Innovation and Improvement of RCEP International Trade Dispute Settlement Mechanism

Inovação e Melhoria do Mecanismo de Resolução de Disputas de Comércio Internacional RCEP

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ABSTRACT

On January 1, 2022, the "Regional Comprehensive Economic Partnership" (RCEP) came into force. This agreement created a special International Trade Dispute Settlement Mechanism, which effectively broke through the current practical dilemma faced by the Dispute Settlement Mechanism of WTO while conforming to the development law of the free trade system. The dispute settlement mechanism of RCEP attaches greater importance to the role of consultation and the transparency of rules and procedures compared with other dispute settlement mechanisms such as WTO. It is more autonomous and efficient and shows sufficient modesty regarding jurisdictional conflicts. However, at the same time, this mechanism still has deficiencies in the rules regarding third-party participation, special and differential treatment rules, safeguard measures for dispute settlement and enforcement procedures, and dispute settlement mechanisms between investors and countries. It needs to be supplemented and improved to play its role better. Although the dispute resolution mechanism of RCEP is carried out within the framework of regional cooperation, it complements the multilateral free trade system and jointly promotes the development of the world economy in the direction of openness, cooperation, and win-win results.

Keywords: RCEP; WTO; Dispute settlement mechanism

RESUMO

Em 1o de janeiro de 2022, a "Parceria Econômica Abrangente Regional" (RCEP) entrou em vigor. Este acordo criou um Mecanismo especial de Resolução de Disputas Comerciais Internacionais, que efetivamente rompeu o atual dilema prático enfrentado pelo Mecanismo de Resolução de Disputas da OMC, ao mesmo tempo em que estava em conformidade com a lei de desenvolvimento do sistema de livre comércio. O mecanismo de resolução de disputas da RCEP atribui maior importância ao papel da consulta e à transparência das regras e procedimentos em comparação com outros mecanismos de resolução de disputas, como a OMC. É mais autônomo e eficiente, e mostra modéstia suficiente em termos de conflitos jurisdicionais. No entanto, ao mesmo tempo, esse mecanismo ainda tem deficiências nas regras relativas à participação de terceiros, regras de tratamento especial e diferenciado, medidas de salvaguarda para resolução de disputas e procedimentos de execução, bem como mecanismos de resolução de disputas entre investidores e países. Precisa ser complementado e melhorado para melhor desempenhar seu papel. Embora o mecanismo de resolução de disputas do RCEP seja realizado no âmbito da cooperação regional, ele complementa o sistema multilateral de livre comércio e promove conjuntamente o desenvolvimento da economia mundial na direção da abertura, cooperação e resultados ganha-ganha.

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Palavras-chave: RCEP; OMC; Mecanismo de resolução de disputas

SUMMARY:

1 INTRODUCTION

As an important engine for the development of the world economy, the liberalization of global trade has provided a strong impetus for global economic growth by promoting the growth of global trade and expanding the market size. To achieve the liberalization of global trade, in addition to the multilateral free trade system led by the World Trade Organization (WTO), regional trade measures also play a significant role. Therefore, a large number of Regional Trade Agreements (RTA) have been concluded between countries and have become a typical feature of global trade. As the world's largest goods trading nation and second-largest economy, China actively promotes regional trade processes and has led or participated in the conclusion of multiple RTA. On January 1, 2022, the "Regional Comprehensive Economic Partnership" (RCEP)[2], in which China participated, officially came into effect. As the free trade agreement with the largest population, the most diverse

[2] In https://cn.rcepnews.com/rcep-chinese. Last access: April 26, 2025.

membership structure, and the largest economic and trade scale and development potential in the world, it aims to jointly establish a modern, high-quality, and mutually beneficial economic partnership cooperation framework. It is a highly symbolic achievement of East Asian regional cooperation and injects new impetus into the world's economic recovery. How to grasp and make good use of this RTA is an important issue for my country at this stage. In the process of implementing RCEP, international investment and trade disputes in the region are bound to increase. In-depth research on the dispute resolution mechanism of RCEP will help promote the formation of a more fair and reasonable global governance system (Zhang Jian, 2022).

