAMR to guide food producers and operators to donate food to relevant social organizations, welfare agencies, aid agencies, and other organizations or individuals as long as food safety is ensured.¹⁸⁰

GOVERNMENT GRANTS AND INCENTIVES

Grants and incentive programs funded at the central, municipal, 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 innovations and emerging technologies that will make food donation more efficient and sustainable.

As mitigating food waste is a national priority, the Chinese government designated support for research and technological solutions. In the new Anti-Food Waste Law, article 26 confirms that the people’s government at or above the county level shall take measures to support scientific research, technological development, and other activities to prevent food waste.¹⁸¹ The article also requires that government procurement decisions align with the mandate to prevent food waste.¹⁸² As many businesses are state-owned in China, directing procurement is a powerful lever. However, as previously noted, there have not yet been implementing regulations issued for this law. Thus, to date, no specific government grants exist for food donation or recovery.

CONCLUSION

This Legal Guide identifies China's current laws, policies, and programs that relate to FLW and food donation. While the central 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. In China, food waste mitigation and redistribution are national priorities, codified by the 2020 Anti-Food Waste Law. While levels of food waste in China remain high, significant efforts to curb excess waste and increase food donation are under way, including new legislation and national campaigns like the Clean Plate Campaign and Healthy China 2030. Imbedded in each of these national campaigns is a multistakeholder approach to reducing hunger and food waste. However, there are opportunities to bolster the progress of China's national food security and food waste goals with legislation that minimizes any obstacles or deterrents to food donation and provides adequate donation incentives, such as liability protection laws or regulations that clarify date labeling laws applied to food donation. The forthcoming implementing regulations for the Anti-Food Waste Law will also serve as an opportunity to optimize the legal landscape for food donation.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies. It also offers a foundation for a dialogue about FLW prevention and the value of food recovery to China's food security, economic stability, and environmental sustainability. To contribute to this discussion, a separate document produced under The Global Food Donation Policy Atlas project sets forth policy recommendations specific to China. In the meantime, food donors and food recovery organizations should consider the laws, policies, and legal issues discussed in this Legal Guide when donating food or distributing donated food to those in need. To better understand the regulation of food donation in China, 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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- ¹³ Li, *supra* note 11; as a large agricultural producer, China is now almost completely self-sufficient in two main staples—rice and wheat. Over the last decade, milk production more than tripled, meat production rose by 30% and vegetables and fruits production increased by nearly 60%.
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39 Xianfa (宪法) [Constitution] art. 58, (2018) (China).

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53 Xianfa (宪法) [Constitution] art. 86 (2018) (China).

54 Xianfa (宪法) [Constitution] arts. 62(5), 87 (2018) (China).

55 *State Council to Abolish Legislative Affairs Office*, STATE COUNCIL PEOPLE'S REPUBLIC OF CHINA (Mar. 13, 2018, 2:21 PM), *中华人民共和国立法法* [Legislation Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 15, 2000, amended Mar. 15, 2015, effective Mar. 15, 2015), art. 80 (China).

57 Xianfa (宪法) [Constitution] art. 95 (2018) (China).

58 Xianfa (宪法) [Constitution] art. 95, 110 (2018) (China).

59 *中华人民共和国立法法* [Legislation Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 15, 2000, amended Mar. 15, 2015, effective Mar. 15, 2015), para. 1, art. 72 (China).

60 Legislation Law of the People's Republic of China, art. 82 (China).

61 Legislation Law of the People's Republic of China, art. 72 (China).

62 Legislation Law of the People's Republic of China, art. 82 (China).

⁶³ Here, “food waste” means “the failure to reasonably utilize safe edible or drinkable food according to its functions and purposes, including abandonment, or reduction in quantity or deterioration of quality of food due to unreasonable utilization, among others.” 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 2 (China).

⁶⁴ Anti-food Waste Law of the People’s Republic of China, art. 17 (China).

