



ARGENTINA

ARGENTINA
**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 around food donation in order to help address both food loss and food insecurity. This project maps the laws affecting food donation in countries across the globe, in order 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 partnership between Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. 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. Our focus is 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/FLPC.



About The Global FoodBanking Network

The Global FoodBanking Network is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.



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INTRODUCTION

Purpose of this Guide

Food loss and waste has emerged as one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is lost or wasted along the supply chain;¹ this amounts to approximately 1.3 billion tons of food each year that ends up in the landfill.² Food loss or waste occurs at every stage of the food system: food is lost during the initial harvest due to low market prices, high labor costs, and demand for perfect-looking produce; food is wasted by grocery stores and restaurants over-estimating customer demands; and food is discarded by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences: food that is lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land,⁵ and accounting for eight percent, or 70 billion tons, of total global greenhouse gas emissions.⁶ The market value of food products lost or wasted is approximately \$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 the reduction of 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 has emerged as a popular and logical solution to redirect safe, surplus food into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, non-governmental organizations that recover surplus, wholesome food and redirect the recovered food to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food insecure persons. As food insecurity, food loss, and food waste have continued to rise, new, innovative models of food recovery have emerged around the world.

However, uncertainty surrounding the laws and regulations most relevant to food donation threatens to hinder the expansion of these food recovery organizations and limit their potential impact. To help address the most pressing and universal legal and policy questions, 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.¹⁰ 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.

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 Argentina, where 16 million tons of food, or 12.5% of all national production, are wasted each year,¹¹ and widespread food insecurity undermines the health and safety of the population. FLPC and GFN, in collaboration with partners in Argentina,¹² have developed this resource to help food donors, food banks and other intermediaries (hereafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that impact food loss, waste and donation efforts.¹³ It is also intended to serve as a resource for stakeholders in other countries who are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Argentina, this guide provides an overview of the legal frameworks most relevant to food donation at the national and local level. The subsequent sections take a closer look at the laws generally applicable to food donation, including: food safety laws and regulations, date labeling laws, “Good Samaritan” or liability protection laws, tax incentives and disincentives, and waste diversion laws that penalize food waste or require food donation or recovery. The extent to which Argentina has developed and subsequently implemented these authorities compared with other countries may vary.

State of Food Insecurity, Food Loss, Waste, and Recovery in Argentina

Policies to prevent food loss and waste and to promote food donation gain new importance when a country’s socio-economic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in Argentina, which, despite possessing one of the largest agricultural-based economies in Latin America, has a long history of economic instability. While Argentina recently declared a “National Food Emergency,”¹⁴ economic turmoil has been building in recent years, marked by recession and inflation, tariffs, and the devaluation of the peso.

These trends have increased the prices of basic foodstuffs, leaving millions of Argentines without the ability to access adequate food.¹⁵ According to the Food and Agriculture Organization of the United Nations (FAO), Argentina’s poverty rate rose to 32% in the second half of 2018, rising to 35.4% in the first half of 2019,¹⁶ with 6.7% of citizens living in a state of extreme poverty.¹⁷ Between 2016-2018, roughly 11.3% of the population was severely food insecure, a 5.5% increase from the prior two-year period.¹⁸

The federal government has taken steps to stabilize the economy and expand social protections for those experiencing poverty and hunger. In 2019, for example, the government passed an emergency food bill to boost the current budget spent on public food and nutrition policies by 50%.¹⁹ It also cut sales tax for basic food products, including bread, sugar, and milk through the end of 2019 and increased bonuses to try to ease economic stress.²⁰ Previously, the government enacted policies intended to promote food security including the National Food Security Plan, created in 2003, the Universal Child Allowance Program, implemented in 2009, and subsidies for school breakfast and lunch programs.²¹

Against this socio-economic backdrop, Argentina has turned its attention to the prevention of food loss and waste. A country-wide assessment of the issue conducted in 2015 revealed that, while much of the population is hungry, Argentina loses 14.5 million tons of food during the production, processing and distribution stages of supply chain and wastes 1.5 million tons of food at the retail or consumer level annually.²² More than 40% of the wasted foods are fruits and vegetables.²³ In the most populous city of Buenos Aires, a survey found that, on average, an individual throws away 2.9 kilograms of food each year, costing an estimated \$180 million or 0.3% of the city’s Gross Geographic Product in 2016.²⁴ This waste contributes to the 6,000 metric tons of municipal solid waste that ends up in landfills each day.²⁵ Such high rates of food loss and waste are troubling given the country’s greater economic and food insecurity challenges.²⁶

ARGENTINA LOSES 14.5M TONS OF FOOD DURING THE PRODUCTION, PROCESSING AND DISTRIBUTION STAGES OF SUPPLY CHAIN AND WASTES 1.5M TONS OF FOOD AT THE RETAIL OR CONSUMER LEVEL ANNUALLY.

Argentina by the Numbers

Population 45,479,000	Prevalence of Severe Food Insecurity 11.3%	World Bank Classification Upper-Middle Income
Median Age 32.4 years	Global Food Security Index 70.8	Human Development Index 8.3
GDP \$519.87 billion	GINI Index 41.2	FLW Estimates 16 million tons
Poverty Rate 32%	Food Sustainability Index 71.5	

Source: Global FoodBanking Network, March 2020.

The federal government has responded to these trends by promoting inclusive, multi-sector solutions to mitigate hunger and poverty that simultaneously combat food loss and waste. In October 2014, Argentina joined 12 Latin American and Caribbean countries at a Regional Consultation hosted by FAO to devise coordinated action under a Regional Strategy for the Reduction of Food Losses and Waste.²⁷ Argentina subsequently established a National Program for Food Loss and Waste Reduction (*Programa Nacional de Reducción de Pérdida y Desperdicio de Alimentos*),²⁸ currently overseen by the Ministry of Agriculture, Livestock and Fisheries (*Ministerio de Agricultura, Ganadería y Pesca*) as part of a new National Plan for the Reduction of Food Loss and Waste (*el Plan Nacional de Reducción de Pérdidas y Desperdicio de Alimentos* or PDA).²⁹

The National Program is instructed to coordinate, propose, and implement public policies that address the causes and effects of food loss and waste in collaboration with the public and private sector, civil society, and international organizations.³⁰ The Program has two prongs: the first is focused on food waste produced in homes, restaurants, and other places where food is distributed, and the second addresses food losses that occur during early stages of food production.³¹ The National Program also created the Network for the Reduction of Food Loss, which consists of more than 100 members from businesses, non-governmental organizations, academia, and the scientific and technological communities.³² In 2018, Argentina demonstrated a renewed commitment to collaborative food recovery and donation efforts by adopting an amended version of its 2004 Food Donation Law (*Ley 25,989: Régimen Especial para la Donación de Alimentos* or “*Ley Donal*”) through Law 27454, which added liability protections for donors and food recovery organizations, discussed later in this guide.³³

IN 2018, ARGENTINA DEMONSTRATED A RENEWED COMMITMENT TO COLLABORATIVE FOOD RECOVERY AND DONATION EFFORTS BY ADOPTING AN AMENDED VERSION OF ITS 2004 FOOD DONATION LAW.

