

CISG-online 7194

Jurisdiction	China
Tribunal	北京市第四中级人民法院 (Intermediate People's Court Beijing No. 4)
Date of the decision	16 May 2023
Case no./docket no.	(2022) jing 04 min chu No. 294
Case name	<i>Shaphar Group LLC v. Baiqi Holdings (China) Co Ltd</i>

Translation by Li Wenlu***

*Translation edited by Yu Yanfeng****

This case concerning a dispute over an international sales contract between the [Buyer], Shaphar Group LLC (hereinafter «Shaphar»), and the [Seller], Baiqi Holdings (China) Co Ltd. (hereinafter «Baiqi»), was accepted by this Court on 18 April 2022. [Buyer] filed the lawsuit without indicating the existence of an arbitration agreement between the parties; therefore, this case falls under the jurisdiction of this Court. Regarding jurisdiction, [Buyer] is an enterprise registered in the United States of America (hereinafter «USA»), making this a foreign-related civil and commercial dispute case. As [Seller]'s office is located in Beijing, pursuant to Article 266 and Article 22 of the Civil Procedure Law of the People's Republic of China (hereinafter «Civil Procedure Law»), and in accordance with Article 1, Paragraph 2 of the Regulations of the Beijing High People's Court on the Case Jurisdiction of the Intermediate People's Court Beijing No. 4 (2018 Revision), this Court has jurisdiction over this case. A collegial panel was formed according to law, with Judge Gao Jing serving as the presiding judge, and Judges Cui Zhiyu and Li Dongmei as members. Subsequently, the members of the collegial panel were changed to Lay Assessors Hui Weihong and Li Dongying. This Court applied the ordinary procedure according to law and held a public hearing on 25 November

* The translation should be verified by cross-checking against the original text. For purposes of this translation, Claimant of Shaphar Group LLC is referred to as [Buyer]; Respondent of Baiqi Holdings (China) Co., Ltd. is referred to as [Seller]. For reasons of clarity, headings in square brackets (formatted in bold) have been added; these are not included in the original text.

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2022. [Buyer]'s attorney Meng Ting appeared in court to participate in the proceedings. [Seller], having been summoned by this Court's public notice, refused to appear in court without justifiable reason, which does not affect this Court's adjudication based on the established facts and according to law. This case has now been concluded.

[Buyer] filed the following claims with this Court, requesting the Court to order:

1. [Seller] to refund the price of USD 315,000 paid by [Buyer] for the first container of goods, plus interest losses calculated based on USD 315,000 from 20 May 2021, until the date of actual payment, at the Loan Prime Rate (LPR) published by the National Interbank Funding Center (tentatively calculated as RMB 66,392.53 as of 31 March 2022);
2. [Seller] to refund the price of USD 630,000 paid by [Buyer] for the second and third containers of goods, plus interest losses calculated based on USD 630,000 from 20 May 2021, until the date of actual payment, at the LPR (tentatively calculated as RMB 132,785.05 as of 31 March 2022);
3. [Seller] to compensate [Buyer] for losses amounting to USD 18,882.12 caused by [Seller]'s breach of contract;
4. [Seller] to bear the court costs of this case.

(All amounts above are in USD, not RMB).

During the proceedings, [Buyer] added a claim: to rescind the Glove Sales Contract executed by both parties on 21 January 2021. Subsequently, [Buyer] amended this claim to declare the contract involved in the case avoided as of 20 May 2021.

