

SUMMARY REPORT

Issued on July 1 2024

by

Eric COTTIER (hereinafter: the Investigator), in Lausanne,

to

President of the World Anti-Doping Agency (WADA), in Montreal

in fulfilment of the mandate given by WADA on 6 May 2024.

I.- Preamble: the subject of the inquiry

A.- Brief reminder of the facts and context

a) On the occasion of a National Competition held from 31 December 2020 to 3 January 2021, in Shijiazhuang City, Hebei Province, China, 23 Chinese swimmers tested positive (some multiple times, with a total of 28 positive tests out of 60 tests carried out in total) for a Prohibited Substance, trimetazidine (TMZ). Despite these Adverse Analytical Findings (AAF) and following an internal procedure involving investigations carried out by itself or by state authorities, as well as expert appraisals, the China Anti-Doping Agency (CHINADA) decided not to consider these as Anti-Doping Rule Violations (ADRV). The hypothesis of "environmental contamination" was accepted: the swimmers would have ingested the substance without their knowledge, probably in the restaurant of the hotel that hosted them for the duration of the competitions. The swimmers came from all over China, from different provinces, cities and clubs, and the doses found in their urine were not capable of improving their performance.

b) This decision was notified to WADA, which had a right of appeal to refer the case to the Court of Arbitration for Sport (CAS). Following various procedures and expert assessments (in terms of chemistry, pharmacokinetics, law, etc.), WADA concluded that there were no grounds for appeal. Despite still having doubts about the environmental contamination scenario, WADA found that it was strongly supported by a body of evidence and indications, and that no other hypothesis in favour of doping appeared more likely.

c) The International Swimming Federation (FINA, now World Aquatics), which also had a right of appeal, came to the same conclusion after its own experts studied the case.

d) Several of the swimmers concerned participated in the Tokyo 2020 Olympic Games, which took place in 2021, and some of them won titles and/or medals.

e) On a few occasions between early 2022 and April 2024, it was suggested or claimed that China had covered up doping cases and, most recently, that WADA had covered up these cases.

B.- The mandate entrusted to the Investigator

The Investigator was contacted by WADA's Director General on 23 April 2024.

By "*letter of agreement*" of 29 April and 6 May 2024, the Investigator was mandated "*to act as an Independent Prosecutor (IP)*" by the World Anti-Doping Agency with the mission of answering the following questions:

1. *Is there any indication of bias towards China, undue interference or other impropriety in WADA's assessment of the decision by CHINADA not to bring forward anti-doping rule violations against the 23 Chinese swimmers?*
2. *Based on a review of the case file related to the decision by CHINADA not to bring forward anti-doping rule violations against the 23 Chinese swimmers, as well as any other elements that WADA had at its disposal, was the decision by WADA not to challenge on appeal the contamination scenario put forward by CHINADA a reasonable one?*

The Investigator was required to submit his written report to the WADA President by the end of June 2024. In the event that this deadline could not be met, the Investigator was requested to file a "*summary report*" indicating the conclusions of his investigation.

The Investigator was guaranteed full independence in the exercise of his mandate, with the possibility of carrying out all investigative measures that he considered useful and necessary, and the possibility of appointing experts in turn on all points that required the opinion of specialists.

At the time of the formalization of the mandate, on 6 May 2024, WADA provided the Investigator with all the documents it considered necessary and useful for the accomplishment of his mission.

II.- Main measures of inquiry

In order to carry out his investigation and to have it cover all the points that he considered essential to answer the questions put to him, the Investigator essentially, in addition to having read the documents that had been given to him:

- questioned a number of WADA employees on several occasions, asking them to answer questions, provide additional information, submit documents, comment on the documents in the file and follow up on the requests of the experts involved;
- implemented three expert assessments:
 - o a) the first entrusted to the School of Criminal Sciences of the University of Lausanne (SCS), responsible for verifying, by means of forensic procedures, that the documents submitted by WADA to the Investigator were complete and did not contain any gaps in the facts submitted to the investigation;
 - o b) the second, entrusted to Professor Xavier DECLEVES, Professor of Pharmacokinetics and Director of the Pharmacokinetics Laboratory of the University of Paris V, responsible for answering questions mainly concerning the absorption, metabolism and excretion of TMZ on the basis of the scientific elements contained in the file;
 - o c) the third, entrusted to the law firm CMS von Erlach Partners SA, in Geneva, intended mainly to check the compliance with the applicable rules in this area of the procedures implemented by WADA in the exercise of its powers to appeal, and the conformity of the investigative measures carried out by WADA with the standard practices in such cases.

