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**| RESEARCH ARTICLE**

## **The Legal Protection of "Silk Road E-commerce": Challenges, Approaches, and Solutions**

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**| ABSTRACT**

The legal protection of "Silk Road E-commerce" faces challenges at both the institutional and governance levels. At the institutional level, the ambiguity of legislative content and the effectiveness of rules hinder the practical implementation of various regulations for "Silk Road E-commerce." At the governance level, the polarization of three factors—governance capacity among nations, resolution of judicial disputes, and regulatory philosophies—complicates international legal cooperation for "Silk Road E-commerce." The legal protection of "Silk Road E-commerce" should be centered on mutual trust and openness, with self-respect and confidence as its foundation, fostering mutual trust and inclusiveness among states, industries, and consumers. In light of this, China should prioritize soft law governance mechanisms at the institutional level, adopt a rational approach toward Western standards, and scientifically balance the scope of mutual trust and openness to enhance the effectiveness of soft law governance. At the governance level, there should be a consensus on consumers' disadvantaged position, with improved judicial rules to lower the barriers for consumers to defend their rights. Additionally, promoting industry self-regulation and loosening regulatory sandbox restrictions can enhance the vitality and international appeal of "Silk Road E-commerce," ultimately transforming it into a global public good serving the world.

**| KEYWORDS**

Belt and Road Initiative Cross-border e-commerce Legal protection

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### **1. Introduction**

"Silk Road E-commerce" is a new international trade initiative proposed by China to effectively promote the high-quality development of the Belt and Road Initiative (BRI). Since 2016, China has successfully signed Memorandums of Understanding (MoUs) on e-commerce cooperation with 33 countries across five continents. This initiative is characterized by its reliance on the Belt and Road Initiative, mutual trust among governments, and the adoption of soft law rules as the primary regulatory framework. As a new engine of economic growth, Silk Road E-commerce has become a key driver of China's institutional opening-up. Establishing pilot zones for Silk Road E-commerce cooperation and building national demonstration zones for innovative development in trade in services have become important engines for driving trade innovation and promoting the high-quality joint development of the Belt and Road Initiative (Wang, n.d.). According to estimates, since the launch of the "Silk Road E-commerce" initiative, China's digital trade, including cross-border e-commerce, has experienced significant growth for several consecutive years. Among the top ten countries in the Digital Trade Composite Index, seven are partner countries of the Silk Road E-commerce initiative (Huaxin Research Institute, n.d.)

"Silk Road E-commerce" is fundamentally reshaping China's trade relations with other countries and driving economic growth across participating nations. However, compared with traditional e-commerce activities, Silk Road E-commerce involves a broader range of participants, more complex legal systems, and more innovative trade models, posing significant challenges to existing e-commerce frameworks. The governance mechanisms for cross-border e-commerce have lagged behind the rapid

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development of Silk Road E-commerce, which further underscores the urgency and necessity of strengthening legal research and institutional safeguards for this initiative.

The Third Plenary Session of the 20th Central Committee of the Communist Party of China emphasized that creating a first-class business environment that is market-oriented, law-based, and internationalized is a prerequisite for promoting high-quality development (China Securities Journal, n.d.). As a new form of economic growth in China, "Silk Road E-commerce" relies on the strong support of the rule of law. Regarding legal issues arising during its development, existing research has reached a preliminary consensus: an open legal system helps reduce trade costs, unleash market vitality, and create a favorable environment for international cooperation among Silk Road E-commerce partner countries. However, challenges remain, such as insufficient initiative in rule-making and an incomplete regulatory framework (Ma, Wang & Fang 2024; Ren, Lin & Hao, 2024; Yu & Wu, 2023; Ma & Zheng, 2024). Based on existing research, this paper analyzes the challenges in the legal safeguarding of the "Silk Road E-commerce" from a macro perspective, identifies the intrinsic mechanisms for promoting its high-quality development, and emphasizes that the legal framework should be strengthened from both institutional and governance dimensions. It highlights the importance of soft law governance mechanisms, leveraging their inclusiveness and flexibility, while adhering to an independent legal system and rationally addressing Western standards during rule alignment efforts. By improving consumer protection mechanisms, enhancing industry self-regulation, optimizing regulatory approaches, and fully mobilizing the initiative of social entities, the study aims to achieve breakthroughs in the legal research on "Silk Road E-commerce" and solidify the institutional foundation for its long-term, stable development.

## **2. Examination of Challenges in the Legal Safeguarding of "Silk Road E-Commerce"**

Modern governance theory emphasizes the use of the rule of law to safeguard social activities and underscores the modernization of national governance systems and governance capabilities. The governance system serves as the compass for a nation's legal activities, guiding the orderly conduct of social relations in accordance with the law, and is manifested in the institutions established through legislation. Governance capability refers to the concrete means by which a state implements its governance system, encompassing broad judicial and regulatory measures (Wu, 2015). In the context of "Silk Road E-Commerce," the institutions established by legislation and governance tools such as judicial and regulatory measures complement each other. On one hand, the legal framework provides a definitive basis for governing "Silk Road E-Commerce," ensuring that its activities operate within a structured rule-of-law system. Without clear and effective legislative design, governance efforts would lack direction. On the other hand, disputes and potential risks arising from "Silk Road E-Commerce" trade rely on judicial and regulatory mechanisms for resolution. Without practical enforcement, the relevant institutional norms would remain ineffective. Therefore, the legal safeguarding of "Silk Road E-Commerce" encompasses both the institutional level, as defined by legislation, and the governance level, primarily consisting of judicial and regulatory measures.

### **2.1 Institutional Challenges: Ambiguities in "Silk Road E-Commerce" Legislation**

Since China signed the first "Silk Road E-Commerce" memorandum with Chile in 2016, the country has consistently employed this soft law instrument for international cooperation in this field for eight consecutive years. Domestically issued documents also predominantly adopt soft law norms, as exemplified by local regulations such as Fujian Province's Eleven Measures to Accelerate the Development of Silk Road E-Commerce, which extensively feature non-mandatory terms like "encourage" and "support". While this legislative approach fully leverages the flexibility of soft law - facilitating stakeholders' initiative and emphasizing self-regulation - it has simultaneously sparked debates about the legal efficacy of such instruments, potentially creating hidden risks for the development of "Silk Road E-Commerce".

