CAS 2024/A/10655 World Anti-Doping Agency v. Japan Anti-Doping Agency & Masaki Toyoda

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr Heiner Kahlert, Attorney-at-Law, Munich, Germany

in the arbitration between

World Anti-Doping Agency, Montreal, Canada

Represented by Mr Ross Wenzel, WADA General Counsel, and Mr Nicolas Zbinden and Mr Robert Kerslake, Attorneys-at-law

Appellant

and

Japan Anti-Doping Agency, Tokyo, Japan

Represented by Mr Koichi Tsujii and Mr Shoichi Satake, Attorneys-at-law

First Respondent

Mr Masaki Toyoda, Sagamihara City, Japan

Represented by Mr Koichiro Mochizuki, Mr Takao Ohashi, Mr Hiromu Taga, Mr Yoji Kudo, Dr Masayuki Tanamura, Mr Kengo Iida, Ms Yugo Kanamaru and Mr Daniel Allen, Attorneys-at-law

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency ("**Appellant**" or "**WADA**") is the international anti-doping agency. It has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The Japan Anti-Doping Agency ("**First Respondent**" or "**JADA**") is the National Anti-Doping Organisation in Japan. It operates under the Japan Anti-Doping Code 2021 (the "**JADC**").

3. Mr Masaki Toyoda ("**Second Respondent**" or "**Athlete**") is a 400m hurdle race ("**400mH**") athlete from Japan, born on 17 January 1998. He has competed at international track and field events in the 400mH since 2015.

4. The First Respondent and the Second Respondent are hereinafter jointly referred to as the "**Respondents**". The Appellant and the Respondents are hereinafter jointly referred to as the "**Parties**".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts based on the Parties' submissions (this term including oral pleadings and evidence adduced). Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts transpiring from the Parties' submissions in the present proceeding, he refers in his Award only to the facts he considers necessary to explain his reasoning.

A. The Athlete's testing history, testing pool affiliations and competitions prior to 19 May 2022

6. From 13 May 2019 until before the doping test at issue here, the Athlete was subject to seven doping controls, including on 13 December 2021 and 25 February 2022. None of those tests resulted in any Adverse Analytical Finding[1] ("**AAF**").

7. On 2 June 2021, the Athlete was notified of his inclusion in the JADA's testing pool, rendering him obligated to submit his whereabouts information.

8. On 11 March 2022, he was notified that he was included in JADA's Registered Testing Pool (the "**RTP**").

9. On 24 April and 1, 3, 8 and 15 May 2022, the Athlete competed in 400mH races.

[1] Capitalized terms not defined herein have the meaning ascribed to them in the JADC.

B. The Adverse Analytical Finding

10. The Athlete underwent an Out-of-Competition test conducted by JADA on 19 May 2022 between 6:01 and 6:25 a.m. (the "**Test**"). During the Test, the Athlete provided a urine sample with the sample number 4637867 (the "**Sample**"). On the doping control form signed by the Athlete (the "**DCF**"), he indicated having used the following supplements: "*HULKFACTOR CREATINE, WINZONE WHEY PROTEIN*, [Sun Chlorella tablets]".

11. The WADA-accredited laboratory in Tokyo, Japan (the "**Tokyo Laboratory**") analysed the "A" Sample and reported, on 7 June 2022, an AAF for epitrenbolone. This is a metabolite of trenbolone, which is a non-specified substance prohibited In- and Out-of-Competition pursuant to section 1.1 of the 2022 WADA Prohibited List (anabolic androgenic steroids, "**AAS**").

12. On 11 June 2022, the Athlete competed at the 2022 Japan Championships and finished third.

13. On 21 June 2022, the Athlete returned from a competition overseas to Japan and was notified of the AAF via telephone by the head of JADA's Results Management Department.

14. Still on the same day, shortly after the verbal notification by JADA, the Athlete called Mr Shunji Karube (the Athlete's coach at Hosei University) and Mr Shinji Takahira (the Athlete's coach at Fujitsu's track and field team), informing them about the AAF.

15. Later on the same day, the Athlete was also informed in writing about the AAF and was provisionally suspended by JADA in accordance with Article 7.4.1 JADC.

16. On 20 July 2022, based on the Athlete's request, the Tokyo Laboratory conducted an analysis of the "B" Sample. This was attended, inter alia, by the Athlete, his lawyer Mr Yoji Kudo, and a representative from JADA. On this occasion, Mr Masato Okano, the Head of the Tokyo Laboratory explained, among other things, the following:

    (i) The concentration of epitrenbolone detected in the "A" Sample was estimated at 1.4 ng/mL, which Mr Okano referred to as "*extremely low*". He explained that WADA's Technical Documents required WADA-accredited laboratories to be able to detect concentrations of 2.5 ng/mL of trenbolone.

    (ii) Trenbolone has a powerful muscle-strengthening effect and is therefore often used in bodybuilding. In cases of intentional consumption for bodybuilding, the urinary concentration would be around 50 or 100 ng/mL.

    (iii) Trenbolone is not approved as a drug in Japan and is not available over the counter.

    (iv) While trenbolone is prohibited in Japan as a growth promoter in animals, it is used as such in the United States and Australia. There is data showing that trenbolone

can be detected in the animal's liver, but it may also be present in ordinary cuts of meat. While the Japanese authorities conduct sample checks for prohibited substances, it does not check every item. Therefore, it is unknown whether imported meat sold at Japanese supermarkets may contain trenbolone.

17. On 21 July 2022, the Athlete was notified that the analysis of his "B" Sample had confirmed the AAF, with the estimated concentration again being 1.4 ng/mL.

18. On 20 February 2023, the Athlete was charged by JADA with the commission of an anti-doping rule violation ("**ADRV**") under Articles 2.1 and 2.2 of the JADC.

C. The decision of the Japan Anti-Doping Disciplinary Panel

19. On 6 July 2023, the Athlete was heard before the Japan Anti-Doping Disciplinary Panel (the "**JADDP**").

20. On 5 January 2024, the JADDP issued its decision (the "**JADDP Decision**") as follows, in the English translation provided by WADA in this arbitration:

> "- *Violations of Articles 2.1 and 2.2 of the Code are found to have occurred.*
>
> *- In accordance with Article 10.10 of the Code, all of the individual results of the Athlete obtained from May 19, 2022, the date of sample collection, through June 21, 2022, the commencement date of the provisional suspension period shall be disqualified, and all medals, points and prizes obtained during such period shall be forfeited.*
>
> *- In accordance with Articles 10.2.2 and 10.13.1 of the Code, ineligibility shall be imposed for a period of two years starting from May 21, 2022.*"

D. The decision of the Japan Sports Arbitration Agency

21. On 25 January 2024, JADA appealed to the Japan Sports Arbitration Agency (the "**JSAA**") requesting a partial reversal of the JADDP Decision by seeking a period of ineligibility of four years instead of two.

22. By a decision dated 2 April 2024 (the "**Appealed Decision**"), the JSAA dismissed JADA's appeal.

23. On 3 April 2024, JADA notified WADA that JADA's appeal of 25 January 2024 had been dismissed.

24. On 8 April 2024, WADA received the Appealed Decision.

25. On 9 April 2024, World Athletics received the Appealed Decision.

26. On 22 April 2024, WADA submitted a case file request and received elements of the case file on the same day.

27. On 23 April 2024, WADA requested additional documents and World Athletics submitted a case file request of its own.

28. On 24 April 2024, the requested additional documents were provided to WADA.

29. On 26 April 2024, World Athletics received elements of the case file.

30. On 16 May 2024, JADA provided WADA and World Athletics with further translated documents.

31. On 21 May 2024, the Athlete resumed his sporting activities.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 6 June 2024, the Appellant filed its Statement of Appeal within the meaning of Article R48 of the Code of Sports-related Arbitration (2023 edition) ("**CAS Code**") before the Court of Arbitration for Sport ("**CAS**"). In its Statement of Appeal, the Appellant requested that the dispute be decided by a sole arbitrator.

