

Impact of RCEP's Investment Chapter on the Investment Agreements of Its Member States

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Abstract: *The signing of RCEP is an important step towards the regional economic integration of East Asia and Oceania. When studying the impact of the RCEP investment chapter on the investment agreements of member states, China and Japan were selected as examples. The history of investment and trade between China and Japan has been ups and downs. In addition to the signing of the first BIT between the two countries in 1988, a new trilateral investment agreement was signed among China, Japan and South Korea in 2012. By comparing these investment agreements with the RCEP investment chapters, one can discover the advantages and disadvantages of the RCEP investment chapters. Therefore, although the RCEP investment chapter has in fact become the basis for each member country to sign a new investment agreement, the member country cannot copy it when signing a new investment agreement. Due to the complexity of RCEP membership and the characteristics of RCEP as an economic organization, it has made certain concessions for the sovereignty of member states in terms of investor protection. Both the trilateral agreement signed by China, Japan and South Korea in 2012 and the RCEP investment chapter have their reference significance.*

Keywords: *impact; RCEP; investment agreement; regional economic integration*

1. Introduction

On November 15, 2020, the RCEP (Regional Comprehensive Economic Partnership Agreement), initiated by ASEAN (Association of Southeast Asian Nations) and another five countries of China, Japan, South Korea, Australia and New Zealand, was formally signed. This free trade agreement covering the major economies on the west coast of the Pacific surpasses the European Union in volume and has become the world's largest free trade economic system. The situation of RCEP member states is complex, with different levels of development, social system, ideology, and it is also regarded as a trade agreement competing with TPP^[1](Trans-Pacific Partnership). The original intention of RCEP was to reduce tariffs and non-tariff barriers, and to establish a free trade system with a unified market^[2]. In the process of gradual advancement of RCEP cooperation, mutual investment between member states is particularly important. In Chapter 10 of the RCEP Agreement, new requirements are set forth regarding the form and content of mutual investment between member states^[3].

Overall, RCEP is a free trade system that integrates the major economies of East Asia, Southeast Asia and Oceania. It was initiated by ASEAN and promoted by China, Japan and South Korea to the final signing. It shoulders the responsibility for building a unified market and guiding economic integration^[4]. Correspondingly, the investment chapter of RCEP also needs to play the same role in the field of investment. The investment environment of RCEP member states is complex^[5]. These countries differ in their strength in attracting foreign investment, foreign investment policies and intellectual property protection^[6]. At the same time, due to political and diplomatic factors, such as the territorial disputes between China and Southeast Asian countries and Japan, the historical disputes between South Korea and Japan, and the political rivalry between China and the United States, RCEP as a trade agreement is always constrained^[7]. Therefore, when studying many provisions of the RCEP investment chapter, the country's specific situation in the RCEP must be considered. Hence, it is necessary to study the investment agreements between the specific member states (China-Japan) of RCEP. The relationship between China and Japan has a long history, their social systems are very different, and they occupy the first and second seats respectively in the economies of RCEP members. Research on the investment agreement between China and Japan can also provide a deeper understanding of the specific meaning of the RCEP investment chapter and make it possible to study the impact of the RCEP investment chapter

on member states.

This article aims to study whether the investment agreement between its member states will change before and after the signing of RCEP, whether the investment environment will be further optimized and the research on investment agreements between China and Japan will be focused on at the same time. Being two largest economies among the RCEP members, China and Japan are similar in cultural context, but very different in political and economic systems. After many conflicts and wars in modern times, the two countries have finally moved on two different paths. The relationship between ASEAN and South Korea is similar to that of China and Japan, therefore, studying the investment relationship between China and Japan also has referential significance for the investment relationship of other member states.

2. Previous China-Japan Investment Agreements

The China-Japan investment agreement is constantly changing along with the economic and trade relations between the two countries. Therefore, according to the different stages of Sino-Japanese trade, the agreements between China and Japan on investment and trade can also be divided into different stages. Based on the normalization of diplomatic relations in 1972, Sino-Japanese trade can be divided into two stages: from 1950 to 1972 and after 1972^[8]. Before 1972, due to the Cold War and other reasons, although there was still a small amount of trade between China and Japan, it was almost of a small scale, that is, there was no perfect investment agreement. During this period, although the two countries signed some trade agreements, similar to the trade memorandum (LT memorandum) in 1962, these agreements were mostly driven by politics rather than economics. In addition, due to political factors in China at that time, the trade memorandum was announced to be partially suspended within one year after its implementation, which did not turn out satisfactory in the expected way. After the normalization of diplomatic relations between China and Japan in 1972, the economic and trade agreement between the two countries gradually turned into an economic drive, and the total trade volume between the two countries achieved tremendous growth in a short period of time. In 1988, China and Japan signed a BIT, which has been in force ever since. In 2012, China, Japan and South Korea (CJK) carried out relevant negotiations on the establishment of the three-country FTA (Free Trade Agreement) and signed a temporary investment agreement to promote subsequent relevant negotiations. Thanks to the signing of RCEP, the three countries have actually integrated and worked under the same free trade agreement, but the CJK free trade agreement negotiations have not come to an end, and its further revision of the investment agreement is also an issue to be discussed in the following part.