In the spirit of collective effort, actors from the public and private sectors country-wide have stepped-up to promote food rescue and recovery. Between 2003 and 2018, the Argentine Network of Food Banks (*La Red Argentina de Bancos de Alimentos* or RedBdA) reported distributing almost 100,000 tons of food to 2,670 organizations and beneficiaries in 14 provinces.³⁴ In 2017, RedBdA provided 33% of Argentine children with at least part of their meals, and in 2018, over 75% of beneficiaries were children.³⁵ Separate from the food bank network, three restaurants in the province of Tucumán have created a “social refrigerator” (*heladera social*) to distribute surplus food to neighbors in need.³⁶ In Buenos Aires, a social venture known as Nilus has applied technology and sharing economy models based on the concept of ridesharing, to help coordinate logistics among food donors, food recovery organizations, and other intermediaries, such as food pantries or kitchens that serve free food to communities.³⁷

Scaling up these operations and investing in new and innovative solutions to hunger and food waste requires recognizing and understanding the laws and policies that apply to food donation. It may also require strengthening some of these laws to better support food recovery, an issue that is further explored in a companion document to this guide.³⁸ The remaining sections of the guide will provide an overview of Argentina'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 ARGENTINA'S RELEVANT LEGAL FRAMEWORK

The Constitution of Argentina establishes a federal system of government, under which powers are distributed between the central national government and provincial governments. At the national level, power is allocated across the executive branch, judicial branch, and a bicameral legislative branch. The Federal Constitution is the primary source of law, followed by Bilateral and Multilateral treaties and agreements, Federal Legislation that includes laws (e.g. Civil and Commercial Code, Criminal Code, and Mining Code), Executive Decrees, and resolutions, administrative decisions, and other administrative acts of the national executive branch.

Most laws relevant to food waste and donation are administered at the national level. However, municipal and provincial governments have certain delegated authorities to supplement these policies or develop implementation plans within their respective jurisdictions, consistent with their own constitutions and governance systems.

Argentine Food Code

NOT ONLY IS THE CÓDIGO ALIMENTARIO ARGENTINO THE FOREMOST FEDERAL LEGAL FRAMEWORK ON FOOD SAFETY AND LABELING IN ARGENTINA, BUT IT HAS BEEN REGARDED AS A "PIONEERING LEGAL FRAMEWORK AND A REFERENCE IN FOOD LEGISLATION FOR SEVERAL COUNTRIES SINCE THE 1970S."

The federal government adopted the Argentine Food Code (*Código Alimentario Argentino* or CAA) in 1969,³⁹ which regulates all domestic and imported food products in order to protect public health and the integrity of commercial transactions. The CAA is comprised of 22 chapters, covering topics from food labeling and advertising to food additives, and incorporating rules to which the Mercosur trade bloc has agreed.⁴⁰ Chapters are regularly updated through joint resolutions of the Ministry of Agriculture, Livestock and Fisheries and the Ministry of Health and Social Welfare. Not only is the CAA the foremost federal legal framework on food safety and labeling in Argentina, but it has been regarded as a "pioneering legal framework and a reference in food legislation for several countries since the 1970s."⁴¹ Donated food is subject to certain provisions of the CAA, as discussed below; however, the CAA does not explicitly mention food recovery and donation.

Enforcement of the CAA is established through Decree No. 815/1999, which allows the creation of the National Food Inspection System (*Sistema Nacional de Control de Alimentos* or SNCA) to guarantee compliance with the CAA.⁴² SNCA is comprised of representatives from the Ministry of Health and Social Development and the Ministry of Agriculture, Livestock and Fisheries, with enforcement authority delegated to three government agencies:

- (1) the National Agro-Food Safety and Quality Service (*Servicio Nacional de Sanidad y Calidad Agroalimentaria* or SENASA), within the Ministry of Agriculture, Livestock and Fisheries. SENASA is responsible for executing all policies issued by the federal government that relate to animal and plant

health and to ensure compliance with the Food Code with respect to all fresh food products listed under Annex I and II of Decree No. 815-99.⁴³ Products listed in these annexes include fresh and frozen meats, poultry, fish, vegetables, fruits, and honey.⁴⁴

- (2) the National Wine Institute (*Instituto Nacional de Vitivinicultura* or INV) within the Ministry of Agriculture, livestock and fishing; and
- (3) the National Food Institute (*Instituto Nacional de Alimentos* or INAL), within the National Administration of Drugs, Foods, and Medical Technology (*Administración Nacional de Medicamentos, Alimentos y Tecnología Médica* or ANMAT) under the Ministry of Health.⁴⁵ INAL is responsible for executing all policies issued by the federal government with respect to health and quality of processed food products and for ensuring CAA compliance with respect to these products.⁴⁶

These agencies often share enforcement jurisdiction. SENASA and INAL, for example, share responsibility for governing the imports and exports of food products under their purview with certain exceptions.⁴⁷ Dairy products are governed by both SENASA and INAL or by provincial governments, if such authority has been delegated.⁴⁸ These agencies are also responsible for executing other national policies related to their respective mandates.⁴⁹ Provincial and municipal health authorities, and that of the City of Buenos Aires, may share oversight with these federal enforcement agencies in their respective jurisdictions.⁵⁰

Decree No. 815/1999 also created the National Food Commission (*Comisión Nacional de Alimentos* or CONAL) to monitor SNCA and stay up to date on scientific developments relevant to food safety.⁵¹ Like SNCA, CONAL is comprised of representatives from the Ministry of Health and Social Development and the Ministry of Agriculture, Livestock, and Fisheries. It is also comprised of representatives from the Ministry of Economy and Public Service and Works (*Ministerio de Economía y Obras y Servicios Públicos*), two representatives assigned by SENASA, and two representatives assigned by ANMAT.⁵² Provincial agencies, industry groups and civil society organizations may also participate in CONAL.⁵³ This Commission may help to influence food loss, waste, and recovery policy, as provisions in the Food Donation Law, discussed in the next section, emphasize the need for donated food to comply with the CAA.

