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BRAZIL
RECOMMENDATIONS
FOOD DONATION
LAW AND POLICY

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About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws on food donation to help address food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe 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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ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). The Atlas project is an innovative partnership that maps the laws and policies affecting food donation in countries around the globe and provides a comparative legal analysis based on these findings. For each country, the Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guide recognizes universal issues that impact efforts to reduce food loss and waste (FLW) and increase food recovery. These issues include food safety, date labeling, liability, taxes, donation requirements and food waste penalties, and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guide and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations serve as a companion to the Legal Guide, though both documents may stand alone. The purpose of the recommendations is to highlight select actions for improving upon laws, policies, and programs relevant to food loss, waste, and donation.

This document sets forth recommendations focused on Brazil, where 42% of the national food supply is lost or wasted each year¹ and roughly 61.3 million people are food insecure.² The discussion below provides a brief overview of the legal issues most pertinent to food donation, which the Brazil Legal Guide explains in detail. The recommendations included in this report are not exhaustive but offer select best practices and policy solutions to reduce FLW and combat food insecurity through stronger food donation laws and policies in Brazil.



SUMMARY OF RECOMMENDATIONS

The recommendations in this document provide a starting point for stakeholders in Brazil to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as “food recovery organizations”), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. In summary, the recommendations are as follows:

To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption and donation, the government should:

- **Adopt a dual date labeling scheme to clearly distinguish between safety-based and quality-based labels and permit food donation after the quality-based date passes.**
- **Adopt a resolution permitting the donation of food after the quality-based date.**
- **Promote consumer education and awareness on the meaning of date labels.**

To ensure liability concerns related to donating food do not deter potential donors, the government should:

- **Promote awareness of liability protections for food donors and intermediaries provided in the Food Waste and Donation Law and disseminate ANVISA’s guidance on best practices for ensuring food safety for donated food.**

To ensure that food donors and food recovery organizations receive proper tax incentives and sufficient information on food donation, the 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.**
- **Offer tax credits to incentivize food donation.**
- **Develop guidance to assist donors and food recovery organizations in understanding the ICMS tax benefits related to food donation.**
- **Ensure food donors can reclaim ICMS credits (input VATs) on donated food.**

To ensure that all food supply chain actors contribute to food recovery and donation efforts, the government should:

- **Adopt nationwide policies that require the donation of surplus food or impose monetary penalties for food that is sent to landfills when it is still suitable for human consumption.**

To ensure that food donors and food recovery organizations can more effectively and safely recover, handle, transport, and distribute surplus food, the government should:

- **Develop government grant opportunities for food donation infrastructure.**

INTRODUCTION

FLW represents a major environmental, economic, and social challenge in Brazil. Just a decade ago in 2014, Brazil was removed from the United Nation’s Hunger Map after a series of successful social policy interventions led to unprecedented poverty reduction.³ Today, however, the country is battling a resurgence of food and nutrition insecurity. As of 2021, Brazil was back on the Hunger Map as rates of food insecurity spiked.⁴ An estimated 61.3 million people—more than one quarter of the population—are currently food insecure.⁵

Prior to the COVID-19 pandemic, unemployment rates were increasing,⁶ and the poorest populations were already struggling to earn enough income to afford basic food items.⁷ The pandemic increased this pressure and hardship, resulting in even higher rates of food insecurity.⁸ The adoption of emergency response strategies had a tremendous impact on economic markets, which led to significant disruptions in food availability and accessibility.⁹ The number of Brazilians experiencing hunger increased from roughly 19.1 million in 2019 to 33.1 million in early 2022.¹⁰

FLW in Brazil occurs along the supply chain, limiting the availability of food for human consumption, and at the end of the food chain due to behaviors adopted in retail establishments, restaurants, and households. Of the 268.1 million tons of food available in Brazil each year, 26.3 million tons is lost.¹¹ Most postharvest loss occurs before food even reaches the consumer, yet according to the 2021 UNEP Food Waste Index Report, 60 kilograms of food per capita per year is also wasted by Brazilian households.¹² Brazilians are aware of the issue, and 96% report concern about food waste.¹³ Nevertheless, an average consumer wastes more than half a kilogram of food every day.¹⁴

OF THE 268.1 MILLION TONS OF FOOD AVAILABLE IN BRAZIL EACH YEAR,
26.3 MILLION TONS IS LOST.