The Investigator also turned to World Aquatics (FINA at the time of the facts) for any information that might be useful regarding its handling of the case in 2021.

The administration of all the investigative measures summarized above ended on Thursday, June 27, 2024. As a result, it was impossible to submit a full investigation report before the end of June. It is therefore this interim report, to serve as a "*Summary Report*", which is sent today to the President of the World Anti-Doping Agency.

III.- Answers to the two questions

1.- Reminder of the first question

Is there any indication of bias towards China, undue interference or other impropriety in WADA's assessment of the decision by CHINADA not to bring forward anti-doping rule violations against the 23 Chinese swimmers?

Investigator's Response

- a) There is nothing in the file – which is complete - to suggest that WADA showed favouritism or deference, or in any way favoured the 23 swimmers who tested positive for TMZ between 1 and 3 January 2021, when it proceeded to review CHINADA's decision to close the proceedings against them without further action.
- b) The Investigator did not find any evidence to suggest any interference or meddling in WADA's review, as described above, either within the Agency or externally, from any entity or institution, including CHINADA or the Chinese authorities.
- c) The investigation did not reveal any irregularities on the part of WADA in the review of CHINADA's decision; this review was detailed and covered all relevant issues in determining whether or not to appeal the decision.

2.- Reminder of the second question

Based on a review of the case file related to the decision by CHINADA not to bring forward anti-doping rule violations against the 23 Chinese swimmers, as well as any other elements that WADA had at its disposal, was the decision by WADA not to challenge on appeal the contamination scenario put forward by CHINADA a reasonable one?

Investigator's Response

All the elements taken into consideration by WADA, whether they come from the file produced by CHINADA with its decision or from the investigation procedures that it carried out, show the decision not to appeal to be reasonable, both from the point of view of the facts and the applicable rules.

IV.- Summary of the recitals on the facts and the application of the relevant rules

1.- In a few days, WADA had to compile the documentation submitted to the Investigator at the end of April and in the first days of May 2024. First and foremost, by means of expertise in the field of forensic sciences, the Investigator wanted to verify that he had a complete file to accomplish his mission.

To carry out the expert mandate, SCS was granted full access to WADA's database. WADA also responded to several additional rounds of requests made by the SCS, in constant consultation with the Investigator. By using a large number of keywords in addition to those used by WADA for its own retrieval of the documents submitted to the Investigator, by the use of filters and cross-searches, SCS was able to conclude that the

file available to the Investigator was complete. The documents that were found and that were not among those initially provided to the Investigator do not differ in content from those initially provided to the Investigator.

The Investigator was thus able to conclude that no useful documents were missing, and that WADA had not failed to provide him with any documentation. In the interests of completeness, it should be noted that some English translations of Mandarin documents in the Chinese file were missing from the file, which were supplemented by WADA at the Investigator's first request.

2.- Whether before or after the sending of the decision subject to the possibility of an appeal by WADA, CHINADA provided detailed responses to WADA's numerous successive requests, producing documents where necessary. The Investigator found no indication of any intention to influence or direct the analysis of the case by WADA, either internally or externally. In particular, nothing suggests or even evokes interference or intervention by any Chinese sporting or political entity.

3.- WADA's review of CHINADA's decision began upon receipt of the decision. The various departments and services of the Agency took action in their respective fields. Opinions on legal issues were sought from lawyers with proven expertise in sports law in general and doping law in particular. As the examination progressed, additional information was requested from CHINADA. An expert opinion was sought from the pharmaceutical company originally behind TMZ.