#### **2.1.1 The ambiguity of norms**

Currently, the normative frameworks governing "Silk Road E-Commerce" can be categorized into three forms: (1) intergovernmental memorandums of understanding, (2) "guidance opinions" issued by state authorities, and (3) "soft clauses" embedded in laws and regulations such as the E-Commerce Law, Consumer Rights Protection Law, and Anti-Unfair Competition Law, which contain provisions regulating cross-border e-commerce activities. The legislative ambiguity of "Silk Road E-Commerce" manifests in all three forms.

First, an analysis of the MOUs signed between China and partner countries (see Table 1) reveals that approximately 75% of these agreements lack specific focus in their cooperation areas. Nearly all MOUs include general commitments to "strengthen cooperation and exchange" and "create a favorable environment for e-commerce development." Even when specialized trade initiatives are mentioned, the details remain vague and non-specific.

Second, taking the Guidance Opinions on Expanding Cross-Border E-Commerce Exports and Promoting Overseas Warehouse Construction as an example, Article 12 calls for "enhancing cross-border data management and service levels." However, the text merely states that data flows should be "facilitated and regulated under lawful and secure conditions," permitting "orderly data

movement in scenarios such as cross-border e-commerce and payments." Crucially, it fails to clarify which legal standards apply—whether the Provisions on Promoting and Regulating Cross-Border Data Flows (allowing certain data to exit without declaration) or the Personal Information Protection Law (requiring individual consent for cross-border data transfers). This omission leaves the definition of "orderly" entirely unresolved.

Third, China's legislation remains unclear regarding liability allocation in "Silk Road E-Commerce" activities. For instance, concerning platform operator liability, Article 38(2) of China's E-Commerce Law stipulates that e-commerce platform operators failing to fulfill security obligations shall bear "corresponding liability" for any resulting infringement. However, the law fails to specify whether this "corresponding liability" constitutes proportional liability, joint and several liability, or supplementary liability, leaving this critical issue unresolved to date. While the inherent abstract nature of law is understandable, such "abstraction" should be remediable through supplementary legal sources and interpretive methods. Otherwise, it may compromise legal certainty (Xiao, 2024). In the context of individual cases concerning "Silk Road E-Commerce" governance, this ambiguity could lead to inconsistent judicial decisions due to variations in judges' life experiences, value orientations, and interpretive approaches, thereby undermining case-specific justice and hindering the high-quality development of "Silk Road E-Commerce".

	Create for the development of e-commerce	Encourage cooperation and strengthen communication	Staff training	Carry out characteristic trade	Focus areas
Chile	√	√			
New Zealand	√	√	√		
Vietnam	√	√		√	
Brazil	√	√	√		
Australia	√	√	√		
Cambodia	√	√	√		
Estonia	√	√	√	√	
Hungary	√	√			
Austria	√	√		√	
Kazakhstan	√	√	√		
Russia	√	√	√		
Kuwait	√	√		√	
The United Arab Emirates	√	√		√	
Rwanda	√	√			
Iceland	√	√			
Argentina	√	√		√	
Panama	√	√			Logistics, tourism
Italy	√	√	√	√	Tourism, leisure service industry
Colombia	√	√	√	√	
Samoa	√	√			Tourism, leisure service industry
Vanuatu	√	√	√		
Uzbekistan	√	√	√	√	
Senegal	√	√	√		New technologies such as artificial intelligence

					and blockchain, Logistics,Paym ent
Belarus	√	√	√	√	New technologies such as artificial intelligence and blockchain, Logistics,Paym ent
Singapore	√	√			Logistics,Paym ent
Pakistan	√	√			Logistics,Paym ent
Thailand	√	√		√	Logistics, delivery, and payment
Laos	√	√		√	
Philippines	√	√			
Indonesia	√	√			
Serbia	√	√	√		

Table 1: Memorandum of Understanding on E-commerce Cooperation Signed between China and Silk Road E-commerce Partner Countries

### 2.1.2 Ambiguity of effectiveness

Unlike hard law, which guides and constrains behavior through numerous mandatory provisions, soft law regulates conduct via non-binding, flexible rules. Its binding force does not stem from state coercion, but rather from self-discipline among individuals and organizations, as well as social oversight. The traditional view of legal validity emphasizes that only rules possessing binding and coercive power qualify as "law" – a characteristic inherently absent in soft law (Wen, 2000; Snyder, 1993; Eliantonio, Stefan & Korkea-aho, 2021). Even if the validity of soft law is recognized, it cannot serve as the sole and direct basis for defining the rights and obligations of all parties involved (Shen, 2022). This debate over legal validity is not merely academic—it has tangible consequences for the cooperative governance of the "Silk Road E-Commerce" initiative. A case in point is Indonesia, which, despite having signed a "Silk Road E-Commerce" cooperation memorandum with China, explicitly banned Chinese e-commerce platforms like Temu (Pinduoduo's overseas version) from operating in its domestic market. The Indonesian authorities cited the need to protect local businesses and expressed concerns about Chinese platforms crowding out indigenous e-commerce development. Under Articles 3(2) of China's Anti-Foreign Sanctions Law and Articles 2 and 33 of the Foreign Relations Law, China reserves the right to impose countermeasures against actions that violate international law and fundamental norms of international relations. However, due to the ambiguous legal status of the "Silk Road E-Commerce" memorandum, China faces difficulties in applying these countermeasures in the Indonesian case. The memorandum cannot be unequivocally invoked as a "special law" or treaty demanding precedence in application. From the perspective of partner countries' political leanings, Indonesia's "concerns"—potentially influenced by geopolitical pressures from Western nations—reflect a broader risk of disengagement from "Silk Road E-Commerce" cooperation. Unless the ambiguity surrounding the normative force of these agreements is resolved, the initiative will increasingly face low-cost or even "zero-cost" breaches of international commitments, with impunity becoming the norm.

