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The Evolution of Host Country Regulatory Authority from an International Investment Perspective

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Abstract: With the advancement of economic globalization, the regulatory authority of host states, as a pivotal component of international investment law, has garnered significant attention and represents a common challenge faced by nations in international investment. This paper focuses on the evolution of host state regulatory authority within the framework of international investment law, elucidating its origins, the gradual decline of traditional regulatory powers and associated issues, as well as the recent trend and challenges of the resurgence of host state regulatory authority exemplified by agreements such as RCEP. The research reveals that while contemporary host state regulatory authority has been somewhat reinforced, it still grapples with issues such as ambiguous provisions, inadequate investment arbitration mechanisms, and an excessive trend towards strengthening regulatory powers. It is imperative to address these concerns by centering on the balance of interests between host states and investors, refining and clarifying substantive rules, and establishing a fair and transparent procedural system. This approach will ensure that host state regulatory authority effectively and reasonably safeguards both investors and host states, thereby fostering the sound and sustainable development of international investment.

Keywords: Regulatory Power, International Investment, RCEP, ISDS

1. Introduction

Amid the rising tide of economic globalization, multinational enterprises have flourished globally, with foreign direct investment (FDI) reaching an unprecedented scale. In 2024, global FDI totaled $1.4 trillion, marking an 11% year-on-year increase. Against the backdrop of such substantial overseas investment, multinational corporations frequently encounter widespread and recurrent interest disputes with host countries during their international operations, with political risk emerging as a significant concern. According to the PwC White Paper on Risk Management for Chinese Enterprises' Overseas Investments, 75% of surveyed enterprises reported encountering political risks during their overseas investment endeavors.

Host state regulatory authority, also referred to as the regulatory autonomy of the host state, denotes the sovereign power of a government to implement normative measures for social governance and the preservation of public interests, with the objective of prohibiting investors from utilizing their property in a manner detrimental to societal welfare.

Indirect expropriation risk, as a quintessential form of political risk, is intrinsically linked to the host country's regulatory authority. The U.S. House of Representatives defines indirect expropriation

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as discriminatory treatment towards foreign investors, alterations in foreign investment policies, compulsory nationalization, and other measures by which the host country impedes foreign investors from effectively managing their corporate assets, thereby constituting de facto expropriation [1]. A case in point is the Qatari government's 2004 adjustment to its "sleeping sponsor" policy. Qatari legislation mandates that multinational corporations must establish joint ventures with Qatari nationals in specific equity proportions to engage in profit-making activities within the country. However, in practice, foreign nationals were previously permitted to operate independently, with Qataris serving merely as nominal majority shareholders in the capacity of sleeping sponsors. In July 2004, the Qatari government enacted new legislation prohibiting this practice, with penalties including asset confiscation, license revocation, fines, and imprisonment for up to one year, thereby exposing numerous foreign enterprises to the risk of indirect expropriation [1].

In confronting the mandatory and authoritative regulatory powers of host states, multinational corporations rely on provisions within international agreements to safeguard their interests. However, the protective obligations enshrined in traditional International Investment Agreements (IIAs) and the binding arbitration outcomes of the investor-state dispute settlement mechanism excessively emphasize investor protection at the expense of undermining host states' regulatory authority, resulting in a severe imbalance in the protection of both parties under international investment law. For instance, the lack of clarity in arbitral tribunals' application of the Fair and Equitable Treatment (FET) clause has created opportunities for investors to abuse their rights, rendering host states' regulatory powers effectively null and void.

The genesis of host state regulatory authority stems from the convergence of national sovereignty and the evolution of international trade and investment, inherently embodying sovereign attributes that represent a nation's autonomy in governing political, economic, legal, and other domains within its territorial jurisdiction [2]. This authority plays a pivotal role in safeguarding the public interest of host states in international investment activities, particularly in balancing economic development with national security for developing nations. Initially, the international community's emphasis on investment promotion led to a lack of attention to regulatory authority. However, with the advancement of global economic integration, the distinction between capital-exporting and capital-importing countries has become increasingly blurred, giving rise to new developmental trends in host state regulatory authority. The international community has begun to strengthen its protection, making the recognition and safeguarding of host state regulatory authority a shared challenge and aspiration in the new era of international investment development [2].