2.1 Historical Development of China-Japan Investment Agreement

Because of World War II and the Cold War, the political relations between China and Japan stayed in a state of stalemate for a long time, as well as the territorial disputes between the two countries. To a certain extent, these aroused nationalist sentiment in the two countries and hence affected trade^[9]. After the two countries signed a joint statement in 1972, the trade between the two countries was heating up rapidly^[10]. As of 1989, the trade volume between China and Japan accounted for 15.8% and 17.0% of each other's gross national product respectively^[11]. The main purpose of the 1988 BIT was to solve the problem of investment protection brought about by the rapid development of trade, and there was no mention of intellectual property protection^[12]. The agreement officially came into effect on May 14, 1989. However, due to China's internal affairs, the growth rate of Sino-Japanese trade volume that year was not as expected, and in 1990 the trade volume between the two countries declined for the first time^[11]. Confronted with this situation, in order to attract foreign investment and introduce advanced technology, China started its foreign exchange reform in the 1980s and gradually liberalized foreign exchange restrictions to be controlled by the market. However, the Chinese government at that time had insufficient experience in this regard. In the early 1990s, the RMB depreciated sharply and the outflow of funds caused the overall purchasing power of China to decline. It was not until the central bank intervened in the foreign exchange market for the first time that the situation began to change for the better^[13]. On the other hand, China's long-term conservative posture was insufficient to adapt to the new situation^[14]. After 1992, China opened up to the outside world, and foreign trade ushered in a new turning point. In the mid-1990s, the growth rate of China's share of world trade increased every year^[15]. This was largely due to the rapid growth of foreign investment. As from 1993, China became the world's second largest inflow of investment. Among those countries investing in China, Japan's investment in China was rising rapidly. It became China's largest trading partner in the 1990s. It was not until the Asian financial crisis in 1998 that the growth rate slowed down^[16]. The 1988 bilateral agreement finally achieved its intended effect.

2.2 Improvement of Intellectual Property Rights

China joined the WTO in 2001 and made a commitment to protecting intellectual property rights and improving laws related to intellectual property rights^[17]. In the BIT between China and South Korea in 2007, intellectual property rights were included in the scope of investment protection, and the parties should ensure that their policies or laws that may affect investors were transparent to investors. In contrast, the BIT signed earlier in 1988 between China and Japan did mention intellectual property rights but they were far from being complete, and did not clarify the provisions of how to implement them as well. The content of the agreement had not been revised for a long time, and it urgently needed to be supplemented. However, the overall impact of RCEP on the investment market can still be optimistic, and the remaining impact needs to be further explored in subsequent studies^[18]. China and Japan also urgently need a new investment agreement to stimulate the investment market. At the same time, being neighboring countries with similar cultural backgrounds, China, Japan and South Korea had complementary industries, and there was no doubt that strengthening the trade, investment, and financial exchanges among the three countries would have great benefits. This was also the significance of the 2012 China-Japan-Korea Trilateral Investment Agreement: Even if its political significance was not mentioned, it served as a pioneer in the China-Japan-Korea Free Trade Zone and as a supplement to the China-Japan BIT, and was also of great significance in the economic development of East Asia. In fact, the 1988 version of the China-Japan BIT and the 2012 version of the China-Japan-Korea (CJK) trilateral agreement could serve as representatives of the investment agreements before and after China's accession to the WTO. Its composition and focus are worth analyzing. The structure of BIT between China and Japan in 1988 was as follows^[19]: definition of investment and investor; investor treatment (Most-favored-nation treatment principle); the mechanism to prevent direct or indirect state expropriation, and the compensation mechanism in case of expropriation; subrogation; dispute settlement mechanism. This could be regarded as an early template for China's signing of BITs in the 20th century. Most BITs between China and developed countries were made under this framework with minor modifications. However, the structure of the CJK Trilateral Agreement in 2012 had undergone great changes. The most direct change was that the agreement separated intellectual property protection into a chapter, highlighting the importance of intellectual property protection in the trade of the three countries^[20].

The second was the transparency clause, which was mentioned in the 2007 China-Korea BIT, so it was more of a supplement to the China-Japan BIA. However, in the 2012 agreement, there were more definitions and classifications of information that should and should not be disclosed, and it was more detailed. The relevant regulations on the transfer of investment assets were also involved in the China-Korea BIT, and were reiterated in the CJK trilateral agreement. The CJK trilateral agreement also added the clause of Denial of Benefits. This clause gave the contracting party the right to deny rights to non-contracting companies that did not have substantive commercial activities, or to refuse to grant rights when the contracting party took measures against non-contracting parties to prohibit transactions with their companies. Before the CJK Trilateral Agreement, China had not signed an investment agreement with this clause, while most of the new bilateral agreements signed by Japan contained this clause. This clause gave the host country more freedom in diplomacy, and it also tended to appear more in BITs among developed countries.

