68. Article 27.2 sets out two conditions that an "other" developing country (a country not listed on Annex VII) must meet to benefit from the eight-year exception. Such country must establish that:

a) it is a developing country Member of the WTO for the purposes of Article 27.2; and

b) export subsidies it grants are at a minimum in conformity with the provisions of paragraph 4 of Article 27.

69. Article 27.4, in turn, sets out three conditions.[81] The developing country Member must:

a) *phase out* its export subsidies within eight years after the entry into force of the WTO Agreement, that is, by December 31, 2002;

b) not increase the level of its export subsidies; and

c) phase out its export subsidies in a shorter period of time than eight years if the export subsidies are inconsistent with its development needs.

70. Finally, given the nature of Article 3 as a strict prohibition subject to very few exceptions, Brazil must show that the exercise of the right under the limited and conditional exception set out in Article 27 does not "devalue" or "negate" the rights of other WTO Members under Article 3.[82]

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[81] Article 27.4 provides that:

> Any developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies[81], and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

[82] The Appellate Body noted in its recent report on *United States - Shrimps* that:

> "[B]ecause the GATT 1994 itself makes available the exceptions of article XX, in recognition of the legitimate nature of the policies and interests there embodied, the right to invoke one of those exceptions is not to be rendered illusory. The same concept may be expressed from a slightly different angle of vision, thus, a balance must be struck between the *right* of a Member to invoke an exception under Article XX and the *duty* of that same Member to respect the treaty rights of

cont. …