2 BACKGROUND OF THE INTRODUCTION OF RCEP DISPUTE SETTLEMENT MECHANISM

Whether it is the multilateral free trade system led by the WTO, or other forms of free trade system such as RTA, the dispute settlement mechanism is an indispensable and important content. The first Director-General of the WTO, Ruggiero, once stated: Any commentary on the WTO would be incomplete without mentioning the dispute settlement system. The dispute settlement mechanism is the core pillar of the multilateral trading system and the most unique contribution the WTO has made to global economic stability (Han Liyu, 2009). This is why the Dispute settlement mechanism is often referred to as the "jewel in the crown of the WTO" (Zhao Jun, 2013). However, it is worth mentioning that the 15 contracting parties of RCEP are all members of the WTO. They can fully rely on the WTO framework of "Understanding on Rules and Procedures Governing the Settlement of Disputes" (DSU) to resolve their trade disputes.[3] Why do they still need to reconstruct a new dispute settlement mechanism within RCEP?[4]

2.1 THE DEVELOPMENT OF THE FREE TRADE SYSTEM

Compared with other trade agreements, RCEP thoroughly implements the concept of shared rights and responsibilities, mutual benefit, and win-win results, and is a great change in integrating the concept of "building a community with a shared future for mankind" into the international

[3] In https://www.wto.org/english/docs_e/legal_e/dsu_e.htm. Last access: April 26, 2025.
[4] In https://cn.rcepnews.com/rceptext/d19z_cn.pdf. Last access: April 26, 2025.

economic and trade field (Ma Zhongfa et al., 2022). Some of its differences from the WTO are one of the reasons why its disputes cannot fully apply to the Dispute Settlement Mechanism of WTO.

2.1.1 The coverage of RCEP exceeds the WTO agreements

The coverage and applicable objects of RCEP are not entirely limited to existing issues in the WTO but also include some emerging areas not covered by the WTO. For example, e-commerce, competition, small and medium-sized enterprises, technical cooperation, etc. These contents are not within the scope of WTO adjustment and cannot be resolved by The Dispute Settlement Mechanism of the WTO, so it is necessary to establish special dispute settlement rules and procedures in the RCEP.

2.1.2 The RCEP contains extra WTO obligations

There are still many issues in RCEP that overlap with those of the WTO, such as trade in goods, trade in services, intellectual property rights, government procurement, trade remedies, etc. However, in terms of the level and standards of protection provided by substantive rules, RCEP has surpassed the WTO in many areas, thus forming "super-WTO obligations". The WTO Dispute Settlement Body has no jurisdiction over disputes arising from the fulfillment or non-fulfillment of these obligations and the compensation resulting from violations, so it is necessary to set up a dispute settlement mechanism for RCEP itself.

It can be seen that with the development and progress of the global economy, science, and technology, etc., the new regional trade agreements will inevitably cover more emerging areas and new requirements, and the problems that cannot be solved by the Dispute Settlement Mechanism of the WTO continue to emerge with the change of the times, more and more. Therefore, the RCEP dispute settlement mechanism is an inevitable product of the development of the free trade system.

2.2 THE DISPUTE SETTLEMENT MECHANISM OF WTO IS IN TROUBLE

In the past, most international trade disputes were resolved by relying on the Dispute Settlement Mechanism of the WTO. More than 20 years of operation have proved that DSU is an

efficient and coercive adjudication mechanism, which has imperceptibly promoted the rule of law in international trade and the transparency, fairness, and reasonableness of the economic and trade systems of various countries.

However, since 2017, unilateral obstruction by the United States has led to repeated setbacks in the selection of judges for the WTO Appellate Body (Yang Guohua, 2019). As of December 2019, the number of judges in the WTO Appellate Body has been reduced from seven to one, which has directly led to the first time since its establishment that the WTO Appellate Body is facing a shutdown crisis and is completely paralyzed. In order to save the WTO Appellate Body, WTO members, including China and the European Union, reached the "Multi-Party Interim Appeal Arbitration Arrangement" (MPIA) under Article 25 of the DSU in 2020,[5] using the provisional appellate arbitration mechanism to exercise the functions of the original Appellate Body (Umenze, 2021). However, the MPIA is not a long-term solution; it is merely a temporary measure and transitional mechanism during the Appellate Body shutdown. Therefore, in the long run, it will be difficult for member countries to obtain fair and timely dispute settlement within the WTO, and in order to safeguard the legitimate rights and interests of RCEP members, it is urgent to establish a new dispute settlement mechanism.

