

The Analysis of Blacklist system of the Social Regulation perspective

Zou Dongsheng¹ Han Jingwei²

¹ School of politics and public affairs, Southwest University of Political Science and Law, Chongqing, P.R.China, 400031

² Teaching and Research department of Police basis, China Criminal Police University, Shenyang, P.R.China, 110854

(E-mail: east_cq@126.com, h2o_zone@126.com)

Abstract

Blacklist is a form of social regulation tool of governing market failures. In recent years, the system has attracted the executive attention, and it applied to increase or even a generalization of trends. However, as one commonly known as the blacklist, the theoretical definition in connotation and denotation is uncertain and the academic system research on this is utterly silent. This paper attempts by the government's social control perspective to explore the blacklist's application background, nature of the system and target selection, Summed up the real-life application of the blacklist system of internal defects and external challenges and at the end of the article has put forward the blacklist system's reconstruction suggestions in a targeted manner.

Keywords : Blacklist; Promises to punish; Social regulation

1. Introduction

Since 2007, the country has investigated and dealt with the food and drug safety events 165 000. In recent years, the food safety incidents is endless, from the "CL", "Beef extract", "Staining bread", "Plasticizer" to the "Jelly", "Old yogurt" and Industrial gelatin. In the food and drug safety supervision, The government not only through incentive means of guidance and urge the enterprises to implement integrity But also to regulate corporate behavior through punitive means. Blacklist system, this is the Damocles sword. The regulatory department of the Ministry of Health, Administration of

Quality Supervision, Administration for Industry and Commerce, the public exposure of a problem with the Food and Drug companies and their products have become more frequent. "Blacklist" of this control method seems to have become the magic weapon of the government in market regulation. However, the blacklist is an end of the punishment mechanism, In the case of imperfect credit system in China and the social credit system, after all, only a temporary last resort and needs to be improved choice of system.

2. The interpretation and analysis of Blacklist system

2.1. Blacklist system is a dishonesty punishment mechanism

The theoretical basis of the blacklist system comes from market failures, consumers' right and social control. Since the 1970s, As Western governments to relax the economic regulation of the reform movement carried out the government began to control the focus shifted to the social control of up. The Social control which means "Administrative government in order to protect the majority of consumers, workers and the public health and safety and quality of life, certain legal and regulatory framework on the enterprise such as product quality, the quality of the workplace and negative internal and environmental pollution implementation of the control of the behavior of the negative externalities." Compared with the economic regulation that the focus of social control is not just the absence of market failure brought about by economic efficiency, It will be more attention to citizens' fundamental rights and quality of

life and other non-economic factors led social and public interests and humanistic concern and it will pay more attention to people-centered and harmonious development of economic society.

The blacklist system is the market failures of governance as a social control tool. The so-called "black list" refers to the government and its departments in order to protect the public's right of consumers as well as social and other basic rights, certain legal and regulatory framework, will be unlawful, illegal enterprises conduct of operations and quality defects product or service the whole of society approach to public exposure control of the market order. In the final analysis, blacklist system is a social credit system which promises punishment mechanism, through production to lose the trust of businesses and individuals to the blacklist spread to legitimate users and legitimate form of bad credit record of its trading partners.

Professor Lin Junyue summarized the philosophy and practices of two distinct production and release of the blacklist: One is the United States as the representative of market-based credit model to deal with bad credit record, its approach is "based on the fact that only based on facts. "This approach has the advantage of sufficient evidence, there is no legal obstacle to smooth legal but its disadvantages are also obvious, It will evaluate the acts of dishonesty "task" push to the user of the credit records of investigations of its investigation report is for user reference. Lose the trust of those transactions or exchanges entirely by the users of credit history, judgment and decision. In addition, the relevant regulatory authorities of the government there is no way to make a simple judgment based on the joint credit database records listed and thus can not lose the trust of those who implement the administrative punishment. Another approach is the blacklist published by the relevant government department or reputable credit bureaus, during a series of information processing and credit scoring process, in order to lose the trust of business or personal log on the blacklist, it seeks to "scientific" explain dishonesty to log on to the grounds of the blacklist. With the regulatory functions of government departments and other callers only need to know the businesses or individuals are listed in the blacklist, there are enough serious acts of dishonesty, defense and punishment

measures should be taken to them. The disadvantage of the latter approach is to increase the operating costs of the government or credit institutions to joint credit database. Widely used blacklist of our society that the latter is through exerting influence on the goodwill of the enterprise to carry out the punishment and cautioned.

