

Technical Bulletin China

CAF v1.6 questions on Trade Unions, Freedom of Association (FOA) and Collective Bargaining (CB)

This country-focused brief serves as a replacement for the previous VB technical bulletins that were issued regarding the topic of trade unions in 2023.

Introduction

In China, all workers have the right to form or join a trade union, but this right is limited because all unions must be affiliated with the one legally mandated body, the All-China Federation of Trade Unions (ACFTU). As China has not ratified the International Labour Organization Conventions (ILO) C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and C098 - Right to Organize and Collective Bargaining Convention, 1949 (No. 98), independent trade unions cannot be freely formed or joined.

For this reason, when verifying the Tool's questions related to the topics of trade unions (FOA and CB), Verifiers are requested to take into consideration the requirements of the applicable ILO Conventions, that are stricter than the national law.

This means that questions in the Tool related to trade unions (FOA and CB) must **first be evaluated against ILO Conventions and then against national law, and the stricter standard shall apply.**

In the CAF v1.6 there are a total of **29 law-based questions** related to trade unions (FOA and CB) as displayed in the following table.

Of the 29 law-based questions, 1 is only applicable to Vietnam (highlighted in orange)

TABLE A – 29 law-related questions related to FOA and CB

#	Number	Key	Question
1	WI-FOA-1	wi-foa-2	Are workers free to form a trade union of their choosing?
2	WI-FOA-2	wi-foa-3	Are workers free to join a trade union of their choosing?
3	WI-FOA-37	foa-cb-2--5	Can the trade union(s) freely form and join federations and confederations of their choice without interference?
4	WI-FOA-38	foa-cb-2--6	Does the facility require workers to join a trade union?
5	WI-FOA-39	foa-cb-3	Do trade union representatives have access to workers in the workplace?
6	WI-FOA-40	foa-cb-3--1	Does the facility deduct trade union dues from wages in line with legal requirements?
7	WI-FOA-41	foa-cb-3--5	Is the facility's practice around financial or other support of the union in line with legal requirements?
8	WI-FOA-42	foa-cb-3--5	Does facility management regularly meet with trade unions to proactively address issues of worker concern?
9	WI-FOA-43	foa-cb-3--7	Is the facility consulting with trade unions in line with legal requirements?
10	WI-FOA-44	wi-foa-34	Are legally required mechanisms for dialogue between the employer and the union(s) in place and functioning in line with legal requirements?

11	WI-FOA-45	foa-cb-3--9	Are workers provided with a private meeting space at the workplace in line with legal requirements?
12	WI-FOA-46	foa-cb-3--9	Does the employer allow workers to carry out trade union activities in accordance with applicable legal requirements?
13	WI-FOA-47	foa-cb-4	Are workers and workers' representatives free to meet without the presence of management?
14	WI-FOA-48	foa-cb-4--1	Does the facility treat all trade unions equally, or as stipulated by applicable legal requirements?
15	WI-FOA-49	foa-cb-4--3	Has the facility management tried to control, manipulate or interfere with any of the unions in the facility?
16	WI-FOA-50	foa-cb-4--5	Is a job applicant's current or previous trade union membership or trade union activities a factor during the hiring process?
17-20 (first prompt WI- FOA- 51 is not a questi on)	WI-FOA-51 1 WI-FOA-51- 2 WI-FOA-51- 3 WI-FOA-51- 4	wi-foa-36 foa-cb-4--7- 1x foa-cb-4--7- 2x foa-cb-4--7- 3x foa-cb-4--7- 5x	Has the facility engaged in any of these actions due to a worker's trade union membership or activities? (SELECT all that apply with a "X") Threatened intimidated, or harassed Punished Terminated workers or did not renew their contract None of the above
21	WI-FOA-52	wi-foa-37	Were terminations of trade union official(s) (if any) in line with applicable legal requirements?
22	WI-FOA-53	wi-foa-71	Do Trade Union representatives have time off to carry out their representative functions?
23	WI-FOA-54	wi-foa-72	Do Trade Union representatives have time off to attend relevant trainings or meetings outside the factory?
24	WI-FOA-55	wi-foa-73	Are Trade Union Officers from the Federation/External Trade Union granted access to meet with Trade Union members' representatives?
25	WI-FOA-56	wi-foa-38	Does the facility refuse to bargain collectively or refuse to bargain in good faith with the union, worker representatives, union federations or confederations?
26	WI-FOA-71	foa-cb-6--2	Are provisions within the Collective Bargaining Agreements (CBA) at least as favorable for workers as applicable legislation?
27	WI-FOA-72	wi-foa-53	Has the facility failed to implement any of the provisions in the CBAs?
28	WI-FOA-73	wi-foa-54	Does the facility inform all workers about CBAs and provide copies in line with legal requirements?
29	WI-FOA-74	wi-foa-60	Vietnam: Has the collective agreement in force been approved by more than 50% of workers covered, as legally required?