3 CHARACTERISTICS AND INNOVATION OF RCEP DISPUTE SETTLEMENT MECHANISM

3.1 RCEP ATTACHES GREAT IMPORTANCE TO CONSULTATIONS

The dispute resolution mechanism of RCEP also regards consultations as an essential procedure. Before any party to a dispute intends to submit a specific international trade dispute to the panel for adjudication, it must first engage in consultations with the other party it intends to sue. The RCEP stipulates the obligation of good faith consultation, which is prominently reflected in the following aspects: First, the accused party should carefully consider and respond to the consultation request made by the plaintiff. Second, the plaintiff should clearly define the disputed matters and articulate the factual basis and legal grounds for their request. Third, all parties participating in the consultation should adhere to the principle of good faith, providing sufficient information so that both sides can grasp the actual situation of the case and make appropriate decisions. Finally, all parties

[5] In https://wtoplurilaterals.info/plural_initiative/the-mpia/. Last access: April 26, 2025.

involved in the consultation should strictly keep confidential any information known during the process and commit to ensuring that the disclosure of such information will not affect the future development of the case or the conduct of procedures, thus enabling all parties to provide information and express opinions without any worries. In addition, the consultation process under the RCEP is not an absolutely closed internal procedure; if another contracting party believes that the consultation has substantial trade benefits for them and obtains the consent of the disputing parties, they may join the consultation as a third party.

3.2 RCEP DISPUTE SETTLEMENT MECHANISM FULLY DEMONSTRATES AUTONOMY AND HIGH EFFICIENCY

The imbalance in economic development levels among RCEP member countries is quite prominent, with varying interests and demands. Among the member countries, there are highly developed nations like Japan, New Zealand, and Singapore, as well as least developed countries such as Myanmar, Laos, and Cambodia. In addition, the regional cooperation frameworks in the Asia-Pacific region are crisscrossed, and there is an overlap between the new and old mechanisms within the region. The RCEP's fully autonomous and highly efficient dispute settlement mechanism has alleviated the complexity of regional cooperation in the Asia-Pacific region and effectively promoted the economic integration process in the Asia-Pacific region. The autonomy and efficiency of the RCEP's dispute settlement mechanism are mainly reflected in the following aspects:

First of all, the RCEP dispute settlement mechanism eliminates the appeal review process compared with the WTO. RCEP abandoned the strong judicial nature of the WTO dispute settlement mechanism and clearly stipulated the finality of panel decisions and binding force on all parties to the dispute. It avoids the secondary damage faced by the winning party due to the abuse of the appeal mechanism by the losing party and eliminates political conflict risks that the appellate body may have introduced to some extent. The efficiency of dispute resolution is greatly improved, and the time cost of disputing parties is also reduced.

Secondly, as long as the parties to the dispute reach an agreement with each other, they may choose to reach a solution through alternative dispute resolution methods such as mediation, mediation, and mediation at any stage of the procedure, which reasonably enhances the flexibility, autonomy and convenience of the procedure.

Finally, even during the proceedings of the expert group, the parties to the dispute are granted full autonomy. This is particularly manifested in the fact that each party has the right to reach a consensus on the scope of functions of the expert group, the qualifications of experts, and the composition of the group, as well as the time limit for resolving the dispute. Different from the WTO Secretariat recommending candidates to the parties to the dispute in the WTO dispute settlement mechanism (Yang Guohua et al., 2004), the expert group of the RCEP dispute settlement mechanism is composed of one member appointed by each of the disputing parties, and the third expert group member is the chairman of the expert group, which is determined by the parties to the dispute through consultation. Full autonomy. In addition, RCEP has maximally shortened the time limits for each stage of dispute settlement. For instance, the consultation period has been reduced to 30 days, and the longest duration for expert review is no more than 180 days (while the maximum period for WTO is 9 months). Moreover, the final reports of the RCEP expert group take effect automatically without requiring approval from the General Assembly. These measures have notably enhanced the independence and core position of the expert group in dispute settlement, greatly improving the efficiency of dispute settlement.

