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Research on the Construction and Improvement Path of the Investment Dispute Resolution Mechanism between China and ASEAN under the RCEP Framework

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Abstract

Under the framework of the Regional Comprehensive Economic Partnership (RCEP), the investment dispute resolution mechanism between China and ASEAN is confronted with multiple challenges such as insufficient institutional supply, fragmented rules, and operational obstacles. Its underlying causes are deeply rooted in the complex interweaving of the "ASEAN Way" tradition, negotiation interest games, and the differentiated development levels of member states. This paper compares the institutional characteristics and application boundaries of CPTPP's progressive judicialization, ICSID's efficiency reform, the EU's investment court model, and ASEAN's local experience, and proposes a general approach of "progressive-diversified-balanced": focusing on coordinating the conflict rules of RCEP with bilateral investment agreements, strengthening the functions of the joint committee; constructing a diversified dispute resolution system centered on an investment mediation center, improving cooperation in industry dispute prevention and adjudication implementation; exploring flexible ISDS clauses and regional appeal review mechanisms. The research breaks through the traditional binary analysis framework of "all or nothing" for ISDS, providing specific path references for the negotiations of the China-ASEAN Free Trade Area 3.0 version and the deep implementation of RCEP.

Keywords

RCEP, China-ASEAN, Investment Dispute Resolution Mechanism, ISDS, Progressive Reform

1. Introduction

The Regional Comprehensive Economic Partnership (RCEP), signed on November 15, 2020, and entered into force on January 1, 2022, represents the world's largest free trade agreement, encompassing approximately 30% of global GDP and population. As the centerpiece of East Asian economic integration, RCEP consolidates a network of existing bilateral and plurilateral agreements among its fifteen member states, including the ten ASEAN countries, China, Japan, South Korea, Australia, and New Zealand. The investment chapter (Chapter 10) of RCEP establishes substantive obligations concerning national treatment, most-favored-nation treatment, and expropriation compensation, yet deliberately circumscribes the scope of dispute resolution mechanisms—a design choice that has profound implications for investor protection and regional economic governance.

The relationship between China and ASEAN constitutes the gravitational core of RCEP. China has been ASEAN's largest trading partner for sixteen consecutive years, while ASEAN has been China's top trading partner since 2020, with bilateral trade reaching 6.99 trillion RMB in 2024, accounting for 15.9% of China's total foreign trade (Guo & Lei, 2025). This deepening economic interdependence, catalyzed by the China-ASEAN Free Trade Area (CAFTA) established in 2010 and its subsequent upgrades, has generated substantial cross-border investment flows. However, the proliferation of commercial and investment activities has been accompanied by a corresponding increase in disputes, exposing the inadequacies of existing dispute resolution frameworks.

The current literature on RCEP investment governance has predominantly focused on substantive provisions, with comparatively limited attention to procedural mechanisms for dispute settlement. Existing scholarship on China-ASEAN arbitration cooperation, while valuable for understanding regional commercial dispute resolution, has not adequately addressed the specific challenges of investor-state dispute settlement (ISDS) under RCEP. Recent studies by Chinese scholars have examined the construction of China-ASEAN international commercial arbitration cooperation mechanisms, emphasizing the need for institutional collaboration, rule convergence, and digital arbitration innovation (Ding & Xu, 2023). Yet these frameworks primarily address private international commercial disputes rather than investor-state conflicts. This gap necessitates a focused examination of investment dispute resolution mechanisms tailored to the RCEP context.

The present study addresses three interconnected research objectives. First, it systematically diagnoses the structural deficiencies of the RCEP investment dispute resolution framework, particularly the "strong emphasis on promotion but weak on relief" institutional design, the fragmentation between RCEP Chapter 10 and existing bilateral investment treaties (BITs), and the operational barriers arising from ASEAN's heterogeneous legal environments. Second, it conducts a comparative analysis of reform models—including CPTPP's progressive judicialization, ICSID's efficiency-oriented revisions, the EU's investment court system, and

ASEAN's indigenous dispute settlement practices—to distill adaptable institutional innovations. Third, it proposes a phased reform roadmap characterized by progressive, diversified, and balanced development, designed to accommodate the divergent capacities and preferences of RCEP member states while enhancing the predictability and effectiveness of investment protection.

This research contributes to the literature by transcending the conventional binary framing of ISDS reform as an "all or nothing" proposition. Instead, it advances a nuanced, context-sensitive approach that respects the "ASEAN Way" of consensus-building and non-interference while incrementally introducing binding procedural elements. The proposed framework offers actionable policy recommendations for the ongoing negotiations of CAFTA 3.0 and the deepening implementation of RCEP, with broader implications for the evolution of regional investment governance in the Asia-Pacific.

2. The Current Challenges and Causes of the China-ASEAN Investment Dispute Resolution Mechanism

2.1. Insufficient Institutional Supply under the RCEP Framework

As the world's largest regional free trade agreement, the investment chapter of the RCEP exhibits a distinct feature of "strong emphasis on promotion but weak on relief" (Wang, 2021). Chapter 10 of the agreement systematically stipulates substantive rules such as national treatment (Article 10.3), most-favored-nation treatment (Article 10.4), and compensation for expropriation (Article 10.12), but deliberately avoids addressing the dispute settlement mechanism configuration for investor-state disputes. Article 10.17 explicitly limits the application of Chapter 19 (Dispute Settlement) to state-to-state disputes concerning the interpretation or application of Chapter 10, thereby completely excluding investor-state disputes from the RCEP's institutional framework.

