

REPORT TO WADA EXECUTIVE COMMITTEE

on

LACK OF EFFECTIVENESS OF TESTING PROGRAMS

prepared by

**WORKING GROUP ESTABLISHED
FOLLOWING FOUNDATION BOARD MEETING OF 18 MAY 2012**

Overview

The Working Group was established by the WADA Foundation Board on 18 May 2012 and was provided with Terms of Reference attached to this report as Appendix “B.” With the exception of item 8 (better ways of collecting and analyzing blood), the Working Group addressed each of the items in the Terms of Reference, as will be seen from the analysis attached as Appendix “A,” although in a manner which enables the analysis to be more easily linked to particular stakeholders and identifiable issues. The same is true with respect to the recommendations submitted to the WADA Executive Committee.

The Working Group consisted of:

Dr. Christiane Ayotte (laboratory director)

Andrew Parkinson (governments)

Adam Pengilly (athlete)

Andrew Ryan (international federations)

Richard W. Pound (IOC – Chair)

It was supported by David Howman, WADA Director General, who coordinated the contributions of the WADA staff and provided helpful background information and statistics. It met by telephone conference on three occasions and held one in-person meeting.

Based on the assessment of the Working Group, its appointment was timely, since there are clearly many systemic, organizational and human reasons why the drug testing programs have been generally unsuccessful in detecting dopers/cheats.

The Working Group is conscious that it can do little more than identify weaknesses and make general recommendations at this stage of the analysis. It will require concerted efforts on the part of WADA and its stakeholders to implement and coordinate more effective programs and to change the paradigms of the fight against doping in sport and, in the process, to ensure that stakeholder responsibilities are fully discharged. Full and independent monitoring is an essential element of an international anti-doping program, which all stakeholders must recognize and support.

The report consists of an Executive Summary, a series of recommendations and a supporting summary analysis of the weaknesses in the testing portion of the anti-doping program identified by the Working Group.

Executive Summary

WADA must continue to perform its responsibilities as the designated leader, coordinator and monitor of the fight against doping in sport and must be able and willing to carry out its activities and to point out cases of non-compliance. Should it be incorrect in any matter of non-compliance, there are appeal mechanisms available to any stakeholder so identified. While recognizing that testing is only part of a successful fight against doping, it is nevertheless an important element in that fight and should be as effective as possible. To date, testing has not proven to be particularly effective in detecting dopers/cheats.

The primary reason for the apparent lack of success of the testing programs does not lie with the science involved. While there may well be some drugs or combinations of drugs and methods of which the anti-doping community is unaware, the science now available is both robust and reliable. The real problems are the human and political factors. There is no general appetite to undertake the effort and expense of a successful effort to deliver doping-free sport. This applies (with varying degrees) at the level of athletes, international sport organizations, national Olympic committees, NADOs and governments. It is reflected in low standards of compliance measurement (often postponed), unwillingness to undertake critical analysis of the necessary requirements, unwillingness to follow-up on suspicions and information, unwillingness to share available information and unwillingness to commit the necessary informed intelligence, effective actions and other resources to the fight against doping in sport.

WADA should readjust its focus around its core responsibility of monitoring compliance with the World Anti-Doping Code (“Code”) and reporting on such compliance, which includes the exercise of its independent right of appeal to CAS in respect of sanctions that are non-compliant. The Code has now been in effect for more than 10 years and there is no reasonable excuse for stakeholders not to be fully aware of, and to have implemented, their responsibilities.

WADA should have the right to declare any stakeholder non-compliant at any time and to impose interim sanctions at the time of such determination. If non-compliance still exists at the end of the interim period, WADA shall make a formal declaration of non-compliance to all stakeholders concerned, which shall take the appropriate action in the circumstances. Notwithstanding particular actions by WADA, all stakeholders shall be subject to a regular periodic review of their Code compliance.

Compliance reviews should change from quantitative to qualitative in nature. The objective is to improve the efficacy of testing procedures and other anti-doping activities, not merely to rely on having performed a certain number of tests. Code compliance is uneven. A complete review of compliance standards should be undertaken.

The WADA Executive Committee should approve the compliance standards, the form and content of compliance reports, make it clear (perhaps in the Code itself) that these are mandatory and implement the requirements forthwith. There has been ample time for stakeholders to understand the applicable responsibilities and there can be no reasonable excuse for failing to discharge them. What is now required is development of the best mechanism for the assessment of Code compliance that is devoid of political shortcomings.

Attention is currently being diverted from the need to find a solution to doping in sport to fractious bickering about the degree of effort made by certain organizations and recriminatory complaints regarding the role of WADA. A new focus has also been put on the matter of match-fixing and corruption, combined with some expression that match-fixing is a far more serious problem than doping, without, apparently, the recognition that doping is very much a subset of the entire problem, but with immediate and visceral impact on a much broader range of the sport population than match-fixing.

The recommendations which follow are summary in nature and should be easily understood by a WADA Executive Committee familiar with the doping landscape and the activities of stakeholders. To the extent that any of them are not clear, or the reason for making a particular recommendation is not apparent, the Working Group remains available to answer any questions.

Recommendations

In Relation to WADA:

1. WADA's principal role is to monitor compliance with the World Anti-Doping Code ("Code") and to report on such compliance by all stakeholders.
2. WADA is an independent, international, regulatory body concerned with doping in sport; it is not a "service" organization.
3. While not withdrawing completely from educational and research activities, WADA shall fundamentally recast its budgets to reflect its primary focus on Code compliance and the efficacy of testing and other means of detecting doping practices.
4. WADA shall continue to exercise its independent right of appeal to CAS in respect of sanctions imposed for non-compliance with the Code.
5. Code compliance and compliance reviews shall be based on qualitative, as opposed to quantitative, factors.
6. WADA shall be entitled to make determinations of Code non-compliance at any time, to impose interim sanctions and, where non-compliance has not been remedied at the end of a specified interim period, shall report accordingly to the relevant stakeholder(s), which shall take the appropriate actions.