What changed with CAF v1.6? - New answer option for facilities and Verifiers

In CAF Version 1.6, there is a change in the answer option for the questions on trade unions. Earlier, the majority of questions were “Yes/No” answers only, but now the facility/ Verifier can answer “*Not applicable. No union presence in the facility during the assessment period.*”

In CAF Version 1.6, for **16** questions (highlighted in red), there is the option to answer: “**Not applicable. No union presence in the facility during the assessment period.**” Or just “**Not applicable**” as an option. To verify these 16 questions, it is important to first assess whether the facility has a union or has had a union within the 12 months of the assessment period. If there is/ was no union, proceed with answering the 16 questions in Table B as “Not applicable. No union presence in the facility during assessment period.” or “Not Applicable”.

The 14 remaining questions (in white) are Yes/No or X/Blank or Yes/No/No applicable legal requirements questions. In these 14 cases, whether there is a union present or not does not matter. The facility/ Verifier has to answer based on the current circumstance and based on ILO Convention first and national law second. More details explained in Table C.

Please remember that 1 question (highlighted in orange) is only applicable to Vietnam.

TABLE B – 16 out of 29 questions where “Not applicable” or “Not applicable. No union presence” is enabled

#	Number	Key	Question	Answer Option including Not Applicable
1	WI-FOA-1	wi-foa-2	Are workers free to form a trade union of their choosing?	
2	WI-FOA-2	wi-foa-3	Are workers free to join a trade union of their choosing?	Not applicable. No union presence in the facility during assessment period.
3	WI-FOA-37	foa-cb-2--5	Can the trade union(s) freely form and join federations and confederations of their choice without interference?	Not applicable. No union presence in the facility during assessment period.
4	WI-FOA-38	foa-cb-2--6	Does the facility require workers to join a trade union?	Not applicable. No union presence in the facility during assessment period.
5	WI-FOA-39	foa-cb-3	Do trade union representatives have access to workers in the workplace?	Not applicable. No union presence in the facility during assessment period.
6	WI-FOA-40	foa-cb-3--1	Does the facility deduct trade union dues from wages in line with legal requirements?	Not applicable. No union presence in the facility during assessment period.
7	WI-FOA-41	foa-cb-3--5	Is the facility's practice around financial or other support of the union in line with legal requirements?	Not applicable. No union presence in the facility during assessment period.
8	WI-FOA-42	foa-cb-3--5	Does facility management regularly meet with trade unions to proactively address issues of worker concern?	Not applicable. No union presence in the facility during assessment period.
9	WI-FOA-43	foa-cb-3--7	Is the facility consulting with trade unions in line with legal requirements?	Not applicable. No union presence in the facility during assessment period.
10	WI-FOA-44	wi-foa-34	Are legally required mechanisms for dialogue between the employer and the union(s) in place and functioning in line with legal requirements?	Not applicable. No union presence in the facility during assessment period.