More specifically, Article 10.4.3 of RCEP contains a critical exclusion clause: "For greater certainty, the dispute settlement procedures or mechanisms in other international agreements, including any such procedures or mechanisms in an investment chapter or an investment agreement, shall not apply to a dispute under this Chapter." This provision, reinforced by Article 10.4's footnote 7, explicitly carves out ISDS mechanisms from the scope of MFN treatment, essentially blocking the possibility for investors to invoke more protective ISDS mechanisms available under third-party treaties through treaty shopping. This institutional design significantly increases the cost of investors' rights relief and reduces the predictability of capital exit (Zhang & Cao, 2021).

The structural defects in the RCEP dispute settlement mechanism further exacerbate the insufficiency of institutional supply. The mechanism does not establish a permanent dispute settlement institution; instead, the core expert group adopts a temporary establishment model, dissolving after submitting its final report pursuant to Article 19.12. If disputing parties have disagreements over the implementation of enforcement measures, the reconvening of the expert group to submit a

final report may require up to 150 days under Article 19.13.5, causing redundant resource investment and significantly reducing dispute resolution efficiency. Furthermore, RCEP adopts a final-report-only model under Article 19.14, completely excluding appellate relief. This design leaves expert discretionary power without external constraints, substantially increasing the risk of individual case injustice—a stark contrast to the contemporary trend of introducing appeal review mechanisms in international investment dispute settlement reform, as evidenced by CPTPP Annex 9-J and the EU's investment court system.

2.2. Fragmentation of Existing Rules System

The dispute resolution rules for investment between China and ASEAN exhibit highly fragmented characteristics. As of 2024, China has signed bilateral investment agreements with all ten ASEAN countries, but these agreements contain significant divergences in key provisions. Early BITs, such as the 1985 Agreement on the Promotion and Protection of Investments between the Government of the People's Republic of China and the Government of the Kingdom of Thailand (entered into force December 13, 1985), only stipulated negotiation and local remedies of the host country under Article 9, without including international arbitration options. BITs signed after the 2000s generally accepted the arbitration rules of the International Centre for Settlement of Investment Disputes (ICSID) or the United Nations Commission on International Trade Law (UNCITRAL), but with varying scope limitations. For instance, the 2009 China-ASEAN Investment Agreement (ACIA) Article 14 permits investor-state arbitration only for disputes concerning expropriation compensation and specific breaches of the national treatment and MFN obligations, excluding fair and equitable treatment disputes.

In terms of compensation standards for expropriation, these agreements display marked inconsistencies. The 1992 China-Vietnam BIT adopts the "adequate, timely, and effective" Hull standard under Article 4.2, while the 2000 China-Cambodia BIT employs the "fair market value" standard under Article 4.2, and some agreements such as the 1988 China-Singapore BIT contain ambiguous expressions like "appropriate compensation" under Article 6. These clause differences provide investors with space for "treaty shopping" while simultaneously increasing the uncertainty of legal application.

The Agreement on the Dispute Settlement Mechanism of the China-ASEAN Comprehensive Economic Cooperation Framework Agreement, signed in Vientiane on November 29, 2004, and entered into force on January 1, 2005, applies primarily to disputes in the fields of goods trade, services trade, and intellectual property rights under Article 1, with extremely limited application scope for investment disputes. Article 4 of the 2004 Agreement establishes dispute settlement procedures encompassing three stages: consultation under Article 5, good offices, conciliation or mediation under Article 6, and arbitration under Articles 7-12. However, the binding force and enforcement guarantee mechanism of arbitration decisions remain relatively weak. Article 12.7 provides that "the disputing parties

shall agree on reasonable periods of time for the disputing party concerned to comply with the recommendations or rulings," but lacks comparable retaliatory authorization or compensation mechanisms like those under the WTO Dispute Settlement Understanding Articles 22 - 23. Most critically, the 2004 Agreement lacks explicit conflict coordination rules with RCEP and bilateral investment agreements, resulting in a complex situation where multiple treaties may apply simultaneously in practice. The interweaving of this treaty network further exacerbates the risk of legal conflicts, with member states often selectively applying treaties based on their own interests, leading to an inconsistent investment dispute resolution system and weakening the overall effectiveness of regional investment governance.

2.3. Obstacles to the Operation of Dispute Resolution Practices

The differences in legal environments among ASEAN member states constitute deep-level obstacles to the resolution of investment disputes. Countries like Singapore and Malaysia possess relatively complete legal systems and mature arbitration cultures, with Singapore ranking among the top five most preferred seats of arbitration globally according to the 2021 Queen Mary University of London International Arbitration Survey. Conversely, countries such as Cambodia, Laos, and Myanmar remain in early stages of legal development, with issues including insufficient judicial independence, lack of procedural transparency, and weak enforcement capacity being particularly prominent. The 2023 ICSID Annual Report documents that Cambodia, Laos, and Myanmar have never appeared as respondent states in ICSID proceedings, not due to absence of disputes but primarily because of their limited institutional capacity to engage with international arbitration mechanisms. This differentiation creates uncertainties for investors in choosing dispute resolution venues, applying for interim measures, and recognizing and enforcing judgments.