7. Regular compliance reports in respect of all stakeholders shall nevertheless be required.
8. Research funding provided by WADA should be limited to projects which have a direct connection to improvements in the fight against doping in sport.
9. WADA shall ensure that the criteria for Code compliance are articulated as part of the Code itself.
10. WADA shall make the identified weaknesses in the testing procedures (Appendix "B") and these recommendations available to the Code Drafting Team.
11. Use of ADAMS shall be mandatory and failure to use ADAMS shall constitute Code non-compliance.
12. ADAMS should be adapted as required to reflect the adoption of these Recommendations.
13. Use of the Athlete Biological Passport shall be mandatory.
14. NADOs shall be entitled to test any athlete found in their territories at any time and means should be devised to provide information regarding the presence of such athletes to NADOs. Results management in respect of tests of foreign athletes shall be the responsibility of the IF concerned.
15. Compliance assessment shall include the degree of implementation of recommendations contained in this report by the organizations in respect of which they are made.

In Relation to International Sport Organizations:

16. Because effective anti-doping actions require a certain level of knowledge and expertise, all organizations shall acquire (or contract out) such knowledge and expertise.
17. Focus on testing shall change from the number of tests performed to the effectiveness of such tests.
18. The IOC and other major sports organizers shall adopt different pre-Games testing models instead of merely conducting large numbers of tests during the defined period of Major Events.
19. Whistle-blowing should be encouraged and mechanisms established to make such activity possible and productive.
20. Organizations shall have a positive obligation to follow-up complaints of doping, and not doing so shall constitute Code non-compliance.
21. RTPs shall be reasonable in the circumstances.
22. Standards of Code compliance shall be higher than self-assessments based on the number of tests performed.
23. Organizations shall act in accordance with the Code and their own statutes when cases of non-compliance are identified.
24. Organizations shall ensure that all their members are Code compliant.

25. Organizations governing team sports shall ensure that their Code compliance is as high as those affecting individual sports.
26. Reports on anti-doping activities and tests shall be accurate and timely.
27. Organizations should renew and enhance efforts to obtain information from public authorities and NADOs, which will include the development of protocols to provide and receive confidential or protected information.
28. The Athlete Biological Passport should be mandatory.
29. Organizations should embrace the desirability of ensuring that anti-doping programs are complete and effective.

In Respect of National Anti-Doping Agencies (NADOs):

30. Governance policies and activities must permit and encourage the complete independence of a NADO to, *inter alia*, obtain samples and to report on positive tests in its country.
31. Funding partners shall refrain from any involvement or interference with the independence of the NADO.
32. Funding partners of NADOs should recognize the importance of being able to test foreign athletes in their territory and provide both the authority and appropriate funding to do so.
33. NADOs should focus on the desirability of obtaining and using intelligence as part of an effective testing program.
34. NADOs should design and implement testing plans which maximize the chances of catching athletes who may be doping.
35. All samples collected in a particular country shall be permitted to be removed from that country without interference or tampering.
36. Athletes outside of their own countries for extended out-of-competition periods should be subjected to greater target testing.
37. Developed NADOs have a responsibility to assist NADOs in the process of development.
38. The annual report required by the Code shall be part of the compliance reporting for NADOs.
39. NADOs shall have a positive obligation to follow-up complaints of doping, and not doing so shall constitute Code non-compliance.

In Respect of Governments:

40. Free and unhindered access to all countries shall be permitted for testing purposes.

41. Stakeholders shall have a positive duty to report to WADA on any refusals of access or hindering of testing activities in respect of any country.
42. There shall be freedom to remove any samples collected in a country from that country, without interference or tampering, and any failures in that respect shall be reported to WADA.
43. Governments should increase their focus on providing positive suggestions to improve the effectiveness of testing as part of the worldwide fight against doping in sport coordinated by WADA.
44. Governments should ensure that their NADOs are independent and adequately funded, including the ability to test foreign athletes in their territories.
45. Governments should renew and demonstrate their visible commitment to WADA and the fight against doping in sport through the selection of their representatives.
46. Governments should adopt and harmonize legislation against trafficking and distribution of doping substances, as called for in the Convention.
47. Governments should fulfill their obligations under the Convention with respect to supplements.
48. Governments should engage the regulated professions (e.g., medical) to change their codes of conduct regarding involvement in doping activities.
49. Governments should increase the amount of information that can be provided to anti-doping authorities and work with them to develop appropriate protocols for the purpose.
50. Values-based education should include the desirability of doping-free sport.
51. Governments should ensure that WADA is adequately funded.
52. Governments should support the principle of Code compliance and ensure that the consequences for Code non-compliance are enforced.
53. Governments should significantly increase the very weak compliance level regarding the monitoring of obligations contained in the Convention.

In Respect of Athletes:

54. Athletes must become more proactive in the fight against doping in sport.
55. Values-based education for athletes should be enhanced and broadened.
56. Athletes should be encouraged and incentivized to come forward with information on doping activities and should insist on the establishment of mechanisms for doing so.
57. Athletes sanctioned for doping activities should have no connection with their teams or sport during the sanction period.
58. Athletes should be offered in-person anti-doping education from the relevant ADO once they enter an RTP, and should have regular education drop-in sessions provided at international events.