11	WI-FOA-45	foa-cb-3--9	Are workers provided with a private meeting space at the workplace in line with legal requirements?	
12	WI-FOA-46	foa-cb-3--9	Does the employer allow workers to carry out trade union activities in accordance with applicable legal requirements?	Not applicable. No union presence in the facility during assessment period.
13	WI-FOA-47	foa-cb-4	Are workers and workers' representatives free to meet without the presence of management?	
14	WI-FOA-48	foa-cb-4--1	Does the facility treat all trade unions equally, or as stipulated by applicable legal requirements?	Not applicable. No union presence in the facility during assessment period.
15	WI-FOA-49	foa-cb-4--3	Has the facility management tried to control, manipulate or interfere with any of the unions in the facility?	Not applicable. No union presence in the facility during assessment period.
16	WI-FOA-50	foa-cb-4--5	Is a job applicant's current or previous trade union membership or trade union activities a factor during the hiring process?	
17-20 (first prompt WI- FOA- 51 is not a question)	WI-FOA-51 WI-FOA-51-1 WI-FOA-51-2 WI-FOA-51-3 WI-FOA-51-4	wi-foa-36 foa-cb-4--7-1x foa-cb-4--7-2x foa-cb-4--7-3x foa-cb-4--7-5x	Has the facility engaged in any of these actions due to a worker's trade union membership or activities? (SELECT all that apply with a "X") Threatened intimidated, or harassed Punished Terminated workers or did not renew their contract None of the above	
21	WI-FOA-52	wi-foa-37	Were terminations of trade union official(s) (if any) in line with applicable legal requirements?	Not applicable. No union presence in the facility during assessment period.
22	WI-FOA-53	wi-foa-71	Do Trade Union representatives have time off to carry out their representative functions?	Not Applicable
23	WI-FOA-54	wi-foa-72	Do Trade Union representatives have time off to attend relevant trainings or meetings outside the factory?	Not Applicable
24	WI-FOA-55	wi-foa-73	Are Trade Union Officers from the Federation/External Trade Union granted access to meet with Trade Union members' representatives?	Not Applicable
25	WI-FOA-56	wi-foa-38	Does the facility refuse to bargain collectively or refuse to bargain in good faith with the union, worker representatives, union federations or confederations?	
26	WI-FOA-71	foa-cb-6--2	Are provisions within the Collective Bargaining Agreements (CBA) at least as favorable for workers as applicable legislation?	
27	WI-FOA-72	wi-foa-53	Has the facility failed to implement any of the provisions in the CBAs?	
28	WI-FOA-73	wi-foa-54	Does the facility inform all workers about CBAs and provide copies in line with legal requirements?	
29	WI-FOA-74	wi-foa-60	Vietnam: Has the collective agreement in force been approved by more than 50% of workers covered, as legally required?	

How to verify the 28 law-based questions related to Trade Unions, FOA and CB in Chinese facilities?

- 1) Assess if the facility has a union or has had a union within the 12 months of the assessment period. If there is/ was no union, proceed with answering the 16 questions in Table B as “Not applicable. No union presence in the facility during assessment period.” or “Not Applicable”.
- 2) If there is/ was a union within the 12 months of the assessment period, then answer by **taking first the ILO Conventions into account and then the national law**. If the ILO Conventions are stricter, then apply the ILO Convention in the Legal Reference field and indicate a Non-Compliance.
 - a. Specifically for China, there are 3 questions that must always be answered No if a union presence is/ was there during the assessment period. These questions are:
 - i. WI-FOA-1, WI-FOA-2, WI-FOA-37
 1. For these questions, if the facility is abiding by Chinese law, you must write in the Assessor/Verifier Explanation that *The facility is in compliance with Chinese national law. However, they are not in compliance with ILO standards. The facility cannot remediate this situation and cannot comply with the ILO Convention, because China has not ratified the ILO Conventions C087 - Freedom of Association and Protection of the Right to Organise Convention 1948 and C098 - Right to Organise and Collective Bargaining Convention, 1949. See reference:
https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_INSTRUMENT_SORT,P11200_COUNTRY_ID:2,103404.*
- 3) If there is/ was a union within the 12 months of the assessment period, and the question allows you to answer “No applicable legal requirements” then apply the **national law only**.

