

Current Situation and Improvement of China's Negative List System for Foreign Investment From the Perspective of Comparative Law

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ABSTRACT

Confronted with the current downward trend of transnational capital flows under globalization, the newest revised edition of Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition) was proclaimed and further pared down its items, making an indispensable contribution to promoting both the recovery of transnational investment and the pattern of open-up development of China. This paper briefly reviews the history and development of China's negative list system for foreign investment. Afterward, textual and comprehensive analyses are used to study the drawbacks of the negative list system for foreign investment in China, such as analyzing reports on the automotive industry and medical institutions. Immediately afterward, this article provides a horizontal comparison between China's legislation, international advanced one, and that of parallel and comparable countries. In summary, this study focuses on the limitations of the negative list itself and the problems in its implementation. It puts forward feasible suggestions from the perspective of legislative construction based on exploring their causes. The latter is launched describing three parts: the comprehensive revision of legal provisions, the clear supplemental instruction in necessary details, and the extensive establishment of a scientific supervision system.

Keywords: *Negative List System, Foreign Investment Access, scientific nature of Negative List System, development, status, regulatory strategies.*

1. INTRODUCTION

In 2020, the third revised edition of Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition) was launched, whose promulgation has practical significance. From the analysis of reports on the automotive industry and medical institutions, there are imperfections in China's current negative list system, which is attributed to its low transparency and conflicts with other existing laws, respectively.

Confronted with the downward economic pressure on multinational investment and the negative impact brought by COVID-19, China is firmly determined to open up to the outside world and continues to improve the business environment for both local and multinational

enterprises. Whereas, at present, China's practice of a negative list for foreign investment access has problems in four aspects: low transparency, existing conflicts, poor operability, and inadequate supporting systems. Therefore, it is of great importance to improve the Chinese negative list system based on the Foreign Investment Law (2019).

2. PROBLEMS OF CHINESE CURRENT NEGATIVE LIST FOR FOREIGN INVESTMENT

China's Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition) (hereinafter referred to as The Negative List (2020 Edition)) was launched and formally implemented in

2020. Throughout the development history of China’s Negative List System for Foreign Investment Access, this institution was originally explored by China (Shanghai) Pilot Free Trade Zone (SHFTZ) by means of promulgating administrative documents in 2013 [1]. After accumulating more experience from the pilot practice of FTZs, the Chinese government has succeeded in exploring how to achieve a unified negative list model for the nationwide application [2], which is the Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition). From 2018 to 2020, the Chinese Negative List for Foreign Investment Access contents is adjusted and revised every year, following the principle of “only a decline, no increase” in the figure for items in the Negative List.

It is worth mentioning that the specific procedures behind the Negative List are gradually improved [3]. In 2019, the Foreign Investment Law was promulgated, whose supporting measures are the Regulations on the Implementation of the Foreign Investment Law (2019). It was formally established the management system of pre-establishment national treatment plus a negative list for foreign investment access in a legal form. In the same year, China issued the Regulations on Improving the Business Environment, requiring the country to implement a unified negative list for market access across the country. Since then, the negative list has had a clear legal basis. The relevant legal system has been gradually improved since the implementation of the system. In 2016, the government replaced the management approach from “examination and approval” to “record management” in the issues of establishment and alteration of foreign-invested enterprises, which were not on the negative list. Those on the negative list should be approved. In contrast, the industries not on the list enable to save time and energy because they only need to go through some necessary and simple procedures after filing with the industry authorities [2].

Although China’s negative list system is continuously perfecting itself, considering the limited development time, it still has the following shortcomings: low transparency, existing conflicts, poor operability, and inadequate supporting systems.

2.1. Low Transparency

The Negative List (2020 Edition) does not indicate its legal basis. In specific, The Negative List (2020 Edition) lacks the disclosure, namely the “measures” part in the negative list made by the U.S. (see in Table 1), that demonstrates which law the legal provisions in the negative list develop from.