In addition, there were provisions on environmental protection, that is, all parties shall not encourage investment by degrading the environment. The parties mentioned in the China-Korea BIT and CJK trilateral agreement had the obligation to protect and promote investment. Take China and Japan as an example. In the early days of China's reform and opening up, the trade between the two countries grew out of nothing and showed an explosive growth. When it came to the 21st century, although investment and trade were still growing every year, the growth rate turned out slow. Therefore, how to promote international investment is a new issue in a new era, and it is also one of the main points that all parties pay attention to when signing an investment agreement. Through the vertical comparison of the two investment agreements, the changes could be seen in the investment environment between China and Japan. One is the increased awareness of intellectual property protection, and the other is the increased requirements on the contracting parties' governments to control investment risks.

2.3 Expansion of Investment Scope

In terms of detailed rules, the CJK Trilateral Agreement has extended the scope of investment definitions compared to the 1988 China-Japan BIT. For example, extending concessions for natural resources exploration to legal, regulatory and contractual authorizations actually expanded the scope of investment. In addition to this, the CJK Trilateral Agreement has repeatedly mentioned that the domestic

laws and regulations of the contracting parties should be applied, which was not mentioned in the previous China-Japan BIT or China-Korea BIT^[21]. Two factors might account for this: on the one hand, China's consistent conservative attitude retained its autonomy while opening up to the outside world; on the other hand, the CJK agreement did provide solutions for conflicts between such agreements and domestic laws, making the content of the agreements more maneuverable.

Overall, the investment agreement between China and Japan is getting closer and closer to the US-based investment agreements, but there is still a gap in terms of policy transparency, and investors are not given the opportunity to participate in consultation and cooperation^[22]. Similarly, the CJK trilateral agreement does not contain relevant provisions on labor treatment, etc. This point needs to be supplemented in the future. Although there are some shortcomings, the CJK trilateral agreement provides investors with better protection than the 1988 China-Japan BIT, and the intellectual property rights, transparency and environmental protection clauses covered by it are more in line with the development themes of the new century. At the same time, the CJK trilateral investment agreement shows sufficient respect for the power of the host country and provides considerable protection, which makes the specific provisions of the agreement more convenient to be implemented, and also allows investors to foresee earlier risks. In 1988, the China-Japan BIT, as a witness and promoter of the rapid increase in China-Japan trade, accomplished its historical mission relatively perfectly. As for the 2012 CJK investment agreement, an outpost for negotiations on the China-Japan-Korea Free Trade Agreement, it did not enter into force until 2014. Therefore, this agreement has not been outdated in fact, and it is even quite forward-looking in many terms. As for its role in the effective period, it cannot be concluded. At the same time that the CJK investment agreement was signed, RCEP negotiations were also in full swing. The difference between the investment chapter of the latter and the former, and how much impact it can cause, require detailed analysis.

3. Analysis of RCEP Investment Chapter

RCEP's detailed rules on investment are concentrated in Chapter 10^[23]. Its structure is similar to most investment agreements, but there are many details worth considering. The purpose of writing the RCEP investment chapter is to clarify the complicated investment agreement relationship between RCEP member states to improve efficiency, protect and promote investment. As of 2013, ASEAN and its 6 member states had a total of more than 80 BIT, multilateral investment agreements or regional trade agreements^[24]. Desire to integrate so many investment agreements and take into account the needs of all member states means that the investment chapter of RCEP is either broad enough to be acceptable to all members, or many rules are derived for the different situations of each member state. Judging from the officially signed RCEP provisions, it has taken into account as many special circumstances of the member states as possible, and has made more restrictions on the specific circumstances of the entry into force of the provisions. For example, the most-favored-nation treatment principle in Section 4 does not apply to Cambodia, Laos, Myanmar and Vietnam. In this way, on the one hand, RCEP's investment clauses set a framework for RCEP's internal investment behavior and investment protection, and on the other hand, it also gives member states enough room for discretion. These need to be supplemented by subsequent supplementary clauses or new investment and trade negotiations based on the RCEP investment framework. In other words, it is evident that part of the investment chapter of RCEP is left blank that subsequent supplementary agreements become necessary. Therefore, even after the signing of the RCEP, the CJK(China-Japan-Korea) FTA negotiations have not been suspended. On the contrary, the two are considered to be mutually reinforcing^[25]. That is to say, the signing of RCEP will contribute to the further advancement of the CJK free trade zone negotiations, and the FTA negotiations will also be beneficial to the continuous improvement and development of RCEP. Therefore, this article will continue to compare the investment chapter of RCEP with the investment agreement reached by CJK, in order to obtain further development direction of the investment agreement of China, Japan and South Korea, and hence further development direction of the investment agreement of RCEP member states.

3.1 Difference in Structure

As far as the overall structure is concerned, the RCEP investment chapter can be divided into four parts: investment definition and scope, investor treatment, obligations and rights of contracting parties, and terms of promotion and facilitation of investment. It is important to note that the RCEP investment chapter does not stipulate an investment dispute settlement mechanism, but regards it as a matter to be discussed, which is different from any existing investment agreement. RCEP has its own dispute settlement mechanism, but it is slightly different from other investment agreements. In Chapter 19, which