TABLE C – 28 questions specific to China with answer options and answer guidance if union is/ was present
If union was not present, follow Table B

#	Number	Key	Question	Answer Option	Answer Guidance if union is/ was present
1	WI-FOA-1	wi-foa-2	Are workers free to form a trade union of their choosing?	Yes No	Always answer NO in China. Citation: C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2: Workers and employers, without distinction whatsoever, shall have the right to <u>establish</u> and, subject only to the rules of the organisation concerned, to <u>join organisations of their own choosing</u> without previous authorisation. Complete the Assessor/Verifier Explanation with text noted under 2) a. i. 1. above.
2	WI-FOA-2	wi-foa-3	Are workers free to join a trade union of their choosing?	Not applicable. No union presence in the facility during assessment period.	Always answer NO in China. Citation: C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to <u>join organisations of their own choosing</u> without previous authorisation. Complete the Assessor/Verifier Explanation with text noted under 2) a. i. 1. above. This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
3	WI-FOA-37	foa-cb-2--5	Can the trade union(s) freely form and join federations and confederations of their choice without interference?	Not applicable. No union presence in the facility during assessment period.	Always answer NO in China. Citation: C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 5: Workers' and employers' organisations shall have the right to <u>establish and join federations and confederations</u> and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers. Complete the Assessor/Verifier Explanation with text noted under 2) a. i. 1. above.
4	WI-FOA-38	foa-cb-2--6	Does the facility require workers to join a trade union?	Not applicable. No union presence in the facility during assessment period.	Check the More Info and apply C087 if necessary/ if China law is not as strict: C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 2: Workers and employers, without distinction whatsoever, shall have the right to establish and, <u>subject only to the rules of the organisation concerned</u> , to <u>join organisations of their own choosing without previous authorisation</u> .
5	WI-FOA-39	foa-cb-3	Do trade union representatives have access to workers in the workplace?	Not applicable. No union presence in the facility during assessment period.	Check the More Info and apply C087 if necessary/ if China law is not as strict: C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 3: Article 3 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.
6	WI-FOA-40	foa-cb-3--1	Does the facility deduct trade union dues from wages in line with legal requirements?	Not applicable. No union presence in the facility during assessment period. AND No applicable legal requirements	Apply only China national law

7	WI-FOA-41	foa-cb-3--5	Is the facility's practice around financial or other support of the union in line with legal requirements?	Not applicable. No union presence in the facility during assessment period. AND No applicable legal requirements	Apply only China national law
8	WI-FOA-42	foa-cb-3--5	Does facility management regularly meet with trade unions to proactively address issues of worker concern?	Not applicable. No union presence in the facility during assessment period.	Apply China national law, but if there is no law then answer Yes or No as per facility circumstances. There is no No applicable legal requirements selection option.
9	WI-FOA-43	foa-cb-3--7	Is the facility consulting with trade unions in line with legal requirements?	Not applicable. No union presence in the facility during assessment period.	Check the More Info and apply C087 if necessary/ if China law is not as strict: C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Article 3: Article 3 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
10	WI-FOA-44	wi-foa-34	Are legally required mechanisms for dialogue between the employer and the union(s) in place and functioning in line with legal requirements?	Not applicable. No union presence in the facility during assessment period. AND No applicable legal requirements	Apply only China national law
11	WI-FOA-45	foa-cb-3--9	Are workers provided with a private meeting space at the workplace in line with legal requirements?	Yes No No applicable legal requirements	Apply only China national law
12	WI-FOA-46	foa-cb-3--9	Does the employer allow workers to carry out trade union activities in accordance with applicable legal requirements?	Not applicable. No union presence in the facility during assessment period. AND No applicable legal requirements	Apply only China national law This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
13	WI-FOA-47	foa-cb-4	Are workers and workers' representatives free to meet without the presence of management?	Yes No	Check the More Info and apply C135 if necessary/ if China law is not as strict: C135 - Workers' Representatives Convention, 1971 (No. 135), Article 2: 1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
14	WI-FOA-48	foa-cb-4--1	Does the facility treat all trade unions equally, or as stipulated by applicable legal requirements?	Not applicable. No union presence in the facility during assessment period.	Apply China national law, but if there is no law then answer Yes or No as per facility circumstances. There is no No applicable legal requirements selection option.
15	WI-FOA-49	foa-cb-4--3	Has the facility management tried to control, manipulate or interfere with any of the unions in the facility?	Not applicable. No union presence in the facility during assessment period.	Check the More Info and apply C098 if necessary/ if China law is not as strict: C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 2: 1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. 2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