The Food Donation Law

In 2004, the Argentine Congress passed the Food Donation Law, establishing a legal regime for regulating the donation of food to those in need.⁵⁴ This version of the law had only a nominal impact on food donation efforts, as the executive branch vetoed a provision that granted liability protection to food donors, which did not otherwise exist at the time.⁵⁵ Due in part to RedBdA's advocacy and support from Argentine food companies,⁵⁶ Congress approved the incorporation of a liability provision into the Food Donation Law in October 2018, through Law 27,454, minimizing the risk of liability for food donors and food recovery organizations.⁵⁷ This added provision gave the Food Donation Law new life and revitalized Argentina's food donation efforts.⁵⁸

The President's office subsequently issued regulations for the revised Food Donation Law in April 2019, giving the Ministry of Health and Social Development the authority to implement and operate a Registry of Public Welfare Institutions Receiving Food (*Registro de Instituciones de Bien Público Receptoras de Alimentos*).⁵⁹ Not-for-profit private and public organizations that comply with the CAA, including civil associations, foundations, religious institutions, and community organizations, which intend to provide free distribution of donated food to eligible consumers, are required to join the Registry.⁶⁰ The regulations also authorize the Ministry of Health and Social Development to enter into agreements with these institutions as may be necessary to carry out the objectives of the Food Donation Law.⁶¹ With momentum for further reform still active among public and private stakeholders, it is likely that the Food Donation Law and its regulations will be amended further.

National Plan for the Reduction of Food Loss and Waste

In addition to adding the much-anticipated liability provision to the Food Donation Law, Law 27,454 codified the National Plan for the Reduction of Food Loss and Waste.⁶² The National Plan is intended to reduce and eliminate food loss and waste through the empowerment and mobilization of producers, processors, distributors, consumers, and associations, with particular attention to the food needs of the most vulnerable populations. The National Plan encompasses public policies that promote awareness of and innovative solutions to food loss and waste throughout the supply chain, and which contribute to the donation of food consistent with the Food Donation Law. In April 2019, the government integrated the National Program of Food Loss and Waste Reduction within the National Plan,⁶³ with regulatory authority designated to the Secretariat of Food and Bioeconomy (*Secretaría de Alimentos y Bioeconomía*) under the Ministry of Agriculture, Livestock and Fisheries.⁶⁴

THE NATIONAL PLAN FOR THE REDUCTION OF FOOD LOSS AND WASTE IS INTENDED TO REDUCE AND ELIMINATE FOOD LOSS AND WASTE THROUGH THE EMPOWERMENT AND MOBILIZATION OF PRODUCERS, PROCESSORS, DISTRIBUTERS, CONSUMERS, AND ASSOCIATIONS.

Other Relevant Federal Law

The CAA and the Food Donation Law provide the most concrete regulations relevant to food recovery and donation efforts. However, there are additional laws that apply to the safety and authenticity of food products as well as food commerce. For example, Law 25163/1999 regulates the manufacture and marketing of wine, and Law 25380/2001 establishes a legal regime for certifying the country of origin and destination for agriculture and food products.⁶⁵ As explained below, federal tax law also creates incentives and barriers that impact food donation.

Provincial and Municipal Law

Argentina's 23 provinces and the autonomous city of Buenos Aires each have their own constitutions that reinforce the principles and guarantees of the National Constitution.⁶⁶ Title II of the National Constitution delegates to the provinces all powers not otherwise delegated to the federal government and those expressly reserved for provincial governments.⁶⁷ For example, the provinces may pass legislative measures to promote economic progress, human development, job creation, education, and science.⁶⁸

While regulatory authority over food production, safety, and sale is generally exercised at the national level, provinces have their own regulatory agencies, including ministries of health, agribusiness, production, and development.⁶⁹ As explained above, for example, the CAA empowers provincial health authorities to apply and enforce the Law and its provisions in their respective jurisdictions.⁷⁰ The National Plan for Loss Reduction and Food Waste also explicitly invites these agencies to adhere to the regulations set forth in the Law.⁷¹

In addition to these specific grants of authority, provinces have the autonomy to adopt their own food waste and recovery initiatives consistent with national efforts. In 2015, for example, the Buenos Aires City Government launched the "Food Care Program" ("*Cuidemos los alimentos*"),⁷² the country's first municipal strategy to design, devise, coordinate, and implement city-wide sustainable food policy, pursuant to the Milan Urban Food Policy Pact.⁷³ The Program has received support from the FAO and has produced an institutional framework to tackle issues of food waste and poverty in the nation's capital and most populous city.⁷⁴ In the Santa Fe province, consumers, restaurant owners and gastronomic entrepreneurs launched the "Another Plate" ("*Otro Plato*") campaign, as a joint venture to reduce food loss and waste.⁷⁵ Similar initiatives have been launched at the provincial and municipal level throughout Argentina, reflecting nation-wide attention to the issue.

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. 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, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills.

In Argentina, federal food safety laws are largely contained within the CAA and are generally applicable to any person, commercial firm, or establishment that develops, conserves, transports, sells, displays, imports, or exports food.⁷⁶ As mentioned above, however, the CAA also includes requirements that are unrelated to food safety such as restrictions on package size.⁷⁷ The Food Donation Law states that all donated food must meet the “bromatological and safety requirements” (*“las exigencias bromatológicas y de inocuidad”*) contained in the CAA,⁷⁸ but does not state that food must comply with other non-safety related provisions.

Even though the CAA contains non-safety related provisions, the law does not clearly distinguish which provisions are safety-based and which are not. The CAA also does not include separate procedures for food donation. As a result, it is difficult for food donors and food recovery organizations to identify which “bromatological and safety requirements” apply to food donation. Food donors may avoid donating surplus food, and food recovery organizations may refuse to accept certain donations if the food may violate *any* CAA provision, regardless of whether the violation impacts the safety of the food.

The federal government has not provided official guidance on which CAA provisions relate to food safety and food donation, but other laws offer some insight. Under Resolution No. 38/2012, for example, SENASA may donate food that it has seized for CAA violations, provided that the violation has not rendered the food unsafe for human consumption.⁷⁹ This includes violations pertaining to package or permit requirements that do not compromise the product’s integrity.⁸⁰ For example, in March 2019, SENASA confiscated and subsequently donated approximately 500 kilograms of food merchandise, including fresh eggs, meat, and poultry, that were seized due to irregularities in their documentation.⁸¹ The Resolution limits such donations to non-profit, public, or private entities of public good that are otherwise entitled to receive donations under the Food Donation Law.⁸²

As discussed later in this guide, understanding which CAA provisions apply to food donation is relevant to the implementation of the Food Donation Law; a knowing violation of CAA provisions may amount to negligence or willful misconduct that would disqualify donors or food recovery organizations from the Food Donation Law’s liability protection. The National Plan for the Reduction of Food Loss and Waste reiterates the requirement that institutions involved in food donation, including the storage and distribution phase, must comply with sanitary provisions of the CAA.⁸³ Yet, like the CAA itself, the National Plan does not identify the specific sanitary provisions that apply to donated food.