In Respect of Entourages:

59. National federations and NOCs should be especially vigilant regarding the impact of entourages and the possibility that they may be involved in the procuring and use of prohibited substances.
60. Any person who has had involvement with doping should be excluded from any role in a sport organization during the period of any sanction.
61. Entourage members should be encouraged to provide information regarding doping.
62. National federations and NOCs should encourage their governments to engage professional and other organizations to apply their disciplinary rules to persons involved in doping.

In Respect of Testing:

63. Full menu testing shall be required unless WADA specifically agrees otherwise.
64. Required testing shall forthwith include EPO.
65. Retroactive TUEs should be permitted only for gluco-corticosteroids and asthma medications and may be reported as negative only with the written approval of WADA.
66. No advance notice of or contact with respect to any OOC test shall be permitted.
67. Front-loading of tests (ie. more testing before competition rather than after competition) connected with major events should become a more regular feature of effective testing programs.
68. No communication shall occur between any laboratory and the ADO before the sample analysis has been completely concluded and documented.
69. Application of random testing should be limited to in-competition testing.
70. CIR (IRMS) testing for artificial testosterone should be increased forthwith for samples provided by male athletes.
71. RTP whereabouts requirements shall be enforced in all countries and sports.
72. "Watering down" of the RTP provisions should not be permitted, especially for team sports.
73. The entire RTP concept and related whereabouts obligations should be reassessed in the context of improving the fight against doping in sport. (It is not credible that in some team sports there are fewer than 10 athletes in their entire international RTP.)
74. For in-competition testing, pre-emptive target testing should be allowed in team sports, in addition to random tests.
75. ADOs should accelerate the use of intelligence-based testing.
76. Because of micro dosages, rules should be established to permit testing during the periods when detection is possible.

77. NADOs should be reminded that testing of persons not in the RTPs is important for purposes of maximizing the fight against doping in sport.

In Respect of Accredited Laboratories:

78. There must be a global strategy as to where accredited laboratories should be located.

79. Laboratories must improve their abilities to analyze at higher levels.

80. Proficiency testing with double blind samples should be improved and such proficiency testing should include substances difficult to detect.

81. It should not be necessary to establish a new accredited laboratory in the host cities of major multi-sport events.

82. The price lists of each accredited laboratory for all services and analyses should be made available to all stakeholders in a standardized format.

83. Laboratory directors shall be ultimately responsible for the actions of their laboratory personnel.

84. Reference laboratories should be established and suspicious samples shall be sent by other laboratories to a reference laboratory.

85. Accredited laboratories should be held to their obligations to conduct ongoing research.

In Respect of Major Event Organizers:

86. Major event organizers shall be subject to compliance reviews.

87. Compliance shall include the Independent Observer program.

In Respect of Dispute Resolution:

88. WADA shall continue discussions with ICAS to ensure that the CAS process in relation to anti-doping appeals is improved (including the engagement of experts to advise panels on scientific issues).

89. WADA shall work with ICAS to establish protocols for the protection of witnesses in appropriate circumstances.

90. Awards of costs in well-financed cases should be more commensurate with the costs of the litigation.

Respectfully submitted,

MONTREAL, 16 April 2013

APPENDIX "A"

(The Lack of) Effectiveness of the Testing Portion of Anti-Doping Programs

This Appendix reflects the observations and conclusions of the Working Group which form the basis of the Recommendations in the Report to the WADA Executive Committee.

Prior to the creation of WADA in 1999, there was no concerted international effort directed at doping in sport. Few would disagree that there has been considerable progress in the fight against doping in sport, including scientific knowledge, awareness of the existence of a significant doping problem and an increased number of tests, both in and out of competition. Tests now exist for all EPOs, human growth hormone, homologous blood transfusion, testosterone, designer steroids and stimulants, SARMS and other new hormones and metabolite modulators. Pre-WADA, approximately 150,000 tests were administered annually, compared with the current total of approximately 250,000. On the other hand, despite the significant increase in testing and the ability to detect more sophisticated substances, there has been no apparent statistical improvement in the number of positive results. Indeed, if the statistics regarding marijuana (approximately 500 AAFs per year), asthma medications (200) and glucocorticosteroids (234) for which therapeutic use exemptions had probably been granted, are removed, less than 1% of the tests produce adverse analytical findings. There has not been any statistical improvement since about 1985. Many preliminary conclusions can be drawn from this, including that doped athletes are not tested at the right time, that they use undetectable substances or methods, that doped athletes avoid testing, plus a whole range of possibilities of organizational and/or human intervention or failure.

The Working Group was established by the WADA Foundation Board on 18 May 2012 and later provided with Terms of Reference by the WADA Executive Committee (Appendix "B") and a mandate to report to the WADA Executive Committee. Interim reports have been provided to the WADA Executive Committee by the Director General.

The Working Group has considered why the testing portion of Anti-Doping Programs does not seem to be working as effectively as it thinks it should, given the anecdotal and other evidence of doping at much higher levels than the number of positive cases would suggest. It has identified a number of issues that may help explain why testing is not as effective as it should be. The principal focus of the Working Group was on the detection of doping, as opposed, for example, to deterrents.

1. WADA

No review of the current (and future) situation would be complete without an assessment of WADA itself and whether it is doing the work that is expected of the organization. It may be that a significant realignment of its priorities and activities is required.