In recent years, the Brazilian government has increased its attention to high rates of FLW, adopting both a comprehensive strategy and national legislation on the issue. In October 2017, it launched an Intersectoral Strategy for the Reduction of Food Loss and Waste in Brazil—a multistakeholder initiative led by the Interministerial Chamber for Food and Nutrition Security (*Câmara Interministerial de Segurança Alimentar e Nutricional*, or CAISAN).¹⁵ The strategy combats FLW 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 Law 14,016,¹⁶ introducing a regulatory scheme to combat food waste through greater donation.¹⁷

Alongside government initiatives and legislation, more than 210 active food banks in Brazil are working to mitigate food insecurity and reduce food waste.¹⁸ Food banks in Brazil include those that are government-managed as well as organizations qualified as “private non-profit entities,” certain “cooperative societies,” and “religious organizations.” They are connected through the Brazilian Food Bank Network (*Rede Brasileira de Bancos de Alimentos*, or RBBA), coordinated by the Brazilian Ministry of Social Development and Fight against Hunger (MDS).¹⁹ The RBBA strengthens and unifies food donation operations based on principles of cooperation, communication, transparency, and ethical conduct.²⁰

While these frameworks have the potential to advance food donation as a solution to hunger and FLW, the Brazilian government can take additional steps to reinforce this policy goal.²¹ The following sections summarize some of the most common legal issues relevant to food donation as identified and described in more detail in the Legal Guide and offer policy recommendations to address these challenges.

LEGAL CHALLENGES & POLICY RECOMMENDATIONS

DATE LABELING

ISSUE OVERVIEW

A major driver of food waste and an obstacle to food donation is the general misconception about date labels such as “sell by,” “use by,” or “best by” affixed to food products. Many donors and consumers interpret these date labels as indicators of food safety. Yet for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illness-causing bacteria over time. Nevertheless, cautious donors and food recovery organizations may discard food once the date passes even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels with indicators of safety rather than quality. In the United Kingdom, for example, research shows that consumers discard about 22% of food they could have eaten due to confusion over date labeling.²² Similarly, 84% of Americans report throwing away food after the “expiration date” passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.²³ This confusion occurs in the home but also impacts food businesses’ willingness to donate, creating a stigma against past-date food among food donation recipients.

The date labeling regulations in Brazil contribute to confusion, thereby undermining other efforts to reduce food waste. Brazil is a member of the regional trade bloc Mercosur (The Southern Common Market), along with Argentina, Brazil, Paraguay, and Uruguay.²⁴ Mercosur Technical Resolution 21/2002 establishes the Technical Regulations for Packaged Food Labeling,²⁵ and Brazil incorporated the regulation through ANVISA Resolution 259/2002, a federal resolution that requires all packaged foods to feature an “expiration date or “shelf life date” (*prazo de validade minima*).²⁶

Expiration dates follow guidance based on the type of food (i.e., natural or processed). According to ANVISA Guide 16/2018, which helps determine the expiration of food, “shelf life” is defined as the “period of time in which the food remains safe and suitable for consumption, provided that it is stored in accordance with the conditions established by the manufacturer.”²⁷ While the technical resolution and guide offer a definition for the “expiration date,” it is not clear whether the date indicates safety or quality. This is inconsistent with the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods, which states that the “expiration date” should represent the last date on which food is considered safe to consume and consequently should be understood exclusively as a safety-based label, not a quality-based label.²⁸ Although Brazil is a member of the *Codex Alimentarius*, its current date labeling scheme does not align with the recommended dual date labeling scheme (requiring either a safety-based or quality-based label).

Without a clear safety-based definition of the “expiration date” or the inclusion of an alternative quality-based date, food system actors assume that the affixed date refers to safety and consequently that past-date food cannot be donated. The 2020 Food Waste and Donation Law reinforces this interpretation by authorizing the donation of unmarketable surplus food that is safe for human consumption, provided the food is within the “expiration date.”²⁹ Further, the Consumer Protection Code (*Código de Defesa do Consumidor*, or CDC) also confirms that suppliers will be jointly and severally liable for defects that make products unfit for consumption, including products sold past their expiration date.³⁰ This demonstrates that currently there is a real risk for liability if food is donated past its expiration date.³¹

Brazil recognizes that date labels potentially drive unnecessary food waste and has sought to address uncertainty emanating from labels in recent years. For example, Brazil supported the 2018 revision of the *Codex Alimentarius* General Standard, noting that the dual date labeling standard and clear distinction of quality-based and safety-based labels “could assist in the reduction of food trade problems and confusion among consumers, food business operators and regulators.”³² The Brazilian Food Industry Association (ABIA) has urged the adoption of a dual date labeling model.³³ Moreover, at an event on the national supply chain held by the Brazilian Association of Supermarkets in June 2021, the Ministry of Agriculture announced its plans to create a working group to assess the existing date labeling scheme and to discuss new flexibilities to date labeling rules.³⁴ However, at the time of this writing, there have been no official statements or updates by the ministry or any working group.

