Señor Presidente, estimado Embajador García-Moritán,

Es una satisfacción para la delegación brasilena reverlo a usted presidiendo nuestros trabajos en esta tercera sesión del PrepCom de la Conferencia del 2012 para un Tratado sobre el Comercio de Armas. Usted cuenta con nuestra amistad y apoyo.

My delegation would also like to thank you for circulating the draft paper on “Implementation”, with a view to facilitate our discussions. Further treatment of elements discussed during the two first PrepCom sessions, such as scope and criteria, depend on how we tackle implementation provisions in an ATT. Our debate during this week can give a clearer picture of how an ATT can look like. Reaching some level of consensus on this subject will therefore enable progress in other aspects of a treaty.

Mr. Chairman,

Brazil is in favor of an international legally binding instrument that regulates the legitimate trade of conventional arms and that helps prevent, combat and eradicate the illicit trade of those weapons. We also attach great importance to international cooperation and assistance as a means to effectively promote those goals.
Provisions aimed at reinforcing national controls over exports and imports, as well as on transit, and at introducing enforcement measures to cope with activities that may be inconsistent with the Treaty cannot but receive our energetic support. The approach you have taken in giving States’ enough latitude to adopt laws and regulations to apply the Treaty in accordance with their political and legal systems and traditions is commendable and goes in the right direction. The relevance of end-user certification, which should apply to all arms transfers and not only when requested by the exporting State, cannot be overemphasized as well. Thus a multilateral effort such as the ATT can be a positive contribution in helping States develop better standards for controlling their exports, imports and related activities.

While an ATT can be relevant in regulating the legitimate arms trade, it should not restrict it. An ATT should not interfere with the inherent right of States for individual or collective self-defence, as recognized by Article 51 of the UN Charter. Moreover, in recent years, both the UN General Assembly and the Security Council seem to acknowledge that this includes States’ right to manufacture, import, export, transfer and retain conventional arms for self-defence purposes and security needs consistent with International Law and the UN Charter. Also, my delegation believes that an ATT should not impose obstacles that may harass States’ legitimate aspirations to make use of technologies and goods to promote their own development, including those technologies and goods of a dual nature.

Having said this, and after considering the draft paper you have circulated, Mr. Chairman, my delegation has found some elements of concern. I refer particularly to Section B (“Transfer Denials”) and to Section C numeral 4.
In our view, those two Sections seem to go beyond what would be necessary or appropriate in terms of regulating the legitimate trade of arms among States.

Those provisions, if implemented, would have serious implications in a number of areas, including to States’ security and development.

From a security point of view, for instance, the text would impose total transparency over all transactions of an importing State. The concrete result of this would be that of opening for public, widespread knowledge that State’s defense capabilities and means to sustain a durable conflict. This is not conceivable for States that rely on conventional weapons for their own national defense. This may not be the case for States that can rely on other kinds of weapons, pertaining to them or to alliances they may take part in.

Furthermore, according to the text, while importing States will be under permanent scrutiny under denial mechanisms or transparency provisions contained in the Treaty, arms producing States would not have to inform or report anything on weapons produced by them or acquired internally via national procurement. Discriminating importing States vis-à-vis producing States would not be fair or acceptable, and this needs to be addressed in our negotiations. Some tend to advocate that an ATT is a treaty on trade and not in production, so we should not deal with production. My delegation believes that these issues are inter-related and cannot be dealt separately. Taking into consideration the complexity of this matter, we believe that any reporting mechanism should be at most voluntary.

Also, it seems that provisions under Sections B and C.4 can pave the way for restrictions, even informal embargos, in flows of equipment, technologies and
goods, including those of a dual nature with civilian purposes – to the prejudice of countries which depend basically on imports. We are not convinced about the importance of notifying denied transfers, much less about the obligation of promoting consultations among potential exporting countries. The ATT is a treaty on arms but is not a commercial treaty.

The Brazilian delegation believes that provisions on transfer denials and on reporting will naturally raise questions about their consistency with Article 51 of the UN Charter and to the right of States to accede to or use technologies for their own development.

In parallel, Mr. Chairman, the draft paper seems somewhat vague, to my delegation, in addressing the question of the illicit trade of conventional arms. There is a welcome yet generic commitment that each State Party shall take all the necessary measures to guarantee that arms are not diverted to the illicit market. While much content is put in promoting intergovernmental coordination in dealing with the legitimate trade of arms, little is said about the same kind of coordination with regard to the illicit trade. This is disappointing taking into account the number of delegations here, like Brazil, that seem to attribute primary importance to this issue.

As mentioned by the African Group this morning, my delegation would also support, first, a general prohibition on arms transfers to non-State actors which are not authorized by the recipient State to receive those weapons. Second, we would favor a provision by which any arms transfers should only be authorized by a supplying State after a relevant authorization was given from the recipient State. Authorization from transit and transshipment States should also be sought
by exporting States, as suggested by Mexico on behalf of a number of South American, Central American and Caribbean countries. These elements would be very important contributions for an ATT in preventing and combating the illicit trade of arms. Discussing provisions such as these may raise resistance from some individual countries, but should not be a taboo for this PrepCom. Also, we believe that the draft paper lacks some kind of consultation mechanism that would explicitly enable a State which has intercepted illicit weapons within its territory to require all necessary information regarding those weapons from the State where those weapons were produced or transferred from. We would also support the idea of introducing measures concerning marking and tracing of arms and ammunition in the Treaty.

Mr. Chairman, with regard to the Implementation Support Unit, we believe that it should be established within the framework of the UN. Its dimension should be that of a body designed primarily to support international efforts of cooperation and assistance with a view to helping States Parties to establish or strengthen their national control systems over arms transfers.

To conclude, my delegation reiterates its support for an ATT that regulates the legitimate trade in arms, without restricting it, and that introduces meaningful provisions with a view to prevent and combat the illicit trade of those weapons. We believe therefore that up to the 2012, Member States will be able to agree in identifying what is really needed, with balance, realism and focus, to effectively reach these goals. The Brazilian delegation is ready to take part in this exercise under your leadership, and you can count with our full engagement.

I thank you, Mr. Chairman.