2.2. The target selection of Blacklist system

Behavior of specific to control of the blacklist system for companies to control what, according to its function as well as against the different objects, can be divided into the following three conditions:

2.2.1 The punishment of illegal weapon - the punitive blacklist

The punishment is the most basic functions of the blacklist. Such blacklist illegal, illegal enterprises, for the tremendous impact of the goodwill is the strong protection of the system to be effective. According to formulate the main the same and have the sanction for two reasons, In this sense blacklist belong to administrative penalties, Specifically, similar to the administrative penalties which the Warning and Reprimand, That "the administration issued a warning to the offender, the punishment to be condemned and warned the perpetrator, including a warning by its reputation, honor, reputation, a statement of repentance, criticized the form of".

2.2.2 The exposure of the fake goods list - Remind blacklist

The blacklist are mainly announced to the public, its properties are similar to consumer alerts, and aiming to protect the basic rights of consumers through the reveal to the public on a single enterprise specific violations of laws and its products in question. The annual "3 15" party is on behalf of such a blacklist. The credibility of enterprises reminder blacklist objectively the same. Though there are similarities with the punitive blacklist, still there are significant differences, due to both the purpose and object.

2.2.3 The sword of Damocles to business - warning blacklist

The warning function is the derivative function of the blacklist, the force mainly come from the blacklist tremendous impact on corporate reputations and citizens "vote with their feet". Its role is to notice and warning, rather than a punitive, aimed primarily at yet undiscovered violations of laws and the

products in question the enterprise. Such blacklist belongs to the kind of incentives; negative incentives in incentive theory will guide and urge enterprises to or an uncertain behavior. It exists for businesses to draw an implicit "stop line", when enterprises attempt to go beyond this line, "single" sanctions must always be considered a huge threat.

In reality, these three types of blacklist are not used alone, each blacklist is mixed together with a number of functions, such as punitive blacklist will have to remind and alert features.

3. The internal defects and external challenges faced by the blacklist system

Blacklist system of social control and achieved positive results, but gradually revealed many problems in its extensive use of performance in the system both inside and outside respectively.

3.1. The defects of the inner system

3.1.1. Technical level - the absence of norms

Laws	The People's Republic of China Food Safety Law, Article 82 The Drug Administration of the People's Republic of China Law, Article 66
Legislations	The Government of the People's Republic of China Information Disclosure Ordinance, Article 10 Food Safety Law of the People's Republic of China Regulations for the Implementation, Article 34 Drug Administration Law of the People's Republic of China Regulations for the Implementation, Article 59
Regulations	Product quality supervision and spot checks of Measures for the Administration, Article 43 Circulation of food safety supervision and management, Article 8, 50, 51 Food safety regulatory information in the Interim Measures, Article 3-11 Catering services food safety supervision and management measures, Article 34, 136 Food service unit of food safety supervision of credit information management, Article 9, 10, 11

Table 1: The relevant laws and regulations of Blacklist system

Specifically the lack of legislation will bring law enforcement and the difficult problems so that the implementation of the blacklist system struggling. The blacklist Perfection need follow-up of national laws and regulations. In addition, because the current state of the illegal enterprise out of the market still lacks a clear legal provisions, if the blacklist system only in the quality control, health systems implemented in other relevant departments of the government does not have effect accordingly, "single" enterprise loans,

and standards

3.1.1.1 The absence of special legislation

In accordance with the principles of administration according to law, the specific administrative act made by the Government must have a legal basis. A system, lack of legal basis is a feature without root. Blacklist system has been used widely, but no one special law or regulations to regulate the blacklist system, the various functional departments rely solely on the relevant laws and regulations to empower to publish a blacklist, which will no doubt in the actual operation. The major problems: Nongfu Spring "arsenic" incident illustrates: blacklist the lack of legal norms, and afterwards the responsibility is difficult to divide, eventually leading to the consequences of "double loss" of the enterprise's interests and the credibility of the government.

