Tribunal Arbitral du Sport
Court of Arbitration for Sport

**CAS 2013/A/3316 World Anti-Doping Agency (WADA) v. Chimdesteren Bataa & International Powerlifting Federation (IPF)**

# ARBITRAL AWARD

delivered by the

## COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr. Martin **Schimke**, Attorney-at-Law in Düsseldorf, Germany

Arbitrators: Mr. Conny **Jörneklint**, Chief Judge in Kalmar, Sweden

Mr. Ken **Lalo**, Attorney-at-Law in Tel Aviv, Israel

in the arbitration between

**World Anti-Doping Agency (WADA)**, Montreal, Canada
Represented by Mr. Oliver Niggli and Mr. Ross Wenzel, Attorneys-at-Law, Lausanne, Switzerland

- Appellant -

and

**Mr. Chimdesteren Bataa**, Ulaanbaatar, Mongolia

- First Respondent -

**International Powerlifting Federation**, Langenfeld, Austria
Represented by F.A.O. Emanuel Scheiber, General Secretary

- Second Respondent-

* * * * *

## I. THE PARTIES

1. The World Anti-Doping Agency (hereinafter referred to as "**WADA**" or "**Appellant**") is a Swiss private law foundation with its seat in Lausanne, Switzerland and its headquarters in Montreal, Canada.

2. Mr. Chimdesteren Bataa (hereinafter referred to as the "**Athlete**" or "**First Respondent**") is a powerlifter affiliated with the Powerlifting Federation of Mongolia, the governing body for powerlifting in Mongolia.

3. The International Powerlifting Federation (hereinafter referred to as "**IPF**" or "**Second Respondent**") is the world governing body for sport powerlifting. The IPF is composed of more than 175 affiliated national federations worldwide. It has its seat in Langenfeld, Austria.

## II. FACTUAL BACKGROUND

4. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties in their written pleadings or in the evidence offered during the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

5. The facts in this case are straightforward and are not substantially in dispute.

6. The Athlete tested positive for *methylhexaneamine* (hereinafter referred to as "**MHA**" or the "**Prohibited Substance**") according to a sample taken pursuant to an in-competition test on 3 May 2013 on the occasion of the World Asian Men's Championships in Ahwaz, Iran (hereinafter referred to as the "**Competition**"). It was detected at a concentration of 25 ug/mL, as estimated by the WADA accredited laboratory in Cologne, Germany. MHA is a prohibited substance classified under "S6 (b)" (*Specified Stimulants*) on the 2013 WADA Prohibited List. The substance is prohibited in-competition only.

7. The Prohibited Substance in the sample can be traced back to the supplement *Jack3d* (hereinafter also referred to as the "**Supplement**") that the First Respondent took prior to testing positive. He declared his use of *Jack3d* on his Doping Control Form.

8. The Athlete did not request an analysis of the B sample and was provisionally suspended from 12 June 2013 onwards.

9. On 29 July 2013, the IPF Doping Hearing Panel (hereinafter referred to as "**IPF DHP**") imposed a period of ineligibility of two months on the Athlete as a sanction for the positive finding of the Prohibited Substance in the sample taken at the Competition.

10. The IPF DHP made the following determinations in its decision (hereinafter referred to as the "**Decision**"):

*"THE IPF DOPING HEARING PANEL DELIBERATIONS*

*1. Has the IPF established that the athlete has committed an anti-doping rule violation?*

*Doping is defined in Article 1 of the IPF Anti-Doping Rules as the occurrence of one or more*

*of the anti-doping rule violations set forth in article 2.1 to 2.8 of the IPF Anti-Doping Rules. According to article 2.1 of these Rules, the presence of a prohibited substance, in this instance MHEA in an athlete's sample constitutes an anti-doping rule violation.*

*There has been no deviation from any International Standard that could cast doubt on the chain of custody and/or the sample analysis. Results management procedures were conducted in strict accordance with all applicable Rules.*

*According to article 2.1.2 of the IPF Anti-Doping Rules, the confirmation provided by Mr. Bataa's waiver of his B sample analysis leads to the assertion that an anti-doping rule violation has occurred.*

*Upon consideration of the documentary evidence and facts before it, the IPF Panel is comfortably satisfied that Mr. Bataa has committed a violation of article 2.1.2 of the IPF Anti-Doping Rules.*

2. *If the athlete is found to have committed an anti-doping rule violation, should the applicable sanction be otherwise reduced or eliminated?*

*Mr. Bataa accepted the results of the analysis of the A sample and did not contest the finding of MHEA in his urine sample.*

*He has provided a clear and conclusive explanation as to the finding of MHEA in his body. He used Jack 3D, and clearly stated that he used Jack 3D as a supplement, not knowing that it could be prohibited and ignoring that it could contain a prohibited substance, in this instance demethylphenidate (MHEA).*

*The IPF Anti-Doping Rules and WADA Code state that athletes are strictly liable for the substances that are found in their systems and that exceptional circumstances mitigating against the consequences of that strict responsibility will not be found to exist where an athlete has failed to exercise appropriate diligence and care and where an athlete has failed to provide satisfactory evidence to demonstrate that he was neither at fault, nor acted negligently.*

*Certainly, the Panel can conclude that the athlete was negligent*

*However, this Panel is also of the opinion that Mr. Bataa did not use the substance with the intent to enhance his performance, that he likely did not get much performance enhancing effect from its use and that had he been properly educated on and been made aware of the dangers of supplement use, and anti-doping in general, that he would not have used the supplement.*

*Therefore it is this Panel's opinion that article 10.4 of the IPF Rules should apply to the facts of this case.*

*In light of all the evidence and facts before it, and notwithstanding the athlete's obvious unwitting ignorance;*

1. *Because of the athlete's credible defence,*
2. *Because he has explained how the substance entered his system,*
3. *Because he has sufficiently convinced this Panel that he did not want to enhance his performance by using the Jack 3D;*

*and finally,*

4. *Because this Panel is aware that there is an important lack of education on anti-doping*

*in Mongolia and that the athlete is certainly admittedly lacking in this regard,*

*This Panel has found that the athlete's degree of fault is not significant and that mitigating exceptional circumstances do exist in this case.*

