

Notes:

1. This is an English translation of the French original Report.
2. The appendices referenced within the Report were made available to WADA Executive Committee members present for its 12 September meeting and, for reasons of data privacy, are not being published.

5 AUGUST 2024

INVESTIGATION REPORT

for the attention of

World Anti-Doping Agency (hereinafter WADA), Montreal

as part of

**the investigation carried out on behalf of the World Anti-Doping Agency in relation to
28 positive tests for Trimetazidine involving 23 Chinese swimmers between 1 and 3
January 2021**

by

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Glossary, names and abbreviations

Bodies, Agencies, Organizations, Institutions and Authorities

World Anti-Doping Agency (WADA)
China Swimming Association (CSA)
China Anti-Doping Agency (CHINADA)
International Olympic Committee (IOC)
International Swimming Federation (FINA), became World Aquatics by the end of 2022
Intelligence and Investigations (I&I), WADA Department
Court of Arbitration for Sport (CAS)
International Testing Agency (ITA)

Speakers

World Anti-Doping Agency

General Management

Olivier NIGGLI, Director General

Legal Affairs Department

Julien SIEVEKING, Director
Cyril TROUSSARD, Senior Manager, Results Management
Marissa SUNIO, Senior Manager
Tharinda PUTH, Counsel, Results Management
Katherine BROWN, Coordinator, Results Management
Ross WENZEL, General Counsel since 2022 (lawyer at Kellerhals & Carrard at the time)

Science and Medicine Department

Olivier RABIN, Senior Director, Sciences and International Partnerships
Osquel BARROSO, Senior Associate Director, Science, Laboratories
Irene MAZZONI, Senior Manager (then Associate Director), Research and Prohibited List, Science and Medicine

IT, Data and Digital Development Department

Marc-André MATTON, Chief Technology Officer
Chaya NDIAYE, Head of Product, IT, Data & Digital Development

Intelligence Department & Investigations

Günter YOUNGER, Director

International Swimming Federation (became World Aquatics in 2022)

Brent NOWICKI Executive Director since May-June 2021
Justin LESSARD, in 2021 Legal Counsel and Integrity Manager
Jordi SEGURA, Professor, Consultant

Abbreviations

AAF: Adverse Analytical Finding
Doping Control Officer (DCO)
ADAMS: Anti-Doping Administration & Management System
BCO: Blood Collection Officer
ATF: Atypical Finding
TUE: Therapeutic Use Exemption
CADR: CHINADA Anti-Doping Rules
Code: World Anti-Doping Code
TDSSA: Technical Document for Sport-Specific Analysis
List: The Prohibited List
NADO: National Anti-Doping Organization
ISTI: 2021 International Standard for Testing and Investigations
ISL: 2021 International Standard for Laboratories
ISRM: 2021 International Standard for Results Management
TMZ: Trimetazidine
ADRV: Anti-doping rule violation

1 Preamble: The purpose of the investigation

1.1.- A brief review of the facts and background

a. During a national competition held from 31 December 2020 to 3 January 2021, in Shijiazhuang City, Hebei province, China, 23 Chinese swimmers tested positive (some more than once, with a total of 28 positive tests out of a total of 60 tests carried out) for a banned substance, trimetazidine (TMZ). Despite these Adverse Analytical Findings (AAFs) and following an internal procedure involving investigations carried out by the Chinese Anti-Doping Agency (CHINADA) itself or by state authorities, as well as expert opinions, CHINADA decided not to consider these cases as anti-doping rule violations (ADRVs). The hypothesis of "environmental contamination" was retained: The swimmers had unknowingly ingested the substance, probably in the restaurant of the hotel where they were staying 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 incompatible with improving their performance.

b. WADA was notified of this decision and had the right to appeal to the Court of Arbitration for Sport (CAS). Following various procedures and expert reports (on chemistry, pharmacokinetics, law, etc.), WADA concluded that there were no grounds for appeal. While it still had doubts about the environmental contamination scenario, WADA noted that it was solidly supported by a body of evidence and clues, and that no other hypothesis in favor of doping appeared more likely.

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

d. Several of the swimmers involved took part 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 the beginning of 2022 and April 2024, it was suggested or claimed that China had covered up doping cases and, more recently, via the media, that WADA had covered up these cases.

1.2.- The mandate entrusted to the Investigator

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

By " *letter of agreement* " dated 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 submit a “*summary report*” indicating the conclusions of his investigation.

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

2 - Processes

2.1 File review

Naturally, the approach to the case began by becoming familiar with the documents provided. These are the three files: the file containing CHINADA's decision and its appendices, the file containing the Agency's activities on receipt of the said decision, and finally a file on the activities of the I&I Department in relation to the case.

In the remainder of this report, these three files will be referred to respectively as the Chinese file for everything sent by CHINADA to WADA, the WADA file for documents relating to the Agency's activities, and the I&I file for the third. It is worth mentioning that the I&I Department has considerable independence and autonomy from the Agency's management. Against this background of independence, I&I is regularly audited by entities totally external to the Agency. In the course of his work, the Investigator had the opportunity to speak with the person carrying out the 2023 audit, a divisional commissioner attached to the General Directorate of the French National Police, who confirmed this total independence.

In relation to the work carried out by the Investigator, it should also be noted that it was relatively easy to become familiar with the Chinese file. It is a structured file. The CHINADA decision is divided into chapters. The chronology is very precise. It systematically and usefully refers to the attached documents, which are listed and numbered. An English translation was available for each document. When, for some documents, the translation was not in the file, the situation was remedied.

The information provided to the Investigator by the Director of the I&I Department relating to the facts under investigation is also arranged in a precise and structured manner.

The review of WADA's file was much more difficult. It's not that the documents themselves are more complex. Nor is it that the documentation is lacking. On the contrary, as we shall see, it is complete, with a great deal of relevant work having been carried out.

The difficulty was more that all this activity was presented to the Investigator in a manner that lacked organization and structure. It was presented in the form of a series, or more precisely sequences of emails, that had to be reviewed. Since these emails were not all systematically from the same groups of authors and sent to the same group of recipients (main and/or copied), they were repeated on several occasions. In the absence of nomenclature or sequencing, it is difficult to be certain that no e-mail has escaped scrutiny. Establishing a chronology is made all the trickier by the fact that the sequences show different times for the same email, depending on whether it was extracted from the inbox of a collaborator in Lausanne or Montreal.

There's nothing in the way of minutes, as is the case with certain legal bodies. The documents are not numbered or filed according to a nomenclature that would enable precise, targeted searches. The decision - whether or not to appeal - is not in a formal document, that would provide information on the investigations carried out, the analysis of their results and the decision that resulted in a concise manner.

This made the Investigator's task of establishing WADA's activities, step by step and area by area, and relating them in the manner of a statement of fact, considerably more arduous and cumbersome.

Here and there, the present report is also probably a bit dense for the reader.

2.2 Trimetazidine (TMZ)

Again, as part of an initial approach to the case, the Investigator looked at the substance detected in the 23 swimmers involved and its place on the Prohibited List. Extracted from the topical Wikipedia page, which will be included in the appendices to this report (Appendix 8.3), the following information is sufficient to give an idea of the substance.

Trimetazidine dihydrochloride, the active compound marketed under the brand name Vastarel, is a drug that's efficacy seems controversial. It may protect cells from oxygen deprivation and provide some protection against oxidative stress.

The Investigator considers it unnecessary to go into further detail. It's easy to see why an athlete might benefit from its use, at least in certain sports.

The fact is that it has been on the WADA Prohibited List since 2014 (see extract from the List, Appendix 8.4). In the 2024 version of the List - identical in this respect to the one in force in 2021 - TMZ is classified with substances and methods prohibited at all times, in the class of hormone and metabolic modulators (S4); within the latter, as an unspecified substance (S4.4), it is listed under S4.4.4. The detection of its presence is not subject to a threshold to constitute an AAF. The prohibition seems to be questioned from time to time, although this is not a factor to be taken into account in the present investigation.

From 2015 to June 2021, including the 28 positive tests in the case in point, TMZ was detected a total of 31 times in China; of these 31 cases, 29 involved swimmers; during the same period, two non-Chinese swimmers tested positive; finally, two cases of positive TMZ tests were, in 2018, attributed to contamination, one for an American swimmer, the other for a Russian bobsleigh athlete. As we shall see later (see paragraph 2.7), there have been no cases of group contamination with TMZ up to 2021.

It is at this point that we should point out, even if it doesn't concern TMZ more than any other substance, that a microgram is one millionth of a gram, while a nanogram is one billionth of a gram. Micrograms per milliliter are written ug/mL, nanograms per milliliter ng/mL.

2.3 The ADAMS system and its database

To understand the extracts from the Anti-Doping Administration and Management System (ADAMS) database contained in the file, the Investigator obtained information on how the system works, and in particular on how to sign in and consult data.

In summary, each test is entered by the anti-doping organization under whose authority it was carried out, with the athlete's identity and number along with the sample number. It is also specified whether the test was taken in competition (IC), or out-of-competition (OOC).

The next entry is made by the laboratory that received the samples, without knowing the identity of the athletes, and carried out the analyses. All results are entered into the database, whether negative or positive for any prohibited substance. It should be pointed out that when the first analysis (ITP: *Initial Testing Procedure*) has revealed the presence of a prohibited substance, the laboratory carries out a second, more thorough analysis (CP: *Confirmation Procedure*) to verify the result. This second analysis, undertaken due to the possible consequences for the athlete, requires work that follows a detailed protocol and takes several days to complete. It is only at the end of this phase that the results are entered into the database.

For the record, the results of tests carried out between 1 and 3 January 2021 were entered into the database by the accredited Beijing laboratory on 14 March 2021.

Entries in the ADAMS database cannot be deleted or modified. Their consultation is open to WADA, as well as to the national anti-doping agency and international sports federation concerned. They are notified by email that positive results have been recorded.

In the event of a positive test(s) for a prohibited substance, the case is then handled within WADA by the people in charge of results management.

We should also mention that the database provides information on all the tests a given athlete has undergone throughout his or her sporting life.

For more detailed information, visit the World Anti-Doping Agency website: [ADAMS | World Anti-Doping Agency \(wada-ama.org\)](https://wada-ama.org)

2.4 Expertise

After an initial review of the documentation, and with a view of the questions to be answered, the Investigator identified three areas requiring the use of experts. He thus resorted to the ordinary rules that apply to any person vested with the competence to ascertain or judge facts: To call in one or more experts when he himself does not have the necessary knowledge or skills.

First, it appeared necessary to check the documentation and files that had been given to the Investigator. To assess WADA's activity, we had to be certain that it had been submitted in its entirety, and that there were no shortcomings. Since this documentation was the result of extraction by WADA itself from its own database, access to it was essential, as was knowledge of the tools and criteria used for extraction.

Forensic expertise on the contents of the file was entrusted to the University of Lausanne's *Ecole des Sciences Criminelles* (ECS, in English - School of Criminal Justice).

In terms of the facts, the central point in CHINADA's decision, as in its review by WADA, was the hypothesis of "environmental contamination" as the cause of the presence of TMZ in the swimmers' urine. The second area of expertise that appeared necessary was to compare this hypothesis with the scientific evidence in the file (contents of the samples, analysis results, TMZ research in the athletes' environment, etc.). The aim was to check whether the hypothesis of environmental contamination was compatible with these elements, to assess its plausibility and

to compare it, in terms of probability, with other hypotheses, particularly the ingestion of TMZ at therapeutic doses.

This second area of expertise was entrusted to Professor Xavier DECLEVES, Professor of Pharmacokinetics and Director of the Pharmacokinetics Laboratory at the University of Paris V.

As for the third expert opinion, it focused on the general conformity with anti-doping regulations of the acts in the file, both those of CHINADA, including the decision, or those of WADA with a view to a possible appeal. In a complex area of law which he had not practiced, the Investigator wanted to submit the essential acts of the case to a specialist in doping law, in much the same way as a judge who has to apply technical or professional standards and who questions a professional or, if he is considering applying foreign law, turns to an institute of comparative law.

The expertise was entrusted to CMS von Erlach Partners Ltd, Geneva, which includes several lawyers specialized in sports law and members of the CAS panel of arbitrators.

We will come back to the questions put to the experts, the procedures they followed and the answers they gave.

2.5 Intelligence gathered from WADA departments and services

In the course of his work, the Investigator relied on WADA's departments and services on numerous occasions to obtain additional information. The questions asked concerned, on the one hand, the Agency's operations in general, and on the other, the facts of the case in question. The people contacted always endeavored to respond quickly and accurately, without restriction. These exchanges are repeated here to the extent that they are useful.

The IT, Data and Digital Development Department was asked to provide the documents received in paper form in electronic format and, in particular, to collaborate without restriction with ECS, in the context of the expert appraisal entrusted to the latter. In coordination with the Investigator, this expert submitted numerous requests to the IT Department, obtaining all the answers required to fulfill the mandate. Finally, the Investigator also requested and obtained information on targeted extractions from the ADAMS database and statistics that seemed useful to him, in particular on tests carried out worldwide and in China, for the years 2016 to 2022, more specifically the last three years. The tables obtained are appended to this report (see Appendix 8.8).

The Investigator submitted a series of questions to the Science and Medicine Department relating to its activity in the handling of the case by WADA, on coordination with FINA's scientific expert and on the current availability of the A and B samples and the possibility of submitting them for reanalysis even today. The Investigator also requested clarification of various documents in the Chinese file, as well as explanation of the meaning of data relating to the tests and their analysis, in particular to compare them with the answers given by the pharmacokinetic expert used.

The Investigator also asked the Legal Affairs Department for explanations on its activity in handling the case, on coordination with FINA, and on WADA's handling of group contamination cases.

Finally, the Investigator requested additional information from the Agency's Intelligence & Investigations (I&I) Department on the handling of information brought to its attention in 2022 and 2023, regarding the case of Chinese swimmers testing positive for TMZ having benefited

from preferential treatment by CHINADA and having been covered up by WADA. It should be noted that at the time of the events (i.e. from March to August 2021) the I&I Department was not involved in the handling of the case.

The answers to these questions will be included later in the report, particularly at the analysis stage.

2.6 The Investigator's approach to World Aquatics

On 26 May 2024, the Investigator interviewed Mr. Brent J. NOWICKI, Executive Director of World Aquatics (at the time of the events: International Swimming Federation, FINA). This resulted in a memo, finalized on 2 June 2024, which reads as follows:

"Concerns: Investigation carried out by Eric COTTIER, in Lausanne, on behalf of the World Anti-Doping Agency (WADA) in the case of the 23 Chinese swimmers who tested positive for trimetazidine (TMZ) between 1 and 3 January 2021.

*Investigator's **notes** following interview with Mr. Brent J. NOWICKI, Executive Director of World Aquatics, 16 May 2024.*

On 16 May 2024, the Investigator spoke with the Executive Director of World Aquatics (at the time of the events: International Swimming Federation, FINA), Mr. Brent J. NOWICKI.

The latter told him that the events coincided with his taking up his new post (June 2021). He was discovering the different aspects of it.

He was informed of the case, which FINA staff were dealing with according to the standard procedures in force at the time, as explained to him. In 2021, FINA, through its various departments, carried out its own investigation, which essentially consisted of direct questioning of experts in the legal and scientific fields.

The Executive Director pointed out that, since then, these procedures have changed, in that World Aquatics now outsources case management as well as testing and investigations to the ITA (International Testing Agency), like several other sports federations.

In the case of the 23 Chinese swimmers, Brent J. NOWICKI remembers that the opinion of Jordi SEGURA, a scientific expert on doping, was decisive. According to his recollection, Jordi SEGURA concluded that no hypothesis other than that of contamination could be proven, or even appear more probable than it.

On the basis of his personal knowledge and without claiming to be an expert, Brent J. NOWICKI is convinced that this was a case of contamination.

On the subject of the relationship between World Aquatics and WADA in cases of (suspected) doping, Brent J. NOWICKI explained that when a case was announced by a national agency or federation, World Aquatics and WADA exchanged information, analyses and thoughts, in order to coordinate their action as much as possible, while respecting their respective independence.

To the best of his knowledge, World Aquatics has never lodged an appeal against a decision by a National Anti-Doping Organization (NADO) without WADA having done so as well. Indeed, WADA is considered the world's guarantor of the fight against doping, also from the point of view of harmonizing practices, since it covers all sports. With the exception of very rare cases involving the practices of a national federation that World Aquatics would like to raise with it, World Aquatics has never appealed against a NADO's decision without WADA also lodging an appeal. "

With regard to the ITA, mentioned in the above note, the Investigator states that it describes itself as "an international organisation constituted as a not-for-profit foundation, based in Lausanne, Switzerland. Its mission is to manage anti-doping programs, independent from sporting or political powers, for International Federations (IFs), Major Event Organisers (MEOs) and all other anti-doping organisations requesting support".

2.7 Information provided by WADA on cases of contamination of numerous athletes

At the Investigator's request, the Agency provided details of cases of group contamination brought to its attention, specifying that it had never appealed decisions not to prosecute the athletes concerned for an ADRV.

This was the case in 2011 for five Mexican footballers at the Gold Cup in the USA, where the presence of clenbuterol was attributed to meat consumption.

The same was true in 2011, when 109 footballers from 19 of the 24 teams taking part in the U17 World Cup in Mexico tested positive for the same substance.

At a competition held in Chicago in 2014, 13 Bosnians tested positive for zilpaterol and suffered the same fate.