RECOMMENDED POLICY ACTIONS

1.

ADOPT A DUAL DATE LABELING SCHEME TO CLEARLY DISTINGUISH BETWEEN SAFETY-BASED AND QUALITY-BASED LABELS AND PERMIT FOOD DONATION AFTER THE QUALITY-BASED DATE PASSES.

Brazil’s date labeling regulations must align with the Mercosur labeling requirements. However, the existing scheme does not adequately explain to consumers, donors, and food recovery organizations which dates are safety-based and which are quality-based. The Brazilian government, with support from ABIA and the Brazilian Association of Supermarkets, should coordinate with Mercosur to implement a dual date labeling system. It should work with Mercosur to amend Mercosur Resolution 21/2002, which establishes regulations for packaged food labeling, and amend ANVISA Resolution 259/2002, which complies with the Mercosur resolution. The system should provide one standard label to indicate quality and another to indicate that a product may not be safe after a specific date. The Brazilian government could propose the change as part of a working group, as the executive body of Mercosur, the Common Market Group, regularly approves recommendations of working groups.³⁵ Such a proposal to introduce a standard dual labeling system for date labels on packaged foods would also align with strategies to modernize Mercosur.

Many other countries and the food industry itself are moving toward this system of dual date labels beyond the global endorsement of such practice by the *Codex Alimentarius*. For example, the European Union requires that the date label on any food products use only one of two standard labels. “Best before” is required for foods where the label indicates quality, while “use by” is required for foods that may pose an increased safety risk after the date.³⁶ Several EU member states have issued guidance clarifying the impact of these dates on food donation, and others have introduced legislation that explicitly allows for donation after the “best before” date but not after the “use by” date.³⁷ The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for the standardization and adoption of a dual date labeling system with separate quality and safety date label phrases.³⁸

Brazil could adopt the European Union’s recommended language of “best before” and “use by.” This labeling scheme would provide greater certainty to consumers, food donors, and food recovery organizations on the meaning of these dates and may reduce the amount of food that is thrown away.

2.

ADOPT A RESOLUTION PERMITTING THE DONATION OF FOOD AFTER THE QUALITY-BASED DATE.

Once the government standardizes date labels to distinguish between quality-based and safety-based labels, it should adopt a resolution clarifying that packaged foods subject to ANVISA’s date labeling requirements may be donated after the quality-based date. The Food Waste and Donation Law explicitly states that food is suitable

for donation only if the expiration date affixed to the food has not yet passed.³⁹ It is necessary to clarify that this refers only to safety-based dates. Without this step, cautious food donors and food recovery organizations may interpret the date label requirement as a safety provision and may believe that food may not be donated after either a safety-based or quality-based date.

UK policies provide a model for Brazil to implement the recommended best practices. Guidance on food donation in the United Kingdom, whose dual date labeling system clearly identifies quality-based and safety-based dates, states that food may not be distributed after the safety-based date, but it may be sold or donated after the quality-based date.⁴⁰

Until the government works with Mercosur to implement a dual date labeling scheme, it should amend the Food Waste and Donation Law or adopt a separate resolution to explicitly permit the donation of certain foods that do not pose a safety risk after the affixed date. For example, in response to the COVID-19 pandemic, the Costa Rican government issued guidance permitting and clarifying donation of specific foods past the date to enhance food security.⁴¹ Implementation of this amendment may be bolstered by administering technical support to retailers, manufacturers, and other potential donors. These actors are accustomed to discarding food once the date passes. Food recovery organizations could support the transition through training for retail staff and guidance on how to transport past-date goods safely and systematically to food recovery organizations.

3.

PROMOTE CONSUMER EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS.

Given that many Brazilians may erroneously perceive expiration dates as indicators of safety, increasing the sale, consumption, or donation of food after these dates will require a change in behavior. National consumer education will be critical to inform donors, food recovery organizations, and consumers that the dates on certain foods are not indicators of safety but of quality.