WADA scientists examined in detail all the material provided by CHINADA with its decision, looking for both what could disprove and what could confirm the hypothesis of environmental contamination as the origin of the positive tests. Scientists from WADA and the International Swimming Federation (FINA), which also had the right to appeal CHINADA's decision, exchanged their thoughts and came to similar conclusions. For all practical purposes, the Investigator attaches to this interim report a summary of the investigative and analytical acts carried out by WADA's specialized departments.

It is on the basis of these findings that the Investigator can conclude that there was no irregularity in WADA's review of CHINADA's decision. In the process of determining whether or not there were grounds for appealing against that decision, that examination was detailed and covered all the relevant issues.

4.- To examine whether WADA's decision not to appeal was "reasonable", the Investigator first relied on the file, examined in the light of the applicable international regulations. But he also referred to his own knowledge and experience in the field of justice, in which he exercised the powers of judge – of first and second instance – as well as prosecutor acting before all authorities, cantonal and federal.

(a) The role of "reason" in deciding whether or not to appeal must first and foremost be to assess the chances that the appeal will be allowed by the appellate authority. These chances depend on the grounds invoked, which may relate to the law or the facts. Where, as in the present case, the upholding of the appeal requires that the facts found

in the decision under appeal be amended, the appellant must have at their disposal evidence, or at least very strong indications, to make the appeal authority accept that the position adopted in the decision is, **at the appeal stage**, improbable, and that the evidence presented in support of this scenario does not meet the required standard of proof, i.e. the balance of probabilities (cf. Art. 3.1 of the World Anti-Doping Code, last sentence).

b) Without taking the place of an appeal authority that was not seized, but rather from the point of view of the authority responsible for deciding whether or not to make use of the right of appeal attributed to it by the codes, the Investigator considers that WADA could reasonably consider that the chances of challenging the environmental contamination scenario were, if not nil, at the very least almost non-existent.

(c) In this sense already, the decision not to appeal appears indisputably reasonable.

d) In addition, by way of *obiter dictum* and superfluously, the Investigator also notes that the filing of an appeal at the end of July 2021 would have resulted in 23 athletes being brought into the proceedings simultaneously, more than six months after the facts were established.

Their national anti-doping agency, for reasons of substance that seemed relevant, independently of procedural issues, had decided not to prosecute them for anti-doping rule violations. In other words, an appeal involving a particularly large number of athletes, far removed from the usual case of only one or two isolated individuals, would have had a considerable impact on a group of athletes who, until then, had not been given any right of access to the procedure and the rights conferred on them by that procedure. In the Investigator's view, it is in no way decisive in this regard that some of them were on the list of swimmers scheduled to participate in the Tokyo Olympic Games, at which the swimming events began on 23 or 24 July 2021. To continue the analogy with judicial law proceedings, it is – *mutatis mutandis* – a bit like if a person found himself in the dock before the adjudicating authority, without having been previously warned or having benefited from the procedural rights of the accused.

(e) An appeal procedure before the Court of Arbitration for Sport usually lasts between 6 and 18 months. Even longer durations are not uncommon. That being said, the Investigator is of the opinion that such proceedings against 23 athletes, in view of all the circumstances, would most likely have been in breach of the principle of proportionality, which must also be taken into consideration when deciding whether to lodge an appeal.

From this point of view too, which reflects – even if once again only as an *obiter dictum* – the need to respect fundamental principles of law and human rights, WADA's decision seems reasonable.

(f) Thus, without going into a level of detail reserved for the full report to be submitted at a later date, the Investigator gives the answers to the questions submitted to him in the answers set out in paragraph III above. The full report, without modifying said answers, will further develop the reasoning. It will also propose a number of recommendations,

Note: This document is an English translation of the French original

both on the internal procedure and on elements of the World Anti-Doping Code that could be revised or clarified.

Lausanne, July 1, 2024

The Investigator:

(s) Eric Cottier

Annex: summary of the main investigative and analytical acts carried out by WADA from the receipt of CHINADA's decision to the decision not to file an appeal (15.06.2021 – 31.07.2021)