



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: Argentina

*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 innovative partnership will map the laws and policies affecting donations in 15 countries over the course of two years. The project aims to: identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation and share best practices and recommendations for overcoming these barriers.

### ARGENTINA FOOD LOSS AND WASTE

Each year, Argentina loses 14.5 million tons of food during the production, processing, and distribution stages of the supply chain and wastes an additional 1.5 million tons of food at the retail or consumer level. At the same time, more than 11% of the population experiences severe food insecurity and the country recently declared a “National Food Emergency” in response to rising hunger and economic instability. Amidst these trends, the government has taken comprehensive federal action, introducing a National Plan for the Reduction of Food Loss and Waste (*el Plan Nacional de Reducción de Pérdidas y Desperdicio de Alimentos*) and amending the national Food Donation Law (“*Ley Donal*”) to provide additional support for food donors, food banks, and other food recovery organizations.

#### Argentina: By the Numbers

- Population: 45,479,000
- GDP: \$519.87 billion
- Poverty Rate: 32%
- Prevalence of Severe Food Insecurity: 11.3%
- Global Food Security Index: 70.8
- Food Sustainability Index: 71.5
- FLW Estimates: 16 million tons

### ARGENTINA FOOD DONATION POLICY HIGHLIGHTS

**LIABILITY PROTECTION FOR FOOD DONATIONS:** Argentina is **one of the few countries to offer liability protections** for food donations—a policy solution that has the potential to significantly strengthen food recovery efforts. In 2018, the federal government amended its national Food Donation Law to include a new liability protection provision modeled after the United States’ Bill Emerson Good Samaritan Act of 1996. Under this provision, food donors are entitled to broad liability protection provided they donate food to qualifying intermediary organizations that equitably distribute the food, free of charge, to populations in need. These food recovery organizations acting as intermediaries are

also eligible for this protection. As in the United States, Argentina's liability protection is not absolute; food donors and food recovery organizations must act in good faith and comply with applicable food safety standards set forth in the Argentine Food Code (*Código Alimentario Argentino*).

**ACTION OPPORTUNITY:** While the introduction of liability protection to the Food Donation Law is an important step towards increasing donations, one year after the provision's adoption, the Argentine Network of Food Banks still had not seen a measurable change in donations. The limited impact suggests that the existing protection has not resolved concerns of food donors and intermediaries with respect to potential liability. The protection may therefore be strengthened through the following actions: issuing interpretive regulations to define the "equitable distribution requirement" and identify which provisions of the Argentine Food Code apply to food donation; extending liability protection for direct donations and those organizations that charge a nominal fee; and clarifying that liability protection extends to the donation of past-date food when the date refers to quality rather than safety.

**GOVERNMENT GRANTS AND INCENTIVES:** While Argentina does not offer a federal law that explicitly allocates grant funding for food loss or waste or food donation, **the government has readily engaged with private sector actors to support food recovery innovation.** For example, in 2019, the federal government launched a contest to grant non-reimbursable financing for innovative food waste solutions in Argentina's horticultural sector. This grant is administered under the government's National Food Loss and Waste Reduction Program and in partnership with the Inter-American Development Bank through its "#SinDesperdicio" platform. This public-private partnership has the potential to support emerging solutions to food waste and food recovery throughout the country.

**ACTION OPPORTUNITY:** The newly-created National Plan for the Reduction of Food Loss and Waste provides a framework in which the government can develop sustainable grant and incentive programs for food donation. Though the Plan is still under development, it is intended to encompass public policies that promote awareness of and innovative solutions to food loss and waste through the supply chain. The Secretariat of Food and Bioeconomy under the Ministry of Agriculture, Livestock and Fisheries, is currently responsible for the Plan's implementation, and has the opportunity to develop programming and policies that will further advance food recovery efforts.

## **ARGENTINA FOOD DONATION POLICY OPPORTUNITIES**

**FOOD SAFETY FOR DONATIONS:** One area for action in Argentina is to clarify the food safety rules that apply to donated foods, as the Argentine Food Code containing the federal food safety laws does not feature a donation-specific section. The country has also not adopted clear guidance regarding the requirements or best practices for safety of donated foods.