⁶⁵ Anti-food Waste Law of the People’s Republic of China, art. 4 (China).

⁶⁶ *Id.*

⁶⁷ Anti-food Waste Law of the People’s Republic of China, art. 23 (China).

⁶⁸ *Id.*

⁶⁹ Anti-food Waste Law of the People’s Republic of China, arts. 5, 15 (China).

⁷⁰ Here, taken to include restaurants, food service, among others.

⁷¹ 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 5 (China).

⁷² Anti-food Waste Law of the People’s Republic of China, art. 19 (China).

⁷³ Anti-food Waste Law of the People’s Republic of China, art. 7 (China).

⁷⁴ Anti-food Waste Law of the People’s Republic of China, art. 5 (China).

⁷⁵ Anti-food Waste Law of the People’s Republic of China, art. 7 (China).

⁷⁶ 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 22 (China).

⁷⁷ *Id.*

⁷⁸ Anti-food Waste Law of the People’s Republic of China, art. 9 (China).

⁷⁹ Anti-food Waste Law of the People’s Republic of China, art. 11 (China).

⁸⁰ Anti-food Waste Law of the People’s Republic of China, art. 8 (China).

⁸¹ 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 6 (China). Quantity of food shall be determined in a “thrifty manner” that does not exceed “prescribed standards.”

⁸² Anti-food Waste Law of the People’s Republic of China, art. 13 (China).

⁸³ Anti-food Waste Law of the People’s Republic of China, art. 14 (China).

⁸⁴ 国家发展改革委办公厅等关于印发《反食品浪费工作方案》的通知 [The General Office of the National Development and Reform Commission and Others Issued the Notice of “Anti-Food Waste Work Program”], NAT’L DEV. & REFORM COMM’N (Dec. 17, 2021), https://www.ndrc.gov.cn/xxgk/zcfb/tz/202112/t20211217_1308233.html?code=&state=123 [<https://perma.cc/KSJ9-YCTT>] (China).

⁸⁵ (国务院食品安全办、教育部、商务部等关于贯彻实施《中华人民共和国反食品浪费法》有关事项的公告[2021]20号) [Notice No. 20 [2021] of the State Council’s Food Safety Office, the Ministry of Education, the Ministry of Commerce, State Market Regulatory Administration, and National Government Offices Administration Concerning the Implementation of the Anti-Food Waste Law of the People’s Republic of China] (June 11, 2021) (China).

⁸⁶ 国务院食品安全办、教育部、商务部等关于贯彻实施《中华人民共和国反食品浪费法》有关事项的公告[2021]20号 [Notice of the State Council’s Food Safety Office, the Ministry of Education, the Ministry of Commerce, State Market Regulatory Administration, and National Government Offices Administration Concerning the Implementation of the Anti-Food Waste Law of the People’s Republic of China] (June 11, 2021) (China).

⁸⁷ 国管局办公室关于贯彻落实《中华人民共和国反食品浪费法》的通知 [2021]30号 [Notice No. 30 [2021] of the National Government Offices Administration Concerning the Anti-Food Waste Law of the People’s Republic of China] (July 27, 2021) (China).

⁸⁸ *Id.*

⁸⁹ 中共中央办公厅、国务院办公厅印发《粮食节约行动方案》 [Action Plan on Staple Food Conservation by General Offices of the CPC Central Committee, and The State Council] (promulgated by the Gen. Off. of the CCPC & the Gen. Off. of the State Council, Oct. 31, 2021, effective Oct. 31, 2021) (China).

⁹⁰ Liu Xiao Ying, *China’s Near-Expired Food Industry is a Big Draw for Investors*, YICAI GLOBAL (July 5, 2021), <https://www.yicai.com/news/china-near-expired-food-industry-is-a-big-draw-for-investors> [<https://perma.cc/2F87-HBSB>].