*The IPF DOPING HEARING PANEL DECISION*

*The IPF Doping Hearing Panel hereby decides that Chimdesteren Bataa has committed an anti-doping rule violation and shall be suspended for 2 months from participating in any Powerlifting competition/event. This includes lifting, refereeing and coaching. Any results earned in the course of the 2013 Asian Men Open Championships in Ahwaz, Iran on May 3, 2013, or since, shall be nullified. The period of suspension will start on June 3, 2013 and last until August 4, 2013.*

*Pursuant to IPF Rule 12.2., the IPF also hereby imposes a fine of 1000€ on the Mongolia Powerlifting Federation for all costs relating to this doping violation and implores the Mongolian federation to begin education programs within its federation and to disseminate anti-doping information to its athletes. The Mongolia Powerlifting Federation shall receive a bill from the IPF Treasurer relating to these costs that must be paid within sixty (60) days.*
*It is always unfortunate for the IPF to sanction one of its athletes for the use of prohibited substances. It is this Panel's hope that this case will prompt all athletes to not only become aware of their responsibilities and obligations under IPF Rules and the WADA Code but to take them seriously by avoiding the use of performance enhancing drugs at all times and by being careful and aware of everything they ingest."*

11. WADA received the Decision as an attachment to an e-mail from the IPF on 1 August 2013. WADA requested the complete case file relating to the Decision on 12 August and received further documents as an attachment to an e-mail from the IPF dated 18 August 2013.

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 9 September 2013, WADA filed a "Statement of Appeal/Appeal Brief" with the Court of Arbitration for Sport (hereinafter referred to as "**CAS**") against the Decision.

13. By a letter dated 10 September 2013, notified to the First Respondent on 13 September 2013 and to the Second Respondent on 12 September 2013, the CAS Court Office informed the parties that the case had been assigned to the Appeals Arbitration Division of the CAS and should, therefore, be dealt with according to Article R47 *et seq.* of the Code of Sports-related Arbitration (2013 edition) (hereinafter referred to as the "**Code**"). The CAS Court Office further invited the Respondents to submit to the CAS an answer containing *inter alia* a statement of defence, any contentions of lack of jurisdiction, and any exhibits or specifications of other evidence they intended to rely on. Finally, the CAS Court Office took note of the Appellant's nomination of Mr. Conny Jörneklint as an arbitrator and requested the Respondents to jointly nominate an arbitrator from the list of CAS arbitrators within 10 days of receipt of the letter.

14. The Respondents failed to nominate a common arbitrator within the granted deadline. Therefore, the President of the CAS Appeals Arbitration Division proceeded with the appointment *in lieu* of the Respondents pursuant to Article R53 of the Code.

15. On 24 October 2013, the CAS Court Office asked the Parties whether they had an objection to the nomination of Prof. Dr. Martin Schimke as President of the Panel, who accepted his nomination but wished to disclose some information. The CAS Court Office stated that, in case of any objections, the Parties would have the opportunity to challenge his nomination.

16. Having received no objection to the appointment of Prof. Dr. Martin Schimke, the CAS Court Office informed the parties by letter dated 5 November 2013 that the Panel would be constituted as follows: Prof. Dr. Martin Schimke, President of the Panel; Mr. Conny Jörneklint and Mr. Ken Lalo, arbitrators.

17. On 15 January 2014, an Order of Procedure was made. On the same day, WADA and the IPF returned a fully-executed copy of the Order of Procedure confirming that their right to be heard had been fully upheld. The Athlete did not return such an executed Order of Procedure. By said order, the CAS Court Office notified the Parties that the Panel considered itself to be sufficiently informed to decide the matter without the need to hold a hearing pursuant to Article R57 of the Code.

## IV. THE PARTIES' SUBMISSIONS

### A. The Appellant

18. On 9 September 2013, in its "Statement of Appeal/Appeal Brief", the Appellant requested CAS to rule as follows:

> 1. *The Appeal of WADA is admissible.*
> 2. *The decision rendered by the IPF Doping Hearing Panel on 29 July 2013, in the matter of Mr Chimdesteren Bataa is set aside.*
> 3. *Mr. Mr [sic!] Chimdesteren Bataa is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, the Athlete before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
> 4. *All competitive individual results obtained by the Athlete from 3 May 2013 through the commencement of the applicable period of ineligibility shall be annulled.*
> 5. *WADA is granted an award for costs."*

19. The Appellant's submissions in support of its request concerning the merits of the case can be summarized as follows:

- *MHA* (*dimethylpentylamine*), a Prohibited Substance according to the 2013 WADA Prohibited List, was found in a urine sample of the First Respondent. The latter did not dispute the presence of the Prohibited Substance in his sample within the context of the IPF proceedings. Rather, the Athlete conceded that he had consumed *Jack3d*, purchased in a "GNC" store in Mongolia. One of the ingredients of the Supplement is *MHA*. Consequently, the First Respondent committed an anti-doping violation according to Article 2.1 IPF Anti-Doping Regulations (hereinafter referred to as "**IPF ADR**").

- The Appellant accepts that the Prohibited Substance entered the Athlete's system as a result of his voluntary ingestion of the Supplement. However, the First Respondent cannot claim - as submitted by him before the IPF DHP - that he had no idea that the Supplement contained a prohibited substance and that, due to his

lack of anti-doping education, he believed that the only prohibited substance was testosterone.