is independent of the investment chapter, a separate display of the RCEP internal dispute settlement mechanism is the first consultation and mediation. If the consultation fails, an expert group will be set up to conduct evaluation and review procedures in accordance with the "Procedures of the Expert Group". In addition, the investment chapter additionally mentions the dispute settlement method that is coordinated and handled by the relevant authorities of the host country when foreign investors make complaints. However, none of the dispute settlement approaches involved alternative solutions submitted to international investment arbitration in accordance with the Washington Convention. This may be due to the complicated situation of the RCEP member states and deliberate evasion for the convenience of negotiation and other factors. In fact, since Laos, Cambodia and other countries are not formal members of the Bernier Convention, RCEP negotiations in fields such as intellectual property rights are difficult, and therefore the transition period enjoyed by these countries is stipulated in the annex to Chapter 11. Under the premise of so many exceptions, the dispute settlement mechanism stipulated by RCEP is consultation and mediation. If it cannot be resolved, the expert group will study and discuss a special way to deal with relevant affairs, which is more like a compromise in complex situations. In international investment and trade, from the perspective of negotiation and mediation, the host country is undoubtedly in a more advantageous position. Even if other countries mediate, diplomatic factors must be taken into consideration. Moreover, it does not establish a special investment dispute settlement institution, nor does it rely on existing dispute settlement treaties and regulations, but adopts the method of setting up expert groups to handle special matters, which also adds a lot of costs to dispute settlement. This is the respect and protection of the sovereignty of member states. It also means that RCEP, as an economic and trade organization, has maintained great political restraint. In fact, in the RCEP investment chapter, this kind of compromise to respect the sovereignty of the host country is not only reflected in the dispute settlement mechanism, but often seen in other sectors as well.

3.1.1 Investment Facilitation

The investment chapter of RCEP also lists investment facilitation as a separate section in addition to investment promotion. In Section 17, it stipulates that contracting parties 'shall' simplify the application and approval procedures to provide conditions for investment facilitation. However, it is also mentioned that this section is only an initiative and cannot be used as a mandatory obligation or the object of dispute settlement. RCEP puts the intervention of the investor's senior management and the board of directors into a separate section, clarifying that the host country can stipulate the nationality of most members of the board of directors of the investing legal person without affecting the actual investment capacity. However, the host country cannot regulate the nationality of candidates for a particular senior management position. The provisions of the investment agreement on senior managers and the board of directors previously appeared in the ASEAN Comprehensive Investment Agreement, but were not mentioned in the China-Japanese agreement ^[26].

3.1.2 State Reservations

Section VIII of this chapter, as well as Annex 2 and Annex 3 of RCEP, which show the reservation measures of countries that do not comply with the provisions of the investment chapter. Take China and Japan for example. China prohibits foreign investors from investing in breeding or genetically modified projects related to plantation and animal husbandry, and projects that explore the continental shelf or natural resources are also prohibited. In addition, China has maintained many laws and regulations related to natural resources and financial securities access qualifications. Japan, on the other hand, requires the qualification review and impact review of foreign investors in places where agricultural-related industries are invested, and has maintained the original approval process and requirements in the acceptance of investment in a considerable number of industries. These are part of the RCEP treaties inconsistent or contrary, but Section 8 lists these exceptions. This is still out of the consideration of respect for the sovereignty of the host country, and also out of the consideration that RCEP, as a purely economic agreement, does not interfere in the internal affairs and customs of countries. However, another clause with RCEP characteristics, Chapter 10 of the Investment Chapter, lists two exceptions to most-favored-nation treatment and national treatment. One is the part of the procedures established by the host country. As long as it does not cause substantial damage to the investment protection agreement, even if it is only for foreign investors, it will not be interpreted as a violation of the principle of national treatment. The other is that contracting parties can require investors to provide information related to their investment, but at the same time, they should protect secret information from being disclosed, so that revealing information itself will not become a factor that harms investors' interests or damages their competitive position. This provision provides convenience to the host country at the information level, and does not cause excessive obstacles to investors, facilitates the management of the host country and respects the laws and regulations of the host country. RCEP has also set up a special exception clause, that is, no

contracting party shall be required to disclose any information related to its security interests, and if the contracting party is for the maintenance of international peace or its own security interests, the provisions of the RCEP investment chapter are not binding on it. The above is the structural difference between the RCEP investment chapter and the CJK trilateral agreement.

3.2 Differences in Applicable Rules

3.2.1 Definition and Scope of Investment

A detailed study of the RCEP rules also indicates that it is different from the investment agreement represented by the CJK trilateral agreement. The first difference lies in the definition and scope of investment. However, the main difference goes to the definition and wording of intellectual property rights. In the RCEP text, intellectual property rights and goodwill are grouped together, and they need to be recognized by the laws and regulations of the host country before they can be integrated in the scope of protection of the investment chapter. This is mainly due to differences in the protection of intellectual property rights within RCEP member states. In particular, the situation of intellectual property protection within ASEAN member states is complicated. As ASEAN has always pursued the principle of internal negotiation of consensus and non-interference, many negotiations on intellectual property rights have been shelved^[27]. Most of the ASEAN countries are former colonies of Britain, France and the Netherlands, so their legal systems are also close to these three countries. Regarding international property rights protection treaties, ASEAN countries mentioned in the first action plan for the protection of intellectual property rights signed in 2004 that all ASEAN countries should join the Paris Convention. In fact, Myanmar is still not a member of the Paris Convention. In the 2011 Intellectual Property Protection Plan, ASEAN countries agreed to join the Intellectual Property Framework of the Patent Cooperation Treaty and the Hague Agreement. So far, Myanmar has not been a member of the PCT, and only Indonesia, Malaysia and Thailand have actually joined the Hague Agreement^[28]. It can be seen that the ASEAN countries have not yet been under a unified international intellectual property protection contract, and that is why intellectual property is not clearly defined in the investment chapter of RCEP. Furthermore, RCEP has made more detailed provisions on prohibiting performance requirements, and the CJK trilateral agreement applies the relevant provisions in Annex 1A of the WTO Agreement and prohibits discriminatory provisions on technology export technology transfer. Obviously, the RCEP chapter has made a more expanded explanation of this part, listing the relevant regulations that the host country does not allow for investor performance. These include not stipulating local content, not stipulating that host country goods must be purchased, and not setting various restrictions as terms for continuing to provide preferential conditions. Making terms and rules not only can clarify the scope of investors' rights protection, further protect investors' rights, but also facilitate the management of the host country and improve the efficiency of trade and investment administrative measures. This is also an increasingly common form of terms in BITs. Performance prohibition requirements have gradually become the mainstream of the newly set BITs^[29].

