FINAL AWARD

NAI Case No. 4917

under the Arbitration Rules of the Netherlands Arbitration Institute
in force as of 1 January 2015

between

QMEA Chemical Solutions B.V.

Claimant

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Romark Global Pharma LLC

Romark Laboratories LC

Respondents

Arbitral Tribunal

Mr Jozua van der Beek
Mr Shawn Conway
Ms Annet van Hooft (Chairperson)

10 June 2022

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I. LIST OF DEFINED TERMS

Administrative Secretary	The secretary to the Arbitral Tribunal, Mr Benjamin Ross
Agreement	The agreement of 26 June 2020 between QMEA and Romark Global for the sale and purchase of 105 metric tons of 2-Amino 5-Nitro Thiazole
Arbitral Tribunal	The arbitral tribunal composed of Mr Jozua van der Beek, Mr Shawn Conway, and Ms Annet van Hooft (Chairperson)
CISG	United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980
Claimant	QMEA Chemical Solutions B.V.
Claimant's Second Submission	Claimant's submission of 21 January 2022
Mt	Metric tons, i.e., 1000 kilograms
NAI	Netherlands Arbitration Institute
NAI Rules	Arbitration Rules of the NAI in force as of 1 January 2015
Parties	Claimant and Respondents
Party	Claimant or a Respondent
Product	2-Amino 5-Nitro Thiazole
Procedural Order No. 1	Procedural Order No. 1, dated 21 September 2021
Procedural Order No. 2	Procedural Order No. 2, dated 5 December 2021
PTG	PTG Advanced Catalyst Co., Ltd
QMEA	QMEA Chemical Solutions B.V.
Respondent No. 1	Romark Global Pharma LLC
Respondent No. 2	Romark Laboratories LC
Respondents	Respondent No. 1 and Respondent No. 2
Romark Global	Romark Global Pharma LLC
Romark Laboratories	Romark Laboratories LC
Statement of Claim	Claimant's Statement of Claim, dated 14 September 2021

II. INTRODUCTION

A. The Parties

1. Claimant in these arbitration proceedings is:

QMEA Chemical Solutions B.V.
Emmaplein 141,
5211 VZ, 's-Hertogenbosch
The Netherlands

T.: +31 62 274 89 35
E.: j.huiberts@fortecapital.eu

VAT number: 855086610B01

Hereinafter "**Claimant**" or "**QMEA**".

2. In this arbitration, Claimant is represented by:

Mr Hans Alexander de Savornin Lohman
Mr Robbert-Jan Winters
Olympisch stadion 39
1076 DE, Amsterdam
The Netherlands

T.: +31 20 760 00 30
+31 62 280 58 52
+31 61 498 55 70

E.: lohman@verbeekdecaluwe.nl
winters@verbeekdecaluwe.nl

3. Respondent No. 1 is:

Romark Global Pharma LLC
6 Carr 696
00646 Dorado, PR
Puerto Rico

T.: +1 787 919 7987
E.: marc.ayers@romark.com
kevin.cowley@romark.com

Hereafter "**Respondent No. 1**" or "**Romark Global**".

4. Respondent No. 2 in these arbitration proceedings is:

Romark Laboratories LC
3000 Bayport Drive, Suite 200
33607 Tampa, FL
United States

T.: +1 813 282 8544
E.: marc.ayers@romark.com
kevin.cowley@romark.com

5. Hereafter **"Respondent No. 2"** or **"Romark Laboratories"**.

6. Respondent No. 1 and Respondent No. 2 are hereinafter jointly referred to as **"Respondents"**.

7. Respondents are not represented by outside counsel.

8. Claimant and Respondents are jointly referred to as the **"Parties"** and individually as a **"Party"**.

B. The Arbitral Tribunal

9. On 10 August 2021, pursuant to the list procedure provided for in Article 14 of the Arbitration Rules of the Netherlands Arbitration Institute in force as of 1 January 2015 (**"NAI Rules"**) and in accordance with Article 16(1) of the NAI Rules, Mr Tomas Vaal, the acting administrator of the Netherlands Arbitration Institute (**"NAI"**), confirmed the appointment of the following persons as arbitrators in these proceedings:

10. Mr Jozua van der Beek, residing in Odijk, the Netherlands:

Zenas Legal
Clarenburgweg 9
3984 RD Odijk
The Netherlands

T.: +31 30 785 72 02
E.: jozua.vanderbeek@zenas.legal

11. Mr Shawn Conway, residing in Rotterdam, the Netherlands:

Conway & Partners
P.O. Box 52610
3007 KC Rotterdam
The Netherlands

T.: +31 10 204 22 00
E.: conway@conway-partners.com

12. Ms Annet van Hooft (Chairperson), residing in Paris, France:

93, avenue Raymond Poincaré
75116 Paris
France

T.: +33 6 1915 9293
E.: vanhooft@vanhooft-legal.com
E.: info@vanhooft-legal.com

13. Together hereinafter referred to as the "**Arbitral Tribunal**".

C. The arbitral institution

14. These arbitration proceedings are administrated by the NAI.

15. The contact details of the NAI are as follows:

The Netherlands Arbitration Institute
Ms W.M.A. Malcontent
Ms Sofia Paoletta
Ms Leonie Assendelft
P.O. Box 21075,
3001 AB Rotterdam
The Netherlands

T.: +31 10 281 69 69
E.: secretariaat@nai-nl.org

D. The arbitration agreement

16. On 11 May 2021, Claimant filed a Request for Arbitration with the NAI pursuant to the arbitration clause included in Article 26 of the agreement for the sale and purchase of 105 metric tons of 2-Amino 5-Nitro Thiazole dated 26 June 2020 signed by Claimant and Respondent No. 1 ("**Agreement**"). Respondent No. 2 also signed the Agreement "*with respect to its agreement to Clause 13*", called "*parent guarantee – non-circumvention*".[1]

17. Article 26 of the Agreement provides as follows:

> *26. GOVERNING LAW AND COMPETENT COURT*
>
> *26.1 This Agreement is governed by the laws of the Netherlands, in combination with the United Nations Convention of 11 April 1980 (CISG) on Contracts for the Sale of Goods (Vienna Sales Convention), irrespective of whether the Customer is established in a CISG member state or not.*
>
> *26.2 All disputes arising in connection with the Agreement shall exclusively be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute. The arbitral tribunal shall be composed of three (3) arbitrators. The arbitral tribunal shall be appointed according to the list procedure. The place of arbitration shall be The Hague, the Netherlands. The proceedings shall be conducted in the English language. The arbitral tribunal shall decide in accordance with the rules of law. Supplier does, however, have*

[1] **Exhibit C-1:** Agreement, Article 13, p. 9 and signature page, p. 17.

> *the right to bring any matter before any other competent court, including the competent court where the Customer is domiciled.*[2]

E. The place of the arbitration

18. Pursuant to Article 26.2 of the Agreement, "[t]*he place of arbitration shall be The Hague, the Netherlands*".

19. Accordingly, the place of the arbitration is The Hague, the Netherlands.

F. The language of the arbitration

20. Pursuant to Article 26.2 of the Agreement, "[t]*he proceedings shall be conducted in the English language*".

21. Accordingly, the language of the arbitration is English.

G. The applicable substantive law

22. Article 26 of the Agreement provides the following:

> *26.1 This Agreement is governed by the laws of the Netherlands, in combination with the United Nations Convention of 11 April 1980 (CISG) on Contracts for the Sale of Goods (Vienna Sales Convention), irrespective of whether the Customer is established in a CISG member state or not.*
>
> *26.2 [...] The arbitral tribunal shall decide in accordance with the rules of law. [...]*

23. Accordingly, the substantive laws applicable to the dispute are the laws of the Netherlands in combination with the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (the "**CISG**").

24. The Parties have not expressly agreed that the Arbitral Tribunal shall have the power to act as *amiable compositeur* or *ex aequo et bono*. Therefore, pursuant to Article 42(3) of the NAI Rules, the Arbitral Tribunal does not have the power to decide as *amiable compositeur* or *ex aequo et bono*.

H. The applicable procedural rules

25. The rules governing the proceedings of this arbitration are the mandatory rules applicable to arbitrations seated in The Hague, the Netherlands, and those included in the NAI Rules, as well as those rules agreed upon by the Parties.

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[2] **Exhibit C-1**: Agreement, Article 26, pp. 16-17.

III. PROCEDURAL HISTORY

26. On 11 May 2021, Claimant filed a request for arbitration with the NAI, together with one exhibit. With respect to the selection of the arbitrators, Claimant indicated that the Parties had agreed to "*nothing*" regarding their qualifications, but that Claimant would prefer "[a]*rbitrators with experience in international contract law*".

27. On 19 May 2021, the NAI invited Respondents to file their short answer. In addition, with reference to the arbitration agreement, the NAI indicated that it would appoint the arbitrators according to the list procedure of Article 14 of the NAI Rules. Because Claimant had expressed a preference for arbitrators with experience in international contract law, the NAI invited Respondents to respond to this preference in their short answer.

28. The same day, pursuant to Article 53(1) and (2) of the NAI Rules, the NAI fixed the administration costs in an amount of EUR 14,520.00 (including EUR 2,520.00 VAT) and requested Claimant to transfer this amount to its bank account.

29. On 3 June 2021, Respondents filed a short answer in which they provided their contact details and indicated that they had "*not appointed an arbitrator and have no other particulars to provide at this time*".

30. On 10 June 2021, the NAI informed the Parties that it had received EUR 14,520.00 from Claimant to cover its administration costs. In addition, the NAI indicated that it would proceed in accordance with Article 14(1) of the NAI Rules and compose a list of arbitrators.

31. On 23 June 2021, the NAI communicated a list of potential arbitrators to the Parties. The NAI requested that they return the list within fourteen days, after having deleted the names of the arbitrators against whom they have "*overriding objections and numbering the remaining names in order of preference*".

32. On 8 July 2021, the NAI confirmed receipt of Claimant's duly completed version of the list of arbitrators. In addition, the NAI warned Respondents that if their "*list is not returned within one week* [the NAI would] *assume that all persons appearing on the list are equally acceptable to* [Respondents]", following which the NAI would proceed with the appointment of the arbitrators.

33. On 20 July 2021, the NAI informed the Parties that Respondents had not returned their duly completed version of the list of arbitrators.

34. On 10 August 2021, pursuant to the list procedure provided for in Article 14 of NAI Rules, and in accordance with Article 16(1) of the NAI Rules, Mr Tomas Vaal, the acting

administrator of the NAI, confirmed the appointment as arbitrators of Mr Jozua van der Beek, Mr Shawn Conway, and Ms Annet van Hooft (Chairperson). The NAI set the arbitrators' hourly rate at EUR 300.00, pursuant to the NAI guidelines and invited the arbitrators to contact the NAI for the purpose of determining the amount of the deposit for their fees and disbursements.