Weaknesses Observed

- Instead of WADA being recognized as the leader in the fight against doping in sport and supported by the stakeholders, it is viewed as an irritant, surrounded by stakeholders, some of which are self-interested or conflicted organizations
- Constantly increasing demands for activities, without concomitant budgetary support
- The result of the constantly increasing demands is that WADA does a number of core and non-core jobs rather poorly [if key document is the Code, then major focus should be on compliance with the Code]
- There are still issues as to whether WADA is a regulator or service provider
- Stakeholders are unwilling to impose sanctions when non-compliance is found
- WADA is unable to do more than report on non-compliance when aware
- Compliance issues are very low and unevenly applied
- Lack of interest on the part of many stakeholders in actually catching doping athletes
- In addition to quality assessments at the level of ADOs, NADOs and IFs, quality assessments for these organizations have not been implemented
- Lack of inclination on the part of WADA to name and shame
- Insufficient monitoring and receipt of required information
- No measurement of WADA's efficiency and effectiveness (goal assessment)
- There is no critical measurement of research funding [assessments of results and efficiency] WADA has funded considerable non-useful research, re-inventing the wheel, outside agencies, and other research not directed at increasing the efficacy of testing
- Increasing levels of complexity of Code and Standards (is downsizing documentation an option?)
- Organizations which genuinely want to be monitored can be, while those that do not can easily avoid it

2. International Sport Organizations

Sport organizations are responsible for adopting and enforcing the rules applicable to their sports and competitions. We need not address the technical rules applicable to each sport or competition. Our concern is the subset of rules relating to doping. Much of the former confusion arising from a broad variety of anti-doping rules has disappeared as a result of adoption of the Code. A considerable degree of latitude has been granted to sport organizations

in the drafting of their anti-doping rules, with only certain identified provisions of the Code considered as mandatory. Some initial resistance to adoption of the Code was encountered, for example, from FIFA, which considered its own anti-doping rules and procedures to be paramount, but the differences were eventually resolved following a reference to CAS regarding compliance.

Sport organizations involved include the IFs, the national federations (NFs) affiliated with the IFs, the NOCs, and multi-sport organizations, such as the IOC, regional associations of NOCs and continental organizations, whether of IFs or NOCs.

Anti-doping responsibilities rest initially with the IFs (which may delegate some of the responsibilities to their affiliated NFs), with the NOCs (when Olympic teams are involved), and with other organizations, depending on the rules governing particular competitions. Thus, for example, the IOC is the responsible authority during the Olympic Games and a specified period prior to the commencement of the Games. IFs have a similar responsibility in respect of world championships.

Weaknesses Observed

- No incentive to catch dopers in the sport – anti-doping is not regarded as their core business (except perhaps for IFs facing a crisis)
- Reluctance to assume the costs of effective anti-doping efforts
- Focus is limited to technical Code compliance only, not to the effectiveness of anti-doping efforts
- Resistance to testing by independent organizations, with various rationalizations for such resistance
- Difficulty of access to athletes in certain countries
- Uneven commitment to rigorous compliance with anti-doping rules
- Lack of independence in many countries
- Reports of doping tests by many ADOs are untimely, incomplete and inconsistent
- There is no positive obligation to report instances/suspicions of doping, nor a readily available mechanism for doing so
- Unwillingness to investigate and use sanctions where systematic doping violations occur in a sport or in a country
- Resistance to higher standards of Code compliance
- Harsh treatment of whistle-blowers
- Very little adoption of the Athlete Biological Profile (ABP) system, despite its usefulness to reduce overall testing and to increase target testing; while blood profiles have been around for years, there are fewer experts in steroid profiles
- Lack of systematic follow-up regarding serious accusations (whether from athletes, officials or third parties) of doping and cover-ups of doping; some from lack of inclination, some from lack of appropriate governance process

- DCOs have been harassed, threatened, confined and subjected to attempts to be bribed in many countries
- Inherent conflicts of interest within the organizations that mitigate against vigorous anti-doping activities
- Insufficient concertation with public authorities and sharing of information
- The long-existing lack of connection/trust between IFs and NADOs has not improved with creation of WADA
- Low focus on education and prevention
- Major differences between team sports and individual sports, with the result that there are different standards, one much lower than the other
- Limited experience within (whether from athletes, officials or third parties) many IFs
- Lack of central organization to which revelations can be made
- Limited (legal) powers of investigation into doping offences (often delegated with very limited success to the national member)
- Unwillingness to retest stored samples

3. National Anti-Doping Organizations

Each responsible sport organization is also an anti-doping organization (ADO). Thus each IF is also an ADO. NOCs are the default ADOs in their territories, although many defer to national anti-doping agencies (NADOs) where they exist, or regional anti-doping organizations (RADOs) in areas too small or too undeveloped to support a NADO or where the NOC is not capable of undertaking such a role.

WADA is the only fully international ADO, with responsibility for leading the fight against doping in sport and monitoring compliance with the Code. WADA has an oversight role regarding all ADOs and has a separate right of appeal in respect of results management outcomes which it may consider to be non-Code compliant. WADA adopts the annual (or more frequent when necessary) List of Prohibited Substances and Methods (List), manages the accreditation process for and monitoring of accredited laboratories, manages the Anti-Doping Administration and Management System (ADAMS), funds scientific and other research, conducts tests and coordinates educational and outreach programs. Its governance is 50% sports movement and 50% governments, as is its funding.