Date Labeling

Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. As explained in the previous section, most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. And, while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to

consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will, therefore, throw away food once the date has passed; intermediaries may also refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for label dates, all of which are intended to reflect when the food will be at its “peak quality.”⁸⁴ Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling.⁸⁵ Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is minimal risk of foodborne illness at that time.⁸⁶

In Argentina, date labeling regulations are standardized as part of the country’s participation in Mercosur, but there is still uncertainty surrounding their application and meaning. Regulations on date labels for packaged food are contained in Chapter V of the CAA and are derived from the Mercosur Resolution 26/03.⁸⁷ The CAA requires all packaged food “intended for human consumption” to feature a date of duration (*fecha de duración* or *fecha de vencimiento*) to indicate the product’s expiration unless Mercosur’s Technical Regulation for Labeling of Packaged Foods provides an exception.⁸⁸ Several other food products are exempt from these labeling requirements, including fresh fruits and vegetables; wines and alcohol beverages above 10-percent ABV; baked goods, which are generally consumed within 24 hours of being made; vinegar; sugar; confectionary products; chewing gum; salt (not enriched); and other food products identified under the regulation.⁸⁹

ANMAT, which is responsible for overseeing compliance with the CAA’s labeling regulations, requires food manufacturers to affix a duration date on the product package. The date must consist of a day and month for products that have a minimum duration of three months or less or a month and year for products that have a minimum duration of more than three months. The manufacturer may select the language used to convey the date from a list of options, including “consume before...”, “valid until...”, “expiration...” etc.⁹⁰ ANMAT does not define these terms or explain if this duration date reflects quality or safety. ANMAT will identify the maximum date for expiration, but it is within the manufacturer’s discretion to label the product with any date prior to that time. Like in the United States, most manufacturers will choose a date that refers to the food product’s quality rather than safety, and which may be any time before the last date ANMAT allows.

Expiration date labels for meat and other animal products are separately defined in the Ministry of Agriculture and Livestock’s Decree No. 4.238/68.⁹¹ Under this decree, facilities processing meat and other animal products are instructed to express the “minimum duration date” (*fecha de duración mínima*) as “consume preferably before...” or “consume preferably before the end of...”⁹² Here, too, the government has not defined these terms or indicated whether these labels are intended to refer to the product’s freshness or safety.

These laws do not assert that the foods are unsafe to eat after the expiration date or explicitly prohibit the donation of food once the affixed date passes. However, donors, food recovery organizations, and lawyers in Argentina generally agree that law prohibits donations of any food past the expiration date.⁹³ Given that consensus, without further clarification by the Argentine government, past-date foods are not accepted for donation at this time.

In order to reduce food waste and promote donation, other countries require separate labels—a safety-based label for food that may give rise to a safety concern if it is not consumed by a certain date, and a quality-based label for food that does not meet this description.⁹⁴ Some businesses have also called for these types of standards.⁹⁵ This scheme can clarify that those foods with a quality-based date label are still safe past the date and allowed to be donated, and support better consumer understanding of the labels. To date, however, Argentina has not pursued this option.

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 the donated food. The Food Donation Law sets forth parameters for safely and lawfully donating food, and Article 9 provides protection from liability for those engaged in the donation process.⁹⁶ 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.

Lawful Food Donors, Intermediaries and Recipients

The Food Donation Law offers a broad definition for the categories of food donors that may be protected from potential liability arising from food donation. Article 3 allows any physical person (*toda persona de existencia física*) or legal entity (*ideal*) to donate food products in good condition.⁹⁷ This inclusive definition is all-encompassing and imposes no apparent restriction on the individuals, groups or entities that may donate food in Argentina.

Food donors may be eligible for liability protection if they donate food to three permissible categories of “intermediaries”: (1) public or private institutions of public welfare that are legally incorporated in Argentina; (2) groups of individuals; and (3) individuals. Public welfare institutions refer to food recovery organizations that have registered with the Registry of Public Welfare Institutions Receiving Food (*Registro de Instituciones de Bien Público Receptoras de Alimentos*) and which provide free delivery of the donated food to the final consumers.⁹⁸

Finally, the Food Donation Law extends its liability protection only to donations that benefit families and populations in need. This includes food insecure populations that rely on food recovery organizations to support their health and wellbeing. These entities are instructed to equitably distribute (*equitativamente distribuidos*) the food among these populations; the law does not define this requirement but defers to those engaged in the process to reasonably execute this requirement.⁹⁹

Safety, Labeling and Other Requirements

Liability protection under the Food Donation Law only extends to food donors and intermediaries that comply with necessary food safety, labeling, and other relevant requirements. Article 3 of the Food Donation Law restricts the donation of food products to those that are in good condition (*productos alimenticios en buen estado*) and Article 2 of the Food Safety law explicitly requires compliance with the food safety provisions contained within the CAA.¹⁰⁰ As previously discussed, food donors and intermediaries do not need to comply with all CAA provisions when donating food, as the law also includes non-safety provisions, including rules related to market retail and transactions, which need not be followed to receive protection under the Food Donation Law.

Food donors and food recovery organizations must also comply with Article 5 of the Food Donation Law, which requires donated food to feature a product description label and, in maintaining compliance with the CAA’s food safety provisions, labels of allergens, if applicable.¹⁰¹ Donor companies may, however, remove their brands or logos from their products prior to donating.¹⁰² The food donor must document this information, along with the expiration date of the donated food and a record of the exchange with the intermediary (name, signature, date, and stamp).¹⁰³ The Food Donation Law also requires local authorities to integrate this information into their Donor Registries.¹⁰⁴

The Food Donation Law prohibits intermediaries from selling donated food, either to the final consumer or to a third party. Article 6 states that intermediaries may not market the product or redirect it from families or populations in need, and Article 8 states that intermediaries cannot exploit the donated food for their own advantage or improperly use it to the detriment of the merchants or producers.¹⁰⁵ Taking such actions will preclude food recovery organizations from receiving civil and criminal liability protection under the law in accordance with Article 9, as explained below.

Scope of Protection

As explained earlier in this guide, amending the Food Donation Law to include Article 9 gave the law new life by offering liability protection that did not previously exist to food donors and food recovery organizations. Under Argentina's Civil and Commercial Code and the Consumer Protection Law, the authority under which most product liability claims fall, product manufacturers and custodians are legally at fault for any harm that results from a product defect, regardless of behavior or intent.¹⁰⁶ Argentina has chosen to apply this "strict liability" standard to most commercial transactions involving liability claims by a consumer.¹⁰⁷ If applied to the food donation context, a food donor or food recovery organization may be held legally and financially responsible for any harm inflicted on a consumer, even if harm was not intended.

Article 9 in the Food Donation Law, however, changes this liability standard for food donors and food recovery organizations engaged in food donation. Specifically, this article affords these actors additional protection by granting them a presumption of good faith (*buena fé*). This presumption prevents courts from automatically holding donors or food recovery organization liable if the final recipient is harmed, as is the case under a strict liability scheme. Instead, courts will presume that food donors and intermediaries complied with all provisions of the Food Donation Law and food safety provisions of the CAA, *i.e.* that they acted in good faith. The burden to prove that these actors did not act in good faith falls on the individual who is alleging wrongdoing. Only if the court is convinced that the food donor or food recovery organization did not act in good faith will it consider whether these actors may be held liable for harm.