### 2.2 Governance dilemma: polarization of governance in "Silk Road e-commerce"

To safeguard the high-quality development of the "Silk Road E-Commerce," China has also established governance mechanisms for the initiative. On one hand, judicial means—such as litigation, arbitration, mediation, and even third-party dispute resolution mechanisms—are employed to resolve legal conflicts with partner countries. On the other hand, regulatory oversight of "Silk Road E-Commerce" activities is implemented to mitigate risks, aiming to dynamically balance an open economy with the maintenance of national security. Current academic research has demonstrated that engaging in "Silk Road E-Commerce" trade with countries that have smaller developmental gaps leads to deeper trade agreements and generates more significant benefits

for China's trade expansion (Ma, Wang & Fang, 2024; Ren, Lin & Hao 2024). However, from the current governance practice, there is a clear polarization in the governance of "Silk Road e-commerce".

### 2.2.1 Polarization of governance capacity between countries

National governance is a universal challenge faced by all countries worldwide. Due to differences in legal systems and governing philosophies among nations, various approaches—such as political governance and rule-of-law governance—have emerged. However, from the perspective of social development trends, the use of legal mechanisms to safeguard national interests, as opposed to case-by-case political diplomacy, has increasingly become a more efficient governance paradigm (He, 2021). The degree of rule of law is not only a reflection of governance capacity, but also positively correlated with the quality of a country's business environment (Zhao, 2020). From a macro perspective, among the 33 "Silk Road E-commerce" partner countries that have reached cooperation, almost all cover the civil law system, common law system, and Islamic law system, but mainly the civil law system countries; The number of mixed legal system countries is higher than that of common law system countries. Moreover, not all "Silk Road e-commerce" countries in Asia are civil law countries. Kuwait, the United Arab Emirates, Pakistan, the Philippines, Bahrain, and Singapore are all mixed law countries, while "Silk Road e-commerce" countries in Oceania and Africa are not civil law countries. In terms of government power balance and openness, among the 28 "Silk Road e-commerce" countries evaluated, only Singapore, New Zealand, Australia, Estonia, Italy, Austria, and Chile ranked high, while the rest of the "Silk Road e-commerce" countries ranked low, with a wide range of regional rankings. Cambodia, which has close trade relations with China, is at the bottom (JuriGlobe, n.d.). It can be seen that when it comes to the construction of specific rules, there is a clear imbalance in the belief in the rule of law, the concept of the rule of law, and the willingness to open up and cooperate among the "Silk Road e-commerce" countries, which poses a huge challenge to China's cross-border trade. From a micro perspective, the World Justice Project quantitatively measures the implementation and enforcement of legislation and laws in various countries. Among the 28 "Silk Road e-commerce" countries participating in the evaluation, Australia, New Zealand, Singapore, Estonia, Chile, and Austria still rank high, while the remaining 71% of countries are in the range of 40-100, with Cambodia still at the bottom (World Justice Project, n.d.). This evaluation result reflects the uneven implementation and enforcement capabilities of the current "Silk Road e-commerce" countries, with only a few countries being able to effectively implement their own institutional rules, and the governance capabilities of the vast majority of countries still at a medium to low level. This means that there will be differences in countries' acceptance of the new initiative of "Silk Road E-commerce" and the resolution mechanism when disputes occur. It is difficult to achieve the goal of mutual benefit, cooperation and win-win of the "the Belt and Road" initiative.

### 2.2.2 Polarization of Judicial Dispute Resolution

As of November 2024, about 17 partner countries have had judicial disputes with China in the "Silk Road E-commerce" judicial disputes being tried in our country (see Table 2). It presents the following phenomenon: (1) There are more traditional cases and fewer emerging cases. According to Table 2, it can be found that most of the "Silk Road E-commerce" dispute cases tried in China are (quasi) contract disputes, and cases related to consumer rights and interests have not been reflected. Disputes over intellectual property and anti unfair competition are also in single digits. (2) There are more small-scale cases and fewer 'major cases'. In terms of disputed amounts, there have been approximately 204 cross-border e-commerce lawsuits between 17 "Silk Road E-commerce" partner countries and China, with amounts ranging from 0 to 100000 yuan. A few countries, such as Italy, Australia, New Zealand, Singapore, and Russia, have cases where the disputed amounts exceed 500000 yuan. (3) The short settlement rate is high, while the long settlement rate is low. As of December 2024, there were 3576 cross-border e-commerce civil cases tried domestically in China, with a first instance completion rate of about 69%, and the trial time was concentrated between 15-90 days. The above phenomenon reveals three polarization issues in judicial disputes in China: (1) there is a value bias in judicial rules. (2) The ways to resolve disputes are too single and lack innovation. (3) There are differences in the referee's philosophy. The following is a detailed argument.

Country	Proportion of civil cases below 500000 yuan	Number of case types
Singapore (18 cases in total)	0-100000 yuan; 53.34% 100000-500000 yuan; 20%	Contract and quasi contract disputes: 13 cases
		Intellectual property and competition disputes: 4 cases
		Labor and personnel disputes: 1 case
Italy (14 cases in total)	0-100000 yuan; 61.54%	Contract and quasi contract disputes: 11 cases

	100000-500000 yuan; 23.08%	Intellectual property and competition disputes: 3 cases
Australia (35 cases in total)	0-100000 yuan; 51.85% 100000-500000 yuan; 29.63%	Contract and quasi contract disputes: 23 cases
		Infringement liability disputes: 6 cases
		Intellectual property and competition disputes: 5 cases
		Labor and personnel disputes: 1 case
New Zealand (30 cases in total)	0-100000 yuan; 33.33% 100000-500000 yuan; 46.67%	Contract and quasi contract disputes: 19 cases
		Infringement liability disputes: 6 cases
		Intellectual property and competition disputes: 4 cases
		Labor and personnel disputes: 1 case
Hungary (1 case in total)	100000-500000 yuan; 100%	Labor and personnel disputes: 1 case
Chile (1 case in total)	0-100000 yuan; 100%	Contract and quasi contract disputes: 1 cases
Vietnam (9 cases in total)	0-100000 yuan; 83.33%	Contract and quasi contract disputes: 8 cases
		Intellectual property and competition disputes: 1 case
Brazil (10 cases in total)	0-100000 yuan; 90%	Contract and quasi contract disputes: 10 cases
Cambodia (5 cases in total)	0-100000 yuan; 50%	Contract and quasi contract disputes: 4 cases
		Personality rights dispute: 1 case
Kazakhstan (3 cases in total)	0-100000 yuan; 50%	Intellectual property and competition disputes: 2 cases
		Contract and quasi contract disputes: 1 case
Russia (13 cases in total)	0-100000 yuan; 25% 100000-500000 yuan; 25%	Contract and quasi contract disputes: 7 cases
		Intellectual property and competition disputes: 3 cases
		Labor and personnel disputes: 2 cases
		Non litigation dispute: 1 case
The UAE (4 cases in total)	0-100000 yuan; 50%	Contract and quasi contract disputes: 3 cases
		Personality rights dispute: 1 case
Pakistan (1 case in total)	0-100000 yuan; 100%	Contract and quasi contract disputes: 1 case
Thailand (41 cases in total)	0-100000 yuan; 81.25% 100000-500000 yuan; 6.25%	Contract and quasi contract disputes: 28 cases
		Intellectual property and competition disputes: 7 cases
		Maritime disputes: 4 cases
		Civil disputes related to companies, securities, insurance, and bills: 2 cases