33. On 12 June 2024, the CAS Court Office initiated the procedure *CAS 2024/A/10655 WADA v. JADA & Masaki Toyoda* and notified, among other information, the Statement of Appeal to the Respondents.

34. On 18 June 2024, the Second Respondent requested the President of the Appeals Arbitration Division to appoint three arbitrators.

35. On 27 June 2024, the Appellant filed the Appeal Brief (within the deadline as extended by the CAS).

36. On 2 July 2024, the CAS Court Office invited the Respondents to submit their Answers within the meaning of Article R55 of the CAS Code.

37. On 24 July 2024, the First Respondent submitted its Answer.

38. On 5 August 2024, the Second Respondent submitted its Answer (within the deadline as extended by the CAS).

39. On 6 August 2024, the CAS Court Office asked the Parties to confirm whether they preferred for a hearing and a case management conference ("**CMC**") to be held.

40. On 13 August 2024, the Second Respondent requested a hearing as well as a CMC.

41. On 13 August 2024, the Appellant requested a hearing but stated that it did not consider a CMC necessary.

42. On 20 August 2024, the CAS Court Office informed the Parties pursuant to Article R50(1) of the CAS Code that the Deputy President of the CAS Appeals Arbitration division had decided to submit the case to a sole arbitrator.

43. On 26 September 2024, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that pursuant to Articles R33, R52, R53 and R54 of the CAS Code, the arbitral tribunal had been constituted as follows:

Sole Arbitrator: Dr Heiner Kahlert, Attorney-at-Law in Munich, Germany.

44. On 1 October 2024, on behalf of the Sole Arbitrator, the CAS Court Office requested the Parties to indicate whether they preferred a hearing in person or via video conference, noting that the final decision on this matter would be taken by the Sole Arbitrator in accordance with Article R57 of the CAS Code.

45. On 3 October 2024, the First Respondent indicated that, for cost reasons, it requested a hearing via video conference.

46. On 4 October 2024, the Second Respondent indicated that he preferred a hybrid hearing as that would allow himself and a witness to testify in person.

47. On the same day, the Appellant requested a hearing in person but confirmed that did not object for other parties to attend via video conference.

48. On 8 October 2024, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, a hybrid hearing would be held in Lausanne and by video conference.

49. On 30 October 2024, the Appellant notified the CAS Court Office of its view that the Second Respondent's arguments before CAS concerning the establishment of the source of the AAF had changed compared to the previous instances.

50. On 31 October 2024, on behalf of the Sole Arbitrator, the CAS Court Office invited the Appellant to indicate as soon as possible, but no later than 8 November 2024, whether it requested to be granted the opportunity to file a further submission in respect of the source of the prohibited substance.

51. On 7 November 2024, the Second Respondent emphasized that, in his view, his legal position had remained consistent throughout all instances and that any further submissions by WADA would be unfairly late.

52. On 7 November 2024, on behalf of the Sole Arbitrator and after having confirmed the Parties' availability, the CAS Court Office informed the Parties that the hybrid hearing would be held on 29 January 2025.

53. On 8 November 2024, the Appellant replied to the Second Respondents' letter of 7 November 2024 and provided an expert report by Prof. Christiane Ayotte (the "**First Ayotte Report**").

54. On 12 November 2024, on behalf of the Sole Arbitrator, the CAS Court Office invited the Respondents to comment on the First Ayotte Report until 15 November 2024.

55. On 15 November 2024, the Second Respondent requested that the First Ayotte Report not be admitted.

56. On 27 November 2024, the Appellant was granted a deadline of 4 December 2024 to provide further comments on whether the requirements for admitting the First Ayotte Report under Article R56 of the CAS Code were met.

57. On 29 November 2024, the Appellant provided such comments, maintaining its position that the First Ayotte Report should be admitted to the case file.

58. On 2 December 2024, on behalf of the Sole Arbitrator, the CAS Court Office granted the Respondents until 6 December 2024 to submit observations further to the Appellant's comments of 29 November 2024.

59. On 4 December 2024, the Second Respondent submitted his observations.

60. On 11 December 2024, a CMC conference was held by videoconference. The Appellant and the Second Respondent were represented in the CMC.

61. On 19 December 2024, the Appellant was invited to clarify, by 15 January 2025, whether Professor Ayotte would testify during the hearing also on "*the relevance of anabolic steroids such as trenbolone in track-and-field*", as alluded to in the Appeal Brief, and (if so) to submit a supplementary expert report on that issue (the "**Second Ayotte Report**").

62. On 23 December 2024, on behalf of the Sole Arbitrator, the CAS Court Office informed the Parties that the First Ayotte Report was admitted to the file and that the reasons therefor would be provided in the final Award.

63. On 14 January 2025, the First Respondent returned a signed copy of the Order of Procedure and confirmed that it did not wish to make any oral argument or examine any of the witnesses.

64. On 15 January 2025, the Appellant and the Second Respondent returned signed copies of the Order of Procedure. Moreover, the Appellant submitted the Second Ayotte Report.

65. On 22 January 2025, the Second Respondent made use of the opportunity granted by the Sole Arbitrator to submit a supplementary report by Professor Ohe in response to the Second Ayotte Report.

66. On 23 January 2025, the CAS Court Office informed the Parties of the tentative hearing schedule and provided a list of questions that the Sole Arbitrator invited the Parties to address at the hearing.

67. On 29 January 2025, a hybrid hearing was held in person and by videoconference. In addition to the Sole Arbitrator, Ms Andrea Sherpa-Zimmermann (Counsel at the CAS) and Ms Juliane Schneider (observer), the following persons participated in the hearing:

For the Appellant:	Mr Ross Wenzel (General Counsel) Mr Nicolas Zbinden (counsel) Mr Robert Kerslake (counsel)
For the First Respondent:	Mr Shin Asakawa (Chief Executive Officer) Mr Yuichi Nonomura (Result Management) Mr Koichi Tsujii (counsel) Mr Shoichi Satake (counsel) Ms Risa Kumano (interpreter) Ms Grace Liu (interpreter)
For the Second Respondent:	Mr Masaki Toyoda (the Second Respondent) Mr Daniel Allen (counsel) Mr Yoji Kudo (counsel) Ms Yuko Kanamaru (counsel) Mr Hiromu Taga (counsel) Mr Kengo Iida (counsel) Mr Takao Ohashi (counsel) Mr Koichiro Mochizuki (counsel) Mr Masayuki Tanamura (counsel) Mr Michael Sekine (interpreter)

68. The following expert witnesses testified before the Sole Arbitrator:

- Professor Christiane Ayotte (called by the Appellant)
- Professor Tomoyuki Ohe (called by the Second Respondent)
- Professor Satoru Tanigawa (called by the Second Respondent)

69. At the outset of the hearing, the Parties confirmed that they had no objections to the arbitral procedure thus far. At the conclusion of the hearing, the Parties confirmed that they had no complaint regarding the conduct of the hearing, in particular, as regards their right to be heard and to be treated equally.

70. On 13 March 2025, the Appellant provided a copy of the award rendered in CAS°2023/A/9916 & 9966.

71. On 19 March 2025, the Second Respondent submitted that it considered the Appellant's communication of 13 March 2025 procedurally inappropriate and reserved its rights in this regard.