This liability protection established under Article 9 is not absolute: evidence of willful misconduct (*dolo*) or negligence (*culpa*) on the part of the food donor may still result in liability for subsequent harm. Willful misconduct may include intentionally tampering with the safety of donated food or knowingly donating food that is unsafe; negligence refers to a failure to act in a manner that most people would have acted in the same circumstance, *i.e.* not refrigerating a perishable food item or leaving food unattended and vulnerable to tampering. Finding negligence depends largely on context and it is determined on a case by case basis.

As previously mentioned, Article 9 also requires compliance with the "bromotological and food safety" requirements of the CAA.¹⁰⁸ Failure to comply with these safety provisions or other violations of the Food Donation Law may rescind the liability protection. However, provided that food donors and intermediaries adhere to food safety rules and other relevant laws if engaging in food donation, the Article 9 liability protection will significantly reduce the risk that these actors will be held responsible for potential harm arising from donating food.

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the environmental costs associated with producing food that is ultimately sent to the landfill. Food donation also helps mitigate the costs of hunger and stimulates the economy: food recovery organizations provide jobs and recipients of donated food are able spend limited financial resources on other basic goods and services. Yet food donation can also 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. As a result, it is often less expensive, and easier, for farmers, businesses, and private individuals to throw away food rather than donate food. Some countries have sought to address this issue by offering tax incentives and removing tax barriers to food donation.

Incentives

Tax incentives can provide significant support for food donation efforts and for the reduction of food loss and waste. For example, corporate donors may be more likely to donate surplus food to food recovery organizations if they receive a charitable deduction to offset the cost of transportation and logistics. These tax incentives could help to offset the costs of donation and reduce the burden of the federal income tax. Argentina's corporate

income tax rate is currently 30%; even with a scheduled decrease, it remains among the highest rates in Latin America.¹⁰⁹

As a general rule, under Article 61 of the Income Tax Law,¹¹⁰ donations to non-exempt entities should be considered as fair market sales subject to income tax. However, with respect to charitable donations, corporations classified as Sociedad Anónima (SA) and Sociedad de Responsabilidad Limitada (SRL) and other taxpayers may claim a tax deduction for in-kind donations of up to 5% of their net taxable profits (*i.e.*, total amount of income on which the business can be taxed) for donations made to a registered tax-exempt organization.¹¹¹ This includes donations made to both tax-exempt civil associations (*asociaciones civiles*) and tax-exempt foundations (*fundaciones*) that are registered with the Argentine Revenue Service.¹¹² In 2017, Argentina amended the categories of tax-exempt organizations to include those that provide social assistance.¹¹³ Such organizations may include food banks and other intermediaries that accept food donations.

An early version of Law 27,454 sought to also amend the Federal Income Tax Law to increase tax incentives for food donation.¹¹⁴ Specifically, the draft law proposed increasing the charitable deduction cap for food donations from 5% of the donor's taxable base to 125% for food donations and to 50% for services associated with food disposal, transport, storage or other activities carried out by the food donor prior to delivery.¹¹⁵ Donors would have been eligible for these higher-rate deductions for donations made to the Argentine Network of Food Banks and other intermediaries.¹¹⁶ However, these changes were not among the amendments adopted in the final version of Law 27,454 so businesses are only eligible to claim a deduction of up to 5% of their taxable base only for food donations to some exempt entities.¹¹⁷

Barriers

While certain tax schemes may encourage food donations, they may also stand as potential deterrents. In many countries, including Argentina, the Value Added Tax (*Impuesto al Valor Agregado, IVA* or VAT), in particular, presents a financial barrier to donating food.¹¹⁸ The VAT is a federal tax that is levied on a good at each stage of the supply chain, from production to the point of sale, whenever value is added.

Many countries adjust VAT rates to align with larger policy agendas; for example, countries may apply reduced VAT rates to basic essentials, such as pharmaceuticals, healthcare services, and education. In August 2019, Argentina eliminated the VAT on essential food products through the end of the calendar year;¹¹⁹ in 2020, the government reinstated the general VAT rate of 21 percent on food,¹²⁰ and a lower rate of 10.5 percent for fruits and vegetables, bread and meat, and bulk honey.¹²¹ Water and liquid and powdered milk without additives are entirely exempt from the tax.¹²²

Argentina's VAT scheme features an Output VAT or VAT debit (*débito fiscal*), which is the value added tax that a VAT-registered business will charge on its own sale of the good, and an Input VAT or VAT credit (*crédito fiscal*), which is the amount invoiced to VAT-registered business upon its purchases. Each month, a taxpaying individual or entity is entitled to recover the Input VAT invoiced (as long as the Input VAT is related to taxable activities), thereby offsetting the output VAT that the taxpayer charged for its taxable activities. For example:

- A rice producer will charge the 21% Output VAT on the sale of a \$2 bag of rice to a rice manufacturer. If the producer did not incur any Input VAT related to its activity, it would only owe the amount of the Output VAT of \$0.42 to the tax authority.
- A rice manufacturer, having incurred an Input VAT of \$0.42 during the purchase, will charge the 21% Output VAT on its own \$4 sale to a local distributor. The manufacturer's net VAT payable would be equal to the Output VAT value less the value of the Input VAT ($\$0.84 - \$0.42 = \$0.42$).
- A rice distributor, having incurred an Input VAT of \$0.84 during the purchase, would subsequently apply the 21% Output VAT to its own \$6 sale to a local supermarket. The distributor's net VAT payable

would be equal to the Output VAT value less the value of the Input VAT ($\$1.26 - \$0.84 = \$0.42$).

- In the last exchange in this scenario, the supermarket charging \$8 for rice would impose an Output VAT of \$1.68 on the sale to a customer and, like the distributor, owe a net VAT payable equal to the difference between the Output VAT charged and the Input VAT incurred ($\$1.68 - \$1.26 = \$0.42$).
- The final customer pays the accumulated tax on top of their final purchase ($\$0.42 + \$0.42 + \$0.42 + \$0.42 = \$1.68$).

Generally, if an Input VAT exceeds the Output VAT for a given month, the difference could later be offset with the Output VAT from subsequent months (*i.e.*, the taxpayer would have “VAT technical balances in favor”). VAT regulations¹²³ only allow VAT technical balances in favor to be credited against future VAT debits.