Laos (3 cases in total)	0-100000 yuan; 66.67%	Contract and quasi contract disputes: 3 cases
Philippines (10 cases in total)	0-100000 yuan; 62.5% 100000-500000 yuan; 25%	Contract and quasi contract disputes: 8 cases
		Maritime disputes: 1 case
		Civil disputes related to companies, securities, insurance, and bills: 1 case
Indonesia(6 cases in total)	0-100000 yuan; 100%	Contract and quasi contract disputes: 6 cases
Noted : Iceland, Austria, Estonia, Kuwait, Rwanda, Argentina, Panama, Colombia, Samoa, Vanuatu, Uzbekistan, Senegal, Belarus, Serbia, Bahrain, Tajikistan have not yet found any relevant public cases		

Table 2- Judicial Disputes between China and 33 Silk Road E-commerce Partner Countries

First, China's judicial rules fail to balance the disadvantaged position and clearly tilt toward the information holder. Unlike contract disputes where both parties hold the contract and know each other's information, in anti-unfair competition disputes, intellectual property disputes, and consumer rights infringement disputes, due to the involvement of the internet, it is difficult for one party to know who is on the other end of the internet or to quickly pierce the veil of the internet to find the other party's information when a dispute arises. However, according to the Civil Procedure Law, the plaintiff must have a clear and definite defendant when filing a lawsuit and must provide detailed information about the defendant. The plaintiff also bears the consequence of losing the case due to inability to provide evidence, which undoubtedly increases the difficulty of protecting rights for the information-disadvantaged party in the internet era. The Cross-Border Trade Tribunal of the Hangzhou Internet Court conducted a detailed statistical analysis of cross-border e-commerce cases it handled in 2021. Cases where e-commerce platforms were the defendants accounted for 60%, but at the same time, because plaintiffs found it difficult to accurately obtain the defendant's information, the proportion of plaintiffs withdrawing lawsuits due to incorrect parties also reached 60%. Among cases that successfully proceeded to trial, plaintiffs often lost due to difficulties in accurately identifying the liable party, such as multiple business entities or mixed service providers. There were even cases where the dispute fell under the jurisdiction of foreign judicial authorities due to signed forum selection clauses with cross-border e-commerce platforms (Hong et al., 2021). Regarding the issue of legal application, since judges enjoy the discretionary power granted by judicial procedures, their value inclinations may also lead to differences in the application of laws. For example, although some consumers sought to protect their rights based on the Notice on Improving the Supervision of Cross-Border E-Commerce Retail Imports (Commerce and Finance Notice [2018] No. 486), judges ruled that this would impose excessive obligations on cross-border e-commerce enterprises and thus could not be used to break the privity of contract and hold the enterprises liable (Hangzhou Internet Court, n.d.). It is evident that although China has enacted substantive laws such as the Consumer Rights Protection Law and the Anti-Unfair Competition Law to impose specific obligations on the dominant party, the application of judicial rules has failed to bridge the gaps caused by value bias. This not only increases the difficulty for disadvantaged groups to safeguard their rights but also creates significant obstacles for Chinese e-commerce platforms in initiating anti-unfair competition disputes against foreign companies, undermining the protection of China's "Silk Road E-Commerce" overseas interests.

Second, the approaches for handling small-value and low-dispute cases remain overly traditional and exhibit significant regional disparities. In "Silk Road E-Commerce" disputes, a large number of cases involve amounts ranging from 0 to 100,000 yuan, yet they are still predominantly resolved through adjudication. This indicates that Chinese judicial authorities have achieved limited success in resolving conflicts through non-litigation means such as mediation, conciliation, and arbitration, with dispute resolution still heavily reliant on traditional litigation channels. Judicial bodies have demonstrated a lack of creativity and initiative in exploring alternative dispute resolution mechanisms. In terms of integration with the digital era, cities like Hangzhou, Beijing, Shanghai, and Guangzhou have established specialized institutions such as internet courts, international commercial courts, intellectual property tribunals, cross-border trade tribunals, and international commercial arbitration centers to handle foreign-related or e-commerce disputes. In contrast, key "Silk Road E-Commerce" hubs in western regions such as Xinjiang, Gansu, and Guangxi have rarely set up digital judicial institutions like internet courts. Regarding the use of mediation and other non-litigation methods to serve Belt and Road trade activities, relevant institutions are predominantly concentrated in central and eastern China. With the exception of Hainan, all eastern coastal cities have established affiliated branches, while central, western, and northern regions (e.g., Qinghai, Yunnan, Hunan, Henan, Heilongjiang, Jilin, and Hainan) mostly lack such branches. Even Xinjiang, Gansu, and Guangxi—key provinces for "Silk Road E-Commerce"—have only one branch each. Shanghai, as a pilot zone for "Silk Road E-Commerce" cooperation, hosts far fewer branches of the "Belt and Road International Commercial Mediation Center" compared to Guangdong, Beijing, Zhejiang, Shaanxi, Sichuan, and Chongqing.

