

# Security Exception Negotiation from the Perspective of Habermas' Discourse Ethics

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**Abstract:** Security exception negotiation is conducive to improving the WTO security exception clause and promoting the correct and reasonable use of the clause, so as to balance the conflicts and contradictions between safeguarding national security and realizing free trade in multilateral trade. Habermas's discourse ethics advocates that in an ideal discourse environment, communication subjects with communication qualifications seek understanding and reach consensus through dialogue and negotiation in accordance with rational requirements and preset norms and procedures, in order to solve the multivariate conflict problems of modern society. Based on this theory, the dilemma of security exception negotiation lies in the inability of equal dialogue, the lack of semantic identity and the lack of pragmatic effectiveness. Therefore, we should respect the dominant position of each country, create an ideal discourse environment and realize equal dialogue among countries. Paying attention to the interpretation of WTO security exception clauses will be a desirable way to solve the dilemma of security exception negotiation.

**Keywords:** Discourse ethics; WTO security exception clause; Security exception negotiation

## 1. Introduction

In international trade, safeguarding national security and realizing trade freedom are very important goals. The meaning and purpose of the security exception clause is to safeguard national security, but how to define the scope of national security in the security exception clause and how to apply the clause reasonably is very important for free trade. Otherwise, this clause will easily become an excuse for trade protectionism. The WTO security exception clause can "break through" the general treaty rules and application of WTO, that is, when the specified circumstances appear, the member states can temporarily stop implementing the obligations stipulated in the WTO rules. As an important clause and content in WTO rules, the purpose is to balance the conflicts and contradictions between the free trade advocated by WTO and the national sovereign interests of member countries, international peace and security, etc [1]. This clause emphasizes that member countries have the right to take restrictive measures against free trade in order to safeguard national security, so as to fundamentally improve the multilateral trading system and promote its implementation. However, judging from the content of this clause, it adopts vague expressions such as "essential security interests" and "absolutely necessary", without clearly defining the meaning of essential security interests and specifying the specific applicable conditions. In today's international economic and trade field, it is not uncommon to impose restrictive measures on free trade in the name of national security. The extension of basic security interests has been continuously broadened, and the trust between the international community has been continuously reduced. Therefore, the international community urgently needs to clarify the meaning and application conditions of WTO security exception clauses through security exception negotiations, so as to reduce international trade disputes and rebuild the trust between the international community.

## 2. WTO security exception clauses and negotiation

### 2.1. WTO security exception clauses

The WTO security exceptions mainly involve Article 21 of GATT, Article 14 of GATS and Article 73 of TRIPS agreement. Article 21 of GATT is divided into three specific paragraphs: the main content of first paragraph is to allow member countries not to disclose information related to basic security interests. The main content of second paragraph is to allow member states to take necessary actions to

safeguard their basic security interests, which also specifies the applicable situations of this necessary action: (i) related to fission, fusion and related derivatives; (ii) related to military materials such as weapons and ammunition; (iii) in times of war or international relations emergencies. The main content of third paragraph is that member states shall not be prevented from taking actions to fulfill their obligations to maintain international peace and security.

From the terms of the clause, the term "essential security interests" is used in both first and second paragraphs, and the second paragraph also uses the term "necessary, urgent". However, this clause does not specifically explain the application of these terms, leaving a vague state. First of all, the boundaries of the scope of basic security interests are not yet clear, and there is no stipulation on which security interests are specifically included in basic security interests. Moreover, the term of "it believes" is considered to give member states discretion, but it is not clear whether it is a complete right of self-determination or a right of self-determination that needs to be restricted. Because of this ambiguous meaning and the lack of objective applicable standards, the application of this clause has also caused great controversy [2]. Article 73 of TRIPS agreement adopts exactly the same content as the article 21 of GATT, and the content of Article 14 of GATT are basically similar, only slightly modified. How to improve the provisions of WTO security exception clauses is an urgent problem to be solved in security exception negotiation, so as to make the obscure security clauses effective and enforceable.