Weaknesses Observed

- Lack of independence within many NADOs (including due to funding by governments, and government pressures to keep positive results secret, so as not to have positive national tests)

- Unwillingness of stakeholders to provide sufficient funding of NADOs, despite increased demands for activities on the part of the NADOs
- Lack of interest in effectiveness of anti-doping programs – sole concern is showing minimal Code compliance
- Lack of information on how doped athletes are able to survive the testing system without detection (e.g., outside pre-knowledge, micro dosages, failure to observe provision of urine samples)
- Lack of commitment by many NADOs to serious anti-doping efforts
- No incentive to catch dopers in their countries
- Disputing the necessity to fight against doping in sport
- Lack of dedicated and competent in-house management resources
- No standards established to ensure minimum competence of NADOs (as there are for laboratory accreditation), especially with respect to quality standards for testing, monitoring Code compliance and testing efficacy
- Interference by governments in NADO activities
- Lack of focused analysis by the sports officials with the most intimate knowledge of their sports of the reasons for low proportion of positive tests (especially by sports with known doping problems)
- Denial of existence of doping by certain sports and sports leaders
- Reluctance of certain IFs to allow testing of their athletes by independent agencies and/or NADOs
- Resistance to increased use of non-analytical positives as tool for anti-doping activities
- Confusion as to roles of NADOs and NOCs

4. Governments

The involvement of governments in the fight against doping in sport was a major step forward when WADA was created in 1999 on the basis of 50-50 governance. This was reinforced with the adoption and subsequent ratification of the Convention. The initial few years of WADA's existence were quite exciting, as the Code was developed and the negotiations leading to the adoption of the Convention proceeded. Governments demonstrated their commitment by sending Ministers to WADA meetings, who took an active interest in its activities and set the tone for the ambitious new organization. Governments worked hard and effectively to determine the continental levels of representation on the WADA Foundation Board and the sourcing of the governmental portion of financial contributions to WADA, also on a continental basis.

As WADA has moved from its formative stages to the ongoing operational fight against doping in sport, ministerial enthusiasm has waned and fewer Ministers are attending the WADA meetings. Whatever political appeal anti-doping may have had seems to have worn off

and more and more states now send civil servants as their representatives. Many of the latter seem to measure their organizational success by how they are able to limit increases in budget contributions or to reducing such contributions, rather than to the effective accomplishment of the WADA mission. The Olympic Movement, for its part, shows no desire to argue for increased funding.

Weaknesses Observed

- Lack of political commitment to fight against doping
- Universal calls for increased activities by WADA, coupled with demonstrated unwillingness to provide adequate resources
- Limited access to certain countries for purposes of out-of-competition (OOC) testing
- Lack of any positive suggestions for improvements in the fight against doping in sport
- Active interference in the effectiveness of anti-doping activities (e.g., data protection issues continually raised by a small group of civil servants, designed to prevent effective worldwide activities)
- No meaningful monitoring process for compliance with International Convention (total self-reporting)
- Intimations that in certain countries there is state-sponsored or state-protected doping
- Unwillingness to share doping-related information (more blessed to receive than to give)
- Unwillingness to put into effect laws relating to trafficking, distribution, etc., which is a Convention undertaking (see also contaminated meat and access to clenbuterol)
- Lack of independence of certain NADOs
- Lack of international cooperation and harmonization of legislation
- Increased availability of doping substances (e.g., Internet)
- Some governments have impeded the investigation and follow-up on doping activities, as well as the sharing of information (e.g., Operation Puerto)
- Unwillingness of governments to engage professional codes of conduct
- Resistance in some countries to access to CAS
- Lack of structured education programs (including educating children on the proper use of medications, values)

5. Testing

Once anti-doping rules were introduced in sport, doping activities immediately became clandestine. Other than direct evidence or confessions of doping, the only way of establishing the existence of doping was by testing. Tests had to be designed for the many existing and new prohibited substances and methods. An acceptable level of scientific satisfaction with each test was required and many protections were built into the testing system, on the philosophical

basis that the worst sin imaginable was a false positive. The standard method was urinalysis, but eventually blood testing was added. The ABP is an emerging new tool for the purpose.

In the 1970s and 1980s, testing was relatively simple and limited mostly to race-day stimulants or other drugs. Over time, testing was developed for substances such as anabolic steroids, although it took time to identify some of what were referred to as “designer” drugs. It was more difficult for substances produced naturally, even where artificial versions were used, such as EPO, testosterone, human growth hormone, blood transfusions and others.

OOB testing depends on knowing where an athlete selected for testing will be located. The current system of whereabouts information coordinated through ADAMS is a useful tool for such purpose.

Weaknesses Observed

- Many ADOs, including the IOC, take public, but false, comfort from the performance of large numbers of tests at times and in circumstances that diminish their efficacy; these tests are predictable
- Lack of testing of foreign international athletes in other countries
- Testing of international athletes is left to the international federations
- The registered testing pool is limited and athletes may be tested OOB only once per year
- Generally, testing is predictable, not enough aggressive testing programs (e.g., back-to-back testing, different off-hours for tests, conservative testing profiles - hard work to set up a targeted test, know what are you looking for, when likely to be taken, etc.)
- ADAMS is not universally used
- Need a culture shift re testing objectives
- No further examination occurs in many cases where thresholds are involved or extra fees are required to proceed with confirmation (e.g., where the T-E ratio is under 4:1, CIR analysis to detect synthetic testosterone is not required to be used) – some laboratory directors have seen profiles with abnormal T-E ratios of 10-12 and no IRMS performed
- Missed tests can be used as a technique to avoid testing without consequences, rather than refusals, which are treated as positive tests
- Some prohibited substances may be detected in the urine or blood for only a short period; efficient testing cannot be done on the random basis often adopted
- Vocal players unions are systematically and aggressively challenging the legitimacy of key elements of effective anti-doping programmes on alleged human rights, privacy, and other political grounds
- Access to athletes can be impeded
- There are, presumably, drugs and methods being used for which no current tests are available