72. On 26 March 2025, the Sole Arbitrator informed the Parties that he had decided to admit the award issued in CAS 2023/A/9916 & 9966 into the record without admitting further submissions from the Parties, *inter alia* because the said award did not contain any finding (relevant to this arbitration) that went beyond the CAS jurisprudence already addressed in the Parties' written submissions and oral pleadings.

IV. SUBMISSIONS OF THE PARTIES

73. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by them. The Sole Arbitrator confirms that he has carefully considered all submissions made, regardless of whether there is any specific reference to them in this Award.

A. WADA's submissions and requests for relief

74. WADA's submissions, in essence, may be summarised as follows:

- Pursuant to Article 13.2.3.2 of the JADC, WADA has the right to appeal to the CAS.

- The Statement of Appeal was lodged in a timely fashion. In accordance with Article 13.6.1 of the JADC, World Athletics' deadline for appeal was 21 days from the receipt of the case file. As it received elements thereof on 26 April 2024, World Athletics' deadline to appeal was, at the earliest, 17 May 2024. Accordingly, pursuant to Article 13.6.1(b)(i) of the JADC, WADA's deadline could not be any earlier than 7 June 2024.

- As it is undisputed that the Athlete has committed an ADRV, the only question to be decided is the applicable sanction.

- The burden to prove lack of intent lies solely on the Athlete, as confirmed by CAS jurisprudence (e.g. CAS 2012/A/2759, paras. 11.31 et seq.; CAS 2014/A/3615, para. 52; CAS 2017/A/5016 & 5036, para. 131). As intentionality includes indirect intent, the Athlete must not only disprove rational and informed cheating, but also recklessness. Per Article 3.1 of the JADC, the standard of proof for lack of intent is on the balance of probabilities. As per CAS jurisprudence, it is not for WADA to come up with alternative scenarios. Instead, one only needs to analyse the scenario put forward by the Athlete.

- The Athlete argued that the AAF was a result of contamination but was unable to establish the source of the prohibited substance in his Sample. As noted in the Appealed Decision, this was uncontroversial amongst the parties at second instance. While the Athlete has argued before CAS that meat contamination was the most likely source of

the AAF, he has failed to provide sufficient evidence to meet his burden of proof in this regard. Specifically, there is no analytical evidence that beef liver was contaminated. Moreover, the Athlete accepted in his oral testimony that it is not clear whether he even ate beef (liver) the day before the Test. In addition, the Athlete's evidence as to his consumption of beef liver must be approached with caution: During cross-examination, he agreed that he added the beef liver photo to the summary of his diet (the "**Diet Summary**") after he had instructed his lawyers, while the text in that document neither referred to liver nor to Australian beef (WADA referred in this regard to CAS 2019/A/6319, which WADA argued showed the significance of a change in position as to the consumption of beef liver). Further, as confirmed by the expert testimony of Professor Ayotte, meat contamination is highly improbable as a source of the Athlete's AAF. Professor Ohe's testimony, by contrast, is entirely speculative as it refers to the maximum residue limit ("**MaxRL**") permissible in Japan. This does not reflect reality because it is much higher than the concentration of trenbolone found in any study of beef livers. It is also fair to assume, contrary to Professor Ohe, that the Athlete urinated between eating beef liver and being tested, for otherwise the Athlete would have surely mentioned this at some stage of the proceedings.

- There is consistent CAS jurisprudence holding that the Athlete must necessarily establish source to successfully prove that the substance was not taken intentionally (e.g. CAS 2017/A/5295, para. 105; CAS 2017/A/5335, para. 137; CAS 2017/A/5392, para. 63; CAS 2018/A/5570, para. 51; CAS 2016/A/4377, para. 51; CAS 2016/A/4563, para. 50; CAS 2016/A/4845, para. 41). Other CAS panels have decided that while proof of source is not a strict requirement for establishing the lack of intentionality, it is still a "*crucial, almost indispensable element for an athlete to disprove intent*" (CAS 2023/A/9377, para. 66) such that the absence of proof of source "*leaves the narrowest of corridors through which such athlete must pass"* (CAS 2016/A/4534, para. 37; endorsed by CAS 2022/A/8653, para. 233(d)), meaning that "*in all but the rarest cases the issue is academic*" (CAS 2016/A/4919, para. 66).

- It follows from the comment to Article 10.2.1.1 of the JADC, which mirrors identically the language contained in the equivalent comment of the 2021 World Anti-Doping Code (the "**WADC**"), that there exists only a theoretical, yet highly unlikely, possibility for an Athlete to prove that the ADRV was not intentional without establishing the source of the prohibited substance. In other words, absent proof of source, a four-year period of ineligibility applies, save in the most exceptional and extremely rare circumstances. The rationale is that absent proof of source, a key piece of evidence is missing to substantiate the claim that the substance was consumed inadvertently, requiring the tribunal to make a logical leap (cf. CAS 2016/A/4761, para. 40, citing with approval a decision of the Sport Dispute Resolution Centre of Canada in the matter of Tylor Findlay), which is not possible save in the most exceptional circumstances where alternative evidence can show the lack of intention.

- The Athlete's testimony is only a protestation of innocence, not concrete actual evidence. In accordance with CAS jurisprudence, such protestations are not sufficient proof of an unintentional ADRV and will thus carry no material weight in the assessment of whether the ADRV was intentional (CAS 2020/A/6978 & 7068, para.

163; CAS 2017/A/5016 & 5036, para. 125; CAS 2017/O/5218, para. 166; CAS 2018/A/5584, para. 139). Even in a rare outlier case where lack of intent was found in the absence of proof of source, the panel emphasized that it was "*disinclined to give weight to uncorroborated assertions of the accused and persons close to him or her*" (CAS 2020/A/7579 & 7580, para. 172). In any case, the Athlete's testimony was flimsy as to his consumption of beef, and when he included beef liver in his statement. He also admitted that he took protein and creatine to improve his explosive power, which gainsays his argument that the use of trenbolone makes no sense.

- Moreover, there is no scientific evidence ruling out an intentional violation and no other exceptional circumstances have been identified proving lack of intent. Instead, the Appealed Decision relies mainly on "evidence" allegedly showing that the Athlete had no incentive to dope as trenbolone allegedly would not have a performance-enhancing effect on a 400mH competitor. This finding was not based on objective facts. In particular, undue weight was attributed to the Athlete's and his coach's testimony in asserting that trenbolone would not have a performance enhancing effect. The Athlete's testimony is again merely a protestation of innocence. His coach is not to be regarded an independent witness (which is reinforced by the Athlete's coach giving evidence in support of the good character of the Athlete and his reaction to the AAF), nor was his opinion given on the basis of scientific evidence.

- In any case, CAS jurisprudence confirms that much more than an (alleged) lack of incentive to dope is required to establish that the ADRV was not intentional (CAS 2017/O/5218, para. 166; CAS 2017/A/5016 & 5036, para. 125; CAS 2019/A/6213, para 65; CAS 2018/A/5584, para. 139). Indeed, deciding otherwise would be to assume that every ADRV is well thought out and calculated on the part of athletes, which is not always the case. If an athlete could prove lack of intent by establishing that there was no potential increase in performance, this would undermine the purpose of anti-doping regulations in keeping participants safe and sport fair.

- Similarly, to the extent that the Appealed Decision referred to *"the words and actions of the Respondent after the Testing and after the notification of the test results, as well as the fact that the Respondent's side implemented an analytic investigation in order to discover the route of entry into his system by using enormous energy and expenses*", this contradicts CAS jurisprudence according to which diligent but unsuccessful attempts by the athlete to discover the origin of the prohibited substance are insufficient to prove lack of intent (CAS 2017/O/5218, para. 166; CAS 2018/A/5584, para. 139).