3.2.2 Transfer of Assets

Regarding the transfer of assets, RCEP is also slightly different from the CJK agreement. There is no difference between the two in terms of the types of asset transfers related to permitted investments, but the RCEP is more detailed and complete than the CJK agreement in terms of the categories where contracting parties are allowed to prevent or delay transfers. In the fourth paragraph of Section 13 of the CJK Investment Agreement, the host country is allowed to prevent or delay the transfer in order to ensure compliance with the trial procedures or to ensure that the judgement is made. In RCEP, this clause is expanded to ensure that the transfer is allowed to be prevented or postponed when a judicial or administrative order is complied with, and when required by the law enforcement or financial regulatory authority, to report or file the transferred assets, allowing blocking or postponing the transfer. In addition to the items mentioned in the CJK agreement, RCEP further extends to a series of matters such as taxation, social insurance, and employee severance expenses. At this point, RCEP is more complete and refined than the CJK protocol.

3.2.3 Expropriation and Compensation

In terms of the host country's expropriation and compensation for overseas investment, RCEP also uses different wording and makes a new interpretation of the compensation requirements. In the CJK agreement, it is mentioned that the expropriation should comply with the laws and international standards of the contracting parties, while the RCEP deletes the international standards and only requires due legal procedures. In addition, RCEP requires no delay in payment of compensation for expropriation, which

can be effectively realized and transferred, and is in line with fair market value. Not adopting international practices but only applying the host country's legal procedures can be understood as a consideration of care and respect for the more conservative member states, while the detailed expropriation and compensation clauses have taken a further step in the process of investor protection. Although expropriation, a way for the host country to manifest its coercive power, is not friendly to investors, if such a situation is encountered, it can only expect sufficient compensation. And RCEP avoided the problem as to whether the investment expectations can be included in the scope of compensation^[30]. However, RCEP stipulates that if compensation is delayed, interest must be paid, and if land is expropriated, it must follow the laws of land market value and relevant laws of the host country and land expropriation. These are further compensations for investors and protection of investors' rights.

3.2.4 'Denial of Benefits' Clause

Similar to the CJK agreement, RCEP also has a 'denial of benefits' clause. Compared with the CJK protocol, RCEP has made improvements and explanations on this. CJK takes the perspective of being in compliance with the "denial of benefits" clause on the host country, taking the host countries as the starting point, stipulating that it can refuse to give preferential terms to investors under the following circumstances: the investors are owned or invested by the non-parties and the host country can maintain certain measures for non-parties or the contracting party has not maintained normal economic ties. The RCEP takes a further step on this basis, not only from the perspective of the host country, but also from the perspective of the investor, pointing out that if the investor does not carry out actual investment activities or is owned or controlled by a non-party that the contracting party refuses to grant benefits, the investor might be denied benefits. Compared with the CJK agreement, the terms of the RCEP are clearer for investors, giving them the possibility to avoid possible risks. And RCEP extends the scope of parties' refusal to grant benefits from non-contracting parties that have taken measures to prohibit transactions to parties that have not established diplomatic relations. This provides the contracting states with more options for overseas investment and fully respects the diplomatic positions of the contracting states. In addition, RCEP violates the relevant laws and regulations of the host country to carry out FATF (Financial Action Task Force) anti-money laundering work and also applies the "denial of benefits" clause to highlight the cooperative attitude of RCEP in anti-money laundering work. RCEP also lists exceptions for Thailand and the Philippines, due to differences in the definition of legal persons and anti-fraud laws between these two countries. Therefore, these two countries are allowed to make limited and expanded interpretations in the "denial of benefits" clause.

3.3 Improvement of RCEP

Regarding the summary of the differences between the RCEP investment chapter and the CJK investment agreement, it can be figured out that RCEP has improved to a certain extent. It has done more in terms of detailed and specific terms, and has also increased the protection of investors. RCEP makes a considerable part of the investment clauses easier to implement, and clearly demarcates the rights and interests of investors. These are the areas where RCEP has improved. But at the same time, as a free trade agreement that involve many countries and the situation of which is complicated, RCEP has to take into account the complicated specific conditions of the member states. Therefore, there are exception clauses under many clauses, or a time limit for the member states to reach an agreement. And as a purely economic collaboration, RCEP has maintained considerable restraints in political and diplomatic stances. This is the protection of the sovereignty of member states, and part of the reason for the hindrance to investment and investment protection.