3.3 RCEP ATTACHES GREAT IMPORTANCE TO THE TRANSPARENCY OF DISPUTE SETTLEMENT RULES AND PROCEDURES

Article 2 of Chapter 19 of the RCEP clearly stipulates that the goal of the dispute resolution mechanism of RCEP is to "provide effective, efficient and transparent rules and procedures for the settlement of disputes arising under this Agreement", so the RCEP attaches great importance to transparency. For example, the parties to the RCEP dispute shall have the obligation to jointly notify the other parties to the RCEP of the agreed dispute settlement terms and conditions. With regard to the establishment of panels, the RCEP requires the prosecution not only to immediately notify the respondent of the request for the establishment of a panel but also to provide copies of the request to the other parties at the same time. This will also help ensure the fairness, justice, and openness of the dispute settlement mechanism.

3.4 RCEP DISPUTE SETTLEMENT MECHANISM FULLY DEMONSTRATES ITS MODESTY IN RESOLVING JURISDICTIONAL CONFLICTS

Many RCEP parties are also parties to other international trade or investment agreements with dispute settlement mechanisms, such as China's formal application to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) in September 2021,[6] and CPTPP members have a high degree of overlap with RCEP members. This means that the dispute settlement mechanisms of WTO, RCEP, and CPTPP overlap and coexist with each other, and jurisdictional conflicts between them are inevitable. This is also known as the "spaghetti bowl effect" proposed by American economist Bhagwati (Anne et al., 2018). If this problem is not solved well, there may be a positive conflict of jurisdiction. Regarding this issue, the RCEP member states have fully leveraged the unique role of the harmonious and modest culture of the East in conflict resolution. Article 5 of Chapter 19 explicitly stipulates the place selection clause. Different from other RTAs, RCEP gives the prosecution the right to choose the place for resolution. At the same time, once the parties to the dispute choose to settle the dispute through RCEP, it means that they have excluded the right to file a complaint with the dispute settlement bodies under other treaties for the same dispute (Chen Rudan, 2016). The RCEP has managed to resolve jurisdictional conflicts with other international agreements that have competing jurisdictional claims by adopting a modest approach to its own dispute settlement mechanism (Li Shixian, 2024).

Although the venue selection clause of RCEP can to some extent alleviate the contradictions and constraints caused by jurisdictional conflicts such as parallel litigation, it also has some controversies. Some viewpoints hold that such a provision is too flexible and objectively undermines the three major goals pursued by the legal order: the morality of the parties, the validity of the law, and the social control of the law. Moreover, it is not conducive to the predictability of dispute resolution. However, the author holds that the function of the venue selection clause is to seek an appropriate positioning within the conflicting jurisdictional rules system so that the dispute settlement place which was originally in an uncertain state can be fixed. The provisions of this clause do not deviate from the constraints and regulations of the law and are therefore not inappropriate.

[6] In https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/cptpp/comprehensive-and-progressive-agreement-for-trans-pacific-partnership-text-and-resources#bookmark0. Last access: April 26, 2025.

4 SHORTCOMINGS OF THE RCEP DISPUTE SETTLEMENT MECHANISM

4.1 LACK OF CONSTRAINTS AND RESTRICTIONS ON THIRD-PARTY PARTICIPATION

Article 10 of Chapter 19 of the RCEP sets out the procedures and rules for parties that are not parties to a dispute to participate in dispute settlement as third parties. This system objectively gives non-disputing parties whose interests are affected the opportunity to express their claims, which helps to overcome the limitations of judges' or arbitrators' relevant cognition. However, this system also has some pitfalls. First, the threshold for non-dispute parties to participate in the trial is too low, which will lead to excessive participation, resulting in procedural delays and inefficient dispute resolution. Second, the neutrality of some non-parties to the dispute is questionable, and they may to some extent be in the same position or have similar interests with one of the parties, thus objectively breaking the original equality status in dispute settlement. Thirdly, the panel's excessive acceptance of representations from non-parties to the dispute could have a negative impact on the efficiency of trials and could undermine the independence of the dispute settlement body (Liang Danni, 2007).

4.2 RULES OF SPECIAL AND DIFFERENTIAL TREATMENT ARE DIFFICULT TO IMPLEMENT

Article 18 of Chapter 19 of the RCEP provides for special and differential treatment provisions, which provide preferential assistance to some developing parties, especially the least developed countries, in their vulnerability in using the procedures and rules under the RCEP to settle international trade disputes. However, in the dispute settlement of specific cases, it is not easy for the panel to find a balance between the interests of the party whose interests are injured and the party who committed the wrongful act. If an interpretation is made unfavorable to the least developed developed Parties, it may lead to the "hollowing" of the special and differential treatment clauses, thereby rendering them useless; Once an interpretation is made in favor of the least developed Parties, it may lead to excessive restraint on the injured prosecution party, thereby undermining the fairness and even credibility of the dispute resolution mechanism of RCEP itself.