To my statistics, and blacklist system is directly related to the legal rules and regulations as follows:

consumption, and register a new company, engaged in the trading will not be strictly limited. The blacklist is through a substantial increase in the cost of corporate dishonesty to regulate the market; its deterrent effect will be greatly weakened.

3.1.1.2 The backwardness and lack in the field of professional standards certification system

Standard certification is a specification of firm's behavior, an important tool to protect consumer safety and health. It regulated the behavior of economic agents in the production

process, reduce the possibility of a market economy the main one-sided pursuit of profit and cause harm to other members of society members. Standard certification is the first threshold control of the government market. Backwardness and lack of standard certification blacklist system you first need to face the problems in the implementation. There is no corresponding standard identified, it is difficult to combat illegal, wrongful act of illegal enterprises, it is difficult to have a deterrent effect on other enterprises. The development of national standards in China began in the establishment of the National Bureau of Standards in 1956, however, after decades of reform and development, China's administrative system and economic system are considerable changed, the standard certification system development lag to food areas, for example, the early 1980s, Britain, France, Germany and other countries have adopted international standards has reached 80 percent, more than 90 percent of Japan's National Institute of Standards adoption of international standards, while the proportion of China's food safety standards with international standards and foreign advanced standards only 23%, especially dairy standards, some in the industry known as the "world's worst standard. In addition, national standards and local standards are not unified the door for unscrupulous companies. Lack of standards is a direct result of law enforcement difficult. Standardized reform in China has reached a stage need to be incorporated into the government agenda.

3.1.2 Program level - Blacklist publishing program is free to anomie

The blacklist system of administrative procedures in two ways: The first is the lack of administrative procedures. Administrative bodies before the release of the blacklist, there should be strict procedures to be regulated. However, in reality the use of blacklist species range of application of chaos, and there is no unified and standardized procedures, which also makes a blacklist issued by the handling is greatly enhanced, no doubt brought a serious hidden danger.

Second, the existing administrative procedures are not effectively kept. Because of the law enforcement personnel individual quality difference, law enforcement programs exist capriciousness, concentrated expression for law enforcement personnel "heavy entity,

light program" thought. In addition, rent-seeking behavior also can make law enforcement personnel over the administrative procedure, so as to achieve the purpose of rent-seeking. Throughout "arsenic door" event, in Haikou city industrial and commercial bureau sampling inspection, told, release, review, and other link is a violation of the relevant regulations of the state, neither issued the first inform program, and also not published in the review and appeal, review and the hearing program, in no event also perfect relief program, released in subject and release procedure are flaws of released its still, not only directly on the farmer mountain spring enterprise caused great loss, and reduced the credibility of the government.

3.1.3 Relief level-the lack of effective administrative relief system

"Arsenic door" event brings out the lack of blacklist system relief means. In the event, the two product has been exposed in the national market accounted for 8% of total share, in the farmer mountain spring all drink sales account for 20%, sales for the loss caused by 25%-30%, about 1 billion RMB. The administrative departments for mistakes and make the enterprise to suffer losses, the enterprise wants to claim directly to the government, in principle is may bring the administrative proceedings, and apply for state compensation, but the reality is not big feasibility, also not unprecedented, most can only on market reputation, reputation is the redeemed. In addition, the lack of exit mechanism blacklist is also a big problem facing the enterprises. Blacklist after release, so there's no subsequent follow-up feedback, unless regulators appear serious mistakes, can the enterprise from the expulsion above, this kind "only go up", this will blow the enthusiasm of enterprise correct behavior. China's credit reporting system regulation bad the individual credit information retention time of 5 years, this period if no new record, the record will be deleted. This method can also be blacklist system reference.

3.2. The external challenges facing blacklist

If the institutional defects brought about by the operation of the system itself is difficult, so the external pressure is directly put the system to run counter to the direction of original intention and design, the "good system" to "the evil system", this kind of external challenges mainly comes from the media, enterprise,

government and industry association four parties.