Therefore, RCEP has considerable advantages in terms of definition details and operability of terms. However, since the dispute settlement mechanism has not been discussed, the overall dispute settlement method of RCEP can only be used temporarily. However, this dispute settlement method of mediation and negotiation, the establishment of a special expert group upon failure of the negotiation, is not suitable for the settlement of investment disputes. RCEP still needs a special arbitration committee or the content of other international treaties to improve this part. At the same time, due to the complexity of its members and its own limitations, RCEP often chooses to evade when the content of the agreement comes into contact with national sovereignty. This makes RCEP attach great importance to the sovereignty of member states and make some concessions in investor protection.

4. Impact of RCEP Investment Chapter

China, Japan and South Korea are the three largest countries and relatively the more developed three

countries among the RCEP member states, and their degree of development has exceeded the average. When the reference value of the CJK Trilateral Investment Agreement for other member states is studied, it is necessary to take into account the different levels of development and the protection of developing countries. Southeast Asian countries are gradually accepting industrial transfers from China, Japan and South Korea, and their development trajectory is partly similar to that of China in the 1980s and 1990s^[31]. Therefore, the direction of the China-Japan-Korea agreement is of great significance to the study of the future development direction of investment agreements under the RCEP framework. From the above research, it could be found that the RCEP investment chapter has been left blank in many aspects for the acceptance of member states and easier negotiation. These also await the pilot experiment of the China-Japan-Korea investment agreement to fill in the deficiencies in the follow-up supplementary agreement of RCEP. Moreover, the China-Japan-Korea investment agreement will also affect the investment agreements signed by other RCEP member states with these three countries, and correspondingly, these investment agreements will constitute a new basic framework for the RCEP internal investment market. Therefore, the study of the CJK trilateral investment agreement is the study of the future RCEP internal investment legal framework, and the study of the changes in the CJK trilateral agreement is the study of the changes in the investment agreements of the RCEP member states after the RCEP is signed.

For the three countries of China, Japan and South Korea, from an international perspective, RCEP provides them with a larger free trade platform. From the perspective of free trade zone negotiations between the three countries, the signing of RCEP has paved the way for subsequent negotiations in many areas because they have reached a certain degree of consensus^[32]. Similarly, in the RCEP investment chapter, the improvement of RCEP also points out the direction for the signing of the follow-up investment agreement between China, Japan and South Korea. Therefore, the signing of RCEP has a positive role in promoting the negotiation of the China-Japan-Korea Free Trade Area, and may accelerate market integration in Northeast Asia and promote the continued development of East Asia toward regional economic integration^[33]. Regarding the content of the investment agreement, compared with RCEP, the CJK investment agreement can adjust the terms according to specific conditions of the three countries to make the content of the agreement closer to the actual investment environment and solve more actual investment problems. Moreover, the cooperation among the three countries must be deepened for the following reasons: the CJK three countries coexist in more international treaties and have more similar objective conditions; Japan and South Korea are eager to further expand their share of the Chinese market; and China also hopes to receive technical and management experience support from Japan and South Korea^[25].

Regarding the differences between the RCEP and CJK agreements from the perspective of chapters and paragraphs, as mentioned above, which parts are helpful to the CJK follow-up investment agreement has become a problem that needs to be resolved. RCEP restricts the host country's requirements for the nationality of senior investors and the board of directors. Although this clause is derived from the ASEAN investment treaty, it can indeed make up for the shortcomings of the CJK investment agreement. This clause will inevitably become a part of the CJK follow-up investment agreement. The CJK three countries have the freedom to choose whether or not to absorb different exception clauses stipulated in RCEP according to various situations. Regarding RCEP's investment facilitation clauses, the CJK three countries can absorb them and make changes that are more in line with the three countries' actual conditions. Since the three countries' investment agreements in 2014 originally included provisions to promote investment, it is not difficult to add these facilitation provisions on this basis.

As far as the dispute settlement mechanism is concerned, the three CJK countries have already had a relatively perfect mechanism, not as vague as that in RCEP^[34]. Similarly, China, Japan and South Korea are seeking in-depth cooperation in intellectual property protection, and as China is transforming into an innovation-driven economy entity, the standards for such cooperation will become higher and higher^[35]. Therefore, in the investment agreement of the CJK three countries, the intellectual property protection standard will be higher than the RCEP standard, and there is no need to lower the standard when join the RCEP. In addition, the environmental protection clause mentioned in the CJK investment agreement, as a newly added clause of the CJK three countries, is increasingly being mentioned in the international investment agreement^[36], which is a higher standard proposed by the CJK three countries in the development process. Therefore, although this clause is not covered in the RCEP investment chapter, this is an improvement of the CJK agreement compared to RCEP, or at least a clause that is more in line with the law of international demand and should be retained.