Ditto for 14 tennis players from 9 different nationalities, again for clenbuterol, all staying at the same hotel in Acapulco.

Again in Mexico, in 2018, eight field hockey players from four different nationalities were found to have ingested meat also contaminated by clenbuterol.

WADA's practice corresponded to that applied to many individual cases - several hundred - in which the concentration of the substance (essentially clenbuterol or similar substances) found in the urine was extremely low.

It should be pointed out, however, that these cases have always occurred in regions of the world where the use of the banned substance in feed for slaughter animals was common practice.

The indications thus obtained led the Investigator to ask further questions about the procedure followed once the "group" AAFs for the cases were known.

It is clear from the responses that the Agency has been able to provide, given the passage of time and data protection regulations, in particular data deletion, that to the best of its knowledge:

- in the FIFA case in 2011 involving the five players, provisional suspensions were imposed (meaning that the athletes had to be notified);
- in the case of the U17 World Cup involving 109 underage athletes, given the circumstances, there were no letters of notification, provisional suspensions or hearings;
- in the case of FIFA in 2014, it is clear from a letter written by WADA's Director General at the time (David HOWMAN) that there was neither a provisional suspension nor a hearing. There is no indication that an initial notification letter was sent;
- in the case of the ITF in 2016, the ruling states that the ITF "talked" to the players about what they had eaten. This suggests that there was no formal letter of notification. WADA has no evidence that such a letter was sent, neither a provisional suspension nor a hearing;

- in the case of FIH in 2018, the decision refers to a letter sent to the athletes inquiring about the food they had eaten (which seems different from a notification letter). To the best of our knowledge, WADA has no indication of any notification letters, provisional suspensions or hearings.

With the exception of the FIFA case in 2011 involving five players, which includes provisional suspensions involving notifications, the Agency deduces from its research that the cases were closed, after preliminary investigation, without finding any violation.

It should also be added that the general problem of clenbuterol, and in particular that of food contamination affecting groups of athletes, has been such that WADA has published several documents to guide national agencies, federations and laboratories (see in particular: [WADA publishes two Notices to Partners concerning possible cases of contamination by meat and diuretics | World Anti-Doping Agency \(wada-ama.org\)](#)).

However, this has not been the case - to date - for TMZ, a substance that is nowhere to be found in food for the same reasons as clenbuterol (cattle feed for slaughter). Until the present case, there has never been any group contamination at TMZ.

Regarding TMZ, the Investigator found only a Technical Letter (TL13) from WADA dated 21 December 2020, containing indications for laboratories and aimed at drawing their attention to the fact that the presence of TMZ may be linked to a permitted use of Lomerizine ([tl13 trimetazidine eng 2021 1.pdf \(wada-ama.org\)](#)). This technical document is unrelated to the issue at hand; it does not mention any qualified minimum threshold for the presence of TMZ to retain an ADRV.

2.8 Processes that the Investigator abandoned after considering them

a. Noting that many of the Agency's employees had taken part in the review of CHINADA's decision, with a view to lodge an appeal or not, the Investigator wondered whether they should be formally heard. In view of the information provided by the various departments, as described above, and the results of the expert reports, it has been decided not to proceed. In particular, the fact that the file submitted to the Investigator was complete (see paragraph 4.1.2 below) and the shared conclusions reached by the Agency's scientific specialists and the pharmacokinetics expert called in by the Investigator, made such investigative measures appear unnecessary to answer the questions posed.

b. The Investigator also considered having a second analysis of the A samples and/or analysis of the B samples. On his instructions, the Agency contacted the Beijing accredited laboratory. It turned out that the samples were still there. They could be sent to a laboratory in another country. There was still the question of deadlines, in that transporting the samples could take several weeks, and their analysis by another accredited laboratory also required a considerable amount of time.

Ultimately, the Investigator found that the hypotheses of falsification of samples or results, or of error (repeated 23 times) had never been alleged or considered, and that there was nothing to suggest that they should be taken into consideration. To this extent, further analyses appeared not only unnecessary, but also pointless. This being the case, and irrespective of feasibility on the one hand and deadlines on the other, the Investigator has decided not to proceed. We will see later that the pharmacokinetic expert's conclusions support this choice. In any case, the samples are kept.

3 - Summary of relevant facts

Preliminary remarks:

The scope of the investigation is limited by the two questions to be answered, which focus on the Agency's activity. Under no circumstances shall the Investigator assume the role and exercise the powers which would have been and could be exercised by the Court of Arbitration for Sport (CAS) if an appeal had been lodged or if, by some other procedural act the possible existence of which the Investigator need not question, the case had been submitted to it.

Despite these limitations and the narrow wording of the questions, the operations required to answer them demanded a detailed review of the facts as they emerged from the files and the investigative procedures carried out. In particular, an in-depth study of the Chinese file was essential, both to check that CHINADA had not used procedures designed to improperly influence WADA's review of the decision, and to detect preferential treatment, undue interference, etc., as well as to assess the *reasonableness* of the decision not to appeal.

3.1.- The Chinese procedure, from doping tests to the 15 June 2021 decision

A.- On 16 March 2021, CHINADA's Director General wrote to WADA's Director General, with a copy to the Director of WADA's Legal Department. The letter sent by email was intended to inform him of a series of "abnormal" doping cases found by CHINADA. The national agency had received 28 positive results for trimetazidine on 15 March 2021, from tests carried out at the national swimming championships held from 1 to 3 January 2021. The 28 tests involved 23 athletes from 7 clubs in different provinces. CHINADA took the case very seriously. After an initial examination, CHINADA considered that these were not normal AAF (*Adverse Analytical Finding*) cases. In view of the investigations to be carried out, CHINADA decided to contact the public authorities for support in its research. At the end of the letter, CHINADA explained the content of this initial rapid communication in terms of the importance of the case and announced that it would provide further information on the investigations to be carried out, as well as being available to answer any questions.

B.- On 7 April 2021, the Director of CHINADA's Legal Department wrote to his WADA counterpart (Julien SIEVEKING). He referred to the letter dated 16 March 2021. The letter details CHINADA's investigations following receipt of the positive tests. Copies were sent to WADA's Result Management Department and FINA's Anti-Doping Department.

C.- On 31 May 2021, the Director of CHINADA's Legal Department sent Marissa SUNIO an email to which CHINADA's draft decision was attached. The email mentions the conclusion reached by the draft decision, i.e. contamination, unbeknownst to the athletes, through food ingestion. Given the complexity and special nature of the cases, CHINADA sent the draft decision translated into English for WADA's comments and suggestions, before a final decision is taken. The email mentions the proximity of the Tokyo Olympics and announces the final decision for mid-June, to avoid the question of the athletes' eligibility for the Olympics remaining pending until the start of the Games. CHINADA expresses its willingness to remain in contact with WADA regarding the case.

D.- On 8 June 2021, the Director of CHINADA's Legal Department sent a new email to Marissa SUNIO, referring to the previous one and stating that CHINADA looked forward to receiving comments and suggestions on the draft decision.

E.- On 15 June 2021, CHINADA sent its final decision to WADA. The contents of this decision can be summarized as follows:

a. The tests took place at the National Swimming Championships, during the finals from 1-3 January 2021. The competition took place in Shijiazhuang City, Hebei province. It brought together 201 club athletes from 21 provinces and cities across China. The athletes and those accompanying them arrived on site on 29 December 2020 and trained on the 29th and 30th. The first competitions took place on the 31st.¹ With the exception of swimmers from the local club, all others were accommodated at the Zhengding Huayang Holiday Hotel. Strict prevention and control measures had been put in place in connection with the COVID-19 pandemic. The hotel was not open to the public. Competitions were held without spectators.

b. The athletes tested were the top two finishers in each of the 29 individual competition finals, plus two additional target tests. In all, 39 swimmers were tested, with a total number of urine samples of 60, and 2 blood samples. All samples were transferred to the Beijing laboratory on 14 January 2021.

c. As of 2 January 2021, a new wave of COVID-19 appeared in the Shijiazhuang City area. After receiving the samples, the Beijing laboratory disinfected and froze them for 30 days, so that test results were not reported until 15 March 2021. As for the hotel, it was closed shortly after the competition and only reopened at the end of February, but no more specific dates are available.

d. 28 samples (45%) tested positive for TMZ, involving 23 athletes (59%), specifically 15 men and 8 women. The decision details the number of athletes tested more than once, with one or more positive tests. We will come back to this later, where appropriate. Of the 28 positive tests, 22 were below 1 ng/mL, while the remaining 6 were between 1 ng/mL and 1.7 ng/mL.

e. Given the particularities of the case, CHINADA concluded after an initial preliminary examination that it was not a case of an ordinary anti-doping rule violation, nor of multiple cases independent of each other. The following investigations were therefore carried out:

- establishment, for each swimmer concerned, of the tests taken in previous years, supplemented where appropriate by post-competition tests;
- harvesting of all elements relating to organization, including food, accommodation, management and competition safety;
- detailed verification of testing and sample transport operations;
- obtaining information from the Beijing laboratory on sample analysis and concentration;
- assessment of the possibility of intentional use of TMZ on the basis of the information obtained;
- review of the medications and nutrients taken by the athletes, from the angle of a possible cause of the positive TMZ tests;
- delegation to the public authorities of investigative measures on the site of the hotel where the athletes were staying;
- hearing of 12 athletes (6 tested positive and 6 tested negative), as well as 4 members of the athletes' entourage, along with a questionnaire sent to the 39 athletes tested;

¹ The Investigator's investigations revealed that in fact one of the two "target tests" had been carried out on 31 December 2020. The result was negative. This clarification is necessary, insofar as it reconciles the figures in ADAMS and in the file: In ADAMS, the test appears in 2020, whereas in the file, it is part of the "case". However, there is no impact on the investigation.

- laboratory analysis of a large number of samples taken from the hotel site for traces of TMZ;
- scientific experiments involving the recruitment of volunteers to study the metabolism of TMZ in the human body. One of these experiments was conducted by CHINADA, and the other by public authorities (on the results of these experiments, the Investigator refers to the conclusions of the pharmacokinetics expert, paragraph 4.2.2.1);
- deployment of five experts in the fields of medicine, pharmacy, analytical chemistry, sports physiology, biochemistry and anti-doping to document the efficacy of TMZ and confirm the validity of the experiments and analyses undertaken.

f. CHINADA then evaluated various hypotheses that could explain the results, in the conduct of the tests, in the analysis of the samples, in the possibility of intentional use of TMZ for therapeutic or non-therapeutic purposes by the athletes during or before the competition, in the analysis of potential doping motives, in the intake of nutrients containing TMZ, in the possibility of malicious intent behind the presence of TMZ in food, drinks, nutrients and, finally, in the environmental contamination of food, water, etc., during the competition.

g. The investigations delegated to the public authorities led to 910 samples being taken from the hotel's various premises, including food, drinks and seasonings. These investigations led to the detection of traces of TMZ in carts containing seasoning containers, in a kitchen drain and in a ventilation hood. The experts consulted by CHINADA concluded that there was a link between these traces and the positive urine tests, in their opinion at the evidential level.

h. In short, CHINADA agreed with these conclusions (CHINADA decision, p. 53).

i. The national agency concluded that the athletes had not intentionally used TMZ and that the positive tests were not caused by medication or nutrients. It was therefore assumed that the athletes had unknowingly ingested food contaminated with TMZ.

j. In conclusion, CHINADA decided that no ADRV had been committed by the athletes and that no proceedings concerning AAFs considered as ADRV should be brought against them.

3.2.- WADA's handling of the case, from the first information given in March 2021 to the decision not to appeal CHINADA's decision

The documents produced by WADA do not reveal any action or reaction upon receipt of the letter sent electronically by CHINADA on 16 March 2021 (paragraph 3.1.A).

As for the letter sent by the Director of CHINADA's Legal Department to his WADA counterpart on 7 April 2021 (paragraph 3.1.B), it seems to have triggered nothing within the Agency other than its transmission, on the same day and without comment, from Results Management (Katherine BROWN) to Legal (Marissa SUNIO), then from the latter to Science (Olivier RABIN), on 27 April, for information ("FYI"), including the indication, "but maybe some sort of contamination". The next day, Olivier RABIN replied, "very intriguing. Will be interested to see what is coming next from CHINADA". On the same day, Marissa SUNIO acknowledged receipt of the 7 April letter from CHINADA.

The dispatch of the draft decision on 31 May (paragraph 3.1.C) and the reminder on 8 June 2021 (paragraph 3.1. D) did not elicit any response either, even though CHINADA indicated that it was open to comments and suggestions.

It is only after the decision has been formally sent out that the Agency's actions are detailed here.

1.- On 15 June 2021, the Director of CHINADA's Legal Department sent the final decision regarding the case. The accompanying message summarized the conclusions of the decision, which were in the direction of environmental contamination and no case would be brought up against the swimmers concerned. The decision, identical to the 31 May 2021 draft, and its appendices were supplied in Mandarin, with an English translation.

2.- On 16 June 2021, Marissa SUNIO (Legal Affairs) contacted Olivier RABIN (Senior Director, Science and Medicine), Irene MAZZONI (Associate Director, Science and Medicine, Prohibited List) and Osquel BARROSO (Associate Director, Science and Medicine, Laboratories), stating that she had received the decision and asking whether CHINADA had contacted them about the case. Olivier RABIN initially replied in the negative. Irene MAZZONI and Osquel BARROSO also replied that this was the first they had heard of the case. Checks were made to ensure that the case had been reported to ADAMS. Julien SIEVEKING (Director of Legal Affairs) recalled that information had been passed on to them at the beginning of April, suggesting that the case would keep them busy over the following weeks. Olivier RABIN confirmed that he had found the information from April (an email from Marissa SUNIO "FYI" dated 27 April 2021).

3.- Also on 16 June 2021, Olivier NIGGLI (Director General) had telephone contact with the Chinese Vice Minister of Sports, a member of the WADA Foundation Board. This contact, documented in writing (see Appendix 8.9), concerned questions relating to the Beijing accredited laboratory, in preparation for the Beijing Winter Olympics in January-February 2022. During this conversation, in which Olivier RABIN also took part, the case of the 23 TMZ-positive swimmers was raised by the Chinese Vice-Minister. He indicated that the Chinese were keen to cooperate and offered to answer any questions via CHINADA.

4.- Still on 16 June 2021, Marissa SUNIO summarized the main elements of the case.

5.- On 17 June 2021, Marissa SUNIO's summary was sent to Ross WENZEL, a lawyer who was working at Kellerhals-Carrard at the time, before joining WADA in 2022. The summary was also circulated to the various departments concerned, together with the decision.

6.- Again on 17 June 2021, Ross WENZEL told Marissa SUNIO that the entire file should be requested quickly, and that WADA and FINA should coordinate during the appeal period.

7 - Also on 17 June 2021, Julien SIEVEKING passed on to Olivier NIGGLI and Olivier RABIN the summary drawn up the previous day by Marissa SUNIO. He noted that WADA had only known since 8 June that the 23 swimmers concerned were on the "long list" for the Tokyo Olympics. He also mentioned contact with Brent NOWICKI, recently appointed Director General of FINA. He had also sent him a copy of the decision, dated 17 June 2021. Both agreed that WADA and FINA should coordinate on the case to file any appeals. The importance of the case for the IOC was also raised, given the proximity of the Olympic Games.

8.- From 18 June 2021, Olivier RABIN contacted the pharmaceutical company behind TMZ in order to obtain information, mainly on the pharmacokinetics of the substance (see paragraphs 18, 25, 26 and 30 below).

9 - On 21 June 2021, Olivier RABIN contacted Irene MAZZONI by telephone to discuss the case.

10 - On 21 June 2021, Olivier RABIN wrote the following to Julien SIEVEKING: "... I think we're going to have to move pretty quickly on this trimetazidine/China issue. If we decide to go into detail and review all the elements, we'll need to call on 2 or 3 external experts". Coordination with FINA was once again raised, with a sharing of tasks suggested.

11.- Still on 21 June 2021, Katherine BROWN, part of the Legal Affairs Department and Coordinator of Results Management, asked the Director of CHINADA's Legal Department to provide the entire case file.

12 - On the same day, Justin LESSARD (Legal at FINA) submitted the same request for FINA and informed WADA.

13.- On 23 June 2021, the Director of CHINADA's Legal Department informed Katherine BROWN that the file had been made available on the platform provided for this purpose.

14.- On 25 June 2021, Marissa SUNIO informed the various WADA departments and services concerned that the complete (Chinese) file was now available to them on the Agency's "ShareFile". The same information was given to the firm Kellerhals-Carrard.

15 - On the same day, Cyril TROUSSARD (Associate Director, Legal Affairs, Results Management) asked Marissa SUNIO for a brief update on the case, for the attention of Olivier NIGGLI and Julien SIEVEKING.

16.- On 26 June 2021, the legal departments of FINA and WADA announced to each other the receipt of the complete file, for coordination purposes.

17- On 28 and 29 June 2021, Olivier RABIN set out to find experts in environmental toxicology and human exposure to xenobiotics, as well as in human excretion.

18 - On the same day, Olivier RABIN met with scientists from the pharmaceutical company behind TMZ, to discuss a series of technical points relating to the case (see paragraph 8, above and paragraphs 25, 26 and 30 below).

19.- On 2 July, Olivier RABIN circulated a document to the various WADA stakeholders listing various questions relating to the case, in several areas.