- In summary, the Appellant submits that the Athlete manifestly took *Jack3d* in order to improve his performance. Consequently, he intended (either directly or indirectly) to enhance his sport performance and therefore Article 10.4 IPF ADR cannot apply. The essential submissions in this regard, with references to various CAS cases involving the same specified substance and the same (or similar) product ingested under similar circumstances, read as follows:

*"C. Article 10.4 IBF ADR - Applicability*

*(...)*

*(i) Intention to enhance sport performance - Meaning*

*26. Once an athlete has established the origin of a specified substance in his/her system (on the balance of probabilities), an athlete also has to comfortably satisfy the Panel that he/she did not intend to enhance his/her sport performance within the meaning of article 10.4 WADC.*

*27. CAS Panels have diverged in their interpretation of "intention to enhance sport performance" within the context of article 10.4. The precise issue is whether the athlete's intention (to enhance sport performance) must relate specifically to the prohibited substance in question or more generally to the product containing such prohibited substance.*

*28. WADA's position is that an intention to enhance sport performance with a product containing a prohibited substance prevents article 10.4 from applying even in circumstances where the athlete did not know that such product contained a prohibited substance.*

*29. Within this context, WADA espouses the reasoning of the majority of the Panel in the case of CAS 2012/A/2804 Dimitar Kutrovsky v/ ITF (see, in particular, paragraph 9.7 et seq. of the Arbitral Award).*

*30. Even if the Panel in the case at hand were minded to follow the alternative interpretation of article 10.4 - i.e. the intention to enhance performance must relate to the prohibited substance itself with the consequence that ignorance of that substance will prima facie be sufficient to establish an absence of the requisite intention - a number of recent CAS cases have established that, in circumstances where an athlete is reckless as to the ingestion of the prohibited substance (by taking few or no precautions), he will be deemed, notwithstanding his ignorance, to have intended to use the prohibited substance to enhance his performance.*

*31. The case of CAS 2012/A/2822 Erkand Qerimaj v/ International Weightlifting Federation refers to "indirect intent" (see paragraph 8.14 et seq.) whereas the case of CAS 2011/A/2677 Dmitry Lapikov v/ International Weightlifting Federation refers to dolus eventualis (see paragraph 64, in particular).*

*32. In the Qerimaj case, the Panel held at paragraph 8.14:*

*"[...] in the case of a food supplement like Body Surge, that is taken in a sport/ training related context, the athlete has to take a certain level of precautionary measures in order not to qualify his behaviour as reckless, i.e. with indirect intent."*

*33. In view of the above and the fact that the Athlete manifestly took no real precautions to prevent the ingestion of the prohibited substance, an intention to use Jack 3d to enhance his sport performance will suffice for article 10.4 not to apply.*

*(ii) Did the Athlete intend to enhance his sport performance by taking Jack 3d?*

*34. Jack 3d is manifestly designed and marketed to enhance athletic performance. Indeed, the label of the Supplement purports to bestow "Ultra Intense Muscle- Gorging Strength, Energy, Power and Endurance" on those that take it.[4] Indeed, Jack 3d was the supplement taken by Mr Kutrovsky; at paragraph 84 of the Award, the Panel held that "the nature of the substance taken was performance-enhancing".*

*35. The concentration of methylhexaneamine in the Athlete's urine sample is extremely high (25 ug/mL and circa 16 ug/mL when adjusted for specific gravity). This concentration is entirely consistent with an ingestion of Jack 3d shortly prior to the Competition and would have improved the Athlete's performance in such Competition (Exhibit 4).*

*36. The benefits of a muscle-building, energy-increasing supplement in a sport like power building are manifest. It is therefore clear that the Athlete took Jack 3d in order to improve his sport performance. This is a fortiori the case when one considers that the requisite standard of proof to demonstrate the contrary is "comfortable satisfaction".*

*37. Regardless of which interpretation of 10.4 the Panel prefers (although WADA submits that the Kutrovsky interpretation is the correct and better one), the Athlete will either (i) have intended to use Jack 3d to enhance his sport performance or (on a Kutrovsky reading) or (ii) be deemed to have intended to enhance his sport performance with* methylhexaneamine *(on a Qerimaj/Lapikov reading). In short, all paths lead to the non-application of article 10.4.*

*38. The pre-conditions of article 10.4 IBF ADR are therefore not met and article 10.4 IBF ADR is not applicable."*

- Since Article 10.4 IPF ADR is not applicable, the Athlete's degree of fault under Article 10.5.2 IPF ADR (no significant fault or negligence) needs to be considered in order to assess whether the Athlete might be eligible for a reduction of the period of ineligibility according to this Article. In this regard, the Appellant submits:

  - In general, Article 10.5.2 IPF ADR requires "*truly exceptional*" circumstances, but in the case at hand there are no exceptional circumstances that allow eliminating or reducing the otherwise applicable period of ineligibility.

  - In particular, the Athlete failed to take any adequate precautionary measures prior to ingesting *Jack3d*. According to Article 2.1.1 IPF ADR, the Athlete has the duty to ensure that no prohibited substances enter his or her body and is therefore responsible for knowing what constitutes an anti-doping rule violation and which substances are included in the Prohibited List (Art.2 IPF ADR). The Athlete's "*extraordinary belief*" that only the substance "*testosterone*" is prohibited by anti-doping regulations would "*not constitute an exceptional circumstance which would reduce his fault to a non-significant level for the purposes of article 10.5.2 IPF ADR*". Accepting this would even undermine the anti-doping system, which is

based on the principles of the personal responsibility of athletes and on strict liability.

- Finally, regarding nutritional supplements, the Appellant states that, "*CAS has always been reluctant to accept a plea of no significant fault or negligence in view of the numerous warnings of the well-known risk linked to the use of such substance*".

### B. The First Respondent

20. The First Respondent did not file any submissions in his defence, or otherwise participate in this appeal.

### C. The Second Respondent

21. The Second Respondent failed to file its answer within the prescribed time limit. It merely informed the CAS Office by a letter dated 10 October 2013 as follows:

> *"The IPF herewith informs the CAS office that it will not be filing a Reply in the above noted matter.*
>
> *The IPF stands by its decision of its Doping Hearing Panel (DHP). The DHP is comprised of expert lawyers and doctors who possess a unique grasp of the various specificities of our sport and a clear understanding of the applicable Anti-Doping Rules.*
>
> *The DHP renders many decisions a year which all typically result in the mandatory sanction being imposed. Still there are rare circumstances when their appreciation of the facts and circumstances of a particular case results in a reduced sanction. After careful deliberations and a proper application of the Rules our DHP's opinion and reasoned decision in this case was that a reduction in sanction was warranted.*
>
> *WADA's opinion differs from that of our Panel.*
>
> *Respectfully, IPF will not challenge WADA's opinion in this matter to CAS.*
>
> *The IPF rely on the application of CAS Rule 55 to decide this matter."*

## V. JURISDICTION OF CAS

22. Article R47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.*
>
> *(...)"*

23. CAS jurisdiction in this matter is derived from Article 13 IPF ADR, which states that in cases arising from participation in an International Event – like in the case at hand – WADA shall have the right to appeal to CAS against decisions made under the IPF ADR (see Articles 13.1.1, 13.2.1, and 13.2.3e IPF ADR).