[Facts and Reasons]

I. The Parties.

[Buyer] is a company registered in Delaware, USA, engaged in goods trade in China, Europe, America, and other parts of the world, and is the [Buyer] in the glove sales relationship involved in this case. [Seller] was established on 25 April 2020, is a company registered in Beijing, China, and its business scope includes the wholesale and retail of medical appliances; it is the [Seller] in the glove sales relationship involved in this case. A non-party, SNDME LLC (hereinafter «DME»), is [Buyer]'s main client and the downstream [Buyer] in the glove sales relationship. DME is a professional supplier of medical protective equipment registered in Florida, USA, regularly supplying medical disposable gloves, masks, disposable protective clothing, disinfectants, and other medical supplies to major local medical institutions, government agencies, and protective equipment suppliers in the USA. Another non-party, Guangdong Guyun Medical Technology Co., Ltd. (hereinafter «Guyun Company»), is a company registered in Guangdong, China, primarily engaged in the production, processing, and sales of medical appliances. Guyun Company is the actual manufacturer of the gloves

involved in the case. [Seller] purchased the nitrile gloves from Guyun Company and resold them to [Buyer].

II. Background of Contract Conclusion and Product Performance.

Against the backdrop of the ongoing COVID-19 pandemic in the USA, the demand for disposable protective gloves surged due to the need for «novel coronavirus» protection. The demand for protective gloves from the US health system increased from approximately 2.65 billion pieces per month before the pandemic to about 10 billion pieces per month, more than three times the original amount. Medical personnel come into contact with numerous different patients or examinees; they must change gloves after each contact with a different person. Therefore, it is essential to ensure that the disposable protective gloves they use deliver reliable safety performance, such as burst strength and tear resistance, to ensure their life and health safety. Nitrile gloves are specifically used for such examinations. The main component of disposable medical nitrile gloves is nitrile rubber, a synthetic rubber polymerized from acrylonitrile and butadiene monomers. It boasts high wear resistance, good air tightness, strong elasticity, tear resistance, and other advantages. Therefore, nitrile gloves possess reliable performance as safety protective gloves and are widely used in various operational scenarios in medical, pharmaceutical, health, and laboratory settings.

After the pandemic, global nitrile glove production capacity was insufficient. Chinese glove manufacturers executificantly expanded production to meet domestic and international demand for disposable nitrile gloves. However, until early 2021, global nitrile gloves were still in short supply. Given this background, to supply disposable nitrile gloves to the professional medical supplier DME, [Buyer] decided to procure them from China. [Seller] was fully aware of [Buyer]’s and DME’s urgent need for these gloves, the intended use scenarios for this batch of disposable nitrile gloves, and their critical role in ensuring the safety of operational personnel.

III. Contract Formation and Main Content.

On 21 January 2021, [Buyer] and [Seller] executed the Glove Sales Contract with contract number JYVJ20210121 (hereinafter the «Contract»), whereby [Buyer] agreed to purchase from [Seller] a total of 600,000 boxes (100 pieces/box) of disposable nitrile examination gloves in sizes S, M, L, and XL, with a total tax-inclusive price of USD 6.3 million. Regarding product brand and quality standards, Article 4.2 of the Contract stipulated that the brand of the goods was «Guyun» or «Ansel». Article 6.1 stipulated that [Seller] confirmed that the products under this contract conformed to the SGS inspection standards. Article 6.2 stipulated that the products conform to the supplier’s enterprise standards or the standard samples determined by both parties, and that FDA/510K qualification (i.e., US Food and Drug Administration 510K qualification) should be provided. Regarding the shipment schedule, the parties agreed on a tight pickup schedule. According to the attached Payment and Pickup Schedule, the goods were to be shipped in 20 separate batches (containers) from 5 February 2021, to 24 March 2021, with each container containing 30,000 boxes of gloves. Among them, the goods for the 1st and 2nd containers were to be shipped on 5 February 2021, and the goods for the 3rd

container were to be shipped on 12 February 2021. Regarding inspection, Article 6.5.1 stipulated that Party A ([Buyer]) should entrust a third-party SGS inspection agency to conduct the inspection within one week before pickup. Article 6.5.2 stipulated that if Party A discovered quality problems with the products during inspection before or on the day of delivery, or if these quality problems were proven through communication between the parties, Party A should raise the issue on the spot with Party B ([Seller]), and Party B would replace the damaged or non-conforming goods free of charge within 10 working days. Regarding payment, according to Article 3.2 and the attached Payment and Pickup Schedule, [Buyer] was to pay USD 945,000 as a prepayment after executing the contract. This prepayment was for the goods in the 1st to 3rd containers, with each container corresponding to a price of USD 315,000 (945,000 / 3). Subsequently, [Buyer] would continue to pay for the subsequent 17 containers in batches.