Third, there exists a divergence in judicial philosophies. As "Silk Road E-Commerce" activities become increasingly frequent, conflicts between consumers and e-commerce platforms have grown more pronounced, leading to a conceptual split in judicial practice between protecting consumer interests and safeguarding the interests of e-commerce platforms. Advocates for consumer protection argue that consumers are the lifeblood of market vitality, and only by ensuring robust consumer safeguards can market trust be enhanced and consumption dynamism stimulated. On the other hand, proponents of protecting e-commerce platforms, viewing the issue through the lens of supporting private enterprises, contend that e-commerce platforms (as part of the private sector) should not be burdened with excessive responsibilities, as this could stifle their confidence in providing higher-quality products and services to the market. This polarization in judicial philosophy has also manifested in adjudicated "Silk Road E-Commerce" disputes in China. For instance, in a civil dispute between a Chinese company and a Singaporean citizen heard by the Hangzhou Internet Court, the defendant argued for dismissal of the plaintiff's claims on the grounds of being a "platform service provider rather than a seller." However, the presiding judge adopted an expansive interpretation of Article 37 of the E-Commerce Law, affirming the rationale of the "apparent-commodity doctrine" to protect reliance interests. The ruling creatively asserted that, in cross-border e-commerce trade, platforms bear a higher disclosure obligation than other e-commerce operators and that the "apparent-commodity doctrine" should be applied to holistically assess "labeling" behaviors. In contrast, in another cross-border e-commerce case adjudicated by the Hangzhou Internet Court, the court rejected the plaintiff's request to apply the Commerce and Finance Notice [2018] No. 486 and their claim that the e-commerce platform should bear joint liability with the overseas company's Weibo-verified entity. The court reasoned that although Commerce and Finance Notice [2018] No. 486 aims to balance consumer rights and product quality in cross-border retail by allowing consumers to bypass contractual privity and directly assert claims against domestic service providers, imposing excessive liability on cross-border e-commerce enterprises would contravene principles of fairness and market order (Hangzhou Internet Court, n.d.). These divergent rulings reflect the judiciary's lack of a unified understanding of "fairness" and the absence of clear criteria to measure it. The "fairness" affirmed in judgments often reflects individual value judgments rather than necessarily aligning with broader societal interests.

### **2.2.3 Polarization of Domestic and Foreign Regulatory Philosophies**

As a new digital economy initiative born in the digital era, the market environment of "Silk Road E-Commerce" is no longer a closed, state-dominated regulatory space, but rather an open market that advocates fair competition and survival of the fittest. Consequently, the traditional over-centralized, top-down administrative regulatory framework often proves ineffective or chaotic, failing to meet the developmental needs of the digital economy. This outdated framework also struggles to address the multi-industry integration characteristic of "Silk Road E-Commerce" (e.g., cross-border shopping involving simultaneous cross-border data flows and digital currency usage) (Fang, 2024). In the field of digital payments, China continues to adopt the aforementioned government-mandated regulatory approach, aiming to prevent the impact of virtual currencies on national monetary sovereignty. The country has introduced new forms of universal equivalents such as central bank digital currencies (CBDCs) and crude oil-backed currencies to facilitate consumer demands across different nations. However, on this issue, the stance of "Silk Road E-Commerce" partner countries differs significantly. Only five countries share China's position of explicitly opposing virtual currencies and enforcing regulations through state coercive measures like prosecutorial oversight. Approximately 85% of "Silk Road E-Commerce" partner countries permit virtual currency transactions within their borders but implement more flexible regulatory models. For instance, they require issuers of virtual currencies to undergo certification procedures and comply with industry standards. The 2024 Cryptocurrency Crime Report indicates that in 2023, cryptocurrency-related crimes such as fraud and theft decreased by 29.2% and 54.3%, respectively, compared to the previous year. However, this has been accompanied by growth in darknet markets, with sanction-evading transactions accounting for 61.5% of illegal trading volume (Team, C., 2025). The evidence suggests that highly coercive regulatory models tend to drive criminal activities underground. While superficially reducing violation and crime rates, they actually increase the difficulty and cost of law enforcement, ultimately hindering market development based on supply-demand theory. Consequently, it is imperative to refine China's current regulatory philosophy to achieve a dynamic equilibrium between security and convenience.

### **3. Response to the Legal Protection of Silk Road E-commerce**

The "Silk Road E-commerce" was born on the basis of the "the Belt and Road" initiative, and also inherited the "the Belt and Road" initiative's concept of "peaceful cooperation, openness and inclusiveness, mutual learning and mutual benefit". To deeply implement this concept, it is necessary for "Silk Road e-commerce" partner countries to trust each other and welcome each other with an open mind. Therefore, the core competitiveness of "Silk Road e-commerce" can be summarized as "mutual trust" and "openness". General Secretary Xi Jinping emphasized that "rules and credit are the cornerstone of the effective operation of the international governance system and the prerequisite for the development of international economic and trade relations. This reveals the fundamental role of mutual trust and openness in safeguarding global governance and international economic and trade relations in accordance with the law (China Court Network, 2019)." Silk Road e-commerce "is an important part of China's



participation in global governance and international economic and trade relations, and mutual trust and openness are also part of its legal protection.

### **3.1 Mutual trust and openness are dynamic and balanced relationships**

The cooperation and communication of Silk Road e-commerce are based on trust, and only trust can build a solid foundation for cooperation and achieve the goal of openness. However, openness has two sides, as it may bring risks into the country, break the foundation of mutual trust, or create greater social welfare when governance is effective. There is no absolute trust in a risk society, but avoiding trust due to risks will miss the opportunity for openness. Therefore, mutual trust and openness should be in a dynamic balance in the legal guarantee of "Silk Road e-commerce".

Firstly, mutual trust is the foundation of openness. The connection formed by mutual trust is not a vertical attachment relationship, but a horizontal cooperation relationship (Zhang & Li, 2024). The long-standing existence of international organizations such as the Shanghai Cooperation Organization (SCO), the United Nations (UN), and the European Union (EU) demonstrates that higher mutual trust among nations leads to deeper cooperation, greater openness, and stronger adherence to the rule of law. Conversely, once a trust deficit emerges, normal open exchanges may be perceived as threats to security, resulting in a "pan-securitization" scenario where the path to openness becomes obstructed. In the development of "Silk Road E-Commerce", China must navigate a complex international landscape. While countries such as Australia, Vietnam, the Philippines, and Indonesia have engaged in cooperation with China in the field of "Silk Road E-Commerce," they have also firmly aligned themselves with the United States in areas like maritime and military affairs. Indonesia's decision to impose bans and restrictions, violating the spirit of the "Silk Road E-Commerce" cooperation memorandum, serves as a wake-up call for China: openness must be based on mutual trust and take mutual trust as a prerequisite. China should scientifically assess the level of mutual trust between nations and within nations, establishing necessary screening mechanisms and risk prevention measures for its open-door policy. This will ensure that the expansion of "Silk Road E-Commerce" proceeds in an environment of friendly cooperation, mutual trust, and mutual benefit, thereby creating more favorable conditions for its sustainable development.