⁹¹ Yum China, *Yum China Reaffirms Its Commitment to Reducing Food Waste with Food Bank Program*, 3BL CSR WIRE (Apr. 12, 2022), https://www.csrwire.com/press_releases/741466-yum-china-reaffirms-its-commitment-reducing-food-waste-food-bank-program [<https://perma.cc/C3CG-FSHA>].

⁹² *Id.*

⁹³ Xing Yi et al., *War Against Food Waste Heats Up*, CHINA DAILY (Aug. 17, 2020), <https://www.chinadaily.com.cn/a/202008/17/WS5f39efa7a310834817260bad.html> [<https://perma.cc/CNT7-3PAZ>].

⁹⁴ *Id.*

⁹⁵ Liu Zhe, Anthony N. Mutukumira, & Hongjun Chen, *Food Safety Governance in China: From Supervision to Coregulation*, 7 FOOD

SCI. & NUTRITION, no. 12, 2019, at 4127-4139.

⁹⁶ *Id.*

⁹⁷ There was also a short 2021 amendment, adding one paragraph about licensing and permits. Order No. 81 of the President of the People's Republic of China (2021); 中华人民共和国食品安全法 [Food Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, rev'd Apr. 29, 2021, effective Apr. 29, 2021) (China).

⁹⁸ Order No. 721 of the State Council, *Implementing Regulations of the Food Safety Law of the People's Republic of China* (October 11, 2019).

⁹⁹ 中华人民共和国食品安全法实施条例 [Regulation on the Implementation of the Food Safety Law of the People's Republic of China] (promulgated by the State Council, Oct. 11, 2019, effective Dec. 1, 2019) (China).

¹⁰⁰ The Food Sanitation, Safety, and Nutrition Advisory Committee was established in 2014. See Food Sanitation, Safety and Nutrition Advisory Committee Establishment Regulations (promulgated by the Ministry of Health and Welfare, effective Aug. 14, 2014), <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=L0000061> [<https://perma.cc/9DGD-WRAX>].

¹⁰¹ Food safety supervision was previously under the jurisdiction of The China Food and Drug Administration (CFDA), however, in 2018 this agency was consolidated into one ministry, the State Administration for Market Regulation, that handles market regulation functions previously shared by three separate agencies (General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), the China Food and Drug Administration (CFDA), and the State Administration of Industry and Commerce (SAIC).) See UNDERSTANDING THE 2018 GOVERNMENT INSTITUTIONAL REFORM: CHINA in PRAC. L. CHINA, Thomson Reuters Westlaw, W-014-9834 (May 2018).

¹⁰² Zhe Liu, Anthony N. Mutukumira & Hongjun Chen, *Food Safety Governance in China: From Supervision to Coregulation*, 7 FOOD SCI. NUTR. 4127 (2019).

¹⁰³ *Main Functions*, MINISTRY AGRIC. & RURAL AFFS. PEOPLE'S REPUBLIC OF CHINA (May 26, 2020), http://english.moa.gov.cn/Institutional/Mandates/202005/t20200526_300404.html [<https://perma.cc/RYG4-8LZZ>].

¹⁰⁴ 国家卫生健康委办公厅关于印发2021年度食品安全国家标准立项计划的通知 [Notice of the General Office of the National Health Commission on Issuing the 2021 National Food Safety Standard Project Approval Plan], NAT'L HEALTH COMM'N (Aug. 18, 2021), <http://www.nhc.gov.cn/sps/s7891/202108/1f6bf27d4c6c498ea4094893b4510aaa.shtml> [<https://perma.cc/9UVF-ZFR5>].

¹⁰⁵ *Advancing China's Food Safety*, WORLD BANK (Mar. 25, 2021), -release/2021/03/25/advancing-china-s-food-safety [<https://perma.cc/859A-JFCM>].

¹⁰⁶ *Id.*

¹⁰⁷ 中华人民共和国民法典 [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021) (China).

¹⁰⁸ 中华人民共和国刑法 [Criminal Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., July 1, 1979, rev'd Dec. 26, 2020, effective Mar. 1, 2021), ch. II, art. 143 (China).