Without the reference of the legal basis, The Negative List will face serious problems and may seem deficient in transparency around the regulations and certainty around the true scope of the regulations. Take U.S. 2019 Report to Congress on China’s WTO Compliance, which has lots of prejudice but actually reflects the view of foreign investors as an example. Although the negative list provides that there is only equity caps limit in the automotive industry, other restrictions violate the national treatment in different laws, like distribution restrictions and domestic branding requirements [4]. Therefore, the lack of the reference of legal basis will be easy to thwart the convenience and foreign investors’ ability to keep comprehensive and accurate information out of their reach. This is an obvious violation of the WTO’s principle of transparency, which means the law should be fully disclosed to the public for easier and more comprehensive access [5].

To explain it clearer, this paper will compare the Chinese negative list with the Philippines negative list in the same certain industry, as the chart below. According to the Philippines negative list, the foreign investor can directly find the legal basis of those management measures and get more details of the restriction in Article XIV, Section 4 of the Philippines Constitution. For example, no educational institution shall be established exclusively for aliens, and there is a potential danger that congress may require increased Filipino equity participation in all educational institutions [6]. Consequently, with reference to the legal basis, the Philippines negative list is more transparent and convenient than the Chinese one, using a similar compiling method and word count.

Table 1. The comparison about the negative list in the education industry of the Philippines and China

Nation		the Philippines	China
Contents	The negative list	Eleventh Regular Foreign Investment Negative List [7]	Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition) [8]
	Industry	Educational institutions other than those established by religious groups and mission boards, foreign diplomatic personnel and their	Education

	dependents, and other foreign temporary residents, or short-term high-level skills development that do not form part of the formal education system.	
Management measure	Up to Forty Percent (40%) Foreign Equity. Control and administration of educational institutions shall be vested in citizens of the Philippines.	Pre-school, regular high schools, and higher education institutions are limited to Sino-foreign cooperative education and must be led by China. It is forbidden to invest in compulsory education institutions and religious education institutions.
Legal basis	Article XIV, Section 4 of the Constitution	Naught must be led by China (the principal or chief administrative officer should have
Noun explanation	the formal education system as defined in Section 20 of Batas Pambansa No. 232 (1982)	Chinese nationality, and the Chinese members of trustee council, board of directors, or joint management committee shall not be less than 1/2).

2.2. Existing Conflicts

A further review of the current legal system for foreign investment suggests that there is still a conflict between applying the negative list for foreign investment access and existing law. From 2018 to 2020, a revised version of the negative list on foreign investment access will be issued around June each year. At the same time, the old version will be abolished. Because the negative list is so new and updated, there will inevitably be conflicts with other laws or regulations enacted in the past.

For example, Article 26 of The Negative List (2020 Edition) and Article 23 of The Negative List (2020 Free Trade Zone Edition) both stipulate that “medical institutions shall be limited to joint ventures”. However, according to the Notice on the Pilot Work of Establishing WHOLLY FOREIGN-OWNED Hospitals jointly issued by the National Health and Family Planning Commission and the Ministry of Commerce in 2014, medical institutions have taken the form of “sole proprietorship”, which does not cohere with the negative list. Both the negative list and the notice are policy documents, and both are currently valid. Therefore, there is no clear provision in the current regulations on whether established foreign-owned hospitals need to be rectified according to the doctrine of retroactivity [5].

When there is a conflict between the negative list and existing laws or regulations, the logic of legal applications of the foreign investment system will be disordered if the lagging regulations are not explained or

abolished in time. This will also lead to the decrease of certainty required by the negative list regulatory mode.

2.3. Poor Operability

The categorization of industrial sectors in The Negative List (2020 Edition) differs from world standards, leading to its weakened operability.