Starting from the details of the investment agreement, the CJK agreement was signed earlier after all, and many of the details are not as detailed as the RCEP, so it is necessary to follow the RCEP, and can extend and go further along the direction indicated by the RCEP. Starting from the prohibition of

performance requirements, the CJK agreement borrowed WTO regulations, but it was not as detailed as RCEP. The follow-up investment agreement can either imitate RCEP to display these prohibited items and make improvements or directly quote the RCEP text and make additions and changes based on its actual situation. Regarding the preventable items of transfer, the coverage of the CJK agreement also needs to be added. In fact, in the subsequent international investment agreements signed by China, for example, the BIT between China and Turkey in 2015 has included the settlement of taxes^[37], employee salaries and other expenses in the circumstances where the parties can delay or organize the transfer of assets. Therefore, the CJK investment agreement will inevitably develop in this direction. Under the terms of expropriation and compensation for expropriated content, CJK can also imitate RCEP's protection of investors in terms of compensation, and apply expropriation compensation clauses that may communicate and compensate more promptly. In the "denial of benefits" clause, since the three CJK countries have signed the RCEP and are not within the scope of the exception clause, CJK can also apply the denial of benefits clause in the RCEP investment chapter.

In conclusion, RCEP is the basis for the CJK three countries to continue to explore ways to protect and promote investment through investment agreements. RCEP has a large number of member countries and a large trading system. However, due to the large number of member countries and the huge differences between the member countries, it is difficult to maintain a unified pace in the promotion of investment despite the investment chapter of RCEP. Only the investment agreement signed by China, Japan and South Korea can carry out further cooperation and be more flexible in dealing with the terms of the agreement. China plays the role of the first importer and important exporter of investment in the international market, which affects China's views on international investment and investment protection.

5. Future Development of the RCEP Investment Chapter

For China and Japan themselves, it is necessary to continue to advance the changes in the investment agreement. China plays the role of the first importer and important exporter of investment in the international market, which affects China's views on international investment and investment protection^[38]. Therefore, in subsequent agreements, China will inevitably promote the protection of investors. Japan, on the other hand, has long maintained an attitude of exchanging money for materials in international trade, and strives to achieve a balance in the geographical distribution of international trade^[39]. On this basis, joining CPTPP and RCEP is also an important part of Japan's strategy^[40]. As an important international investment exporter, Japan's position on investor protection will not change, and it can be assumed that it is trying to play a more important role in RCEP^[41]. South Korea's situation and position are basically the same as those of Japan. Therefore, the next investment agreement of the three CJK countries will go further than RCEP in terms of investor protection. The in-depth economic cooperation of the three countries will help to abandon some sovereignty obstacles in the investment field and further promote the development of investment policies.

On this basis, the follow-up development of the RCEP investment chapter and the parts could be explored that other member states of RCEP can learn from the CJK investment agreement. First, the discussion part mentioned in the last section of the investment chapter of RCEP gives a hint, namely, the investment dispute settlement mechanism and whether the levy provisions in the investment chapter should be applied to tax measures that constitute levy. As mentioned above, the current investment chapter of RCEP lacks provisions on dispute settlement mechanisms. Although there is an overall RCEP expert group solution, the cost is too high, and the pre-mediation of the parties is not suitable for the settlement of disputes between investors and the host country. Therefore, the establishment of an efficient investment dispute arbitration institution and the study of a suitable investment dispute settlement procedure are issues that RCEP must first solve in the investment field, or at least a compromise method acceptable to all parties needs to be found.

Second, regarding whether taxation measures that meet the definition of taxation can be applied to the taxation clauses in the investment chapter of RCEP, since taxation is an important source of public finances in a sovereign country, and it is inseparable from the sovereignty of the contracting member states, making negotiations on this more difficult. Considering RCEP's political restraint and the complexity of RCEP member states, the prospects for the passage of this issue are relatively pessimistic. Except for the two items already under negotiation, RCEP's cooperation in the field of international investment is still inferior to the 2014 CJK investment agreement in terms of intellectual property rights, environmental protection, and transparency of parties. Due to the complex situation of RCEP member states, especially ASEAN, it is necessary to judge according to the intellectual property chapters in RCEP and whether countries can reach agreement goals after the transition period. The final result is difficult

to predict.

Third, as for environmental protection, traditional Western countries such as New Zealand and Australia generally support environmental protection^[42], while ASEAN countries' attitudes towards environmental protection are quite different. All ASEAN members except Singapore are developing countries, and have long held an attitude of economic development higher than environmental protection. However, with the change of international public opinion and the gradual maturity of the environmental protection industry, while ASEAN countries' attitudes towards environmental protection are quite different^[43]. Therefore, although there is still a long way to go to carry out specific environmental protection cooperation action, it is still very hopeful to reach a consensus in the investment agreement to add a general protection clause.

Forth, in terms of transparency, the investment facilitation clause in the RCEP investment chapter has been used as a foreshadowing, and it is relatively easy to reach as a whole. However, since investment facilitation is not an obligatory treaty in the RCEP but only a proposal, the guarantee of transparency may be added in the form of supplementary clauses at a later stage. The RCEP investment chapter is the foundation of the CJK follow-up investment agreement, and the CJK investment agreement is also the forerunner of RCEP investment cooperation, which has reference significance for both RCEP and other member states of RCEP^[44].