Therefore, refining the balance between investor rights and host state regulatory authority under international investment agreements not only facilitates the protection of national interests by individual states but also enhances the ability of multinational corporations to predict and mitigate potential investment risks in their foreign operations. This balance promotes the flow and efficiency of international investments, thereby contributing to global economic prosperity.

This paper investigates the historical evolution and emerging trends of host country regulatory authority, and based on this analysis, proposes comprehensive recommendations for enhancing the regulatory framework. The objective is to facilitate its better integration into the trajectory of international investment development and to establish a rational equilibrium with multinational corporations.

2. The evolution of host state regulatory authority

The development of host state regulatory authority in the field of international investment has undergone three distinct phases. The initial phase was characterized by the neglect of host state regulatory authority in traditional international investment agreements. Subsequently, the second phase witnessed an excessive emphasis on investor protection, leading to the compression of

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regulatory space for host states within investment agreements. The current phase reflects a concerted effort by nations to promote balanced development between investor protection and host state regulatory authority, marked by initiatives to reform arbitration mechanisms and enhance investment agreements [3].

The evolution of host state regulatory authority adapts to different stages of international investment development, reflecting distinct implications across various eras. Corresponding to the inception, expansion, and maturation phases of international investment, it demonstrates a curvilinear trajectory from dominance to decline and subsequent reinforcement. The analysis of the transformation of host state regulatory authority necessitates a comprehensive examination of international investment agreements and related mechanisms, which in turn provides practical references for the refinement of international investment law.

2.1. From dominance to decline: the evolution of traditional host state regulatory authority

In the context of international investment, host state regulatory authority primarily addresses issues concerning national security, public health, public morality, environmental protection, and human rights, all of which are intrinsically linked to the public interest of the host country. During the nascent stages of international investment development, the resolution of traditional international investment disputes predominantly occurred through domestic judicial channels within the host state, adhering to the Calvo Doctrine, which emphasizes the principle of territorial sovereignty in handling such disputes. During this period, host states were granted extensive regulatory freedom to safeguard their public interests, while foreign investors seeking remedies within host states often encountered significant obstacles in obtaining effective relief[3].

With the maturation of international investment and the rise of investment liberalism, countries have increasingly focused on protecting investor rights and constraining host state regulatory authority when negotiating investment agreements. This trend stems from the dual imperatives of capital-exporting states to establish fair and secure investment environments for multinational corporations, and capital-importing states to attract foreign investment through regulatory concessions. The proliferation of international investment agreements incorporating investor protection provisions has led to a significant development: the broad and expansive interpretations of often ambiguous treaty provisions by arbitral tribunals exercising discretionary powers, resulting in the erosion of host states' regulatory rights. This phenomenon reflects the prevailing dominance of investment liberalization over the protection of host states' infant industries and public interests [4].

In terms of host state obligations, investment agreements mandate that host countries adhere to stringent standards, including providing national treatment and fair and equitable treatment to investors, ensuring the legality of expropriation, and maintaining reasonable compensation criteria. Many of these provisions are related to the host state's regulatory authority, such as the fair and equitable treatment clause, the most-favored-nation clause, and the umbrella clause. These are common areas where investors challenge the host state's regulatory authority under the ISDS system.