24. The jurisdiction of CAS is not disputed by the Parties and is otherwise confirmed by the Order of Procedure duly signed by WADA and IPF.

25. Therefore, CAS has jurisdiction to decide on the present matter. Under Article R57 of the Code, the Panel has full authority to review the facts and the law.

## VI. APPLICABLE LAW

26. According to Article R58 of the Code,

> *"the Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Court shall give reasons for its decision."*

27. The Decision was issued under the IPF ADR, and there is no dispute as to the applicability of the IPF ADR in the present matter.

## VII. ADMISSIBILITY

### A. Deadline for the Statement of Appeal

28. Article 13.6 of the IPF ADR provides as follows:

> *"The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings having lead to the decision subject to appeal: IPF Anti-Doping Rules 25 August 2004*
>
> *a) within ten (10) days from notice of the decision, such party/ies shall have the right to request from the body having issued the decision a copy of the file on which such body relied;*
>
> *b) if such a request is made within the ten-day period, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS.*
>
> *The above notwithstanding, the filling deadline for an appeal of intervention filed by WADA shall be the later of:*
>
> *a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
>
> *b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."*

29. The Decision was rendered on 29 July 2013 and WADA received the complete file on 18 August 2013. WADA's "Statement of Appeal/ Appeal Brief" was filed on 9 September 2013, i.e. twenty-two (22) days after receipt of all documents. However, considering that 8 September was a Sunday, WADA's statement of appeal was filed within the prescribed time limit according to Article R32 of the Code.

**B. Valid legal procedural-relationship**

30. The Panel acknowledges that the Second Respondent filed its "statement" on 10 October 2013 and is therefore involved in the present proceedings in the aforementioned sense. However, the First Respondent failed to communicate with the CAS Court Office and equally failed to submit his answer in defense. It is, therefore, essential that the Panel resolve the question of whether a legally valid procedural-relationship was established between the Appellant and the First Respondent in order for the Appeal proceedings to be conducted *in absentia*. This is all the more important in light of the fact that the address given for the First Respondent in the "Statement of Appeal/Appeal Brief" was not his private address, but was an address of the President of the Powerlifting Federation of Mongolia.

31. Article R55 of the Code provides as follows:

> *"If the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award."*

32. Moreover, the Panel refers to CAS jurisprudence providing that *"mandatory to an appeal proceeding is the participation of the respondent. Otherwise the appeal would be inadmissible due to the absence of a valid legal procedural-relationship between the parties to the proceedings. Especially in doping proceedings that involve – as does the case at hand – the magnification of the sanction imposed on the athlete, it would be procedurally unacceptable to make a decision on the merits if the athlete concerned has not been properly included in the proceedings; at the very least, he/she should receive knowledge of the proceedings in such a way that enables the person to legally defend him/herself."* (CAS 2013/A/3112, CAS 2007/A/1284, and CAS 2007/A/1308).

33. As an initial matter, the Panel notes that various correspondences, e.g. the Order of Procedure, were sent by the CAS Court Office to the e-mail address stated by the Athlete himself on the Doping Control Form and that no notices of failed delivery of these came back.

34. Furthermore, national federations generally send any official correspondence and decisions concerning their athletes to these athletes without undue delay. The Panel is confident that such was the case here, and the CAS Court Office file contains email correspondence between the IPF and the Athlete, which confirms that the Athlete is aware of the present proceedings before the CAS. Moreover, the CAS Court Office, at the request of the Panel, received verbal communication from the IPF that all such documents in this procedure, including an application for Legal Aid, had been forwarded to the Athlete.

35. In light of the above, the Panel is comfortably satisfied that the Athlete had knowledge of the appeal proceedings and the knowledge he had was of such a nature as to enable him to legally defend himself. Hence, in the Panel's view, a legally valid procedural-relationship between the Appellant and the First Respondent has been established and the present Appeal proceedings shall be conducted *in absentia* of the First Respondent.

## VIII. The Panel's Findings on the Merits

36. On the basis of the Appellant's written submissions (including attachments) and the responses (or lack of responses) from the Respondents, the Panel can safely conclude that the Athlete violated an anti-doping rule. The issue that still needs to be decided here is

whether, despite the finding of such a violation, the standard two-year period of ineligibility should be reduced in reliance on Article 10.4 IPF ADR.

## A. Applicability of Article 10.4 IPF ADR

37. Article 10.4 IPF ADR, which is identical to Article 10.4 of the current World Anti-Doping Code (hereinafter referred to as "**WADC**"), states:

> *"10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances*
>
> *Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:*
>
> *First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility. To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance-enhancing substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility."*

38. It is undisputed that the Prohibited Substance in question is a specified substance and can be traced back to the food supplement *Jack3d* that the Athlete took prior to the sample collection. Therefore, the first two conditions/prerequisites of Article 10.4 IPF ADR have been satisfied.

39. In order to satisfy the third condition, the Athlete must establish the absence of an intent to enhance sport performance at the time of its ingestion. This element of intent in Article 10.4 WADC (and in corresponding doping rules such as Article 10.4 IPF ADR in the case at hand) has in recent periods been the subject of various discussions and interpretations among CAS panels, national doping panels, and jurists. The starting point of the debate surrounding the correct interpretation of the condition "*absence of an intent to enhance sport performance*" is the fact that in the second paragraph of Article 10.4 WADC (and of Article 10.4 IPF ADR) there is no mention of the word "*substance*" (as there is in the first paragraph) in connection with the evidential burden to "*produce corroborating evidence*" that the Athlete did not intend to enhance sport performance. Therefore, the key question is whether the intent to enhance sport performance relates to the use of the specified substance or to the product in which it was contained.