3.2.1 The media VS enterprise--ethics incarcerated interests first

Media public relations as a new marketing means, not only in the development of the enterprise or the spread of brand plays a very important role, even directly about the survival of enterprises. However, through the SanLu milk powder that the problems of the exposure, the news media ethics received a public torture. In the powerful enterprise before the public relations, media public relations with another layer of meaning, that is, media are enterprise captive, became the only tools of news suffer. SanLu milk powder that is a typical case, events related to SanLu early of the enterprise all negative information by desalt processing, and even some media also advocated by SanLu milk powder in all sorts of advantages, this enterprise "false image" media relation completely lost the role of the media to wake up. Many public food safety crisis, the collective silence and media response to an increase in difficult and lagging behind the pain of such a fact is both reflects media "attract eyeball unite for", also reflect the media public responsibility and the lack of professional ethics.

3.2.2 The government VS enterprise management system of traditional-under the government failure

Powerful enterprise public relations, will not only captured the media, the government will also be captured. " National inspection-free Product System " and " Chinese brand-name selection ", etc incentive regulation failure shows the enterprise's public relations powerful. In many major by exposure of safety and health incident, the government can brazenly are enterprise engaged in illegal behavior of the umbrella. In addition, because of the existence of local protectionism, some backbone enterprises tend to enjoy "immunity", especially as SanLu this win "the country avoids check" golden signboard enterprise is even more so. At the same time expressing face, the collective silence makes in the media four games, the only victim only consumers. The government's breach of duty and media ethics as will again be on whether blacklist of system, is worth us alert. Murphy talking about when professor blacklist warned: "any set of institutions, once the list to get resources control life, also have power to kill the

rent-seeking opportunities, which will be difficult to control corruption state close to" The "reasonable right to harm" of Blacklist system provide the possibility and convenient for rent-seeking behavior.

3.2.3 Industry Association VS Enterprise—helpless self-regulation failure

Industry association is the link between the government and enterprises and bridge, and an important channel for government to formulate national standards and access to industry information. and its At the same time, being industry self-regulatory organization, it should strictly supervise the product, service quality and competitive means of the industry in order to maintain the credibility of the industry and encourage fair competition and fight against the illegal behaviors. The reason why industry associations exist precisely is that it can play the role of self-management within the industry, and promote the self-restraint within the enterprises. It is the basis for government to regulate market behavior and maintain the good order of society. Industry association know more than the government is the industry's technology situation, so industry association can build a more concrete, more detail of industry standard operation, strengthen the self-regulation of industry. This credit reporting supervision mode has been commonly adopted by the credit countries. But faced with the industry of the existence of the fierce internal malignant competition and full internal various industry unspoken rules, many industry association choose silence. In recent years, more and more safety and hygiene accident exposed the industry association is not clear, such as the role, functions do not clear, management confusion, poor supervision such as many problems, in the face of these problems, the government and the enterprises in squeezed, industry associations of self-discipline function also is difficult to achieve.

4. The future of the reconstruction of system blacklist route choice

In view of the above Blacklist system exposed and, at the same time, regulation theory reference for the latest achievements of development and the reconstruction of the path should be from the following four aspects:

4.1. The improvement of the institution and supporting system.

4.1.1. Strengthen relevant legislation and enforcement To improve the Blacklist system, the relevant laws and regulations must follow up to regulate its entity and procedures. However, under the current actual, the distinction of Blacklist of different situations should also be handled: the Blacklist which has legal basis and relevant regulation, must be enforced; the one which has legal basis but the regulation is not specific or non-operational, could be enforced after the supplementary through the local legislation or departmental normative documents by the local legislative branch; the one which has no legal basis, mustn't be enforced.

4.1.2. Speed up the update and improvement of the standard and certification system

After China's accession to the WTO, trade friction between China and developed countries point to the "standard" developed by setting technical standards barriers to restrict China's merchandise exports, resulting in China's export enterprises are facing enormous pressure. Meanwhile, for the backwardness of the domestic standard certification system, resulting in exports of goods and domestic commodity standards various, different quality and causing public discontent. In the blacklist system, the standard certification system consider as the blacklist system the first threshold, the improvement of the system or not related to the accuracy and credibility of the blacklist. Therefore, in the update and improvement of the standard, the standard-setting authority can take the following measures: First, further in strict accordance with relevant international standards, China's current product safety and environmental safety standards in all areas to control and adjust; In addition, play industry Association to update the standard certification system; Finally, to establish product safety control standards, the establishment of product testing, certification, identification and other market access system.