In international investment arbitration, the Fair and Equitable Treatment (FET) clause in Bilateral Investment Treaties (BITs) represents the most frequently invoked provision by investors seeking claims. This clause mandates the provision of a stable and predictable legal and commercial environment, ensures the protection of investors' legitimate expectations, and does not require the demonstration of arbitrariness or bad faith as stipulated by traditional international law standards. Any violation of the FET clause necessitates compensation. Recent international investment treaty arbitration cases have established a new international standard by broadly interpreting the FET clause based on the principle of good faith, scrutinizing host states' actions. A breach is deemed to occur when the host state fails to provide a stable legal and commercial environment or adversely affects investors' fundamental expectations. This interpretation has conferred privileged status upon foreign investors, often at the expense of host states' legitimate exercise of regulatory authority[5]. For instance, in the 2002 Azurix v. Argentina case, Azurix Corp., a subsidiary of the American company Enron, secured the water supply and treatment project in Argentina's capital. However, operational issues such as low water pressure and poor water quality emerged, prompting the government to advise citizens against using the treated water. Azurix initiated international investment arbitration, alleging that Argentina's actions violated the FET clause in the US-Argentina BIT and caused substantial losses. The arbitral tribunal ruled that Argentina had indeed violated the FET clause and ordered compensation of $165 million to Azurix. Within the historical framework of bilateral agreements in international investment, the mechanism of international investment arbitration has been subject to misuse, resulting in a significant imbalance between investor protection and host state interests.

Furthermore, provisions such as the umbrella clause—which transforms purely contractual obligations between the host state and investors into obligations under international law; the most-favored-nation (MFN) clause—which introduces dispute resolution provisions from third-party treaties into the arbitration of cases under the foundational treaty; and the indirect expropriation clause—where the definition, criteria for determination, and exceptions for indirect expropriation are inconsistent and ambiguous. In recent international investment law practices, the "sole effects doctrine" has emerged as the predominant theory among various criteria for determining indirect expropriation[6], leading to an expansive interpretation of indirect expropriation. These provisions significantly constrain the host state's exercise of regulatory authority, making it highly susceptible to challenges from investors, exposing it to the risk of compensation claims, and plunging it into the predicament of a "regulatory chill."

International investment agreements incorporate exception clauses to safeguard host states' regulatory authority beyond stipulating their obligations. However, the inherent ambiguity of these exception provisions, coupled with arbitration tribunals' propensity to favor foreign investors' interests, often leads to interpretations that prioritize investor protection through discretionary powers in investment dispute resolution. This tendency consequently undermines host states' public interests and regulatory sovereignty.

The national security exception has been widely adopted by numerous countries. For instance, the Bilateral Investment Treaty (BIT) concluded by the United States employs the term "essential security interests," while Germany's BIT uses "public security," and the investment rules in the 2009 Free Trade Agreement between China and Peru also adopt the phrase "essential security interests"[5]. However, there is no explicit stipulation regarding the severity of the security crisis required to invoke this exception. The determination of whether the national security clause is self-judging or non-self-judging—i.e., whether a state can autonomously assess the crisis level and take measures—has been subjectively inferred by arbitration tribunals based on the presence or absence of the phrase "it considers necessary" in the BIT's exception clauses. This traditional interpretation may contravene the state's sovereign will and pose risks to the exercise of its regulatory authority.

On the other hand, exceptions for public morals, public order, and public health (also known as general exceptions) [5] are less frequently incorporated into treaties by states. These exceptions can address the risk of investors disregarding the host country's public interests and seeking compensation by selectively applying BIT provisions. For example, in the case of Philip Morris v. Australia concerning plain packaging of tobacco products, the host country exercised its regulatory authority to protect public health, but the investor challenged this action under the "fair and equitable treatment" clause. The widespread application of general exceptions across BIT provisions can effectively curb investor abuse of litigation and arbitration bias, thereby safeguarding the host country's regulatory sovereignty.

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In summary, the regulatory authority of host countries has been consistently constrained by international agreements, with the international investment arbitration mechanism favoring investors. The regulatory rights of host nations have been persistently challenged by investors, resulting in inadequate protection of public interests and leading to a "regulatory chill." This has created a significant imbalance between investor protection and the rights and interests of host countries.

2.2. From decline to reinforcement: the new evolution of host country regulatory authority

With the evolution of international investment, the demarcation between capital-exporting and capital-importing nations has progressively blurred. Under the neoliberal investment framework, the infringement of investor rights upon host state sovereignty has become increasingly frequent and severe. The international community has initiated the implementation of the ICSID mechanism to complement the substantive reinforcement of host state regulatory authority within international investment agreements. This approach aims to rectify the previous overprotection of foreign investment interests, gradually enhancing the safeguarding of host state regulatory rights to achieve a balance between the protection of foreign investment interests and national public interests.