### a) Overview of the conflicting decisions and the debate

40. One of the first jurisprudential approaches taken by CAS on the subject was introduced in the *Oliveira* decision (CAS 2010/A/2107). In this decision, the panel stated the following:

> *"The Panel does not read clause two of Article 10.4 as requiring Oliveira to prove that she did not take the product (...) with the intent to enhance sport performance. If the Panel adopted that construction, an athlete's usage of nutritional supplements, which are generally taken for performance-enhancing purposes, but which is not per se prohibited by the WADC, would render Article 10.4 inapplicable even if the particular supplement that is the source of a positive test result contained only a specified substance. Although an athlete assumes the risk*

*that a nutritional supplement may be mislabelled or contaminated and is strictly liable for ingesting any banned substance, Article 10.4 of the WADC distinguishes between specified and prohibited substances for purposes of determining an athlete's period of ineligibility. Art. 10.4 provides a broader range of flexibility (i.e., zero to two years ineligibility) in determining the appropriate sanction for an athlete's use of a specified substance because "there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation." See Comment to Article 10.4.*

*If the Panel adopted USADA's proposed construction of clause two of Article 10.4, the only potential basis for an athlete to eliminate or reduce the presumptive two-year period of ineligibility of ingestion of a specified substance in a nutritional supplement would be satisfying the requirements of Article 10.5, which requires proof of "no fault or negligence" or "no significant fault or negligence" for any reduction. Unless an athlete could satisfy the very exacting requirement for proving that "no fault or negligence", the maximum possible reduction for use of nutritional supplement containing a banned substance would be one year. This consequence would be contrary to the WADC's objective of distinguishing between a specified substance and a prohibited substance in determining whether elimination or reduction of an athlete's period of ineligibility is appropriate under the circumstance."*

41. Since then, at least ten CAS panels have expressly dealt with the approach taken in the *Oliveira* decision. Various legal articles have also summarized this - in part contradictory - CAS jurisprudence, in addition to discussing the difficulties surrounding the interpretation of Article 10.4 WADC. In the subsequent sections (nos. 50 – 57) the Panel will briefly outline the discussion on the basis of and with specific references to these sources.

42. The approach taken by the arbitral tribunal in *Oliveira* (i.e. the intention to enhance sport performance applies to the use of the specified substance and not to the product itself) has - in principle - been expressly followed by the CAS panels in the cases *Berrios* (CAS 2010/A/2229 no. 83, 84), *Kolobnev* (CAS 2011/A/2645 no. 78-81), *Lapikov* (CAS 2011/A/2677 no. 59-61), *Fauconnet* (CAS 2011/A/2615 and 2618), *Armstrong* (CAS 2012/A/2756 para. 8.49), *de Goede* (CAS 2012/A/2747), and *Qerimaj* (CAS 2012/A/2822 para 8.9) (see also *Estelle de La Rochefoucauld*, CAS jurisprudence related to the elimination or reduction of the period of ineligibility for specified substances, CAS Bulletin 02/2013, pages 18-27).

43. In *Qerimaj*, in particular, the panel extensively elaborated on the arguments that follow the reasoning in *Oliveira*. According to that panel:

*"First, the wording of Art.10.4 IWF ADP speaks in favour Oliveira, Paragraph 1 expressly links the intent to enhance performance to the taking of the specified substance. It is true, that this link is not repeated in the second paragraph that constitutes a rule of evidence. However, the second paragraph does not exclude similar interpretation either.*

*It follows from the above that whether or not to follow a broad or restrictive interpretation of Art. 10.4 IWF ADP must be decided depending on the purpose of the rule. The underlying rationale of Art.10.4 IWF ADP is that -as the commentary puts it- "there is a greater likelihood that specified substances, as opposed to other prohibited substances, could be susceptible to a credible non-doping explanation" and that the latter warrants — in principle - a lesser sanction. What Art. 10.4 IWF ADP wants to account for is, in principle, that in relation to specified substances there is a certain general risk in day to day life that these substances are taken inadvertently by an athlete. The question is what happens if the risk at stake is not a "general" but a (very) specific one that the athlete has deliberately chosen to take. The Respondent submits that Art. 10.4 IWF ADP was not intended for such cases. If an athlete chooses to engage in risky behaviour (by taking nutritional supplements), he should not benefit from Art.10.4 IWF ADP. The Panel is not prepared to follow this interpretation for the following reasons:*

*(1) The Panel finds it difficult to determine what patterns of behaviour qualify for risky behaviour as defined above. This is all the more true since -in particular when looking at elite athletes- most of their behaviour is guided by a sole purpose, i.e. to maintain or enhance their sport performance. The term 'enhance sport performance' is like an accordion that could be interpreted narrowly or widely: at one end of the spectrum, if an athlete takes -e.g.- a cough medicine, in most circumstances it will be to enable him to recover quicker in order to train again or to compete. Were the Panel to adopt a similar interpretative attitude, then it would risk outlawing a very wide spectrum of activities that are remotely only connected to sports performance. It is very difficult to draw an exact dividing line between products taken by an athlete that constitute a "normal" risk and products that constitute high risks in the above sense, preventing the application of Art.10.4 IWF ADP from the outset. It is not for this Panel to act as a legislator by drawing this dividing line. It is for this Panel though to decide on the instant case, and the reasoning above should be understood as underscoring our resolve to thwart a wide interpretation of the term 'enhance sport performance'.*

*(2) It follows from the above that whether or not the behaviour of the athlete as such is intended to enhance his sport performance is not a sufficient criteria to establish the scope of applicability of Art. 10.4 IWF ADP. This is all the more true since - as the arbitral tribunal in Oliveira has stated - nutritional supplements are usually taken for performance-enhancing purposes which is not per se prohibited. The characteristic of "performance-enhancing" as such is neutral. An athlete is entitled to consume any substance that seems useful to enhance his sport performance as long as this substance is not listed on WADA's Prohibited List, Therefore, the primary focus can obviously not be on the question whether or not the athlete intended to enhance his sport performance by a certain behaviour (i.e. consuming a certain product), but moreover if the intent of the athlete in this respect was of doping-relevance,*

*(3) Finally, the view held by the Panel is also in line with the commentary in Art. 10.4 IWF ADP. The latter reads — inter alia: "Generally, the greater the potential performance-enhancing benefit, tire higher the burden on the Athlete to prove lack of an intent to enhance sport performance". Thus, the commentary assumes that there is a sliding scale with regard to the standard of proof in relation to absence of intent. The more risky the behaviour is in which an athlete engages the higher is the standard of proof for the absence of fault. It is exactly this sliding scale that the Panel will apply in the case at hand."*

44. Contrary to the *Oliveira* approach discussed above, the panel in *Foggo* (CAS A2/2011) held that the mere fact that the athlete did not know that the product contained a specified substance did not in itself establish the relevant lack of intent. Moreover, if the athlete believes that the ingestion of the substance will enhance his or her sport performance, although the athlete does not know that the substance contains a banned ingredient, Article 10.4 cannot be satisfied.