- Retroactive TUEs are frequently issued
- Too few samples are subjected to EPO, insulin GH, IRMS testing
- European data protection preoccupation may prevent transfer of necessary information
- Replication of IOC testing programs
- Threshold levels of certain drugs are “managed” (e.g., blood parameters, testosterone)
- Masking of certain drugs is still possible
- False identities used at time of testing
- Controlled autologous blood transfusions are almost undetectable
- Micro dosages of EPO, GH, testosterone are hard to detect; very short window of detection
- Manipulation of test samples can occur
- TUEs are not notified to WADA in many cases
- Testing positives (analytical positives) and non-analytical positives based on other evidence are far more expensive than targeted testing positives based on intelligence

6. Accredited Laboratories

One of the hallmarks of the WADA system (inherited to some degree from the previous IOC system) has been the use of WADA-certified laboratory accreditation to acknowledge minimum standards of analysis. This process applies to initial accreditation as well as regular monitoring of performance, including analysis of blind and double-blind proficiency samples containing substances on the List. Suspensions of accreditation and even revocation of accreditation can occur in the event of serious failures in analysis and management. False positives lead to virtually automatic suspension. There is a relatively high degree of satisfaction with the accreditation regime for laboratories and analyses performed by an accredited laboratory benefit from a (rebuttable) presumption that the analysis of a particular sample has been properly done.

We are reasonably confident of the scientific reliability of the tests used. That is to say, that if the tests are properly administered and the samples are properly analyzed, we can have confidence in the science, notwithstanding occasional complaints about its reliability. On the other hand, if ADOs are aggressively pursuing individuals, the science must be equally aggressive.

That is quite different, however, from being able to assert that we have similar confidence that all the accredited laboratories are equally able to meet the performance criteria required to ensure that all of the available science is properly applied, especially at the analytical level. It seems increasingly clear that not all accredited laboratories have the necessary equipment and skill sets to derive the full benefit of the science available to them.

Nor can we discount the possibility that employees of a laboratory may be compromised, or that they work at all times with sufficient independence and without political interference.

Weaknesses Observed

- Not all accredited laboratories are capable of operating at the same level of competence
- Some laboratories suffer pressures from governmental or sport authorities
- Laboratories have been willing to disclose and discuss suspicious samples with the IF concerned and even the athlete involved
- No global strategy as to where new accredited labs should be located
- No thought given to reference laboratories, secondary level accreditation
- Not all laboratories are competent to analyse for all substances on the List
- Some laboratories limit their analysis on the substances requiring basic techniques and do not apply confirmatory methods like the IRMS method or methods like EPO or insulin if not required by the testing organization – no incentive to do otherwise comes from their related testing authorities
- It is much simpler for laboratories to err on the side of negative reporting than to report positive samples and then risk having to defend their analysis or to be exposed to public scrutiny, sanctions
- Varying athlete confidence in the competence of certain labs (e.g., worry about false positives)
- Standards of reporting positive samples may be set too high (to avoid any possibility of controversy); in cases of high profile athletes, laboratories may become risk-adverse and/or be pressured by ADOs
- Certain reporting standards may be too conservative, resulting in too many (unknown) false negatives
- Risk-adverse counsel may insist on 100% certainty before taking a case
- Many labs are poorly managed (and may never be open on weekends – or for several weeks)
- Laboratories have been unwilling to disclose to WADA the contracts they may have with ADOs and the menu used for analysis
- Constant use by an ADO of a particular laboratory may lead to a level of financial dependence and erosion of independence
- Not all laboratories practice at recognized ISO levels or even follow the ISL
- Not all national bodies providing ISO accreditation are equally capable
- Cost structures may differ significantly, but the estimation of costs is often intuitive, as opposed to calculated – fees charged to testing organizations may be excessive for the value provided
- Not all laboratory personnel are professionally qualified

- Compliance with all technical documents, including providing complete documentation packages is not always achieved
- Some laboratory directors have not appeared in person at hearings to defend their analyses (particularly in complicated cases)
- Human error cannot be discounted (although mechanisms in place should catch human errors)
- Human conduct may compromise confidentiality
- Preparation of counsel in complicated cases may be insufficient

7. **Anti-doping Rules**

With the advent of WADA in 1999, considerable progress was achieved in the development of comprehensive and largely comprehensible anti-doping rules. The World Anti-Doping Code (Code), was adopted in 2003, came into force in 2004, and provided a single set of anti-doping rules for all athletes, all sports and all countries. The Olympic Movement took steps to ensure that the Code was incorporated into the rules of all sports governed by international federations (IFs), all national Olympic committees (NOCs) and the International Olympic Committee (IOC) prior to the commencement of the 2004 Olympic Games. Governments subsequently adopted the International Convention on Doping in Sport (Convention) in November 2005, which came into formal effect upon ratification by 30 member states. The Convention has since been ratified by more than 170 member states. Pursuant to the Convention, member states undertake to use the Code as an essential element in their own anti-doping activities.

Code compliance is a requirement for participation in the Olympic Games and for addition to or continued presence of any sport on the Olympic Programme.

The Code was revised in 2007 and will be revised again in 2013. Draft versions of the to-be-revised Code are in current circulation.

On the other hand, the apparent inability to catch serial dopers (e.g., Armstrong) casts doubt on the efficacy of the rules, as well as the prospect of human and organizational failures.