This paper examines the establishment and refinement of the Regional Comprehensive Economic Partnership (RCEP) to illustrate international reforms in investment agreements, thereby demonstrating the evolving trend of host countries' regulatory authority strengthening from specific cases to broader contexts. The RCEP member states, comprising China, Japan, South Korea, Australia, New Zealand, and the ten ASEAN nations, constitute the world's largest free trade agreement in terms of population coverage, encompassing countries at varying stages of development, thus holding profound exemplary significance. While maintaining the level of investment and trade liberalization, RCEP aligns with the prevailing international trend of enhancing host countries' regulatory authority, implementing reforms at the level of investment agreements.

The provisions regarding host state regulatory authority within the RCEP investment chapter are distributed across various articles of the agreement. These provisions, which reflect RCEP's emphasis on host state regulatory rights, are specifically articulated in the preamble, fair and equitable treatment clause, expropriation clause, non-discrimination treatment clause, exception clause, and dispute settlement mechanism.

The fair and equitable treatment (FET) provisions in RCEP are linked to customary international law, stipulating that foreign investors are not entitled to treatment beyond or exceeding the minimum standard of treatment, nor do they confer additional substantive rights to investors. These provisions clearly define the standards of fair and equitable treatment, thereby preventing its potential abuse. Furthermore, given the ambiguous and inconsistent interpretation of the "minimum standard" concept in customary international law, which could lead to the misuse of FET provisions, RCEP mitigates such risks by explicitly limiting host states' obligations, as evidenced by the "no denial of justice" clause. Additionally, RCEP deliberately omits the conventional yet ambiguous phrase "in accordance with investors' legitimate expectations," recognizing that the inherent vagueness of "legitimate" and the subjectivity of "expectations" could enable arbitral tribunals to interpret FET provisions arbitrarily, potentially challenging the regulatory authority of host states.

The Regional Comprehensive Economic Partnership (RCEP) explicitly stipulates provisions regarding direct and indirect expropriation, stating that "a Party shall not expropriate or nationalize a covered investment either directly or through measures equivalent to expropriation or nationalization." It further delineates the criteria of "public purpose," "non-discrimination," and "compensation requirement," thereby affirming the legitimacy of the host state's regulatory authority under specified conditions. This approach discards the "sole effects doctrine" prevalent in traditional international investment agreements, which disproportionately favored investors, and instead adopts the "purpose and effects doctrine" to balance the interests of host states and investors. Additionally, Annex II of RCEP specifies the factors to be considered in determining indirect expropriation, including the economic impact of the government measure, the character, intent, and context of the government action, and whether the government action breaches written commitments. RCEP mandates a comprehensive assessment of the purpose and nature of the government measure and its impact on investors, providing clear guidelines for arbitration and facilitating a balanced protection of investor interests and host state regulatory authority. Furthermore, Annex II outlines exceptions that do not constitute indirect expropriation, such as "non-discriminatory regulatory actions by a Party that are designed and applied to achieve legitimate public welfare objectives, including the protection of public health and safety." This clarification that non-discriminatory regulatory actions do not constitute indirect expropriation significantly expands the regulatory scope and flexibility of host states. The expropriation provisions in RCEP are characterized by fairness, specificity, and clarity, leaving no room for exceptions in indirect expropriation or host state regulatory authority. This advanced framework effectively reduces the initiation of arbitrations and ensures their impartiality, safeguarding both host state regulatory powers and investor rights.

The issue with the non-discrimination treatment clause lies in the ambiguity surrounding the definition of "like circumstances" in both national treatment and most-favored-nation treatment requirements. Different standards exist in international agreements and arbitrations, and the broad application of these standards can potentially challenge the regulatory authority of host states. The RCEP employs the term "like circumstances" in its provisions and provides an interpretive framework for defining such circumstances, specifically in the context of "the establishment, acquisition, expansion... or other disposition of investments." Furthermore, it offers an explanatory note on what constitutes like circumstances, stating that "like circumstances must be determined based on the totality of the circumstances, including whether the differential treatment is based on legitimate public welfare objectives between investors and investments." The purpose of this clarification in the RCEP is to limit the scope of obligations for host states, restrict expansive interpretations by arbitral tribunals, and safeguard the regulatory authority of host states.