20.- On 5 and 6 July 2021, Olivier RABIN and Marissa SUNIO gave an update on the situation, from which the Investigator retained the following elements:

- since 2015, there had only been one case of a Chinese swimmer testing positive for TMZ, in 2017;
- a table containing additional information on the tests undergone by the swimmers and the samples was in the process of being drawn up;
- news of the FINA examinations was awaited;
- the question of the deadlines for appeals, first by FINA (14 July?) then by WADA (4 August?), was raised.

21.- On 8 July 2021, one of Kellerhals-Carrard's lawyers informed WADA of the results of the file review he had carried out with Ross WENZEL, who was working for the same firm at the time before joining WADA in 2022. The lawyer explained that he was of the opinion that the case should not be appealed, as the chances of success (merits) were relatively low. The theory of environmental contamination seemed realistic, and other theories, such as intentional doping or contamination by food supplements, seemed difficult to establish. The opinion was

supported by various considerations deduced from the Chinese file. In summary, the lawyer stated that "there is clear evidence of environmental contamination and no clear positive factors in favor of a different explanation".

22 - On the same day, Olivier RABIN discussed the case of environmental contamination with two scientists from the University of Montreal's School of Public Health.

23 - On 9 July 2021, Julien SIEVEKING circulated the opinion of Kellerhals-Carrard's lawyer internally, stating that 12 of the 23 swimmers were now on the short list for Tokyo and confirming the appeal deadlines of 14 July for FINA and 4 August for WADA.

24 - Between 9 and 12 July 2021, Olivier RABIN contacted Jordi SEGURA. Jordi SEGURA, former director of the doping analysis laboratory in Barcelona and an experienced scientist in the field of anti-doping, was a member of the FINA Anti-Doping Commission in the summer of 2021.

25 - On 13 July 2021, Olivier RABIN circulated information within WADA indicating that he had had contact with Jordi SEGURA the previous day.

The two had spoken, with Olivier RABIN informing Jordi SEGURA that WADA had received scientific information from the original manufacturer of TMZ, and was likely to receive more, and that this information could prove very useful in managing the case (see paragraphs 8 and 18 above and 26 and 30 below). According to Olivier RABIN, Prof. SEGURA considered the contamination hypothesis to be the most probable. He had informed FINA's lawyer that in his opinion it was indeed more likely that the positive TMZ tests were the result of contamination than the opposite. Without being able to say exactly what weight FINA had finally given to Prof. SEGURA's opinion in its decision-making process, Olivier RABIN felt that it had certainly counted. (*Editor's note: When interviewed by the Investigator, Brent NOWICKI confirmed that Prof. SEGURA's opinion had been a determining factor in FINA's decision not to pursue the appeal route, despite the statement filed to save time (see paragraph 28 below).*)

26 - Olivier RABIN also mentioned, in his communication with WADA, that he had had contacts, via videoconference, with experts in the field of pharmacology from the company producing TMZ (see paragraphs 8, 18 and 25 above and 30 below). Before being able to report on this, however, it was necessary to wait for the green light from the company's lawyers to send WADA the information and calculations contained in a document that served as a basis for the videoconference. Olivier RABIN concluded by indicating that he wished to carry out further excretion calculations.

27.- Following internal exchanges between the departments concerned, on 14 July 2021 Marissa SUNIO requested additional intelligence from CHINADA (see paragraph 29 below).

28.- On 15 July 2021, Justin LESSARD informed WADA that FINA had filed a "Statement of appeal" against CHINADA's 15 June 2021 decision, with the aim of taking action before the deadline expired (14 July 2021). The email explains that the Court of Arbitration for Sport (CAS) had been asked not to notify the appeal before a possible confirmation of the appeal by FINA, due on 21 July 2021. FINA had not informed CHINADA and would only do so once it had completed its analysis and made its final decision on an appeal. The email to WADA still stated that the appeal was highly confidential, pointing out that FINA did not want to disrupt the swimmers concerned in their preparations for the Tokyo Olympic Games. FINA wanted WADA to inform it of its own intentions, if possible before 21 July.

It appears from the file that, on 21 July 21, FINA withdrew its appeal.

29.- On 19 July 19 2021, CHINADA provided clarifications on certain points, thus following up on Marissa SUNIO's 14 July 2021 request (paragraph 25 above). The answers given concerned:

- two dietary supplements that were not initially analyzed, but were later found not to contain TMZ;
- the numerous unsuccessful attempts by public authorities to determine the origin of the environmental contamination;
- investigations into the TMZ manufacturing plant closest to the hotel, which was over 200 km away, as traces of TMZ found in the vicinity of this plant could not be correlated with the case of the swimmers;
- the difficulty of the search, given the time that has elapsed;
- unsuccessful investigations into the possibility that a member of the hotel staff had taken TMZ and could have been the source of the contamination;
- details of the TMZ concentration detected during checks of the hotel kitchens and seasoning containers & others, which ranged from 0.03 ng/mL to 0.2 ng/mL.

30.- On 20 July 2021, Olivier RABIN received authorization to use, on a confidential basis, the PowerPoint presentation answering various questions (see paragraphs 8, 18, 25 and 26 above). He also requested and obtained additional information from the pharmaceutical company behind TMZ. He also circulated the information internally. On the basis of this analysis, which provided information in particular on the possible relationship between the doses found in swimmers “downstream” and the ingestion of the substance “upstream”, Olivier RABIN decided not to call in other scientific experts, but made his own calculations for the specific case on the basis of the scientific information obtained. With regard to the essential elements emerging from the information provided by the pharmaceutical company behind TMZ, the Investigator refers to the conclusions of the expert in pharmacokinetics, paragraph 4.2.2.1.

31 - On 21 July 21 2021, Olivier RABIN and Irene MAZZONI continued their discussions, continuing to question the contamination scenario by comparing the doses resulting from the tests with the figures in the pharmacokinetic document drawn up by the pharmaceutical company behind TMZ.

32 - On 28 July 2021, at the initiative of Olivier RABIN, Marissa SUNIO again asked CHINADA questions about the precise location of the traces of TMZ discovered in the carts containing the containers of salt, spices, seasoning, etc. The answers provided the following day gave few details. As far as we understand, no traces of TMZ were found inside the containers, nor in the food itself, CHINADA pointing out that more than two months had passed, and the containers had necessarily been emptied and refilled.

33 - On 30 July 2021, Olivier RABIN began by pointing out that the latest information and answers given by CHINADA added little to what they already knew. Uncertainties about the source of the contamination and the absence of TMZ measurements in foodstuffs made it almost impossible to devise a realistic scenario. The results of the calculations he had tried to make to determine what exposure to TMZ would have been necessary to achieve excretion levels of 1 to 1.7 ng/mL, yielded only an estimate of "a few micrograms", not precise enough to confirm or exclude contamination. Olivier RABIN persisted in finding that "a few micrograms" was high for contamination and remained surprised that the Chinese had not found anyone on the kitchen or hotel staff taking TMZ. Since he was not in a position to exclude the scenario of contamination

with solid evidence, he saw no other solution than to accept it, even if he continued to have doubts about the reality of contamination as described by the Chinese authorities. Olivier RABIN reserved Irene MAZZONI's position.

34 - On 31 July 2021, Julien SIEVEKING announced to the in-house team (legal, science and medicine, and results management) that, after a further exchange with one of the lawyers at Kellerhals-Carrard, the case had been closed (see Appendix 8.10).

35.- Also on 31 July 2021, Irene MAZZONI, apologizing for the lateness of her reply, agreed with Olivier RABIN's analysis, while expressing her difficulty in believing in contamination due to the minimal doses found in the kitchen, what's more out of the food, two months after the competitions, without the origin of the TMZ being identified. Nevertheless, she admitted that WADA did not have any solid arguments to support its assertion that there could not have been any contamination and agreed to close the case even though there were still many question marks.

36.- On 4 August 2021, the last day of WADA's deadline for lodging an appeal, the closure of the case was entered into the system by Marissa SUNIO and Katherine BROWN (see Appendix 8.10).

3.3.- Facts subsequent to WADA's decision

Subsequent to WADA's decision not to appeal, which is the subject of this investigation, the Agency's I&I Department received information in 2022 and 2023 that Chinese swimmers who tested positive in early 2021 had been exempted from proceedings. After checking and contacting ITA, the I&I Department replied to its informants that the cases in question had been brought to the Agency's attention and had been dealt with. I&I remained at their disposal should they require any further information or intelligence. This was not the case.

To be precise, in 2023, USADA forwarded information to WADA I&I from a whistleblower that was deemed reliable. The whistleblower had indicated that they were in possession of a piece of evidence. WADA responded and informed USADA of the case, stating that it was interested in receiving any new information that there may be. USADA did not follow up on this response.

For the sake of completeness, it appears that in 2020, via USADA, allegations concerning Chinese swimmers protected by CHINADA and whose positive tests had allegedly not been entered into ADAMS, had turned out to be unfounded. The underlying whistleblower and USADA were not heard from again after I&I informed the American agency that the cases were known and had been dealt with.

The Investigator does not consider it necessary to develop this further, as it has no bearing on the subject of the inquiry.

3.4.- Other facts useful for analysis

3.4.1.- The 23 swimmers who tested positive, the tests before and after.

In summary, the 28 TMZ-positive tests are as follows, with concentrations indicated in ng/mL:

- 8 on 01.01.2021, from 0.1 to 1.7 (out of 21 samples)
- 7 on 02.02.2021, from 0.1 to 1.1 (out of 20 samples)
- 13 on 03.01.2021, from 0.2 to 1.4 (out of 18 samples)

19 swimmers tested positive only once:

- 5 on 01.01, of which 2 tested negative on 02.01;
- 5 on 02.01, none tested on another day;
- 9 on 03.01, of which 2 tested negative on 01.01, 4 on 02.01 and 1 on 01.01 and 02.01).

1 swimmer tested positive on all 3 days;

1 swimmer tested positive on 01.01 and 03.01, but was not tested on 02.01;

1 swimmer was positive on 01.01, negative on 02.01 and positive again on 03.01;

1 swimmer tested positive on 02.01 and 03.01, without having been tested on 01.01.

For the most part, the Investigator refers to the documents in the Chinese file, namely:

- a table entitled “Domestic Testing Data for Swimming During the Last Three Years (2018-2020)” summarizing all the tests undergone by swimmers during the period in question;
- a table showing the 1-3 January 2021 tests for the 23 swimmers concerned, with the dates of tests immediately before and after the competition;
- one of the Appendices (2.5) to CHINADA's 15 June 2021 decision, entitled “CHINADA's Test Distribution Planning and Implementation for Swimming”.

These three documents can be found in Appendix 2 to the aforementioned decision.

The Investigator also relied on a table found in the WADA files, which also provides comprehensive information on the cases of the 23 swimmers, with tests before and after the beginning of January 2021. A partial photocopy, for anonymization purposes, is appended to this report (see Appendix 8.5).

CHINADA has analyzed the figures extracted from its databases concerning doping control on swimmers in general and the 23 athletes who tested positive between 1 and 3 January 2021 (Decision, paragraph 3.3, pages 17 and following).

The Investigator notes that the swimmers were generally subjected to numerous regular tests, both in- and out-of-competition, and that no test was positive for any substance whatsoever. Overall, the January 2021 competition can be described as "average" in terms of doping control (60). At the previous Chinese championships, held in September 2020 after the first COVID-19 wave, 115 urine samples were taken, and 114 were taken in May 2021 at the national qualifying championships for the Tokyo Olympics

It also showed that, of the 23 swimmers, three had tested positive in the past: two in 2016 and one in 2017. The substance was clenbuterol, and all three were found to have been contaminated through meat consumption, with no further consequences.

22 of the 23 swimmers were tested in the months and weeks before and after the competition in early January 2021. There were eight swimmers tested in December 2020 and 12, some of them the same, in January 2021. The same 22 swimmers as above were tested between the early January 2021 test and 14 March 2021, the date on which the positive tests were entered into ADAMS.

One swimmer was not tested between August 2019 and the competition in early January 2021, nor between the latter and the end of April 2021.

As for the only athlete tested positive three times on 1, 2 and 3 January 2021, it should be noted that the athlete was tested on 22 December 2020, 17 and 19 January 2021 and all three tests were negative.

In the same case, TMZ concentrations increased from the 1st to the 2nd, then from the 2nd to the 3rd test, without being scientifically significant.

The same applies to the two swimmers who tested positive on 1 and 3 January (one of whom tested negative on 2 January).

Lastly, the concentration showed little change in the case of the swimmer who tested positive on 2 and 3 January.

3.4.2 Sample processing by the Beijing laboratory in early 2021

According to WADA's answers to the Investigator's questions (IT, Data and Digital Development), on 14 January 2021, the Beijing laboratory received 105 samples (including the 60 or so in the case in question). Out-of-competition samples were first analyzed between 21 and 26 days after receipt by the laboratory; results from in-competition test samples were reported in the ADAMS database between 60 and 83 days from 14 January 2021. In particular, three negative results for weightlifters were reported in the ADAMS database 23 days after the results for swimmers involved in the present case.

3.4.3.- A later case of individual contamination with TMZ?

WADA further reported to the Investigator that CHINADA had experienced, subsequent to the case of the 23 swimmers of 2021, a situation in which, for a positive urine test for TMZ (0.3 ng/mL), contamination through food would have been established. In short, TMZ, at a concentration of 2ug/mL, would have been detected in the cooking (wine) of beef hot-and-dry noodles. Tracing of the origin would have led to TMZ being detected in the alcohol contained in the cooking wine. This alcohol was allegedly purchased from a chemical substances factory, which in turn obtained it illegally from a pharmaceutical company. The latter would have used alcohol (distillation) in the TMZ manufacturing process.

On the basis of the dossier as a whole, the Investigator considers this scenario, which he has described in the conditional tense, to be possible, no less, no more. Indeed, giving it more attention would have required it to be documented, then scientifically verified and validated. In other words, it will not be taken into consideration when assessing the case under investigation, and we cannot infer anything about the January 2021 scenario from it.

4 - Results of the three expert opinions

4.1.- Forensic expertise

The mandate given to the *Ecole des Sciences Criminelles* (ESC – in English, School of Criminal Justice) was as follows:

4.1.1.- Purpose of mandate

To carry out his mandate, the Investigator was provided with documents. These relate in part to CHINADA's procedure for handling positive test cases up to the 15 June 2021 decision, and in part to WADA's procedures once the decision has been received, with a view to the possible lodging of an appeal against it. The documents supplied were extracted from digital data using keywords, and then sorted. The extraction process was described to the Investigator in a note that was handed to him.

In order to carry out his mandate, the Investigator must check the relevance of the documentation provided to him. This relevance check must determine whether the documentation is complete, adequate and consistent.

It was against this backdrop that the Investigator commissioned to ESC.

As it carried out its mission, the ESC kept the Investigator informed. It quickly became apparent from the investigations and procedures carried out by ESC that the documentation handed over to the Investigator on 6 May 2024 was complete, the few gaps noted below having no bearing on the answers to the questions posed.

4.1.2.- Summary of the questions submitted to the expert and the answers given in his report dated 27 June 2024

1 - Take into account the digital data made available to the Investigator:

- in the form of a USB key: The digital version of the documents submitted ("*following extraction of digital data using keywords, and sorting of this data*"),
- in the form of WADA "Sharefile": Digital data extractions performed using keywords before manual sorting of the data handed over to the Investigator.

2 - Once the data and the note describing the extraction process have been taken into account, specify the nature and volume of the data transmitted by WADA (emails, instant messaging, files, etc.).

Expert's reply: *The data made available by WADA to the Investigator is the result of an initial extraction using Microsoft eDiscovery software according to a restricted list of keywords (...) over a period of interest between 01.03.2021 and 31.08.2021 on the Microsoft 365 infrastructure servers (Outlook, SharePoint, Teams) and ShareFile used by WADA. These servers, and by extension the data transmitted, include emails (Outlook), instant messages (Teams) exchanged internally, as well as documents on file servers (SharePoint and ShareFile). A total of 29 WADA user accounts (Outlook mailboxes, Teams messaging and SharePoint spaces) were targeted by these searches. Files associated with emails and Teams messages were sorted by Ross Wenzel.*

The Investigator thus received: - Sorted emails, instant messages and associated files (attachments), corresponding to a 240 MB file (eDiscovery - Chinese Swimmers.pst). PFS 24.0192 l8/l, the contents of the file ShareFile Documents related_5-17-2024.2ip, i.e. 175 files (166 PDF documents, 6 emails, 2 text files and 1 image) (Appendix V).

3.a.- If the volume of data allows it, independently (without consulting the sorting performed by WADA), sort the data made available via WADA's "Sharefile" in order to identify elements that could be useful for the Investigator's mandate. At the end of this operation, inform the Investigator of the major differences observed between the sorting carried out by the SCJ and that carried out by WADA.

3.b.- If the volume of data is too great for the operation described in point 3.a above to be carried out within the allotted time, retrieve the data that has not been transmitted to the Investigator (excluding data made available via "Sharefile" and data transmitted by USB key). Then, from this data, identify and communicate to the Investigator any additional elements that may be useful in carrying out his mandate.