35. The same day, the NAI sent the file to the Arbitral Tribunal.

36. On 16 August 2021, the Arbitral Tribunal wrote to the Parties for the first time with a view to organising the case management conference to schedule and establish procedures for the conduct of the arbitration. The Arbitral Tribunal therefore invited the Parties to consult with each other with a view to agreeing the procedural steps to be included in the procedural timetable and – to the extent possible – to present a joint proposal for the procedural timetable. Alternatively, the Parties were invited to submit their own proposed timetable.

37. On 17 August 2021, the Arbitral Tribunal proposed to hold the case management conference on 26 August 2021 or 13 September 2021, and invited the Parties confirm their availability.

38. The same day, Claimant confirmed that it was available on both dates proposed by the Arbitral Tribunal, with a strong preference for 26 August 2021. Claimant added that "[i]*f that date proves to be impossible, QMEA strongly urges you to pick an alternative date before 13 September for the aforementioned reasons*".

39. On 19 August 2021, Respondents confirmed they were available on 13 September 2021, and indicated that they were not available on 26 August 2021.

40. On 24 August 2021, because the Parties were unable to reach agreement, Claimant communicated its proposed procedural timetable to the Arbitral Tribunal. Claimant "*emphasise*[d] *the need for a swift procedure, given the straightforward nature of the case and in order to prevent further delays and resolve the dispute as soon as possible*".

41. On 25 August 2021, the Arbitral Tribunal informed the Parties that it was unable to hold the case management conference prior to 13 September 2021. Accordingly, given the Parties' availability for this date, the Arbitral Tribunal fixed the date for the case management conference on 13 September 2021, at 17.00 CET.

42. On 3 September 2021, the Arbitral Tribunal circulated draft procedural order No. 1 and a draft agenda for the case management conference. The Arbitral Tribunal invited the Parties to provide any comments they may have in relation to these two drafts by 9 September 2021.

43. On 7 September 2021, Claimant informed the Arbitral Tribunal that it was preparing its statement of claim and asked the Arbitral Tribunal how many physical copies it would like to receive.

44. On 8 September 2021, the Arbitral Tribunal invited Claimant to file hard copies in accordance with the provisional instructions included in paragraphs 15.5 and 15.6 of draft procedural order No. 1.

45. On 10 September 2021, the Arbitral Tribunal noted that none of the Parties had commented on the draft agenda for the case management conference, or on draft procedural order No. 1 by the deadline of 9 September 2021. Accordingly, the Arbitral Tribunal provided the Parties with the agenda for the case management conference and indicated that Mr Benjamin Ross, an associate working at the firm of the Chairperson, would also attend the case management conference.

46. On 13 September 2021 at 17.00 CET, Claimant represented by Mr Hans de Savornin Lohman and Mr Robbert-Jan Winters, and Respondents represented by Mr Marc Ayers, participated in a case management conference by video link with the Arbitral Tribunal. During the case management conference, the Parties and the Arbitral Tribunal discussed and agreed to the terms of draft procedural order No. 1. They also discussed and agreed on a procedural timetable.

47. On 14 September 2021, Claimant filed its Statement of Claim ("**Statement of Claim**"), together with exhibits 1 to 76, which were filed in the form of three scanned documents. When filing the Statement of Claim, Claimant sent separate emails to each member of the Arbitral Tribunal, and a separate email to Respondents.

48. On 15 September 2021, the Arbitral Tribunal wrote to the NAI to request a deposit of EUR 60,000.00 from Claimant, in accordance with the basic deposit as mentioned on the NAI website. In addition, pursuant to Article 20 of the NAI Rules, the Arbitral Tribunal requested that the NAI appoint Mr Benjamin Ross as the Arbitral Tribunal's secretary. The Arbitral Tribunal provided the NAI with a copy of Mr Benjamin Ross' signed statement confirming his independence and impartiality, availability, and acceptance, together with a copy of his CV.

49. The same day, following the discussion that took place during the case management conference, the Arbitral Tribunal communicated a revised draft of procedural order No. 1. The Arbitral Tribunal invited the Parties to provide any final comments on this draft by 17 September 2021.

50. Also on 15 September 2021, the Chairperson of the Arbitral Tribunal wrote to the Parties to remind them that they should avoid making *ex parte* communications during the arbitration proceedings. Accordingly, the Parties were asked to always send their communications simultaneously to everyone involved in the arbitration. In addition, the Chairperson requested that, in keeping with the procedural directions contained in the draft procedural order No. 1, Claimant file separate electronic documents for each exhibit and add the letter "C" in front of each exhibit number. The Arbitral Tribunal also requested a searchable PDF copy of the Statement of Claim.

51. On 16 September 2021, Claimant communicated a searchable copy of the Statement of Claim, together with exhibits C-1 to C-76.

52. On 21 September 2021, the Arbitral Tribunal noted that none of the Parties had commented on the revised draft of procedural order No. 1 by the deadline of 17 September 2021. Accordingly, the Arbitral Tribunal issued Procedural Order No. 1, which included the agreed procedural timetable ("**Procedural Order No. 1**").

53. On 29 September 2021, the NAI confirmed Mr Benjamin Ross' appointment as secretary to the Arbitral Tribunal ("**Administrative Secretary**") and fixed his hourly rate at EUR 100.00.

54. The same day, the NAI invited Claimant to proceed with a wire transfer of EUR 60,000.00 for the deposit.

55. On 15 October 2021, the NAI sent its first reminder to Claimant regarding the payment of EUR 60,000.00 for the deposit.

56. On 1 November 2021, the NAI sent its second reminder to Claimant regarding the payment of EUR 60,000.00 for the deposit and indicated that, pursuant to Article 55(6) of the NAI Rules, if this amount was not paid within the next fourteen days, Claimant would be deemed to have withdrawn its claim.

57. On 2 November 2021, the Arbitral Tribunal noted that, pursuant to the procedural timetable included at paragraph 14.1 of Procedural Order No. 1, Respondents were to file their statement of defence on 29 October 2021. The Arbitral Tribunal indicated, however, that it had "*not received any submission from Respondents*". The Arbitral Tribunal therefore requested Respondents to inform it as soon as possible, and in any event by 3 November, whether they intended to (actively) participate (further) in these arbitration proceedings.

58. On 3 November 2021, Claimant noted that the procedural timetable provides for a pre-hearing video conference on 10 November 2021 and asked whether a time had been set for this conference.

59. The same day, Respondents wrote the following to the Arbitral Tribunal:

> *Consistent with the concerns expressed during our video conference, we have not been able to complete our response by October 31. Furthermore, we have had communications with the claimant indicating its intention to delay the arbitration proceedings. We are not aware of any communications directed to you in that regard, but we have noted that the claimant has not paid the required fee of 60,0000 Euros, and therefore, we are uncertain as to whether the claimant intends to proceed with the arbitration or on what timetable. In view of the circumstances, we respectfully request an additional four weeks to respond if the claimant intends to proceed.*

60. On 4 November 2021, Claimant wrote the following, in response:

> *Hereby I respond to Mr. Ayers' mail of 3 November 2021. In the beginning of October 2021, Romark indicated that it could make payment for the outstanding amount and for future amounts by the end of October. Romark indicated that it would be in the interest of both parties to suspend the proceedings. QMEA indicated that it would be able to consider this proposal on the condition that Romark would pay the outstanding amount and make a commitment with regard to future deliveries and payments. However, Romark did not make any payment by the end of October. Romark did not make any commitment with regard to future deliveries either. Furthermore, Romark did not request an extension of the deadline prior to 29 October for filing their Statement of Defence.*
>
> *Notwithstanding the foregoing, QMEA is prepared to give an extension of the deadline, provided that Romark files its Statement of Defence not later than Friday 12 November 2021, in order to avoid any discussion of due process.*

61. On 5 November 2021, the Arbitral Tribunal noted that unless and until the arbitration proceedings are officially suspended, the procedural timetable as established by the Arbitral Tribunal after consultation with the Parties remained in force (cf. Article 55(6) of the NAI Rules). The Arbitral Tribunal added that, pursuant to Article 14.3 of Procedural Order No. 1, requests for extensions of time need to be motivated and submitted *before* the expiry of the time-limit. Accordingly, before reverting back to the Parties concerning the conference call scheduled for 10 November 2021 and a potential new time-limit for the submission of Respondents' statement of defence, the Arbitral Tribunal requested that (i) Claimant confirm that it had paid the advance on costs or that it intended to do so, and if so by which date; (ii) Respondents confirm that they intend to (actively) participate (further) in these proceedings; and (iii) Respondents give the Arbitral Tribunal a more precise understanding of the "*concerns*" that they allegedly encountered and which

resulted in them being unable to present their defence. The Arbitral Tribunal requested that the Parties provide their answers by 8 November 2021, at the latest.

62. On 8 November 2021, Claimant wrote the following:

> *In response to your e-mail dated 5 November 2021, in which the Tribunal asked the parties to answer the relevant questions contained in that e-mail by today (8 November 2021) at the latest, Claimant kindly requests a short extension of the deadline to Tuesday 9 November 2021 12.00 CET for the following reason. Respondent promised to provide Claimant with further information about its ability to pay today, 8 November 2021, at the latest. Claimant has not heard from Respondent yet. However, given the time difference with the United States, Claimant would like to give Respondent the chance to provide it with further information until the end of the day, i.e. until 11.59 pm U.S. time. Claimant will then be in a position to answer the question the Tribunal included in its e-mail of 5 November 2021.*

63. The same day, Respondents wrote the following:

> *Thank you for your e-mail. In response to your requests below, I confirm that Respondents intend to participate in these proceedings. During our last video conference, I expressed concerns regarding Respondents' ability to respond to the complaint before the end of November. Our company is and has been fully devoted for the past twenty months to responding to the global COVID-19 public health crisis. We are developing an oral medication for early treatment of COVID-19, which has shown the ability to reduce the rate of progression to severe illness, hospitalization, or death by 85% and to reduce the duration of mild COVID-19 illness by 4- to 5-days compared to treatment with a placebo. The work we are doing is critical for life and health. In the middle of this important public health response, we are being asked to manage formal arbitration proceedings in a foreign jurisdiction. We have immense respect for the Arbitral Tribunal and for the Claimant, and we want to manage this process well, but under the circumstances, we need additional time as we requested during the video conference.*

64. On 9 November 2021, Claimant informed the Arbitral Tribunal that it was willing to give Respondents until 10 November 2021 to provide evidence of their ability to pay the outstanding amount and make commitments concerning payments for future deliveries. Moreover, Claimant confirmed that it intended to continue the arbitration proceedings if such evidence would not materialize. Finally, Claimant indicated that it would prefer to maintain the videoconference scheduled for Wednesday 10 November 2021.

65. The same day, the Arbitral Tribunal noted that given "*Claimant's intention to continue these proceedings is conditional, it does not seem very useful to the Arbitral Tribunal to arrange a call tomorrow, 10 November 2021*". Accordingly, the Arbitral Tribunal invited Claimant to confirm by 15 November 2021 whether it intended to continue these proceedings, and if so, whether it had paid the deposit. The Arbitral Tribunal added that, in the event the arbitration was to continue, it would revert to the Parties on the

outstanding issues, such as the timing for the statement of defence and the overall procedural calendar, in due course.