- Moreover, the statistics do not support the Athlete's allegation that 400mH athletes would never use steroids, given that other 400mH athletes have tested positive for the use of steroids and have faced four-year periods of ineligibility as it was deemed intentional. The statistics also illustrate that the Athlete's case is not such a large outlier that one could automatically rule out direct intention. Rather, the statistics show that use of trenbolone in short distance athletics is not uncommon. This is also supported by multiple CAS precedents involving short distance track and field athletes who were sanctioned with periods of ineligibility of four years for ADRVs involving trenbolone (e.g., CAS OG 20/06 & 08; CAS 2017/A/5105; CAS 2019/A/6319; CAS 2021/O/8111).

Moreover, Professor Ayotte's expert testimony confirms that trenbolone is used by track-and-field athletes, which also disproves Professor Tanigawa's evidence that, allegedly, no 400mH athlete would take trenbolone.

- Also, the allegation is not that the Athlete was on a course of 200mg trenbolone for eight weeks. It is unknown what happened, the point is that the Athlete failed to provide evidence showing that he lacked intent. Therefore, the Athlete's argument that he did not gain weight is a red herring. In fact, the athlete in CAS 2019/A/6319, who likewise tested positive for trenbolone, was a diminutive athlete who was nonetheless found to have used a steroid intentionally. Moreover, the Athlete has only submitted six weight figures across three years at random points. There could be all sorts of reasons for this loss of weight. No scientific evidence was presented that would show that this loss of weight means anything, and Professor Ayotte confirmed that trenbolone is useful also for maintaining (i.e., not necessarily gaining) weight.

- Adducing evidence of shock or a clean sporting record is likewise insufficient (see regarding the latter CAS 2017/O/5218, para. 166). Otherwise, floodgates would be opened and the four-year sanction, which was introduced in 2015 primarily due to requests by athletes, would become the exception.

- All of the Athlete's arguments are mounted against direct intent, while he has not sought to disprove indirect intent.

- In light of all of the above, it was not proven that the ADRV was unintentional. Consequently, the mandatory four-year period of ineligibility as per Article 10.2.1 of the JADC shall apply.

75. WADA made the following requests for relief in its Appeal Brief:

> *"1. The appeal of WADA is admissible.*
>
> *2. The decision dated 27 February 2024 rendered by the Japan Sports Arbitration Agency is set aside.*
>
> *3. Masaki Toyoda is found to have committed an anti-doping rule violation pursuant to Articles 2.1 and 2.2 of the Japan Anti-Doping Code.*
>
> *4. Masaki Toyoda is sanctioned with a four (4) year period of ineligibility starting on the date on which the CAS Appeals Division award enters into force. Any period of provisional suspension or ineligibility effectively served by Masaki Toyoda before the entry into force of the CAS Appeals Division award shall be credited against the total period of ineligibility to be served.*
>
> *5. All competitive results obtained by Masaki Toyoda from and including 19 May 2022 until the date on which the CAS Appeals Division award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*

6. The Japan Anti-Doping Agency, or in the alternative the Respondents, jointly and severally, are ordered to pay the arbitration costs of these proceedings (if any).

7. The Japan Anti-Doping Agency, or in the alternative the Respondents, jointly and severally, are ordered, jointly and severally, to pay a contribution to WADA's legal and other costs."

B. JADA's submissions and requests for relief

76. JADA submits that, because it has no right to appeal the Appealed Decision, it considers appropriate not to involve itself in the dispute between WADA and the Athlete, but rather to take a "*neutral and silent position*". Therefore, JADA refrains from making any substantive arguments. However, JADA considers unfair to be requested to pay the arbitration costs, or to contribute to WADA's legal and other costs.

77. JADA made the following requests for relief:

"Therefore, JADA respectfully requests that the arbitration costs are ordered to be paid in equal shares by the Appellant and the Respondents. […]

Therefore, JADA respectfully requests that [WADA's request against JADA for a contribution to WADA's legal and other costs] *be dismissed."*

C. The Athlete's submissions and requests for relief

78. The Athlete's submissions, in essence, may be summarised as follows:

<u>No intentional ADRV</u>

- The applicable standard of proof for lack of intent is "*by the balance of probability*" (Article 3.1 of the JADC). Accordingly, the probability of the "*ADRV is not intentional*" only needs to be slightly higher than the probability of the "*ADRV is intentional*".

- WADA overemphasizes the importance of establishing source. First, it is precisely those athletes whose ADRV was unintentional who will find it difficult to prove source. Secondly, proof of source may often be important, but is not indispensable, as confirmed by CAS jurisprudence (CAS 2020/A/7579 & 7580), the comment to Article 10.2.1.1 of the JADC and a comparison with the definitions of No (Significant) Fault or Negligence. Even without proof of source, the "corridor" for innocent Athletes to exculpate themselves must be wide enough and the specific objective and subjective circumstances of the case must be considered, recognizing that no case is the same as the other (CAS 2019/A/6313, paras. 75 and 76; CAS 2020/A/6978 & 7068, para. 136).

- During the second consultation phase of the 2021 WADC Review, it was pointed out by some stakeholders that "*the capability of laboratories to detect lower and lower concentrations of banned substances opens the door to more and more unintentional*

anti-doping rule violations for the presence of a prohibited substance". This has resulted in inconsistent CAS jurisprudence on proving lack of intent without establishing source. WADA itself acknowledges that this lack of consistency has led to unequal treatment of athletes (see "Concepts for Consideration and Feedback regarding the WADA-Code & IS Update Process"). This situation is caused by an ambiguity of Article 10.2.1.1 of the WADC, by which the Athlete must not be disadvantaged. The legal concept of strict liability under the WADC already puts athletes in a difficult position. One should not make it even more difficult for them to establish their case by limiting them to scientific and analytical evidence. Rather, lack of intent, which is a past subjective circumstance, can only be determined by a comprehensive evaluation of various indirect facts. As facts vary from case to case, there is a great risk of wrong decisions in some cases if facts or evidence are to be restricted and excluded from the consideration. Instead, it is essential to properly consider and evaluate all facts and evidence, including circumstantial ones, as supported by CAS jurisprudence (CAS 2020/A/6978 & 7068, para. 136; CAS 2017/A/5016 & 5036, para. 124).

- The evidence shows that the source of the prohibited substance is most likely the meat eaten by the Athlete prior to the Test. Therefore, his ADRV was most likely unintentional. This is supported by the following evidence:

    - No prohibited substances were to be detected in the supplements and skin creams used by the Athlete prior to the Test.

    - While trenbolone is not used in Japan, it is used outside of Japan as a veterinary drug to improve rearing efficiency and promote growth in beef cattle. A very large quantity of meat, including beef, is imported to Japan and there is no way to investigate all such quantity of imported beef to be able to determine the presence or amount of trenbolone.

    - The Athlete ate imported meat, including beef and beef liver, on more than one occasion during the period immediately preceding the Test. The Athlete's statement that he also ate beef liver is particularly credible because it was sent to his attorney on or before 20 July 2022 – before the Athlete and his attorney first learned that trenbolone is particularly prone to remain in beef liver, namely during the opening of the "B" Sample on 21 July 2022.