Second, openness serves as a catalyst for mutual trust. Openness not only refers to fostering unimpeded exchanges between nations but also entails making state governance channels accessible to the public, businesses, and other market entities. Through openness, mutual communication is enhanced, allowing for a better understanding of each other's needs, interests, and values. It also ensures that governance frameworks align with societal demands, validates the soundness of national policies, and reduces misunderstandings and suspicions among different societal actors—thereby fostering more robust trust. In other words, trust should also be cultivated between the state and the market. The government should open "testing grounds" for the market, granting it room for self-regulation and course correction, rather than imposing a "pan-security" mindset on market activities or stifling emerging business models under the pretext of security. The presence of risks presents both challenges and opportunities. While "Silk Road E-Commerce" drives the global expansion of China's industries, it will inevitably spur new technologies, activities, and demands. The role of legal safeguards is not to predetermine its developmental path or confine it to existing tracks, but rather to identify and mitigate risks, enabling participants to engage without reservations. Only by keeping the market open can opportunities for practice be granted, allowing participants to tangibly experience a sense of security and, in turn, strengthen their trust in China. By embracing this approach, "Silk Road E-Commerce" can thrive in an environment of confidence, innovation, and mutual benefit.

### **3.2 Mutual trust and openness are based on self-esteem and confidence**

In the realm of legal safeguards, mutual trust and openness necessitate strengthened legal cooperation and inclusive participation from all stakeholders. China's willingness to welcome and encourage such engagement does not stem from a "borrowing doctrine," but rather from self-respect and self-confidence. Self-respect means upholding the dignity of our legal system and core interests, demonstrating the demeanor of a major nation to earn international recognition—not through zero-sum exploitation, but through principled leadership. Self-confidence reflects our conviction in our legal framework, reinforcing confidence in our institutions, theories, development path, and culture. We embrace openness over protectionism, welcoming global partners without fear of external influence. We tolerate differences, address shortcomings with proactive reforms, and remain driven toward future progress. Only by grounding legal trust and openness in self-respect and self-confidence can China's "Silk Road E-Commerce" retain its distinctive character while showcasing its Chinese ethos. This approach ensures that our legal system acts not as a barrier, but as a bridge for secure, mutually enriching collaboration.

First, self-respect and self-confidence are the cornerstone of China's role as a responsible major power. In constructing the legal safeguards for "Silk Road E-Commerce," while emphasizing legal cooperation with other nations, China has never lost sight of its fundamental objective: protecting its overseas interests. Against "litigation abuse" by the U.S. and others in intellectual property (IP), China has strengthened IP legal frameworks, providing judicial support for domestic enterprises defending their rights abroad and ensuring the interests of Chinese businesses and consumers remain secure. On emerging issues like data sovereignty and AI, China introduced the Global Initiative on Data Cross-Border Flow Cooperation, articulating its governance principles for

new domains. By advocating dialogue over confrontation, China seeks to help nations reconcile differences while ensuring security and convenience. This demonstrates China's consistent stance in advancing "Silk Road E-Commerce" legal safeguards: No compromise on high-standard international trade rules, regardless of developmental disparities among nations; No pursuit of self-interest at others' expense, rejecting zero-sum practices. Unlike Western countries' alliance-based unilateralism, China actively counters hegemony by offering global public goods like the Belt and Road Initiative and the vision of a community with a shared future for mankind. Such efforts foster international consensus, and it is precisely this confidence and principled leadership that anchors China's standing in the world—earning trust and acclaim from the international community.

Second, the advancement of legal frameworks for "Silk Road E-Commerce" requires China to steadfastly uphold its self-respect and self-confidence. As the Belt and Road Initiative continues to deepen and solidify, "Silk Road E-Commerce" will undoubtedly attract more partners and expand into broader markets. It is undeniable that the future development landscape will become increasingly complex, with persistent issues such as conflicts of interest and struggles for power. If China fails to maintain its self-respect and self-confidence, blindly conforming to Western standards or striving to meet externally imposed benchmarks, it will not only undermine China's core competitiveness but also reduce its role from a leader in global governance to a follower of others' rules. Therefore, adhering to self-respect and self-confidence is particularly crucial for China in deepening the legal safeguards for "Silk Road E-Commerce." Such adherence enables us to objectively recognize our strengths and weaknesses, neither discouraged by difficulties nor lost in achievements, keeping us mindful of our era's mission. Even in complex environments, it allows us to identify and address key challenges, fostering a more comprehensive perspective on governance differences among nations. Only in this way can we guide more countries to join hands with us in building a better shared future.

#### **4. Innovative Countermeasures for the Legal Protection of Silk Road E-commerce**

The intrinsic mechanism of legal safeguards for "Silk Road E-Commerce" based on mutual trust and openness demonstrates that its innovation should achieve mutual trust and openness at both the institutional and governance levels. To optimize the institutional framework of "Silk Road E-Commerce," emphasis should be placed on leveraging the advantages of soft law governance, fully utilizing its legal attributes to realize mutual trust and openness in "soft rules" both domestically and internationally, while rationally addressing Western standards and scientifically calibrating the degree of mutual trust and openness. For improving the governance layer of "Silk Road E-Commerce," efforts should focus on strengthening tripartite trust among "consumers-industry-state," earnestly fostering consumer protection awareness, guiding and incentivizing industries to develop self-regulation, and moderately opening regulatory sandboxes to cultivate a collaborative and prudent business environment through an inclusive and cautious approach.

##### **4.1 Path of institutional reform**

China's legal safeguard framework for "Silk Road E-Commerce" has begun to take shape. However, in addressing issues such as ambiguous legislative content and effectiveness during its development, as well as standards and parameters for mutual trust and openness, Chinese legislators should further enhance their legal governance concepts, solidify the rule foundation, and better leverage existing systems to ensure the effectiveness of "Silk Road E-Commerce" safeguards.