IV. Contract Performance.

[Buyer] paid [Seller] the full price of USD 945,000 for the 1st to 3rd containers. On 9 February 2021, [Seller] completed customs declaration for the 1st container of goods. Around 1 March 2021, the 1st container of goods was actually loaded and shipped from the port. Given that the shipment of the 1st container was already severely delayed, to receive the goods as soon as possible, the parties did not conduct a pre-shipment quality inspection of the gloves. On 29 March 2021, [Buyer] sent a lawyer's letter to [Seller], urging [Seller] to deliver the 2nd and 3rd containers of goods within five working days. On 11 April 2021, [Seller] replied, acknowledging its failure to perform on time and stating its intention to continue performance. However, the 2nd and 3rd containers of goods were never actually shipped. On 13 April 2021, the 1st container of goods arrived at the port of Los Angeles. On 12 May 2021, the parties held their first video conference regarding the quality problems with the 1st container of goods received by [Buyer], conducting a video inspection of the relevant goods. On 20 May 2021, [Buyer] sent a lawyer's letter to [Seller], notifying [Seller] of the avoidance of the Contract and demanding that [Seller] refund all paid amounts. On 1 June 2021, the parties held a second video conference, during which [Seller] acknowledged the quality problems and promised a refund. Thereafter, [Seller] delayed the refund under various pretexts, such as needing to communicate with downstream suppliers and needing instructions from senior management, and even ignored [Buyer]. The relevant payments have not been refunded to date.

V. [Seller]'s Breach of Contract.

1.

The 1st container of goods had serious quality problems and was almost unusable. The relevant gloves in this container tore immediately upon pulling, completely lacking the reliable safety performance required for medical examinations. [Buyer] and its downstream [Buyer] DME could not supply this batch of goods to hospitals, healthcare institutions, or other end-users of gloves. Consequently, DME faced rejection by the end-users. Regarding the quality issues, the parties organized a video conference on 12 May 2021, to inspect the quality of the 1st container of goods. During the meeting, all parties witnessed the fact that the gloves

severely ruptured with a light pull. [Seller] did not dispute the origin of the inspected goods or the existence of quality problems. Regarding [Buyer]'s request for a full refund as soon as possible, [Seller] stated it would promptly provide a solution. However, Baiqi has not provided any actual feedback since then. Shockingly, according to a glove inspection report dated 7 October 2021, this batch of goods was not the nitrile examination gloves stipulated in the contract; their composition was Polyvinyl Chloride (PVC), not nitrile. In fact, this batch of goods did not require professional testing; even an ordinary person without specialized knowledge of medical supplies could understand what it means for medical gloves to tear immediately upon pulling.

2.

[Seller] failed to deliver the 2nd and 3rd containers of goods. According to the Payment and Pickup Schedule, the 2nd container was to be shipped together with the 1st container on 5 February 2021, and the 3rd container was to be shipped on 12 February 2021. However, the 2nd and 3rd containers were never shipped. During the contract performance period, [Buyer] repeatedly urged [Seller] via WeChat and phone calls, but [Seller] was passive and showed no sincerity in delivering the goods or performing the contract on time. [Seller] offered various unreasonable excuses to fob off on [Buyer].