    - The Athlete's AAF is consistent with the amount of meat eaten. As confirmed by Professor Ohe, consuming 200g of beef liver containing trenbolone at the MaxRL applicable in Japan would result in a urinary concentration of trenbolone of 1 ng/mL after 24 hours, assuming that one litre of urine has passed by that time. This is also confirmed by the testimony of WADA's expert witness, Professor Ayotte, on the rate of excretion. At the JADDP hearing, the Athlete stated that he usually consumes about 300g of beef liver per meal. Thus, the concentration would be 1.5 ng/mL after 24 hours, thus corresponding with the 1.4 ng/mL detected in the Athlete's "A" and "B" Sample. In addition, as it is impossible to investigate all the vast quantity of beef imported into Japan, there

is the possibility that the beef liver consumed by the Athlete contained trenbolone above the maximum residue limit.

- In CAS 2019/A/6313 and the New Era Arbitration Tribunal case of Erriyon Knighton, the tribunals acknowledged the possibility of meat being contaminated by trenbolone, resulting in no period of ineligibility being imposed.

- Even if the source of the prohibited substance is not proven, holistic considerations of the scientific, circumstantial and human evidence as well as application of common sense, rule of thumb and plausibility shall lead to the conclusion of the Athlete successfully establishing that his ADRV was unintentional on a balance of probabilities. There is significant circumstantial evidence that the Athlete did not intentionally take trenbolone.

- To begin with, the Athlete has appeared before the Sole Arbitrator and, after having been told about the possibility of criminal sanctions, has credibly denied having intentionally used trenbolone. He was shocked when he learnt of the AAF and he did not even know what trenbolone was.

- In addition, there is a plausible alternative explanation for the AAF, namely ingestion of contaminated beef liver. WADA tried to frame this as a binary issue, which it is not. Even if contaminated beef cannot be proven to be the source, it is a plausible alternative source that cannot be just ignored in the overall assessment of evidence.

- Moreover, as trenbolone is not approved as a drug in Japan, the Athlete would have had to acquire it while overseas, or from overseas, or through another athlete, none of which is the case. It is clear from his travel history that he did not purchase trenbolone while overseas. As proven by his current and previous passport, his last international travel before the Test was to Quatar in October 2019. If the Athlete were to have purchased trenbolone on that occasion, he would have begun continuous use. Yet, no prohibited substances were detected in subsequent tests. It is not plausible that the Athlete purchased a trenbolone product during his travel in October 2019 or earlier, only to then start suddenly using it after receiving the RTP inclusion notice in March 2022. Moreover, the Athlete's purchasing history from online shopping websites and his credit card statements show that he did not purchase trenbolone from overseas (or otherwise). Finally, it is inconceivable that the Athlete could have acquired a trenbolone product from another athlete. No Japanese track and field athlete has ever tested positive for trenbolone before. In fact, even the existence of the substance was virtually unknown in the Japanese track and field community until the media reported on the JSAA's arbitral award against the Athlete and the case of Erriyon Knighton in 2022.

- Further, there was no incentive for the Athlete to take trenbolone:

  - As proven by the expert testimony of Mr Tanigawa, 400mH is characterized by (1) requiring "speed endurance" rather than explosive power and (2) races being decided by technical skill as well as adaptability. Trenbolone has a particularly

pronounced muscle hypertrophy effect, resulting in it typically being used by bodybuilders and similar athletes. It would be counterproductive for any 400m hurdler to use trenbolone in-season, given the decrease in endurance and sudden change in physical balance arising out of an increase of caloric intake and bodyweight due to extreme hunger caused by the substance. If at all, trenbolone use could make sense during winter, when it is common for 400m hurdlers to do more weight training, before excess muscle is trimmed and the body is brought in line with race specifications before the start of the competitive season in April/May.

- The foregoing applies with even greater force to the Athlete, who is a "second-half" or speed endurance athlete who competes on hurdling technique. He would therefore suffer even more from the negative effects of trenbolone than those 400mH athletes who compete on higher speed in the first half of the race.

- In 2022, the Athlete's winter training season proceeded without incident, and his results were highly promising in the 2022 season. If he continued to perform at this level at the Japan Championships in early June 2022 (as he eventually did), he was assured a second appearance at the World Athletics Championships in late July. Hence, there was no incentive for the Athlete, in May 2022, just prior to his most important competition, to intentionally take trenbolone, which could disrupt his race pattern as explained by Mr Tanigawa.

- The Athlete fully understood the risks and seriousness of doping. Specifically, he had completed multiple anti-doping education courses with JADA and other organizations. In addition, his coach had told him that doping can affect the lives of others, using as an example his own story of a changed Olympic medal ten years after the race due to an ADRV.

- In addition, the Athlete is the only Japanese athletics athlete who ever tested positive for trenbolone; the other Japanese positive tests were in strength sports. WADA even confirmed that he is the only 400mH athlete world-wide who ever tested positive for trenbolone. WADA's expert, Professor Ayotte, likewise testified that trenbolone is used for increasing muscle mass and therefore mostly used in power sports.

- Also, the following facts are not consistent with intentional consumption of trenbolone:

  - As confirmed by the Head of the Tokyo Laboratory, the concentration of trenbolone detected in the Athlete's Sample was extremely low, even below the analytical precision required by WADA for analytical laboratories. Had the Athlete taken trenbolone intentionally, a higher concentration would have been found in his Sample. In addition, the Athlete competed in back-to-back competitions during the period from early to mid-May 2022, resulting in a higher possibility of an in-competition test. It is inconceivable that the Athlete would intentionally take a prohibited substance during such time. If he would have done so intentionally, it would have only made sense for him to have consumed the substance immediately after the series of competitions ended on 15 May

2022, thus just before the Test on 19 May 2022. However, in that case, the detected concentration would have been much higher.

- As the use of trenbolone would have required a daily intake of 10.000 kcal or more, the Athlete's bodyweight would have been higher in 2022 than in previous years had he taken trenbolone. However, this was not the case: As proven by his bodyweight records, his weight even slightly dropped in 2022 compared to the previous two years.

- As confirmed by Professor Ohe, trenbolone must be taken continuously over a period to have any significant effect. In addition, if a 400m hurdler were to take trenbolone, it is unthinkable that he would take it suddenly just before his most important competition, because he would need to relearn how to run the race in a state of muscle hypertrophy after taking trenbolone. Hence, the Athlete would have needed to take trenbolone continuously well before May 2022. However, the Athlete tested negative on 13 December 2021 and on 25 February 2022, demonstrating that he was not using trenbolone long-term.

- Although a relatively large proportion of top athletes run 13 strides between hurdles in the early stages of the race, the Athlete runs 14 strides in the early stage of the race, resulting in a race pattern where he catches up in the second half. As confirmed by Mr Tanigawa, if the Athlete were to intentionally consume a substance known to have a particularly pronounced muscle hypertrophy effect, he would surely attempt to learn how to race with fewer strides between hurdles than before (by using the 13-stride pattern in the early stage). This is because, if the body's own power output is increased by muscle hypertrophy without changing the stride pattern between hurdles, the surplus of power output will result in "bunching up" strides between hurdles. However, he never attempted to change his stride pattern after 2019. Instead, as confirmed by Mr Tanigawa, at the 11 June 2022 Japan Championships race, the Athlete continued to use 13 strides in the early stages of the race.

- Prior to the Test, the Athlete was tested seven times since May 2019. The last two of those tests occurred on 13 December 2021 and 25 February 2022, i.e., only two months apart. On 11 March 2022, the Athlete was included in the RTP. The Athlete has testified that he knew this would mean that the frequency of tests would go up. In such a situation, it is highly unlikely that the Athlete would newly and intentionally begin to take a prohibited substance fully knowing that an out-of-competition test could come at any time.