First, emphasize the soft law governance mechanism to effectively utilize its safeguarding role. On the one hand, the credibility mechanism of soft law should be strengthened to gradually clarify its effectiveness. The binding force of soft law does not stem from state coercion but rather emphasizes voluntary compliance and endogenous recognition by those being regulated - in other words, soft law must be able to "persuade" actors to perform or refrain from certain actions. The effectiveness of such persuasion depends on the authority of the persuader (Dutton, 2010). In the process of soft law's participation in social governance, differences in its persuasive power also exist. For instance, soft laws endorsed and adopted by public authorities inherently carry higher credibility in society than other rules, indicating that a "hierarchy of effectiveness" exists among soft laws. Legislators should promptly summarize governance experiences following the formulation of soft laws, identify those with proven governance efficacy and high public satisfaction, and affirm relevant rules through transformation, incorporation, or absorption to elevate them into norms with clearer legal effect and higher hierarchical status, thereby facilitating future integration with China's other legal instruments. For underperforming soft laws with low satisfaction, competent authorities should mandate revisions and improvements while periodically phasing out outdated ones to establish a credible soft law system that better fulfills its safeguarding role in the "Silk Road E-Commerce" legal framework. On another front, the operational domains of soft law should be expanded beyond communication and consultation to encompass judicial activities. With the credibility mechanism established, China's soft laws have developed a hierarchy based on effectiveness and persuasive power, where higher-ranked soft laws embody social values closer to the "public good." In judicial practice, the spirit and values embedded in such soft laws should be incorporated into public order and good morals (*ordre public et bonnes mœurs*), allowing their judicial application through this principle. By establishing precedent-based adjudication rules, courts at all levels should be encouraged and guided to assimilate these practices, progressively implementing the spirit of soft law in "Silk Road E-Commerce" legal work and embedding its values into individual case adjudications.

Second, adopt a rational approach toward Western standards and scientifically calibrate the parameters of mutual trust and openness. As explicitly stated in the communiqué of the Third Plenary Session of the 20th CPC Central Committee, China will actively align with international high-standard economic and trade rules to achieve regulatory compatibility and interoperability in e-commerce and other fields, thereby creating a transparent, stable, and predictable institutional environment (Mu, n.d.). This entails placing China's regulations and international standards within the same framework for comparative analysis, while continuously improving the shortcomings of our domestic rules. In this process, we must carefully consider three fundamental questions: "why to align", "with whom to align", and "how to align". Firstly, the "Silk Road E-Commerce" initiative proposed under the Belt and Road framework represents a distinct model of international public good - different from traditional models dominated either by single nations or international organizations. It embodies a new "prosumer-integrated" paradigm where providers of innovative content in "Silk Road E-Commerce" simultaneously serve as consumers within the system, demonstrating pronounced decentralized characteristics (Yang, 2022). Under this model, partner countries and China maintain an equal cooperative relationship rather than one based on subordination or regulation. Therefore, when exploring regulatory alignment, each nation should analyze whether the rules meet its domestic needs based on its own interests. For rules that align with domestic requirements, the gaps can be bridged through mutual trust and coordination, without necessarily resorting to revising domestic regulations or reorganizing legislation. Regarding rules led by Western countries such as CPTPP, USMCA, CETA, and EPA, their status as "higher standards" should be assessed by considering factors like each country's development level, legal disparities, social needs, and primary contradictions—rather than simply attributing any gaps to deficiencies in China's legislative techniques. Secondly, China should adopt a dialectical view of existing Western rules while maintaining confidence in its own legislation. When conditions are ripe, China should promote its regulatory framework globally as a model for others to align with. Currently, it is widely recognized that the CPTPP's advancement far surpasses that of RCEP, representing the highest standard of new-generation free trade agreements (Li 2024). Although China applied to join the CPTPP as early as 2021, it has not yet been approved, demonstrating that multiple external factors remain when aligning with American-led rules. It would therefore be irrational to conclude that China lags behind the West in areas such as foreign trade and cross-border data flows. Moreover, China's current legislative efforts show continuous improvement in constructing a digital economy regulatory system covering cross-border data flows. However, as China's legislative process requires thorough research, drafting, and deliberation - while fully demonstrating the value of democratic lawmaking - the time invested is entirely justified. When Western countries, led by the United States vigorously promote the superiority of their own formulated rules, we must neither overlook our own progress in legislative work nor be swayed into losing our bearings. Instead, we should steadfastly uphold China's propositions, maintain confidence in our ongoing legislative efforts, develop Chinese regulations into higher-standard and more attractive international norms, and use China's quality to demonstrate to the world the wisdom of the Chinese rule of law.

#### 4.2 Governance reform path

On the basis of improving the institutional framework, corresponding innovations should also be made at the governance level of "Silk Road E-Commerce". The innovation approach should still be based on building mutual trust and openness as the legal safeguard for "Silk Road E-Commerce", by improving judicial rules to protect consumer rights, strengthening industry self-discipline to build market mutual trust, and appropriately liberalizing regulatory sandboxes to open up diversified payment channels, so as to make "Silk Road E-Commerce" a more cohesive and inclusive international market. First, a consensus should be formed on the disadvantaged position of consumers to improve existing judicial procedural rules. Firstly, legislation should be based on the actual status of consumers. Under traditional definitions, "consumers" mostly exist in the form of individuals such as natural persons. In the early days of the Internet, based on the "individuality" (or "human attributes") of consumers, people considered consumers to be in a "disadvantaged" position (Xu, 2004). However, with the deepening of the "Silk Road E-Commerce" and the Belt and Road Initiative, the "human" attribute of consumers has gradually diminished while their "disadvantaged" status persists - a vulnerability stemming not from their identity as individuals but from their positional disadvantage in transactional markets, where their status as demanders inherently places them in a "dominated" position, deprived of transactional control. This necessitates that China's legislative approach should avoid equating "consumers" with individuals and formulating regulations solely from an individual perspective, but rather establish the fundamental consensus that regardless of whether consumers are individuals, their market position inherently determines their disadvantaged status. Secondly, when handling consumer rights disputes, judicial authorities should proactively assist consumers by facilitating communication between platforms/merchants and consumers when such information is obtainable, such as actively initiating contact or mediating negotiations to reduce consumers' burden of information collection and litigation participation. Thirdly, China may consider simplifying evidentiary requirements for consumer rights cases, permitting consumers to supplement defendant information during proceedings as long as service can be effected on at least one defendant. Regarding burden of proof allocation, the standard should shift from a "transaction counterparty" perspective back to a "consumer disadvantage" paradigm to better adapt to rapidly evolving trade markets, restore the consumer-serving essence of commerce, and strengthen consumer trust in "Silk Road E-Commerce".