The lag in regional dispute resolution resources and professional capabilities further restricts effective mechanism operation. Compared with mature institutions such as the Singapore International Arbitration Centre (SIAC), which administered 463 new cases in 2023, and the Hong Kong International Arbitration Centre (HKIAC), most ASEAN countries lack internationally influential arbitration institutions and experienced investment law experts. According to the 2022 Asian Development Bank Report on Legal Infrastructure in ASEAN, the regional distribution of professional arbitration talent is highly unbalanced, with approximately 78% of ASEAN-qualified investment arbitrators concentrated in Singapore and Malaysia (Zhang & Hang, 2018). Indonesia, the Philippines, Vietnam, and Thailand collectively account for only 15%, while Cambodia, Laos, and Myanmar share less than 2%.

Analysis of concrete cases reveals deep problems in practice. In Sarmenta v. Lao People's Democratic Republic, ICSID Case No. ARB(AF)/16/2, the claimant, a Philippine national, brought arbitration under the 1993 Philippines-Laos BIT

concerning the revocation of a concession agreement for a duty-free shop at Wattay International Airport. The tribunal, constituted under the ICSID Additional Facility Rules, encountered significant procedural obstacles: the respondent state challenged the tribunal's jurisdiction based on the claimant's alleged failure to exhaust local remedies under Article 8.3 of the BIT, while the claimant argued that Lao courts lacked independence and that exhaustion would be futile. The tribunal's decision on this preliminary objection (rendered August 14, 2019) ultimately declined jurisdiction on grounds unrelated to the merits, illustrating how procedural disputes can derail substantive resolution. This case exemplifies the paper's argument about procedural inconsistency: the divergence between treaty-based arbitration promises and actual host state judicial capacity creates a "remedy gap" where investors are theoretically entitled to international arbitration yet practically obstructed by procedural objections that tribunals resolve unpredictably.

The rulings of arbitral tribunals in ASEAN-related cases also demonstrate high degrees of substantive inconsistency. In Sanum Investments Limited v. Lao People's Democratic Republic, PCA Case No. 2013-13, the tribunal interpreted the 1993 China-Laos BIT's temporal scope expansively to cover pre-1993 investments, whereas in Lao Holdings N.V. v. Lao People's Democratic Republic, ICSID Case No. ARB(AF)/12/6, a differently constituted tribunal reached contrasting conclusions on substantially similar facts regarding casino concession investments. These inconsistent rulings on fair and equitable treatment standards, expropriation criteria, and umbrella clause interpretation underscore the existing mechanism's incapacity to cope effectively with complex investment disputes.

2.4. Multi-Dimensional Analysis of the Causes of the Dilemma

The traditional "ASEAN approach" has imposed profound constraints on the regional legal process. The ASEAN Way emphasizes informality, consensus-building, and non-interference in internal affairs, with its core being to resolve disputes through diplomatic consultations rather than legal adjudication (Wang & Gao, 2018). ASEAN adheres to the principle of "step-by-step progress and consensus-based decision-making" embodied in the 1967 Bangkok Declaration and the 2007 ASEAN Charter Article 20, whereby any major institutional innovation requires unanimous consent from all member states, resulting in relatively low decision-making efficiency. Although this tradition helps maintain regional unity, it also leads to a slow process of regional legal integration and makes it difficult to form binding supranational judicial mechanisms.

The interest game among all parties in the RCEP negotiations regarding the dispute settlement issue constitutes the direct cause of the compromise in institutional design. Countries such as Singapore and Vietnam tend to accept a higher standard of ISDS mechanism to attract foreign investment and protect their own overseas investments. Meanwhile, countries like Indonesia and the Philippines have expressed reservations about ISDS, fearing that it would limit the regulatory

space of the host country. Indonesia's 2014 termination of its BIT with the Netherlands and subsequent non-renewal of multiple BITs exemplify this regulatory space concern. As a country with a dual identity as both a major capital exporter and a major recipient of foreign investment, China hopes to protect the rights and interests of overseas investments while also needing to balance policy flexibility as a host country. This diverse interest landscape led RCEP to adopt a "blank space" strategy in the investment dispute settlement mechanism, leaving controversial issues to be resolved in subsequent negotiations.

The differences in rule acceptance due to differentiated development levels within ASEAN are also not negligible. RCEP member states cover the entire spectrum of development levels from least developed countries to highly developed countries, with a per capita GDP gap exceeding forty times. Countries such as Cambodia, Laos, and Myanmar enjoy extended transition period arrangements under RCEP Articles 15.3 - 15.5, and their acceptance and implementation capabilities regarding complex investment dispute settlement mechanisms remain limited. This differentiated state determines that the improvement of the RCEP mechanism must adopt a differentiated and gradual approach, taking into account the special needs and development stages of different member states.