66. On 15 November 2021, Claimant informed the Arbitral Tribunal that it had not heard from Respondents nor received any of the proof it had requested concerning Respondents' ability to pay. Accordingly, Claimant confirmed that it had paid the EUR 60,000.00 deposit and that it intended to continue these proceedings. In addition, Claimant considered that Respondents should file their statement of defence by 19 November 2021 because Respondents *"have had ample opportunity to file their statement [...]."* In addition, Claimant requested that the overall procedural calendar be followed with regard to the other steps.

67. On 16 November 2021, the NAI acknowledged receipt of the EUR 60,000.00 deposit.

68. The same day, further to Respondents' request of 3 November 2021 for a four-week extension to file their statement of defence and Claimant's email of 15 November 2021, the Arbitral Tribunal granted Respondents until 26 November 2021 to file their statement of defence. In taking its decision, the Arbitral Tribunal considered, on the one hand, the fact that the arbitration proceedings had not been suspended, and that Respondents had not requested an extension, providing detailed and concrete reasons as to why such an extension would be necessary, prior to the expiry of the deadline. On the other hand, the Arbitral Tribunal considered that Claimant's failure to pay the deposit while conducting negotiations may have created justifiable doubts for Respondents as to Claimant's willingness to pursue these proceedings. Under these circumstances, the Arbitral Tribunal considered that it would not be possible to maintain the original hearing date on 1 December 2021 and decided to hold the pre-hearing video conference on that date. In addition, the Arbitral Tribunal invited the Parties to indicate by 18 November 2021 whether they would be available for a hearing on 13, 14, or 16 December 2021.

69. On 17 November 2021, Claimant indicated that it was available for a hearing on 13 or 16 December 2021.

70. On 23 November 2021, the Arbitral Tribunal noted that Respondents had not indicated their preferences concerning the hearing date by the 18 November 2021 deadline, as requested by the Arbitral Tribunal, or thereafter. Accordingly, the Arbitral Tribunal had to fix the hearing date without taking into account Respondents' preference. The Arbitral Tribunal fixed the hearing for 13 December 2021, at 15.00 CET.

71. On 29 November 2021, the Arbitral Tribunal noted that Respondents had not filed their statement of defence by the 26 November 2021 deadline and circulated a draft agenda for the pre-hearing video conference for the Parties' review and comments.

72. On 1 December 2021, at 2.56 CET, Respondents indicated that they would "*not be able to attend a call tomorrow due to other commitments. If QMEA plans to continue with the proceedings, we are open to scheduling for another date.*"

73. The same day, at 10.49 CET, the Arbitral Tribunal wrote the following to the Parties:

> *On behalf of the Arbitral Tribunal, I acknowledge receipt of your email of today (2.56 AM) in which you inform us that Respondents will not attend the pre-hearing conference because of "other commitments".*
>
> *I refer to the Arbitral Tribunal's email of 16 November 2021, in which the Arbitral Tribunal granted Respondents until 26 November 2021 to submit a Statement of Defence; fixed the pre-hearing conference for today at 16.00, taking into account that under the previous procedural timetable today had been reserved for the hearing; and requested a response concerning three potential hearing dates by 18 November 2021 at the latest.*
>
> *Until this morning, we received no reaction from Respondents.*
>
> *While the Arbitral Tribunal very much regrets that Respondents will not attend the conference this afternoon, Respondents are of course free to give priority to their other (unspecified) commitments. The Arbitral Tribunal will, however, not postpone the conference at such late notice.*

74. At 16.00 CET, Claimant represented by Mr Hans de Savornin Lohman and Mr Robbert-Jan Winters, in their capacity as counsel and Mr Jeroen Hemstra in his capacity as party representative participated in a pre-hearing video conference with the Arbitral Tribunal and the Administrative Secretary to discuss practicalities in relation to the hearing scheduled for 13 December 2021. During the pre-hearing conference the Arbitral Tribunal followed the agenda it had circulated on 29 November 2021, given that there were no comments from the Parties on the draft agenda. Whereas the Arbitral Tribunal proposed to conduct a hearing by Zoom, Claimant's counsel indicated preferring an in-person hearing. The Arbitral Tribunal explained that one of the reasons for having a hearing by video conference was to avoid having to require Respondents to travel from the United States in light of the continuing Covid-19 pandemic. Claimant then indicated that it would revert to the Arbitral Tribunal on this point. The Arbitral Tribunal and Claimant also discussed the length of the Parties' pleadings, when the Parties should exchange pleading notes and slides prior to the hearing, and whether the hearing should be transcribed or recorded. The Arbitral Tribunal informed Claimant that it would issue a procedural order detailing the agreed hearing practicalities.

75. The same day, Claimant informed the Arbitral Tribunal that it considered that a hearing by video conference would be the most appropriate format.

76. Later the same day, the Administrative Secretary circulated a recording of the pre-hearing conference to the Parties.

77. On 5 December 2021, the Arbitral Tribunal issued Procedural Order No. 2 ("**Procedural Order No. 2**") which contained directions with regard to the hearing, including a hearing schedule and a virtual hearing protocol. The Parties were requested to provide their respective lists of attendees for the hearing by 8 December 2021 and to share any slides or demonstrative aids that they wished to use during their pleadings with the opposing party and the Arbitral Tribunal by 15.00 CET on 12 December 2021. In addition, the Arbitral Tribunal indicated that it "*would appreciate if the Parties during their pleadings could refer to relevant legal authorities invoked in support of their legal claims and defenses. The Arbitral Tribunal would also like the Parties to discuss the quantification of Claimant's claims*".

78. On 7 December 2021, Claimant informed the Arbitral Tribunal that it would be represented at the hearing by Mr Hans de Savornin Lohman and Mr Robbert-Jan Winters. In addition, Claimant indicated that Mr Jeroen Hemstra would also attend the hearing in his capacity as Claimant's party representative.

79. On 13 December 2021, at 14.05 CET, Claimant shared its pleading notes with the Arbitral Tribunal and Respondents.

80. The same day, at 15.07 CET, the Arbitral Tribunal opened the virtual hearing. The Arbitral Tribunal noted that no representative for Respondents was present. Accordingly, the Arbitral Tribunal proposed to wait for five minutes, in case a representative from Respondents wished to connect to the video conference. After waiting until 15.13 CET and noting that no representative from Respondents attempted to connect to the virtual hearing, the Arbitral Tribunal decided to assume that Respondents would not attend the hearing. Claimant was afforded an opportunity to plead its case and to answer the Arbitral Tribunal's questions.

81. At the end of the hearing, the Arbitral Tribunal considered that it required further briefing from Claimant in relation to the applicable law and evidence in substantiation of its claim to efficiently take a decision in these arbitration proceedings. Accordingly, the Arbitral Tribunal invited Claimant to consider whether it would like to file a further written submission, it being noted that the Arbitral Tribunal considered that if Claimant were to file such a submission, Respondents should then be granted a five-week period to file any comments they may have in response. Claimant agreed to the Arbitral Tribunal's proposal. Accordingly, the Arbitral Tribunal invited Claimant to file a further written submission as soon as possible and, in any event, by 21 January 2022 at the latest.

82. On 15 December 2021, the Arbitral Tribunal circulated a recording of the hearing to the Parties. In addition, as discussed during the hearing, and as summarised at the end thereof, the Arbitral Tribunal issued the following directions:

> *1. Claimant is invited to file a written submission commenting on the matters raised by the Arbitral Tribunal during the hearing, with specific attention to applicable law and evidence in substantiation of Claimant's claim as soon as possible, and no later than 21 January 2022. To the extent Claimant wishes to make any specific procedural requests, such as requests that the Arbitral Tribunal render an interim award on a certain subject, it is also requested to include such requests in its written submission.*
>
> *2. Respondents will be granted five weeks from the date of Claimant's submission to file their submission in response.*
>
> *3. Both Parties are invited to make their cost submissions one week from the date of Respondents' submission, or expiry of the deadline in case Respondents do not make a submission.*

83. On 24 December 2021, following the Arbitral Tribunal's request, the NAI requested that Claimant transfer an additional EUR 25,000.00 for the deposit.

84. On 12 January 2022, Claimant indicated that it was willing to pay the additional amount but asked if the Arbitral Tribunal could provide some insight into the costs that had been made so far, which would necessitate the extra EUR 25,000.00. Claimant added that it assumed that the extra EUR 25,000.00 would be sufficient to cover the total cost of the proceedings, including the writing of the award, and hoped that some of the deposit may be reimbursed at the end of the proceedings.

85. On 13 January 2022, the Arbitral Tribunal indicated that at the end of the virtual hearing the Arbitral Tribunal's provisional fees amounted to a total of EUR 24,730.00 (excl. VAT). The Arbitral Tribunal added that,

> *During the hearing, it became clear that the Arbitral Tribunal required further briefing from Claimant with specific attention to applicable law and evidence in substantiation of Claimant's claim. Accordingly, the Arbitral Tribunal invited Claimant to submit another memorial as soon as possible, and no later than 21 January 2022. The Arbitral Tribunal also indicated that Respondents would be granted five weeks from the date of Claimant's additional memorial to file their submission in response.*
>
> *In order to ensure that there is enough money in the deposit account for the Arbitral Tribunal to analyse this extra round of written submissions and to draft the final award, the Arbitral Tribunal asked the NAI to request a supplemental deposit of EUR 25,000.00.*
>
> *The Arbitral Tribunal considers that this supplemental deposit, in addition to the initial deposit, will be sufficient to cover the total costs of the proceedings, unless further procedural steps were to be required. In any event, the Arbitral Tribunal ensures Claimant that any sums left in the deposit which exceed the*

Arbitral Tribunal's fees will be reimbursed when the proceedings have concluded.

86. On 18 January 2022, the NAI sent a reminder to Claimant that it transfer EUR 25,000.00 for the deposit.

87. On 21 January 2022, Claimant filed a written submission in the form of a letter, commenting on the matters raised by the Arbitral Tribunal during the hearing ("**Claimant's Second Submission**").

88. On 25 January 2022, the Arbitral Tribunal reminded Claimant that, pursuant to paragraph 16.1 of Procedural Order No. 1, it must communicate the evidence on which it relies in its written submissions. Accordingly, the Arbitral Tribunal invited Claimant to communicate their legal authorities pursuant to paragraph 16.3(iii) of Procedural Order No. 1 and to provide translations as necessary, in accordance with paragraph 20.2 of Procedural Order No. 1. Furthermore, as explained during the hearing of 13 December 2021 and pursuant to the Arbitral Tribunal's directions in its email of 15 December 2021, the Arbitral Tribunal invited Respondents to file their comments on Claimant's Second Submission by 25 February 2022.

89. On 27 January 2022, Claimant filed exhibits C-77 to C-80 in support of Claimant's Second Submission, together with translations of their relevant passages.

90. On 28 January 2022, the Arbitral Tribunal acknowledged receipt of Claimant's exhibits and reminded Respondents that they were to file their comments in response to Claimant's Second Submission by 25 February 2022.