- As confirmed by the video of 11 June 2022 Japan Championships race, the Athlete did not show any of the effects or side-effects of trenbolone, including muscle growth or extreme acne.

- Moreover, the Athlete's behaviour surrounding the Test is inconsistent with intentional doping:

- The Athlete has never had a single missed test or filing failure for whereabouts information and consciously designated 6:00 a.m. at his home as the one-hour time slot for testing because a senior athlete had advised him that this decreased the risk of any change of plans that could result in a missed test.

- He underwent the Test without evasive action even though he knew that the ringing of his bell at exactly 6:00 a.m. could only mean a doping test as no courier or other service would arrive that early in the morning. Had the Athlete intentionally taken a prohibited substance, he would have tried to avoid the Test by pretending not to be home, especially as he had not previously missed any tests.

- The Athlete's behaviour before and after the test did not change as he went on to calmly train for the Japan Championships, placing third in line with his abilities at the competition. If the Athlete would have taken trenbolone, he would have been psychologically as well as athletically out of balance. However, his athletic performance was not affected in any way.

- Right after learning about his AAF and before receiving the PDF of the notice, the Athlete went on to call Mr Karube and Mr Takahira in a state of confusion and exhaustion. Such immediate reaction would have been different if he had intentionally taken the substance. In such case, he would have carefully considered how to proceed when reporting and explaining his situation, rather than calling his coaches in a state of confusion and exhaustion after mere verbal notice of the positive result.

- The Athlete's efforts in the process of analysing his supplements and skin creams by a laboratory have been carried out intensively at the expense of time and effort. If the Athlete had intentionally taken a prohibited substance, he would have known the source of the prohibited substance found in his body from the beginning, so he would not have bothered to put in the expense, time, and effort required to conduct the multiple analyses that he did – after all, he would reason that the sooner the analytical results were obtained, the sooner he could return to competition.

- The Athlete adequately took precautions regarding supplements he consumed, specifically choosing Japan-made products because he believed that such products were more credible than those being made overseas. It is difficult to imagine that the Athlete would take such precautions regarding his supplements while at the same time intentionally taking trenbolone, a prohibited substance.

- The people around the Athlete have unanimously attested that he is a sincere person who respects discipline and is quiet and cautious. Everyone familiar with the Athlete is confident that he did not intentionally take trenbolone.

- While most of the above evidence was already presented to the JADDP and/or the JSAA, none of it was addressed in the Appeal Brief. Instead, the Appeal Brief referred

to another CAS case in which one central piece of evidence was the athlete's body-mass index, as is the case here.

- Based on his race schedule, the only reason one could imagine for the Athlete to take trenbolone before the Test is for recovery. However, there is no evidence it could be used in that way, how much one would take, and in what form. In fact, Professor Ayotte confirmed there is no data on this. Accordingly, this is a very speculative theory. That said, had the Athlete taken trenbolone after 15 May 2022 to recover, it is highly likely that the concentration in his Sample would have been higher.

- WADA's reference to case law on mere protestations of innocence has nothing to do with the current case. Similarly, the Athlete does not argue in the abstract about lack of sporting incentive and situation that are inconsistent with intent to dope. Instead, the Athlete's case is based on his own specific and individual situation, considering the characteristics of 400mH, the scientific features of trenbolone and numerous other factors, as supported by scientific and analytical evidence based on expert testimony. Based on such facts and evidence, the Athlete has established that him having ingested trenbolone innocently is more likely on balance than that he either intended to take trenbolone or was recklessly oblivious to the risk of contamination during his activities.

Delays not attributable to the Athlete

- In accordance with Article 10.13.1 of the JADC, the Athlete's period of ineligibility should have started on 21 May 2022 due to delays in the disciplinary procedure not attributable to the Athlete.

- Specifically, the Athlete was only notified by JADA on 21 June 2022, i.e. 33 days after the Test. The JADDP Decision confirms that such notification would have been possible approximately 10 days after sample collection. There was no exceptional reason for such a delay in notifying the AAF in this case.

- Further, after the hearing before the JADDP on 6 July 2023, the JADDP requested additional submissions. While the Athlete promptly prepared and filed an additional brief on 15 September 2023, JADA submitted a rebuttal only on 31 October 2023, requiring another rebuttal from the Athlete on 7 November 2023. The JADDP, in turn, took approximately two months between the final submission and the issuing of its decision, showing at least one month of additional delay without attribution to the Athlete.

- Moreover, while the Appealed Decision was rendered on 2 April 2024, WADA appealed only on 6 June 2024. There is no justification for the delay in JADA providing the complete file to WADA.

- In accordance with CAS jurisprudence, the Athlete "*has a right to an expeditious hearing and timely completion of the adjudicative process*" (CAS 2009/A/1759-1778, para. 95). Discretionary backdating of the period of ineligibility can compensate for the

undue delays in the disciplinary process for which WADA or JADA, but not the Athlete, bears responsibility.

No disqualification of results in competition

- In the event of non-application of Article 10.13.1 of the JADC and the two-year period of ineligibility being upheld, the Athlete would only be suspended approximately one month following the CAS Award. If, however, in accordance with Article 10.10 of the JADC, the Athlete's results in competitions during the period starting from the date of the Appealed Decision until the commencement of the ineligibility would be disqualified, this would result in his competition-results being disqualified for more than two years, which would be unreasonable and contrary to fairness within the meaning of Article 10.10 of the JADC.

79. The Athlete made the following requests for relief:

> *"(i) dismiss the Appeal in its entirety;*
>
> *(ii) affirm the Appealed Decision in its entirety;*
>
> *(iii) confirm that the Athlete is suspended for a period of 2 (two) years commencing as 21 May 2022; and*
>
> *(iv) order WADA or, alternatively JADA, to pay:*
>
> *a. costs of the arbitration; and*
>
> *b. the legal fees and other expenses incurred in connection with the present proceedings."*

V. JURISDICTION

80. Pursuant to Article R47 of the CAS Code:

> *"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 it prior to the appeal, in accordance with the statutes or regulations of that body* […]*".* (emphasis added)

81. As the Appealed Decision was issued by JSAA, which is governed by the JADC, the wording "*regulations of the said body*" in Article R47 of the CAS Code is a reference to the JADC. According to Article 13.2 of the JADC,

> *"a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation* […] *may be appealed exclusively as provided in this Article 13.2".*

82. The Appealed Decision is such a decision. Consequently, Article 13.2 of the JADC exhaustively provides for the appeal mechanism for the Appealed Decision.

83. If the Athlete qualifies as an International-Level Athlete, the jurisdiction of CAS follows from Article 13.2.1 of the JADC, which provides that

> *"*[…] *in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS."* (emphasis added)

84. However, CAS also has jurisdiction if the Athlete does not qualify as an International-Level Athlete: Article 13.2.2.3.4 of the JADC, which refers to decisions of the JSAA rendered in cases of athletes who are not International-Level Athletes, provides that such decisions "*may be appealed as provided in Article 13.2.3*". Article 13.2.3.2, in turn, provides in its last paragraph that

> *"WADA* […] *shall also have the right to appeal to CAS with respect to the decision of the* [JSAA]*."* (emphasis added)

85. Accordingly, it does not fall to be decided whether the Athlete qualifies as an International-Level Athlete. In either case, CAS would have jurisdiction. In addition, neither of the Respondents challenged CAS jurisdiction at any time and all Parties have expressly confirmed CAS jurisdiction by signing the Order of Procedure. Therefore, the Sole Arbitrator finds that he has jurisdiction to adjudicate the present case.

VI. ADMISSIBILITY

1. WADA's right to appeal

86. Depending on whether the Athlete qualifies as an International-Level Athlete, WADA has a right to appeal under Article 13.2.3.1(f) or 13.2.3.2 *in fine* of the JADC.