45. In *Kutrovsky* (CAS 2012/A/2804), the majority of the panel adopted the *Foggo* approach. Accordingly, "*an athlete's knowledge or lack of knowledge that he has ingested a specified substance is relevant to the issue of intent but cannot, pace Oliveira, of itself decide it*". The majority of the panel held that the reading of the second condition should not differentiate between the specified substance and a product in which it may be contained. The specified substance mentioned in the second condition is the same specified substance as the one mentioned in the first condition. This interpretation is confirmed by the language of the Article, in particular by the use of the word "such" attached to specified substance in the second condition. Precisely, according to the Panel, "*the specified substance in the Second Condition refers to the specified substance in the form in which it has been established under the First Condition to enter the athlete's body [...] it follows that in order*

*to meet the Second Condition the athlete must establish that in taking the specified substance in the form in which he took it, he did not intend to enhance his performance*". As a consequence, "*the First and Second Conditions must be read together since the Second Condition only falls to be considered if the First Condition is satisfied.*" (see *Estelle de La Rochefoucauld*, l.c. (Fn.1), page 23, see also CAS 2013/A/3388 *Hill v. Cycling Australia & ASADA*).

46. The Panel is aware that similar reasoning was also recently adopted in *West* (CAS 2013/A/3029): "*[The panel] does not accept that an athlete's ignorance that a product contains a Specified Substance can establish absence of intent for the purposes of Article 10.4. In plain words, and in contradiction with Oliviera, if an athlete believes that a product enhances performance he cannot invoke the benefit of Article 10.4 just because it is accepted that he did not know that the product contained a banned substance. This would have the absurd result of rewarding competitors for being -- and remaining -- ignorant of the properties of the products they ingest, contrary to a fundamental objective of the anti-doping regulations, namely to create powerful incentives for competitors to take active and earnest initiatives to inform themselves.*"

**b) Opinion**

47. After carefully weighing the various arguments, the Panel has decided to adopt the view of the advocators of the approach taken by the arbitral tribunal in *Oliveira* as described above.

48. The same applies to the specific and detailed discussion in the *de Goede* decision regarding the argumentation in the *Kutrovsky* case. In addition to relying on the panel's reasoning in *Qerimaj*, the panel in *de Goede* convincingly deduced and argued that the reasoning of the panel in *Kutrovsky* appears not only to contradict the rationale of the "*reduction mechanism*" in the WADC but also to contradict itself. The Panel of the case at hand also relies in full on the respective statements in the *de Goede* case, which it concurs without reservation (see CAS 2012/A/2747, para. 7.13, 7.14).

49. Finally, the Panel agrees with the view expressed in the literature regarding the comments to Article 4.3.2 of the WADA Code wherein it is stated that "[u]*sing the potential to enhance performance as the sole criterion [for including a substance on the Prohibited list] would include, for example, physical and mental training, red meat, carbohydrate loading and training at altitude,*" the WADC itself recognizes the difference between legitimate performance enhancement and the use of a prohibited substance. (see *Antonio Rigozzi/Brianna Quinn*, Inadvertent Doping and the CAS, Part II, The relevance of a "credible non-doping explanation" in the application of Article 10.4 of the WADA Code, LawInSport, November 2013, with further confirming references to the genesis of Article 10.4 WADC.)

50. In the Panel's view, there is another reason that supports the approach taken in the *Oliveira, Qerimaj,* and *de Goede* cases. As explained and emphasized many times in the aforementioned CAS jurisprudence and in the literature, Art 10.4 WADC (and Art.10.4 IPF ADR in the case at hand) is anything but clear and is in fact most ambiguous. Generally in such cases, and particularly in doping cases, CAS decisions have consistently applied the principle of "*contra proferentem*", meaning that an ambiguity in a regulation must be construed against the drafter of such regulation. The Panel would like to highlight the following chain of CAS decisions and statements in connection with the interpretation of doping rules:

- *USA Shooting and Quigley v Union Internationale de Tir*, CAS 94/129, award dated 23 March 1995, Digest of CAS Awards 1986–1998 (Berne 1998), p 187, 197–98, and in particular the passages at para 55: *"The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable. They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders"*

- The aforementioned passage has been cited with approval many times since, e.g. by the CAS panel in *Devyatovskiy & Tsikham v IOC*, CAS 2009/A/1752 and CAS 2009/A/1753, award dated 10 June 2010, para 6.11.

- In the above quoted *Devyatovskiy & Tsikham v IOC* case atpara 4.28, the CAS panel resolved a conflict between the IOC anti-doping rules and the 2013 WADC (and therefore the case) in favour of the athlete on the basis that *"contradictions in the applicable rules must be interpreted contra proferentem, i.e. to the detriment of the promulgator of the conflicting or contradictory provision" (See also CAS 2008/A/1461, award dated 10 September 2008).*

- See also *Liao Hui v. IWF*, CAS 2011/A/2612, award dated 23 July 2012, para. 107 (ambiguities in the IWF Anti-Doping Rules should be resolved in favour of the athlete, with the four-year ban stipulated in those rules "*read down*" to comply with the two-year ban stipulated in the World Anti-Doping Code).