Expert's reply: *The comparison between the printed documents sent to the Investigator and the initial extractions carried out by WADA showed that all the documents present in the sorted extraction were sent to the Investigator. This operation did, however, reveal the absence of a number of documents referenced in both the printed documents and the initial extractions. The list of these documents was forwarded to the Investigator. The results of the sorting were then examined. No additional documents were found.*

4 - In the light of all the documents consulted, and any additional elements resulting from the procedures carried out in accordance with point 3 above, and in order to identify any new documents that may be useful in carrying out the Investigator's mandate, the expert is asked to:

- identify which additional keywords could be used to extract new digital data from WADA's systems.
- indicate whether other data sources or other types of data can be consulted.
- evaluate, if the data transmitted does not contain all the existing data between March and August 2021 (e.g. content, mailboxes, emails or expired or deleted files), the opportunity to ask WADA for access to complete data (e.g. by restoring backups, etc.).

Expert's reply: *On the basis of the documents forwarded to the Investigator, the undersigned have drawn up an additional list of keywords (...) in order to broaden the document search. They cover topics related to the investigation conducted by the Investigator, i.e. the agencies or laboratories involved, the January 2021 sporting event, the potential causes of the contamination, and the athletes concerned. This selection was as broad as possible. On the basis of these keywords, WADA sent the undersigned the associated additional extractions (...). Examination of this data identified a number of additional documents (...). Finally, at the Investigator's request, WADA carried out new extractions based on the initial keywords on all WADA mailboxes and SharePoint (...). Examination of this data revealed a number of additional documents (...). Among these is the report entitled "Expert Opinion on the 28 AAFs for Trimetazidine" (7.7 (recte 7.1) EN-Expert Opiniion.PDF) dated 23 April 2021, which details the conclusions of a panel of three experts (Wu Moutian, Zhang Xinrong, and Ye Min). S50 All the documents extracted were forwarded to the Investigator.*

5 - Inform the Investigator of any other element useful to the execution of his mandate which may have emerged from the operations carried out within the framework of the mandate.

Expert's reply: *We have not identified any other elements that could be useful in carrying out the Investigator's mandate.*

4.2.- Pharmacokinetic expertise

4.2.1.- Purpose of mandate

Whether in CHINADA's 15 June 2021 decision, or in the investigations conducted by WADA to determine whether to appeal this decision to the Court of Arbitration for Sport, numerous documents deal with pharmacokinetic issues. The answers to these questions are intended to determine whether the presence of trimetazidine (TMZ), which resulted from repeated urine tests of between **0.1 and 1.7 ng/mL** for some of the swimmers, is the result of intentional or unintentional doping.

The present mandate, through the use of a specialist, is intended to provide the Investigator with information on the pharmacokinetic aspects of TMZ, in order to enable him to answer the questions submitted to it.

4.2.2.- Summary of the questions submitted to the expert and the answers given by him in his report dated 15 June 2024

1 - What are the hypotheses, ranging from the voluntary and intentional intake of the substance to environmental contamination as retained as probable by CHINADA, that could explain, from a pharmacokinetic point of view, the presence of TMZ in the urine of the swimmers during doping control on 1, 2 and 3 January 2021?

Expert's reply: *In view of the very low urinary concentrations (between 0.1 and 1.7 ng/mL, including 22 below 1 ng/mL) found in 28 urine samples taken from 23 swimmers between 1 and 3 January 2021, we can definitively rule out the hypothesis that TMZ was taken in clinically effective and potentially doping doses during the competition and even well before it. All the hypotheses mentioned in the CHINADA decision are possible, in my opinion, without it being possible to select one with certainty over another. Indeed, according to the pharmacokinetic parameters of TMZ in the accessible databases (drugbank, PubMed, VIDAL) and those provided by the laboratory that discovered and marketed TMZ, and conducted a pharmacokinetic study in elderly people (pharmacokinetic Information" of 13 July 2021 included in the WADA file), such urinary concentrations (between 0.1 to 1.7 ng/mL) can only be observed after a minimum of 4 to 5 days' discontinuation of chronic, multi-day treatment with TMZ at therapeutic doses. The CHINADA study, conducted in March 2021 after TMZ intake and TMZ urinary dosage on healthy volunteers of the same age as the swimmers concerned by the application, confirms these data, showing that even a delay of at least 11d would be required after taking therapeutic doses of TMZ (at doses of 20mg *2/d for 3d). However, on the basis of these pharmacokinetic data alone, it is not possible to rule out intentional (or unintentional) intake of TMZ for doping or therapeutic purposes in the weeks leading up to the competition. Environmental contamination with low doses of TMZ during the hotel stay is also possible and can neither be ruled out nor affirmed with certainty on the basis of scientific data, but I see no scientific argument of a pharmacokinetic nature in favor of one hypothesis over another.*

2 - Do these hypotheses differ depending on whether we consider the presence of TMZ in one or more swimmers, during one, two or three tests carried out on consecutive days?

Expert's reply: *In the case of TMZ exposure (environmental or intentional), inter-individual variability in TMZ pharmacokinetics may explain the detection or non-detection of TMZ in swimmers' urine, especially as most of the TMZ urinary concentrations observed are close to TMZ's analytical detection limit of 0.1 ng/mL. An important point is the condition of urine samples that are taken on the morning of competitions, but possibly at different times. Urine samples are taken from micturition (100 to 150 mL) at the end of the pool, rather than from urine collected over a 24-hour period (which makes it easier to compare the total quantity excreted in urine over a full day). The urinary concentrations of substances present in the urine of these daytime samples are therefore strongly influenced by the quantity of beverages ingested in the hours prior to sampling, and therefore by diuresis (the quantity of urine emitted over 24 hours), which can concentrate or dilute urine, thus explaining why a swimmer may be positive or negative depending on the day of sampling and diuresis. Without a TMZ blood test or, at the very least, a test for an endogenous marker of urine concentration (e.g. creatinuria), which would have made it possible to weight urine TMZ concentrations to urine dilution/concentration over a single micturition, it is difficult to interpret variations in TMZ concentrations in the same individual over the 3 days of competition. It should also be noted that the CHINADA study is based on a protocol where the time of urine collection is always the same, i.e. in the morning on waking (most concentrated urine over the day), which is not the case in real life when urine is collected during the competition. In conclusion, the hypotheses raised remain valid regardless of the positivity/negativity profile of urine analyses over the 3 days of competition. If a swimmer is positive on at least one of the days, and the analytical technique cannot be called into question on any of the urine samples taken, this shows that the swimmer has been exposed to TMZ, regardless of whether the exposure was intentional or environmental.*

3 - If the substance was voluntarily taken at a therapeutic dose, can it be dated for each swimmer and each test, in terms of day or period?

Expert's reply: *In the case of voluntary use of TMZ in therapeutic doses well before the competition, it is impossible to precisely date either the duration or the doses taken, or the date/time of cessation of treatment before the competition. However, in the case of clinically effective doses taken intentionally (or not) and with the help of available scientific studies, we can date the cessation of treatment to a window between 5 and 11 days before the competition.*

4 - Is the voluntary use of TMZ for performance-enhancing purposes compatible with test results in cases where the same athlete has undergone several tests, some with positive results in all tests, others with one positive test followed by another negative, or two positive tests and one negative, etc.? In particular, is taking TMZ voluntarily at a therapeutic dose compatible with a first test positive on 1 January the second negative on 2 January, and the third positive again on 3 January, or with another case with two negative results on 1 and 2 January and one positive result on 3 January?

Expert's reply: *The sequence of positivity/negativity of each athlete's samples over the 3 days of competition makes it impossible to distinguish between athletes who may have intentionally taken TMZ in therapeutic doses well before the competition, and those who may have been contaminated in situ in the hotel by food/drink containing low doses of TMZ. In the CHINADA study, despite a stricter clinical protocol for urine sampling than in real life, anarchic variations in urinary TMZ concentrations were observed in the same subject on different sampling days, probably linked to the problem of the urinary matrix and the concentration/dilution of urine as a function of diuresis.*

5 - Taken individually or as a whole, whether for one or all of the swimmers to test positive on one, two or three occasions between 1 January and 3 January 2021, do the dosages revealed by the tests all fall within the predictions of the simulations developed in the 13 July 2021 "Pharmacokinetic Information" submitted to WADA?

Based on the same simulation, what explanation can be given for the presence of TMZ in positive tests of swimmers, when a test the previous day was negative?

Expert's reply: This point has already been developed in the answers to questions 1 and 4.

6.- a) We were in the middle of the COVID period, with its successive waves. Could TMZ have been given/taken (by prescription?) for preventive or therapeutic purposes related to COVID? Can such prescriptions be scientifically documented?

Expert's reply: The interest in TMZ in the treatment of cardiac disorders inherent to COVID-19 was raised as early as 2021 in 6 scientific articles published between 2021 and 2024 in peer-reviewed journals (PubMed), due to its mechanism of action on the cardiac cell and its anti-inflammatory effect, notably positive in viral myocarditis. However, no study has clinically demonstrated its value. However, it has been shown that the therapeutic use of TMZ increased during the COVID-19 period (Mooses et al, Scientific Report 2023), suggesting that medical prescriptions may have been made on the basis of no benefit/risk balance data for this treatment in this indication to prevent or treat subjects/patients during the COVID crisis.

6.-b) Assuming that TMZ was taken by hotel staff, particularly in the kitchens or restaurant service, could this explain the contamination of kitchen and restaurant facilities, or of products consumed by swimmers? If so, which scenario(s)?

Expert's reply: Contamination of the facilities by hotel staff treated with TMZ could fully explain the TMZ contamination of surfaces observed during the study carried out by the Chinese authorities in March/April 2021. But it does suggest that the employees contaminated the objects, particularly in the kitchens, with their hands soiled by, for example, their own urine (or possibly by their saliva or sweat, even though the presence of TMZ in these excreta has not been studied).

7.- Does the expert have any other comments to make, in terms of pharmacokinetics, in relation to the 28 positive tests on 1, 2 and 3 January 2021 and the hypothesis so far favored of contamination within the premises (kitchen, refectory, etc.) in which the athletes were housed during the competitions?

Expert's reply: The hypothesis of contamination within the hotel remains a valid one, which no scientific argument can rule out. Arguments that are not scientific in nature also support it: (1) The positive athletes were all accommodated in the same hotel, which implies that all athletes accommodated in other hotels were all negative. (2) The positive athletes came from different swimming clubs. (3) The probable low interest in doping with TMZ several weeks before the competition.

4.3.- Expertise in the relevant legal field

4.3.1.- Purpose of mandate

The Investigator appointed CMS von Erlach Partners SA as experts to answer a series of questions, with the important clarification that no assessment of the merits of the case was to be made (the existence or otherwise of anti-doping rule violations by athletes, assessment of the merits of a possible appeal by WADA to the Court of Arbitration for Sport against CHINADA's 15 June 2021 decision). Indeed, it was necessary to avoid - and this applies to the work of both the expert and the Investigator - substituting the CAS, even if only to a very limited extent, in the exercise of the powers of judgement which belong solely to it when examining an appeal which, in the present case, had not been submitted to it. The expert opinion, signed by the firm's lawyer Pierre DUCRET, was submitted on 12 June 2024.

The expert began by outlining the documents on the basis of which he had carried out his mission. It appears that these documents, to which the expert had access via an online platform opened to him by the Agency, as to the Investigator and at the latter's request, are the same as those in the file given to the Investigator on 6 May 2024. We know from forensic expertise that this file is complete, with two clarifications:

- on the one hand, the expert was unaware of the follow-up given to the information received by the I&I Department in 2022 and 2023 (see supra paragraph 3.3). Clearly, these facts are outside the scope of the investigation, with the Investigator specifying that, in his view, there is nothing in the whistleblowers' claims in 2022 and 2023, relayed to the I&I Department, which followed up as appropriate, that calls into question WADA's handling of the case in 2021. We would just like to point out that, when I&I replied that these cases had indeed been received and dealt with, the information that Chinese swimmers had been exempted from procedures was neither reiterated in a documented manner, nor backed up by further evidence, clues or revelations;
- on the other hand, as the Expert noted, certain documents in CHINADA's file were not translated or, more precisely, the translation was not included in the documentation submitted in paper form or electronically via the aforementioned platform; the Investigator was able to fill in these gaps; the documents in question were, for the most part, minutes of hearings of a number of athletes tested between 1 and 3 January 2021, some positive and others not; there were also long questionnaires which all the athletes tested had to fill in; both the hearings and the questionnaires mentioned their context, i.e. investigations carried out in relation to a "doping incident"; the swimmers had to give information relating to their origin, their career, the relevant career sporting results, their stay, their accommodation, the food consumed, any dietary supplements and medication taken, the competitions in which they had taken part in during the event, the course of the urine tests, etc.; lastly, a document was an opinion on the results of the investigations carried out in relation to a "doping incident"; finally, one document was the opinion of three Chinese scientists who, in short, based on the file, confirmed the hypothesis of contamination (exhibit 7.1 of CHINADA's file); once the expert, as we will see, considered the file transmitted by CHINADA to WADA as complete (answer to question 1) these few additional translations have no impact on his conclusions.

At this stage, the Investigator considers it important that the facts submitted to him and those submitted to the expert are the same.

The expert then reviewed the applicable rules, or to be more precise, the *body of* applicable regulations. The following is a summary:

"... The CHINADA Anti-doping Rules 2021 ("CADR") are applicable to this case. The CADR refer to the 2021 World Anti-Doping Code ("Code") - as well as to the comments it contains (art. 23.2 CADR) - and to the International Standards (art. 1.1 CADR), in particular the 2021 International Standard for Testing and Investigations ("ISTI") , the 2021 International Standard for Laboratories ("ISL") , the 2021 International Standard for the List of Prohibited Substances and Methods ("List") and the 2021 International Standard for Results Management ("ISRM") .

All provisions of the Code are mandatory and must be followed by each anti-doping organization, athlete or other person insofar as they are applicable to them. However, the Code does not eliminate the need for each anti-doping organization to adopt comprehensive anti-doping rules. While certain provisions of the Code must be included by each anti-doping organization in its own rules, other provisions of the Code serve as mandatory guidelines giving each anti-doping organization some flexibility in the wording of its rules or define requirements that anti-doping organizations must meet without having to include them in their own rules (Code, Introduction)...". (expert opinion, paragraph 4, p.10).

4.3.2.- Summary of questions submitted to the expert and answered in his 12 June 2024 report

The Investigator summarizes the expert's report, repeating the numerous references to the applicable rules on which the expert relied. The same applies to the facts, insofar as the Investigator's and the expert's findings are identical.

1. Does the file communicated to WADA concerning CHINADA's 15 June 2021 decision to take no further action in the case of 23 swimmers who tested positive for Trimetazidine (TMZ) appear to be complete with regard to the standards governing the activity of a national anti-doping agency in such cases?

The expert considers that the file sent to WADA concerning CHINADA's 15 June 2021 decision to take no further action in the case of 23 swimmers testing positive for TMZ is complete with regard to the standards governing the activity of a national anti-doping agency in such cases.

He points out that, notwithstanding the fact that CHINADA's decision is not based on ISRM Article 9 - given the absence of any notification of charges within the meaning of ISRM Article 7 (see 2.D *below*) - this provision must be taken into consideration. Indeed, no other provision specifies the content of a file. Consequently, ISRM Article 9 can and must be used as a reference to determine the contents of the file to notify WADA circumstances other than those covered by ISRM Article 9.

2. Did CHINADA's procedure for handling the case, either by carrying out the procedures directly or by delegating them indirectly to other entities, in particular authorities, follow the rules applicable to such a case?

To answer this question, the expert went into great detail, recalling the applicable rules, their mandatory nature, the presumptions, their possible irrebuttable nature, the conditions for their reversal, the respective roles and responsibilities of the anti-doping organization and the athlete concerned, the burden of proof, the decisions, etc.

The expert distinguished the phases of the proceedings conducted by CHINADA in a logical way.

A.- Regarding the **tests** carried out between 1 and 3 January, he recalled the applicable rules, in particular the list of information that must be given to the athlete (ISTI Article 5.4.1) and that of information that must be recorded (ISTI Article 7.4.5). With the exception of a few points of detail which appear to have no bearing on the expert's opinion or on the outcome of the investigation, these rules have been complied with.

B.- Regarding **sample analysis**, the expert noted that it had been carried out by an accredited laboratory presumed to have complied with procedures.

C.- Regarding **the investigation**, the expert recalled in great detail all the applicable rules, as well as the related Guidelines.

Rather than paraphrasing or referring to them, the Investigator reproduces here the expert's developments:

"CADR Article 5.10 anticipates that CHINADA will conduct investigations into AAFs, atypical findings, abnormal passport results and other potential ADRVs.

Under Article 5.7 of the Code, the anti-doping organizations shall equip themselves with the means to carry out investigations and gather Intelligence in accordance with the requirements of the ISTI and shall implement these means. CADR Article 5.1.1 also refers to the ISTI for investigations.

According to ISTI Article 12.1, the aim of ISTI Article 12, relating to investigations, is to set standards for the effective conduct of investigations that anti-doping organizations must carry out under the Code, including, but not limited to:

a) the examination of atypical findings, atypical passport results and abnormal passport results, in accordance with the ISRM;

b) the examination of any other analytical or non-analytical information and/or intelligence when there is a legitimate reason to suspect that an ADRV may have been committed, in accordance with the ISRM;

c) examining the circumstances surrounding an AAF and/or arising from that result with a view to obtaining further intelligence on other persons or methods involved in the doping (for example, by interviewing the athlete concerned); and

d) when an ADRV by an athlete is established, an investigation to determine whether the athlete's support personnel or other persons may have been involved in the violation, as defined in Article 20 of the Code.