## **2.2. WTO security exception negotiation process and results**

In the relevant WTO meetings and multilateral trade negotiation rounds, we have always attached great importance to the negotiation of security exceptions. From the preparatory establishment of the International Trade Organization (ITO) in 1947 to the establishment of the World Trade Organization (WTO) in 1995, the international community's negotiations on security exceptions have formed today's security exceptions and related remedial measures. At the initial stage of drafting the Charter of the International Trade Organization, there was no separate provision entitled "security exception", but it was stipulated in the general exception clause: nothing in Chapter IV of this Charter shall be interpreted as preventing members from adopting or implementing the following measures: (c) related to fissile materials; (d) related to the trafficking of arms, ammunition and war tools and other goods and materials for the supply of military facilities; (e) in wartime or other emergency situations in international relations, which it is related to the protection of members' basic security interests; (k) fulfilling its obligations under the Charter of the United Nations to maintain or restore international peace and security

During the Geneva meeting, the general exception clause under Chapter IV of the New York Draft, "Commercial Policy" was comprehensively adjusted. The representative of the United States proposed to delete items (c), (d), (e) and (k) in this clause and created a new clause as a general exception clause of the whole charter, not just the general exception under "commercial policy". This proposal was finally adopted as Article 99 of the Charter of the International Trade Organization, but the Charter did not come into effect because it was not passed by the United States Congress. Subsequently, the General Agreement on Tariffs and Trade (GATT) also experienced a reorganization procedure similar to the general exception clause in the Charter of the International Trade Organization. In the record report of September 1947, the purpose of this report was to discuss how to divide Part I and Part II of Article 20 of GATT into two different articles: Article 20 (a) and Article 20 and take "security exception" as the new title of Article 20, which was also the first time that a clear name of security exception appeared. In the draft of GATT in October 1947, part I and Part II of Article 20 of GATT were completely divided into two separate clauses: Article 20 General Exception and Article 21 Security Exception.

The Uruguay Round negotiations began in 1986. After several years of arduous negotiations between developed and developing countries, the WTO was finally established. There are obvious differences between the exception clauses related to political and security issues and the exception clauses governing all other affairs. When Article 21 of GATT was formed, the Cold War had just begun. In order to safeguard national sovereignty, national defense security and peace in military threats, one of the drafters of this clause once said that this clause should be avoided being used to protect domestic industries. However, in the Uruguay Round negotiations, it was very difficult for negotiators from all countries to understand the ambiguous terms and provisions in this clause. Therefore, the WTO security exception clause continues the content of Article 21 (1947) of GATT without modification. Moreover, since 1995, the negotiations on security exceptions have been at a standstill, and no attempt has been made to further revise the terms of security exceptions.

### **3. The dilemma analysis of security exception negotiation under discourse ethics**

#### **3.1. Discourse ethics theory**

On the basis of communicative action theory, Habermas put forward the theory of discourse ethics, pointing out that communicative action is essentially a negotiation (dialogue) relationship between subjects with language as the medium. He advocated that in an ideal discourse environment, communicative subjects with communicative qualifications should seek understanding and reach consensus through dialogue and negotiation according to rational requirements and preset norms and procedures [3]. In the theory of discourse ethics, communicative action theory is its theoretical basis, and communicative action, communicative rationality, communicative qualification, communicative language and inter-subjectivity, life world and system are the main contents of communicative action theory. Negotiation is its core concept and an action to demonstrate the effectiveness of communication. The ideal discourse environment is its rational presupposition, which is an indispensable prerequisite for communication and negotiation; "Generalization principle" and "discourse principle" are its two basic principles, which are mutually prerequisite and complementary; Cognition and proceduralism are its basic characteristics [4].

In Habermas's view, negotiation is also a kind of discourse and a communicative action with language as the medium. The negotiation must realize the following conditions: Firstly, the equal dialogue between the subjects; Secondly, the proceed in a common language and thinking framework; Thirdly, the language meets the requirements of comprehensibility, authenticity, sincerity and legitimacy; Fourthly, only when the negotiation principle is met can the negotiation result be valid. Only then can the negotiating parties reach a consensus [5].

#### **3.2. The dilemma of security exception negotiation**

##### **3.2.1. The impossibility of equal dialogue**

Habermas believed that the core of communicative behavior is to establish "inter-subjectivity". "Inter-subjectivity" refers to the rational interaction between independent and equal subjects. The "subject-subject" structure replaces the traditional "subject-object" structure, which lays the foundation for the rationalization of communication behavior [6]. Habermas emphasized that the participants in the negotiation must rely on the communication form of the inter-subjectivity structure in the argument, that is to say, the perspective of the subjects can be changed, so that the participants can truly understand themselves and identify with others [7]. At present, there are two major ideological societies in the world: capitalism and socialism. Different countries have different development patterns and uneven development levels, and in fact, big countries and small countries, strong countries and weak countries, developed countries and developing countries are in an unequal position. Influenced by hegemonism, the "subject-subject" structure can easily evolve into a "subject-object" structure in security exception negotiation, and it is even more difficult to realize empathy. Even, some countries will also use economic coercive means to interfere with others and carry out their will by force. Moreover, when there is a dispute between countries about the application of the security exception clause, whether the disputing institution can maintain its independence is also questioned, which becomes a barrier to equal dialogue between countries.