Furthermore, the issue of whether the Most-Favored-Nation (MFN) treatment clause in non-discriminatory treatment provisions grants investors the right to invoke terms from other International Investment Agreements (IIAs) signed by the host state has been both overlooked and exploited in traditional international agreements. This has frequently been utilized in international arbitration to expand and arbitrarily interpret provisions, thereby undermining the host state's regulatory authority. The Regional Comprehensive Economic Partnership (RCEP) stipulates that the MFN treatment does not encompass any provisions or mechanisms from other international agreements, thereby mitigating the risk of expansive interpretation and safeguarding the host state's regulatory authority. This aligns with the global trend of restoring regulatory sovereignty to host states in international investment agreements.

The general exceptions and security provisions constitute the most direct stipulation and protection of the host state's regulatory authority. Originating from GATT and GATS, the Regional Comprehensive Economic Partnership (RCEP) adopts the provisions concerning regulations for public morals, public health, and other purposes, supplemented with explanatory notes that thoroughly clarify their content and justify the protective measures. Furthermore, the exceptions to the host state's obligations previously mentioned in this article serve as a complement to the general exceptions, distributed across various provisions. Compared to traditional international agreements, these exception clauses exhibit broader scope and more specific content. RCEP features dual security exception provisions: Article 13 of Chapter 17, "General Provisions and Exceptions," applies to all provisions of the agreement, presenting a closed enumeration[3]and introducing innovations in "information disclosure" compared to other international agreements; Article 15 of Chapter 10 specifically addresses security exceptions in investment, broadly described as "taking any measures"

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"to protect its essential security interests," thereby expanding the scope of security interests and facilitating the exercise of the host state's regulatory authority.

3. Future options for host country regulatory authority: balancing stakeholder interests

The equilibrium of interests constitutes the fundamental value of law, embodying the intrinsic requirements of equity and justice. In other words, the paramount mission of law is to balance interests. The objective of international investment should consistently strive to achieve a balance between the public interests of the host country and the interests of investors. Given the uncertainty and unpredictability of real-world factors, this equilibrium should be dynamic, continuously adjusted in response to the evolving international environment across different eras, and progressively developed towards the direction of interest balance.

Through an in-depth analysis of the RCEP agreement, it becomes evident that the current trend in international agreements is the progressive strengthening of host state regulatory authority. However, several critical issues persist: the traditional challenges associated with host state regulatory authority remain unresolved. The agreement's provisions continue to exhibit ambiguity, with overly generalized descriptions of host state obligations and undefined customary international law standards, making it difficult to ascertain the boundaries of contracting parties' rights and responsibilities as well as their genuine intent. For instance, in the context of fair and equitable treatment, RCEP's formulation of "taking reasonably necessary tangible protection for investors" still carries the risk of ambiguity. Similarly, in RCEP's non-discrimination clauses, the term "overall circumstances" remains a broad and imprecise expression, posing the risk of controversial expansive interpretations.

With the evolution of host country regulatory authority from decline to reinforcement, certain emerging issues have surfaced. Primarily, there exists a risk of excessive strengthening of host country regulatory authority, where the over-specification of certain provisions has led to an undue elevation of the threshold for triggering remedies, resulting in an imbalance between investor interests and the protection of host country regulatory rights.