91. On 17 February 2021, the NAI acknowledge receipt of the EUR 25,000.00 deposit.

92. On 2 March 2022, the Arbitral Tribunal noted that Respondents had not filed any comments on Claimant's Second Submission by the 25 February 2022 deadline. In addition, the Arbitral Tribunal reminded the Parties that they were to file their cost submissions by 4 March 2022.

93. On 3 March 2022, Claimant filed its cost submission.

94. On 7 March 2022, the Arbitral Tribunal noted that Respondents did not file their cost submission by the 4 March 2022 deadline and indicated that it would proceed with its deliberations.

95. On 20 April 2022, the Arbitral Tribunal informed the Parties that it would be in a position to render the final award by 16 May 2022.

96. On 15 May 2022, the Arbitral Tribunal informed the Parties that it would be in a position to render the final award by 23 May 2022.

97. On 22 May 2022, the Arbitral Tribunal informed the Parties that it would be in a position to render the final award by 30 May 2022.

98. On 29 May 2022, the Arbitral Tribunal informed the Parties that it would be in a position to render the final award by 7 June 2022.

99. On 6 June 2022, the Arbitral Tribunal informed the Parties that it would be in a position to render the final award by 14 June 2022.

IV. FACTUAL BACKGROUND

100. QMEA is a specialist in the development, production and supply of speciality chemical intermediates with a focus on the pharmaceutical and food industries. It is a limited liability company incorporated under the laws of the Netherlands.[3]

101. Romark Global is a pharmaceutical manufacturer with activities in the United States, Puerto Rico, Belgium, Luxembourg, and Australia.[4] Romark Laboratories is Romark Global's parent company.[5]

102. On 26 June 2020, QMEA concluded the Agreement with Romark Global. Pursuant to the Agreement, QMEA sold and Romark Global purchased 105 metric tons ("**Mt**") of 2-Amino 5-Nitro Thiazole (the "**Product**"), to be delivered in instalments in the period from July 2020 through May 2021 at a price of USD 4,620,000.[6]

103. QMEA relies on a third party based in China, namely PTG Advanced Catalyst Co., Ltd ("**PTG**") for the manufacturing of the Product. QMEA and PTG entered into a separate agreement in this respect.[7]

104. Article 3 of the Agreement provides:

> *3.1. Subject to the terms and conditions of this Agreement, including, without limitation, Clause 3.2, the Customer hereby purchases from the Supplier and the Supplier hereby sells to the Customer 250 metric tons of the Product (Purchased Product) at a price of forty-four dollars (USD 44) per kilogram (Price), which shall be delivered by Supplier to Customer in the quantities and in the months set out in the indicative delivery schedule set out in Schedule 3.1, which may be amended as further agreed by Parties (Delivery Schedule).*

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3 Statement of Claim, para. 4; Claimant's pleading notes, para. 4.

4 Statement of Claim, para. 5; Claimant's pleading notes, para. 5.

5 Statement of Claim, para. 1.

6 Statement of Claim, para. 6; Claimant's pleading notes, para. 6.

7 Statement of Claim, para. 6; Claimant's pleading notes, para. 6.

> *3.2. The respective obligations of Parties related to the sale and delivery of the last 150 metric tons of Purchased Product (Unconfirmed Obligations) are subject to Supplier having receiving a written notification (Confirmation) from Customer confirming that Customer wishes to proceed with fulfilment of the Unconfirmed Obligations [...] Unless Parties agree otherwise in writing, the Unconfirmed Obligations shall terminate automatically if Supplier has not received Confirmation on 1 September 2020, or any later date further agreed between Parties in writing.*[8]

105. Article 4 of the Agreement provides:

> *4. PURCHASE PRICE AND PAYMENT*
>
> *4.1. Each purchase price for a shipment of Purchased Product (Purchase Price) shall be paid by Customer to Supplier as follows:*
>
> *a. The first shipment of 20 metric tons Purchased Product shall be prepaid by Customer prior to shipment of the goods in Port of Shanghai, Mainland China following receipt of the related invoice, packing list and certificate(s) of analysis.*
>
> *b. The following shipments of Purchased Product (equal to an aggregate volume of 80 metric tons Purchased Product) shall be paid monthly through irrevocable TT at sight letters of credit issued quarterly on behalf of Customer by a reputable international bank for the benefit of Supplier (QLC(s)), which payment shall each month be made as soon as the relevant documents have been accepted by such bank. Customer shall arrange for, and shall submit to Supplier, QLCs prior to the beginning of each quarter, the first QLC to be issued to and received by Supplier before 1 August 2020.*
>
> *c. Subject to Clause 3.2, the final shipments of Purchased Product (equal to an aggregate volume of 150 metric tons Purchased Product) shall be paid within thirty (30) days after the date of the bill of lading issued in relation to such shipment of these Purchased Products through irrevocable QLCs. Customer shall arrange for QLCs and shall submit to Supplier such QLCs prior to the beginning of the applicable quarter.*
>
> *4.2 Supplier shall provide the Customer with the invoice and all required documents for each respective shipment of the Purchased Product which documents shall include bills of lading, packing lists, certificates of analysis per batch, batch and delivery receipts as appropriate. [...]*
>
> *4.3 The Customer shall pay each invoice to the bank account as designated by Supplier in the respective invoice.*[9]

106. Article 13 provides:

> *13. PARENT GUARANTEE – NON-CIRCUMVENTION*
>
> *13.1. Parent hereby, as a separate and independent obligation, unconditionally and irrevocably guarantees to Supplier the due and punctual performance by Customer of all its obligations, commitments, undertakings, warranties and indemnities under or pursuant to this Agreement.*

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8 **Exhibit C-1: Agreement, Article 3.1, p. 3.**

9 **Exhibit C-1: Agreement, Article 4, pp. 3-4.**

> *13.2. Parent and Supplier have on the Effective Date executed the Non-Circumvention Agreement attached hereto as Schedule 13.2.*
>
> *13.3 Parent shall execute this Agreement to agree that it is bound by this Clause 13.*[10]

107. Article 26 provides:

> *26. GOVERNING LAW AND COMPETENT COURT*
>
> *26.1 This Agreement is governed by the laws of the Netherlands, in combination with the United Nations Convention of 11 April 1980 (CISG) on Contracts for the Sale of Goods (Vienna Sales Convention), irrespective of whether the Customer is established in a CISG member state or not.*[11]

108. According to Schedule 3.1 to the Agreement, the delivery schedule was as follows:

Shipment date	Volume	Production site
07-2020	7 Mt	Jiujiang
08-2020	7 Mt	Jiujiang
09-2020	14 Mt	Jiujiang
10-2020	7 Mt	Jiujiang
11-2020	7 Mt	Jiujiang
12-2020	14 Mt	Jiujiang
01-2021	7 Mt	Jiujiang
02-2021	7 Mt	Jiujiang
03-2021	14 Mt	Jiujiang
04-2021	7 Mt	Jiujiang
05-2021	14 Mt	Jiujiang
Total	**105 Mt**	

109. The schedule mentions that it "*is a revised schedule based on the fact that a 40 ft container can hold a maximum of 7 mt Product*" and that "[b]*ased on monthly 7 mt [...] or 14 mt [...] Product shipments you get to 105 mt Product.*" Therefore the "[f]*irst commitment in Purchase Agreement should [...] be 105 mt Product.*"

110. On 22 June 2020, Romark Global issued a purchase order for 56 Mt of Product, to be delivered before the end of 2020. These 56 Mt represented the first six deliveries contained in the delivery schedule, starting with the July 2020 delivery.[12]

111. On 29 July 2020, Romark Global paid EUR 100,340.00 in advance for the first partial shipment of the July 2020 delivery, i.e., 2.1 Mt of Product. QMEA delivered this first partial shipment to Romark Global on 3 August 2020.[13]

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10 **Exhibit C-1:** Agreement, Article 13, p. 9.

11 **Exhibit C-1:** Agreement, Article 26.1, p. 16.

12 **Exhibit C-2:** Purchase Order dated 22 June 2020.

13 **Exhibit C-3:** Proof of Payment dated 29 July 2020.

112. On 11 August 2020, QMEA informed Romark Global that a further partial shipment of the July 2020 delivery in the amount of 4.9 Mt was forthcoming and issued two invoices for which it requested prompt payment by Romark Global.[14]

113. On 18 August 2020, Romark Global informed QMEA that it would not be able "*to pay the two overdue invoices [...]*".[15]

114. On 17 September 2020, QMEA delivered the further partial shipment of the July 2020 delivery.[16]

115. On 3 November 2020, Romark Global paid USD 50,000.00 to QMEA.[17]

116. On 6 November 2020, Romark Global paid EUR 494,670.00 to QMEA.[18]

117. These sums covered payment for the 4,9 Mt constituting the second shipment of the July 2020 delivery and for the 7 Mt of the August 2020 delivery.[19]

118. QMEA delivered the entirety of the August 2020 delivery on 14 November 2020, i.e., 7 Mt.[20]

119. The September 2020 delivery of 14 Mt was reconfirmed for shipment around 20 December 2020. QMEA asked Romark Global to pay the order in advance and indicated that it would be willing to extend payment terms after the orders for Q1 and Q2 of 2021.[21]

120. The 14 Mt of Product were shipped from China on 21 December 2020.[22]

121. On 28 January 2021, Romark Global informed QMEA that it would not be able to pay for the 14 Mt of Product.[23]

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14 **Exhibit C-4**: Email of 11 August 2020 from QMEA to Romark Global.

15 **Exhibit C-5**: Email of 18 August 2020 from Romark Global to QMEA.

16 Statement of Claim, para. 21.

17 **Exhibit C-27**: Proof of Payment dated 3 October 2020.

18 **Exhibit C-27**: Proof of Payment dated 6 November 2020.

19 See Statement of Claim, para. 29; Claimant's pleading notes, para. 11.

20 Statement of Claim, para. 30.

21 **Exhibit C-28**: Email of 5 December 2020 from QMEA to Romark Global.

22 **Exhibit C-30**: Email of 22 December 2020 from QMEA to Romark Global.

23 Statement of Claim, para. 37.

122. On 9 March 2021, Romark Global paid an amount of EUR 49,970.00, in partial payment of the September 2020 delivery.[24]

123. Following further correspondence attempting to obtain payment of outstanding amounts from Respondents, QMEA initiated these arbitration proceedings on 11 May 2021.

V. THE PARTIES' POSITIONS

124. The following provides a summary of the Parties' respective positions. This summary is not an exhaustive description of all the arguments presented during these arbitration proceedings and the fact that a particular submission has not been referenced below should not be taken as an indication that it has not been considered by the Arbitral Tribunal.