VI. Applicable Law.

The parties agreed in the Contract that the contract was concluded pursuant to the Contract Law of the People's Republic of China. Given that the contract involved in the case was executed in January 2021, disputes under the Glove Sales Contract should be governed by the Civil Code of the People's Republic of China (hereinafter the «Civil Code»), which came into effect on 1 January 2021, specifically the relevant provisions of Book Three, Contracts. Furthermore, this case involves an international sales dispute. [Buyer]'s place of business is in the USA, and [Seller]'s place of business is in China. Both States where the parties have their places of business are Contracting States to the United Nations Convention on Contracts for the International Sale of Goods (CISG). According to the provisions on automatic application of the CISG, this case shall primarily be governed by the CISG. Matters not settled by the CISG shall be governed by the relevant provisions of the Civil Code.

According to Article 584 of the Civil Code and Art. 74 CISG, [Seller] should refund [Buyer] the full price paid for the 1st, 2nd, and 3rd containers of goods and, adhering to the principle of full compensation for damages, bear various actual losses incurred by [Buyer], including DME, due to its breach, such as goods inspection fees of USD 6,228, sea freight and customs clearance fees for the 1st container of USD 11,404.12, and land freight for some already shipped goods from the 1st container of USD 1,250. In this case, considering [Seller]'s various actions – treating the contract as a trifle and the life and health safety of medical workers and other glove users as a trifle, selling goods with serious quality problems first, failing to deliver subsequent goods later, and delaying the refund with various excuses after the breach – [Seller] has shown no commercial integrity. [Buyer] is entitled to demand that [Seller] refund the full price, pay interest, and compensate for the actual losses suffered by [Buyer] and DME, and requests the Court to rule as prayed.

[Seller] did not appear in court and did not submit a written defense.

[Buyer] submitted evidence in support of its claims according to law, and this Court has reviewed it according to law. The evidence to which no objection was raised during review is included in the case file for corroboration.

Based on the parties' statements and the evidence reviewed and confirmed, this Court finds the following facts:

On 21 January 2021, Party A, [Buyer] and Party B, [Seller] executed the bilingual (Chinese and English) Glove Sales Contract, agreeing pursuant to the Contract Law of the People's Republic of China and related regulations, upon the following terms: ... (2) Product Name: Disposable Nitrile Examination Gloves; Models: S (5%), M (25%), L (45%), XL (25%); Color: Blue; Total Quantity: 600,000 boxes; Specification: 100 pieces/box; Total Tax-Inclusive Price: USD 6.3 million. (3) Article 3.2: Within one day after executing this contract, Party A must pay Party B a one-time prepayment; the first prepayment is USD 945,000. After the first 2 container shipments, subsequent prepayments and delivery arrangements shall be made according to the payment schedule. Article 3.3: From the date of receiving the prepayment, Party B enters the production reserve period, and after 5 working days, Party B begins delivery to Party A according to the batches stipulated in the pickup schedule of this contract. (4) Article 4.2: The packaging method for this product shall be delivered in the original manufacturer's brand «Guyun» or «Ansell». (5) Article 5.1: The delivery method is in batches; the first batch shall be delivered before 5 February 2021; the remaining goods shall be delivered weekly at 2-3 containers per week after 27 February. Article 5.1.1: The trade term of this contract is FOB. Party B must prepare the goods, ship them to Shenzhen Port or other Asian region ports, and complete customs declaration and other procedures. (6) Article 6.1: Party B confirms that the products under this contract conform to SGS inspection standards. Article 6.2: The products conform to the supplier's enterprise standards or the standard samples determined by both parties; FDA/510K qualification shall be provided. Article 6.5.1: Party A shall entrust a third-party SGS inspection agency to conduct the inspection within one week before pickup. If the product conforms to the SGS inspection standards and is verified as qualified, acceptance shall be confirmed on the day of product delivery; if Party A raises no objection to the type, quantity, or quality of the product before pickup, it shall be deemed that Party A has accepted the product as qualified and without quality problems, and Party B shall not be liable for returns or exchanges. Article 6.5.2: If Party A discovers quality problems with the products during inspection before or on the day of delivery, or if these quality problems are proven through communication between the parties, Party A should raise the issue on the spot with Party B, and Party B will replace the damaged or non-conforming goods free of charge within 10 working days. If the replacement period exceeds 10 working days or the replaced goods still fail to meet the quality standards, the parties shall negotiate a solution; if negotiation fails, Party A has the right to cancel the contract, and Party B shall refund according to the contract agreement. Article 6.5.5: If the product does not conform to the SGS quality inspection standards, Party A has the right to raise a dispute or lawsuit pursuant to Article 6.5.2. The contract appendix was the Payment and Pickup Schedule, stating: The goods would be