Weaknesses Observed

- Code compliance standards are very weak or vague (in the International Standard for Testing, only 3 pages (23-26) deal with the Test Distribution Plan and 2 pages with the selection of athletes – there are no criteria to define what would be efficient planning)
- Code compliance is based initially on self-assessment
- The criteria adopted internally for Code compliance are minimal

- The major measurement tools for Code compliance are the mere existence of anti-doping rules and a certain number of tests performed
- Effectiveness of anti-doping actions is not a relevant factor in measurement of Code compliance; resources are not provided to have effective monitoring activities
- Stakeholders have shown major resistance to increased Code compliance standards and even to Code compliance reports by WADA
- Timing of compliance reports and contents thereof under new Code are left to decision of WADA Executive Committee
- No research-based evidence that OOC testing as conducted is effective (both IC and OOC tests are generally perceived as being predictable)
- “Flexibility” in Code allows for political interference (by stakeholders) that may restrict effectiveness of provisions that would otherwise be mandatory
- Jurisdiction regarding specific responsibilities is such that testing becomes ineffective (e.g., prior to Olympic Games), when large numbers of OOC tests are performed in short period
- Failure to insist on use of ADAMS and to sanction those who do not (limited number of countries – most around the Executive Committee table – refuse to use ADAMS)
- Diminishing athlete confidence in whereabouts requirements, due to uneven standards of compliance
- The privately-owned professional leagues have refused to adopt the Code (although, to be fair, they have increased the number and range of tests in recent years)
- Changes/improvements to rules are postponed for considerable periods, even when changes do not result in increased responsibilities or exposure (e.g., changes in 2007 were delayed until 2009 and 2013 changes will only become effective in 2015), detracting from any sense of urgency to improvement of the anti-doping framework
- There is considerable division of opinion regarding testing for and sanctioning for the use of cannabinoids at the current level (but note the increasing use of synthetic cannabinoids)
- Risk-adverse counsel insist on 100% certainty from laboratories, not the “comfortable satisfaction” level established by CAS

8. Athletes

Athletes are at the centre of the doping hub. It is the athlete who is directly affected by doping, whether as perpetrator or one cheated by a doped athlete. Doping, with the exception of mislabelled innocuous supplements, is very seldom an accident. It is normally a deliberate plan to obtain an unfair advantage over competitors who abide by the applicable rules – or, at best, an attempt to keep up with those believed to be doping. It is cheating. It may also be dangerous cheating.

Weaknesses Observed

- Values-based education (from many perspectives) is too weak – affects athletes, hence identification of a weakness, even though the responsibility rests with governments and NADOs
- Athletes are less inclined than one might expect to identify doping when they encounter it
- Relatively few athletes take a publicly strong position against doping
- Most athletes are single-minded in their pursuit of performance and have no useful knowledge of doping, nor to whom they can speak [if they are naïve, they know nothing; if they are doping, they will not talk]
- Lack of information on how doped athletes are/were able to survive the testing system without detection (e.g., outside pre-knowledge, micro dosages, failure to observe provision of urine samples)
- Athletes seldom offer suggestions, based on their experience, of how to improve testing and other methods of identifying dopers and enablers
- Athletes are concerned that whistle-blowers are treated more harshly than the dopers and that they will be punished and isolated if they come forward
- Similarly, clean athletes are concerned that whistle-blowers who have doped can get treated too softly
- Rationalization of reasons for doping indicates that the “values” aspect among athletes is not as strong as one might hope
- There is no positive obligation to report instances/suspicious of doping, nor a generally available hot line for the purpose
- IFs generally discourage whistle-blowing on the part of athletes
- Doping athletes from nations that ignore, condone or support doping programs know they will likely be tested if they leave their (certain) countries, so they do not travel, while doping athletes from nations that have well-developed anti-doping programs travel to testing “havens” overseas to avoid being tested at home
- Athletes who dope (and/or their entourages) know how to manipulate ABPs
- Young athletes may not know what they have been given
- Athletes who dope (and/or their entourages) know how to manipulate plasma and fluid volumes by intravenous or oral intake
- Athletes who dope (and/or their entourages) keep up with the research WADA funds
- High value of athletic success attracts government attention, brings notoriety and pressures to succeed

- Athletes often poorly educated on drugs, medications and supplements, particularly younger athletes when they are first entering international sport

9. Entourages

Experience suggests that the doped athlete is often not the only one involved in the doping activities. The athlete's entourage may include: the supplier of prohibited substances, the person(s) who assist in the doping itself, those who counsel the use of drugs, those who have access to scientific and other information useful to athletes who are doping, coaches, lawyers and others. Younger athletes may have almost complete reliance on their entourages, while older ones know that their success in doping may well depend on the expertise that can be found to surround them. Either way, the entourages form a vital link in the entire process.

Weaknesses Observed

- Lack of jurisdiction
- Ineffectiveness of any sanctions pronounced by sports authorities
- Difficulty in defining "entourage"
- Unwillingness to come forward with information
- Effective inability to control who may form part of an athlete or team entourage
- Lack of civil or other sanctions against entourages
- Growing criminal underworld involvement
- Unwillingness of governments to engage professional codes of conduct
- Monitoring of availability of drugs is not systematic
- Lack of media attention to actions of entourages

10. Major Event Organizers

This refers to the organizers of events other than such contests as the Olympic Games or world championships. There has been concern for many years about the willingness of such events to engage in proper drug testing.