2. The timeliness of the appeal

87. Article R49 of the CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against* […]*".*

88. Accordingly, Article R49 of the CAS Code accords priority to any time limit for appeal provided for in the regulations of the governing the body that issued the decision

appealed against. In that regard, Article 13.6.1 of the JADC relevantly provides as follows:

> *"*[...] *the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings that led to the decision being appealed:*
> *(a) Within fifteen (15) days from the notice of the decision, such party/ies shall have the right to request a copy of the full case file pertaining to the decision from the Anti-Doping Organisation that had Results Management authority;*
> *(b) If such a request is made within the fifteen (15) 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 filing deadline for an appeal filed by WADA shall be the later of:*
> *(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or*
> *(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."*

89. World Athletics, which is the Athlete's International Federation and, thus, a party having a right to appeal under Article 13.2.3.2 *in fine* of the JADC, received the Appealed Decision on 9 April 2022. It submitted a case file request on 23 April 2022, i.e. within the deadline for such request provided for in letter (a) of the first paragraph of Article 13.6.1 of the JADC. Further to its request, World Athletics received elements of the case file on 26 April 2022. Assuming in the Respondents' favour that this case file was complete, it follows from letter (b) of the first paragraph of Article 13.6.1 of the JADC that World Athletics' deadline to appeal expired 21 days after 26 April 2022, i.e. on 17 May 2022. Accordingly, pursuant to letter (a) of the second paragraph of Article 13.6.1 of the JADC, WADA's deadline cannot have expired any earlier than 21 days after 17 May 2022, i.e. 7 June 2022.

90. Therefore, WADA's Statement of Appeal, which was received by CAS on 6 June 2022, was filed in time. As there are no indications in the file that the appeal could be inadmissible for any other reasons and noting that no Party has raised any objections as to the admissibility of the appeal, the Sole Arbitrator determines that the appeal is admissible.

VII. OTHER PROCEDURAL MATTERS

91. As mentioned above, the Sole Arbitrator admitted the First Ayotte Report into the record and indicated that the reasons for this decision would be provided in this Award. The decision was made mainly because there is a reference in the Appealed Decision to an expert statement by Mr Fedruk, who according to the Appealed Decision opined that "*if trenbolone had been detected from the Respondent's sample due to the Respondent's intake of meat in this case, it would have been necessary to take over 6 kg of beef in the 24 hours prior to the sample collection, which is 'very unlikely.'"* This expert view

contradicts the Second Respondent's assertion in this arbitration that meat contamination is the most likely source of the AAF. In order to be comfortable making a finding on this assertion by the Second Respondent, the Sole Arbitrator would have had to at least review the contradicting expert statement of Mr Fedruk expressly referenced in the Appealed Decision. However, neither Party submitted that expert statement in this arbitration. While the Sole Arbitrator could have ordered that document to be produced as part of the case file pursuant to R57(1) of the CAS Code, he found it more helpful to hear live testimony from the expert proffered by the Appellant in respect of the meat contamination argument. This situation amounted to exceptional circumstances within the meaning of Article R56 of the CAS Code.

VIII. APPLICABLE LAW

92. Article R58 of the CAS Code provides as follows:

> *"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 a 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

93. Both the Appealed Decision and the Parties' pleadings on the merits referred to the JADC, which the Sole Arbitrator agrees are applicable to this case. Subsidiarily, Japanese law shall apply, being the law of the country in which the JSAA is domiciled. However, the Sole Arbitrator also notes that none of the Parties made any reference to Japanese law in its pleadings and that, pursuant to Article 29.2 of the JADC, any issues of interpretation shall be resolved autonomously, not by reference to any national law.

IX. MERITS

94. It is undisputed that epitrenbolone was present in both the "A" Sample and the "B" Sample, and that it is a Metabolite of trenbolone, which in turn is a Prohibited Substance under section 1.1 of the 2022 WADA Prohibited List. Accordingly, there is sufficient proof of an ADRV pursuant to Article 2.1.2 of the JADC. While the estimated concentration of epitrenbolone was very low, it follows from Article 2.1.3 of the JADC that this is irrelevant for the existence of an ADRV as there is no Decision Limit for trenbolone. Since there are also no special reporting criteria within the meaning of Article 2.1.4 of the JADC, the Sole Arbitrator finds it established, and no Party has disputed, that the Athlete has committed an ADRV under Article 2.1 of the JADC.

95. Consequently, what is left to be decided is the applicable sanction. The Sole Arbitrator will first turn to the period of ineligibility before addressing the disqualification of competitive results (with resulting consequences).

A. Period of ineligibility

1. Length

i. Legal standard

96. Article 10.2 of the JADC provides, in its relevant parts, as follows:

> *"The period of Ineligibility for a violation of Article 2.1 Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:*
>
> *10.2.1 The period of Ineligibility* […] *shall be four (4) years where:*
>
> > *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *[Comment to Article 10.2.1.1: While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance.]*
>
> > *10.2.1.2 The anti-doping rule violation involves a Specified Substance or a Specified Method and JADA can establish that the anti-doping rule violation was intentional.*
>
> *10.2.2 If Article 10.2.1 does not apply* […] *the period of Ineligibility shall be two (2) years.*
>
> *10.2.3 As used in Article 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.* […]*"*

97. Trenbolone is not a Specified Substance. Hence, if lack of intent is not established, the standard period of ineligibility is four years pursuant to Article 10.2.1.1 of the JADC. Otherwise, it is two years in accordance with Article 10.2.2 of the JADC. While the JADC provides for certain cases in which the standard period of ineligibility, whether two or four years, can be increased or reduced, the Sole Arbitrator finds that the relevant provisions can be disregarded in his further analysis, for a combination of three reasons.

98. First, there is no suggestion by any Party, and the Sole Arbitrator sees no indication in the record, that the standard period of ineligibility would need to be increased, specifically under Articles 10.4 and 10.9 of the JADC.

99. Secondly, while the Athlete's argument of meat contamination could, if accepted, mean that the requirements of Article 10.5 or 10.6 of the JADC might be met, the Sole Arbitrator notes that those provisions require a finding of No (Significant) Fault or Negligence. Such finding, in turn, would be tantamount to a finding that the ADRV was not intentional within the meaning of Article 10.2.1.1 (to same effect, e.g., CAS 2017/A/5282, para. 73; CAS 2023/A/9451, 9455 & 9456, para. 342 with further references). In that case, the applicable standard sanction would be two years, per Article 10.2.2 of the JADC. It follows that the sole purpose of applying Article 10.5 or 10.6 of the JADC would be to lower the period of ineligibility to below 2 years. This, however, is something that the Sole Arbitrator is unable to do: The Athlete has not (cross-)appealed the Appealed Decision, instead he is merely seeking the dismissal of WADA's appeal. Consequently, even if the Athlete were to meet the requirements of Article 10.5 or 10.6 of the JADC, the principle of *ne ultra petita* would prevent the Sole Arbitrator from applying such reduction in this arbitration.

100. Thirdly, should the four-year period of ineligibility as provided for in Article 10.2.1.1 of the JADC be the applicable standard sanction in this case, the Sole Arbitrator fails to see, and none of the Parties has submitted, how this sanction could be reduced to a period between two and four years. In particular, Article 10.8.1 of the JADC clearly does not apply.

