July 20, 2018

Meeting Highlights: Yuan Feng of NDRC and Ye Wei of MOFCOM

In response to the release of the revised 2018 Negative Lists (i.e., the “Special Administrative Measures on Access to Foreign Investment” and “Special Administrative Measures on Access to Foreign Investment in Free Trade Zones” – “the Lists”) earlier this month, AmCham China organized separate meetings with Yuan Feng (袁锋), Director of the NDRC Foreign Investment Department, and Ye Wei (叶威), Deputy Director General of the MOFCOM Department of Foreign Investment Administration, to meet with Policy+ subscribers and help them better understand these recent policy changes.

Key Takeaways

> The recently-revised Negative Lists focus on improving market access and fair competition for foreign businesses in China. Industries such as auto and finance have particularly benefited from several restrictions being removed from the previous Lists. Restrictions on the cultural and entertainment sector are unlikely to be lifted anytime soon.

> Inconsistency of policy interpretation and implementation are among the most popular concerns shared by member companies.

> The Chinese government is well-aware of member concerns. Both Yuan and Ye were receptive of the comments and suggestions raised by members but signaled that further openings will proceed with caution.

Background and Insights

Prior to the escalation of US-China trade frictions this July, the announcements to relax restrictions on foreign investment in certain sectors had largely been interpreted as a gesture by the Chinese government to prevent an all-out “trade war.” An improved Chinese nationwide negative list was allegedly among an extensive list of US demands on the trade negotiating table, though the Chinese government has refuted such speculation and positioned these moves as part of its overall plan to celebrate China’s 40th anniversary of Reform and Opening-up.

Since the first round of tariffs entered effect in early July, trade frictions between the two countries do not appear to be slowing. However, the official explanation for the release of the Lists remains consistent—It is part of the overarching economic reform driven by domestic demand and not as a reaction to external pressures.

Caution is the overarching theme, but the Lists will continue to be revised. Yuan and Ye are representative of the mainstream government stance that China is a developing country and, therefore, it will inevitably take some time for China to completely open up its market. Industries such as auto and finance are the current winners in this latest effort to remove restrictions on foreign investment. On the other hand, industries that could incite ideological controversies—such as internet, cultural and entertainment sectors—still face greater restrictions. For these sectors, any existing blocks are unlikely to be lifted anytime soon. However, as suggested by Ye, there might be some wiggle room in areas such as filmmaking. All foreign investment requests in these culture-related sectors will be reviewed on a case-by-case basis.

Ye also stressed that the general trend of updating the Lists to meet local economic demands will not change. It remains unclear as to whether the Chinese government will announce further investment openings later this year. According to Ye, the new Lists have "exceeded public expectations."

Officials strive to appease a nervous foreign business community with a receptive attitude towards member concerns as US-China trade tensions appear to reach a stalemate. Both Yuan and Ye exhibited interest in listening to questions and concerns raised by members and tried to demonstrate that the Chinese government has made extensive efforts to address their grievances. For example, Ye described the substantial process that the central government has gone through to revise the Lists including conducting field surveys at several foreign companies.

Yuan also noted that the new Lists, coupled with State Council Circular 19 (*Notifications on Several Measures of Positively and Effectively Using Foreign Investment as a Means to Promote High-quality Economic Development*) include clear timelines for openings in certain areas, reflecting the demands of the foreign business community for greater transparency. He further expressed an observation that the majority of concerns now voiced by foreign companies are common issues also faced by domestic private companies.

While members welcome the new Lists, questions about local implementation persist. For many businesses operating outside of Beijing, local interpretation will have a bigger impact than the policies themselves. As a result, inconsistent implementation coupled with local protectionism could place foreign businesses in a disadvantaged position compared to their Chinese peers. Yuan called for greater communication between the Chinese government and the foreign business community regarding what specifically companies mean when expressing concerns about inconsistent implementation, as he feels there is some misunderstanding between the two sides in this area. He similarly requested that companies strive to provide specific examples when expressing concern about unclear regulations and enforcement.

Under this context, it is recommended for companies to:

- Routinely collect and consolidate examples of practical problems encountered during operations in China that can readily be shared with government officials.
- Take full advantage of AmCham China's platform, including its sizable network and events, to help voice industry concerns.

AmCham China Trade-related Resources

[US-China Trade Dispute Portal]

[INSIGHTS III: Common Terms in US Export Control]

AmCham China Practical Guide and Position Paper on dealing with Tariffs (coming soon)