Joint public- and private-sector initiatives may help stakeholders understand that date labels should not be a barrier to donation. Any clarification or standardization to this regime, such as the introduction of a dual labeling requirement, will also require campaigns to educate and increase awareness among donors, food recovery organizations, and consumers about the new interpretations. Given support for a dual date labeling scheme by ABIA and the Brazilian Association of Supermarkets, the government should work with these associations and their members to support the needed consumer education campaigns.

LIABILITY PROTECTION FOR FOOD DONATIONS

ISSUE OVERVIEW

A significant barrier to food donation is the fear among donors that they will be liable if someone becomes sick after consuming donated food. Several countries, including Brazil, have comprehensive protections for both food donors and food recovery organizations.⁴² These protections limit the likelihood that actors will be held legally or financially responsible for resulting harm, provided they act in good faith and in accordance with relevant laws.

In 2020 the Brazilian government passed Law 14,016—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*) to encourage food donation.⁴³ The law limits the liability food donors and food recovery organizations may face to cases of alleged harm involving acts of malice.⁴⁴ It specifies that the donor's responsibility ends at the moment

of delivery to the intermediary (or in the case of direct donation, to the beneficiary) and that the responsibility of the intermediary ends at the time of delivery to the beneficiary.⁴⁵ A donor or intermediary will only be *civily and administratively liable* for damages caused by the donated food “if they *act with intent*.”⁴⁶ Further, donors and intermediaries can only be found *criminally liable* if the “*specific intent of causing damage to the health of others*” is found at the time of delivery to an intermediary or beneficiary.⁴⁷ Such limits effectively ensure that only actors with deliberate intent to harm beneficiaries will face liability.

Food qualifies as “suitable” for donation provided it meets three criteria: (1) the expiration date affixed to the food has not passed, and, if applicable, the food has been stored in proper conditions as instructed;⁴⁸ (2) the integrity and safety of the food has not been compromised;⁴⁹ and (3) the food retains its nutritional properties and is safe to consume, even if the food appears damaged or “commercially undesirable.”⁵⁰ The law states that donors can provide food either directly to beneficiaries (through direct donations) or indirectly through an intermediary such as a food bank and that liability is limited for both donors and any intermediaries that handle donated food.⁵¹

While the Food Waste and Donation Law protects food donors and intermediaries from liability as long as they donate with good intent and satisfy the other legal requirements,⁵² the law has not been well publicized and its protections are not well understood.⁵³ Further, many stakeholders still do not feel adequately protected since the law does not provide information on how to donate food safely, therefore placing beneficiaries at risk of receiving unsafe food and leaving donors without clear guidelines to help them maintain food safety and avoid liability.⁵⁴

In 2022 ANVISA released a *Guide for Food Donation with Sanitary Safety*, which expresses ANVISA’s understanding of best practices on procedures, routines, and methods to maintain food safety when food is donated.⁵⁵ The guide is a nonnormative regulatory instrument (i.e., the recommendations are nonbinding), but it provides thorough instruction for food donors, intermediaries, and recipients that are concerned with maintaining food safety.⁵⁶ Any party that complies with the ANVISA guide should be able to address food safety concerns and maximize the quantity of food for donation.⁵⁷ At the time of this writing, the guidelines are being disseminated but donor concerns regarding liability remain a barrier to food donation in Brazil.

RECOMMENDED POLICY ACTIONS

1.

PROMOTE AWARENESS OF LIABILITY PROTECTIONS FOR FOOD DONORS AND INTERMEDIARIES PROVIDED IN THE FOOD WASTE AND DONATION LAW AND DISSEMINATE ANVISA’S GUIDANCE ON BEST PRACTICES FOR ENSURING FOOD SAFETY FOR DONATED FOOD.

To eliminate uncertainty regarding liability for food donations and potential safety risks, Brazil should promote education and awareness of the Food Waste and Donation Law and the ANVISA *Guide for Food Donation with Sanitary Safety*. This would be best accomplished through a multistakeholder public education/awareness campaign.