The industry sector in The Negative List (2020 Edition) remains in accordance with China’s 2019 Industrial Classification for National Economic Activities and Codes (GB/T 4754-2017) (revised according to the National Standard Revision No. 1), which divides the services trade industry into 20 sectors, 97 major categories, 473 medium categories and 1,380 subcategories [9]. The Industrial Classification for National Economic Activities and Codes (GB/T 4754-2017) is the most authoritative national standard for classifying industries of China’s economy at present. China’s national industrial policy directories, such as the Catalogue of Industries to Encourage Foreign Investment (2020 Edition) and the Catalogue for the Guidance of Industrial Restructuring, are all based on the classification standards of the Industrial Classification for National Economic Activities and Codes (GB/T 4754-2017). Therefore, China’s external negative lists are also applicable to that one. However, the majority of the international practices of applying the negative list are based on the classification criteria of WTO’s “Document on Services Sector Classification List” (MTN.GNS/W/120), which divides the services trade sector into 12 broad categories and 155 subsectors [10]. The ambiguities in sectoral classification and the differences in sectoral names caused by the huge

difference between these two industrial sectoral classification standards are the very reasons for the confusion and errors in the understanding of The Negative List (2020 Edition) by foreign investors, which seriously threatens the operability of The Negative List (2020 Edition). China is actively signing bilateral or multilateral investment agreements with many countries through the Negative List model. In contrast, as a party to the agreement negotiations, China categorizes its industry sectors completely differently from other countries, which will undoubtedly hinder the finalization of trade agreements.

2.4. Inadequate Supporting Systems

In March 2019, the Foreign Investment Law was enacted in our country, and the negative list system was established. However, there are only a few provisions about the supervision, which suggests there is still a lack of systematic legal regulations in the supervisory of negative list. In the Foreign Investment Law, the second chapter to the fifth chapter respectively are “investment promotion”, “investment protection”, “investment management,” and “legal liability.” The rules of foreign capital regulation are in the fourth chapter, “investment management” Article 32 to 35. Article 32 generally stipulates “the foreign investors shall accept the prosecutorial supervision by the competent department.” The other three provisions are the anti-monopoly review system, the establishment of a foreign investment information report system, and the establishment of a foreign investment security review system. It can be seen that the Foreign Investment Law has few provisions on the supervision of foreign investment access, and the content is too broad, general, and not very operable.

In 2019, the Guiding Opinions of the State Council on Strengthening and Standardizing Supervision During and After Matters (hereinafter referred to as The Opinions) was promulgated by the State Council, aiming at speeding up the establishment of the business environment, which is marketization, under the rule of law, and internationalization, and promoting fair competition with fair regulation. It is applicable to all walks of life, but The Opinions are only a part of the normative documents. Compared with other types of legal norms of the State Council, it is less effective and is not aimed at supervision in the field of foreign investment. Opinions can only meet the universal requirements in the field of foreign investment. Although the Foreign Investment Law belongs to laws with relatively high legal effectiveness, as mentioned above, this law lacks systematic provisions for supervision and has no strong reference value.

3. CAUSING REASONS OF NEGATIVE LIST FROM A WORLDWIDE VIEW

Clarifying the causes is the prerequisite for tackling problems. For the above four aspects of China’s negative list system, textual analysis, comprehensive analysis, and horizontal comparison, still applied, contribute to exploring the causes from a global perspective. Overall, these complex cases can be summarized into the following three aspects: relatively short development time, legislative techniques required to improve, and imperfect legislative system.

3.1. The Development Time of China’s Negative List System is Relatively Short

China’s negative list system has only been established and implemented in the last decade. In 2013, the term “negative list” was first officially proposed during the 5th China-U.S. Strategic and Economic Dialogue (S&ED) [11]. As a matter of fact, prior to implementing the negative list, China used to conduct the “positive list”, mainly by listing the encouraged industries with specific items [12].

Judging from the frequency of content revision, China’s negative list regulations are updated frequently. There are two main reasons for this phenomenon. First and foremost, China’s negative list system, limited by the short development time, is still at a less stable stage of development. Under this premise, it needs to be constantly improved and revised. Another dominating factor is the negative list is designed and implemented to cooperate with national strategy. Each revision of the negative list should consider both national and personal interests to avoid conflicts between each other before the final and improved revision. The promulgation of the negative list requires policymakers to consider the state-to-state relations from the big picture, so the negative list is related to national interests. However, domestic laws and administrative regulations enacted embody people’s will, thus representing the interests of people.

