First Meeting
Geneva, 10 – 14 November 2003

Meeting of Experts
Geneva, 18 – 29 August 2003
Items 5 and 6 of the agenda

LEGISLATION GOVERNING INTANGIBLE TECHNOLOGY

Prepared by the United Kingdom

1. New controls under the Export Control Act 2002 will be introduced on: the electronic transfer abroad of military technology, transfer by any means of technology related to weapons of mass destruction and the provision of WMD related technical assistance.

2. These controls are all contained in the *draft* Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order. It should be noted, however, that the *draft* Order containing these new controls also reproduces, and in the process consolidates and rationalises, existing controls on:

- exports of military goods including military technology exported in physical form. (These controls are currently contained in the Export of Goods (Control) Order 1994, as amended; and

- exports of dual-use goods including technology exported in physical form and electronic transfers of the same technology. (These controls are currently contained in the Dual-Use Items (Export Control) Regulations 2000, as amended.

3. Both these Orders will be repealed in full at the same time as the new Orders under the Export Control Act come into force, and in particular the repeal of export provisions of the Import, Export and Customs Powers (Defence) Act 1939 will take effect at that time.

The Transfer of Technology by Intangible Means and Provision of Technical Assistance

4. *The Export of Goods, Transfer of Technology and Provision of Technical Assistance Order* consolidates and rationalises the existing controls on the physical export of military goods and technology and the physical export and electronic transfer of dual use goods and technology. It also provides for new controls on the transfer of military technology by electronic means, the transfer, by any means, of technology intended for use in connection with weapons of mass destruction or a related missile programme and the provision of technical assistance in relation to WMD.

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5. The new control on the electronic transfer of military technology will apply to technology whose physical export abroad is already controlled. Electronic transfer includes transfer by fax, email or telephone. The existing Open General Export Licence for military technology will be extended to cover electronic transfers and extant individual export licences will also be extended to cover electronic as well as physical exports. One of the key issues on the introduction of the new control is the record keeping requirements under open licences because of the potential volume of electronic transfers. The new control on the transfer, by any means, of WMD related technology supplements existing end-use controls on the physical export of goods and technology and the electronic transfer of technology contained in the EC Dual Use Regulation. The new control will apply to anyone in the UK or a UK person anywhere in the world who communicates technology which the provider knows or has been informed by Government is or might be intended for use outside the EU in connection with WMD or missiles capable of delivering WMD. Transfer by any means includes face to face communication, personal demonstration or dissemination of written material. The communication of information that is in the public domain, or the placing of this information into the public domain is not, however, covered by this control.

6. The new control on the provision of technical assistance will apply to anyone in the UK or to any UK person abroad who provides or facilitates the provision of technical assistance outside the EC where they know, or are informed by Government, that it is or may be intended for use in connection with WMD or missiles capable of delivering WMD. This control together with the WMD transfer controls implement a European Joint Action of 22 June 2000.

New controls on the transfer by any means of technology related to weapons of mass destruction

7. Under a new draft Order it will be illegal for anyone in the UK or any UK person or legal entity anywhere in the world to communicate technology by any means which they know, or which the Government has informed them, is or may be intended for use in connection with the development of WMD or missiles capable of their delivery, without first obtaining a licence. No licence will however need to be obtained for information that is already in, or is being placed in, the public domain. The new control will apply irrespective of how and where the technology is communicated.

8. These controls, together with the controls on the provision of technical assistance described above, will implement the European Joint Action of 22 June 2000 on the provision of technical assistance to certain military end uses.

Relationship of the new controls to other legislation on weapons of mass Destruction

9. It is important to note that the new controls supplement the following existing legislation on weapons of mass destruction:

- The end-use control on physical exports of goods and technology and electronic transfers abroad of technology. This control is contained in the EC Dual-Use Regulation. Under this a licence is already required from the Department if Trade and Industry’s Export Control Organisation for the electronic transfer of technology (as well as the physical export of goods including technology) from the UK to outside the EC that the exporter or transferor knows, or
has been informed, or suspects is or may be intended, for use in connection with weapons of mass destruction or missiles capable of their delivery. There is no exemption under the existing end-use control for information in the public domain.