shipped in 20 separate containers (each container 3,000 cartons, 10 boxes/carton) from 5 February 2021, to 24 March 2021. Among them, the 1st and 2nd containers were to be shipped on 5 February 2021, and the 3rd container on 12 February 2021. Party A was to pay the first prepayment of USD 945,000, followed by eight additional payments.

On the same day, the parties jointly issued an Exporter and Importer Joint Declaration, stating the content of 600,000 boxes of disposable nitrile examination gloves, imported into the USA, manufactured by Guyun Company. The exporter and importer confirmed that the products conformed to the Chinese quality standard GB4806.11-2016 and the product quality standards agreed upon by both parties. The importer guaranteed that the agreed product quality standards conformed to the importing country's quality standard requirements for the product and confirmed acceptance of the aforementioned product quality standards.

On 26 January 2021, [Buyer] paid USD 495,000 and USD 450,000, totaling USD 945,000, to [Seller]'s deexecuted receiving account as stipulated in the contract.

The goods were shipped directly by Guyun Company ([Seller]'s upstream company) to [Buyer]. On 9 February 2021, the 1st container of goods completed export customs declaration at Yantian Port, declared as 30,000 boxes of «Guyun» brand medical examination gloves valued at USD 315,000. Around 1 March, the goods departed the port. [Buyer] claimed that, as the shipment of the 1st container was already severely delayed per the contract, to receive the goods sooner, a pre-shipment quality inspection of the gloves was not conducted. Despite [Buyer]'s repeated urging, the 2nd and 3rd containers of goods were never actually shipped.

After the 1st container arrived at the port of Los Angeles, it was transported to a warehouse by NNR USA Corporation Los Angeles Office. [Buyer] and DME ([Buyer]'s downstream company) discovered quality problems with the gloves. On 12 May 2021, the [Buyer], [Seller], DME, Guyun Company, and warehouse personnel held their first video conference regarding the quality problems with the 1st container received by [Buyer]. The meeting demonstrated that some gloves tore upon pulling and had inconsistent colors; the parties inspected the goods. On 1 June of the same year, the parties held a second video conference. During this meeting, Guyun Company admitted that within the 1st container, out of 3,000 cartons of gloves, «1,799 cartons were mixed film, 1,201 cartons were pure film», «I know without testing», «Our staff loaded the wrong goods», «We are willing to compensate with more pure film gloves to ship to them». [Seller]'s Li Dong said, «Guyun clearly knows that 1,799 cartons of this shipment are bad, now it's very simple, no need for inspection or anything, just a handling plan», «We ordered pure film medical gloves from Guyun». DME stated that their clients had already gone to others, and the already sold portion had been returned to the warehouse, so they demanded a refund for the 1st to 3rd containers and compensation for one month's storage fees. Guyun Company said, «A refund is also possible, but it's difficult now.» [Seller] stated that a refund date could not be set and further discussion was needed.

To prove the quality problems with the gloves received by [Buyer], [Buyer] submitted an inspection report dated 7 October 2021, from Akron Rubber Development Laboratory, Inc., and proof of payment of the USD 6,228 testing fee. The inspection report showed the tested

sample gloves were composed of Polyvinyl Chloride. [Buyer] also submitted a complaint letter from DME's client MST Distributors Ltd. regarding the glove quality issues, and a letter from NNR USA Corporation Los Angeles Office stating that the inspected gloves were of low quality, easily torn, and did not meet the specifications for medical nitrile gloves.