While the frequent updating of the negative list reflects China’s firm determination to open up to the outside world, it also negatively affects it. The contents of the negative list and related supporting measures are not in place due to its short development history. Hence, there are four issues mentioned above, in particular low transparency and existing conflict. Firstly, frequent updates without clear criteria for triggering revisions will reduce the transparency of the policy in the long run [5]. As the negative list is an important criterion for foreign investment access, the absence of revision criteria and trigger factors can easily affect foreign investors to adjust their investment plans and decisions. Low policy transparency is a volatile source of risk in the future, and most rational investors tend to avoid such risk. Secondly, the contents of the negative list are up to date compared

with other administrative regulations, which were enacted much earlier than the 2020 edition negative list. In this way, the newest negative list is more likely to collide with other currently effective laws and regulations. When there is a conflict between the negative list and existing laws or regulations, the logic of the legal application of the foreign investment system will be disordered if the lagging regulations are not explained or abolished in time. This will also lead to the decrease of certainty required by the negative list regulatory mode.

3.2. Legislative Technique of Chinese Authorities Needs to be Improved

The current legislative technique used in The Negative List was updated on 23 June 2020 [8]. Compared with the world trend and domestic performance, this article suggests that the legislative technique is not advanced and the effectiveness of the current relative legal norms is low, conducting to the above problems.

Most importantly, the content of The Negative List is not adequate and cannot catch up with the updated compiling tendency, especially when it comes to the issue of legal basis. The layout of The Negative List adopts the

“explanation + special management measures” method [5]. The “explanation” means the appendix at the beginning of the negative list, playing the role of generally regulating, introducing, and listing the exception. The “special management measures” mean the specific regulations for various industries, such as equity, senior management, and forbidden. However, the transparency problem happens on the “special management measures” part, which actually is as similar as that in America negative lists, called the “description” part (see in Table 2). The “measures” and “descriptions” are not the same issue, “measures” are the related laws and regulations. In contrast, “descriptions” are the detailed descriptions of “measures” in accordance with relevant laws and regulations [13]. Therefore, The Negative List does not have the “measure” and other useful content elements, which will lead to the lack of transparency. Obviously, shown in the chart below, plenty of international treaties and host countries, especially developed countries, have the reference of the legal basis, namely “measures”, in their negative list (see in Table 2). Therefore, this essay supposes that The Negative List has only half of the content compared to other countries’ advanced models, thus lacking lots of important information due to compiling problems.

Table 2. The statistics of the compiling method in world mainstream negative lists

Elements of negative list compiling (refer to the 2012 U.S. Model Bilateral Investment Treaty)	Sector (the industry that non-conforming measures apply in) [13]	Obligations concerned (may include National level of Government measures (made by central government or regional government) [13] management, and the board of directors) [13]	Description (The specific description of non-conformity measures, including the provisions on which laws and regulations are based, protection procedures and conceptual interpretation) [13]
The source of the negative list	2005 U.S.-Uruguay Bilateral Investment Treaty (Anne x 1) [14]	Has e.g., Atomic Energy National Treatment (Article 3)	Has e.g., The Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 et seq. The issuance of such a license to any entity known or believed to be owned, controlled,

								or dominated by an alien, a foreign corporation, or a foreign government is also prohibited (42 U.S.C. § 2134(d))
	1994 North America free trade agreement [15]	Has	Has	Has	Has	Has	Has	
	2005 U.S.-Australia free trade agreement [15]	Has	Has	Has	Has	Has	Has	
	2007 U.S.-Korea Free Trade Agreement Negotiation [15]	Has	Has	Does not have	not	Has	Has	
	the Philippines's Eleventh Regular Foreign Investment Negative List [7]	Has	Does not have	Does not have	not	Has	Has	
The negative list made by the host country	China's Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition) [8]	Has	Does not have	Does not have	not	Does not have	not Has	

3.3. The legislative system is imperfect

First of all, the total amount of regulatory talent is insufficient. At present, 18 free trade areas exist in China, and each zone has many foreign enterprises. Take the free trade zone in Guangdong as an example. By September 2018, there are more than 6000 financial enterprises, but the number of local financial the administrative staff is only 49 [16], which suggests the amount of professional supervision personnel is far insufficient. The financial

industry has a high-risk coefficient so that more professional people should be available for supervision.