A. Claimant's position

125. According to Claimant, pursuant to the Agreement, QMEA was to deliver to Romark Global 105 Mt of Product in monthly instalments from July 2020 to May 2021 for a total price of USD 4,620,000.00. Romark Global's parent company, Romark Laboratories, guaranteed the performance of the Agreement by Romark Global.[25]

126. QMEA asserts that the Product was specifically developed and produced for Romark Global and can only be sold to third parties with great difficulty.[26]

127. QMEA further asserts that pursuant to Article 4.1(a) of the Agreement, Romark Global agreed to prepay the first shipment of 20 Mt of Product. Subsequently, pursuant to Article 4.1(b) of the Agreement, the following shipments were to be *"paid monthly through irrevocable TT at sight of letters of credit issued quarterly on behalf of* [Romark Global] *by a reputable international bank for the benefit of* [QMEA]".[27]

128. According to QMEA, on 22 June 2020, Romark Global issued a purchase order for 56 Mt of Product, to be delivered before the end of 2020. [28] On 29 July 2020, Romark Global paid USD 100,340.00 in advance for the first shipment of the July 2020 delivery, i.e., 2.1 Mt of

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[24] Statement of Claim, para. 42; Claimant's pleading notes, para. 13; **Exhibit C-47**: Proof of Payment dated 9 March 2021.

[25] Statement of Claim, para. 6; **Exhibit C-1**: Agreement, Article 13, p. 9.

[26] Claimant's pleading notes, para. 6.

[27] Statement of Claim, para. 8; **Exhibit C-1**: Agreement, Articles 4.1.a and 4.1.b, pp. 3-4.

[28] Statement of Claim, para. 9; **Exhibit C-2**: Purchase Order dated 22 June 2020.

Product. QMEA delivered this first shipment on 3 August 2020, which Romark Global accepted without any objection.[29]

129. On 18 August 2020, however, Romark Global informed QMEA that it would not be able to pay for the second shipment of 4,9 Mt of Product constituting the second part of the July 2020 delivery. According to QMEA, Romark Global explained that it was working on investor-funding negotiations and that until those negotiations materialised it would be in a tight financial situation and would also be unable to pay for the August 2020 delivery of 7 Mt.[30] QMEA asserts that it asked Romark to clarify when it would be able to pay for the 4,9 Mt because, if Romark was able to pay a few days later, QMEA would have been agreeable, as it was committed to solving the issue efficiently.[31]

130. On 17 September 2020, QMEA delivered the second part of the July 2020 delivery, i.e., 4,9 Mt.[32]

131. QMEA argues that Romark Global did not honestly inform it about its financial difficulties and played for time. QMEA contends that Romark Global claimed to be working on multiple funding options, but only one succeeded, allowing Romark Global to pay USD 50,000.00 to QMEA on 3 November 2020 and USD 494,670.00 on 6 November 2020. These sums covered payment for the 4,9 Mt constituting the second shipment of the July 2020 delivery and for the 7 Mt in respect of the August 2020 delivery.[33]

132. On 14 November 2020, QMEA delivered the entirety of the August 2020 delivery, i.e., 7 Mt.[34]

133. By then, the September 2020 delivery of 14 Mt had already been delayed. On 4 December 2020, QMEA and Romark Global discussed the issue over the telephone and the third delivery for 14 Mt was reconfirmed for shipment around 20 December 2020. Romark Global and QMEA agreed that Romark Global would confirm a new delivery schedule for January 2021 onwards, to ensure that QMEA and PTG could prepare production

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29 Statement of Claim, para. 10; Claimant's pleading notes, para. 9. According to Claimant, Romark Global paid in USD, Exhibit C-3, however, shows that Claimant received payment of EUR 100,340.00.

30 Statement of Claim, para. 12; Claimant's pleading notes, para. 10.

31 Statement of Claim, para. 13; Claimant's pleading notes, para. 10; Exhibit C-6: Email of 18 August 2020 from QMEA to Romark Global.

32 Statement of Claim, para. 21.

33 Statement of Claim, para. 29; Claimant's pleading notes, para. 11. According to Claimant, Romark Global paid in USD, Exhibit C-27, however, shows that Claimant received payment of EUR 494,670.00.

34 Statement of Claim, para. 30.

accordingly. QMEA asked Romark Global to pay the order in advance and indicated that it would be willing to extend payment terms after the orders for Q1 and Q2 of 2021. The 14 Mt were shipped from the port of Shanghai on 22 December 2020.[35]

134. On 28 January 2021, in response to an email from QMEA requesting same-day payment, however, Romark Global informed QMEA that it would not be able to pay for the 14 Mt of Product that day.[36]

135. On 9 March 2021, QMEA received payment of USD 49,970.00 from Romark Global.[37]

136. On 29 April 2021, QMEA summoned Romark Global and Romark Laboratories to pay the outstanding amount of USD 572,340.00 by 6 May 2021 at the latest, failing which they would be in default. QMEA asserts that, by contrast, it fulfilled its financial obligations towards PTG for the first 28 Mt of Product, representing the July, August, and September 2020 deliveries provided for in the delivery schedule.[38]

137. QMEA contends that because Respondents failed to pay for this third delivery, "*QMEA took possession of the shipment*" and stored it in a warehouse.[39]

138. According to QMEA, the amount for the remaining deliveries under the Agreement, i.e., USD 3,388,000.00, became due on 1 June 2021, the date by which all deliveries should have been made according to the original delivery schedule.[40]

139. QMEA also asserts that Romark Global's shortcomings have put QMEA in a difficult situation with its own supplier PTG. PTG has requested specific performance from QMEA. Accordingly, QMEA now requests that the Arbitral Tribunal order specific performance of Respondents' obligations under the Agreement.[41]

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35 Statement of Claim, paras. 31-33; Claimant's pleading notes, para. 12; **Exhibit C-28**: Email of 5 December 2020 from QMEA to Romark Global; **Exhibit C-30**: Email of 22 December from QMEA to Romark Global. According to this exhibit, the shipment began on 21 December 2020.

36 Statement of Claim, para. 37; Claimant's pleading notes, para. 13; **Exhibit C-38**: Email of 28 January 2021 from QMEA to Romark Global; **Exhibit C-39**: Email of 28 January 2021 from Romark Global to QMEA.

37 Statement of Claim, para. 42; Claimant's pleading notes, para. 13; **Exhibit C-47**: Proof of payment dated 9 March 2021. According to Claimant, Romark Global paid in USD, Exhibit C-47, however, shows that Claimant received payment of EUR 49,970.00.

38 Claimant's pleading notes, para. 13; see also Statement of Claim, paras. 55-56; **Exhibit C-69**: Letter of 29 April 2021 from QMEA to Romark Global and Romark Laboratories.

39 Statement of Claim, para. 62; see also Claimant's Second Submission, paras. 19, 29.

40 Claimant's pleading notes, para. 14.

41 Claimant's pleading notes, para. 15; see also Statement of Claim, para. 62.

140. According to QMEA, the CISG governs the Agreement.[42] Pursuant to Article 30 of the CISG, QMEA was to deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the Parties' Agreement.[43] In addition, pursuant to Article 35(1) of the CISG, QMEA was obliged to deliver the Product in the quantity, quality and description required by the Agreement.[44]

141. Pursuant to Article 53 of the CISG, Romark Global was to take delivery of the Product and to pay the agreed price.[45] Article 3.1 of the Agreement provides that the agreed price is USD 44.00 per kilogram of Product. Furthermore, pursuant to Article 4.1(a) of the Agreement, Romark Global was to pay the first shipment of 20 Mt prior to the Product being shipped by QMEA. Pursuant to Article 4.1(b) of the Agreement, Romark Global was meant to pay for following shipments of Product monthly through irrevocable letters of credit issued quarterly on behalf of Romark Global by a reputable international bank for the benefit of QMEA. Payment would each month be made as soon as the relevant documents had been accepted by such bank. Moreover, Romark Global was to submit the quarterly letters of credit prior to the beginning of each quarter.[46]

142. QMEA contends that it has met its obligations under the Agreement *"as far as possible"*.[47] In accordance with articles 6:58 and 6:59 of the Dutch Civil Code ("DCC"), it was entitled to suspend delivery of the Product because Respondents failed to pay the purchase price for the September 2020 shipment of 14 Mt.[48] Respondents are therefore in default of their obligations.[49]

143. QMEA's primary request is *"for specific performance [...] that the obligations of the parties under the Agreement and the CISG remain in force, including the obligation of Claimant to deliver the Purchased Product to Respondents, provided that this delivery obligation is*

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42 Claimant's Second Submission, paras. 1-3; **Exhibit C-1**: Agreement, Article 26(1), p. 16.

43 Claimant's Second Submission, para. 14; Article 30 of the CISG: *"The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention"*.

44 Claimant's Second Submission, para. 14; Article 35(1) of the CISG: *"The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract"*.

45 Claimant's Second Submission, para. 7; Article 53 of the CISG: *"The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention"*.

46 Claimant's Second Submission, paras. 11-12; **Exhibit C-1**: Agreement, Articles 3, 4, pp. 3-4.

47 Claimant's Second Submission, para. 18.

48 Claimant's Second Submission, paras. 19-20; Sections 6:58 and 6:59 of the DCC.

49 Claimant's Second Submission, paras. 22-23.

suspended until a reasonable date after receipt of payment of the amounts of USD 572,340 and USD 3,388,000".[50]

144. QMEA argues that specific performance is one of the remedies available under the CISG.[51] In spite of Claimant's repeated invitations to Respondents to propose a new delivery schedule, Respondents did not provide a new schedule. Therefore, the original delivery schedule is still in place. Accordingly, Respondents breached Article 54 of the CISG concerning the buyer's obligation to pay the price for the goods, as well as Articles 3.1, 4.1(a) and 4.1(b) of the Agreement. In addition, Respondents failed to take delivery as required under the CISG and the Agreement.[52]

145. Accordingly, QMEA requests the Arbitral Tribunal to make an award of USD 572,340.00 for the September 2020 shipment of 14 Mt of Product, which is currently stored in a Belgian warehouse. In addition, QMEA requests the Arbitral Tribunal to make an award of USD 3,388,000.00 for the further outstanding 77 Mt of Product that Respondents should have paid and taken delivery of on a monthly basis in accordance with Articles 3.1 and 4.1(b) of the Agreement. These monthly payments have become due after the monthly payment terms expired. In this regard, Claimant has referred to Article 59 of the CISG which provides that the buyer must pay the price on the date fixed by or determinable pursuant to the Agreement and the CISG, without the need for any request from the seller. Claimant has also invoked a recent decision of the Court of Appeal of 's Hertogenbosch in which the Court, according to Claimant, decided that because all monthly payment terms had expired the entire outstanding sum due by the purchaser had become due based on Article 59 CISG.[53]

146. Claimant also needs Respondents to prepay PTG for the production of the outstanding 77 Mt of Product. According to Claimant, PTG has made the availability of these funds a condition for restarting the production of Product. Finally, Claimant points out that PTG demands specific performance from QMEA. Accordingly, QMEA has a legitimate interest in obtaining specific performance from Respondents.[54]

147. In order to achieve specific performance, Claimant has proposed the following new delivery schedule:

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50 Claimant's Second Submission, para. 24.

51 Claimant's Second Submission, para. 25; Article 62 of the CISG.

52 Claimant's Second Submission, para. 28; Article 54 of the CISG.

53 Claimant's Second Submission, paras. 29-32; **Exhibit C-77**: Gerechtshof's-Hertogenbosch 14 December 2021, ECLI:NL:GHSHE:2021:3716.