4.3 LACK OF SAFEGUARDS IN DISPUTE RESOLUTION AND ENFORCEMENT PROCEDURES

In the dispute settlement mechanism, resolving disputes is the most crucial core link, while enforcement serves as an important institutional guarantee for the implementation of the expert group's ruling and the thorough settlement of disputes. It is a powerful weapon that ensures the smooth operation of the dispute settlement mechanism. Compared with the WTO, the RCEP dispute settlement mechanism lacks a fixed and permanent dispute settlement body like the DSB. This leads to a lack of organized full-process management and supervision in dispute settlement under the RCEP. As the expert group is temporary and dissolves after the end of the dispute trial, the enforcement of the ruling can only rely on the self-awareness of the disputing parties. If there are differences among the disputing parties regarding the enforcement of the ruling, it can only be resolved by reconvening the enforcement review expert group. The ruling made by the expert group is like the investigation report made by an international investigation, and the contracting parties are free to choose whether or not to give it validity and to what extent, which is not conducive to enhancing the authority of the expert group, and it is also likely to lead to mutual retaliation between the two sides when they fail to reach an agreement on the expert group's report. More seriously, the RCEP dispute settlement mechanism is also at risk of being ignored.

4.4 THE ABSENCE OF INVESTMENT DISPUTE SETTLEMENT MECHANISM BETWEEN INVESTORS AND STATES

As the RCEP negotiations were taking place during a period when the traditional investor-state arbitration mechanism (ISA) was facing a severe legitimacy crisis and backlash, the negotiating parties of the RCEP had significant differences regarding this mechanism. China, Japan, and South Korea advocated for its inclusion, but Australia, New Zealand, and India were not enthusiastic. Most ASEAN member states held a rather cautious or even opposing stance. This issue was ultimately put on hold temporarily. A work plan for discussing the matter was listed at the end of Chapter 10, indicating that the discussion should commence no later than two years after the entry into force of the agreement and be concluded within three years from the start of the discussion.

The lack of a dispute settlement mechanism between investors and countries is not conducive to the protection of foreign investment. Under NAFTA, Canada, and the United States are

often brought to investment agreement arbitration initiated by each other's investors,[7] while under ECT, many developed European countries are brought to such arbitration initiated by investors.[8] That is to say, even countries with relatively mature rules of law may violate the substantive obligations of investment agreements. Moreover, their domestic laws are also unlikely to ensure that all foreign investors receive adequate and effective protection and redress. This is even more so the case for countries with relatively immature rules of law. Therefore, the dispute settlement mechanism between investors and countries has its necessity, which is very important for the protection and relief of foreign investment. As this mechanism is absent in RCEP, when investors exhaust all local remedies in the host country but still fail to resolve the disputes, they can only seek diplomatic protection from their home countries. However, the home countries often consider various factors and are reluctant to file diplomatic protection requests against the host countries (Wang Yanzhi, 2022). Meanwhile, the investment rules of RCEP also exclude the possibility for investors to apply other dispute settlement procedures through the most-favored-nation treatment clause (Wu Qi et al., 2023). Therefore, the RCEP dispute settlement mechanism ignores the legitimate interests of investors in this respect, fails to provide adequate relief to this important entity in the international economy, and is unable to encourage the active inflow of capital from developed countries into developing countries to promote development. It needs to be improved.

5 IMPROVEMENTS OF RCEP DISPUTE SETTLEMENT MECHANISM

5.1 IMPROVE THE NORMS FOR THIRD-PARTY PARTICIPATION

To enable non-dispute parties to participate in dispute settlement in a reasonable manner, Need to be improved and perfected from the following aspects: First, The necessary regulation of the participation rights of non-dispute parties, If it determines to participate as an amicus curiae or a third party, The panel's control of the entire procedure must be obeyed; next, The scope of opinions expressed by non-dispute parties shall be strictly limited to the interpretation of the Treaty, It is not appropriate to intervene or interfere in the identification of evidence and the judgment of facts; once more, Non-dispute parties involved in the trial, Cannot undermine the balance of interests between

[7] In https://2009-2017.state.gov/s/l/c3439.htm. Last access: April 26, 2025.
[8] In https://www.energychartertreaty.org/. Last access: April 26, 2025.

the parties to a dispute, If allowing a third party to participate in the trial will obviously undermine the balance of interests between the parties to the dispute, They should not be allowed to participate. Perfecting the norms of third-party participation is conducive to a more just and efficient settlement of disputes, promoting the prosperity and development of free trade, and thereby facilitating the in-depth development of regionalism.