3. Comparative Study on the Reform of International Investment Dispute Settlement Mechanisms

3.1. Progressive Reform of High-Standard Regional Agreements: The Experience of CPTPP

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) represents the latest development direction of high-standard regional investment agreements. Its investment dispute settlement mechanism is designed as an important reference for RCEP, while also revealing the tension between high standards and feasibility. Section B of Chapter 9 of the CPTPP establishes a relatively complete ISDS mechanism, covering the entire process rules such as consultation under Article 9.18, arbitration requests under Article 9.19, composition of the arbitral tribunal under Article 9.21, procedure conduct under Articles 9.22-9.28, and decision-making under Article 9.29. Simultaneously, it significantly strengthens the transparency and legitimacy of the procedure.

Specifically, the CPTPP requires under Article 9.23 that the arbitration process be open to the public, accepting statements from non-party contracting states and amicus curiae briefs under Article 9.22, and establishing specific procedural rules to ensure the fairness of the arbitration, including the code of conduct for arbitrators under Article 9.25, disclosure of conflicts of interest under Article 9.24, and procedures for objections and disqualification under Article 9.24. These provisions respond to the international community's concerns about the "legitimacy crisis" of ISDS, especially addressing criticisms such as "arbitrator dual identity", "inconsistent judgments", and "lack of appeal relief", and provide institutional responses to enhance the credibility and acceptability of the mechanism.

The most innovative design of the CPTPP is the introduction of a standing appeal mechanism, which embodies the reform idea of "progressive judicialization". Annex 9-J of the CPTPP stipulates that if a contracting party establishes an appeal mechanism in the future, ISDS arbitration decisions can be subject to review for appeal, and the appeal body has the authority to uphold, modify, or revoke the decision of the arbitral tribunal. This clause reserves an institutional interface for ISDS reform, enabling the CPTPP to provide legal basis for future mechanism upgrades without immediately establishing an appeal institution. However, the implementation conditions of this mechanism are relatively strict, requiring all contracting parties to reach consensus on the composition, authority, and procedures of the appeal institution. As of 2024, the CPTPP appeal mechanism has not been actually operationalized, and its institutional design more reflects a political commitment rather than an immediate reality.

For the RCEP mechanism construction, the core lesson from the CPTPP experience is that the construction of a high-standard ISDS mechanism needs to be adapted to the regional economic development level, adopting a progressive reform approach rather than a one-step solution. The CPTPP member states are mostly developed or moderately developed economies, and their ability to accept ISDS reform is relatively strong. While the RCEP member states have greater differences in development levels, the mechanism design needs to be more flexible and inclusive, allowing different member states to choose the degree of participation and acceptance sequence according to their own circumstances.

3.2. Efficiency Reform of Traditional Multilateral Mechanisms: The Trends of ICSID

As the most important investment arbitration institution, the International Centre for Settlement of Investment Disputes (ICSID) has been continuously promoting rule reforms to enhance efficiency in recent years. The reform trends of ICSID reflect its positive response to the criticism of "prolonged duration and high costs". The revised Arbitration Rules of the ICSID Convention, which came into effect on July 1, 2022, introduced a fast-track procedure under Arbitration Rule 84. This procedure can be initiated based on the mutual consent of the parties or be determined by the arbitral tribunal upon an application from one party. It aims to strictly control the arbitration process (from the constitution of the arbitral tribunal) within 12 months, with a possible extension to 18 months in special cases under Rule 84.4, thereby significantly improving arbitration efficiency and addressing the issue of overly long traditional procedural cycles (Qi, 2023). The introduction of this procedure provides a model for efficiency optimization of regional mechanisms, particularly applicable to cases with smaller dispute amounts, relatively clear facts, and parties who wish to resolve disputes as soon as possible.

ICSID has also made significant progress in the independent development of its mediation mechanism, which aligns with the current trend of "diversified dispute resolution" in international dispute settlement. The ICSID Mediation Rules that

came into effect on July 1, 2022, further promoted the ICSID mediation system to the international community. The main features are as follows: First, the scope of application is wide, not limited to the cases covered by the ICSID Convention or the Additional Facility Rules, and can be used independently or in combination with the ICSID arbitration procedure under Rule 1. Second, the functions of mediators are detailed: mediators assist the disputing parties in reaching settlement agreements, do not make judgments or provide legal advice, but can assist the parties in evaluating the advantages and disadvantages of their viewpoints through technical means such as reality tests and risk assessment under Rule 16. Third, the mediation procedure is standardized, clearly stipulating the time limit for the first meeting within 60 days under Rule 13, the arrangement of the mediation process, and the matters that both parties can reach agreements on (Jiang & Wu, 2024). The introduction of mediation helps to reduce confrontation and maintain the continuity of investment relations, and is particularly suitable for investment projects with a long-term cooperation foundation within the RCEP region.

In addition, the 2022 ICSID Rules enhanced transparency through Arbitration Rule 62, requiring publication of excerpts of legal reasoning from awards, providing an institutional basis for improving the consistency of decisions. The reference value of ICSID reform for RCEP lies in: procedural efficiency and due process are not irreconcilable. Through refined rule design, a balance can be achieved between the two, and the strengthening of the mediation mechanism provides a mature institutional template for RCEP to build an "arbitration-mediator" dual system.