¹⁰⁹ 中华人民共和国公益事业捐赠法 [Law of the People's Republic of China on Donations for Public Welfare] (promulgated by the Standing Comm. Nat'l People's Cong., June 28, 1999, effective Sept. 1, 1999) (China).

¹¹⁰ 中华人民共和国企业所得税法(2018修正案) [Enterprise Income Tax Law of the People's Republic of China (2018 Amendment)] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2018, effective Dec. 29, 2018) (China); 中华人民共和国个人所得税法(2018修正案) [Individual Income Tax Law of the People's Republic of China (2018 Amendment)] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 31, 2018, effective Jan. 1, 2019) (China).

¹¹¹ 中华人民共和国增值税暂行条例(2017修订) [Interim Regulation of the People's Republic of China on Value Added Tax (2017 Revision)] (promulgated by the State Council, Nov. 19, 2017, effective Nov. 19, 2017), art. 7 (China).

¹¹² The law stipulates that license systems should be established for pesticides, veterinary drugs, feed and feed additives, fertilizers, and veterinary equipment that may affect the quality and safety of agricultural products according to the provisions of the laws and administrative rules concerned and specifies quality labeling (including geography, organic, "green" foods).

¹¹³ 北京市生活垃圾管理条例(2019修正) [已被修订] [Beijing Municipal Regulation on the Management of Municipal Solid Waste] (China).

¹¹⁴ *Food Waste Regulation Takes Effect in Beijing*, INST. GEOGRAPHIC SCIS. & NAT. RES. RSCH., CHINESE ACAD. SCIS. (June 1, 2021). http://english.igsnr.cas.cn/ue/ne/202106/t20210601_271458.html [<https://perma.cc/DY2J-CYYW>].

¹¹⁵ 中华人民共和国食品安全法 [Food Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, rev'd Apr. 29, 2021, effective Apr. 29, 2021) (China).

¹¹⁶ 中华人民共和国食品安全法实施条例 [Regulation on the Implementation of the Food Safety Law of the People's Republic of China] (promulgated by the State Council, Oct. 11, 2019, effective Dec. 1, 2019) (China).

¹¹⁷ Food Safety Law of the People's Republic of China, ch.1, art. 2(1), ch. 5, section 1 (China).

¹¹⁸ 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 16 (China).

¹¹⁹ Anti-food Waste Law of the People's Republic of China, art. 23 (China).

¹²⁰ Anti-food Waste Law of the People's Republic of China, art. 20 (China).

¹²¹ 中华人民共和国食品安全法 [Food Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, rev'd Apr. 29, 2021, effective Apr. 29, 2021) (China); 中华人民共和国食品安全法实施条例