- See also *Roland Diethart v.FIS* CAS 2007/A/1437: *"Therefore, at this stage of its reasoning, the Panel must consider the legal requirements of said provision. Pursuant to CAS case law, the different elements of a federation shall be clear and precise, in the event they are legally binding for athletes and/or clubs (see CAS 2006/A/1164; CAS 2007/A/1377). The Panel is of the opinion that inconsistencies shall be on the charge of the legislator (the federation)."*

51. In light of this clear and consistent CAS jurisprudence, and in addition to all other arguments, the Panel finds that the principle of "*contra proferentem*" alone justifies a restrictive interpretation of the element of "*intent to enhance sport performance*" in Article 10.4 WADC – in accordance with the *Oliveira* doctrine and contrary to the wider interpretation of *Foggo, Kutrovsky* and others. It is clear that the restrictive interpretation (i.e. intent must relate to the prohibited substance in question) favours the athletes.

## B. Consequences for the case at hand

52. Following the *Oliveira, Qerimaj, de Goede, etc.* approach, intent is established if an athlete knowingly ingests a prohibited substance. The Panel notes that it cannot rely on any declarations and/or explanations of the First Respondent due to the absence of any written submissions by him. However, it is undisputed that the Athlete listed the *Jack 3d* supplement on his anti-doping control form and, thereby, presumably was not trying to hide his ingestion of the product. In light of this, and in the absence of corroborating evidence to the contrary, the Panel is comfortably satisfied that the Athlete lacked (direct) intent to

enhance sport performance through consuming MHA at the time of its ingestion according to Article 10.4 IPF ADR.

53. But although the panels in *Qerimaj* and *de Goede* followed *Oliveira*, they also went further and established a distinction between direct and indirect intent. According to both decisions, Article 10.4 WADC (and consequently 10.4 IPF ADR) will still apply if the athlete, rather than being *reckless*, was "only" *oblivious*. In this connection, the panels in *Qerimaj* and *de Goede* state: *"If - figuratively speaking - an athlete runs into a "minefield" ignoring all stop signs along his way, he may well have the primary intention of getting through the "minefield" unharmed."*

54. The Panel in the case at hand finds the aforementioned approach neither persuasive nor helpful for a number of reasons, as outlined below.

55. First, the panels in *Qerimaj* and *de Goede* themselves stress and admit that the distinction between indirect intent (which excludes the applicability of Article 10.4 WADC) and the various forms of negligence (that allow for the application of said Article) *"is difficult to establish in practice."* In *de Goede*, the panel even added that, *"The assessment whether or not an athlete acts with (direct or indirect) intent within the meaning of art. 39.3 of the Previous JBN Rules (art. 10.4 WADC) is further complicated if the substance at stake is prohibited in-competition only, but was ingested by the athlete out-of-competition."* Despite these obvious and described difficulties, the panels in *Qerimaj* and *de Goede* are of the view that one should take into account the distinction between direct and indirect intent although no explicit indication of this can be found in Article 10.4 WADC. Contrary to the reasoning in *Qerimaj* and *de Goede*, the Panel sees no such indication in the following comments to Article 10.4 WADC either:

*"Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance."* (see *Qerimaj* para. 2.(3))

or

*"Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete."* (see *de Goede* para. 7.16)

These aspects undoubtedly function as a kind of factual presumption when determining whether or not an athlete (directly) intended to enhance his or her sport performance. However, particularly in light of the fundamental principles of "*contra proferentem*" and legal certainty, the comments quoted above do not necessarily justify such a wide interpretation of the term "*intent*" in Article 10.4 WADC to include indirect intent as well.

56. Secondly, it is this very difficulty of drawing an exact dividing line that is used by the panel in *de Goede* to refuse the application of a broader interpretation of another special term in Article 10.4 WADC, seeing in such difficulty an undermining of the principle of legal certainty, which requires to avoid the distinction between direct and indirect intent in this context. The Panel in *de Goede*, when discussing the *Kutrovsky* case, states: *"Finally, arguments of legal certainty also speak against the jurisprudence in Kutrovsky. The latter tries to differentiate between the ingestion of a substance in a sporting and a non-sporting context. In case of the former, the athlete, in principle, always acts intentionally, thus,*

*precluding the possibility of a reduction according to art. 39.1-5 of the Previous JBN Rules (art. 10.4 WADC). The Sole Arbitrator finds it difficult to determine what patterns of behaviour potentially qualify for application of art. 39.1-5 of the Previous JBN Rules (art. 10.4 WADC) and which not. (...)In consequence if one were to follow the jurisprudence in Kutrovsky it would be - in the view of the Sole Arbitrator - nearly impossible to draw an exact (i.e. non-arbitrary) dividing line between products taken by the athlete that qualify for an application of art. 39.1-5 of the Previous JBN Rules (art. 10.4 WADC) and which not."*

57. Thirdly, it is the Panel's view that if the *Oliveira* approach includes the *"minefield"* analogy - i.e. the product contains so many warning flags about its contents that it can be presumed that the user of it knew that it contained a prohibited substance - then in most cases one effectively arrives at the same conclusion contemplated by the *Foggo/Kutrovsky* approach, namely that there was an intention to ingest not only the product but also all of the ingredients of the product.

58. Finally, the Panel sees no compelling reason to take into account the said distinction between direct and indirect intent, since - as correctly explained in detail in *de Goede* - *"The differences as to the consequences of the different views (Oliveira and Kutrovsky) are - contrary to what may appear at first sight - not tremendous."*

59. It follows from the above that drawing a distinction between direct and indirect intent would lead to a broad interpretation of the term "intent" in Article 10.4 WADC/IPF ADR, and thus to an interpretation to the detriment of athletes. In the Panel's view, this approach would contradict the applicable and previously explained principle of *"contra proferentem"* and is, therefore, an approach that should not be taken.

60. Therefore, the Panel sees no reason to assess any degree of indirect intent that the Athlete may possibly have had. Rather, the Panel remains with its conclusion, as stated above, that the Athlete had no intent within the meaning of Article 10.4 IPF ADR.