5.2 IMPLEMENTATION AND IMPROVEMENT OF SPECIAL AND DIFFERENTIAL TREATMENT RULES

The expert group needs to carefully deliberate and decide on effectively considering substantive fairness in dispute resolution, ensuring that the basic safeguards for the least developed contracting parties under RCEP are implemented while guaranteeing that wrongdoers receive due punishment and ensuring the orderly operation of international rule of law. Considering that some affected developing countries lack sufficient capacity for retaliation, collective retaliatory measures can be increased under certain circumstances. At the same time, increasing compensation can help efficiently resolve disputes, compelling the accused party to promptly terminate or revoke illegal measures, and prevent the least-developed countries from being dragged into a long-term and time-consuming situation ([Lu Ningning et al., 2023]). Ultimately, it is not conducive to the common development of regional economies. We should fully consider and respect the common demands of developing countries in the Doha Round negotiations of the WTO as well as the phased differences in the economic and social development of countries within the region, and improve the rules of special and differential treatment.

5.3 IMPROVE SAFEGUARD MEASURES FOR DISPUTE SETTLEMENT AND ENFORCEMENT PROCEDURES

There are two ways to solve this problem. The first is to set up a special committee for dispute settlement. The RCEP has given the Joint Commission the function of setting up other committees. Therefore, a dedicated committee can be set up for dispute settlement to facilitate effective communication and coordination among the disputing parties and urge the disputes to be resolved within the stipulated time. They also oversee and manage the entire process of dispute resolution to fully protect the interests of all parties involved. The implementation status of the cases

is tracked and urged until the rulings are fully fulfilled. Disputes that arise during the implementation of the rulings by the parties involved are promptly resolved.

Second, sign the commitment letter. When the next RCEP meeting is convened, all parties will sign the commitment letter, promising to uphold the principle of good faith in the whole process of dispute settlement, conduct sincere and effective communication with the opposite party, and obey the report made by the expert group. Except when a party has sufficient evidence to prove that the report clearly violates international law, all parties should acknowledge and implement the decisions. In the event of a breach of the content of the commitment, other States have the right to impose sanctions on that State collectively of a nature commensurate with it. The above measures are conducive to the prompt and thorough settlement of disputes under RCEP, reducing the administrative costs and enterprise transaction costs of the operation of free trade agreements and promoting regional economic and trade liberalization and integration. They are in line with the common interests of the countries within the region and the needs of regional institutional building and are beneficial to promoting the healthy and prosperous development of the regional economy.

5.4 ESTABLISH A DISPUTE SETTLEMENT MECHANISM BETWEEN RCEP INVESTORS AND COUNTRIES

However such disputes can eventually be referred to the investor-state dispute settlement mechanisms stipulated in other bilateral investment treaties and free trade agreements signed between the contracting states. However, some of these mechanisms are not conducive to safeguarding the rights and interests of investors and the regulatory power of the host country. For instance, the tobacco control clause in the ISDS chapter of the TPP led to the famous Philip Morris v. Australia case,[9] which aroused strong public protests and exacerbated concerns of states regarding regulatory sovereignty and legal costs. Eventually, this clause was excluded (Song Xiaoyan, 2023). At the same time, because there are too many other agreements and mechanisms, investors will choose treaties, which will lead to the fragmentation of investment protection and investment dispute settlement. However up to now, the number of investment disputes between RCEP contracting parties submitted to the arbitration mechanism between investors and countries is very small, Taking China and ASEAN as an example, there are only six cases. However, since the 21st century, ISDS cases have

[9] In https://ustr.gov/sites/default/files/TPP-Final-Text-Investment.pdf. Last access: April 26, 2025.

increased fivefold, and the number of Asian-Pacific countries as respondents has doubled. It can be seen that with the development of international trade and the fiery progress of the Belt and Road Initiative, the number of similar disputes will surely continue to increase. Therefore, it is still necessary for RCEP to establish its own investor-state dispute settlement mechanism. This will also contribute to enhancing the integrity of RCEP itself and resolving investment disputes under RCEP. It is beneficial for the compliance and implementation of the investment entities' norms under RCEP and the improvement of the regional investment legal system. Ultimately, it will contribute to the prosperity and development of the regional economy and provide a sound idea for global economic governance.