Therefore, RCEP is limited by its scale and the complexity of its internal situation, and its innovations in the investment field are limited, but it still has its advanced nature. Compared with the CJK agreement, each has its own advantages and disadvantages. As an earlier investment agreement, the CJK agreement does need to be amended according to the RCEP investment chapter. At the same time, the RCEP investment chapter itself is also in an unfinished state, and its completion is subject to follow-up discussions and negotiations and the adjustment of the transition period of each country. In any case, the investment chapter of RCEP is promoted by RCEP member states to supervise investment activities. It is also a platform for negotiation and communication in case of conflicts.

6. Conclusion

The successful signing of the RCEP is of great significance to the economic integration of the West Coast of the Pacific, and it has also brought about tremendous changes to the East Asian investment market. Before the signing of RCEP, there were 89 bilateral investment agreements and multilateral investment agreements in East Asia. The legal frameworks overlapped each other and were very complicated. Therefore, the investment chapter of RCEP plays a role in promoting investment protection on the one hand, and on the other hand, it also aims to unify the investment agreements in East Asia and Oceania so that the investment chapter can function under the same platform. When studying the difference between the RCEP investment chapter and the existing investment agreement, and the impact of the RCEP signing on subsequent investment agreements, China and Japan, as the largest and second largest economies in the RCEP member states, are appropriate enough to be selected as representatives of the research objects. Since the normalization of diplomatic relations between China and Japan in 1972, the volume of trade has grown rapidly, and mutual investment has also increased year by year. On this basis, China and Japan signed the first bilateral investment agreement in 1988 and achieved excellent results in the 1990s. However, with China's entry into the WTO, with the emergence of industrial changes and other new trends, it was baffling for this agreement to adapt to the investment environment in the new era. In 2012, the first step was taken in the negotiations between China, Japan and South Korea to establish a free trade zone. The three countries signed a new investment agreement, improving the original China-Japan agreement which came into effect in 2014. This CJK agreement and subsequent RCEP investment chapters have their own advantages and disadvantages. A detailed analysis of the differences will help determine the impact of the RCEP signing on the existing legal framework in the investment field.

Overall, the RCEP investment chapter is more detailed and specific in terms of rules than the CJK agreement. For example, in terms of prohibiting performance requirements and the host country's prohibiting or delaying the transfer of investment assets, RCEP provides more detailed and specific explanations. But in terms of intellectual property protection, transparency, and awareness of environmental protection, RCEP is not as far-reaching as the CJK agreement. This is due to the complexity of RCEP member states, which directly leads to the difficulty of the negotiation. At the same time, since RCEP is only an economic cooperation agreement, it has maintained as much restraint as possible on issues involving the sovereignty of member states. At this point, although RCEP sets a

transition period for countries to reach agreement conditions, after all, it is impossible for it to guarantee the ultimate effect. Moreover, since the RCEP investment chapter does not have a complete dispute settlement mechanism, this has to be left to the subsequent negotiations to complete. During this period, disputes can only be resolved by means of good offices, negotiation, and the high-cost expert group model additionally stipulated by RCEP. Therefore, RCEP has promoted the development of investment agreements between its contracting states to a certain extent, but it also has a number of defects. The two-party or tripartite investment agreement can be modified according to the specific conditions of the contracting states. Coupled with the in-depth cooperation of the contracting states outside the economic field, sovereignty disputes can be avoided to a certain extent, so it is more flexible, and it can also go further on the road of protecting the rights and interests of investors and promoting investment. The signing of the CJK investment agreement has taken place in recent years, therefore, it is relatively new as the representative of all investment agreements. However, the investment agreement whose content aims to meet the needs of investment protection still needs to be further revised and improved, especially in terms of various definitions and measures that need to be implemented or even ahead of the RCEP. The CJK agreement and its subsequent amendments that may be made in accordance with RCEP can be used as a blueprint for other RCEP member states to sign investment agreements with these three countries. Because the development trajectory of some ASEAN countries is similar to that of China at the end of the 20th century and the beginning of the 21st century, the China-Japan 1988 Agreement and the CJK2012 Agreement also have considerable referential value^[45].

This article starts with the Sino-Japanese investment and trade relationship, trying to explore the impact of RCEP's investment chapter on the investment agreements of its member states. Since there is no specific analysis of the investment and trade situation of other member states, the results obtained may not be accurately reflected in each member state. Therefore, further specific analysis might be a possible direction of future research. In addition, some RCEP clauses are still under discussion. Whether they will be amended or filled in the near future is still unknown. That also accounts for the limitations of this article. RCEP is scheduled to take effect on January 1, 2022. Currently, it has not been approved by the parliaments or other legislative bodies of all member states, and there may still be variables. How will RCEP react to the common state of living with COVID-19? It could be said that at the beginning of the establishment of RCEP, its destiny is bound to be rough. However, its signing itself is an important process of East Asian economic integration, and its investment chapter must also play a major role in the East Asian investment market. After the RCEP takes effect, it is necessary to study the effects of the new international investment legal system in East Asia established in its investment chapter. It is also necessary to integrate the impact of COVID-19 on the economy, the rise of nationalism, and the impact of trade protectionism. However, the overall impact of RCEP on the investment market can still be optimistic, and the remaining impact needs to be further explored in subsequent studies.

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