以下の「２.」のみについて、6 月 1 日（木）17 時までに回答を濵本宛に送信すること。

１. 授権条項はなぜ必要とされたか。また、なぜこのタイミング（1979 年）で採択されたか。

２. インドが EC を訴えた EC-一般関税特恵事件において、インドは、麻薬の生産・取引を撲滅するために一定の措置を執っている発展途上国を関税率において優遇する制度を EC が設けていることについて、一部の発展途上国のみを優遇することは授権条項では正当化できないと主張した。

インドの主張（パネル報告からの抜粋）

7.66　India argues that paragraph 3(c) requires that developed countries "respond positively" to the development, financial and trade needs of developing counties by ensuring that the product coverage and depth of tariff cuts are of a nature and magnitude that respond to the development, financial and trade needs of developing countries as a whole, not individually or in terms of sub-groups. According to India, the preferential tariff treatment must be applied without discrimination to like products originating in all developing countries.

EC の主張（同）

7.70　The European Communities, in contrast, argues that paragraph 3(c) permits developed countries to respond to the development needs of individual developing countries according to "objective criteria". The European Communities maintains that this does not mean that any difference related to development needs should be taken into account; in the European Communities' view, this would be an impossible task. Rather, the European Communities proposes two criteria for responding to the development needs in a "non-discriminatory" manner: (i) the difference in treatment must pursue a legitimate aim; and (ii) the difference in treatment must be a reasonable means to achieve that aim.

パネルの見解

7.78　The Panel notes that a textual reading of the language of paragraph 3(c) – whereby GSP schemes shall be designed and modified "to respond positively to the development, financial and trade needs of developing countries" – does not reveal whether the "needs of developing countries" refers to the needs of all developing countries or to the needs of individual developing countries. […]

7.79　Under these circumstances, the Panel considers it is necessary to have recourse to the context of paragraph 3(c) and other relevant means of interpretation, in line with Articles 31 and 32 of the Vienna Convention on the Law of Treaties ("Vienna Convention").

7.102　Tariff preferences would very often be a "reasonable means" to achieve that legitimate aim of promoting development. For example, providing tariff preferences would help to solve the development problem of some developing countries stemming from the size of population, by creating more jobs in labour-intensive industries. If the Panel were to uphold the European Communities' interpretation, the way would be open for the setting up of an unlimited number of special preferences favouring different selected developing countries. The end result would be the collapse of the whole GSP system and a return back to special preferences favouring selected developing countries, precisely the situation that negotiators aimed to eliminate back in the late 1960s.

7.174　Based on the above analysis, the Panel finds that the term "developing countries" in paragraph 2(a) should be interpreted to mean all developing countries, with the exception that where developed countries are implementing a priori limitations 375, "developing countries" may mean less than all developing countries.

上級委員会の見解

156.　It does not necessarily follow, however, that "non-discriminatory" should be interpreted to require that preference-granting countries provide "identical" tariff preferences under GSP schemes to "all" developing countries. In concluding otherwise, the Panel assumed that allowing tariff preferences such as the Drug Arrangements would necessarily "result [in] the collapse of the whole GSP system and a return back to special preferences favouring selected developing countries". To us, this conclusion is unwarranted. We observe that the term "generalized" requires that the GSP schemes of preference-granting countries remain generally applicable. Moreover, unlike the Panel, we believe that the Enabling Clause sets out sufficient conditions on the granting of preferences to protect against such an outcome. As we discuss below, provisions such as paragraphs 3(a) and 3(c) of the Enabling Clause impose specific conditions on the granting of different tariff preferences among GSP beneficiaries.

159.　[…] Paragraph 3(c) refers generally to "the development, financial and trade needs of developing countries". The absence of an explicit requirement in the text of paragraph 3(c) to respond to the needs of "all" developing countries, or to the needs of "each and every" developing country, suggests to us that, in fact, that provision imposes no such obligation.

165.　Accordingly, we are of the view that, by requiring developed countries to "respond positively" to the "needs of developing countries", which are varied and not homogeneous, paragraph 3(c) indicates that a GSP scheme may be "non-discriminatory" even if "identical" tariff treatment is not accorded to "all" GSP beneficiaries. Moreover, paragraph 3(c) suggests that tariff preferences under GSP schemes may be "non-discriminatory" when the relevant tariff preferences are addressed to a particular "development, financial [or] trade need" and are made available to all beneficiaries that share that need.

この上級委員会の解釈は、「『政治的』とも評しうる折衷的な立場」と言われることがある。いかなる意味において「政治的」・「折衷的」であるか。また、パネル・上級委員会のいずれに賛成か、あるいは第三の立場があり得るか？

参考文献（国際経済法の教科書類に加えて）

- 柳赫秀「WTO と途上国（上）（中）（下 1）（下 2)」貿易と関税 1998 年 7 月号、10 月号、2000 年 7 月号、9 月号。
- 濱田太郎「WTO における後発途上国問題」日本国際経済法学会年報 16 号（2007 年）
- 伊藤一頼「WTO 体制と発展途上国」日本国際経済法学会（編）『国際経済法講座 I 通商・投資・競争』（法律文化社、2012 年）
- 「特集 WTO ドーハラウンドは後発発展途上国に何をもたらしたか」アジ研ワールド・トレンド 20 巻 6 号（2014 年 7 月）
- 位田隆一「グローバル・ジャスティスにおける『開発の国際法』の意義」世界法年報 34 号（2015 年）