



THE GLOBAL FOOD DONATION POLICY ATLAS

Executive Summary: Brazil

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 maps the laws and policies in countries across the globe. 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.

BRAZIL FOOD LOSS AND WASTE

Each year, approximately 26.3 million tons of food in Brazil is either lost or wasted along the supply chain. Much of this food is still safe for human consumption and could be redirected to those experiencing hunger and chronic malnutrition throughout the country. The benefits of greater food recovery and donation are particularly apparent in Brazil, where an estimated 61.3 million people face food insecurity. While in the past Brazil was able to reduce food insecurity significantly, so much so that Brazil was removed from the United Nation's Hunger Map in 2014, a recent series of economic, political, and pandemic related factors have led to an increase in food insecurity and the subsequent re-addition of Brazil to the Hunger Map in 2021.

The government of Brazil has prioritized food insecurity and food loss and waste (FLW) Reduction as part of its national policy agenda. In recent years, the Brazilian government has demonstrated increased attention to food insecurity and high rates of FLW, adopting both a comprehensive strategy and national legislation on the issue. In October 2017, the Brazilian government launched an Inter-Sectoral Strategy for the Reduction of Food Losses and Waste—a multi-stakeholder initiative led by the Inter-ministerial Committee for Food Security and Nutrition (*Câmara Interministerial de Segurança Alimentar e Nutricional*)—to combat food loss and waste through public-private partnerships and programs, calling for greater support for food donation, food banks, and other food recovery organizations. In June 2020, the Brazilian government enacted a Food Waste and Donation Law—Law 14,016, which explicitly establishes the legality of all food donation and provides liability protections for food donors and intermediaries. Shortly after enacting the Food Waste and Donation law, the Brazilian president also issued a Decree (Decree 10,490) reestablishing the Brazilian Food Bank Network to strengthen and unify food donation operations based on principles of cooperation, communication, transparency, and ethical conduct.

Brazil: By the Numbers

- Population: 214.3 million
- GDP: \$1.609 trillion USD
- Poverty Rate: 18.7%
- Prevalence of Food Insecurity: 20.5%
- Global Food Security Index: 65.1
- FLW Estimates: 26.3 million tons/year (household)

BRAZIL FOOD DONATION POLICY HIGHLIGHTS

LIABILITY PROTECTION: Brazil offers liability protections for food donations through the Food Waste and Donation Law (*Dispõe Sobre o Combate ao Desperdício de Alimentos e a Doação de Excedentes de Alimentos para o Consumo Humano*). In 2020, the federal government enacted this law to provide liability protections for food donors and intermediaries. Under this law, food system actors donating food are entitled to broad liability protection provided that the food they donate is suitable for donation and if donors donate food to qualifying intermediary charitable organizations or directly to final beneficiaries that distribute the food to populations in need. Brazil's liability protection is not absolute; food donors and food recovery organizations can be held civilly and administratively liable for damages caused by the donated food if they "act with intent" and can be held criminally liable if they act with "the specific intent of causing harm to the health of others" at the time they deliver the food to an intermediary or final beneficiary.

ACTION OPPORTUNITY: While the enactment of liability protections through the Food Waste and Donation Law is an important step towards increasing donations, the protections are not well understood. Outstanding confusion suggests that the protection has not resolved concerns of food donors and intermediaries with respect to potential liability and food safety. Liability protections may therefore be strengthened through a public awareness and education campaign to increase donor and general awareness of the liability protections offered by the law and appropriate food safety practices for donations.

FOOD SAFETY FOR DONATIONS: The Brazilian Health Regulatory Agency (ANVISA) released a *Guide for Food Donation with Sanitary Safety* on November 7, 2022 which expresses ANVISA's understanding of best practices regarding procedures, routines, and methods considered adequate to maintain food safety when food is donated. It is non-binding, but provides thorough instruction for food donors, intermediaries, and recipients. For example, one of the weakest links in ensuring food safety in Brazil is the transportation and distribution of food. To address this concern, the guide clearly instructs on how food can be transported, different methods of transport and storage for different food products, proper temperatures at which food must be kept during transport to ensure safety, and an example of a donation temperature control record.

ACTION OPPORTUNITY: While ANVISA's Guide provides a comprehensive explanation of food safety best practices for donating food, as a next step Brazil should codify food safety for donations in ANVISA regulations or in the Food Waste and Donation Law to ensure that all donors and intermediaries comply with food safety guidance. Additionally, ANVISA should ensure that the Guide is widely disseminated to all relevant stakeholders in the food donation chain.