54 Claimant's Second Submission, paras. 29-33.

Shipment date	Volume
07-2022	7 Mt
08-2022	7 Mt
09-2022	14 Mt
10-2022	7 Mt
11-2022	7 Mt
12-2022	14 Mt
01-2023	7 Mt
02-2023	14 Mt

[55]

148. This proposed new delivery schedule is based on the assumption that Respondents will have paid all outstanding amounts by 1 April 2022 at the latest, and takes into account that Claimant will need three months to restart PTG's production of the Product. If Respondents were to belatedly pay the USD 572,340.00 and USD 3,338,000.00, the new delivery schedule would need to be amended taking into account the three-month period required for the restart.[56]

B. Claimant's prayer for relief

149. In its Statement of Claim, QMEA made the following request for relief:

> *a. ordering Romark[57] to pay USD 572,340 (USD 566,030 for the 14 mt of the Product, USD 4,000 for higher freight and storage costs and USD 2,310 for higher freight costs) to QMEA outstanding since 16 December 2020 (the main sum), 21 December 2020 (USD 4,000) and 10 February 2021 (USD 2,310); and*
>
> *b. primarily ordering Romark to pay USD 3,388,000 to QMEA for the outstanding 77 mt of the Product, which became due on 1 June 2021; or, alternatively (subsidiair), dissolving the Agreement and ordering Romark to pay damages; and*
>
> *c. ordering Romark to take delivery of the outstanding 77 mt of the Product in accordance with QMEA's new Delivery Schedule; and*
>
> *d. ordering Romark to pay QMEA an annual interest of 8% on all outstanding amounts from the dates the amounts became due according to the original Delivery Schedule (set out in paragraph 8 and 63* [of the Statement of Claim]*); and*
>
> *e. ordering Romark to bear the costs and expenses of the Arbitration, including fees and expenses of this Tribunal, the administrative costs of the NAI, legal counsel, experts, consultants and witnesses; and*
>
> *f. ordering any further or other actions the Tribunal may consider appropriate.*[58]

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55 Claimant's Second Submission, para. 36.

56 Claimant's Second Submission, para. 37.

57 Romark has been defined in the Statement of Claim as "Romark Global". Statement of Claim, para. 1.

58 Statement of Claim, para. 65; Claimant's pleading notes, para. 16.

150. The Arbitral Tribunal notes that Claimant defined "Romark" in its Statement of Claim as "Romark Global".[59] Accordingly, Claimant's request for relief only relates to Respondent No. 1. Claimant does not seek any relief against Respondent No. 2.

A. Respondents' position

151. Although Respondents appeared in these arbitration proceedings and actively participated these proceedings, Respondents have not submitted a statement of defence. In fact, they have not submitted any substantive brief during these proceedings because their short answer filed on 3 June 2021 does not contain any factual or legal analysis.

152. In addition, Respondents did not participate in the case management conference of 1 December 2021, nor in the hearing of 13 December 2021, nor have they filed a submission on costs, in spite of having been invited and reminded to do so.[60]

B. Respondents' prayer for relief

153. Respondents have not submitted a prayer for relief.

VI. THE ARBITRAL TRIBUNAL'S ANALYSIS

154. In the following section the Arbitral Tribunal will analyse Claimant's claims pursuant to "*the laws of the Netherlands, in combination with the [...] CISG*" as required pursuant to Article 26.1 of the Agreement.

155. In this regard, the Arbitral Tribunal also refers to Article 34 of the NAI Rules which provides in the relevant part:

> *2. If the respondent fails to present a statement of defence as referred to in Article 23 within the time limit determined by the arbitral tribunal, without asserting well founded reasons, the arbitral tribunal may immediately make an award.*
>
> *3. In the award referred to in the second paragraph, the claim shall be wholly or partially awarded, unless it appears to the arbitral tribunal to be unlawful or unfounded. The arbitral tribunal may, before making its award, require proof from the claimant of one or more of its assertions.*

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[59] Statement of Claim, para. 1.

[60] See e.g., Email of 16 November 2021 from the Arbitral Tribunal to the Parties; Email of 23 November 2021 from the Arbitral Tribunal to the Parties; Email of 20 November 2021 from the Arbitral Tribunal to the Parties; Email of 1 December 2021 from the Arbitral Tribunal to the Parties; Email of 15 December 2021 from the Arbitral Tribunal to the Parties; Email of 25 January 2022 from the Arbitral Tribunal to the Parties; Email of 28 January 2022 from the Arbitral Tribunal to the Parties.

> *4. If a party, although reasonably having been called, fails to appear at the hearing without asserting well founded reasons, the arbitral tribunal may continue the arbitral proceedings and make an award.*

156. In the present case, Respondents failed to present a statement of defence or appear during the hearing, without asserting well-founded reasons. The Arbitral Tribunal therefore elected to continue these proceedings and to render an award, after having requested Claimant to provide further legal substantiation of its claim.

A. Claimant's claim No. 1

157. Claimant has requested that the Arbitral Tribunal order Romark Global to pay Claimant USD 572,340.00, consisting of the following amounts:

- USD 566,030.00 for 14 Mt of Product;
- USD 4,000.00 for higher freight and storage costs; and
- USD 2,310.00 for higher freight costs.

158. Claimant has explained that its claim for payment of USD 566,030.00 concerns the payment for the September 2020 delivery provided for in Schedule 3.1 to the Agreement. Upon mutual agreement, the September 2020 delivery was postponed for shipment to around 20 December 2020.[61] Romark Global made a partial payment for this shipment in the amount of USD 49,970.00 on 9 March 2021.[62] Respondents, however, failed to pay the remainder of the purchase price for this shipment in the amount of USD 566,030.00, as well as the higher freight and storage costs in the aggregate amount of USD 6,310.00.[63] The 14 Mt of Product (September 2020 delivery) were shipped from China on 21 December 2020. QMEA contends that because Respondents failed to pay for this third delivery, "*QMEA took possession of the shipment*" and stored it in a warehouse. During the hearing of 13 December 2021, QMEA mentioned that the September 2020 delivery will be (re)delivered within two weeks after payment of USD 566,030.00.[64]

159. According to the documents that Claimant has submitted on the record, Respondents did not object to Claimant's claims for payment of the remainder of the purchase price, nor did they object to the payment of increased freight and storage costs. To the contrary, Respondents continued to promise that payment would follow once they would be able

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61 **Exhibit C-28**: Email of 5 December 2020 from QMEA to Romark Global.

62 **Exhibit C-47**: Proof of payment dated 9 March 2021.

63 **Exhibit C-43**: Email of 7 February 2021 from QMEA to Romark Global.

64 Audio recording of the hearing: 24.27 and further.

to pay.[65] In these arbitration proceedings, Respondents have not submitted any response suggesting that they did or do object either.

160. The Arbitral Tribunal notes that pursuant to Schedule 3.1 to the Agreement, Claimant was to deliver 14 Mt to Respondent No. 1 in September 2020. This delivery was Claimant's third delivery, which followed two earlier deliveries of 7 Mt each.

161. Pursuant to Article 4.1(a) of the Agreement, the first shipment of 20 metric tons of Product was to be prepaid by Respondent No. 1 prior to shipment of the goods, following receipt of the related invoice, packing list and certificate(s) of analysis. Pursuant to Article 4.1(b) of the Agreement, the following shipments of Product (equal to an aggregate volume of 85 Mt) were to be paid monthly through irrevocable telegraphic transfer at sight letters of credit issued quarterly on behalf of Respondent No. 1. The first quarterly letter of credit was to be issued and received by Claimant before 1 August 2020.

162. While the Parties agreed in their email correspondence to a different payment method and different payment dates for the September 2020 delivery, it is undisputed that by 6 May 2021, the ultimate payment date granted by Claimant pursuant to its default notice of 29 April 2021, Respondents had not paid the remaining amount due for the 2020 September delivery (shipped in December) nor the increased storage and freight costs as claimed by Claimant in its email of 7 February 2021, and its default notice.[66]

163. Accordingly, the Arbitral Tribunal will order Respondent No. 1 to pay Claimant the remaining purchase price for the September 2020 delivery of 14 Mt of Product. The remaining purchase price amounts to 14 Mt *times* USD 44,000.00[67] which *equals* USD 616,000.00 *minus* USD 59,354.90 (which *equals* EUR 49,970.00 paid on 9 March 2021 according to then applicable exchange rate) which *equals* USD 556,645.10.[68] The Arbitral

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65 **Exhibit C-44**: Email of 1 March 2021 from Romark Global to QMEA; **Exhibit C-45**: Email of 8 March 2021 from Romark Global to QMEA; **Exhibit C-48**: Email of 19 March 2021 from Romark Global to QMEA; **Exhibit C-51**: Email of 24 March 2021 from Romark Global to QMEA; **Exhibit C-53**: Email of 24 March 2021 from Romark Global to QMEA; **Exhibit C-54**: Email of 29 March 2021 from Romark Global to QMEA: **Exhibit C-58**: Email of 7 April 2021 from Romark Global to QMEA; **Exhibit C-60**: Email of 9 April 2021 from Romark Global to QMEA; **Exhibit C-62**: Email of 16 April 2021 from Romark Global to QMEA; and **Exhibit C-67**: Email of 27 April 2021 from Romark Global to QMEA.

66 **Exhibit C-43**: Email of 7 February 2021 from QMEA to Romark Global; **Exhibit C-69**: Letter of 29 April 2021 from QMEA to Romark Global and Romark Laboratories.

67 Pursuant to Article 3.1 of the Agreement Romark Global undertook to pay USD 44.00 per kilogram of Product, which equals USD 44,000 per one Mt.

68 The Arbitral Tribunal notes that Claimant calculated this initial purchase price at USD 566,030.00. However, this amount was erroneously calculated by subtracting the EUR amount paid on 9 March 2021 from the USD purchase price, i.e., USD 616,000.00 *minus* EUR 49,970.00. The Arbitral Tribunal has rectified this error by applying the applicable USD exchange rate to the EUR amount.

Tribunal will also order Respondent No. 1 to pay the USD 4,000.00 for increased freight and storage costs and USD 2,310.00 for increased freight costs, resulting in a total amount of USD 562,955.10.