- [Regulation on the Implementation of the Food Safety Law of the People's Republic of China] (promulgated by the State Council, Oct. 11, 2019, effective Dec. 1, 2019) (China).
- ¹²² GB 7718-2011, National Food Safety Standards-General Rules for the Labeling of Prepackaged Food (promulgated by the Nat'l Health Comm'n of the People's Republic of China, Apr. 20, 2011, effective Apr. 20, 2012); Food Safety Law of the People's Republic of China, art. 150 (China).
- ¹²³ *China: China Notifies Revised Draft National Food Safety Standard of General Rules for Nutritional Labeling of Prepackaged Foods*, U. S. DEP'T AGRIC. FOREIGN AGRIC. SERV. (Nov. 17, 2021), <https://www.fas.usda.gov/data/china-china-notifies-revised-draft-national-food-safety-standard-general-rules-nutritional> [<https://perma.cc/CL4N-W44Q>].
- ¹²⁴ GB 7718-2011 (China); Food Safety Law of the People's Republic of China, art. 150 (China).
- ¹²⁵ Food Safety Law of the People's Republic of China, art. 99 (China).
- ¹²⁶ *Can't Eat It After the Expiration Date? Actually, Your Misunderstanding About the Shelf Life is Too Deep*, CHINA DAILY (Feb. 3, 2019, 7:24), <http://cn.chinadaily.com.cn/a/201902/03/WS5c564c25a31010568bdc841b.html> [<https://perma.cc/Z3AU-WDY3>].
- ¹²⁷ Telephone interview with stakeholder (Nov. 2021) (notes on file with author).
- ¹²⁸ 中华人民共和国食品安全法 [Food Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, rev'd Apr. 29, 2021, effective Apr. 29, 2021), art. 124 (China).
- ¹²⁹ Fine of not less than 50,000 yuan but not more than 100,000 yuan on it if the goods value of the food or food additives illegally produced or dealt in is less than 10,000 yuan or a fine of not less than ten times but not more than 20 times of the goods value if the goods value is 10,000 yuan or more.
- ¹³⁰ Telephone interview with stakeholder (Nov. 2021) (notes on file with author).
- ¹³¹ 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 16 (China).
- ¹³² 国家发展改革委办公厅等关于印发《反食品浪费工作方案》的通知 [*The General Office of the National Development and Reform Commission and Others Issued the Notice of "Anti-Food Waste Work Program"*], NAT'L DEV. & REFORM COMM'N (Dec. 17, 2021) https://www.ndrc.gov.cn/xxgk/zcfb/tz/202112/t20211217_1308233.html?code=&state=123 [<https://perma.cc/KSJ9-YCTT>] (China).
- ¹³³ *Id.*
- ¹³⁴ 中华人民共和国民法典 [Civil Code] (promulgated by the Nat'l People's Cong., May 28, 2020, effective Jan. 1, 2021), book 1, ch. VIII, art. 184 (China).
- ¹³⁵ *Id.*
- ¹³⁶ Civil Code, art. 662 (China).
- ¹³⁷ Telephone interview with stakeholder (Nov. 2021) (notes on file with author).
- ¹³⁸ Civil Code, book 7, ch. IV, art. 1202 (China). *See also* HAO JIANG, CHINESE TORT LAW.: TRADITION, TRANSPLANTS AND SOME DIFFICULTIES, in COMPAR. TORT L.: GLOBAL PERSPS. 397, 418 (Mauro Bussani & Anthony J. Sebok eds., 2021).
- ¹³⁹ Civil Code, book 7, ch. IV, art. 1202 (China). *See also* Nicolas Groffman, Harrison Clark Rickerbys & He Fan, *Product Liability Q&A: China*, in COUNTRY Q&A: CHINA, PRAC. L. Q & A, Thomson Reuters Westlaw, Res. No. 5-535-9005 (2021).
- ¹⁴⁰ Civil Code, book 7, ch. IV (China).
- ¹⁴¹ 中华人民共和国产品质量法 [Product Quality Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 22, 1993, rev'd Dec. 29, 2018, effective Dec. 29, 2018), art. 42 (China). Article 1203 of the Civil Code confirms this standard: To protect consumers and ensure that they will receive compensation for defective products that cause injuries, the Civil Code allows a consumer to seek compensation from either the manufacturer or the seller, and whomever the consumer seeks compensation from must pay. However, a seller could seek indemnification from the manufacturer if the seller is not at fault. Relatedly, if the consumer seeks compensation from the manufacturer, the manufacturer could seek indemnification from the seller only if the seller is at fault. Civil Code, book 7, ch. IV, art. 1203 (China).
- ¹⁴² Civil Code, book 7, ch. IV (China) (emphasis added).
- ¹⁴³ 中华人民共和国食品安全法 [Food Safety Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, rev'd Apr. 29, 2021, effective Apr. 29, 2021), art. 124 (China).
- ¹⁴⁴ *Id.*
- ¹⁴⁵ A donor faces potential liability under contract law only if there exists a special kind of contract between the donor and the donee. Civil Code, book 3, ch. XI, arts. 660-62 (China).
- ¹⁴⁶ Under the Consumer Protection Law, business operators are subject to tort liability for failure to fulfill the obligation of guaranteeing the safety of consumers and thereby causing damage to consumers. 中华人民共和国消费者权益保护法 [Law of the People's Republic of China on the Protection of Consumer Rights and Interests] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 31, 1993, rev'd Oct. 25, 2013, effective Mar. 15, 2014), ch. VII, art. 48 (China).
- ¹⁴⁷ Law of the People's Republic of China on the Protection of Consumer Rights and Interests, ch. VII, art. 48 (China).
- ¹⁴⁸ The Food Safety Law imposes liability on a party if it violates the food safety standards and causes injuries. Food Safety Law of the People's Republic of China, art. 96 (China). Thus, if donors and food recovery organizations are compliant with food safety standards, they would not incur liability under Food Safety Law.