On 29 March 2021, [Buyer] sent a lawyer's letter to [Seller], demanding delivery of the 2nd and 3rd containers, totaling 60,000 boxes of gloves, within five working days of receipt. On 11 April 2021, [Seller] replied, stating that during the supply process for the 2nd container, a third party encountered an unexpected issue, hence they failed to perform on time, and requested to continue performance. On 20 May 2021, [Buyer] sent another lawyer's letter to [Seller], notifying [Seller] of the avoidance of the Glove Sales Contract due to the failure to deliver the 2nd and 3rd containers and the serious quality problems with the 1st container, and demanding a refund of the total paid amount of USD 945,000. The letter was received on 22 May 2021. Staff from both parties also negotiated the refund via WeChat.

It was further ascertained that for the 1st container of goods, sea freight, customs clearance fees, etc., totaling USD 11,404.12, were actually incurred. For the portion of gloves already sold in the USA, land freight of USD 1,250 was actually incurred.

[Buyer] stated that out of the 3,000 cartons in the 1st container, 228 cartons that were sold had been returned by [Buyer]s because they tore upon pulling, and the remaining 2,772 cartons had been destroyed by DME.

Baidu Baike shows: «Nitrile» refers to nitrile rubber, a copolymer polymerized from acrylonitrile and butadiene monomers, with excellent oil resistance, high wear resistance, good heat resistance, and strong adhesion; «Nitrile gloves» are made from nitrile rubber mixed with other additives, functioning for safety protection, widely used in chemical, aquatic, food, hospital, and other industries; «Polyvinyl Chloride», English abbreviation PVC, is a polymer polymerized from vinyl chloride monomers via a free radical polymerization mechanism, with poor stability to light and heat, decomposing under prolonged sunlight exposure, leading to a rapid decline in physical and mechanical properties, widely used in industrial products, daily necessities, wires and cables, etc.; «FDA/510K» refers to the 510K certification conducted by the US Food and Drug Administration for medical products; «SGS inspection standards» refer to the various inspection standards provided by SGS (Société Générale de Surveillance), the world's largest and oldest private third-party company engaged in product quality control and technical appraisal (called Standard Technical Services Co., Ltd. in China). SGS standards are international standards widely applied in various fields such as product quality inspection, environmental protection, and health safety; the Chinese quality standard «GB4806.11-2016» is a national food safety standard issued by China's National Health and Family Planning Commission on 19 October 2016, specifying the basic requirements for rubber materials and products in contact with food.

The aforementioned facts are corroborated by evidence in the case file, including the Glove Sales Contract, Exporter and Importer Joint Declaration, payment vouchers, invoices, customs

declaration forms, video conference recordings, lawyer's letters, WeChat chat records, notarized/certified documents, and the parties' statements.

[This Court holds that]

This case involves a dispute arising from an international sales contract concluded between [Buyer], with its place of business in the USA, and [Seller], with its place of business in China, and is a foreign-related civil and commercial dispute case.

Regarding the application of procedural law.

Pursuant to Article 266 of the Civil Procedure Law, the procedural law for this case shall be the special provisions of Part Four of the Civil Procedure Law on Foreign-Related Civil Procedures and other relevant provisions of that law. Regarding the applicable substantive law, the parties did not make an explicit choice in the contract. Since the States where the parties have their places of business (China and the USA) are both Contracting States to the United Nations Convention on Contracts for the International Sale of Goods (CISG) concluded in Vienna on 11 April 1980, and the circumstances precluding application under Art. 2 and 3 CISG are not present in this case, and upon inquiry during the trial, [Buyer] explicitly chose to apply the CISG as the basis for determining its rights and obligations, and the parties have not excluded the application of the Convention, this case shall automatically be governed by the provisions of the CISG (excluding clauses to which China has declared reservations). For issues not settled by the CISG, pursuant to Article 41 of the Law of the People's Republic of China on Application of Laws to Foreign-Related Civil Relations, which states, «The parties concerned may choose the laws applicable to contracts by agreement. If the parties concerned do not choose, the laws of the habitual residence of the party whose performance of obligation can best reflect the characteristics of the contract shall apply, or other laws which have the closest connection with the contract shall apply», and given that the [Seller]'s domicile is within China, the law of the People's Republic of China shall apply. Furthermore, according to Article 1, Paragraph 1 of the Several Provisions of the Supreme People's Court on the Temporal Effect of the Application of the Civil Code of the People's Republic of China, Civil dispute cases caused by legal facts occurring after the implementation of the Civil Code shall be governed by the provisions of the Civil Code. As the legal facts in this case occurred after the implementation of the Civil Code, the provisions of the Civil Code shall apply.