Furthermore, the host country has completely abandoned the ISDS mechanism. The ISDS arbitration system has been characterized by scholars as asymmetric, non-reciprocal, biased, one-sided, exploitative of victims, and dismissive [7]. It is inappropriate for ISDS mechanisms to allow arbitration panels, described as "undemocratic and highly secretive"[8], to intervene in policy choices made by democratically elected governments. Such arbitration panels lack accountability and transparency, and have been explicitly opposed by 12 contracting parties from China, Japan, and South Korea[9]. The RCEP has temporarily suspended the establishment of the ISDS mechanism in its investment chapter, which means that investors cannot obtain relief if the host government adopts unreasonable regulatory measures. This current situation excessively strengthens the regulatory power of the host country, disrupts the balance between the host country and investors, and is detrimental to attracting foreign investment.

Consequently, the enhancement of international investment agreements should primarily focus on two key dimensions. Firstly, it is imperative to refine the substantive provisions of these agreements to ensure the clarity and equity of host states' regulatory authority. Secondly, the arbitration mechanism requires substantial improvement to achieve a balanced protection of interests between investors and host nations.

3.1. Enhancement of regulatory authority documentation

Firstly, it is imperative to clarify the substantive treatment provisions within the agreement, explicitly delineating the content of treatment or elucidating the standards through enumeration. In international investment arbitration, the most frequent abuse of litigation by investors involves the invocation of the fair and equitable treatment standard. From a practical perspective, the core content of fair and equitable treatment is the opposition to discrimination and arbitrariness [5]. Consequently, it is advisable to incorporate universally accepted specific rules or elements from international practice into the provisions, thereby reducing the ambiguous application of "customary law," such as the prohibition of arbitrary measures and the denial of justice. To avoid the use of vague or subjective descriptors such as "reasonable" or "similar circumstances," it is recommended to provide enumerative explanations of the referenced content. For instance, the Regional Comprehensive Economic Partnership (RCEP) explicitly enumerates "the establishment, acquisition, expansion of investments..." to clarify the connotation of "similar circumstances," thereby manifesting the genuine intent of the host state.

Secondly, the treaty may explicitly stipulate exceptions to the application of treatment provisions. To address issues arising from academic controversies or the lack of international consensus, exception clauses can be established to counteract investor abuse, serving as a safeguard for regulatory authority. For instance, given the ongoing debate surrounding the definition of indirect expropriation, measures taken by the state for public safety and health, environmental protection, and maintenance of public order should be categorized as non-expropriatory, thereby preserving the fundamental regulatory authority of the state.

Lastly, the language of legal obligations can be employed to directly impose international legal responsibilities on investors, in contrast to the traditional approach where investment treaties primarily confer rights to foreign investors without imposing direct obligations [7]. This approach encourages investors to exercise greater prudence in their investment and trade decisions, thereby reducing the frequency of arbitration and mitigating its adverse impact on investment efficiency.

3.2. Enhancement of regulatory authority equity

The fairness enhancement referred to herein constitutes a requirement aimed at preventing excessive expansion in the context of strengthened host state regulatory authority. Within the framework of the RCEP's Fair and Equitable Treatment (FET) provisions, only circumstances severe enough to constitute "denial of justice" are deemed violations of FET, while explicitly excluding other obligation elements of the FET clause such as transparency and legitimate expectations. This textual clarification, while significantly expanding the scope for the exercise of host state regulatory authority, simultaneously increases opportunities for host states to violate FET provisions, thereby challenging the protection of investor interests. If contracting parties place excessive emphasis on protecting their own interests during treaty negotiations, it may lead to the "primitiveization" of international investment, resulting in the exploitation of legally vulnerable investors and ultimately undermining the prosperity of international investment. Consequently, it is imperative to establish an international agreement review mechanism to mandate revisions or deletions of provisions that excessively diminish host state obligations or unduly strengthen host state regulatory authority.

3.3. Enhancement of arbitration mechanisms

Firstly, it is imperative to ensure the impartiality of arbitrators. In investor-state arbitration, as opposed to private disputes, arbitrators are more likely to have vested interests with the investor or potentially become investors themselves in the future, thereby necessitating more stringent scrutiny. Arbitrators are required to disclose to the arbitration institution any professional or business relationships with the parties involved in the case and must continuously report any relationships or circumstances that may impair their independent judgment throughout the arbitration process.

