

17 January 1984

PANEL ON VALUE-ADDED TAX AND THRESHOLD

*Report of the Panel adopted by the Committee on Government Procurement
on 16 May 1984
(GPR/21 - 31S/247)*

I. INTRODUCTION

1. At the request of the United States delegation the Committee on Government Procurement established the Panel under Article VII:7 of the Agreement on Government Procurement, on 23 February 1983, with the following terms of reference:

"To examine, in the light of the relevant provisions of this Agreement the matter referred to the Committee by the United States in GPR/Spec/18; to consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution; and to make a statement concerning the facts of the matter as they relate to application of the Agreement and make such findings as will assist the Committee in making recommendations or giving rulings on the matter." (GPR/M/7, paragraph 67).

The composition of the Panel was as follows:

Chairman:

II. FACTUAL ASPECTS

6. The matter referred to in paragraph 1 above was:
"... the European Communities' practice of excluding the value-added tax (VAT) from the contract price of

included.¹ The US approach assumed that the value of the contract for the purpose of Article I:1(b) was equivalent to the full cost to the buyer.² The Agreement contained no definition of what was meant by

all be netted out because this in the end was money paid by the entity but recovered by the government.¹ These and other arguments could all be put forward for different rules. But the fact remained that the rule agreed upon was a uniform threshold for contract value, without deductions or adjustment (except that contracts might not be divided to avoid application of the Agreement). With a fixed uniform threshold, the negotiators could then seek an equitable balance of rights and obligations in the negotiations on entity coverage.

13. The European Economic Community questioned the relevancy to the present dispute of the various theoretical arguments the United States had admitted could be put forward for different rules. Concerning the argument that the language of the

IV. FINDINGS AND CONCLUSIONS

18. The Panel examined whether the European Economic Community's practice of excluding the value-added tax (VAT) from the contract price in relation to the determination of whether government purchases fall under the Agreement was in conformity with Article I:1(b) of the Agreement,

26. The Panel also considered the argument that threshold determinations had to be based on estimates which by their nature were imprecise and that several erratic factors would be at play which lead to variations in the threshold. The figure of SDR 150,000 was, for instance, converted into national currencies once a year, whereas exchange rates could fluctuate considerably over the year. Furthermore, the accuracy of the estimate would depend on the skill and experience of the officials responsible. The Panel was of the opinion that the acceptance of certain erratic factors which applied to all Parties and which could affect the threshold in both directions, could not mean that Parties might make a unilateral deduction of certain cost elements like VAT, which would have the effect of raising the threshold for the Party in question. The inevitable uncertainty resulting from the need to estimate the contract value and from currency variations was no reason to create this further difference. Regarding the currency conversions, the Panel also noted that the Committee had decided, at its January 1981 meeting, to examine any significant problem with regard to the application of the Agreement due to a major currency change in the course of the year.

27. The Panel considered the argument that the inclusion of the VAT would lead to differences among the various EC Member States, caused by the absence of uniform VAT rates within the Community, and recognized that the Community considered this to be a problem. The Panel also recognized that

3. The representative of the United States welcomed the adoption of the VAT Panel report which, in his delegation's view, was both well reasoned and equitable in