B. Claimant's claim No. 2

164. Claimant requests the Arbitral Tribunal to order Romark Global to pay Claimant USD 3,388,000.00 for the remaining 77 Mt of Product, which became due on 1 June 2021. Alternatively, Claimant requests the Arbitral Tribunal to dissolve the agreement and to order Romark Global to pay damages.[69]

165. Claimant asserts that pursuant to Article 53 of the CISG, Respondents' main obligations are the obligation to pay the purchase price (cf. Articles 54 and 58 of the CISG) and to take delivery of the goods (cf. Article 60 of the CISG).[70] Claimant asserts that pursuant to Article 3.1 of the Agreement, Respondents had the obligation to pay USD 44 per kilogram of the Product. Moreover, according to Claimant, pursuant to Article 4.1(a) of the Agreement, payment for the first shipment of 20 Mt was to be made prior to the shipment of the Product and pursuant to Article 4.1(b) of the Agreement, the following shipments were to be paid monthly through irrevocable at sight letters of credit.[71]

166. According to Claimant, because Respondents failed to pay the purchase price of USD 572,340.00, it was entitled to suspend the delivery of the Product pursuant to Articles 6:58 and 6:59 of the DCC. Without Respondents' cooperation, Claimant could not deliver the Product in accordance with the delivery schedule. Respondents' refusal to cooperate qualifies as a creditor's default (*schuldeiser's verzuim*). Accordingly, in Claimant's view, it was entitled to suspend the performance of its obligation pursuant to Articles 6:58 and 6:59 of the DCC.[72]

167. Respondents have not submitted any substantive response to the Statement of Claim in these arbitration proceedings, and accordingly have not contested Claimant's assertions.

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69 Claimant has not provided the Arbitral Tribunal any evidentiary substantiation of damages suffered. Nor has Claimant seriously pursued this alternative claim even when asked about during the virtual hearing. Accordingly, the Arbitral Tribunal will not order any relief in respect to it.

70 Claimant's Second Submission, paras. 7-9.

71 Claimant's Second Submission, paras. 11-12.

72 Claimant's Second Submission, paras. 15-23.

168. The Arbitral Tribunal notes as follows. Both the CISG and Dutch law provide for specific performance as a remedy in case a breach of contract occurs.[73] Pursuant to the Agreement, Respondent No. 1 was to pay and take delivery of a total of 105 Mt of Product in monthly instalments in the period from July 2020 until May 2021. The payment for the shipment of the first 20 Mt was to be made in advance, and the payment of the next 85 Mt was to take place monthly through irrevocable letters of credit, which were to be issued on a quarterly basis. These quarterly letters of credit were to be submitted prior to the beginning of each quarter.

169. While it appears from the correspondence that Claimant has submitted to the record that the Parties agreed to deviate from the delivery schedule included in Article 3.1 of the Agreement and the payment terms included in Article 4 of the Agreement for the first three deliveries (i.e., the deliveries of July 2020, August 2020 and September 2020), there is no evidence on the record that the Parties agreed to an amended delivery schedule and payment terms for the subsequent deliveries (i.e., the monthly deliveries as of October 2020 until May 2021). Indeed, while Claimant was open to amending the delivery schedule as required by Respondents, and repeatedly requested a proposal from Respondents in this regard, it appears that it never received an answer. Accordingly, the original delivery schedule remained in place for the period from October 2020 until May 2021.

170. As far as the applicable payment terms are concerned, while Claimant accepted to extend the payment term for the September 2020 shipment, it made clear that for future deliveries it would require payment in accordance with the Agreement.[74] Accordingly, the original payment terms as described in Article 4 of the Agreement also remained in place.

171. Pursuant to Article 63 of the CISG, Claimant was entitled to fix a new reasonable delivery schedule, when Respondent No. 1 defaulted in making its monthly payment when due through the irrevocable letters of credit issued quarterly on behalf of Respondent No. 1, as required pursuant to Article 4.1(b) of the Agreement.[75]

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[73] See e.g., Article 62 of the CISG which provides: *"The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement."*

[74] **Exhibit C-33**: Email of 4 January 2021 from QMEA to Romark Global; **Exhibit C-43**: Email of 7 February 2021 from QMEA to Romark Global.

[75] Article 63 of the CISG provides in the event of default by the buyer: *"The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations."*

172. As far as the payment terms included in the Agreement are concerned, the Arbitral Tribunal notes that whereas Claimant was to receive advance payment for the shipment of the first 20 Mt pursuant to Article 4.1(a) of the Agreement, for the shipment of the next 85 Mt, it would receive monthly payments through irrevocable letters of credit upon presentation of the relevant documents to the bank pursuant to Article 4.1(b) of the Agreement. The irrevocable letters of credit were to be issued quarterly, and Respondent No. 1 was to submit the quarterly letters of credit to Claimant *prior to* the beginning of each quarter, thereby providing Claimant with advance security for payment.

173. Pursuant to Article 6:59 of the DCC (read in conjunction with 6:52 and 6:80 of the DCC), Claimant was indeed entitled to suspend the execution of its obligation to deliver, for so long as Respondents did not fulfil their obligation to provide advance security and pay, also taking into account that Romark Global had informed QMEA on 28 January 2021 that it would not be able to effect payment for the September 2020 delivery.[76]

174. Given that the originally agreed payment terms remained in place, Respondents should have provided security for payment and paid for all further deliveries in accordance with Article 4(1)b of the Agreement, i.e., by means of irrevocable letters of credit, issued quarterly in advance, the last payment having been scheduled for May 2021. Therefore, Respondents should have provided security for and paid a further total amount of USD 3,388,000.00 (i.e., 77 Mt times USD 44,000.00/ per Mt) by May 2021. Respondent No. 1 breached its obligation to provide such advance security each time it failed to submit quarterly letters of credit in accordance with the delivery schedule. Respondent No. 1's successive breaches of that obligation entitled Claimant to suspend the corresponding monthly deliveries. Payment was only to take place upon acceptance by the bank of the documents specified in Article 4.2 of the Agreement. The Arbitral Tribunal considers that because Claimant was entitled to suspend its delivery obligations, Claimant was also excused from presenting relevant documents to the banks. Claimant's right to suspend deliveries pending Respondent No. 1's posting of security, however, does not derogate in any way Respondent No. 1's ongoing obligation to present letters of credit and through them effect payments as they fell due. Accordingly, the Arbitral Tribunal concludes that payments became due on a monthly basis in accordance with the contractual delivery schedule.

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[76] Article 6:59 of the DCC states: "*The creditor is also in default, if, as a result of circumstances that are for his risk and account, he does not fulfil one of his obligations to the debtor, and on this ground the debtor lawfully suspends the performance of its obligation towards the creditor.*"

175. In accordance with Article 59 of the CISG (and Article 6:83 of the DCC), Claimant was not required to send a default notice for Respondent No. 1's obligations to provide quarterly letters of credit in advance and to make monthly payments (ultimately resulting in an aggregate amount of USD 3,388,000.00) to become due.[77]

176. Given that Respondent No. 1 should have provided advance quarterly letters of credit for a total amount of USD 3,388,000.00, and made monthly payments in the same amount, the Arbitral Tribunal, considers that Claimant is entitled to request payment of the full amount as a form of specific performance of the Agreement.

177. Claimant has not specified the manner in which such payment is to take place. Since the right to suspend does not entail any right to modify the terms of the Agreement, the request for specific performance of the Agreement (in accordance with Article 62 of the CISG), can only be understood to mean payment in the same manner as provided in the Agreement, i.e., by irrevocable TT at sight letter of credit against the documents referred to in Article 4.2 of the Agreement upon each monthly delivery. Given that Respondent No. 1's obligations to provide security have all become due, the Arbitral Tribunal considers payment of the USD 3,380,000.00 is to take place through a single irrevocable TT at sight letter of credit issued on behalf of Respondent No. 1 by a reputable bank for the benefit of Claimant. This irrevocable TT at sight letter of credit should be issued no later than 14 days after the date of this Award.

178. Accordingly, the Arbitral Tribunal hereby decides to order Respondent No. 1 to pay Claimant USD 3,388,000.00 by means of one single irrevocable TT at sight letter of credit issued by a reputable bank for the benefit of Claimant, pursuant to which payment shall each month be made as soon as the relevant documents (referred to in Article 4.2 of the Agreement) have been accepted by such bank, the irrevocable TT at sight letter of credit to be issued no later than 14 days after the date of this Award.

C. Claimant's claim No. 3

179. Claimant has requested that Romark Global be ordered to take delivery of the outstanding 77 Mt of Product in accordance with Claimant's new production schedule. Claimant's new production schedule provides for monthly shipments of the outstanding quantities starting as of July 2022, based on the assumption that Respondents would have paid all

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[77] Article 59 of the CISG provides that: "*The buyer must pay the price on the date fixed or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.*" Also see: **Exhibit C-77:** Gerechtshof's-Hertogenbosch 14 December 2021, ECLI:NL:GHSHE:2021:3716.

outstanding amounts by 1 April 2022 at the latest and thereby giving Claimant three full months to restart the production of the Product by PTG.

180. Respondents have not commented on this claim.

181. Pursuant to Article 62 of the CISG read in conjunction with Articles 53 and 60 of the CISG, Claimant may request an order that Respondent No. 1 take delivery of the Product.[78] Given that the originally agreed schedule can no longer be attained due to Respondents' failure to make payments and taking into account that Claimant was entitled to suspend the delivery, the Arbitral Tribunal concludes that a new delivery schedule needs to be fixed.

182. Considering that Claimant needs three months following payment of the outstanding amounts of USD 562,955.10 and USD 3,388,000.00 to restart the production at PTG and that CISG allows Claimant to fix a new reasonable delivery schedule,[79] the Arbitral Tribunal will order Respondent No. 1 to take delivery in accordance with the following schedule:

Delivery date (expressed as a period calculated from the Trigger Date, being the first day of the month following the month in which Respondent No. 1 has paid USD 562,995.10 and has issued an irrevocable letter of credit for payment of an additional USD 3,388,000.00)	**Volume**
Trigger Date *plus* 3 months	7 Mt
Trigger Date *plus* 4 months	7 Mt
Trigger Date *plus* 5 months	14 Mt
Trigger Date *plus* 6 months	7 Mt
Trigger Date *plus* 7 months	7 Mt
Trigger Date *plus* 8 months	14 Mt
Trigger Date *plus* 9 months	7 Mt
Trigger Date *plus* 10 months	14 Mt
Total	**77 Mt**

D. Claimant's claim No. 4

183. Claimant claims payment of annual interest at the rate of 8% on all outstanding amounts from the dates that these amounts became due under the original delivery schedule.

184. Claimant has asserted that the due dates for the deliveries from October 2020 until May 2021 were as follows:

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78 Article 53 of the CISG provides: "*The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.*" Article 60 of the CISG states: "*The buyer's obligation to take delivery consists: (a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and (b) in taking over the goods.*"

79 See Article 63 of the CISG as quoted above.

- 15 September 2020 (for the October 2020 delivery of 7 Mt);
- 15 October 2020 (for the November 2020 delivery of 7 Mt);
- 15 November 2020 (for the December 2020 delivery of 14 Mt);
- 15 December 2020 (for the January 2021 delivery of 7 Mt);
- 15 January 2021 (for the February 2021 delivery of 7 Mt);
- 15 February 2021 (for the March 2021 delivery of 14 Mt);
- 15 March 2021 (for the April 2021 delivery of 7 Mt); and
- 15 April 2021 (for the May 2021 delivery of 14 Mt).[80]

185. Respondents have not commented on this request.

186. The Arbitral Tribunal considers that a distinction should be made between Claimant's request for payment of USD 572,340.00 (of which the Arbitral Tribunal has awarded USD USD 562,955.10) for the September 2020 delivery and its request for payment of USD 3,388,000.00 for the remaining deliveries.