Under Argentina’s VAT Law, donations or free deliveries are not taxable events so the associated Input VAT related cannot be recovered by the donor. If the Input VAT was recovered before the donation takes place (*i.e.*, in a previous month) the taxpayer must pay back the Input VAT in the month that the donation was made. The amount owed is restated according to the variation of the wholesale price index (*Indice de Precios al por Mayor*), as determined by the Statistics Governmental Authority (*Instituto Nacional de Estadísticas y Censos*). Simply put, donors are responsible for paying the full cost of the Input VAT for the donated food.¹²⁴

As applied to the above scenario, this means that the following would occur: a supermarket, having paid an Input VAT of \$1.26 for rice, decides to donate the surplus at no cost to a local foodbank. This donation is not a taxable event and the supermarket does not charge an Output VAT to the food recovery organization and, under Article 58 of Argentina’s VAT law, could not keep the \$1.26 VAT credit (it cannot be used or it must be paid back).¹²⁵ If the supermarket sold the rice to a customer, it would owe a net VAT of \$0.42.

By contrast, if the business throws away food, it is entitled to retain the Input VAT and does not need to pay it back.¹²⁶ The requirement to pay back the credit in the event of a donation looks more like a penalty to donors, as the difference between the net VAT owed after an ordinary business exchange and a net VAT owed on food that is donated could amount to millions of pesos, especially for large-scale donations. Some case-law has endorsed that VAT credits related to “free donations by the business” are not subject to the rule of Section 58 of VAT Law’s Regulatory Decree.¹²⁷ The draft version of Law 27,454 proposed an amendment to the VAT law that would exempt food donations from the list of donation activities for which the VAT credit must be returned.¹²⁸ However, this amendment was not among those provisions adopted in Law 27,454. As a result, businesses that donate food must continue to pay the credit reimbursement in accordance with the federal VAT law.

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 food systems. In Argentina, there are currently no federal or provincial laws that require food donation or penalize food waste. In 2015, both the Senate and Chamber of Deputies introduced a bill that would make it unlawful for supermarkets to discard food that is in good condition, however, this proposal was not adopted.¹²⁹ Given the recent evolution of the Food Donation Law, and the opportunities for implementation at the provincial level, such measures may be adopted in the future.

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. 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 new innovations and emerging technologies that will make food donation more efficient and sustainable.

Argentina's food donation legal framework does not explicitly provide for grant funding related to food loss and waste or food donation. However, in 2019, Argentina's Ministry of Agribusiness launched a contest to grant non-reimbursable financing for innovative food waste solutions in Argentina's horticultural sector.¹³⁰ The 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 and its Innovation Lab (I-Lab). IBM and the Argentine Network of Food Banks also provided support for the initiative.¹³¹ This public-private partnership has the potential to support emerging solutions to food waste. Even so, at the time this Legal Guide was published, the government has not announced more robust or sustainable strategies for funding on-farm, post-harvest infrastructure or other solutions for increasing food donation.

Miscellaneous

In addition to the relevant laws addressed in the above sections, there may be other federal, municipal, or provincial laws and policies that impact food donation efforts in Argentina. For example, Article 20 of Law 25,246 on Aiding and Abetting and Asset Laundering, sets forth the obligation to report suspicious transactions the Financial Information Unit (UIF) for all legal persons that receive donations or contributions from third parties;¹³² Resolution 3030/2011 includes certain paperwork and reporting requirements that may apply to food recovery organizations or donors.¹³³

CONCLUSION

This Legal Guide is intended to identify Argentina's current laws, policies, and programs that relate to food waste or food donation.¹³⁴ While the federal 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 Argentina, the government has recently implemented legislative and policy changes to promote greater food donation and the reduction of food loss and waste. Among the most recent developments include the adoption of the National Plan for Food Loss and Waste Reduction and amendments to the Food Donation Law, which now includes liability protections for food donors and food recovery organizations.

This Legal Guide provides a starting point from which policymakers, private sector actors, and civil society may better understand the current laws and policies as well as begin a dialogue about food loss and waste prevention and the value of food recovery to Argentina's food security, economic stability, and environmental sustainability. A separate document produced under The Global Food Donation Policy Atlas sets forth policy recommendations specific to Argentina to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in Argentina, donors, intermediaries, and policymakers should investigate the laws identified in this guide and seek additional legal counsel, if necessary.