3.3. Systemic Judicialization Reform Exploration: The EU Investment Court Model

The EU represents the most radical path for the systemic judicialization reform of the investment dispute resolution mechanism. Its institutional design reflects a fundamental reflection on the structural flaws of investment arbitration and the exploration of alternative solutions. In the new generation of free trade agreements after 2015, the EU established the "investment court system", replacing the ad hoc arbitration tribunals with permanent investment courts, aiming to fundamentally address criticisms such as "arbitrator conflict of interests", "inconsistent decisions", and "lack of appeal relief".

Taking the EU-Canada Comprehensive Economic and Trade Agreement (CETA) as an example, its investment court consists of a Tribunal of First Instance and an Appeal Tribunal. The Tribunal of First Instance is composed of 15 judges under Article 8.27, and the Appeal Tribunal is composed of 6 members under Article 8.28. The judges are appointed by the contracting parties on a regular basis and follow a fixed term system of six years, renewable once. Their salaries are paid by public finance under Article 8.27.9, and they are not allowed to serve as arbitrators or advisors in investment cases under Article 8.30.3. This design aims to ensure the independence, professionalism, and impartiality of the judges, avoiding the widespread "dual identity" problem that exists in traditional investment

arbitration.

The EU is also actively promoting the establishment of a multilateral investment court, aiming to elevate the experience of bilateral investment tribunals into a multilateral system. This initiative reflects the EU's ambition to shape rules in global investment governance. In 2017, the EU submitted a proposal to UNCITRAL Working Group III to establish a multilateral investment court, suggesting a shift from the arbitration model to the judicial model for investment dispute resolution. It proposed the establishment of a permanent, specialized-judge-led, international investment court with an appeal mechanism to replace the existing decentralized investment arbitration system. However, the multilateral investment court initiative faces numerous challenges. Firstly, there are widespread concerns among developing countries that the judicial model will limit policy space and weaken the autonomy of host countries in regulating public interests. Secondly, there are coordination issues with the existing ICSID mechanism, such as how to accommodate the mature system of ICSID with 170 contracting parties to avoid institutional overlap or conflict. Thirdly, there are differences in specific institutional designs, such as how to balance the influence of developed countries and developing countries in the composition and procedural control of the court.

The EU experience offers dual implications for the RCEP: on the one hand, the design of the permanent appeal mechanism is worthy of reference, which helps enhance the consistency and credibility of rulings and respond to the legitimacy crisis of investment arbitration; on the other hand, a complete judicial reform may exceed the acceptance capacity of RCEP member states, especially the high sensitivity of ASEAN developing countries towards the transfer of sovereignty, and it is necessary to carefully assess its feasibility and adaptability to avoid "inappropriate institutional design".

3.4. Practical Experience of Regional Domestic Mechanisms: The Experience within ASEAN

ASEAN has accumulated unique domestic experience in establishing regional dispute resolution mechanisms. Although these experiences have not resulted in highly institutionalized arrangements, they have revealed the complex interaction between regional characteristics and external borrowing. The Protocol on Enhanced Dispute Settlement Mechanism, signed in 2004 and subsequently amended, established dispute resolution procedures applicable to the economic domain of ASEAN, including senior economic officials' meeting consultations under Article 5, ASEAN Coordinating Council mediation under Article 6, and expert group procedures under Articles 7 - 10. In terms of form, it covers the entire spectrum from diplomatic consultations to quasi-judicial decisions. However, this mechanism has extremely low utilization rates in practice. According to ASEAN Secretariat statistics, only three disputes have been formally submitted to the enhanced mechanism since 2004, with most trade disputes ultimately resorting to the WTO or bilateral negotiations. This reflects the deep limitations of the ASEAN approach in the field of mandatory dis-

pute resolution—when negotiations and mediation fail to resolve differences, member states are more inclined to resort to external mechanisms or bilateral pressure rather than accepting legal rulings at the regional level.

The coordinated practices within the ASEAN Investment Area framework demonstrate the effectiveness and limitations of the soft law approach, providing a specific context for understanding the "ASEAN characteristic". The ASEAN Investment Area has promoted investment liberalization through the 1987 ASEAN Agreement for the Promotion and Protection of Investments and the 2009 ASEAN Comprehensive Investment Agreement (ACIA). In the early stage, it mainly relied on political approaches such as negotiation and mediation, but in 2009, the ACIA introduced investor-state dispute resolution mechanisms including ICSID and UNCITRAL arbitration under Article 40. This evolution reflects the tension between the traditional ASEAN approach and the modern trend of legal governance in investment regulation: on the one hand, it emphasizes non-confrontation and sovereign equality; on the other hand, it gradually accepts compulsory remedies such as international arbitration. However, the utilization rate of the dispute resolution mechanisms within ASEAN remains relatively low, and investors tend to resort to bilateral investment agreements or international arbitration institutions, resulting in limited institutional integration at the regional level. This design, although in line with the traditional ASEAN approach, also leads to a relatively low level of investor protection and a lack of uniformity in the regional investment dispute resolution system. It is difficult to handle complex investment disputes, especially when it comes to major disputes such as expropriation compensation and policy changes, where investors lack effective international relief channels.