Additionally, there is no specialization among regulators. For instance, the Fujian Free Trade Zone is divided into three zones: Xiamen, Fuzhou, and Pingtan, among which Fuzhou's industrial structure is positioned as an advanced manufacturing base and an important platform of the "21st Century Maritime Silk Road". As the Maritime Silk Road, the Fuzhou area currently lacks a large number of shipping logistics talents, port

management talents, and marine science talents. Correspondingly, the regulatory authorities also need more marine supervision talents. At present, there are still outstanding problems in the professional division among regulators.

The scarcity of talents leads to the lack of timely supervision and the lack of comprehensive coverage of the regulatory scope. In contrast, the inadequate specialization of labor leads to the inability to solve some professional problems in the legislative process and the imperfect legislative system.

Moreover, social credit standards, for example, have not yet been set. At present, China's free trade zone is speeding up the construction of the credit system, mainly exploring the credit grading management, punishment mechanism for trust-breaking, and trust-keeping encouragement mechanism. For example, Guangdong Free Trade Zone carries out credit classification management. With the help of the supervision platform, it collects the behavioral information of enterprises generated in the process of running the business. According to this, the credit risk grade of the enterprise in Guangdong Free Trade Zone is divided into four grades: A, B, C, and D, and the classification standard are administrative punishment, bad behavior, and contribution [17]. In contrast, the credit rating of enterprises in Fuzhou is divided into five types: good credit, trustworthy credit, average credit, trust-breaking, and serious trust-breaking, and the classification criteria are good years of enterprise behavior, bad behavior, and administrative punishment. Accordingly, it can be seen that the credit classification standards are different in different places, and it is difficult to form a coordinated credit management system. In addition, there are many differences in the identification of "trust-breaking" and "trust-keeping," and there is also no unified standard. This adoption of different credit evaluation standards in different places for a long time has brought great difficulties to the formulation of unified supervision rules.

4. FEASIBLE SUGGESTIONS ON IMPROVING THE CHINESE NEGATIVE LIST SYSTEM

Seeking solutions is the ultimate objective of figuring out problems. On the strength of the above analysis of major factors for the limitations in the completeness of the Chinese negative list system, this part will explore the potential targeted measures. After drawing on the experience of domestic and foreign negative list system development, the feasible and reasonable suggestions can be summarized into three main ones: revising the legal text comprehensively, listing the necessary details clearly, and building a scientific, regulatory system roundly.

4.1. Amending the Negative List in accordance with the current domestic legal system of Negative List for Foreign Investment

It is necessary to sort out current laws, regulations, standards, and other relevant legislation regulating foreign investment behavior in China and eventually integrate them into the domestic legal system of Negative List for Foreign Investment. Amending the negative list in accordance with the legal system can achieve the unification of legislative technology, consistency of legal content, and coordination of law enforcement (this part will be separately demonstrated in the following paragraphs), helping Chinese foreign investment access more transparent and effective.

Firstly, the unification of legislative technology for the negative list is mainly about disclosing the legal basis. To enhance the facilitation and transparency of investment, the negative list should add the reference of the legal basis behind the special management measures and demonstrate the force level of the legal basis. The lawmakers should consider the domestic legislation experience, such as the compiling method used in Market Access Negative List (2020 Edition), which lists the prohibited measures in Annex 1-2, and attaches the "legal basis" and management department to the prohibited measures [18]. Whereas, this paper mostly commends applying the compiling method in "Guidelines for the Negative List of Financial Services Industry Opening Up in China (Shanghai) Pilot Free Trade Zone (2017 Edition)" again. It contains specific clauses [5] and more details on a legal basis than "Market Access Negative List" (2020 Edition), containing just the name of the legal basis, not specific terms. This regulation is a trial before the negative list prevailing whole China jurisdictions and is more innovative and initiative than the afterward national legislation. After more than five years of implementation, the essay believes its practicality and feasibility have been proved in Shanghai Pilot Free Trade Zone. By doing so, the article advocates that every description of regulation management should be followed by the corresponding law source, specific in provisions or items.