In each case, the aim of the investigation is to achieve one of the following goals (ISTI Article 12.1.1):

a) exclude potential violation/potential involvement in violation;

b) gather evidence to support the initiation of ADRV proceedings in accordance with Article 8 of the Code; or

c) provide evidence of a violation of the Code or applicable International Standards.

The Guidelines state that the anti-doping organization should investigate potential ADRVs other than AAFs in particular (Guidelines, p. 50):

When an ADO becomes aware of a potential ADRV other than an AAF, an ATF, a whereabouts violation or ATPF, it should conduct any appropriate follow-up investigation without unnecessary delay and notify WADA.

On the other hand, this might suggest that there is no need to investigate ADRV due to an AAF. However, this would not be in line with ISTI Article 12.1.c mentioned above. It should be remembered that the

Guidelines are not binding (Guidelines, p. 6). The Guidelines must therefore be interpreted in accordance with the ISTI. In our opinion, the fact that anti-doping organizations can investigate cases of potential ADRV outside of AAF cases (among others) does not mean that they can never investigate these situations. They may do so insofar as this is justified in accordance with the ISTI and taking into account the concrete and specific circumstances of the case in question.

ISTI Article 12.2.2 provides that the anti-doping organizations shall collect and retain all relevant information and documentation as soon as possible, so that it may constitute admissible and reliable evidence in connection with a potential ADRVs, and/or identify additional lines of inquiry that may lead to the discovery of evidence; anti-doping organizations shall ensure that investigations are conducted in a fair, objective and impartial manner at all times; the conduct of investigations, the evaluation of information and evidence identified during investigations and the results of investigations shall be fully documented.

The commentary on this provision reads as follows:

It is important for anti-doping organizations conducting the investigation that information is provided and collected as soon as possible and in as much detail as possible, because the longer the time elapsed between the incident and the investigation, the greater the risk that some evidence will be lost. Investigations should not be carried out with a priori focus on a single possible outcome (e.g. the opening of proceedings for an anti-doping rule violation against an athlete or another person). On the contrary, investigators should be open-minded and consider all possible consequences at every important stage of the investigation. They should seek to gather not only all available evidence indicating whether there are grounds for prosecution, but also all available evidence indicating that there are no grounds for prosecution.

In addition, under ISTI Article 12.2.3, the anti-doping organizations should use all resources at its disposal to conduct its investigation; this may include obtaining information and assistance from law enforcement agencies and other relevant authorities, including other regulatory bodies; However, the anti-doping organizations should also use all investigative resources at their disposal, including the Athlete Biological Passport program, investigative powers granted under applicable rules (e.g. the power to require the production of relevant documents and information, as well as the power to question potential witnesses and the athlete or other person who is the subject of the investigation), as well as the power to grant a reprieve from a period of Ineligibility imposed on an athlete or other person in exchange for Substantial Assistance in accordance with Article 10.7.1 of the Code.

CADR Article 5.11 states that when an athlete's sample or specimen is positive, his or her administrative unit must first conduct an investigation and provide the relevant evidence; the national federation, national sports centers and provincial anti-doping agencies will participate in, direct and supervise the investigation, and the athlete himself or herself and the personnel concerned will be required to cooperate with the aforementioned organizations and explain the reasons for the AAF; CHINADA will examine the evidence and provide the necessary advice and support, and will be entitled to conduct the investigation directly if it deems it necessary. In particular, CHINADA may request technical support from laboratories to carry out analyses (CADR Article 5.13).

Where the anti-doping organization concludes, based on the results of its investigation, that an athlete or other person should be prosecuted for an alleged ADRV, it shall notify this decision in the manner provided in the ISRM and shall prosecute the athlete or other person for ADRV in accordance with Article 8 of the Code (ISTI Article 12.3.2 ISTI).

Conversely, when the anti-doping organization concludes, based on the results of its investigation, that no case should be brought against an athlete or other person for alleged ADRV, it shall notify WADA, the International Federation and the athlete's or other person's National Anti-Doping Organization of this reasoned decision in writing, in accordance with Article 14.1.4. of the Code (ISTI Article 12.3.3.1 ISTI).

After recalling these rules, the expert's opinion recognized CHINADA's competence to conduct an investigation having, upon receipt of the AAFs, considered the circumstances suspicious and having difficulty believing in the commission of an intentional ADRV on the part of the 23 athletes testing positive for TMZ.

However, while the investigation was in itself and in principle legitimate, the expert questioned the choice made by CHINADA in seeking exculpatory evidence, given that, according to the aforementioned rules, the burden of proof rested in any event with the athlete. Nevertheless, the expert acknowledged that the anti-doping organization had a certain amount of freedom in deciding whether to carry out an investigation to clarify the circumstances of an ADRV. He considered that such circumstances existed in this case (number of swimmers from different origins, difficulties for them to assume the burden of proof, very low rates, accommodation in the same hotel, restrictions and constraints resulting from the COVID-19 pandemic, both for the event and for the subsequent search for evidence).

Finally, the expert pointed out that, according to the commentary to ISTI Article 12.2.2 ISTI, investigators "*should be open-minded and consider all possible consequences at each important stage of the investigation*" (p.19), and, in the same vein, that anti-doping organizations have a great deal of leeway when it comes to the modalities of the investigation.

D.- In the final analysis, the expert was highly critical of CHINADA's **results management**. The expert recalled the principle of athlete notification, which must include: (i) the AAFs that concern them, (ii) the fact that said results may lead to a finding of an ADRV under Article 2.1 or 2.2 of the Code, (iii) their right to request the analysis of the "B" sample, (iv) the opportunity to attend the opening of the "B" sample and its analysis, (v) their right to request a copy of the laboratory documentation for the "A" sample, (vi) the possibility of providing an explanation for the AAF, (vii) the possibility of providing substantial assistance, (viii) any questions relating to the provisional suspension.

In short, the Chinese Anti-Doping Organization, by refraining from notifying the positive athletes, completely ignored ISRM Article 5.1.2.1, which the expert describes as a fundamental violation of anti-doping rules. This violation gave rise to a whole series of consequences which, in the expert's view, are the results of many flaws in the proceedings conducted by CHINADA

E.- Among these consequences, the expert noted the absence of **a hearing** provided for in Article 8.1 of the Code.

F.- Above all, he highlighted all aspects of the **results management decision** and its effects, in particular with regard to the withdrawal of medals and prizes, provisional suspension and public disclosure, noting that this had been to the benefit of the athletes, due to the failure to comply *ab initio* with ISRM Article 5.1.2.1.

In his **conclusion on question 2**, the expert basically replied that CHINADA's handling of the case had deviated significantly and fundamentally from the procedures laid down in anti-doping standards, that these deviations were particularly serious given that they had enabled the athletes concerned - in the absence of an appeal by WADA - to benefit from an absence of an ADRV (as well as an absence of any consequences), outside the application of the specific circumstances likely to call into question an AAF, notably a negative "B" sample analysis or a causal deviation in the ISTI or ISL.

3. Does CHINADA's decision not to suspend athletes who test positive for TMZ comply with the aforementioned rules and standard practices?

Referring to his earlier comments, the expert replied that CHINADA had not complied with the applicable procedure by failing to give notice within the meaning of ISRM Article 5, the result was that it did not issue a provisional suspension, which was mandatory at the time. The expert considered that the fact that CHINADA was carrying out an investigation in parallel did not change anything, given that this investigation did not concern elements likely to justify a lack of notification.

CHINADA should therefore have imposed a provisional suspension (mandatory) on the athletes concerned by the AAFs. CHINADA would have retained the possibility of lifting the suspension during the course of the proceedings, depending on the outcome of the investigation and/or the athletes' determinations.

4. Is the time elapsed between the tests (01-03.01.2021) and the announcement of the case to WADA and FINA (now World Aquatics) on 16 March 2021 customary?

The Expert considered three periods:

a.- Period prior to sending samples to the laboratory (01-03.01.2021 - 14.01.2021)

The principle is speed. According to ISTI Article 9.3.2, samples should be transported to the laboratory as soon as possible after sample collection. In particular, it is important to limit the risk of deterioration due to factors such as delivery times.

According to the Guidelines for Sample Collection published by WADA (version 2021), *transportation should take place **no later than seven days** after the date of collection.*

The expert noted that the Guidelines for Sample Collection are a non-mandatory document designed to help anti-doping organizations understand what to do under the ISTI. He nevertheless considered that the samples collected from 1 to 3 January 2021, and received by the Laboratory on 14 January, was more than ten days after the samples were collected, which he described as unusual.

b.- Period of sample analysis and generation of results reports in ADAMS by the laboratory (14.01.2021 - 14.03.2021)

The expert first recalled that according to ISL Article 5.3.8.4, "A" sample results should be submitted in ADAMS within twenty (20) days of receipt of the sample. This period may be shorter on certain occasions or modified by mutual agreement between the laboratory and the testing authority. The latter should be informed of any delay in the delivery of results.

The expert also noted that, on 17 March 2020, WADA had sent a recommendation to the directors of accredited laboratories concerning the COVID-19 pandemic, its prevention and control of it. Under the terms of this letter, issued to protect the staff of accredited laboratories, the latter were authorized to apply any safety measures they deemed necessary in the light of the local health situation, such as storing samples at -20°C for 14 days - the maximum incubation period for the COVID-19 virus - and informing the relevant testing authorities.

The expert noted that the laboratory had taken advantage of this recommendation to freeze the samples for 30 days. Without calling this longer period into question, the expert noted that a total of two months had elapsed between receipt of the samples by the laboratory and

communication of the analysis results in ADAMS, which he considered at first sight to be unusual in terms of the applicable standards. By adding the 30 days of freezing to the 20 days of ISL Article 5.3.8.4, a maximum period of 50 days would have been acceptable, 60 days therefore appearing contrary to the applicable standards.

c. Period following upload of analysis results to ADAMS 14.06.2021-16.06.2021 (recte 14.03.2021 - 16.03.2021)

The expert considered that the two days that had elapsed between the laboratory's uploading of the reports into ADAMS and CHINADA's announcement to WADA were reasonable.

Conclusion to question 4

On the basis of his three-stage approach, the expert concluded that the time elapsed between doping control (1-3 January 2024) and the announcement of the case to WADA and FINA (16 March 2021), i.e. more than 70 days, did not appear to comply with the applicable standards.

To "*put things into a practical context*", the expert carried out a comprehensive review of CAS decisions on doping cases handed down over the last five years, which he listed in an appendix to his report. Of the 68 decisions examined, he found only one in which the time between doping control and communication of the results exceeded that observed in the Chinese swimmers case (with the exception of cases involving further analysis), confirming the latter's unusual nature in the light of "recent CAS jurisprudence".

5. Do the subsequent notice (7 April 2021), the dispatch of a draft decision (31 May 31 2021) and the notification of the decision (15 June 15 2021) comply with the relevant rules and practices, both in terms of their content and the time that has elapsed between them?

With regard to the **7 April 2021 notice**, the expert considered that ISTI Article 12.3.1, which governs the duty of anti-doping organizations to keep WADA informed of the progress of investigations, and legitimizes WADA to question the anti-doping organizations in the absence of news or a decision within a reasonable time, that the 7 April 2021 notice- 3 weeks after the case was announced to WADA and FINA - was in compliance with anti-doping regulations.

With regard to the **31 May 2021 draft decision**, the expert noted that there was no provision in the anti-doping standards for any obligation to submit such a draft to WADA.

As the draft decision was issued one month after the authorities had drawn up their investigation report, this seemed a reasonable timeframe.

In terms of content, as the 31 May draft had not been modified, the expert referred to his assessment of the 15 June decision.

With regard to the **15 June 2021 decision**, the expert first observed and recalled that the appendices to the decision had not been translated into English. The Investigator refers to what he said above: These translation gaps were filled in the course of the investigation. This did not result in any substantive change, as none of the translations contradicted or even modified the content of the file.

The expert considered that the content of the decision and the accompanying (translated) appendices provided a clear understanding of the reasons why CHINADA had decided not to pursue the case, and of the investigations carried out by CHINADA and/or at its request.

As a result, CHINADA's 15 June 2021 decision satisfies the requirement for a statement of reasons laid out in the applicable standards.

As for the time elapsed since the draft decision, it is approximately two weeks, which seems reasonable in view of the fact that (i) CHINADA went back to WADA on 8 June in this regard, (ii) the decision is identical to the draft, so that WADA was in a position to take note of it as early as 31 May 2021.

**6. Do the procedures deployed and implemented by WADA upon receipt of the 15 June 2021 decision, with a view of filing - or not filing - an appeal against this decision, generally comply with the rules applicable in this area?
and**

7. In particular, do the requests for additional information addressed to CHINADA, the assessment of the case entrusted to lawyers specialized in sports law and anti-doping, and the investigations in the field of pharmacokinetics, carried out by WADA using its internal resources or using third parties, constitute case investigation measures in line with usual practices in such a case?

The expert considered that all the procedures implemented by WADA constituted investigative measures that were in conformity with standard practice. This was the case in particular for the use of lawyers and the activity of the Science and Medicine Department in reviewing the scientific explanations provided by CHINADA in support of its 15 June 2021 decision. It was also appropriate to request additional information from CHINADA, and to approach the pharmaceutical company behind TMZ to obtain information, mainly on the pharmacokinetics of the substance.

On the other hand, the expert noted that, given the particular circumstances of the case and the persistent doubts of WADA's scientific team as to the hypothesis of unintentional contamination of the athletes, the question arose as to whether the Agency could have investigated the case further by mandating independent scientific experts and/or entrusting an investigation to its Intelligence and Investigation (I&I) team.

The expert suggested that the following measures could have been implemented:

- get more intelligence on food testing for the athletes during competition;
- attempt, if necessary by reproducing the conditions of the case in point, on the basis of the experiments carried out by CHINADA and the information provided by the pharmaceutical company that supplied TMZ, to study whether TMZ contamination, as revealed by the test analyses, could correspond to the results of the samples taken from the containers;
- study whether a low concentration of TMZ can potentially improve sporting performance: This is described as "*difficult*" or "*very unlikely*" by the experts consulted by CHINADA, but not impossible or devoid of scientific basis; study in particular the case of microdosing, which seems likely to lead to alternating positive and negative results;
- Obtain information on the events that took place between the end of the event and the hotel's closure, on the precise dates of the hotel's closure and reopening, and on the processes used to clean the containers, which were vaguely described and did not seem to comply with the rigor and requirements (disinfection) of the COVID-19 era;

- Obtain the production of certain translations, in particular of questionnaires completed by athletes dealing in particular with their diet during the competition (Appendix 5.3 of the CHINADA 15 June 2021 decision).

The expert said he was aware of the limited time WADA had to reach a decision on a possible appeal to CAS, and of the health situation prevailing at the time in the region where the competition took place. However, he noted that WADA had received a draft decision from CHINADA on 31 May 2021. He also pointed out that WADA was free to lodge a preventive appeal with CAS, while reserving the right to withdraw it subsequently in the absence of additional elements calling into question CHINADA's conclusions.

8. Does the expert have any other comments?

In addition to the answers given, the expert was keen to reiterate certain essential principles resulting from the Code, already set out in his report, namely:

a) The principle of strict liability:

- According to the latter, since the mere presence of a prohibited substance in a sample provided by an athlete constitutes an ADRV, it is the athlete's personal responsibility to ensure that no prohibited substance enters his or her body, and the athlete is responsible for any prohibited substance found in his or her sample; it follows that it is not necessary to prove intent, fault, negligence or knowing use on the part of the athlete to establish an ADRV within the meaning of Article 2.1 (CADR Article 2.1.1; Article 2.1.1 of the Code);
- The athlete's fault is only taken into consideration when determining the consequences of this anti-doping rule violation under Article 10, as has been consistently confirmed by CAS;
- With the exception of substances for which a decision limit is specified in the Prohibited List or in a Technical Document, the presence of any reported quantity of a prohibited substance or its metabolites or markers in an athlete's sample constitutes an ADRV (CADR Article 2.1.3; Article 2.1.3 of the Code); for TMZ, such a limit is nowhere to be found;

b) Burden of proof and degree of proof (CADR Article 3.1 and Article 3.1 of the Code):

- The burden of proof will lie with the anti-doping organization, which will have to establish that an anti-doping rule has been violated. The standard of proof required of the anti-doping organization is to establish the anti-doping rule violation to the satisfaction of the hearing body, which will assess the seriousness of the allegation. The degree of proof, in all cases, will have to be greater than a simple balance of probabilities, but less than proof beyond reasonable doubt. Where the Code imposes upon an athlete or other person alleged to have committed an anti-doping rule violation the burden of rebutting the presumption or establishing specific facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the degree of proof is established on a balance of probabilities;

- Thus, while the burden of proof rests with anti-doping organizations for "incriminating evidence", it rests with the athlete for "exculpatory evidence". Furthermore, while the standard of proof for anti-doping organizations is that of a qualified balance of probabilities ("*more important than a simple balance of probabilities, but less than proof beyond reasonable doubt*"), the standard of proof applicable to the athlete is that of a balance of probabilities, i.e. the athlete must demonstrate that his or her version of the facts is more probable than the other possible hypotheses.

4.4.- The Agency's response to the main points of the legal expert (same level as the expert)

In view of the number of points on which the legal expert gave a critical assessment, firstly of the manner in which CHINADA handled the case, but also and above all of the activity deployed by WADA in the exercise of its powers as an authority to which the appeal route is open, the Investigator decided to seek WADA's response to the points concerning it.