In this case, [Buyer] and [Seller] executed the written Glove Sales Contract based on their true intentions, and its conclusion complies with the Convention. Given that Art. 4 CISG explicitly excludes the Convention's application to the validity of the contract, the validity of its terms, and the effect on the property in the goods sold, these issues shall be determined by applying domestic law. The content of the «Glove Sales Contract» involved in the case does not violate the mandatory provisions of China's current laws and administrative regulations and shall be recognized as legal and valid. Both parties shall perform their obligations according to the contract.

Regarding whether it constitutes a fundamental breach of contract.

First, from the parties' agreement on «Product Name» in the contract, the product [Buyer] purchased was disposable «Nitrile» medical examination gloves, meaning the primary material or component of the gloves should be «Nitrile». This is also evident from [Seller]'s statement during the second video conference: «We ordered pure nitrile medical gloves from Guyun». Based on the actual performance of the contract, for the 1st container of 3,000 cartons delivered by [Seller], Guyun Company admitted that at least 1,799 cartons were «mixed nitrile» rather than «pure nitrile» gloves due to employees loading the wrong goods. The non-conforming goods accounted for more than half of the delivered goods. In particular, some gloves tore upon pulling, completely unfit for the ordinary use of medical gloves of the same specifications. After discovery, [Buyer] promptly raised the quality objection to [Seller] and Guyun Company. Additionally, [Seller] has not delivered the 2nd, 3rd, or subsequent 17 containers of goods, seriously exceeding the contractually agreed delivery time. [Seller]'s aforementioned actions constitute breaches of contract. Secondly, the conclusion and performance of this contract occurred during the global COVID-19 pandemic, a background factor that cannot be ignored when assessing whether [Seller]'s breaches amount to a fundamental breach. The goods involved are medical consumables that were massively needed and in short supply during this special period. [Buyer]'s purchase from China for sale to its domestic clients represented a business opportunity. However, [Seller]'s breach of contract was sufficient to frustrate [Buyer]'s purpose of making profits through the contract, as evidenced by [Buyer]'s statements that the received goods were ultimately returned or destroyed by its client, who then purchased other gloves. Therefore, considering the circumstances of this case comprehensively, and pursuant to Art. 25 CISG, «A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract,» this Court holds that [Seller]'s conduct constitutes a fundamental breach of contract.

Regarding the declaration of the contract avoided.

Article 6.5.2 of the Contract stipulated that if quality problems are proven through communication between the parties, Party A should raise the issue on the spot with Party B, and Party B would replace the non-conforming goods free of charge within 10 working days; if the replacement period exceeds 10 working days or the replaced goods still fail to meet quality standards, the parties shall negotiate; if negotiation fails, Party A has the right to cancel the contract, and Party B shall refund according to the contract. In this case, [Seller] objectively has not replaced the non-conforming gloves to date. Under these circumstances, based on the aforementioned contract terms, and pursuant to Art. 45 CISG, and Article 51(2), which states, «The [Buyer] may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of contract,» and Art. 73(3), which further provides for contracts involving delivery by instalments, «A [Buyer] who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract,» [Buyer] has the

right to claim cancellation of the contract, i.e., to declare the contract avoided. Furthermore, Art. 26 CISG stipulates the formal requirement for avoidance: «A declaration of avoidance of the contract is effective only if made by notice to the other party.» In this case, [Buyer] sent a lawyer's letter to [Seller] on 20 May 2021, notifying it of the avoidance of the Glove Sales Contract. Although this letter was received by [Seller] on 22 May, the CISG does not adopt the «receipt principle» for such notices but rather the «dispatch principle». Therefore, [Buyer]'s claim regarding declaring the entire Glove Sales Contract avoided as of the date the letter was sent complies with the agreement between the parties and the provisions of the Convention and shall be supported.