- ¹⁴⁹ 中华人民共和国刑法 [Criminal Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., July 1, 1979, rev'd Dec. 26, 2020, effective Mar. 1, 2021), ch. II, arts. 143 (China). Under China's criminal law, intent is required for criminal liability to attach, unless the specific provision on that crime provides that a negligent act could be subject to criminal liability. Criminal Law of the People's Republic of China, ch. II, arts. 14-15 (China). Thus, since the statute that provides for criminal liability for violation of food safety standards does not mention negligence (article 143 of the Criminal Law), a party must intentionally violate the food safety standards for criminal liability to attach.
- ¹⁵⁰ 中华人民共和国反食品浪费法 [Anti-food Waste Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 29, 2021, effective Apr. 29, 2021), art. 26 (China).
- ¹⁵¹ 中华人民共和国企业所得税法(2018修订) [Enterprise Income Tax Law of the People's Republic of China (Revised in 2018)] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 29, 2018, effective Dec. 29, 2018), art. 9 (China).
- ¹⁵² *Id.*
- ¹⁵³ 财政部、税务总局、国务院扶贫办关于企业扶贫捐赠所得税税前扣除政策的公告[2019] 49号 [Announcement 49 [2019] of the Ministry of Finance, the State Taxation Administration and the State Council Leading Group Office of Poverty Alleviation and Development on the Policies Concerning the Deduction of Donations Made by Enterprises for Poverty Alleviation before the Payment of Enterprise Income Tax] (promulgated by the Ministry of Fin., the State Tax'n Admin. & the State Council Leading Grp. Off. of Poverty Alleviation and Dev., Apr. 2, 2019, effective Jan. 1, 2019); 财政部、税务总局、人力资源社会保障部、国家乡村振兴局关于延长部分扶贫税收优惠政策执行期限的公告[2021] 18号 [Announcement 18 [2021] of the Ministry of Finance, the State Taxation Administration, the Ministry of Human Resources and Social Security and the National Administration for Rural Revitalization on Extending the Implementation Period of Certain Preferential Tax Policies for Poverty Alleviation] (promulgated by the Ministry of Fin., the State Tax'n Admin., the Ministry of Human Res. and Soc. Sec. & the Nat'l Admin. for Rural Revitalization, May 6, 2021, effective May 6, 2021).
- ¹⁵⁴ 财政部、税务总局、国务院扶贫办关于扶贫货物捐赠免征增值税的公告[2019] 55号 [Announcement 55 [2019] of the Ministry of Finance, the State Taxation Administration and the State Council Leading Group Office of Poverty Alleviation and Development on the Policies Concerning the Value-added Tax Exemption Policy for Goods Donated for Poverty Alleviation] (promulgated by the Ministry of Fin., the State Tax'n Admin. & the State Council Leading Grp. Off. of Poverty Alleviation and Dev., Apr. 10, 2019, effective Apr. 10, 2019); 财政部、税务总局、人力资源社会保障部、国家乡村振兴局关于延长部分扶贫税收优惠政策执行期限的公告[2021] 18号 [Announcement 18 [2021] of the Ministry of Finance, the State Taxation Administration, the Ministry of Human Resources and Social Security and the National Administration for Rural Revitalization on Extending the Implementation Period of Certain Preferential Tax Policies for Poverty Alleviation] (promulgated by the Ministry of Fin., the State Tax'n Admin., the Ministry of Human Res. and Soc. Sec. & the Nat'l Admin. for Rural Revitalization, May 6, 2021, effective May 6, 2021).