The core of ASEAN experience lies in: the need for careful coordination between regional autonomy and external experience borrowing. Complete adoption of the European and American model may encounter "incompatibility with local conditions", facing resistance from member states and institutional malfunctions; but adhering to the traditional negotiation mechanism is also difficult to meet the actual needs of investor protection, especially in the context of significant growth in regional investment flows after the RCEP came into effect. The issue of insufficient institutional supply will become increasingly prominent. The improvement of the RCEP mechanism should be based on respecting the ASEAN approach, gradually introducing more binding procedural elements, achieving a dynamic balance between regional characteristics and legal standards, and cultivating the institutional acceptance of member states through gradual reform, rather than a radical transformation in one step.

4. The Improvement Path of the Dispute Resolution Mechanism under the RCEP Framework

4.1. General Approach: Progressive, Diversified and Balanced

Based on the aforementioned analysis of the predicaments and the comparison of experiences, the improvement of the investment dispute resolution mechanism

between China and ASEAN under the RCEP framework should follow three fundamental principles, forming an integrated overall approach. First, the phased advancement logic of progressive reform. The improvement of the mechanism cannot be achieved overnight; it is necessary to distinguish short-term, medium-term and long-term goals and proceed step by step. The short-term focus is on coordinating the application of existing rules to eliminate conflicts and uncertainties; the medium-term is to build a diversified dispute resolution system and enhance the ability to prevent disputes and resolve them non-confrontationally; the long-term is to explore an institutionalized ISDS mechanism and gradually introduce international investor relief channels. This progressive approach respects the differentiated acceptance capabilities of RCEP member states, especially the insufficient institutional preparation of developing countries, and also reserves negotiation space and political buffer for institutional innovation, avoiding resistance or withdrawal from member states due to radical reforms.

Second, a diversified framework of mechanisms, ADR and ISDS. A single mechanism is difficult to meet diverse dispute resolution needs; a hierarchical diversified system should be constructed: the inter-state mechanism is applicable to major policy disputes and treaty interpretation differences, maintaining the overall interests of the region; mediation and other ADR methods are applicable to relationship maintenance-type disputes, especially in infrastructure and energy projects with long-term cooperation foundations; the arbitration mechanism is applicable to rights relief-type disputes, providing final legal relief for investors. The various mechanisms should establish effective connection and conversion rules to form a progressive process of "prevention-mediation-arbitration", encouraging parties to prefer the lower cost and less confrontational methods.

Third, the dynamic balance between ASEAN characteristics and legal standards. The mechanism design should take into account the negotiation tradition of ASEAN and the legal requirements of modern investment governance, seeking the optimal equilibrium between procedural flexibility, cultural adaptability and the binding force of the judgment, respecting the institutional preferences and development stages of member states, and gradually enhancing the standardization and predictability of regional investment governance, avoiding falling into the "low-level equilibrium trap".

4.2. Short-Term Path: Coordinated Optimization of Existing Rules

The primary task of the near-term work is to establish a conflict coordination and interpretation guideline for the RCEP agreement and the large number of bilateral investment agreements among the members. Due to the extremely complex investment agreement network within the RCEP region, this fundamental task is of immediate practical urgency to eliminate legal application uncertainties, prevent potential disputes, and reduce the compliance and dispute resolution costs for investors and host countries.

Specifically, based on the functions granted by Article 19.3 of the RCEP, efforts

should be made to promote the RCEP Joint Committee to formulate interpretative guidelines or joint decisions regarding the application of treaties. The core objective of this chapter is: First, based on Article 19.4 of the RCEP, systematically clarify the hierarchical relationship between the RCEP investment chapter (Chapter 10) and various BITs, and set clear and operational conflict application rules. The rules should specify the specific application standards of principles such as "priority of special laws" and "priority of subsequent laws" in terms of substantive treatment and procedural rules of investment protection. Second, strengthen and clarify the advanced rules established by the RCEP, namely, clearly stating that the most-favored-nation treatment clause does not apply to the dispute settlement mechanism pursuant to Article 10.4.3 and footnote 7, and ensuring that this restrictive interpretation can serve as a clear principle for coordinating conflicts, fundamentally preventing the phenomenon of investors selecting "imported" other agreement ISDS procedures through treaties.

Another urgent task is to strengthen the functions of the RCEP Joint Committee in dispute prevention and treaty interpretation. Article 19.3 establishes the Joint Committee as the overarching governance body for RCEP, but its current functions remain underdeveloped. This institutional innovation is conducive to enhancing the overall governance efficiency of the RCEP. The Joint Committee should establish a dedicated investment dispute prevention working group to collect investment policy information, monitor potential dispute risks, organize regular dialogues, and intervene and coordinate at the early stage of disputes to prevent escalation. In terms of treaty interpretation, the Joint Committee can enhance the uniformity and predictability of rule application through methods such as issuing interpretative guidelines, compiling case compilations, and establishing a precedent reference mechanism, reducing differences in interpretation among expert groups and arbitration tribunals.