Weaknesses Observed

- Advising athletes whether or not there will be drug testing at the event
- Advising athletes regarding the testing menu
- Agreeing not to test at the event in order to attract certain athletes

11. Dispute Resolution

A huge forward step in the international fight against doping occurred with acceptance of the Code provision granting exclusive final jurisdiction in doping matters to CAS, subject only to the supervisory jurisdiction of CAS by the Swiss Federal Tribunal (SFT). This avoids the inevitable confusion and complication of decisions of state courts, which have the power to issue enforceable Orders, but applicable only in their own jurisdictions. Arbitration awards are enforceable in approximately 140 countries, pursuant to the New York Convention. The SFT has recognized CAS as an independent arbitral body whose decisions (subject to jurisdictional challenges and failure to apply rules of natural justice, etc.) are entitled to deference. The SFT has been consistent in recognizing the jurisdiction of CAS in doping matters. Other appeals to domestic state courts in attempts to challenge the jurisdiction of CAS have been almost uniformly rejected, as have the occasional appeal to the European Court of Justice.

Weaknesses Observed

- Responsibility for first instance decisions is often delegated to national member federations or NADOs, with limited success
- Better first instance decisions would save additional costs of appeals to CAS
- CAS panels have not always demonstrated the degree of technical expertise and understanding of the anti-doping programs that might have been expected, resulting in some anomalous decisions that did not make sense from a sport perspective
- Inadequate protection of certain witnesses in anti-doping proceedings
- Some CAS panels could benefit from the appointment of an expert to assist them in complicated doping appeals, since it is evident that, on occasion, the CAS panels have not understood the evidence presented to them
- Anti-doping appeals, in particular, have become relatively expensive
- Parties appearing regularly before CAS have tended to name the same party-appointed arbitrator, which raises eventual questions regarding their independence (although CAS has counselled arbitrators to be wary of such conduct)
- Long hearings are becoming more prevalent and Panels are not controlling the process adequately
- CAS has been unwilling to issue awards of costs that reflect a reasonable contribution toward the expenses of the winning party, especially in well-financed appeals
- No WADA oversight of non-analytical positives prior to prosecution at the national (or international) level
- Many athletes not aware of possible assistance for costs from CAS
- There has been a reluctance to accept the proportionality reflected in the Code regarding sanctions

- Sport organizations have not always developed rules that can easily be interpreted by independent arbitrators and CAS panels tend to interpret such rules to give the benefit of any doubt to athletes



WORKING GROUP ON THE (IN)EFFECTIVENESS OF TESTING

Terms of Reference

Preamble

Over recent years it has become apparent that traditional anti-doping testing programs are not catching many cheats. The latest available laboratory statistics (for 2010) indicate a mere 2,790 adverse analytical results were returned from more than 258,267 tests analyzed; a meager 1.08%. In addition, a significant portion of those results were for cannabis only. The likely figures for 2011 show little change. Such statistics might appear to suggest that doping is not a major scourge for international sport, yet the intelligence otherwise gathered points strongly in the direction that it is still a huge threat, and that many are avoiding detection.

Testing programs are considered by many as extremely costly and the question of value for money is now raised repeatedly. This Working Group (WG) was established after the matter of costs and effectiveness was raised and discussed by the WADA Foundation Board on 18 May 2012.

Purpose

The WG has been established to investigate and report on factors why the anti-doping testing program is not detecting many cheats and why, for example, large amounts of money are being spent on scientific research and testing programs with very little return on investment insofar as positive test results are concerned. The WG will consider what steps might be taken to change these outcomes, and how they could be introduced.

Terms of Reference

The Terms of Reference are as follows. The WG will:

1. Consider the reasons why testing is not more successful.
2. Examine whether model testing programs are working and if not, is it possible that they can be made to work?
3. Consider the issue of cost, and look at ideas of keeping costs down.

4. Suggest some possibilities of how ADOs can better utilize their resources to achieve more efficient and effective programs.
5. Examine the degree of human participation in the anti-doping process, and the fragility created by this to determine whether it can be strengthened or altered.
6. Examine the potential and real occurrence of external influence and interference on testing programs.
7. Examine why ADOs are electing to select abridged analytical menus (e.g. little EPO analyses).
8. Look at better ways of collecting blood and analyzing blood, both for the Athlete Biological Passport and other blood testing controls.
9. Consider why the amounts of money spent on research in developing better analytical techniques do not seem to have an effect on catching more cheats.
10. Consider possible changes to the World Anti-Doping Code and International Standards.

Membership/Composition

The President of the WADA Foundation Board, following consultation with the WADA Director General, will appoint persons to the WG.

Members will be selected on the basis of expertise and relevant background.

The WG shall be comprised of no more than five (5) members, plus one person of WADA Management who will act as the Secretariat.

Members are appointed for the duration of the mandate of the WG but in any case, for a maximum of one year.

Funding and Administrative Support

The WADA Executive Office shall provide the necessary administration and operational resources for WG meetings.

Resources and Reporting

The WADA Executive Office will provide the relevant background materials to assist the WG in its work. Members of the WG may also seek additional information, including consulting or co-opting other persons with expertise to assist.

The WG will report to the WADA President who in turn will report to the WADA Executive Committee.

If the WG need or want to expand their brief as a result of the information they receive, or due to their findings, they must first consult with the WADA President.

A preliminary written report will be delivered by the WG by the end of October 2012, in time for presentation to the WADA Executive Committee on 17 November 2012. In turn, the President may elect to update the Foundation Board on the relevant findings of the WG.

It is understood that WADA will be able to use the conclusions of the report to take any appropriate actions.

Meetings/Timelines

The following (tentative) meetings and timelines of the WG will apply:

- Teleconference meeting 1 – July
- Teleconference meeting 2 – August
- In person meeting – August/September (if deemed necessary)
- Preparation of Report – September/October
- Report presented to WADA President – End of October
- Report presented to WADA Executive Committee – 17 November 2012

Minutes of the WG meetings, reports and correspondence relative to the WG shall be recorded and retained at the WADA Headquarters.