4.1.3 Standardize and improve the administrative procedures of the blacklist system

The provincial level and above regulatory authorities should take the responsible for the Blacklist's formulation, review, publish, modify, and all the information needed is provided by the local regulatory authorities at all lower levels; The identification of serious breach of law or bad faith enterprise and its

relevant persons responsible for need to focus on evidence collection. The inform and re-examination procedures of the administrative law also can be referred to protecting the enterprise's right of statement or argument. Authorized the signature potency; The name list determined finally must be discussed and determined by the verification group collective, If involved to the professional field, the expert appraisal should be introduced; Set up the hearing procedure, before defending the issue the last checkpoint. As one kind of punitive control measure, the blacklist manufacture must follow the proportion principle. Therefore, should consider the establishment blacklist the removal procedure, and strict removal condition and method. After including "the blacklist" certain deadline, really has repents the performance, observes the laws and regulations strictly the enterprise, stipulated that its may depend on applies to enter the blacklist removal procedure, raises the code of honor consciousness and responsibility consciousness by this guidance enterprise, follows the law strictly, strengthens the autonomy management.

4.2. Play a supervisory role of the new media network

With the popularity of new media network and development company for media control began to puff. Microblogging communication platform as an emerging network of information, making information effectively, broad freedom to disseminate in a timely manner possible. People no longer just passively receive filtered information from the media, people can actively participate in the information publishing, circulation and discussion, everyone can be a Publisher, circulation of information and discussion. Free and open flow of information, you may break free undetected while government supervision. Regulation of micro-blogging in the Government market and become a false publication platform corporate blacklist, its effectiveness is worth looking forward to.

4.3. The introduction of cooperative regulation, the government is no longer a single representation

The experiences of developed countries, market regulation, can refer to the collaborative supervision. Through a signed agreement with the manager, is Manager introduced in the formulation of Government

policy and legal processes, this cooperation regulation belongs to a system innovation. The innovation is in the Western developed countries achieved good social benefits. Within the framework of the agreement, The official rules of the country will be the manager of internal self-regulation replaced the managers self-regulation . Once was Manager of violations of the laws or agreements exist, are extremely severe punishment implemented by government agencies. This collaborative approach can solve not only government agencies monitor resource shortage problem, but will be more proactive by managers to comply with the laws and agreements to facilitate law enforcement. Industry self-regulation and the appropriate cooperative approach.

4.4. Strengthen the cultivation of the market and business ethics and self-regulation

Blacklist system as a punishment tool, it is clear that punishment is not an end, but enterprises can standardize operation behavior. However, in China's market, economy is not perfect, construction of social credit system has not yet been cases; merely to moral self-discipline is not a realistic expectation the enterprise. Professor Zhou Zhi forbearance thinks, Moral drive to self-discipline is good , but a lack of continuity , it should be turned to the institutionalization of self-discipline , the latter emphasizes the formal system and informal system of system constraints , moral and external monitoring of the environment and competitive environment system constraints , it is "not only means self-discipline to become the conscious action of a small number of noble persons , is more important is self-discipline to become the majority of ' rational economic man ' in the external constraints the only rational choice . "Therefore, in the current market environment in China, should be institutionalized by the Government means to drive enterprise ethical self-discipline, increase the moral cultivation of the enterprise, when you can really be moral capital of the enterprise, the blacklist system will not come, this is the desired result.

5. Conclusion

Blacklist system as a tool of social control of Government governance market failure problems, of course, has its rationality and its

practical effectiveness. But it's a double-edged sword, protection of the basic rights of consumers and the public at the same time, may also be a way of Government rent, or under the enterprises strong public relations, alienation of wrongful Enterprise umbrella and combat competitive tool. Hope Chinese Government control over the market, ultimately will blacklist such punitive mechanisms to guide the enterprise credit incentive mechanism of change, really honest, these intangible moral values become the capital of honesty, moral capital, so that the Government bears the construction of social credit system and the company.

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