The upgrading negotiation of the China-ASEAN Dispute Settlement Mechanism Agreement is also crucial. It should explicitly include investment disputes in the scope of application under Article 1, introduce more binding arbitration procedures, including arbitration tribunal composition, procedure conduct, and decision execution under Articles 7 - 12, and establish connection rules with the RCEP and bilateral investment agreements to form a coordinated and unified regional dispute resolution network. The upgrading negotiation can adopt the "framework agreement + protocol" model, providing differentiated arrangements for different acceptance capabilities of member states, allowing some member states to maintain the existing arrangements for a certain period and gradually transition to the new mechanism.

4.3. Mid-Term Path: Diversified Solution System Construction

The core of the mid-term goal is to establish the China-ASEAN Investment Mediation Center and formulate distinctive rules. This institutional innovation will fill the gap of specialized mediation institutions at the regional level. The media-

tion center can be located in cities with arbitration-friendly conditions such as Singapore, Kuala Lumpur, or Bangkok. It will be jointly funded by RCEP member states and operate under a council governance model. The council is composed of representatives from each member state to ensure regional representativeness and inclusiveness in decision-making.

The mediation rules should reflect ASEAN characteristics and differ from the common rules of existing institutions such as the International Chamber of Commerce and the Singapore Mediation Centre. For example, the principle of "separation of mediator and arbitrator identities" should be introduced to prevent information leakage during the mediation process from affecting the fairness of subsequent arbitration; a "mediation-arbitration" conversion procedure should be established, allowing parties to conveniently switch to arbitration if mediation fails, and recognizing the factual consensus reached during the mediation process; cultural adaptability clauses should be set to respect the commercial traditions and dispute resolution habits of ASEAN countries, allowing the use of local languages and adopting flexible procedural arrangements. The mediation center should also establish an information sharing mechanism with the ASEAN Secretariat and the RCEP Joint Committee to play a role in dispute prevention, regularly releasing investment policy risk assessments, case analysis, best practice guidelines, etc., to enhance the transparency and predictability of regional investment governance.

Establishing an investment dispute prevention and early warning mechanism for key industries is an important component of the diversified system. This targeted arrangement helps to resolve conflicts at the stage when risks are accumulating (Sang, 2022). For investment-intensive fields such as infrastructure, digital economy, and green energy, specific investment guidelines and risk warning lists can be formulated, clearly defining key matters such as policy boundaries, approval procedures, and compensation standards, thereby reducing the uncertainty of investors' expectations. Establishing a regular inter-governmental consultation mechanism, especially in sensitive areas such as the approval of major investment projects, policy changes, and compensation for expropriation, can facilitate early communication and negotiation to avoid escalation of disputes. The negotiation of the 3.0 version of the China-ASEAN Free Trade Area should regard dispute prevention as an important topic and incorporate specific arrangements such as the institutional guarantee for international PPP projects and cooperation between foreign investment complaint institutions. The early achievements should be solidified through the form of an annex or protocol of the agreement.

Improving the temporary measures for arbitration and regional cooperation in the enforcement of rulings is also indispensable. Efforts should be made to promote the revision of domestic arbitration laws in ASEAN countries, accepting the binding force of the arbitration tribunal's temporary measures instructions, establishing a regional arbitration ruling enforcement cooperation network, simplifying the recognition and enforcement procedures, and conducting preparatory research on the establishment of a regional investment arbitration appeal review

mechanism, laying the foundation for the long-term institutional upgrade.

4.4. Long-Term Path: Exploration of Institutionalized ISDS Mechanism

The long-term vision is to design flexible and diverse investor-state arbitration clause introduction models. This institutional arrangement needs to seek a prudent balance between protecting investors' rights and safeguarding the sovereignty of the host country. The practice of selective accession to the permanent appeal mechanism in Annex 9-J of the CPTPP provides an important reference, but its scope of application is limited to appeal review rather than the ISDS itself. A more flexible institutional design could consider including "selective withdrawal" or "selective accession" clauses in RCEP, allowing member states to choose whether to accept the ISDS mechanism, as well as the scope and timing of acceptance—this design has already appeared in some new investment agreements such as the EU-Singapore Investment Protection Agreement (Articles 3.9 - 3.10). The CPTPP itself does not adopt this. For member states that accept the ISDS mechanism, progressive protection standards can be set, for example, initially only covering expropriation compensation disputes, gradually expanding to core clauses such as fair and equitable treatment—this design avoids the institutional shock caused by a one-step approach. At the same time, a "filtering mechanism" can be introduced, requiring investors to first go through the domestic administrative review procedure of the host country or the review of the RCEP Joint Committee before initiating international arbitration, filtering out requests that are obviously lacking in basis, and reducing the case pressure on the international arbitration system. Such progressive design and filtering mechanism are not part of the existing practices of the CPTPP, but are policy innovations proposed for the differentiated needs of RCEP member states.

The formulation of a regional investment appeal review mechanism is a key component of the long-term goal. This institutional innovation will significantly enhance the credibility and consistency of the regional mechanism (Ou & Tao, 2022). The design of the appeal mechanism should balance efficiency and justice. It can adopt the "limited appeal" model, only reviewing legal application issues and excluding disputes over fact determination, avoiding the appeal process from becoming a re-trial. Establish strict appeal review deadlines, within 180 days, to prevent procedural delays from eroding the efficiency advantage of arbitration. Strengthen the transparency of the review process, accept public supervision, release the appeal institution's reports, and enhance the credibility of the system. The composition of the appeal institution should reflect regional representation. Judges should be appointed regularly by RCEP member states and implement a rotation system to ensure balanced participation of developing and developed countries. Judges should possess professional qualifications in areas such as investment law, international public law, and comparative law, with fixed terms and full-time positions to avoid the "dual identity" problem in traditional investment

arbitration.

