The parties entered into contracts for sale of goods by Claimant to Respondent, and various additions thereto. As the US import licences held for the goods were due to expire, Respondent urged for rapid shipment. Some of the goods were delivered prior to expiry of the licences and some afterwards. Respondent paid the full price of goods delivered prior to expiry of the licences and approximately one third of the price of the goods shipped thereafter. Respondent refused to make any further payments, claiming the sums withheld would be set off against damages allegedly due to it. Respondent alleges it had an exclusive right to import the goods, which Claimant had violated, and that Claimant had also defaulted on timely shipment. The Arbitral Tribunal finds no proof of Respondent's claim to exclusivity, no legally binding requirement for the deliveries to be timed so as to come within the term of the US import licences, nor any lack of good faith by Claimant in its choice of time of delivery. In so determining, it refers to Articles 2.17 (merger clause), 2.18 (written modification clause) and 4.3 (prior commercial practices) of the Unidroit Principles. 85% of arbitration costs are to be borne by Respondent and 15% by Claimant, reflecting the success rate of the various claims and the proportion of the proceedings devoted to each of them.

The Majority Arbitrators further considered whether under the general duty to act in good faith Claimant would have been under an obligation to accelerate the shipment . . . so as to allow a customs clearing prior to the expiry of the US import licence. For instance, parties to a contract might be or become bound by a particular course of dealing which they have established as between themselves, by virtue of their previous commercial practices and conduct, and which can fairly be regarded as a common basis of understanding for interpreting their expression and other conduct. This notion,
for instance, is also reflected in Article 4.3 of the 1994 *Unidroit Principles* (which are not directly applicable in the instant case, but nevertheless express a *commnis opinio* and consensus).

The question thus arises whether such a particular course of dealing (which might have to be considered or applied by this Tribunal) had been established between the Parties. The answer to this question is, however, **negative**, for three reasons. **First**, it is from the outset hardly conceivable that a conclusive (and in the end legally binding) commercial practice can be established overriding the terms of a straightforward sales contract; typically, such practices emerge in the framework of long-term contracts such as those in the construction industry. **Second**, the explicit integration clause and the written modification clause, as contained in the Contract, operate as a **bar** against the assumption that a certain behaviour or practice could reach the level of becoming legally binding between the Parties. **Third**, the contractual relationship, as it had been examined by this Tribunal, did not reveal any particular commercial practices between the Parties, and there is no evidence before the Tribunal that the Parties had established a particular conduct which could have become legally binding on them.

**Referring Principles:**

1.2.2 - Trade usages