- ¹⁵⁵ 中华人民共和国企业所得税法实施条例 [Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China] (promulgated by the State Council, Dec. 6, 2007, rev'd Apr. 23, 2019, effective Apr. 23, 2019), art. 51 (China).
- ¹⁵⁶ 中华人民共和国慈善法 [Charity Law of the People's Republic of China] (promulgated by the Nat'l People's Cong., Mar. 16, 2016, effective Sept. 1, 2016), art. 3 (China).
- ¹⁵⁷ 中华人民共和国企业所得税法实施条例 [Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China] (promulgated by the State Council, Dec. 6, 2007, rev'd Apr. 23, 2019, effective Apr. 23, 2019), art. 51 (China).
- ¹⁵⁸ Regulation on the Implementation of the Enterprise Income Tax Law of the People's Republic of China, art. 52 (China).
- ¹⁵⁹ 财政部、税务总局、民政部关于公益性捐赠税前扣除有关事项的公告 [2020] 27号 [Announcement No. 27 [2020] of the Ministry of Finance, the State Taxation Administration, and the Ministry of Civil Affairs on Matters Concerning Pre-tax Deduction of Charitable Donations] (promulgated by Ministry of Fin., the State Tax'n Admin. & the Ministry of Civil Affs., May 13, 2020, effective Jan. 1, 2020) (China).
- ¹⁶⁰ 财政部、税务总局、民政部关于公益性捐赠税前扣除有关事项的公告 [2020] 27号 [Announcement No. 27 [2020] of the State Administration of Taxation on Issuing the Measures for the Administration of Vouchers for the Pre-Deduction of Enterprise Income Tax] (promulgated by the State Admin. of Tax'n, June 6, 2018, effective July 1, 2018), art. 11 (China); (财政部关于印发《公益事业捐赠票据使用管理暂行办法》的通知[2010] 112号) [Notice No. 112 [2010] of the Ministry of Finance on Issuing the Interim Measures for the Use and Management of Vouchers for Public Welfare Donations] (promulgated by the Ministry of Fin., Nov. 18, 2010, effective July 1, 2011), art. 18 (China).
- ¹⁶¹ 财政部关于印发《民间非营利组织会计制度》的通知 [Circular of the Ministry of Finance on Issuing the Accounting System for Non-governmental Non-profit Organizations] (promulgated by Ministry of Fin., Aug. 18, 2004, effective May 1, 2005), art. 17 (China).
- ¹⁶² 财政部关于印发《〈民间非营利组织会计制度〉若干问题的解释》的通知 [Circular of the Ministry of Finance on Issuing the Interpretations of Several Issues Concerning the Accounting System for Non-governmental Nonprofit Organizations] (promulgated by Ministry of Fin., Jun. 15, 2020, effective Jun. 15, 2020), art. 2 (China).
- ¹⁶³ 中华人民共和国个人所得税法(2018修正案) [Individual Income Tax Law of the People's Republic of China (2018 Amendment)] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 31, 2018, effective Jan. 1, 2019), art. 6 (China).
- ¹⁶⁴ 财政部、税务总局关于公益慈善事业捐赠个人所得税政策的公告[2019] 99号文 [Announcement No. 99 [2019] of the

- Ministry of Finance and the State Taxation Administration on Individual Income Tax Policy in Relation to Charitable Donations] (promulgated by the Ministry of Finance and the State Taxation Administration, Dec. 30, 2019, effective Jan. 1, 2019) (China).
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