



BULL'S EYE THE ISSF IPOD ON DOPING

2012, AN OLYMPIC YEAR, IS JUST AROUND THE CORNER!

THIS IPOD FIRST FOCUSES ON THE CHANGES THAT HAVE BEEN BROUGHT TO THE PROHIBITED LIST EFFECTIVE JANUARY 1, 2012. THIS LIST WILL BE IN FORCE AT THE LONDON 2012 OLYMPIC GAMES AND ALL ATHLETES MUST BE WELL AWARE OF THESE CHANGES PRIOR TO THE NEW YEAR.

THE IPOD THEN FOCUSES ON A CRITICAL DECISION RECENTLY RENDERED BY THE COURT OF ARBITRATION FOR SPORT WHICH GRANTS PRIOR DOPING OFFENDERS THE RIGHT TO COMPETE IN FUTURE OLYMPIC GAMES.

THE PROHIBITED LIST:

The Prohibited List is a key component of the World Anti-Doping Program – along with the World Anti-Doping Code and the mandatory International Standards (which include Testing, Laboratory, Education, Protection of Personal Information and Therapeutic Use Exemption). It is an international standard that identifies substances and methods prohibited in sport.

The Prohibited List ensures fair competition by providing a standard list of substances banned in sport that is consistent in every country. As such, it provides a basis for quality assurance in the work of anti-doping agencies globally.

The List is separated in different classification categories (e.g., steroids, stimulants, gene doping) and distinguishes between specified and non-specified substances (the use of a specified substance could result in a lesser sanction). It specifies which substances or methods may be prohibited only in competition, or both in and out of competition. It also clarifies which substances and/or methods are only prohibited in certain sports based on their performance enhancing effect in those specific disciplines. For example, the use of beta blockers is strictly forbidden in-competition and out-of-competition in Shoot-

ing Sport but is not prohibited in sports such as athletics, skiing or basketball. Although the Prohibited List was first published in 1968 by the International Olympic Committee, the World Anti-Doping Agency (WADA) has been responsible for the preparation and publication of the List since 2004 and it is updated every year effective January 1. Therefore, as of January 2012, a new List will be effective.

What major changes have been made to the 2012 List compared to the 2011 List?

1. Formoterol added as an exception to beta-2 agonists

One of the most significant changes to the 2012 List is the removal of formoterol from 'Section 3 Beta-2 Agonists' of the List when taken by inhalation at therapeutic dosages. Accordingly, in light of recent research results and concerns expressed by members of the sports community, inhaled formoterol at therapeutic doses is no longer prohibited. The List prohibits the administration of all beta-2 agonists. But under the 2012 List, salbutamol when taken by inhalation (maximum 1600 micrograms over 24 hours), salmeterol when taken by inhalation, and now formoterol when taken by inhalation

(maximum 36 micrograms taken over 24 hours) are no longer prohibited. The issue of beta-2 agonists will continue to be a focus of WADA's research activity in order to both ensure that the administration of these substances in large doses or by systemic routes is prevented and prohibited, but also that the appropriate care and treatment of asthmatic athletes is facilitated.

2. Nicotine placed on monitoring program

Under Article 4.5 of the World Anti-Doping Code, WADA is mandated to establish a monitoring program which addresses substances that are not on the List, but which the Agency wishes to monitor in order to detect patterns of misuse. In order to detect potential patterns of abuse, nicotine has been placed on WADA's 2012 Monitoring Program. Though it is not WADA's intention to target smokers, the decision to place nicotine on the monitoring program is to examine the effects nicotine can have on performance when taken orally in tobacco products such as "snus". Nicotine is but one of several stimulants that have been added to the Monitoring Program. The narcotics hydrocodone and tramadol have also been included as has out-of-competition use of glucocorticosteroids.



3.

Alcohol and beta-blockers

At the request of the Federation Internationale des Quilleurs (FIQ), alcohol is no longer included on the List as a prohibited in-competition substance for ninepin and tenpin bowling.