Uncertainty surrounding donation liability and how to maintain food safety may make food donors and food recovery organizations wary of food donation, particularly for prepared food items. While the Food Waste and Donation Law protects food donors from liability, misunderstanding and a lack of awareness of the law itself among potential donors and food recovery organizations, continue to be barriers to food donation. ANVISA’s guidance, produced in response to concerns about the lack of food safety guidelines, clarifies the procedures and methods considered adequate to maintain food safety during donation. Widely distributing

and publicizing information about the Food Waste and Donation Law and the ANVISA guide will enhance confidence in the safety of food for donation and clarify liability protections, thereby encouraging increased food donations. This education campaign should make clear that by complying with this guidance any donor, intermediary, or recipient can safely provide food and maximize food donations.⁵⁸

An education/awareness campaign should primarily target potential food donors (e.g., restaurants, retailers, wholesalers, farmers), food recovery organizations, and food donation recipients that provide food directly to food-insecure individuals. Food safety inspectors that work with restaurants, producers, and retailers on this guidance should be trained to ensure the message is delivered to key stakeholders. Further, ANVISA should issue a summary of the most important food safety measures along with information on the Food Waste and Donation Law for all potential food donors.

TAX INCENTIVES AND BARRIERS

ISSUE OVERVIEW

Food donation helps mitigate the costs of hunger and stimulate the economy, but it can be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier to donation, contributing to greater FLW. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics.

Under the current tax scheme in Brazil, food donors are only eligible to claim minimal benefits. First, regarding corporate income tax, legal entities that donate to qualifying nonprofit organizations may deduct up to 2% of their base operating profit.⁵⁹ Legal entities include companies, partnerships, and foundations formed in Brazil that are registered with the relevant Board of Trade and the Federal Tax Authority (RFB).⁶⁰ Individual donors that are not legal entities are not eligible for the income tax deduction. Qualifying nonprofit donation recipients are civil society organizations (*organização da sociedade civil de interesse público*, or OSCIP),⁶¹ nonprofit private entities and cooperative societies⁶² with a designated public interest, including the promotion of nutrition and food security.⁶³

In addition to providing a small incentive for donation, Brazil's tax scheme creates a barrier to food donation as a result of the state value-added tax (*imposto sobre operações relativas à circulação de mercadorias e serviços de transporte interestadual e intermunicipal e de comunicações*, or ICMS). For most commercial transactions, including the sale of food, an ICMS tax must be paid at each stage of a product's production until purchase by a consumer. States set their respective ICMS rates based on the type of good.⁶⁴ ICMS rates generally range from 17% to 20%.⁶⁵ The application of ICMS tax to food products, regardless of donation, depends on the state. For example, in São Paulo, horticultural products, including fruits and vegetables, even if cut or stripped, are exempt from ICMS tax.⁶⁶ However, across all states, food donations are exempt from ICMS tax. The federal government launched the *Comida no Prato* program in November 2021 and amended ICMS Agreement No 018/03 to exempt food donors and beneficiaries from the ICMS tax for food donations to the Food and Nutritional Security Program.⁶⁷ All 27 Brazilian states participate in the program. Public or private food banks, charitable entities, and municipal assistance entities may facilitate food donations to support vulnerable populations.⁶⁸ The Ministry of Citizenship released an Operation Manual of Donations Intended for the Food and Nutrition Security Program (*Manual Operacional de Doações destinadas ao Programa de Segurança Alimentar e Nutricional*) to provide guidance on how to receive the tax exemption.⁶⁹ Both donors and beneficiaries must register on the *Comida no Prato* online portal.⁷⁰ Then, at the time of the donation, the donor must record the donation, including the type, amount, and quality of the food, to claim the ICMS exemption.⁷¹ The portal can also link donors and beneficiaries to facilitate food donations.⁷² Despite its beneficial goals, this

ICMS exception process has been criticized as involving too many steps for donors as well as not having an impact on fresh food donations, since most states already did not charge an ICMS tax on fresh foods.⁷³

RECOMMENDED POLICY ACTIONS

1. 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.

Although Brazil offers a limited tax deduction for qualifying food donations under Law 9.249/1995, the 2% of operating profit cap is too restrictive to effectively incentivize donations. To ensure that donors perceive food donation as an economical alternative to throwing away food, the government should expand the income tax benefits to offer more compelling incentives under Law 9.249/1995. This would increase the financial benefit companies receive when donating food and dissuade food waste. The current 2% cap limits the economic benefit for food donors, particularly when compared with the tax incentives offered in other countries. In Colombia, for example, the government provides a tax credit equivalent to 25% of the value of donations in the taxable year or period for donations to nonprofit entities registered under a special income tax regime.⁷⁴ In China businesses may deduct their charitable donations, including in-kind food donations, up to 12% of their annual taxable profit.⁷⁵ If the charitable donation exceeds 12% of the business's annual profit in a given year, the amount may carry over to be deducted for three years.⁷⁶ Offering more substantial benefits such as these may help Brazil position food donation as a competitive alternative to simply throwing away food.