**a) Determining the period of ineligibility**

61. The fact that the athlete had no intent within the meaning of Article 10.4 IPF ADR does not, however, automatically lead to the impunity of his wrongdoing. The extent to which the Appellant is eligible for a reduction of the standard period of ineligibility still has to be determined, in a second step. The possible sanctions pursuant to Article 10.4 IPF ADR range from a minimum sanction, consisting of a reprimand and no period of ineligibility, to a maximum sanction, consisting of a two-year period of ineligibility. According to Article 10.4 IPF ADR, the degree of the athlete's fault (e.g. light or gross negligence) is the decisive criterion in assessing the appropriate period of ineligibility.

62. The Athlete claimed before the IPF DHP that he had absolutely no knowledge of the various prohibited substances, or respectively that he believed that the only prohibited substance was testosterone. The Panel – in the absence of any submissions to the contrary – presumes that he at least must be generally aware of the risk of using supplements, considering that such risks are well-known even to the general public, as well as to athletes, especially in light of the wide publicity they have received in the sporting community, as correctly emphasized by the Appellant.

63. By completely ignoring the well-known risks that athletes are exposed to by consuming supplements, and by failing to make even the most minimum investigation into the supplement product the Athlete consumed, the Panel is of the opinion that the Athlete's conduct constitutes a significant departure from the standard of behaviour expected of an athlete and accordingly finds that the Athlete's degree of fault is significant.

64. Indeed, the Panel could even go so far as to support the presumption that the Athlete had indeed been totally ignorant, and a degree of wilful blindness regarding the risks associated with the use of supplements must be attributed to the Athlete when determining the appropriate sanction. This sort of wilful blindness in an athlete is neither justifiable nor condonable, and it is a significant deviation from the standard of behaviour expected of any athlete, especially an adult athlete at this level of international event. This is required in order to ensure that no mockery is made of the fight against doping and that fair play in sporting competitions is ensured.

65. The Panel notes that the Athlete did identify the supplement on his anti-doping control form. By doing so, the Panel believes that the Athlete (naively) believed that he was using a legal product. While this disclosure assists in assessing the Athlete's intent, it does little to assess his degree of fault.

66. Due to the absence/lack of supporting evidence presented by the Respondents in the proceedings at hand, the Panel defers to the Athlete's submissions in the Decision. In this regard, the Athlete simply refers to the lack of anti-doping education in Mongolia and that he purchased the product from "GNC's official store" to support his plea in defence. He provides no information concerning whether, for example, he (a) researched the (widely-known) product Jack3d on the internet (see *Kutrovsky*; *de Goede*; *Lapikov;* 2013/A/3075 *WADA v. Laszlo Szabolcs*); (b) consulted a team coach or doctor (*Fauconnet*; CAS 2011/A/2518 *Robert Kendrick v. International Tennis Federation* and 2012/A/2701 *WADA v. International Waterski and Wakeboard Federation & Aaron Rathy*); (c) confirmed the statements about the product made by the salesman with an independent source (*Szabolcs* and *Rathy*); (d) consulted the WADA List of Prohibited Substances or his sporting federation *(Qerimaj*); or (e) relied on assurances or assistance from a trusted source, such as a family member or close confident (*Szabolcs*, *Qerimaj* and *de Goede*).

67. While these factors are not determinative on the appropriate sanction, they are considerations that this Panel gives weight to when assessing the Athlete's degree of fault. As set forth above, and in consideration of the vast CAS jurisprudence, the Panel is of the opinion that the Athlete did very little to assure himself that the Jack3d was a "safe" or did not contain a prohibited substance. Simply relying on own's lack of education, especially when the Athlete competes at an international level, or relying on a salesman's assurances, is plainly not enough. Consequently, the Panel concludes that the Athlete is to be sanctioned with a period of ineligibility of 15 (fifteen) months.

**b) Commencement of the ineligibility period**

68. Article 10.9 of the IPF ADR provides that the period of ineligibility - in principle - starts on the date of the "*hearing decision made providing for Ineligibility*". Whether this refers to the date of the Decision or the CAS decision is not quite clear. The Panel is of the opinion that the decisive time is the day on which whatever respective instance (here CAS) makes

its decision. The period of ineligibility must therefore begin on the date on which this decision is issued (see also *de Goede* CAS 2012/A/2747, para. 81). According to Article 10.9.3 IPF ADR, the two-month period of ineligibility imposed by the IPF DHP and served by the Athlete must be credited against the 15-month period of ineligibility. In addition, any period of voluntary suspension served by the Athlete following the IPF DHP Decision shall also be credited against the 15-month period of ineligibility.

## IX. Costs

69. Article R65.2 of the Code provides:

*"Subject to Articles R65.2 para.2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrations, calculated in accordance with the CAS fee scale, together with the costs of the CAS borne by the CAS."*

70. As this is a disciplinary case of an international nature, the proceedings will be free, except for the Court Office filing fee of CHF 1,000-, which WADA already paid. This fee shall be retained by the CAS.

71. Moreover, given that this appeal did not include a hearing, the written submissions were streamlined and not complex, and that the Parties used few, if any, outside resources, the Panel holds that the Parties shall bear their own legal fees and other expenses incurred in connection with these proceedings.

**ON THESE GROUNDS**

The Court of Arbitration for Sport rules:

1. The Appeal filed by the World Anti-Doping Agency against the decision of the IPF Doping Hearing Panel dated 29 July 2013 in the matter of Mr. Chimdesteren Bataa is partially upheld.
2. The decision of the IPF Doping Hearing Panel dated 29 July 2013 is set aside and replaced with the following:

   Mr. Chimdesteren Bataa is sanctioned with a period of ineligibility of fifteen (15) months, with credit given to Mr. Bataa for the two-month period of ineligibility imposed by the IPF DHP and served by the athlete, as well as any other period of voluntary suspension served.
3. All sporting results obtained by Mr. Chimdesteren Bataa between 3 May 2013 up to the expiry of the period of ineligibilty shall be invalidated.
4. This award is pronounced without costs, except for the Court Office fee of CHF 1'000 paid by the World Anti-Doping Agency which shall be retained by the CAS.
5. Each Party shall bear its own legal fees and other expenses incurred in connection with these proceedings.
6. All other or further claims are dismissed.

Seat of Arbitration: Lausanne, Switzerland
Date: 13 May 2014

**THE COURT OF ARBITRATION FOR SPORT**

Dr. Martin Schimke
President of the Panel