After a review by WADA and following discussions with stakeholders, bobsleigh and skeleton, curling, modern pentathlon, motorcycling, sailing and wrestling have also been removed from the list of sports included in the List in which beta-blockers are prohibited.

Note that although beta-blockers are no longer prohibited in those specific sports, **they are still strictly prohibited in shooting.**

4.

Non-approved substances

A non-approved substance is any pharmacological substance which is not addressed by any of the other sections of the List and with no current approval by any governmental regulatory health authority for human therapeutic use (e.g. drugs under pre-clinical or clinical development or discontinued, designer drugs, veterinary medicines). Non-approved substances are prohibited at all times.

The section for non-approved substances – S0 – has been moved under the section for Prohibited Substances to clarify that “methods” are not included in this section. Furthermore, in order to broaden the scope of this section a word change has been made with “i.e.” being replaced by “e.g.” Additional substances have also been added to this section to clarify its scope.

Substances will be included in S0 only after all other categories have been considered inadequate. Non-approved substances included in S0, are considered specified.

5.

WADA has also clarified their stance on some high profile substances

Clarifications on the status of Clenbuterol

WADA confirmed that Clenbuterol is a prohibited substance and that there is no threshold under which this substance is not prohibited. At present, and based on expert opinion, there is no plan to introduce a threshold level for clenbuterol.

It is possible that under certain circumstances the presence of a low level of clenbuterol in an athlete’s sample can be the result of food contamination. However, each case is different and all elements need to be taken into account, along with the context of the case.

In light of many anti-doping cases involving tainted meat in the past few years, it is foreseen that result management of cases under the World Anti-Doping Code will grant an athlete the opportunity to explain how the prohibited substance entered his/her body should his or her sample yield an adverse analytical finding for clenbuterol.

Although WADA’s stance is clear that this is a government issue and not a WADA issue, WADA is nonetheless working closely with countries, International Federations and event organizers to help minimize the risk of meat contamination through the monitoring of official event hotels and restaurants.

Clarification on the status of caffeine.

The status of caffeine has not changed from last year. Caffeine was removed from the Prohibited List in 2004. Its use in sport is not prohibited. Many experts believe that caffeine is ubiquitous in beverages and food and that reducing the threshold might create the risk of sanctioning athletes for social or diet consumption of caffeine. In addition, caffeine is metabolized at very different rates in individuals. Therefore Caffeine is only part of WADA’s Monitoring Program. As explained previously, the monitoring program includes substances which are not prohibited in sport, but which WADA monitors in order to detect patterns of misuse in sport.

It is worth mentioning that the 2010 and 2011 WADA Monitoring Programs did not reveal global specific patterns of misuse of caffeine in sport, though a significant increase in consumption in the athletic population is observed.

Bottom line

Shooters should be aware of all the classes of substances that are on the Prohibited List at all times. All shooters are encouraged to familiarize themselves with the ISSF Anti-Doping Rules, the Prohibited List and the various other rights and responsibilities they have as athletes. The ISSF Medical Committee reminds all shooters to be careful to check the status of any medication they consume to ensure that it will not result in a positive test, and to familiarize themselves with the changes to the Prohibited List prior to January 1st of every year in order to minimize the risk of preventable anti-doping rule violations.



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THE OSAKA RULE

On October 6, 2011, the Court of Arbitration for Sport (CAS) ruled against the International Olympic Committee’s (IOC) Osaka Rule opening the door for any athlete that has received a doping ban six months or longer to be able to compete at the next edition of the Olympic Games.

The “OSAKA Rule” is so-known since a decision made by the IOC Executive Board on 27 June, 2008 at a meeting in Osaka, Japan. Under Rule 45 of the Olympic Charter called ‘Regulations Regarding Participation in the Olympic Games’, it was then decided that all athletes who had been suspended for more than six months for an anti-doping rule violation would be banned from participating in the next Olympic Games following the expiration of their suspension. Understandably, the decision shocked a number of athletes from around the world.