2. OFFER TAX CREDITS TO INCENTIVIZE FOOD DONATION.

While an increased tax deduction may incentivize food donation among certain corporate donors, offering a tax credit for food donations is more likely to encourage donation among a broader group of supply chain actors. Some businesses and farms may not generate enough net taxable profit to benefit from a tax deduction or to offset the associated expenses of recovery and donation. Compared with a tax deduction, which reduces a taxpayer's taxable income and determines the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.⁷⁷ Tax credits are applied evenly across tax brackets and would therefore have a greater impact for small, low-revenue businesses than tax deductions.

A tax credit could be offered at the federal or state levels and could vary in design. For example, the government may elect to limit the total credit that a business could claim in a given tax year by setting a percentage on the value of donated food that can be claimed, with or without a cap on the total dollar amount.

3. DEVELOP GUIDANCE TO ASSIST DONORS AND FOOD RECOVERY ORGANIZATIONS IN UNDERSTANDING THE ICMS TAX BENEFITS RELATED TO FOOD DONATION.

Uncertainty surrounding the ICMS tax exemption process in Brazil disincentivizes donors from donating food. Donors are only exempt if they register with *Comida no Prato* and the donation is recorded and approved on the online portal.⁷⁸ However, food donors and food recovery organizations note a lack of transparency and

challenges around the steps needed to claim the exemption. First, the exemption rules are ambiguous, with inconsistencies between the text of the law and interpretations of who may claim the exemption and which beneficiary organizations may receive the donations. Furthermore, especially for smaller donors, even if they are aware of the exemption process, the required registration and approvals may be too onerous and time-consuming to encourage food donation. Stakeholders indicate that the approval process could take several days or weeks, too long for fresh produce and other food already toward the end of its life or for donors with storage shortages.

The government should issue comprehensive but easily understandable guidance on the Brazilian tax system as it applies to food donors and food recovery organizations to clear up this confusion, help businesses navigate the system more smoothly, and encourage increased food donation. The Operation Manual of Donations Intended for the Food and Nutrition Security Program (*Manual Operacional de Doações destinadas ao Programa de Segurança Alimentar e Nutricional*) clarifies the ICMS exemption.⁷⁹ However, the Ministry of Development and Social Assistance, Family, and Fight Against Hunger should continue to liaise with food businesses and food recovery organizations to ensure that the guidance is clear to the different donors and beneficiaries of the tax exemption. Additional guidance may also be necessary to confirm the rules of the exemption with the new administration.

Additionally, the government should consider changing the required approval process to eliminate or reduce the delay between a donor deciding to donate food and the donation itself. The *Comida no Prato* online portal could be modified to automatically approve food donations between registered parties under a certain threshold. It could also allow parties to register their food donation after the food has been transported so long as they still provide the proper documentation.

4. ENSURE FOOD DONORS CAN RECLAIM ICMS CREDITS (INPUT VATS) ON DONATED FOOD.

The Brazilian ICMS tax is a system of credits and debits. The taxpayer receives credits (input VAT) based on an ICMS tax previously incurred on that product when it enters the taxpayer's premises.⁸⁰ The taxpayer then generates debits (output VAT) when the product leaves the taxpayer's premises based on the value added at this stage of production.⁸¹ If the product is then sold, the taxpayer owes ICMS tax on the difference between their input VAT and output VAT. The *Comida No Prato* program exempts food donors from paying the *output* VAT (or incurring ICMS debits) on food donation, meaning the donor is not taxed on the value they added in production to that product.⁸² However, food donors may not recover the *input* VAT (or receive ICMS credits) paid on business purchases along the value chain to produce that product, placing a financial burden on food donors.⁸³ Thus, to mitigate ICMS tax concerns—and thereby reduce barriers to food donation—the federal or state governments should enact a law allowing food donors to recoup the input VAT they paid to acquire the food products they later donated.

DONATION REQUIREMENTS OR FOOD WASTE PENALTIES

ISSUE OVERVIEW

Some countries employ food waste deterrence policies, such as food donation requirements or monetary penalties, for food that is sent to landfills.⁸⁴ Such policies encourage businesses to adopt strategies that mitigate food waste and promote more sustainable food systems. Brazil currently does not impose a federal donation requirement or penalty, as the newly adopted Food Waste and Donation Law stops short of actually requiring donation or penalizing food waste.⁸⁵

1.