					This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
16	WI-FOA-50	foa-cb-4--5	Is a job applicant's current or previous trade union membership or trade union activities a factor during the hiring process?	Yes No	Apply C098 if necessary/ if China law is not as strict: C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1: 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. 2. Such protection shall apply more particularly in respect of acts calculated to-- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.
17-20 (first prompt WI-FOA-51 is not a question)	WI-FOA-51 WI-FOA-51-1 WI-FOA-51-2 WI-FOA-51-3 WI-FOA-51-4	wi-foa-36 foa-cb-4--7-1x foa-cb-4--7-2x foa-cb-4--7-3x foa-cb-4--7-5x	Has the facility engaged in any of these actions due to a worker's trade union membership or activities? (SELECT all that apply with a "X") Threatened intimidated, or harassed Punished Terminated workers or did not renew their contract None of the above	Yes or No shown through X as Yes and Blank as No. None of the above X means facility did not engage in threats, punishment, termination.	Apply C098 if necessary/ if China law is not as strict: C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 1: 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. 2. Such protection shall apply more particularly in respect of acts calculated to-- (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. These questions WI-FOA-51-1 WI-FOA-51-2 WI-FOA-51-3 require mandatory Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
22	WI-FOA-52	wi-foa-37	Were terminations of trade union official(s) (if any) in line with applicable legal requirements?	Not applicable. No union presence in the facility during assessment period. AND No applicable legal requirements	Check the More Info and apply only China national law This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
23	WI-FOA-53	wi-foa-71	Do Trade Union representatives have time off to carry out their representative functions?	Not Applicable	Check the More Info and apply C135 if necessary/ if China law is not as strict: C135 - Workers' Representatives Convention, 1971 (No. 135), Article 2: 1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
24	WI-FOA-54	wi-foa-72	Do Trade Union representatives have time off to attend relevant trainings or meetings outside the factory?	Not Applicable	Check the More Info and apply C135 if necessary/ if China law is not as strict: C135 - Workers' Representatives Convention, 1971 (No. 135), Article 2: 1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.
25	WI-FOA-55	wi-foa-73	Are Trade Union Officers from the Federation/External Trade Union granted access to meet with Trade Union members' representatives?	Not Applicable	Check the More Info and apply C135 if necessary/ if China law is not as strict: C135 - Workers' Representatives Convention, 1971 (No. 135), Article 2: 1. Such facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently. This is a mandatory key for Assessor/Verifier Explanation. Complete according to new Verification Protocol and Verifier Guidance requirements.

26	WI-FOA-56	wi-foa-38	Does the facility refuse to bargain collectively or refuse to bargain in good faith with the union, worker representatives, union federations or confederations?	Yes No	Check the More Info and apply C098 if necessary/ if China law is not as strict: C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 2: 1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. 2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.
27	WI-FOA-71	foa-cb-6--2	Are provisions within the Collective Bargaining Agreements (CBA) at least as favorable for workers as applicable legislation?	Yes No	Apply China national law, but if there is no law then answer Yes or No as per facility circumstances. There is no No applicable legal requirements selection option.
28	WI-FOA-72	wi-foa-53	Has the facility failed to implement any of the provisions in the CBAs?	Yes No	Apply China national law, but if there is no law then answer Yes or No as per facility circumstances. There is no No applicable legal requirements selection option.
29	WI-FOA-73	wi-foa-54	Does the facility inform all workers about CBAs and provide copies in line with legal requirements?	Yes No No applicable legal requirements	Apply only China national law