ENDNOTES

- ¹ FOOD & AGRIC. ORG. OF THE UNITED NATIONS [FAO], GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011), <http://www.fao.org/3/a-i2697e.pdf> [<https://perma.cc/DD6H-U99T>]
- ² *Id.*
- ³ HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 1 (2016), https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf.
- ⁴ FAO, FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES 6 (2011).
- ⁵ *Id.*
- ⁶ FAO, FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015).
- ⁷ *Id.*
- ⁸ FAO, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD: SAFEGUARDING AGAINST ECONOMIC SLOWDOWNS AND DOWNTURNS 6 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf> [<https://perma.cc/WS34-9DCZ>].
- ⁹ G.A. Res. 70/1 at 22 (Oct. 21., 2015) (“By 2030, to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.”).
- ¹⁰ The Global Food Donation Policy Atlas project would not be possible without the support of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice; those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- ¹¹ FAO, FOOD LOSSES AND WASTE IN LATIN AMERICA AND THE CARIBBEAN, 11 (2016), <http://www.fao.org/3/a-i5504e.pdf>.
- ¹² FLPC would like to express its gratitude to Red Argentina de Bancos de Alimentos, Nilus, Becar Varela for their contribution to this guide, as well as many other NGOs, businesses, and government agencies who shared input with the FLPC team.
- ¹³ FLPC and GFN recognize that the legal and policy landscape relevant to the prevention of food loss and waste and promotion of food donation is changing rapidly. According, the contents of this guide reflect the status quo from the time of research (September–December 2019).
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- ¹⁵ *UCA Report: Half of Argentina’s children live in poverty*, BUENOS AIRES TIMES (June 30, 2019), <https://www.batimes.com.ar/news/argentina/half-of-nations-children-living-in-poverty.phtml>.
- ¹⁶ *Poverty rose to 35.4% in first half of 2019, reports INDEC*, BUENOS AIRES TIMES (Sept. 30, 2019), <https://www.batimes.com.ar/news/argentina/poverty-rose-to-35-4-percent-in-first-half-of-2019-reports-INDEC.phtml>.
- ¹⁷ *Id.*
- ¹⁸ FAO, *supra* note 8, at 130.
- ¹⁹ C. Garrison & E. Raszewski, *Argentine Senate approves emergency food law as crisis worsens*. REUTERS, (Sept. 18, 2019) <https://www.reuters.com/article/us-argentina-economy-food/argentine-senate-approves-emergency-food-law-as-crisis-worsens-idUSKBN1W32VW> [<https://perma.cc/BVK9-LDWX>].
- ²⁰ Emiliano Lasalvia, *Argentine lawmakers approve emergency food bill amid economic crisis*, FRANCE 24 (Sept. 13, 2019) <https://www.france24.com/en/20190913-argentina-economic-crisis-lawmakers-approve-emergency-food-bill>.
- ²¹ See UNITED NATIONS CHILDREN’S FUND [UNICEF] ARGENTINA, UNIVERSAL CHILD ALLOWANCE (AUH). A CONTRIBUTION TO THE DISCUSSION ON THE ROLE OF CONDITIONALITIES 23 (2018), [https://www.unicef.org/argentina/media/4186/file/Universal%20Child%20Allowance%20\(AUH\).pdf](https://www.unicef.org/argentina/media/4186/file/Universal%20Child%20Allowance%20(AUH).pdf)
- ²² FAO, *supra* note 11 at 11.
- ²³ *Id.*
- ²⁴ See Gijs Langeveld, *Municipal Solid Waste network: Cities targeting food waste to reduce pollutant emissions*, CLIMATE & CLEAN AIR COALITION, (June 4, 2018), <https://ccacoalition.org/en/blog/municipal-solid-waste-network-cities-targeting-food-waste-reduce-pollutant-emissions>, (interviewing Sandra Mazo-Nix, the Coalition’s Waste Initiative Coordinator and Andrea Celeste Paiz, New Technology Management for the City of Buenos Aires).
- ²⁵ *Waste Management*, BUENOS AIRES CIUDAD, <https://turismo.buenosaires.gob.ar/article/waste-management>.
- ²⁶ GRUPO BANCO MUNDIAL, HACIA EL FIN DE LAS CRISIS EN ARGENTINA: PRIORIDADES PARA UN CRECIMIENTO SOSTENIBLE Y PROSPERIDAD COMPARTIDA, (2018) <http://documents.worldbank.org/curated/en/693981558012501931/pdf/Summary.pdf>.
- ²⁷ FAO, *supra* note 11 at 11.; The FAO also implemented a countrywide technical cooperation facility (TCP/ARG/3501) to carry out studies of food loss, including at the wholesale and retail distribution stages as well as within households.
- ²⁸ See Ministry of Agriculture, Livestock and Fisheries, Resolution 392/2015, June 23, 2015, [33159] B.O. 58 (Arg.) [hereinafter “Resolution No. 392/2015”], <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=248599> <https://perma.cc/TXJ8-3SXW>.
- ²⁹ Law 27454, October 10, 2018, [33984] B.O. 3 (Arg.) [hereinafter “National Plan for the Reduction of Food Loss and Waste”], <http://servicios.infoleg.gob.ar/infolegInternet/anexos/315000-319999/315735/norma.htm> [<https://perma.cc/FTA5-FC9L>].
- ³⁰ See Resolution 392/2015.
- ³¹ *El Congreso debatió la modificación de la ley de donación de alimentos*, RED ASSOCIATION, <https://www.redaccion.com.ar/el-congreso-debate-la-modificacion-de-la-ley-de-donacion-de-alimentos/>.
- ³² Ministry of Agroindustry, Resolution E 9/2017, Mar. 27, 2017, [33596] B.O. 11 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=273172> [<https://perma.cc/WV5L-Y3KX>]. RedBdA has published a guide to assist municipalities in joining this nation-wide effort: VALOREMOS LOS ALIMENTOS: GUÍA INTEGRAL PARA MUNICIPIOS, PROGRAMA NACIONAL DE REDUCCIÓN DE PÉRDIDA Y DESPERDICIO DE ALIMENTOS (2017), http://www.oneplanetnetwork.org/sites/default/files/guia_para_municipios.pdf.
- ³³ See Law 25989, Dec. 16, 2004, [30564] B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [<https://perma.cc/ED5J-EE4H>] [hereinafter “Food Donation Law”] amended via the National Plan for Food Loss and Waste (Law No. 27454).
- ³⁴ *Cadena de valor solidaria*, REDBDA, <https://www.redbda.org.ar/>.
- ³⁵ UCA Report, *supra* note 15.
- ³⁶ *Tucumán: Crearon una heladera social*, HELADERA SOCIAL (Mar. 21, 2016), <https://heladerasocial.wordpress.com/2016/03/21/85>.
- ³⁷ NILUS, <https://www.nilus.org> (last visited Feb. 24, 2020).
- ³⁸ For suggested policy interventions that will help strengthen Argentina’s food recovery framework, please see the FLPC Recommendations for Argentina.
- ³⁹ CÓDIGO ALIMENTARIO ARGENTINO [CÓD. ALIM.] [HEALTH CODE] [hereinafter “CAA”](Arg. 1969).
- ⁴⁰ See Law 24560, Sept. 20, 1995, [28249] B.O. 3 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28253/norma.htm> [<https://perma.cc/QW6B-KE5K>] (The “Common Market of the South” or MERCOSUR Agreement is a free trade agreement between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay.).
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45 *Id.*, Art. 4.

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47 *Id.*, Art. 22–25.

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76 CAA, Ch. 1.

77 *Id.* Ch. V, Art. 240 (specifying that a food product’s packaging should not be more than 10% larger than its contents for opaque, hermetically-sealed containers or 5% larger if the food container is transparent.).

78 Food Donation Law (Law No. 25989), Art. 2.

79 See Food Donation Law (Law No. 25989), Art. 2. (requiring that food products can only be donated if they are in compliance with the healthy, hygiene, and bromotological requirements of the CAA).

80 Ministry of Agriculture, Livestock and Fisheries, Resolution No. 38/2012, Art. 7, Feb. 3, 2012, [32336] B.O. 19 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/190000-194999/193971/norma.htm> [https://perma.cc/Q49Y-JYJG] [hereinafter “Resolution No. 38/2012”].

81 *Donación de casi 500 kilos de mercadería a dos municipios de La Pampa y Río Negro*, Argentina.Gob.Ar (March 7, 2019) <https://www.argentina.gob.ar/noticias/donacion-de-casi-500-kilos-de-mercaderia-dos-municipios-de-la-pampa-y-rio-negro>.

82 Resolution No. 38/2012, Article 7(f).

83 National Plan for the Reduction of Food Loss and Waste, (Law No. 27454) Art. 3.

84 HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC AND NATURAL RESOURCES DEFENSE COUNCIL, DON’T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017).

85 US GAO. DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION, GAO-19-407 (SEPT. 2019) <https://www.gao.gov/assets/710/701238.pdf>.

86 DON’T WASTE, DONATE, *supra* note 84, at 19.

87 Joint Resolution MSyA No. 149/05 and SAGPyA No. 683/05, Sept. 26, 2005 [30746] B.O. 20 (Arg.) <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=110017> [https://perma.cc/9MF9-YXS7] (incorporating the Mercosur standards into the Food Code).