ADOPT NATIONWIDE POLICIES THAT REQUIRE THE DONATION OF SURPLUS FOOD OR IMPOSE MONETARY PENALTIES FOR FOOD THAT IS SENT TO LANDFILLS WHEN IT IS STILL SUITABLE FOR HUMAN CONSUMPTION.

Brazil adopted the Food Waste and Donation Law, which states that all establishments dedicated to the production and supply of food are *authorized* to donate surplus food fit for human consumption and *protected from liability* for qualifying food donations.⁸⁶ However, the law does not require the donation of surplus food or impose monetary penalties for food waste.

Brazil should consider different policy interventions to require the donation of surplus food that is still suitable for human consumption. To institutionalize this, a law may impose a food donation requirement for any food items safe for human consumption. For example, provisions could require restaurants and other establishments that sell prepared food to package and donate all food items that have been prepared but not sold or consumed, provided the items are still safe for consumption. In this way, the law would prohibit the disposal of foods that would otherwise be appropriate for donation.

Furthermore, Brazil should consider imposing monetary penalties for the disposal or destruction of food that remains fit for human consumption. This policy may complement a food donation requirement or stand on its own to make the donation of surplus food more economical than disposal. For example, in Ecuador the government bans the destruction of food that is fit for human consumption and provides a hierarchy of alternative uses such as donation, animal feed, production of renewable energy, and composting.⁸⁷ The law applies to a broad scope of actors across the food supply chain and imposes sanctions on those that fail to comply.⁸⁸

Some such policy interventions are in effect at the state level in Brazil. For example, in 2016 the Federal District adopted Law No. 5694, which requires supermarkets with an area greater than 400 square meters in the district to donate surplus foods to charities or social welfare organizations.⁸⁹ However, the government should adopt a national policy that requires the donation of surplus food or imposes monetary penalties for food that is sent to landfills when it is still suitable for human consumption. For example, Brazil could build off the commitment to facilitating food donation stated in the Food Waste and Donation Law and amend it to require, rather than just authorize, food donation.⁹⁰ Alternatively, Brazil could consider adopting Bill No. 2874, which would require wholesale and retail food establishments above a size threshold to donate surplus food to charitable social service entities and impose a fine for noncompliance.⁹¹

GOVERNMENT GRANTS AND INCENTIVES

ISSUE OVERVIEW

National or local grants and incentive programs can be important resources for food donation initiatives, especially as alternatives or supplements to tax incentives. Government-assisted funding is particularly important in Brazil, where a lack of infrastructure and capital limits food recovery efforts. For example, government grants can help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support new technological innovations to make food donation more efficient and sustainable.

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.⁹² However, the

programs do not provide sufficient funding and are not adequately publicized, especially in the areas where infrastructure is most significantly lacking.

The Brazilian federal government provides a stamp of recognition through the *Comida no Prato* program to all companies that donate food.⁹³ The ministry also grants special seals of recognition to food donors that have donated R\$100,000–R\$499,999 (bronze level), R\$500,000–R\$999,999 (silver level), and more than R\$1,000,000 (gold level) in food.⁹⁴ The *Comida no Prato* program likely incentivizes larger corporations and donors, given the monetary thresholds and emphasis on public image. There are broader opportunities to employ similar incentive programs to reach actors across the food supply chain.

RECOMMENDED POLICY ACTIONS

1. A. DEVELOP GOVERNMENT GRANT OPPORTUNITIES FOR FOOD DONATION INFRASTRUCTURE.

Grants and incentive programs funded at the federal, state, or municipal levels offer an important resource for food donation initiatives, as cost is one of the main barriers preventing food businesses from donating. More specifically, transportation and storage costs are substantial expenses that manufacturers, retailers, and restaurants need to overcome to donate food. This is particularly true in Brazil, where food producers are often located far away from food recovery organizations and the equatorial and tropical climates pose difficulties in safely transporting perishable food. Therefore, even if food producers are interested in donating food, donation is not logistically achievable.

Although the federal government provides some grants to municipal governments for the construction, renovation, or expansion of food banks,⁹⁵ there are opportunities to expand and better publicize the programs and enhance data collection to ensure that funding is reaching vulnerable areas where food donation is not feasible. 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.