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Furthermore, in several ICSID rulings concerning Argentina, the factual and legal nature of the cases was identical. Given that the arbitrators, particularly the presiding arbitrator, were the same individual, the outcomes of these cases were substantially similar, posing significant risks to the impartiality and objectivity of the rulings. Consequently, arbitration rules should impose restrictions on the selection and appointment of arbitrators, especially the presiding arbitrator, to prevent the same individual from adjudicating cases of a similar nature [5].

Secondly, strict industry regulations should be established by emulating the U.S. Supreme Court justice system, restricting arbitrators from engaging in other professions or specifically limiting their involvement in international investment activities to ensure strict impartiality in adjudication. An arbitrator review mechanism should be implemented to conduct regular integrity assessments and publish a blacklist of unqualified individuals. A performance evaluation mechanism should be created, where cases handled by arbitrators are assessed by designated independent institutions to ensure prudent judgments.

Finally, it is imperative to ensure the transparency of arbitration proceedings. The secrecy and opacity of investment arbitration have been widely criticized, as the public often lacks the right to be informed and has low confidence in the adjudication outcomes. From a democratic perspective, the exclusion of public participation in matters affecting their vital interests contravenes democratic principles and undermines the legitimacy of the mechanism itself. Therefore, a hearing mechanism analogous to the "jury" system should be established to make the adjudication process public, subject to public scrutiny and evaluation. Simultaneously, the selection of "jury" members must be conducted transparently, with public disclosure of their identities to ensure impartiality.

Building upon this foundation, a retrial mechanism should be instituted. International arbitration typically follows the principle of "finality of awards," where the adjudication is considered conclusive [5]. However, arbitration awards may inevitably contain errors in practice, including factual misjudgments and misapplications of law, potentially resulting in unjust outcomes for the parties involved. Consequently, in addition to the existing withdrawal mechanism, a second-instance system should be introduced. Based on the jury's opinions, contentious cases should be proactively retried; appeals from the arbitration parties should be accepted, and the adjudication outcomes and penalty severity should be re-evaluated, implementing a second-instance final adjudication to ensure the efficiency of the awards. This approach not only guarantees the fairness of case adjudication but also enhances its credibility.

Finally, it is imperative to establish a third-party evaluation mechanism. This entity should comprise interdisciplinary experts, thereby providing comprehensive, holistic, professional, and more impartial perspectives when addressing complex investment disputes [10].

In summary, the refinement of the agreement text itself can prevent the occurrence of disputes and establish a foundation for a fair investment environment; meanwhile, a more just and transparent arbitration mechanism can provide robust judicial safeguards for the healthy development and prosperity of international investments. The enhancement of both aspects should be guided by the principle of balancing the interests of host countries and investors, promoting the strengthening and legal regulation of host countries' regulatory powers under current realities, and ensuring a dynamic equilibrium between their regulatory authority and investors' rights.

4. Conclusion

This paper focuses on the evolution of host state regulatory authority, elucidating its conceptual framework, origins, and factors driving its transformation. Against this backdrop, by delineating the traditional scope of host state regulatory authority, the paper identifies the challenges it faces, particularly the imbalance in international investment agreements that disproportionately prioritize investor rights at the expense of host state regulatory authority, thereby jeopardizing public interests.

Taking the RCEP agreement as a focal point, the paper examines the emerging trend of strengthening host state regulatory authority, which, while attempting to address power asymmetries, has introduced new complexities, including the dual risks of incomplete regulatory enhancement and excessive regulatory expansion. The paper concludes with a forward-looking analysis of the future development of host state regulatory authority, emphasizing the principle of balanced interests as the core concept, and proposes improvement strategies from both substantive provisions and procedural rules perspectives.

The limitations of this study lie in the absence of systematic comparative analysis of agreement contents and insufficient vertical and horizontal comparisons. Consequently, the exploration of regulatory authority issues in existing agreements may be incomplete, and the related recommendations may lack comprehensiveness. Future research should conduct thorough vertical and horizontal comparisons of investment agreements across different regions and varying levels of economic development to derive more universally applicable theoretical guidance.

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