1.- In relation to the answers to questions 2 (procedure followed by CHINADA) and 3 (CHINADA's choice not to suspend the athletes), from the point of view of their compliance with the usual rules and practices, WADA has admitted that the investigation as carried out did not comply with the fundamental rules described by the expert, in particular with regard to communication to the athlete and what is incumbent on the latter, and with the principles governing notification and its follow-up.

Although it is not usual for a NADO to conduct an investigation following an AAF, given the role is assigned to the athlete, WADA has already seen this happen, including on the part of major organizations (notably USADA on several occasions). In this case, WADA considered that the normal procedure (notification of each athlete individually with a deadline to explain the AAF) would have been problematic, taking into account the health situation in China as well as the indication that the AAFs had a common source. For the swimmers, the difficulty of individually seeking evidence to explain the circumstances of their AAF would have been considerable. Some of the means deployed by CHINADA, notably recourse to public authorities, would have been practically inaccessible to them.

2.- With regard to the answer to question 4 (time elapsed between the January tests and the 16 March 16), WADA considers that the 70 days, excessive according to the expert, must be assessed taking into account the exceptional number of adverse results (28) requiring a confirmation procedure, in the context of a period of COVID-19 which, everywhere but in China in particular, disrupted the normal functioning of organizations as well as the rest of society. Ten days longer than the 60 considered by the expert to be the maximum acceptable in this case does not seem unreasonable; from experience, WADA regularly hears of cases of AAFs - some 2,000 to 3,000 announced per year - in which the positive result was recorded 60 days or more after the test.

The Agency also noted that the phrase "*without delay*" in the relevant provisions was translated as "*promptly*" in the authoritative English version, as it is less peremptory.

3.- On the period between 16 March 2021 (first announced to WADA) and 15 June 2021 (CHINADA's decision), addressed by the expert in his answer to question 5, the Agency further explained by answering specific questions put forward by the Investigator on the subject:

- that it had nothing to undertake on receipt of the 16 March announcement, as the willingness of the Chinese to investigate the situation appeared to comply with the rules and to be reasonable in the circumstances;
- that the subsequent 7 April notice from CHINADA to Marissa SUNIO required nothing more than that it be forwarded for information to Scientific Director Olivier RABIN, which was done on 28 April, at the same time as it was acknowledged to CHINADA with a request to be informed of the further course of the investigation;
- that the lack of reaction to the draft decision sent on 31 May and to the reminder sent on 8 June was in line with the Agency's ongoing practice when draft decisions are submitted to it; according to the latter, its right of appeal requires it to refrain from commenting on or approving draft decisions in advance, without having examined the file and consulted experts, to avoid this being used (by the organization that issued the decision) in the context of a possible appeal.

4 - With regard to the expert's answers to 6 and 7 concerning the compliance of the Agency's activity in the context of the review of CHINADA's decision with a view to a possible appeal, WADA emphasized that the scientific information it had obtained was, in its view, of a high level of relevance and particularly reliable, since it came from **the** company behind TMZ. It was therefore sufficiently solid for them to not have recourse to an external expert. They recalled that according to this information, the minimum pharmacologically active dose had been calculated at 7.5mg. In their opinion, the calculations showed that there was no pharmacologically active intake. The results were clear and did not justify microdose studies, especially given the short time available to decide on a possible appeal.

For the rest, they referred to the detailed list of successive scientific procedures and questions to CHINADA for further information. They also indicated that, with regards to the documents not translated from Chinese, the law firm had been able to learn of their content by means of translation software.

5 - On the expert's suggestion that an appeal could have been lodged preventively by WADA, reserving the right to withdraw it, the Agency admitted the existence of this possibility.

However, they pointed out that they had not appealed, as they were unable to contest the food/environmental contamination scenario. Thus, according to its vision, it would have, in the context of such an appeal, recognized the absence of fault or negligence on the part of the athletes and would not have required a period of ineligibility. The athletes concerned would have gone to the Olympics. CAS would not have ruled on the case before the Olympic Games, and probably not in 2021. Assuming that ADRVs - without fault - had been retained, their publication - probable without being certain - following the CAS ruling would have come much later. The effects would have been limited to the national competition, which was not an Olympic qualifying competition. Recognizing the absence of fault or negligence, the possible effects of an appeal did not seem - for reasons of expediency - to justify the significant resources the appeal would have required. What's more, the months leading up to the Olympic Games are a particularly busy time for the Agency, given the stakes of a possible ineligibility shortly before the Games.

Finally, as it has made clear publicly, WADA has never appealed to convert a decision not to pursue a case into a "no fault" decision.

5 - Analysis

5.1.- Question 1

5.1.1.- Reminder of the 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?

5.1.2.- Analysis

To answer question 1, the Investigator must investigate whether WADA's assessment of CHINADA's decision not to refer the 23 swimmers who tested positive for TMZ for anti-doping rule violations stems from possible favoritism towards China (and its athletes) or is the result of undue interference or inappropriate actions.

As mentioned above (paragraph 3, Preliminary remark), this cannot be answered without first returning to the CHINADA decision itself, which, to reiterate once again it is not for the Investigator to assess the conclusion of this decision, i.e. the merits of the case. To do so would be to exercise, at least partially, the powers devolved to the CAS.

Rather, the review of CHINADA's decision should focus - and only focus - on the processes that led to it, as elements that may have interfered with or unduly influenced WADA's review. It is only on the basis of this examination that WADA's handling of the case can then be assessed, taking into account any possible tainting of this handling by a subjectively oriented state of mind or by undue influence.

A.- Like the expert in the legal field concerned, the Investigator notes that the procedural rules recalled by the latter and rightly described as fundamental, were neither respected nor applied by CHINADA when it learned of the 28 AAFs. This can be summed up in two sentences. Firstly, the national agency decided from the outset not to deduce from the AAFs the presumptions laid down by the regulations, thus reversing the roles of burden of proof in the investigation to be carried out. Secondly, this option spared swimmers the consequences provided for by the regulations: Notification, hearing, suspension (in principle compulsory), withdrawal of results, loss of bonuses, etc.

Moreover, the Agency does not dispute CHINADA's failure to comply with the applicable rules (see section 4.4.1 above).

Nor can it be disputed that CHINADA's choices "benefited" the athletes, both in terms of their status in the procedure and in terms of their lives and activities as athletes, at least temporarily, in relation to strict compliance with the procedure.

B.- While admitting that CHINADA's *modus operandi* did not comply with the rules of procedure, to the best of the Investigator's knowledge, WADA has never formally and publicly challenged it. In any case, it did not do so before deciding not to lodge an appeal. Nor does it appear to have done so subsequently. Even in their recent determinations, while admitting that the rules were not respected, it relativizes the fact, particularly by placing it in the complicated period of time, i.e. the pandemic and its consequences in terms of complications for athletes in exercising their rights and their personal involvement in the acts of investigation, their difficulty in accessing means of proof (paragraph 4.4.1).

In any case, for the Investigator, the assessment of this lack of reaction by WADA to CHINADA's non-compliance with the rules of the anti-doping procedure is obviously limited to the period of the facts under investigation, more precisely from 16 March 2021, the date on which CHINADA first brought the case to its attention, two days after the results were entered into ADAMS, to 4 August 2021, the last day of the appeal period.

In retrospect at least, the Agency's silence is curious, in the face of a procedure that does not respect the fundamental rules, and its lack of reaction is surprising. On this point, the Investigator takes up the successive stages of the procedure, distinguishing between two periods: leading to the 15 June 2021 decision, and thereafter.

From the announcement of the AAFs to the eve of the 15 June 2021 decision, there are four distinct moments.

a. The content of CHINADA's first missive to WADA, dated 16 March 2021, to which the Investigator refers in letter A of paragraph 3.1 (*supra*, p. 14), expressly mentions that the 28 AAFs involving 23 swimmers are considered "abnormal", an adjective which here does not qualify the results of the analyses, in the technical sense of the term, but rather the situation taken as a whole.

Today, knowing what happened next, the temptation is great to find in this letter already a clear announcement of the absence of notifications and the choice to depart from the procedure. However, we must be careful not to be so peremptory. Certainly, CHINADA has announced that it is taking the case very seriously and undertaking investigations. But, as the expert pointed out, such action is not, in itself, contrary to the rules.

In these circumstances, the Investigator, while leaving open the question of the appropriateness, or even the timeliness, of immediate intervention by the Agency on receipt of this first letter from CHINADA, categorically excludes seeing the absence of reaction as an act of favoritism on the part of the swimmers concerned. In any case, the fact that WADA did nothing more at the time is not shocking. The explanation that they had nothing to undertake at this stage seems relevant and in line and consistent with practice.

Incidentally, it should be kept in mind that some 2,500 to 3,000 AAFs are registered with the Agency every year. And remember too that the years 2020 to 2022 were special because of COVID-19, which has had an impact on all areas. The postponement of the Tokyo Olympics from 2020 to 2021 is a case in point. Recalling that from March to July 2021, the question of an Olympic Games without spectators on site was the subject of debate and controversy, helps us to better remember the general climate at the time. We must not lose sight of the disruption to the functioning of society in all areas. The Investigator specifies that he has questioned WADA in this respect. It was also hit with its share of health restrictions, employees testing positive for the virus, restrictions on face-to-face work, quarantines and telecommuting. However, they do not take advantage of it.

b. The content of the 7 April 2021 notice clearly left no doubt that CHINADA was managing the results and conducting its investigation in deviation from the fundamental rules and principles of procedure, not only by conducting a very thorough investigation, but also, while the AAFs led to a presumption of ADRVs, and this presumption was not overturned by any of the circumstances allowing it, by not initiating formal proceedings against the swimmers. In particular, even though only three weeks had elapsed since the first letter, it was clear from the

very detailed content of the measures undertaken by CHINADA that the swimmers would not be notified, that there would be no formal hearing, and therefore no provisional suspension, etc., subject of course to the results of this investigation carried out ex officio providing evidence to support the presumption of ADRV arising from the AAFs.

However, this opinion generated only a very limited internal circulation (see paragraph. 3.2 above). In short, Result Management forwards it without comment to Legal, who in turn relays it to Science & Medicine, for its information ("FYI"), with the comment that it appears to be a case of contamination.

On this point, the elements in the file give the Investigator an impression of compartmentalization and lack of coordination. The particularly perilous exercise of interpreting silence gives the impression that each of the three departments listed has acted - or rather refrained from acting - on the assumption that one of the other two would come forward if there was anything to be done at this stage.

Legally, the Investigator can follow the very short explanation from the Agency, in the sense that, formally, there was no rule requiring it to act. On the other hand, given the role of WADA, the frontline guardian of the fight against doping worldwide, this simple reference to the absence of a rule imposing action is not satisfactory. At the very least, the extraordinary nature of the case (23 swimmers, including top-class athletes, 28 positive tests out of 60 for a banned substance of therapeutic origin, etc.), could have led to coordinated and concerted reflection within the Agency, culminating in a formal and clearly expressed decision to take no action.

This criticism does not allow the Investigator to consider that the Agency has favored the 23 swimmers concerned, or that some of its members have sought to do so. The reproach, easy and straightforward to formulate with the benefit of hindsight and an overall vision, concerns a shortcoming, a gap, an absence. However, this cannot be construed as a deliberate intention, nor as WADA's acceptance of CHINADA's handling of the case for the benefit of its athletes, with anti-doping rules taking a back seat.

c. On the basis of the above, the Investigator can quickly move on to the sending of the draft on 31 May and the reminder by CHINADA on 8 June 2021. Even though the email accompanying the draft mentioned the proximity of the Olympic Games and the desire to avoid the question of athlete eligibility being left open until the start of the Games, and announced the formal decision for 15 June, it has to be said that it was only addressed to the Director of the Legal Affairs Department (SIEVEKING) and its senior manager (SUNIO). For the same reasons as above regarding the 7 April mailing, we understand why there was no reaction: the case was known and the various departments concerned had been informed, without reacting, in line with standard practice.

Furthermore, the Investigator cannot dispute the relevance of the explanation given by WADA in response to the question posed on this specific point: The Agency's right of appeal may underpin its practice of refraining from commenting on or approving draft decisions in advance, without having examined the file and consulted experts, to avoid this being used (by the organization that issued the decision) in the context of a possible appeal.

It would undoubtedly be appropriate for it to reiterate this in a general way, and that, *in casu*, on receipt of a draft evoking the complexity and special nature of the case and suggesting

comments and suggestions (of 31 May 2021 email), it expressly made it known that they were awaiting the formal decision before exercising their powers.

But this silence and passivity cannot be seen as the expression of a desire, or even just a consciousness, to favor the 23 swimmers in this case.

It should also be remembered that in the cases of group contamination on which the Investigator asked WADA for information, there was, with one exception, never any notification, suspension or hearing. This means that the procedure, with its presumptions, reversals, burden of proof, etc., has apparently not been respected by the anti-doping organizations and/or federations concerned. WADA has not reacted to these cases, even if only by reminding them of the formal rules. The Agency's silence and lack of reaction in this case cannot therefore be construed as anything other than treatment in line with its usual practice, devoid of any intention to show favoritism.

d. To conclude on the questions relating to the sequence of events, the Investigator again refers to the time elapsed between the tests (01-03.01.2021) and the announcement of the case to WADA (16.03.2021). The legal expert considered the 70 days between these two moments as not complying with the applicable standards.

For the Investigator, it is not a question of determining whether CHINADA should be reproached on this point, but only and once again whether WADA, having failed to react to these 70 days, has shown a laxity likely to constitute preferential treatment.

The Investigator does not share the expert's view of a duration that WADA should have considered excessive, for the following reasons.

Admittedly, the 70 days elapsed between the last tests (3 January 2021) and the entry of the results in the ADAMS database (14 March 2021) seem at first sight to exceed the admissible duration. First of all, the expert correctly pointed out that the 11 days between the last tests and receipt by the laboratory exceeded the maximum set by the WADA Guidelines by 4 days. It is also true that, as the expert also pointed out, the results for the "A" sample should be entered in ADAMS within 20 days of receipt of the sample by the laboratory.

Strict adherence to these two deadlines should therefore, as a general rule, lead to results being entered into the database 27 days after testing (although significantly shorter deadlines may be necessary on certain occasions). Even taking into account the 30-day freezing period at the Beijing laboratory, the results should have been entered into ADAMS on 4 March 2021.

At 70 days, we are still well short of the mark.

First and foremost, however, the wording chosen in the relevant texts (for example the terms "as soon as possible", "should" or "significantly less") inevitably puts these deadlines into perspective. They can almost be considered as order deadlines. They are, moreover, commented on in directives, guidelines and recommendations, which also readily use the conditional and are intended to help anti-doping organizations understand what needs to be done under the ISTI. It is doubtful whether, generally speaking, strict obligations result, or whether rights can be inferred from non-compliance. Determining the extent to which obligations can be inferred from this must be done with all the more restraint, as WADA is empowered to set deadlines, if necessary, when it considers that the time elapsed between the test and the registration of the analysis results in ADAMS is too long.

The Investigator considers that CHINADA cannot be faulted for having taken 11 days to deliver the samples to the laboratory. Once again, we need to remember the impact of the pandemic on the entire functioning of society. Everywhere in the world, at one time or another, in the wake of successive waves, everything was slowed to a crawl, even paralyzed. To consider, three years later, that the transport of samples to an anti-doping laboratory could not be postponed for a few days, is to forget the establishment of priorities, particularly of a sanitary nature, that these times demanded.

In the same perspective, the laboratory cannot be criticized for having instituted a 30-day freezing period instead of the 14 days recommended - in a formulation that does not appear to be mandatory - by WADA. Under the terms of WADA's 17 March 2020 recommendation, issued to protect the staff of accredited laboratories, the latter were authorized to apply the safety measures they deemed necessary in view of the local health situation, for example to store samples at -20° C for 14 days, i.e. the maximum incubation period for the COVID-19 virus, and to inform the responsible testing authorities.

The fact that in China, for the reasons already mentioned, the laboratory chose to set the freezing period at 30 days does not seem open to criticism. The expert did not support it.

Rather, it's the 70 days taken as a whole that he considers substandard. In support of this assessment, the expert referred to a series of cases (approx. 70) which were brought before CAS. The list is appended to the report. It is true that the overall result is that in the cases in question, subject to particularities (e.g. second analysis, repeat of a case after several years, etc.), it is exceptional for the time elapsed between the test and the entry of the analysis result in ADAMS to have been two months or more.

Having carried out some research into the decisions referred to by the expert, the Investigator considers it appropriate to relativize their scope when assessing the 70 days in the case in point. Indeed, in the cases handled by CAS, the time elapsed between the test and the entry of the result in ADAMS has never been a contentious or controversial issue in itself. Moreover, none of the cases appears to have involved a large number of simultaneous AAFs. What's more, the decisions listed concern all types of tests: In-competition or out-of-competition; when competitions were involved, they were sometimes national, sometimes international, and sometimes qualifying for a championship or the Games, sometimes not. It is doubtful, therefore, that it constitutes a sample on which to rely. The intelligence provided by WADA at the request of the Investigator, who points out that up to 3,000 AAFs are sometimes recorded every year on ADAMS, and that the passage of 60 days or more is not uncommon, confirms the very relative significance, in terms of reference, of some 70 CAS decisions over 10 years.

Without criticizing the expert, who rightly sought to back up his assessment with figures, the Investigator cannot agree with his conclusions on this point. It's as if, knowing that hundreds of thousands of criminal orders are issued every year in Switzerland, we wanted to search the Federal Court's rulings for the usual time limit within which they are issued, when only a few dozen of them end up being brought before the federal court, mostly on points unrelated to criminal proceedings.