**ACTION OPPORTUNITY:** To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the federal government should **amend the Argentine Food Code to feature donation-specific provisions** to ease the burden on food donors and food recovery organizations seeking to ensure compliance with food safety requirements. The government should also **produce and disseminate clarifying guidance on which food safety requirements are relevant to donation** to help facilitate the safe donation of surplus food.

**DATE LABELING:** Argentina's existing date labeling regime allows manufacturers to select from several labels and does not clearly convey whether the date refers to the food's quality or safety. These requirements align with those established by the Mercosur trade group of which Argentina is a member. The lack of clarity surrounding these labels on a national level, however, contributes to food waste and deters donation, as food donors assume that food is not safe to donate once the affixed date as passed, regardless of its intended meaning.

**ACTION OPPORTUNITY:** To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the federal government should coordinate with other Mercosur countries to **endorse a standard, dual-labeling system** that clearly distinguishes between quality and safety-based dates. This regime should require manufacturers or retailers who choose to affix date labels on foods to use one of two prescribed labels: “BEST If Used By” for foods that are labeled to indicate quality, and “USE By,” if the date intends to communicate when a food should be discarded for safety reasons. Argentina should subsequently amend its own date labeling requirements contained in the Argentine Food Code to conform to this new system and **should expressly permit the donation of food after the quality date**. Argentina should also **promote consumer education and awareness on the meaning of date labels**, once the labels are standardized.

**TAX INCENTIVES AND BARRIERS:** While Argentina offers a standard tax deduction for certain food donations of up to 5% of net taxable profits, the existing tax scheme also creates a barrier to donation as a result of the Value Added Tax (*Impuesto al Valor Agregado* or VAT). Taxpayers in Argentina are permitted to retain an input VAT or VAT credit on food that is discarded, but are responsible for paying the full cost of this credit if they donate food. As a result, many taxpayers perceive the VAT as imposing a penalty on food donation and prefer to throw away rather than donate food.

**ACTION OPPORTUNITY:** To ensure that food donation is perceived as an economical alternative to throwing away food, the government should **exempt the free donation of food from the list of activities for which a VAT credit must be reimbursed**. Additional changes to tax laws may further incentivize food donation, including: **offering tax credits for the donation of food**; providing an **increased deduction for food donations and associated costs**, such as the storage, transportation and delivery of donations; and developing simplified guidance to assist food recovery organizations apply for tax-exempt status and expedite the notice of decision.

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

In terms of policy successes, Argentina’s development of a Food Donation Law, now featuring liability protection for food donors and food recovery organizations, demonstrates a growing commitment to food recovery. However, the existing legal framework relevant to food donation can be strengthened by clarifying food safety requirements, standardizing date labels and amending the tax regime to promote rather than deter donations.

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
No policy	Weak Policy	Strong Policy	Weak Policy	Yes	No policy	Weak Policy

For more detail on how Argentina 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 Argentina and policy recommendations for strengthening this framework, check out the Argentina Food Donation Legal Guide and the Argentina Food Donation Policy Recommendations.

# BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

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

**Date Labeling:** Date labels, such as “use by,” “best before,” “sell by,” and “expires on,” are a major driver of food waste and obstacle to donation. For the majority of foods, date labels are used by manufacturers to reflect freshness or quality rather than safety, yet without standard labels delineating safety versus quality, safe food often goes to waste rather than being donated.

**Liability Protection for Food Donations:** A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Many countries are moving to adopt liability protections to mitigate this concern. In such countries, donors and food recovery organizations may still face uncertainty as to the parameters of this protection.

**Tax Incentives and Barriers:** Donating surplus food can be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax incentives (deductions or credits), can help offset these costs and make donation a more attractive option. In some countries, such as several countries with a Value Added Tax, tax schemes are themselves a barrier to donations.

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

**Government Grants and Incentives:** Grants and incentive programs funded at the federal 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.

## THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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