Second, the construction of industry self-regulation must be strengthened. Firstly, industry associations represented by e-commerce associations should diminish their administrative nature and return to their core function of serving the industry, undertaking the crucial task of guiding healthy industry development. Government departments should establish reward and penalty mechanisms, providing positive incentives to associations that actively promote collective enterprise development and healthy competition while penalizing those that chronically neglect or fail to perform their duties, thereby compelling industry associations to fulfill their supervisory responsibilities effectively. Secondly, cross-regional collaboration among associations should be encouraged to actively exchange insights on regional development challenges, upgrading enterprise-initiated self-regulatory agreements into industry standards led by associations, thereby expanding the applicability and authority of such agreements and enhancing their binding force. Thirdly, consumer evaluations must be incorporated into the criteria for assessing industry self-regulation. While self-regulation emphasizes industry self-discipline, it does not imply that mere adherence to internal behavioral norms constitutes true "self-regulation"—industry self-regulation should be conditional and standards-based. Examining the original intent of promoting self-regulation reveals that this governance mechanism aims to supplement government oversight, enabling industry players to autonomously identify behaviors that deviate from public interests or pose potential risks to consumer rights, thus facilitating self-correction. Therefore, self-regulation is not aimless; safeguarding public interests and earning consumer trust constitute its ultimate objectives. Only by integrating consumer evaluations into self-regulation standards can consumers gain due recognition in the "Silk Road E-Commerce" market, transform it into a consumer-trusted platform, alleviate concerns about "government-business collusion" undermining public interests, and ultimately enhance the appeal of "Silk Road E-Commerce".

Thirdly, open up the regulatory sandbox with an inclusive and cautious attitude, and optimize the regulatory model. General Secretary Xi Jinping emphasized that China will continue to support the construction of an open world economy and deepen reforms in areas such as the digital economy while creating a "Silk Road E-commerce" cooperation pilot zone (Ma, n.d.). However, the application of digital yuan is still in its nascent stage, with most "Silk Road E-Commerce" activities still predominantly using virtual currencies as the primary transaction medium. Observing the development status of partner countries in "Silk Road E-Commerce," virtual currencies can fully coexist with digital currencies without contradiction—the key lies in whether a country can summarize regulatory patterns through practice and optimize its regulatory model, which makes establishing a regulatory sandbox for virtual currencies particularly crucial. Unlike Singapore's categorized regulatory approach, China adopts a uniform prohibition model that denies virtual currencies any legitimate space domestically. Yet, the forms of virtual currencies continue to diversify, and the number of enterprises and nations engaging in virtual currency operations has not diminished. As China persists in its opening-up process, it will inevitably face impacts from more diverse virtual currency transactions. A blanket denial of virtual currencies' potential legitimacy would undoubtedly increase the difficulty of China's integration into global markets. Moreover, the digital yuan issued by the central bank is technologically indistinguishable from virtual currencies. The indiscriminate prohibition regulatory framework diminishes the "testing ground" for digital currency regulation, leaving China with inadequate experience in addressing technical risks associated with the digital yuan. Therefore, China should systematically study the types, application scenarios, and utilization methods of virtual currencies across nations in line with current international regulatory trends, re-examining the legal status of virtual currencies. Under the principle of inclusive and prudent regulation, China should appropriately initiate a regulatory sandbox for virtual currencies to achieve a balance between virtual and digital currencies. "Rivers and oceans do not reject small streams, thus they achieve their depth"—artificially blocked rivers, no matter how vast, will eventually face desiccation. Moving forward, while defining the coexistence boundaries between digital yuan and other virtual currencies, China should moderately adjust its legislatively restrictive stance toward other virtual currencies in key cities. Through combining measured openness with effective regulatory measures, China can create fertile ground for studying virtual currency development. This approach would not only enable the safe and reliable application of other virtual currencies within defined parameters and attract more foreign investment, but also enhance "Silk Road E-Commerce" participants' trust in China's digital payment systems, thereby creating a trustworthy environment for promoting digital yuan.

## **5. Conclusion**

At a time when cross-border e-commerce is increasingly active, "Silk Road e-commerce", as an important part of the high-quality development of the "the Belt and Road" initiative, is closely related to the construction of China's path to modernization. Improving the legal protection of "Silk Road e-commerce" is not only an endogenous requirement for coordinating domestic and foreign-related legal systems, but also an important force in promoting foreign-related legal systems. At present, the legal protection of "Silk Road e-commerce" in China is facing a dual dilemma of institutional and governance levels, which has become a key constraint on the high-quality development of "Silk Road e-commerce". In this era, how to build China's own legal framework in the field of "Silk Road e-commerce" and how to achieve symbiosis in openness have become the focus of discussion among all sectors.

In the future, the legal protection of "Silk Road e-commerce" should continue to revolve around the core of mutual trust and openness, and be jointly promoted from both institutional and governance dimensions. In terms of institutional design, attention should be paid to the governance mechanism of soft law, establishing a credible mechanism for soft law, enriching the application field of soft law, and enhancing the persuasiveness of soft law. Faced with the complex development environment of "Silk Road e-commerce", China should adhere to self-esteem and confidence, rationally treat Western standards, and scientifically grasp the scale of mutual trust and openness. In terms of governance measures, China should pay more attention to the role and vulnerable position of consumers in "Silk Road e-commerce", improve judicial rules, protect the legitimate rights and interests of consumers, and cannot ignore strengthening industry self-discipline construction to stimulate industry vitality. At the same time, moderate relaxation of supervision can increase the convenience of "Silk Road e-commerce", narrow the concept of inter regional supervision, and enhance the international influence of "Silk Road e-commerce". Of course, the above suggestions for improvement are not the final conclusion or the only correct solution. The more important purpose is to trigger the debate of the legal professional community and contribute theoretical wisdom to the construction of the "Silk Road E-commerce" and the "the Belt and Road".

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