On the basis of the figures he obtained from the IT Department (paragraph 3.4.2), the Investigator notes that, on 14 January 2021, the Beijing laboratory received 105 samples (including the sixty or so in the case in point). No doubt they were not all from regions hit by a new COVID-19 wave. In other words, the 60 samples from the swimmers could not be analyzed until 14 February. In view of the 28 positive results and the resources required for the more extensive Confirmation Procedure, the 28 days elapsed seems beyond criticism.

In any case, the fact that WADA has not reacted to this length of time is certainly not a sign of favoritism, which is the only question that needs to be answered.

In conclusion on this point, for the period from the tests on 1 January to 3 January 2021, through the entry of results into ADAMS on 14 March, to the eve of the decision on 15 June 2021, the Investigator has detected nothing that would reveal a desire to favor the 23 swimmers concerned.

C.- Throughout its review of the 15 June 2021 decision with a view to a possible appeal, the Agency appears never to have mentioned the non-conformity of the procedure followed by CHINADA to deal with the case. In a way, it is exclusively concerned with substance, to the exclusion of form, which includes the method of administering the means of proof.

In this respect, it is surprising to note that even the lawyers consulted by the Agency, who were privy to the entire CHINADA file, expressed their views, as early as 8 July 2021, exclusively on the chances of an appeal on the merits (see *supra* paragraph 3.2, no. 21, p.17).

The Investigator cannot imagine that the procedural non-compliance of CHINADA's actions would have escaped the attention of the experienced legal experts who deal with doping on a daily basis, whether at WADA or its lawyers. The reality is that the Agency considered, *in casu*, that it was the final result and its concrete consequences that mattered.

In so doing, taking into consideration the particularities of the case, it appears *in fine* to have acted in accordance with the rules it has itself laid out for anti-doping organizations. The Investigator is thinking in particular of the ISTI which, in Article 3.6.2, reminds us that its wording, like that of the Code, takes account of the principles of proportionality, human rights and other applicable legal principles, which must guide its interpretation.

The Investigator also refers to ISTI Article 12.2.2 and its commentary, cited by the legal expert, which, again for the attention of the anti-doping organizations, emphasize not only the need for speed, completeness and reliability in the administration of evidence, but also the imperatives of fairness, objectivity, impartiality, absence of preconceived ideas, open-mindedness and the need to investigate both the inculpatory and exculpatory elements.

In light of these provisions and the principles set out therein, the Investigator considers that nothing in the examination carried out by WADA after receiving the decision from CHINADA and after reading the very complete file suggests a desire to treat the case in favor of the swimmers concerned or even China itself. In any case, the mere absence of any questioning of the procedure followed by CHINADA cannot be interpreted in this way. WADA's decision not to file an appeal will be examined in its own right in the answer to question 2.

E.- To fully answer the first question, the Investigator still needs to determine whether WADA's handling of the case may have been the result of "*undue interference*", by which interference or influence is meant. In other words, it must be determined whether, as has been suggested, the case was handled for non-legal reasons, such as political considerations, rather than for the application of the rules, or whether considerations not inherent to the fight against doping were involved.

The political stakes of sport, including doping and the fight against it, are not lost on the Investigator. Regardless of the case in point, it is well known that the eligibility or ineligibility of

top athletes for a world-class competition, such as the Olympic Games, can, for some, be a politically charged issue.

Independence does not imply naivety. On the other hand, it ensures that the beneficiary is protected from these influences and challenges.

a. Thanks to his forensic expertise, the Investigator was able to ascertain that WADA had demonstrated absolute transparency towards him, which confirms the aforementioned independence. On this point, we essentially refer to the report submitted by the ECS (paragraph 4.1). It is clear that the Investigator had access to everything WADA had on file concerning the 23 swimmers, and this assertion is based on the fact that the forensic expert had access to the WADA database and was able to carry out searches using keywords and filters of his own choosing.

b. It also follows that the Investigator had access to the entire CHINADA file, as submitted to WADA in June 2021. Only a few non-essential translations were missing from the file submitted. This gap has now been filled. This is certainly an omission, and not the result of a desire not to hand over one or another document.

It should be noted that the completeness of the file is also attested to by the legal expert, who was able to make the above-mentioned critical observations on the basis of what he found there.

In the same vein, the Investigator notes that CHINADA has systematically responded to WADA's requests for additional information on several occasions between 15 June and 28 July , 2021. They have documented their answers to the best of their ability.

At this stage, it should be noted that, from WADA's point of view, CHINADA has been fully transparent since 16 March 2021, and that the same has been true of its collaboration throughout the procedure and until the expiry of WADA's appeal deadline. This finding leaves little room for "*undue interference*".

c. WADA's activities from 15 June 2021 have been described in detail above (paragraph 3.2). It shows that the departments and services concerned have carried out their work in a manner that is complete. When considering whether undue interference tainted WADA's review to such an extent as to influence its decision not to appeal, this finding is essential. In particular, the Science and Medicine Department examined the case in detail and from all angles. On several occasions, it initiated steps to obtain additional information. It was also them who approached the company behind TMZ to submit to its expertise the problems in the field of pharmacokinetics, from ingestion to excretion, in order to confront the figures in the file with science.

WADA's activity, summarized above in a single paragraph, is clearly not that of an entity driven by considerations other than the desire to accomplish its mission. In particular, the decision to forego other investigative measures, such as those suggested by the legal expert, was explained. It was based on the scientific evidence available. It was sufficiently clear from the latter that further investigations would not be able to change the assessment of the case. This waiver is not the result of an intention to favor the athletes, nor of any influence whatsoever; it is the result of a thorough analysis of the case.

d. On his first examination of the file, the Investigator's attention was drawn to the mention, on 16 June 2021, of telephone contact between Olivier NIGGLI and the Chinese Vice-Minister of Sport, a member of WADA's Foundation Board. This contact, which took place the day after CHINADA's decision, immediately appeared suspicious. When questioned, WADA was able to explain, with supporting documents, that the purpose of this contact was to raise issues relating to the affiliation of the Beijing accredited laboratory, with a view to the Winter Olympics in January-February 2022 (see Appendix 8.9). In short, at the time, WADA was taking steps to ensure that accredited laboratories were independent of public authorities. In China, a few months before the Beijing Games (early 2022), this process had fallen behind schedule. At stake was the laboratory's ability to operate during the Games. During this conversation, in which Olivier RABIN also took part, the case of the 23 TMZ-positive swimmers was raised by the Chinese Vice-Minister. He indicated that the Chinese wished to cooperate and offered to answer any questions that might be asked, via CHINADA. The chronology of the Agency's activities shows that, at the time, Olivier RABIN had virtually no knowledge of the case, and Olivier NIGGLI even less. The Investigator concludes that there is nothing here to suggest any interference of a political nature - and therefore undue - in WADA's examination of the case. The procedures carried out after this contact sufficiently demonstrate that WADA took the necessary investigative measures and that CHINADA cooperated.

e. As we know, on at least two occasions, in 2022 and 2023, the I&I Department received information that the case of the 23 swimmers had been covered up, by CHINADA and/or WADA. Whistleblowers had evidence, or at least clues. I&I, not involved in the handling of the case in spring 2021, was able to verify that the 28 AAFs concerning the 23 swimmers had indeed been reported by CHINADA and that WADA had handled the case. The Department said it was ready to examine additional information, the existence of which had been suggested, but which never came to light.

The Investigator does not see this as further proof of the absence of interference in WADA's activities. On the other hand, these two episodes are a reminder, if one were needed, that the distance between rumor and fact is often even greater than we might think.

5.1.3 Answer to question 1

a. Nothing in the file - which is complete - suggests that WADA showed favoritism or complacency, or in any way benefited the 23 swimmers who tested positive for TMZ between 1 January and 3 January 2021, when it reviewed CHINADA's decision to close the proceedings concerning them without further action.

b. The Investigator has found no evidence of any interference or interference with WADA's review as described above, whether internal to the Agency, or external to it, from any entity or institution, including CHINADA or Chinese authorities.

c. The investigation did not reveal any irregularity on the part of WADA in its review of CHINADA's decision; this review was detailed and covered all the issues relevant to determining whether or not to appeal the said decision.

5.2.- Question 2

5.2.1 Reminder of the 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?

5.2.2 Analysis

A.- In order to establish all the facts relevant to the exercise of its powers, the Agency has ensured that the CHINADA file is as complete as possible (subject to a few missing translations, which have no impact). To this end, it requested additional information as it analyzed the case.

The Investigator does not intend to return once again to CHINADA's failure to comply with the fundamental rules of procedure. When considering whether WADA's decision not to appeal was reasonable, however, we must begin by noting that the file submitted for WADA's analysis contained substantially all the evidence it would have contained had the burden of proof rules been applied. At this stage, in the eyes of the Investigator, it is irrelevant that these elements were brought to light as the result of an investigation carried out *ex officio*, whereas the procedure would have required the burden of proof to fall on the athletes and rest on their shoulders. Of course, there were no notifications or hearings. But the athletes were heard, in the broadest sense of the word. They had to answer questions that were more or less the same as those they would have been asked in a proper procedure. They were asked to provide information on their schedule, accommodation, diet, substances ingested, competition and testing conditions, etc. The documents show that their attention was drawn to the consequences of false declarations, as well as to the need for confidentiality.

In fine, the material elements of the file submitted to WADA were therefore similar and analogous, if not identical, to those which would have been found there following application of the procedure arising from ISRM Article 5.1.2.1. As long as it is accepted that CHINADA was competent to carry out investigative measures, or to delegate them to the public authorities, the question of the validity or relevance of this or that means of proof, due to the fact that the rules on burden were not respected, does not arise.

In the course of his analysis of the practical consequences of CHINADA's decision not to follow the rules governing the burden of proof, the Investigator was confronted with a question to which he did not find the answer in the file, nor in the rules. Unless it has escaped his notice, it does not appear that the swimmers who were questioned, or those to whom a questionnaire was sent, were informed whether or not they had tested positive, or that 28 tests had been positive, concerning 23 of them. In this way, each swimmer responded without being informed on these two points, as confidentiality prevented them from contacting the others.

If the rules had been followed, 23 separate files would probably have been opened. However, it is highly probable that a fair *trial* would have required the positive swimmers to be informed of the others' cases as soon as possible, so that they could make an informed request for investigative measures, since this was the particularity of the case.

In the final analysis, it doesn't really matter, since CHINADA has taken into account this exceptional element that each individual case obviously did not reveal.

B.- Contrary to the legal expert, the Investigator does not consider that WADA should have carried out other investigative measures.

Obtaining more information on the tests carried out on the food offered to the athletes during the competition would not have been sufficient to reveal, for example, the questionable hygiene behavior of a hotel staff member who, on the assumption of TMZ (even if such a staff member was not found); the Investigator points out that in the latter case described above, it would have been tests carried out at a later date on the food itself, and then its tracing - impossible in this case - that would have revealed the scenario.

Performing a simulation on the basis of CHINADA's experiments and the information provided by the pharmaceutical company behind TMZ seems extremely random and artificial.

Although known to WADA, the study by the pharmaceutical company behind TMZ was not known to Chinese experts, who considered that performance enhancement by low concentrations of TMZ was difficult or highly unlikely. This study shows that TMZ has no appreciable effects at the very low concentrations observed. Even without taking into account the pharmacokinetic expert's answers, it does not appear that an investigation on this point would have been useful. The same applies to further research into the alternation of positive and negative tests, which the expert explained could not be explained, and so nothing could be deduced from it.

In view of the documents in the Chinese file and the answers given between June and July 2021 to WADA's questions, the possibility of obtaining further details seems illusory. The vagueness that remains is regrettable. It suggests practices that are questionable from a hygiene point of view. That said, total and absolute disinfection when the hotel closed, or when it reopened, with a view to eliminating any risk linked to the COVID-19 virus, would not have been more useful to the investigation operations. On the contrary, it would have entailed the risk of obliterating many, if not all, traces.

As for the absence of a few translations, the law firm commissioned at the time made up for this, and a complete review of the file during the course of the investigation did not provide any relevant new information. One might find it surprising that the Agency provided the Investigator with an incomplete file, which it was satisfied with in 2021. However, no damage was caused.

With regard to possible additional investigative measures, in view of the Science and Medicine Department's decision not to carry out further calculations by comparing the figures in the file with the expertise of the pharmaceutical company behind TMZ, the Investigator notes the following.

The pharmacokinetic expertise acquired during the course of the investigation was categorically enlightening on several key points:

- the hypothesis that TMZ had been taken in clinically effective and potentially doping doses during the competition, and even well before it, has been definitively ruled out;
- environmental contamination with low doses of TMZ during the hotel stay is also possible, and can neither be ruled out nor affirmed with certainty on the basis of scientific data, with no scientific pharmacokinetic argument in favor of one hypothesis being more likely than another;

- urinary concentrations (between 0.1 and 1.7 ng/mL) can only be observed after a minimum of 4 to 5 days' discontinuation of chronic, multi-day treatment with TMZ at therapeutic doses, according to the pharmaceutical company behind TMZ; the CHINADA study, carried out in March 2021 after TMZ intake and TMZ urinary dosage on healthy volunteers of the same age as the swimmers concerned by the application, confirmed these data, showing that a delay of at least 11 days would be required after taking therapeutic doses of TMZ (at doses of 20mg *2/d for 3 days);
- as a result, in the case of clinically effective doses taken intentionally (or unintentionally), we can date the cessation of treatment to between 5 and 11 days before the competition;
- The hypothesis of contamination on the hotel premises remains a valid one that no scientific argument can rule out; non-scientific arguments reinforce it: (1) Accommodation in the same hotel. (2) Athletes from different swimming clubs. (3) TMZ doping several weeks before the competition is probably of little interest.

Even if the conclusions summarized above cannot be entirely attributed to the WADA scientists, since they were consulted after their involvement in the case, it has to be said that all these answers point in the direction of a complete analysis and, in relation to what follows, to the impossibility of contesting the CHINADA hypothesis or putting forward a more probable hypothesis than this.

Finally, based on the pharmacokinetic findings summarized above, the Investigator observes the following:

- the swimmer tested positive 3 times on 1, 2 and 3 January 2021 had been tested out-of-competition on 22 December 2020 (negative);
- it would appear that TMZ consumed before 22 December could not have been the source of the doses detected in early January: the 22 December test would have been positive, with a high concentration;
- to explain the positive tests on the first three days of January, the swimmer would have had to ingest TMZ, in clinically effective doses, after the test on 22 December;
- this hypothesis is incompatible with the 11-day period separating the cessation of TMZ intake from the 1 January 2021 test date, according to the Chinese study (see above);
- according to the calculations of the company behind TMZ, the athlete would have had to stop taking TMZ from 27 or 28 December 2020, after having taken it in therapeutic doses for several days from 23 December.

This is just about possible. But for this swimmer, taking TMZ at therapeutic and "effective" doses (but ineffective at the time of competition) is thus highly unlikely. This can only reinforce the hypothesis of contamination for all the swimmers concerned. In particular, the intake of TMZ by 23 swimmers belonging to seven different clubs, at identical doses, in the same period, seems highly unlikely, given all the coincidences it requires.

C.- Against the backdrop of the extensive work carried out internally by the Agency's departments and services upon receipt of CHINADA's decision and the file, the grounds for WADA's decision not to file an appeal are mainly:

- the Kellerhals-Carrard legal opinion;
- the scientific developments of the pharmaceutical company behind TMZ;
- the identical conclusions of FINA's analysis, particularly that of its scientific expert;
- the impossibility, or at least the extreme difficulty, of making further calculations, given the definitive and irremediable imprecision of the data concerning the traces of TMZ detected in the hotel kitchens;
- in addition to all this, there were a series of exceptional circumstances, which CHINADA noted from the outset in order to consider the case "*abnormal*": A form of huis-clos (behind closed doors) bringing together all the athletes tested positive in the same hotel, from which they only left to go to the competition venue; the different origins (seven clubs) of the swimmers concerned; and the very low level of interest, if any, in doping several weeks before the competitions; although not scientific in nature, these particularities were also noted by the pharmacokinetic expert.

But perhaps above all, there is the number of positive results. CHINADA noted just how high it was in relation to the number of tests carried out (>45%). Although this is another substance whose presence in food - unlike that of TMZ - is regularly confirmed, it is only in the case of group contaminations that such percentages have been reached.

And there's more: while giving numbers their rightful measured role, it's not uninteresting to note that the 28 positive tests in this case represent half of all positive results across all sports in China in 2021 (57). Incidentally, in view of the extra work involved in an AAF, this should put into perspective the expert's observation that the analyses and their results have taken too long.

Again in China, these 28 positive tests in three days represent 45% of the 63 positive tests in water sports between 2016 and 2022 (7 years).

In the eyes of the Investigator, these findings make it understandable that the 28 positive results were so atypical, so extraordinary in the original sense of the word, that they were described as "*abnormal*" to the point of prompting an equally extraordinary investigation.

As it explained, WADA considered that it was not in a position to contest the food/environmental contamination scenario on which CHINADA's decision was based, as it had been solidly documented. Even if its scientific specialists had doubts about this scenario, it was not possible for the Agency to present the appeal authority (CAS) with a hypothesis or scenario more probable, or even just more likely, than this one.