Some countries have grant programs to encourage food recovery. For example, in 2019 Argentina's Ministry of Agribusiness launched a contest to grant non-reimbursable financing for innovative food loss solutions in the country's horticultural sector.⁹⁶ The grant is administered under the government's National Food Loss and Waste Reduction Program and in partnership with the Inter-American Development Bank. The Brazilian government could create a similar grant program to help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. The government could also provide grants to support new innovations and emerging technologies that will make food donation more efficient and sustainable.

CONCLUSION

While these Policy Recommendations are intended to help strengthen food donation in Brazil, they are not exhaustive. Those committed to reducing FLW and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

ENDNOTES

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- ⁸⁷ Ley Para Prevenir Y Reducir La Pérdida Y El Desperdicio De Alimentos Y Mitigar El Hambre De Las Personas En Situación De Vulnerabilidad Alimentaria, 30 de mayo de 2022 (Ecuador), at Art. 12; see HARV. L. SCH. FOOD L. & POL'Y CLINIC, GLOB. FOOD DONATION POL'Y ATLAS, ECUADOR LEGAL GUIDE: FOOD DONATION LAW AND POLICY 9 (2022), https://www.foodbanking.org/wp-content/uploads/2023/01/The-Global-Food-Donation-Policy-Atlas_Ecuador_Legal-Guide.pdf.
- ⁸⁸ *Id.*
- ⁸⁹ Lei No. 5694, de 2 de Fevereiro de 2016, Diário Oficial do Distrito Federal [D.O.D.F] de 5.8.2015 (Braz.).
- ⁹⁰ See Lei No 14.016 de 23 de Junho de 2020, D.O.U de 24.06.2020 (Braz.).
- ⁹¹ Projecto de Lei No. 2874, de 2019, Senado Federal de 14.05.2019 (Braz.); see *CRA debate Projeto de Lei que trata sobre pesticidas e productos de controle ambiental*, SENADO FEDERAL (Nov. 24, 2022), <https://www12.senado.leg.br/tv/plenario-e-comissoes/comissao-de-agricultura-e-reforma-agraria/2022/11/cra-debate-projeto-de-lei-que-trata-sobre-pesticidas-e-productos-de-controle-ambiental>. In November 2021 the Agriculture and Agrarian Reform Commission (CRA) approved Bill No. 2874 (proposed in 2019), but the bill has not yet passed into law and is currently “awaiting reporter’s designation” in the Senate.
- ⁹² See, e.g., Andhressa Fagundes et al., *Public Infrastructure for Food and Nutrition Security in Brazil: Fulfilling the Constitutional Commitment to the Human Right to Adequate Food*, 14 FOOD SEC. 897, 901 (2022), <https://link.springer.com/article/10.1007/s12571-022-01272-1#Fun>; *Banco de Alimentos de Itapeçerica da Serra recebe caminhão refrigerado*, TABOANESE (June 30, 2022), <https://www.otaboanense.com.br/banco-de-alimentos-de-itapeçerica-da-serra-recebe-caminhao-refrigerado/>; Natalia Tenuta et al., *Brazilian Food Banks: Overview and Perspectives*, INT’L J. ENV’T RSCH. & PUB. HEALTH, 18(23), 12598, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8657059/pdf/ijerph-18-12598.pdf>.
- ⁹³ *Governo Federal lança o Comida no Prato, programa que facilita doações de alimentos por empresas com isenção de ICMS*, GOV. BR, MINISTÉRIO DO DESENVOLVIMENTO E ASSISTÊNCIA SOCIAL, FAMÍLIA E COMBATE À FOME (Nov. 31, 2022, 10:56 AM), <https://www.gov.br/cidadania/pt-br/noticias-e-conteudos/desenvolvimento-social/noticias-desenvolvimento-social/governo-federal-lanca-o-comida-no-prato-programa-que-facilita-doacoes-de-alimentos-por-empresas-com-isencao-de-icms>.
- ⁹⁴ *Id.*
- ⁹⁵ Andhressa Fagundes et al., *Public Infrastructure for Food and Nutrition Security in Brazil: Fulfilling the Constitutional Commitment to the Human Right to Adequate Food*, 14 FOOD SEC. 897, 901 (2022), <https://link.springer.com/article/10.1007/s12571-022-01272-1#Fun>.
- ⁹⁶ Contest: #SinDesperdicioHortícola, <https://sindesperdicio.net/en/challenges1> (last visited Dec. 18, 2019).

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