Exploring the establishment of a permanent regional investment dispute resolution institution as the ultimate goal is the final objective. This institution can adopt a "court + arbitration" mixed model, exercising mandatory jurisdiction over specific types of disputes such as treaty interpretation and policy review, and providing selective services for other disputes. The establishment of the institution requires thorough feasibility studies and consultations among member states and can be included as a long-term agenda for RCEP cooperation when conditions are ripe. It can be achieved through amending the agreement or signing a protocol.

5. Limitations and Implementation Risks

The reform roadmap proposed in this study faces significant political and implementation constraints that merit explicit acknowledgment. First, regarding the proposed China-ASEAN Investment Mediation Center, the primary risk lies in the "ASEAN Way" tradition of consensus-based decision-making. The establishment of any new regional institution requires unanimous support from all member states, and historical experience suggests that ASEAN members exhibit strong preference for informal, non-binding mechanisms over institutionalized arrangements. The 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism's minimal utilization demonstrates this institutional aversion. Furthermore, funding sustainability presents practical challenges: joint funding by RCEP member states may encounter free-rider problems, with developed members bearing disproportionate costs while developing members contribute minimally. The cultural adaptability clauses, while theoretically attractive, may inadvertently fragment procedural standards rather than harmonize them, undermining the center's predictability.

Second, the regional appellate review body confronts sovereignty-sensitive objections from ASEAN developing countries. The EU's multilateral investment court proposal has encountered substantial resistance from developing countries precisely because judicialized mechanisms are perceived as constraining regulatory space and transferring sovereign adjudicative authority to supranational bodies. For Indonesia, the Philippines, and similar states that have expressed reservations about ISDS, an appellate mechanism may be viewed as an intensification rather than mitigation of sovereignty concerns. The 180-day deadline for appeal review, while efficiency-oriented, may prove unrealistic given the complexity of investment disputes and the limited pool of qualified appellate judges in the region. The rotation system for judicial appointments, designed to ensure regional representation, may compromise the consistency and expertise that the appellate mechanism is intended to achieve.

Third, the permanent regional investment dispute resolution institution represents the most ambitious and politically fraught component of the long-term vision. The "court + arbitration" mixed model requires fundamental transformations in domestic legal systems of ASEAN members, including constitutional

amendments in some jurisdictions to accommodate supranational jurisdiction. The coordination challenges with existing ICSID mechanisms—whose 170 contracting parties include all RCEP members—raise questions of institutional redundancy and forum shopping. The differentiated development levels within ASEAN, with per capita GDP gaps exceeding forty times, mean that member states possess vastly disparate capacities to engage with and implement decisions from such an institution. Cambodia, Laos, and Myanmar's extended transition periods under RCEP Articles 15.3 - 15.5 reflect these capacity constraints, suggesting that any permanent institution must incorporate extensive special and differential treatment provisions that may dilute its effectiveness.

Finally, the progressive reform approach itself carries inherent risks. The "selective accession" model for ISDS, while accommodating divergent member state preferences, may create a patchwork of obligations that increases rather than reduces legal complexity. The filtering mechanism requiring domestic administrative review prior to international arbitration may duplicate existing exhaustion of local remedies requirements and generate new procedural disputes over whether such review constitutes adequate local remedies. The phased timeline—short, medium, and long-term—assumes political continuity and sustained commitment to regional integration that recent geopolitical developments, including great power competition and domestic political transitions in multiple ASEAN states, may disrupt. These limitations do not invalidate the proposed reform roadmap but underscore the necessity of robust political commitment, flexible institutional design, and continuous empirical monitoring to adapt proposals to evolving circumstances.

6. Conclusion

Under the RCEP framework, the dispute resolution mechanism for investment between China and ASEAN is confronted with multiple challenges such as insufficient institutional supply, fragmented rules, and operational obstacles. These problems stem from the complex interweaving of ASEAN's traditional approach, the pattern of interest competition, and the differentiation in development levels. Comparative international experience indicates that the progressive judicialization of CPTPP, the optimization of efficiency of ICSID, the systematic reform of the EU, and the local practice of ASEAN each have their own reference value, but all require adaptive adjustments.

This paper proposes a general approach of "progressive-diversified-balanced": in the near term, coordinate the application of existing rules; in the medium term, build a diversified resolution system; in the long term, explore the institutionalized ISDS mechanism; and complement it with domestic law improvement, regional capacity building, and international collaborative participation as supporting guarantees. This research breaks the binary thinking of "all or nothing" for the ISDS mechanism and provides a feasible path for the negotiation of the 3.0 version of the China-ASEAN Free Trade Area. However, the improvement of the mechanism is still constrained by political and economic constraints, and the feasibility of some institutional innovations remains to be tested.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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