The “Osaka Rule” was challenged by the USOC and IOC in April 2011, when the parties voluntarily entered into an Arbitration Agreement with respect to a dispute as to the validity and enforceability of the Osaka Rule. The Agreement provided that CAS would resolve the dispute according to the applicable regulations and rules of law. CAS later issued the following Press Release from Lausanne on October 6, 2011:

‘The IOC Executive Board’s June 27, 2008 decision prohibiting athletes who have been suspended for more than six months for an antidoping rule violation from participating in the next Olympic Games following the expiration of their suspension is invalid and unenforceable’.

The reasoning of the CAS is that the Osaka Rule is more of a disciplinary sanction than an eligibility rule. More precisely, the CAS Arbitral Panel, composed of Prof. Richard H. McLaren (Canada), Mr. David W. Rivkin (USA) and Mr. Michele Bernasconi (Switzerland), has come to the conclusion that the “Osaka Rule” is more properly characterized as a disciplinary sanction, rather than a pure condition of eligibility to compete in the Olympic Games.

Imposing an additional disciplinary sanction to the original period of ineligibility after that sanction has been served is not in compliance with Article 23.2.2 of the World Anti-Doping Code (Code), which provides that the Signatories of the Code may not introduce provisions that change the effect of periods of ineligibility provided in the Code. Simply put, the CAS Panel has decided that Signatories cannot issue additional ineligibility provisions or sanctions beyond those imposed on athletes by the WADA Code. To

allow them to do so is considered a form of "double jeopardy": sanctioning an individual twice for the same offence. The Panel further states that, because the IOC made the Code a part of its own governing statute under Rule 44 of the Olympic Charter, the "Osaka Rule" is in fact a violation of the IOC's own Charter and is therefore invalid and unenforceable.

In short, the Osaka rule breaches the IOC's own legal principles as defined in the Olympic Charter.

This ruling has come as a blow to many, especially the International Olympic Committee (IOC) and its chief, Dr. Jacques Rogge, who has always held a strong stance against doping in sport. Rogge served on the IOC's medical commission for years and since the creation of WADA has been a crusader for keeping the Olympic Games clean and ensuring fairness for all competitors. The IOC has issued a statement that it "fully respects the CAS decision and will abide by it". However, there will probably many discussions to this effect with the next revision of the WADA Code. In fact, in its decision, the CAS Panel emphasises that if the IOC wants to exclude athletes who have been sanc-

tioned for doping from the Olympic Games, it could propose an amendment to the World Code, which would allow other Signatories to consider such an amendment and adopt it. If such an amendment was adopted and implemented by Signatories, no prohibition against double jeopardy could be raised or challenged because the athlete's ineligibility (including both the ineligibility period and the ban from competing in the Olympic Games) would be part of a single sanction.

The approach of the CAS Panel could also potentially lead to challenges to the British Olympic Association (BOA) in respect of their bylaw that imposes a lifetime ban from Olympic Games following a WADA Code violation. However, the BOA is expected to robustly defend its position. Indeed, shortly after the ruling, BOA chairman Colin Moynihan held a press conference in London defending the BOA lifetime rule that athletes found guilty of any doping violation will not be allowed to compete in any Olympic Games. He explained that the BOA by-law distinguishes itself from the Osaka rule because it expresses eligibility and is not a sanction.

U.S. 400m winner LaShawn Merritt, who served out his ban after testing positive for a banned substance found in a male-enhancement product, is the one initiated the claim along with the USOC. This change of regulations will allow him, along with a number of other past-offenders, to hit the starting blocks beside clean athletes at the London Games. And so, surely this is not the last the sporting world will hear of this CAS ruling or of the "Osaka Rule". On the one hand, sooner than later, WADA will modify some of the provisions of the World Code in order to allow the IOC to reinstate a similar Rule in the IOC Charter and to re-establish the fairness principles they were trying to institute when they first created the Osaka Rule.

But, on the other hand, and likely sooner than later, chances are that in the course of the 2012 London Olympics Games an athlete will fail to make the podium because he or she finished behind another athlete who served a doping sanction in the past yet was allowed to compete at the Games... Will you consider that to be fair?

Janie Soublière BSS. LL.M. LL.B.

Legal consultant, anti-doping in sport

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