Secondly, the consistency of legal content means that the amendment can solve the conflicts between the negative list and existing laws. Different situations need to be identified. If the negative list conflicts with the Upper Law, the latter should be applied directly. Legislators should carefully check and verify the negative list and make a comprehensive and systematic review. If any missing conflict is found after release, it shall be explained and modified in time.

If the negative list conflicts with laws of the same level, it will be necessary to communicate with the relevant departments in time and make a screening based on the actual cases to choose the more proper document

to apply. To solve the conflicts, when revising the negative list, conflicts among the contents listed in the list and the foreign investment law and other basic laws can be listed one by one. Meanwhile, necessary explanations can be made to guide the application of laws in practice. At present, the 2020 edition of the negative list covers a total of twelve areas of prohibitive and restrictive provisions, and the legislative authorities need to revise the negative list according to specific provisions in each area, such as Manufacturing Industry and Culture, Sports and Entertainment Industries. If there is any conflict, it is necessary to explain in time and make the public know the suitable measures adopted in practice.

4.2. Drawing Lessons from Overseas Experience to Clarify the Necessary Contents of the Negative List

The negative list model is gradually becoming a new trend in international investment and trade, and China's negative list access management system in the field of foreign investment will be a long-term strategy. Catering to such an international and domestic context, the Negative List (2020 Edition) is of great significance to the present and future of China's economy. When revising the negative list and carefully considering existing domestic laws, it is also worthwhile to draw on extraterritorial experience to clarify the necessary contents of the negative list. According to the above analysis, the areas needed to be focused on in China's negative list are the legal basis of special management measures and the classification criteria of industrial sectors.

4.2.1. Learning from the U.S. to Mark the Legal Basis of Special Management Measures

So far, the U.S. is the country using the negative list system most fully, with the most comprehensive contents of the legal basis of special management measures. China can learn from the practices of the U.S. to mark the clear legal basis for the application of special management measures and areas, the scope of which includes the applicable basis for the laws at the central and local levels. In contrast, the content includes the name of the basis, the year of promulgation, the enacting authority, the specific article number, and other indispensable information [19]. On the one hand, such an approach can enhance the legitimacy of the negative list and limit the arbitrariness of the negative list makers. On the other hand, the transparency of the negative list is going to be promoted, and a legal index of measures and areas that the host country prohibits or restricts can be established to facilitate foreign investors to understand the negative list more accurately.

4.2.2. Drawing on Singapore's Experience in the Application of Industry Classification Standards

The functional orientation of the Catalogue of Industries to Encourage Foreign Investment (2020 Edition) and the Catalogue for the Guidance of Industrial Restructuring is completely different from that of the Negative List (2020 Edition), as the former mainly plays a guiding and adjusting role within China's national economy, while the latter is the exact opposite, being regulations and management measures for foreign investment. Hence, the Negative List (2020 Edition) does not need to follow the standards of Industrial Classification for National Economic Activities and Codes (GB/T 4754-2017) but can consider adopting the international common industry classification, namely the standards of the WTO's "Document on Services Sector Classification List" (MTN.GNS/W/120), to achieve the convergence between China and the international community.

