Memo from VP Davignon to the Council meeting on Industry of 15 October 1984

MEMO 104/84 . Bruxelles, le 16 octobre 1984

U.S. POLICY ON THE TRANSFER OF TECHNOLOGY

1. A series of measures have been taken recently by the U.S. Administration to restrict the transfer of technology and the dissemination of scientific information. These include :

- the increasingly widespread application of a "NO FOREIGN (NOFORN)" restriction to Department of Defense-sponsored conferences, symposia and other industry-oriented meetings (for example, the requirement to be a U.S. citizen to participate at a Metal Matrix Composites Course at UCLA in August 1983 and at an Ordered Polymers Workshop at Dayton University, Ohio in November 1983) ;
- restrictions on the dissemination of published information (the diffusion of NASA Tech Briefs restricted to US citizens only ; the removal of NASA records from DIALOG's "Federal Research in Progress" data-base because of a prohibition on "transmitting these records outside the United States") ;
- the imposition of restrictions on the transfer of technical data to specified countries on participants at meetings organised by private enterprises (for example, the "Non-Transfer Agreement" imposed on participants at the 1984 DIGITAL EQUIPMENT CORPORATION'S User Group's 1984 European Symposium in Amsterdam)
- the restrictions placed on private (non-US ?) users of the LANDSAT space shuttle as a result of the July 17, 1984, law (As reported in the U.K. publication the ECONOMIST of July 21, 1984, these include the need for Department of Commerce approval before contact with non-U.S. customers, the U.S. Government's right to inspect the company's equipment and ground stations anywhere in the world, the obligation on the company to make the data obtained available, free of charge, to an American Government archive to which anybody has access) ;
- stricter criteria for the classification of information (e.g. Executive Order 12356 of April, 1982 required restrictions to be imposed in all cases where reasonable doubt exists about the need for classification, expanded the number of categories of potentially classifiable information and made it possible to reclassify information previously made public) ;
- difficulties for some foreign scientists to get entry visas.

2. Many of these measures are, it is understood, based on the powers provided by the 1979 Export Administration Act, the 1976 Arms Export Control Act, the 1954 Atomic Energy Act and the 1978 Nuclear Non-Proliferation Act. Others appear to be based on the President's executive powers.

3. The EAA is the broadest-ranging of these acts. It defines technology as "the information and know-how that can be used to design, produce, manufacture, utilize or reconstruct goods, including computer software and technical data but not the goods themselves" and provides for the establishment of a "commodity control list", consisting of any goods or technology subject to export controls, as well as a militarily critical technologies list. The renewal of the 1979 EAA is currently under examination in Washington. The Community and its Member States have made known their views on the various amendments which have been proposed.

4. Although the Arms Export Control Act is principally concerned with the export of weapons technology it can also be used to control the export of more general technologies, for example, some semiconductor technologies and coding algorithms.

5. The controls imposed on the transfer of technology are justified, by the U.S. Administration, primarily on the grounds of national security. However, there is some suspicion outside the U.S. that the manner in which the controls are implemented may, in practise, give a competitive advantage to U.S. companies as compared with non-U.S. companies. They may well create important problems for industry in the European Community.

6. The range of possibilities covered by the measures referred to above would appear to give the U.S. Administration extremely comprehensive powers to control or, at least, to exert a very strong influence on the transfer of technology not just directly between the U.S. and another country but also between other countries as such if the technology in question is subject to U.S. controls. However, it is not completely clear to what extent such measures are implemented in practice and, if so, to what extent they have in fact affected the transfer of technology and scientific exchanges.

7. The Community urgently needs to clarify the situation by a) establishing a comprehensive inventory of all measures which have been taken or are currently under consideration, and b) assessing their actual impact.

This could probably be carried out most effectively by means of an investigation carried out by the Member States missions in Washington in cooperation with the Commission's delegation.