187. With respect to Claimant's claim for payment of USD 572,340.00, Claimant has asserted in its correspondence with Respondents that 8% interest would apply as of 16 December 2020.[81] The Arbitral Tribunal notes, however, that on 29 April 2021, Claimant provided Respondents with a default notice in which it gave Respondents a final payment date of 6 May 2021. In relation to the payment of this amount, Respondents were hence only in default (*verzuim*) as of 7 May 2021. Interest over the amount of USD 562,955.10 (the amount awarded by the Arbitral Tribunal) will therefore only accrue as from 7 May 2021.

188. With respect to Claimant's claim for payment of USD 3,388,000.00, the Arbitral Tribunal refers to paragraph 174 above in which it concluded that the monthly payments became due.

189. Although the Agreement does not provide a specific date by which the payments must be made and solely determines that payment shall each month be made *"as soon as the relevant documents have been accepted by such bank"*, the Arbitral Tribunal accepts the dates stipulated by Claimant, as reasonable estimates of the date by which advance payment in practice could be expected to have been made pursuant to the irrevocable letters of credit. Given that the Agreement allows the payment dates for the relevant sums to be determined, Respondents were in default once they failed to make payment by the

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80 Statement of Claim, para. 63.

81 **Exhibit C-70:** Letter of 7 May 2021 from QMEA to Romark Global and Romark Laboratories.

final due date, i.e., as of the 16th of each month, without any default notice from Claimant being required.

190. The Arbitral Tribunal notes that pursuant to Articles 6:119a of the DCC (and 6:120 of the DCC), the legal interest for a payment delay in commercial transactions equals the 6-month refinancing interest of the European Central Bank plus 8 percentage points. Claimant's claim thus has a legal basis.[82]

191. Accordingly, the Arbitral Tribunal concludes that Claimant is entitled to the payment of legal interest at the rate of 8% over the following amounts as of the following dates until payment in full:

- USD 308,000.00 as of 16 September 2020;
- USD 308,000.00 as of 16 October 2020;
- USD 616,000.00 as of 16 November 2020;
- USD 308,000.00 as of 16 December 2020;
- USD 308,000 as of 16 January 2021;
- USD 616,000.00 as of 16 February 2021;
- USD 308,000.00 as of 16 March 2021;
- USD 616,000.00 as of 16 April 2021; and
- USD 562,955.10 as of 7 May 2021.

192. The Arbitral Tribunal will discuss Claimant's claim No. 5 (costs of the arbitration and of legal expenses) in the next section of this Final Award.

VII. COSTS

193. Claimant has requested that the Arbitral Tribunal order "*Romark to bear the costs and expenses of the Arbitration, including fees and expenses of this Tribunal, the administrative costs of the NAI, legal counsel, experts, consultants and witnesses*".[83]

194. Pursuant to Article 57(1) of the NAI Rules, "[t]*he arbitral tribunal shall determine the costs of the arbitration with due observance of the provisions of Article 54*".

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82 Claimant referred to the legal basis of its claim during the hearing. Audio recording of the hearing: 16.57 and further.

83 Statement of Claim, para. 65(e); Claimant's pleading notes, para. 16(e).

195. Pursuant to Article 57(2) of the NAI Rules, the Arbitral Tribunal shall order the unsuccessful party to pay the costs of the arbitration, except in special events at the discretion of the Arbitral Tribunal. In case each of the Parties is partially successful, the Arbitral Tribunal may divide all or part of the costs of the arbitration.

196. The costs of the arbitration, as referred to in Article 57 of the NAI Rules, have been defined in Article 52 of the NAI Rules as follows:

> *The costs of the arbitration shall be understood to mean the costs mentioned in Articles 53, 54 and 56 and the other costs necessarily incurred in the arbitration in the opinion of the arbitral tribunal.*

197. Article 53 of the NAI Rules concerns the administration costs,[84] Article 54 of the NAI Rules concerns the Arbitral Tribunal's fees and disbursements,[85] and Article 56 of the NAI Rules concerns "*reasonable compensation for the successful party's legal assistance*".[86]

198. In the present case, Claimant prevailed on its request that the Arbitral Tribunal order Respondent No. 1 to pay the outstanding amounts of USD 562,955.10 and USD 3,388,000.00. Claimant is thus the successful party. Therefore, in accordance with Article 57(2) of the NAI Rules, Respondent No. 1 is to bear the NAI's administration costs and the Arbitral Tribunal's fees and disbursements, together with reasonable compensation for Claimant's legal assistance.

199. In the following sections, the Arbitral Tribunal will first address the NAI's administration costs and the Arbitral Tribunal's fees and disbursements. The Arbitral Tribunal will then turn to the reasonable compensation for Claimant's legal assistance.

A. The NAI's administration costs and the Arbitral Tribunal's fees and disbursements

200. On 19 May 2021, pursuant to Article 53(1) and (2) of the NAI Rules, the NAI fixed the administration costs in an amount of EUR 14,520.00 (including EUR 2,520.00 VAT) and requested Claimant to transfer this amount to its bank account.

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[84] Article 53(2) of the NAI Rules: "[t]*he administration costs shall be calculated on the basis of the total monetary interest of the claims, including contingent claims, using the scale determined by the Executive Board as included in Appendix A to these Rules. The Executive Board may make interim changes to this scale in accordance with the provisions of Article 62. In the event that the administration costs cannot be calculated on the basis of the scale, the administrator shall decide.*"

[85] Article 54(1) of the NAI Rules: "[t]*he fees and disbursements of the arbitrator or arbitrators shall be reasonably determined by the administrator after consulting with the arbitrator or arbitrators.*"

[86] Article 56 of the NAI Rules: "[t]*he arbitral tribunal may order the unsuccessful party to pay reasonable compensation for the successful party's legal assistance, if and insofar as these costs were necessary in the arbitral tribunal's opinion.*"

201. On 10 June 2021, the NAI informed the Parties that it had received EUR 14,520.00 (including EUR 2,520 VAT) from Claimant on account of its administration costs.

202. On 16 November 2021, the NAI acknowledged receipt of EUR 60,000.00 paid by Claimant on account of the deposit for the Arbitral Tribunal's fees and disbursements.

203. On 17 February 2022, the NAI acknowledged receipt of an additional payment of EUR 25,000.00 from Claimant on account of the deposit for the Arbitral Tribunal's fees and disbursements.

204. Accordingly, the total deposit for the Arbitral Tribunal's fees and disbursements amounts to EUR 85,000.00.

205. On 7 June 2022, the NAI fixed the Arbitral Tribunal's fees as follows:

Co-arbitrator Mr van der Beek:	EUR 7,110.00;
Co-arbitrator Mr Conway:	EUR 12,930.00;
Chairperson Ms van Hooft:	EUR 22,170.00; and
Disbursements (arbitral secretary)	EUR 6,250.00.

206. As set forth at paragraph 198 above, in the present case Respondent No. 1 is to reimburse Claimant for the NAI administration costs as well as the Arbitral Tribunal's fees and disbursements.

207. Accordingly, Respondent No. 1 will be ordered to pay to Claimant the amount of EUR 12,000.00 on account of administration costs and the amount of EUR 48,460.00 on account of the fees and disbursements of the Arbitral Tribunal.

B. Reasonable compensation for legal assistance

208. On 3 March 2022, in accordance with the procedural timetable decided by the Arbitral Tribunal at the end of the hearing of 13 December 2021 and as included in the Arbitral Tribunal's email of 15 December 2021, Claimant filed its costs submission, indicating that it had spent EUR 67,066.81 in legal fees.

209. As Claimant has prevailed in its request for specific performance, Respondent No. 1 will be ordered to pay Claimant's reasonable compensation for legal costs. Taking into account the amount in dispute, the Arbitral Tribunal concludes that the amount of legal fees claimed (i.e., EUR 67,066.81) is reasonable in the circumstances. Accordingly, Respondent No. 1 will be ordered to pay Claimant EUR 67,066.81.

VIII. DISPOSITIVE PART

210. The Arbitral Tribunal hereby:

(a) Orders Romark Global Pharma LLC to pay QMEA Chemical Solutions B.V. the amount of USD 562,955.10;

(b) Orders Romark Global Pharma LLC to pay QMEA Chemical Solutions B.V. the amount of USD 3,388,000.00 by means of a single irrevocable TT at sight letter of credit issued by a reputable bank for the benefit of Claimant, pursuant to which payment shall each month be made as soon as the relevant documents (referred to in Article 4(2) of the Agreement) have been accepted by such bank, the irrevocable TT at sight letter of credit to be issued no later than 14 days after the date of this Award.

(c) Orders Romark Global Pharma LLC to take delivery from QMEA Chemical Solutions B.V. of the outstanding 77 Mt of Product in accordance with the following schedule:

Delivery date (expressed as a period calculated from the Trigger Date, being the first day of the month following the month in which Respondent No. 1 has paid USD 562,955.10 and issued the irrevocable letter of credit ordered in paragraph (b) above in the amount of USD 3,388,000.00)	**Volume**
Trigger Date *plus* 3 months	7 Mt
Trigger Date *plus* 4 months	7 Mt
Trigger Date *plus* 5 months	14 Mt
Trigger Date *plus* 6 months	7 Mt
Trigger Date *plus* 7 months	7 Mt
Trigger Date *plus* 8 months	14 Mt
Trigger Date *plus* 9 months	7 Mt
Trigger Date *plus* 10 months	14 Mt
Total	**77 Mt**

(d) Orders Romark Global Pharma LLC to pay QMEA Chemical Solutions B.V. interest at the rate of 8% per annum compounded annually over the following amounts as of the following dates until payment in full:

- USD 308,000.00 as of 16 September 2020;
- USD 308,000.00 as of 16 October 2020;
- USD 616,000.00 as of 16 November 2020;
- USD 308,000.00 as of 16 December 2020;
- USD 308,000 as of 16 January 2021;

- USD 616,000.00 as of 16 February 2021;
- USD 308,000.00 as of 16 March 2021;
- USD 616,000.00 as of 16 April 2021; and
- USD 562,955.10 as of 7 May 2021:

(e) Orders Romark Global Pharma LLC to pay the costs of these arbitration proceedings, consisting of administration costs fixed in the amount of EUR 12,000.00, and fees and disbursements of the Arbitral Tribunal and Administrative Secretary fixed in the amount of EUR 48,460.00;

(f) Decides that these costs shall be paid out of the administration costs in the amount of EUR 14,520.00 paid by QMEA Chemical Solutions B.V. to the NAI, and the deposit for the fees and disbursements of the Arbitral Tribunal in the amount of EUR 85,000.00, made by Claimant (any surplus shall be reimbursed by the NAI to QMEA Chemical Solutions B.V.);

(g) Orders Romark Global Pharma LLC to pay QMEA Chemical Solutions B.V. an amount of EUR 67,066.81 for costs related to its legal assistance; and

(h) Rejects all other claims and requests for relief of the Parties.

The Hague, the Netherlands
Date: 10 June 2022

Mr Jozua van der Veer

Mr Shawn Conway

Ms Annet van Hooft
Chairperson