In terms of specific construction, because the traditional dispute settlement mechanism between investors and countries often pays more attention to arbitration and encourages investors to resolve disputes through arbitration, nowadays it has increasingly shown its obvious shortcomings by simply or mainly resorting to arbitration. Therefore, RCEP should establish an investor-state dispute settlement mechanism that integrates multiple approaches organically. It should adopt a multi-way organic integration approach such as dispute prevention, consultation, mediation, arbitration, or litigation that fits the complex nature of disputes between investors and countries. Specifically, it involves drawing on the 2015 Brazilian Investment Cooperation and Facilitation Treaty and its treaty practice to clearly establish and highlight the dispute prevention mechanism (Cai Congyan et al., 2015);[10] referring to the Canada's 2021 Foreign Investment Promotion and Protection Agreement (FIPA) Model, further detailing the consultation procedures;[11] attaching importance to the mediation mechanism, detailing the mediation procedures, and stipulating transparency principles such as information disclosure and participation of interested parties in the mediation mechanism, etc.

6 CONCLUSIONS

The proper resolution of international trade disputes is not only crucial for the realization of rights enjoyed by the disputing parties under international treaties but also serves as a concrete

[10] In https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5912/download. Last access: April 26, 2025.
[11] In https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/fipa-apie/2021_model_fipa-2021_modele_apie.aspx?lang=eng#sec-e. Last access: April 26, 2025.

manifestation of the rule of law in global economic governance. The introduction of RCEP offers solutions to many emerging areas of international trade disputes outside the scope of WTO regulations, while also providing a "panacea" for the crises faced by The Dispute Settlement Mechanism of WTO. In contrast, RCEP attaches greater importance to the unique function of consultation in resolving international disputes, as well as the transparency of dispute settlement rules and procedures. It is more autonomous and efficient and demonstrates sufficient modesty in terms of jurisdictional conflicts. However, it still has deficiencies in terms of third-party participation rules, special and differential treatment rules, safeguards, and investor-state dispute settlement mechanisms, which need to be improved and supplemented.

RCEP is the world's largest free trade agreement led by developing countries. As a key expression of emerging economies in the international economic order, it has promoted the paradigm shift of regionalism in Asia and injected Asian elements into the global paradigm transformation of the international economic order. The innovation and improvement of the dispute settlement mechanism of RCEP also facilitate a more adequate demonstration of the insistence of developing countries on legalism in the "New Regional Economic Order" (NREO) and make a beneficial exploration for global developing countries to establish a normative foundation in the international economic law system.

7 REFERENCES

Anne Meryl M. Chua,Yolanda T. Garcia, and Emmanuel Genesis T. Andal. (2018). The Spaghetti Bowl Phenomenon in Free Trade Agreements (FTAs) among APEC Economies. Journal of Global Business and Trade, 14(2), 45· https://scholar.cnki.net/zn/Detail/index/GARJ2021_2/SQGE347512578CFE2EAABBC59077FC6B1332

蔡从燕, 李尊然. (2015). 国际投资法上的间接征收(pp. 56).法律出版社. (Cai Congyan, and Li Zunran. (2015). *Indirect expropriation in international investment law* (pp. 56). Law Press.)

陈儒丹. (2016). TPP中选择性排他管辖权条款的效力研究.政法论坛, 34(5), 58-69· (Chen Rudan. (2016). A Study on the Effectiveness of Selective Exclusivity Jurisdiction Clause in TPP. *Political Science and Law Forum,* 34(5), 58-69·)

韩立余. (2009). 既往不咎——WTO争端解决机制研究(pp. 3).北京大学出版社. (Han Liyu. (2009). *No Regrets for the Past——The Dispute Settlement Mechanism of WTO Research* (pp. 3)· Peking University Press.)