88 CAA, Ch. 1 § 6.6.1.

89 *Id.*

90 *Id.*

91 Decree No. 4238/68, July 19, 1968 [21505] B.O. 9 (Arg.) (updated 2004), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/24788/texact.htm> [https://perma.cc/JCE5-R4KR]

92 *Id.*

93 See e.g. Honorable Cámara de Diputados de la Nación Argentina, *Sesión Especial: Por Amplia Mayoría, Aprueban un Regimen para la Donación de Alimentos*, DISPUTADOS ARGENTINA (July 4, 2018) https://www.diputados.gov.ar/prensa/noticias/2018/noticias_0633.html [https://perma.cc/X5Q8-B9AY]. (Deputy Elisa Carrió, sponsor of the bill introducing Article 9 to Law 25,989 explained that “in no way does this [provision] enable the donation of expired merchandise.”)

94 EUROPEAN PARLIAMENT, BRIEFING: ‘BEST BEFORE’ DATE LABELS: PROTECTING CONSUMERS AND LIMITING FOOD (2015), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/548990/EPRS_BRI\(2015\)548990_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2015/548990/EPRS_BRI(2015)548990_REV1_EN.pdf).

95 *Release: Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste*, World Resources International (Sept. 20, 2017) <https://www.wri.org/news/2017/09/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste>.

96 See Food Donation Law (Law No. 25989), Art. 9 updated via the National Plan for the Reduction of Food Loss and Waste (Law No. 27454), Art. 6.

97 Food Donation Law (Law No. 25989), Art. 3.

98 See Decree 246/2019, Art. 3.

99 Food Donation Law (Law No. 25989), Art. 3.

100 *Id.*, Art. 3 and 2, respectively.

101 *Id.*, Art. 5.

102 *Id.*

103 *Id.*

104 *Id.*, Art. 7.

105 *Id.*, Art. 8.

106 See Law No. 24240, Art. 40, Sept. 22, 1993 [27744] B.O. 34 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=638> [https://perma.cc/VHH2-QRJT] [“Consumer Protection Law”]; CÓDIGO CIVIL Y COMERCIAL [CÓD. CIV. Y COM.], Art. 1757 (Arg.).

107 *Id.*

108 Food Donation Law (Law No. 25989), Art. 2.

109 See Law No. 27430, Dec. 27, 2017, [33781] B.O. 3 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305262/texact.htm> [https://perma.cc/KLE5-WAMS] [hereinafter “Law No. 27430”] (providing for a decrease in the tax rate to 25% starting in 2020). Under Law No. 27430 the tax rate will further decrease to 25 percent as from 2020; On December 17, 2019, the Executive Branch sent a draft reform bill to the Congress proposing the suspension of the rate decrease until December 31, 2020.). See Note No. 3/19, National Executive Branch 2019, ‘Año de la Exportación’ (Dec 17, 2019) <https://www4.hcdn.gov.ar/dependencias/dsecretaria/Periodo2018/PDF2018/TP2018/0016-PE-2019.pdf> [https://perma.cc/V872-PXU2]

110 Law No. 20628, Dec. 27, 1963 [22821] B.O. (Arg.) [hereinafter “Income Tax Law”] http://biblioteca.afip.gob.ar/dcp/LEY_C_020628_2019_12_05 [https://perma.cc/6RUN-5VVZ].

111 *Id.*, Art. 85.

112 Argentina, COUNCIL ON FOUNDATIONS (July 2018), <https://www.cof.org/content/argentina>; Silvia Stang, *Donar para el Bien Común: Requisitos del Incentivo Fiscal*, LA NACIÓN (Feb. 10, 2013), <https://www.lanacion.com.ar/1553278-donar-para-el-bien-comun-requisitos-del-incentivo-fiscal>.

113 See Law No. 27430 (amending the Income Tax Law Article 85 subsection (c)).

114 Argentine Lower House, Draft Bill 5523-D-2017, <https://www.hcdn.gov.ar/proyectos/textoCompleto.jsp?exp=5523-D-2017&tipo=LEY> [https://perma.cc/J84K-SZHS].

115 *Id.*

116 *Id.*

117 Income Tax Law, Art. 85.

118 Argentina’s VAT regulations are housed in Law No. 23349, Aug. 7, 1986, [25978] B.O. (Arg.) (reordered by Decree 280/97) [hereinafter “VAT Law”] <http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/42701/texact.htm> [https://perma.cc/BAQ6-ACJ5] and its Regulatory Decree, Decree 692/1998, June 11, 1998, [28918] B.O. 3 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=51323> [https://perma.cc/7BL7-QV2C] [hereinafter “VAT Regulatory Decree”].

119 Patrick Gillespie, *Argentina’s Macri Rolls Out More Measures as Markets Recover*, BLOOMBERG (August 15, 2019), <https://www.bloomberg.com/news/articles/2019-08-15/argentina-s-macri-rolls-out-more-measures-as-markets-recover>.

120 Nadín Argañaraz, *Fuerte Carga Fiscal sobre los Alimentos*, CLARÍN (Mar. 25, 2018), https://www.clarin.com/economia/fuerte-carga-fiscal-alimentos_0_S1ZhC3M9z.html.

121 *Id.*

122 VAT Law, Art. 7.

123 Vat Law, Art. 24; VAT Regulatory Decree, Art. 63. See also, ABC – *Frequently asked questions and answers on regulations, applications and systems*. AFIP, https://www.afip.gob.ar/genericos/guiavirtual/consultas_detalle.aspx?id=647386 [https://perma.cc/X73R-6LP7].

124 VAT Regulatory Decree, Art. 58; see also ABC – *Frequently asked questions and answers on regulations, applications and systems*. AFIP, https://www.afip.gob.ar/genericos/guiavirtual/consultas_detalle.aspx?id=2792308 [https://perma.cc/6JLN-4CM7].

125 *Id.*

126 *Id.* See also, Mario Juan Rapisarda, *Curiosidades de nuestros tributos: cuando la solidaridad paga impuestos*, EL CRONISTA (May 23, 2016) https://www.cronista.com/fiscal/curiosidades-de-nuestros-tributos-cuando-la-solidaridad-paga-impuestos-20160523-0014.html?utm_source=ecc_notia&utm_medium=cms&utm_campaign=refresh.

127 VAT Regulatory Decree, Art. 58.

128 See Argentine Lower House, Draft Bill 5523-D-2017 (proposing an amendment to the VAT Regulatory Decree, Art. 58.).

129 House Chamber of Deputies of the Nation, Draft Bill 4424-D-2015, (Aug. 19, 2015), <http://www1.hcdn.gov.ar/proyxml/expediente.asp?fundamentos=si&numexp=4424-D-2015> (https://perma.cc/9H56-MY9Q) (in Spanish).

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132 Law No. 25246, Art. 20, Apr. 13, 2000 [29395] B.O. 1 (Arg.), <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/62977/texact.htm> [https://perma.cc/LZL7-B5NL].

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134 The information contained in this guide is current as of January 2020.



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