Regarding damages.

Pursuant to Art. 45 CISG, [Buyer] has the right to exercise its claim for damages from [Seller]. Regarding the amount of damages, Article 6.5.2 of the Contract stipulates that the consequence of Party A cancelling the contract is that Party B shall refund; Art. 74 CISG also stipulates, «Damages for breach of contract by one party consist of a sum equal to the loss, as well as such loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.» In this case, [Buyer] prepaid [Seller] a total of USD 945,000 for the 1st to 3rd containers as agreed. Due to [Seller]'s fundamental breach of contract, [Buyer]'s purpose of the contract was frustrated, resulting in the loss of the aforementioned prepayment and corresponding actual losses for customs clearance fees, freight, and testing fees totaling USD 18,882.12. [Buyer]'s request for [Seller] to refund the paid price and compensate for actual losses has factual and legal basis, and this Court supports it. After [Seller] refunds and compensates, if the remaining gloves have any residual value, [Seller] may assert a claim separately. Regarding interest losses, pursuant to Art. 78 and Art. 84(1) CISG, [Buyer] is entitled to recover interest on the price. However, as the CISG does not settle the rate of interest, this issue shall be determined according to China's relevant laws and regulations. [Buyer]'s claim for interest on the outstanding price calculated based on the LPR standard complies with China's relevant laws and regulations and shall be permitted.

In summary, all of [Buyer]'s claims shall be supported. In accordance with Art. 1, 25, 30, 33, 35, 45, 49, 51(2), 73(3), 74, 78, 81(1), 84(1) CISG, Article 143 of the Civil Code of the People's Republic of China, Article 41 of the Law of the People's Republic of China on Application of Laws to Foreign-Related Civil Relations, Articles 147 and 266 of the Civil Procedure Law of the People's Republic of China, and Article 90 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China, it is adjudicated as follows:

1. The Glove Sales Contract executed between the [Buyer] Shaphar Group LLC and the [Seller] Baiqi Holdings (China) Co Ltd. on 21 January 2021, is declared avoided as of 20 May 2021.

2. The [Seller] Baiqi Holdings (China) Co Ltd. shall, within ten days of this judgment taking effect, refund the [Buyer] Shaphar Group LLC the price of USD 945,000 and pay interest thereon (calculated from 20 May 2021, until the date of actual payment, based on the one-year Loan Prime Rate published by the National Interbank Funding Center authorized by the People's Bank of China).
3. The [Seller] Baiqi Holdings (China) Co Ltd. shall, within ten days of this judgment taking effect, compensate the [Buyer] Shaphar Group LLC for actual losses amounting to USD 18,882.12.

If the judgment debt is not fulfilled within the period specified in this judgment, interest on the debt for the period of delay shall be doubled in accordance with Article 260 of the Civil Procedure Law of the People's Republic of China.

Court acceptance fee of RMB 55,701 and announcement fee of RMB 260 shall be borne by the [Seller] Baiqi Holdings (China) Co Ltd. (to be paid within seven days of this judgment taking effect).

If dissatisfied with this judgment, the [Buyer] Shaphar Group LLC may file an appeal within thirty days, and the [Seller] Baiqi Holdings (China) Co Ltd. may file an appeal within fifteen days, from the date of service of this judgment, by submitting a petition of appeal to this Court, with copies according to the number of opposing parties or representatives, to appeal to the Beijing High People's Court.