李诗娴. (2024). 论WTO争端解决机制改革的价值取向与规则构造: 以RCEP为参照样本.暨南学报(哲学社会科学版), 46(1), 97-111. (Li Shixian. (2024). On the Value Orientation and Rule Construction of WTO Dispute Settlement Mechanism Reform: Take RCEP As the Reference Sample. *Journal of Jinan University (Philosophy and Social Sciences)*, 46(1), 97-111.)

梁丹妮. (2007). "北美自由贸易协定"投资争端仲裁机制研究(pp. 162).法律出版社. (Liang Danni. (2007). *Study on the Investment Dispute Arbitration Mechanism of "North American Free Trade Agreement"* (pp. 162). Law Press.)

吕宁宁, 蒋欣. (2023). 比较视角下的RCEP争端解决机制研究.国家法学刊, 4, 131-154. (Lu Ningning, and Jiang Xin. (2023). The dispute resolution mechanism of RCEP Research from a Comparative Perspective. *National Law Journal*, 4, 131-154.)

马忠法, 谢迪扬. (2022). "构建人类命运共同体"理念下的"区域全面经济伙伴关系协定".上海对外经贸大学学报, 29(1), 5-19. (Ma Zhongfa, and Xie Diyang. (2022). The Regional Comprehensive Economic Partnership under the Concept of "Building a Community with a Shared Future for Mankind". *Journal of Shanghai University of International Business and Economics*, 29(1), 5-19. https://doi.org/10.16060/j.cnki.issn2095-8072.2022.01.001)

Umenze, N. S. (2021). Is the WTO Appellate Body in Limbo? The Roots of the Crisis in the WTO Dispute Settlement Body and the Available Routes Navigating the Quagmire. *Potchefstroom Elec. L. J.*, 24(1), 1-46. https://doi.org/10.17159/1727-3781/2021/v24i0a8580

宋晓燕. (2023). 全球治理视野下的国际经济秩序发展与法治化.东方法学, 2, 99-109. (Song Xiaoyan. (2023). Development and Legalization of International Economic Order under the Perspective of Global Governance. *Oriental Law*, 2, 99-109. https://doi.org/10.19404/j.cnki.dffx.20230320.005.)

吴琦, 林泽伟. (2023). RCEP争端解决机制评估与中国之因应.集美大学学报(哲学社会科学版), 26(3), 40-47. (Wu Qi, and Lin Zewei. (2023). Assessment of RCEP Dispute Settlement Mechanism and China's Response. *Journal of Jimei University (Philosophy and Social Sciences)*, 26(3), 40-47.)

王彦志. (2022). RCEP背景下中国-东盟投资争端解决机制.政法论丛, 6, 86-96. (Wang Yanzhi. (2022). China-Asean Investment Dispute Settlement Mechanism in the Context of RCEP. *Political Science and Law*, 6, 86-96.)

杨国华. (2019). WTO上诉机构的最后五年: 基于WTO争端解决机构会议记录的回忆.中国法律评论, 4, 68. (Yang Guohua. (2019). The Last Five Years of the WTO Appellate Body: A Recollection Based on the Minutes of the WTO Dispute Settlement Body Meetings. *China Law Review*, 4, 68.)

杨国华, 李詠箑, 纪文华, 于宁, 蒋成华. (2004). WTO争端解决机制中的专家组程序研究(上).法学评论, 3, 78-85. (Yang Guohua, Li Yonggan, Ji Wenhua, Yu Ning, and Jiang Chenghua. (2004). Research on Expert Group Procedure in The Dispute Settlement Mechanism of WTO (Part I). *Law Review*, 3, 78-85. https://doi.org/10.13415/j.cnki.fxpl.2004.03.010)

张建. (2022). RCEP背景下国际贸易争端解决机制的创新与完善.中国政法大学学报, 2, 216-229. (Zhang Jian. (2022). Innovation and improvement of the international trade dispute settlement mechanism under the background of RCEP. *Journal of China University of Political Science and Law*, 2, 216-229.)

赵骏. (2013). “皇冠上明珠”的黯然失色: WTO争端解决机制利用率减少的原因探究.中外法学, 25(6), 1242-1255. (Zhao Jun. (2013). The Dimming of the Pearl on the Crown: An Inquiry into the Reasons for the Decrease in the Utilization Rate of the WTO Dispute Settlement Mechanism. *Chinese and Foreign Law*, 25(6), 1242-1255.)