If an appeal had been lodged, its conclusions would have been that CHINADA's decision not to prosecute (for an ADRV) should be replaced by a finding of a no-fault anti-doping rule violation, without concluding that a period of ineligibility should be imposed.

Recently, WADA made it publicly known that it had never lodged an appeal that would have merely converted a decision not to pursue a case into a "no fault" decision.

Weighing the effects of the possible admission of such an appeal, the consequences for the 23 athletes concerned and the resources and means to be devoted, respectively deployed, to appeal, in the notoriously busy period that is the weeks leading up to the Olympic Games, the Agency has made its decision.

D.- In examining whether WADA's decision not to appeal was "reasonable", the Investigator obviously based himself first and foremost on the case 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 has exercised both the skills of a judge - of first and second instance - and of a prosecutor acting before all instances, cantonal and federal.

a. The role of "reason" in deciding whether or not to lodge an appeal requires first and foremost an assessment of the chances of the appeal being allowed by the authority seized. These chances depend on the grounds put forward, which may relate to the facts or the law. When, as in this case, the admission of the appeal requires that the facts of the decision appealed against be changed, the appellant must have the means of proof, or at the very least very strong evidence, to persuade the appeal authority to accept that the position taken in the said 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., *in casu*, that of the balance of probabilities (see Article 3.1 of the World Anti-Doping Code, last sentence).

The Agency retained "doubts" about the contamination scenario, which the Investigator fully understands from his own procedures. But doubts alone are not enough to form an appeal. To challenge a hypothesis, you must at the very least present another that is at least as plausible, and back it up with clues and evidence of a level equal to those that support the contested scenario, questioning the seriousness of the latter. This is what the Agency was told by the lawyers it consulted.

Without taking the place of the appeals body that it had not taken advantage of, but rather from the point of view of the authority responsible for deciding whether or not to use the legal avenue of appeal that the codes attribute to it, the Investigator considers that WADA could reasonably consider that the chances of challenging the environmental/food contamination scenario was, if not nil, at least virtually non-existent.

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

b. On the other hand, the reasons given, somewhat on a subsidiary basis by the Agency, do not form part of the criteria on the basis of which the Investigator qualifies the decision not to lodge an appeal as reasonable.

Indeed, a particularly heavy workload - in this case in connection with the approaching Olympic Games - cannot be used as a reason to treat a file differently from what would be the case at other times. This applies to all cases, but even more so when the case involves 23 athletes, including top-level champions! Suggesting that there are times when attention wanes is neither appropriate nor something that can be entertained.

The Investigator notes that the argument is all the more maladroit given that, in the case in point, the file has been handled carefully, conscientiously and "thoroughly".

Similarly, the fact that WADA has never lodged an appeal to convert a decision not to prosecute into a no-fault violation decision is irrelevant, insofar as it might suggest that this practice is

constant because it results from the adoption of a policy along these lines. In reality, it appears that the Agency, in the face of criticism, wanted to explain that the case in question had not been treated any differently from the others. The same applies to the cases of group contamination in which the Agency informed the Investigator.

This has no bearing on the reasonableness of the decision not to appeal. To conclude on this point, the Investigator disagrees with the legal expert when he suggests that WADA could have filed a preventive appeal, even if it meant withdrawing it afterwards. Legally, the route indicated exists. It was even used in this case by FINA (appeal lodged on 14 July and withdrawn on 21 July). However, the reasons for this were different. Its deadline was approaching. It wanted to safeguard the possibility of being an appellant alongside WADA, for the reasons explained by its Executive Director to the Investigator (see *supra* p.10, paragraph 2.6).

c. Furthermore, by way of *obiter dictum* and superfluously, the Investigator points out that the filing of an appeal at the end of July 2021 would have had the consequence of bringing 23 athletes simultaneously into the proceedings, more than six months after the facts for which their national anti-doping agency, for reasons of substance that seem 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 involving only one or two isolated individuals, would have had a considerable impact on a group of athletes who had hitherto been given no access to the procedure and the rights it confers. Indeed, while the swimmers' interrogations and questionnaires may be considered relevant from the point of view of the elements that a file must contain, they in no way replace the procedures carried out in accordance with the rules, from the point of view of the procedural rights of the persons concerned and potentially targeted.

To continue the analogy with judicial procedures, it is - *mutatis mutandis* - as if a person were to find himself in the dock before the judging authority, without having been previously warned or having benefited from the procedural rights that belong to the accused during the investigation. This scenario, which is legally possible, cannot be ruled out. In view of its consequences, however, the appellant must have a particularly rich arsenal of clues and evidence, *especially* when the appeal concerns 23 people.

The Investigator points out that the above consideration is stated independently of the fact that several of the athletes concerned were on the list of swimmers participating in the Tokyo Olympic Games, whose swimming events began on 23 or 24 July 2021. It applies to all athletes, at all levels, at all times.

d. An appeal procedure before the Court of Arbitration for Sport usually lasts between 6 and 18 months. Even longer durations are not uncommon. This being the case, the Investigator is of the opinion that such a procedure directed against 23 athletes, in view of the totality of 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 angle too, which incorporates - albeit once again only as *an obiter dictum* - the need to respect fundamental legal principles and human rights, WADA's decision seems reasonable.

To conclude on this point, the Investigator is aware that 23 athletes were ultimately granted a kind of "no contest", which the body in charge of the worldwide fight against doping did not contest even though, according to the letter of the applicable provisions, introduced to

strengthen the worldwide fight against doping, the positive results of their tests created a presumption of guilt on their part, based on the principle of strict liability, which they did not have to rebut because of the failure to apply the rules on the burden of proof.

Given the *ratio legis* of the system established by the Code and the various rules for its application, this may come as a shock. It may even create a feeling of injustice among competitors opposed to the athletes in question in one or other discipline.

The sense of justice or injustice, however, goes far beyond the scope of this investigation.

The fact is that, when it decided not to lodge an appeal, WADA appears to have acted in accordance with the rules it has itself laid out for anti-doping organizations. We refer in particular to the ISTI. Article 3.6.2 stresses that its wording, like that of the Code, takes into account the principles of proportionality, human rights and other applicable legal principles. As for ISTI Article 12.2.2 and its commentary, quoted by the legal expert, they remind anti-doping organizations not only of the requirements of speed, completeness and reliability in the administration of evidence, but also of the imperatives of fairness, objectivity, impartiality, absence of preconceived ideas, open-mindedness and the need to investigate both the case against and the case against the accused.

5.2.3 Response to question 2

In conclusion on question 2, the Investigator considers that all the elements taken into consideration by WADA, whether from the file produced by CHINADA with its decision or from the investigation procedures carried out by it, make the decision not to lodge an appeal appear reasonable, both in terms of the facts and the applicable rules.

6.- Concluding remarks

6.1.- Preamble

In the course of his work, the Investigator, who has not become a specialist in the field of anti-doping in less than three months, was repeatedly surprised by some of the findings.

More specifically, the global organization set up to combat doping, of which WADA is the keystone, appears to be highly structured to ensure that the various national and international bodies that make it up can each, in the exercising its competencies, and working together, achieve the goals assigned to the system as a whole. However, based on the case submitted to him, the Investigator was confronted with situations where the way the system worked surprised him.

These findings concern the Agency, since the investigation covered its activities. The Investigator shares this information here, while recognizing that we must be wary of general considerations deduced from a single - very - specific case.

Anti-doping "legislation" - i.e. the Code, the eight International Standards and their related documents - is a large and complex *corpus*. It cannot be mastered in the space of three months or so devoted to a particular case. As a result, the Investigator cannot claim to propose concrete amendments to relevant provisions, lacking sufficient overall vision and detail. This is all the truer given that work on the revision of the Code, but also on ADAMS, or on the issues raised in the investigation, is in progress, as the Investigator was able to see on the Agency's website.

The Investigator therefore limits himself to addressing a few points that raised questions, while being aware that some of these points are specific to the very particular subject of the inquiry, and probably of no interest or impact in the vast majority of cases.

6.2.- Remarks

6.2.1.- Coming from the legal world, the Investigator has practiced throughout his career on very organized files, with numbered documents, minutes of operations, decisions or summary notes, etc.

The Agency's "file" submitted to him is quite the opposite. For a description, please refer to paragraph 2.1. Keeping track of the Agency's work and activities has been very complicated and tedious. Establishing a chronology has been a long and complex process, full of uncertainties.

This is certainly of no consequence for the "small" cases, the usual cases, the situations encountered on a recurring basis. On the other hand, when it comes to specific, important cases, which may raise questions of principle, may serve as a reference or, as in this case, may need to be reviewed in detail, this disorganization of the file - in fact, we would have to say the non-existence of the file - is unsatisfactory.

The Investigator is of the opinion that the Agency should formalize the handling of cases by creating files that include a structure, a nomenclature, a summary document, a "living chronology". This should cover everything from file opening to file closure. In particular, the latter should take the form of a formal memo, other than an email circulated by the Director of the Legal Department within the Agency.

This formalization is undoubtedly very cumbersome for "small" files. But there's nothing to prevent a lighter or simpler form, depending on the criteria applied when the decision is made.

6.2.2.- Consequently, the various aspects of analyzing a decision with a view to a possible appeal could usefully be set out in a document. The various departments are very active, both in terms of quantity and quality. Both for the outside eye and for an in-house qualitative review, or for a reworking of the case, if necessary, the existence of a work process should be considered.

In this case, for example, the I&I Department did not intervene in the spring 2021 analysis stage. Although it does not appear that his intervention would have been necessary, it would be useful, particularly from the point of view of transparency, to know the criteria that determine whether or not to get involved. Again, by way of example, the Investigator refers to what he expressed concerning the absence of any follow-up, within the Agency, on receipt of the 7 April 2021 notice (see paragraph 5.1.2 let. B, p. 40). Whether or not there was a lack of coordination in this case, the existence of formalized processes would mean that each of the three departments could consider that the other two had identified any issues that needed to be addressed at one stage or another, with the result that nothing was done.

WADA is involved in drawing up numerous guidelines for its partners. Such guidelines for its own activities would also make sense.

Basically, it's about codifying best practices.

Here too, it's understandable that such processes may seem excessive for dealing with cases that seem, at least initially, to be ordinary, as so many of them are, i.e. individual or isolated positive tests.

On the other hand, they seem to be useful, if not indispensable, for cases that appear to be more complex from the outset, and for which it becomes clear very quickly, if not immediately, that they are going to require more extensive and longer investigations, especially when there is a lot at stake for many athletes, especially a few months before major competitions such as the Olympic Games or world or continental championships.

6.2.3.- The time elapsed between testing and the entry of results into ADAMS has been controversial.

ADAMS appears to be a highly effective system, an essential tool at the heart of the fight against doping.

In this case, the results of 60 tests were not entered more than two months after the tests. In fact, there were probably more. Although a delay of 60 days between the test and the entry of the result in the database is not uncommon, and can be justified by the circumstances, the Investigator believes that ADAMS should be equipped with an "alarm", drawing the attention of the Agency (RM) to atypical situations. Such a system, which would also apply to monitor results management in terms of deadlines, would also help the Agency to exercise its right to challenge an organization.

What's more, if particular deadlines are on the agenda (e.g. in the vicinity of major international competitions), with the extra work that this can entail, such a means of monitoring the progress of procedures could also be useful.

6.2.4.- The Investigator was led to examine in detail the successive opinions of the national anti-doping organizations and the follow-up action taken by WADA. In this case, the terms used by the NADO when informing WADA strongly suggest that a response was expected. The same applies to sending the draft decision and the subsequent reminder. The legal expert considered that the draft could have kick-started WADA's work. This is technically right. But it is hardly legal: A first-instance authority does not send the person who has a right of appeal to be exercised within a certain time limit, a kind of draft decision that would allow, by anticipation, to extend this time limit.

The Agency has explained its consistent practice, which does not seem open to criticism.

This notwithstanding, the Investigator is of the opinion that this practice should be clarified with the partners. These clarifications could be general. It would undoubtedly be useful to include them in acknowledgement letters. Indeed, it must be clear to NADOs that WADA will not act, and therefore will not react, before the decision is sent.

6.2.5.- If what is explained in the previous section is the rule, it should be possible to make exceptions. Insofar as the examination of a single case allows, the Investigator considers that the case submitted to him is exceptional. The question arises as to whether, in such cases, there should not be a genuine exchange of views between the NADO and WADA before the decision is taken, the sending of which - after receipt of the complete file - triggers the time limit for appeal.

6.2.6.- The Investigator wondered whether the case in point did not reveal that the procedure laid out in the Code and International Standards was not initially designed, and then developed, for individual cases, or for two or three simultaneous, but not identical, cases. In any case, it

seems ill-suited to situations in which a large number of athletes test positive for the same substance at the same time, with concentrations of the same order of magnitude.

This question became all the more acute when he observed the follow-up given to cases of environmental/food contamination, with significant deviations from standard procedure.

Should there not be a special procedure for such cases, as soon as there are indications that they may exist? Such a procedure could begin with the initial tests (*ITP: Initial Testing Procedure*) and precede the second set of tests (*CP: Confirmation Procedure*). Given that, for reasons of speed, the confirmation procedure cannot be carried out by another laboratory, could an expert from outside the relevant laboratory attend this procedure?

The Investigator is aware of the difficulty of implementing such a proposal, which perhaps makes it unrealistic. However, the automatic and systematic outcome of group contamination cases is unsatisfactory for the jurist.

Nor is it satisfactory for the Agency, despite noting that a national organization has deviated from the procedure, to make no comment on the matter, even when this deviation has had no substantive impact.

In this respect, WADA's apparent silence is hardly compatible with its role as worldwide guardian of compliance with procedures, which cannot be limited to issuing and distributing directives to NADOs and sports federations, without reacting in individual cases.

6.2.7.- The regulations give WADA the power to challenge national agencies. In this case, it was not used. The Investigator does not know if and when it is.

In connection with the above remarks, we must ask ourselves whether interpellation should not be a tool activated by the Agency in certain situations, for example when there is a very long delay between the tests and the entry of the results into ADAMS, or if this entry reveals something "abnormal" in the sense understood by CHINADA in the present case.

Identifying out-of-the-ordinary cases is certainly difficult. It requires the establishment of criteria and a monitoring system to detect them. In any case, this avenue should be explored.

6.2.8.- As for the decision to terminate the case by waiving the filing of an appeal, the Investigator noted that, in addition to the fact that it was hardly formalized, it had not been communicated to anyone. It is certainly possible that the parties concerned - CHINADA or FINA, for example, or even the IOC if it had prior knowledge of the case, which is possible - may have deduced from the absence of any information that no appeal had been lodged. This remains unsatisfactory. Above all, it can be taken for granted that the Chinese swimmers concerned, in view of the procedures deployed, including questioning and the sending out of questionnaires, knew, without knowing the details, that doping cases likely to concern them were being dealt with. The Investigator considers that the rights of these people would justify that they be informed expressly and in an official way, that they are not involved. Given what is at stake for an athlete, such information is essential. We don't know how this requirement is met in practice. In all cases where an AAF has occurred, the athlete should know this and also know when the procedure has been completed, even in his or her favor.

The preceding remarks do no more than express the Investigator's thoughts. They are not sufficiently mature to make recommendations. All the more so as working groups are already in charge of one or other of the points addressed.

7 - Conclusions

7.1.- Answers

At the end of his work, the Investigator answers the two questions posed as follows:

Question 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?

a. Nothing in the file - which is complete - suggests that WADA showed favoritism or complacency, or in any way benefited the 23 swimmers who tested positive for TMZ between 1 January and January 3, 2021, when it reviewed CHINADA's decision to close the proceedings concerning them without further action.

b. The Investigator has found no evidence of any interference or interference with WADA's review as described above, whether internal to the Agency, or external to it, from any entity or institution, including CHINADA or Chinese authorities.

c. The investigation did not reveal any irregularity on the part of WADA in its review of CHINADA's decision; this review was detailed and covered all the issues relevant to determining whether or not to appeal the said decision.

Question 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?

In conclusion on question 2, the Investigator considers that all the elements taken into consideration by WADA, whether from the file produced by CHINADA with its decision or from the investigation procedures carried out by it, make the decision not to lodge an appeal appear reasonable, both in terms of the facts and the applicable rules.

7.2.- Recommendations

As indicated above, the Investigator has decided not to make any recommendations, and refers to the remarks he has made.

Lausanne, 5 August 2024

The Investigator

Eric COTTIER

8 - Appendices

8.1.- Letter of agreement dated 6 May 2024

8.2.- WADA's 2021 organizational chart

8.3.- TMZ Wikipedia

8.4.- Prohibited List - extract

8.5.- 1 table on the tests undergone by the 23 swimmers concerned (anonymized by the Investigator)

8.6.- 1 extract from a questionnaire sent to a Chinese swimmer (anonymized by the Investigator)

8.7.- 1 extract from the interrogation of a Chinese swimmer (anonymized by the Investigator)

8.8 - Extract of statistics requested by the Investigator

8.9.- Emails and letters concerning the accredited Beijing laboratory

8.10.- WADA case closure emails (31.07 - 04.08.2021)

8.11.- Report on the Investigator's interview with Brent NOWICKI (FINA => World Aquatics)

8.12.- Report from the Ecole des Sciences Criminelles (ESC), 27 June 2024

8.13.- Report by Professor Xavier DECLEVES, 15 June 2024

8.14.- Report from the law firm CMS Von Erlach Partners SA dated 12 June 2024

8.15.- Interim report, 1 July 2024

8.16.- Appendix to the interim report, 1 July 2024