BRAZIL FOOD DONATION POLICY OPPORTUNITIES

DATE LABELING: Brazil's date label requirements, which are standardized as part of the country's participation in Mercosur (the Southern Common Market trade bloc), require most food products have an "expiration date" or a "shelf life" (*prazo validade minima*). However, the definitions for these terms do not clarify which date labels relate to food safety and which refer to food quality. Further, the Food Waste and Donation Law does not permit the donation of any food past its expiration date, even if the food remains safe to consume.

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 Brazilian government should coordinate with other Mercosur countries to implement 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: one for foods that are labeled to indicate quality and the other if the date intends to communicate when a food should be discarded for safety reasons. Brazil should subsequently amend its own date labeling requirements, currently stated in ANVISA Regulation 259/2002, to conform to this new system and should expressly permit the donation of food after the quality date. Brazil should also promote consumer education and awareness on the meaning of date labels, once the labels are standardized.

TAX INCENTIVES: Under the current tax scheme in Brazil, entities that donate to qualifying non-profit organizations may deduct only up to 2% of their base operating profit. At the state level, the *Imposto sobre Operações Relativas à Circulação de Mercadorias e Serviços de Transporte Interestadual e Intermunicipal e de Comunicações* (ICMS) is a VAT tax on the sale of goods and services. Across all states, food donations are

exempt from ICMS tax through the federal *Comida no Prato* program and amended ICMS Agreement No. 18/03. However, increased guidance and logistical improvements in the ICMS exemption process are required to fully diminish the adverse consequences of the ICMS tax on food donation.

ACTION OPPORTUNITY: To ensure that food donors and food recovery associations receive proper tax incentives and sufficient information to participate in food donation, the Brazilian government and appropriate agencies should increase the scope and amount of the tax deduction available for food donations and activities associated with the storage, transportation, and delivery of donated food. The current 2% deduction is insufficient to encourage food donation. Brazil should also develop guidance to assist donors and food recovery organizations in understanding the ICMS tax benefits related to food donation. Further, the tax code should allow food donors to reclaim VAT credits accrued during the production of donated food.

DONATION REQUIREMENTS: Brazil currently does not impose a federal food waste deterrence laws, such as a donation requirement or food waste penalty. The newly-adopted Food Waste and Donation Law 14.016/20 *authorizes* establishments dedicated to the production and supply of food to donate surplus food fit for human consumption, and offers them *liability protection*. However, the law stops short of actually *requiring* donation or penalizing food waste.

ACTION OPPORTUNITY: To ensure that all food supply chain actor contribute to food recovery and donation efforts, the Brazilian government should adopt nationwide policies that would require the donation of surplus food or impose monetary penalties for food that is sent to landfills. For example, Brazil could build off the commitment to facilitating food donation stated in the Food Waste and Donation Law (14,016/20) and amend the law to require, rather than just authorize, donation of safe, surplus food.

GOVERNMENT GRANTS AND INCENTIVES: In Brazil, there is a foundation of government grant opportunities, with government funding for food banks, donations of refrigerated trucks, and research grants for food banks and food safety. However, the programs do not provide sufficient funding and are not adequately publicized to support food donors and food banks across the country, especially in the areas where infrastructure is most significantly lacking.

ACTION OPPORTUNITY: To ensure that food donors and food recovery organizations can more effectively and safely recover, handle, transport, and distribute surplus food, the Brazilian government should further develop government grant opportunities for food donation infrastructure. Although the national government provides grants to municipal governments for the construction, renovation, or expansion of food banks, there are opportunities to better publicize the programs and enhance data collection. The Brazilian government should establish a more robust grant program targeted at creating infrastructure to store, transport, and deliver food to food recovery organizations in line with the objectives of the Food Waste and Donation Law (14,016/20).

BRAZIL FOOD DONATION POLICY: HOW DOES IT COMPARE?

In terms of policy successes, Brazil’s enactment of a Food Waste and Donation Law, establishment of National Food Bank Network, and publication of the Inter-Sectoral Strategy for the Reduction of Food Loss and Waste, demonstrate a growing commitment to food recovery. However, the existing legal framework relevant to food donation can be strengthened by spreading awareness of liability protections and food safety practices, standardizing date labels, amending the tax regime to promote donations, requiring donation of surplus food or imposing penalties for food disposal, and providing government support for food donation.

| 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/ Donation Law or Policy |
|---------------------------|----------------|----------------------------------------|----------------|--------------|-----------------------------------------------|----------------------------------|--------------------------------------|
| Moderate Policy | Limited Policy | Strong Policy | Limited Policy | Yes | No Policy | Limited Policy | Yes |

For more detail on how Brazil measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out www.atlas.foodbanking.org. For more information about the food donation legal framework in Brazil and policy recommendations for strengthening this framework, check out the Brazil Food Donation Legal Guide and the Brazil 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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