##### **3.2.2. Lack of semantic identity**

Whether the meaning of language can achieve the same validity directly affects and determines the effect of security exception negotiation. Habermas presupposed the validity ideal of semantic identity, which requires the speaker and the addressee to share the same set of linguistic signs and grammatical rules [8]. Community communication must use the same language, so that it is possible to reach understanding with each other. English has long been the universal language in the world, and there is no obstacle for all countries to use communication in security exception negotiation [9]. However, in the security exception negotiation, even under the same language, due to differences of various countries in ideology, cultural traditions, values, etc, as well as the unclear and multilateral meanings of the language itself, it will also lead to differences in language understanding and create obstacles to negotiation. According to the WTO security exception clause, "essential" in "essential security interests" is defined as "absolutely necessary" and "absolutely necessary and extremely important" in the dictionary. However, each country will have its own different understanding and definition of what national security interests are essential and very important. It can also be seen that it may be difficult for countries to enter the same context when negotiating.

### ***3.2.3. Lack of pragmatic effectiveness***

Effective communication between subjects can make up for the lack of linguistic identity. In order to ensure effective communication between communication subjects, Habermas's discourse theory presupposed a universal pragmatic premise, that is, it requires that "interactive participants must recognize each other's ability to be responsible, and thus presupposed that their actions are oriented towards validity". The "responsibility ability" here refers to the three effective requirements that the communicators can guarantee the communication, that is, the verbal dialogue in the communication behavior must meet the requirements of authenticity, correctness and sincerity [10]. Only by strictly abiding by the above requirements and through repeated debates and communication can the two sides reach a consensus. According to the trade disputes involved in WTO security exception clause, countries that quote this clause often claim that the WTO security exception clause is related to national security and should belong to a country's sovereignty, so it should be judged and decided by the member countries themselves. No matter in GATT or WTO period, the negotiators of the contracting parties are very worried that if the disputes related to national security interests are mishandled, it may lead some countries to directly withdraw from GATT or WTO system, so negotiators should try their best to avoid directly discussing national security issues or related disputes. It can be seen that in the past negotiations on security exceptions, most dialogues did not meet the requirements of authenticity, correctness and sincerity, and did not achieve effective communication. Even in some countries, during the negotiation process, what we uphold is not the attitude of sincere consultation, but the principle of prioritizing our own national interests and always putting our own national interests first, which has actually alienated our communication behavior into strategic behavior. In this case, the security exception negotiations can not be conducted effectively, and it is impossible to reach a consensus.

## **4. The way to solve the dilemma of security exception negotiation**

### ***4.1. Respect the dominant position of each country and create an ideal discourse environment***

To realize the equal dialogue between countries, first of all, we should respect the dominant position of each country and recognize the equality between countries. All countries should unite and resist interference and pressure in negotiations. Secondly, build a democratic deliberative procedure and create an ideal discourse environment. In the security exception negotiation, formulate democratic, reasonable and fair discourse rules and procedures to ensure that all countries participating in negotiations have equal discourse rights and the right to participate in democratic debates. Moreover, if there is a problem with the original rules, it is still through the power of words that negotiators need to discuss, exchange, refute and debate, and re-establish the rules that all countries abide by together. Moreover, in the process of mutual dialogue and discussion, each country should meet the requirements of authenticity, correctness and sincerity at the same time, face the political and security issues directly involved in the WTO security exception clauses, fully discuss the terms and applicable conditions of the clauses, and even launch a heated debate.

### ***4.2. Pay attention to the interpretation of WTO security exception clauses***

To meet the requirements of comprehensibility, authenticity, sincerity and legitimacy of language, we must attach importance to the interpretation of WTO security exception clauses. Only by reasonably explaining the meanings of the existing vague terms in WTO security exception clauses can these terms be modified to clarify the scope of basic security interests and the specific applicable conditions of the clauses, so as to increase the intelligibility of the language and make up for the deficiency of semantic identity. This paper believes that the rules and methods of treaty interpretation stipulated in the Vienna Convention on the Law of Treaties should be followed, that is, the interpretation of WTO security exceptions in good faith should be carried out by means of textual interpretation, contextual interpretation, purpose interpretation, and historical interpretation.

## **Acknowledgements**

This paper Sponsored by the seed Foundation of Innovation and Creation for Graduate Students in Northwestern Polytechnical University (CX2020030).

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