Nevertheless, due to the large differences between China's current industry classification standards and the common international standards as explained in the previous section, it may bring many discomforts and challenges to the operation of relevant departments if the Chinese government rashly and completely adopts the classification standards of the WTO's "Document on Services Sector Classification List" (MTN.GNS/W/120). From this perspective, it is necessary to leave room for the transition when updating and improving the classification criteria of industries on the Negative List (2020 Edition). Based on this consideration, a feasible approach is to use the internationally accepted industry classification method as an important reference factor in changing how industries are classified in the Negative List (2020 Edition). There is already a precedent for this: Singapore has made a new classification based on the combination of its own actual situation and the classification method in the WTO's "Document on Services Sector Classification List" (MTN.GNS/W/120) [20]. China can learn from Singapore's practice to sort out the similarities and differences between the National Economic Classification and Codes and the WTO's Services Sector Classification List so that the sectors in both can correspond to each other. At the same time, it is also worth trying to include industries that may emerge in the future in the sector called "other industries", which can avoid the problem of unclear classification of emerging industries. Additionally, the Chinese government should also explain certain keywords that may be ambiguous to minimize the misunderstanding of foreign investors to improve the operability of the Negative List (2020 Edition) and enable it to better serve China in attracting and regulating foreign investment.

4.3. A highly scientific regulatory system that covers a wide range of areas should be built

Currently, the Foreign Investment Law lacks systematic provisions on the supervision of implementing a negative list, and other legal norms on the supervision are at a low level. Consequently, the relevant departments of the State Council should issue the “Measures for the Implementation of Foreign Investment Supervision,” which has the higher legal effect to provide a basic legal basis for the regulatory authorities and also provide an authoritative upper legal basis for the free trade zones and local governments to formulate detailed rules or implementation plans for the supervision of foreign investment in their regions or industries. The Measures for the Implementation of Foreign Investment Supervision shall include the basic principles, regulatory subjects, scope of application, implementation procedures, responsibility determination, and other key parts of the supervision. In addition, the relevant contents of the Guiding Opinions of the State Council on Strengthening and Standardizing Supervision During and After Matters can be referred to for legislation in terms of regulatory procedures, regulatory methods, and regulatory responsibilities.

In relevant laws and regulations, the standards of the regulatory system need to be clarified. Setting market regulatory standards should focus on the following aspects: First, the social credit system construction standards. Credit supervision in foreign investment plays a mainstay role. Therefore, attention should be paid to the credit information collection, evaluation, management, application, and relevant standards, especially the credit grading standard. Second, the administrative law enforcement standards. This is the requirement of the regulatory departments and the regulatory personnel themselves, with the administrative supervision information in the open and administrative law enforcement behavior evaluation and assessment and other related standards. Third, the market monitoring standards. The market monitoring index system should be mainly built. In the field of foreign investment, especially the key areas, such as the financial industry, it is necessary to strengthen the detection in its operation process. Developing the detection standards in these key areas is beneficial to improve the possibility of preventing risks.

Some cities in China set up a free trade area and release the negative list, such as Shanghai, Guangdong, Tianjin, and Fujian. The Chinese government can introduce the “regulatory sandbox” model, implementing relevant regulatory laws and regulations in the free trade areas first and testing the effect of supervision. If it works well, then the supervisory system can be rolled out nationwide. In this way, the government can achieve flexible regulation and promote cooperation between the government and the regulated objects. At the same time,

it also ensures that the regulatory system can be applied more stably throughout the country in the future.

5. CONCLUSION

Under the background of economic globalization, the “negative list” administration mode has gradually become a new trend in developing international investment rules. This paper focuses on the Special Administrative Measures (Negative List) for Foreign Investment Access (2020 Edition). Due to its short development time, the negative list system in China may still maintain at the inchoate stage of evolution and brings some problems, namely low transparency, existing conflicts, poor operability, and inadequate supporting systems. To explore the scientific momentums for the sustainable development of this system, this article summarizes three main solutions: revising the legal text comprehensively, listing the necessary details clearly, and building a scientific, regulatory system roundly.

By doing so, the Chinese model of comprehensive pre-establishment national treatment for foreign investment plus a negative list will be more open and cosmopolitan, helping the Chinese government implement a wider scope and deeper opening initiatives in the area of foreign investment access. This essay finds the existing problems, corresponding reasons, and solutions that will enhance China's global cross-border investment and maintain and promote high-quality Chinese economic development in today's complex international situation.

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