101. For those reasons, the Sole Arbitrator finds that his decision on the applicable period of ineligibility is a binary one: Depending on whether lack of intent is established, the period of ineligibility is either two years or four years. For this reason, the following analysis will be limited to the issue of intentionality.

ii. Burden of proof

102. It follows from the clear wording of Article 10.2.1.1 of the JADC – and is not called into question by the Athlete – that the burden is on the Athlete to prove that the ADRV was not intentional. The Sole Arbitrator agrees with WADA and the Athlete that, in view of Article 10.2.3 of the JADC, this requires the Athlete to disprove both a deliberate ADRV ('direct intent') and a reckless ADRV ('indirect intent').

103. However, as rightly pointed out by the Athlete, this means that he is to prove a negative (and subjective) fact. This entails, according to the Swiss Federal Tribunal, a certain duty of cooperation of the counterparty, i.e. WADA, to avoid procedural unfairness (see CAS 2011/A/2386, paras. 102-106; CAS 2017/A/5045, paras. 106-109). Therefore, while WADA does not bear the burden of proving alternative scenarios, a paucity of sufficiently plausible alternative scenarios presented to the Sole Arbitrator may assist the Athlete in meeting his burden of proof (cf. CAS 2011/A/2386, para. 111; CAS 2019/A/6443 & 6593, para. 181).

iii. Standard of proof

104. As to the standard of proof applicable to the Athlete's burden to prove lack of intent, Article 3.1 of the JADC provides as follows, in its relevant part:

> *"The standard of proof shall be whether JADA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete* […] *alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances* […] *the standard of proof shall be by a balance of probability."* (emphasis added)

105. Accordingly, the Athlete must prove lack of intent by a balance of probability, which requires less than the comfortable satisfaction. According to the prevailing line of CAS jurisprudence, this requires that "*the occurrence of a specified circumstance is more probable than its non-occurrence*" (CAS 2006/A/1067, para. 7; to same effect, e.g., CAS 2009/A/1926 & 1930, para. 31; CAS 2012/A/2759, para. 11.6; CAS 2012/A/2789, para. 7.4; CAS 2012/A/2797, para. 61; TAS 2013/A/3320, para. 95; TAS 2014/A/3475, para 79; CAS 2016/A/4377, para. 51; CAS 2017/A/4944, para. 62; CAS 2017/A/5295, para. 107; CAS 2019/A/6541, para. 80; CAS 2020/A/6978 & 7068, para. 162; CAS 2021/O/8111, para. 72). Put differently, the athlete must establish that the likelihood of the occurrence of the relevant circumstance is greater than 50% (see, in particular, CAS 2009/A/1926 & 1930, para. 31; TAS 2014/A/3475, para. 79; CAS 2014/A/3615, para. 57; CAS 2017/A/5296, para. 52; CAS 2023/A/9451, 9455 & 9456, para. 355).

106. The Sole Arbitrator is aware that there is another line of CAS jurisprudence whereby it is sufficient for athletes to prove that the theory put forward by them is the most likely among several scenarios (see, e.g., CAS 2007/A/1370 & 1376, para. 58; CAS 2008/A/1515, para. 116; CAS 2012/A/2986, para. 69; CAS 2011/A/2384 & 2386, paras. 111-113). However, the Sole Arbitrator considers that it is not necessary for him to take any position on those two diverging views as he would not arrive at different conclusions under any of them. This holds true, in particular, as there are only two alternatives for the main fact to be proven by the Athlete – either his ADRV was intentional, or it was not intentional. Pursuant to both lines of jurisprudence, the Athlete needs to establish by a probability of greater than 50% that the ADRV was not intentional: According to the 'more likely than not' approach, this is always the required probability. Under the 'most likely among several scenarios' approach, the existence of only two scenarios (intentional or not) means that for one of the two scenarios to be 'the most likely', it must likewise be more than 50% probable.

iv. Admissible means of evidence

107. As to the means of evidence that the Athlete may rely upon to meet his burden of proof, the JADC does not provide for any restrictions. It follows that any means of evidence are admissible, subject of course to general restrictions on admissibility of evidence

(same view CAS 2020/A/7579 & 7580, para. 171; CAS 2023/A/9451, 9455 & 9456, para. 356). This view finds additional support in the reference to "*any reliable means*" in Article 3.2 (see CAS 2011/A/2384 & 2386, para. 243; CAS 2023/A/9451, 9455 & 9456, para. 356).

108. For the avoidance of doubt, the Sole Arbitrator notes that written witness statements are also an admissible means of evidence. However, if the witness is not called to appear at the hearing, this may affect the evidentiary value of the witness testimony (see NOTH/HAAS, in ARROYO, M.: *Arbitration in Switzerland – The Practitioner's Guide*, 2nd ed, Article R44, para. 41; cf. also Swiss Federal Tribunal, judgment of 31 May 2012, 4A_682/2011, paras. 4.1 *et seq.*). This holds true, in particular, if the counterparty challenges the contents of the written witness statement or has indicated that it seeks to cross-examine that witness.

v. Principles for the assessment of evidence

109. It is generally accepted that there is no concept of binding precedent in CAS jurisprudence (see, e.g., CAS 2014/A/3668, para. 66; CAS 2016/A/4643, para. 82; CAS 2020/A/6978, para. 135). Nonetheless, the Sole Arbitrator finds it appropriate, in the interest of a harmonized application of the WADC and the regulations that are based on it (such as the JADC), to take guidance from past jurisprudence on the interpretation of the relevant rules. However, when it comes to the assessment of the facts and the evidence to which those rules must be applied, it is trite that no case is identical to the other, meaning that each case needs to be decided on its own particular circumstances (see CAS 2011/A/2515, para. 71; CAS 2014/A/3685, para. 72; CAS 2015/A/4233, para. 114; CAS 2020/A/6978 & 7068, para. 136).

110. Moreover, the Sole Arbitrator notes the following finding of the Swiss Federal Tribunal (4A_538/2012, decision of 17 January 2013, at E.5.1):

> *"Aussi bien, comme l'intimée le souligne à juste titre, si chaque partie pouvait décider par avance, pour chaque pièce produite, quelle sera la conséquence probatoire que le tribunal arbitral sera autorisé à en tirer, le principe de la libre appréciation des preuves, qui constitue un pilier de l'arbitrage international (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2e éd. 2010, n° 1238), serait vidé de sa substance."*
>
> Translation into English:
>
> *"Also, as the respondent rightly points out, if each party could decide in advance, for each document produced, what evidentiary consequences the arbitral tribunal would be authorised to draw from it, the principle of the free assessment of evidence, which is a pillar of international arbitration (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 2nd ed. 2010, no. 1238), would be stripped of its substance."* (emphasis added)

111. In view of the above, the Sole Arbitrator considers that his task is to assess the totality of facts and evidence before him to determine the likelihood of the Athlete's ADRV having been unintentional. This task would not be fulfilled if he were to merely adopt conclusions that other tribunals reached based on their assessment of different facts and different evidence. For this reason, the Sole Arbitrator is not persuaded by what he understands to be WADA's argument, namely that certain types of evidence, such as testimony by the athlete ("*protestations of innocence*"), evidence for lack of sporting incentive, evidence of diligent attempts to discover the origin of the prohibited substance, or evidence of a clean record are *per se* incapable of assisting the Athlete in proving lack of intent, allegedly because they are not "*actual, concrete evidence*". It may well be that in other cases, CAS tribunals came to the conclusion that specific pieces of evidence before them falling into those categories were insufficient to prove lack of intent. This does not mean, however, that evidence from the same categories could not, under the circumstances of another case, help an athlete in proving lack of intent. This holds true, in particular, as the specific pieces of evidence and the combination of different pieces of evidence will hardly ever be identical between two cases, and neither will be the factual matrix to which the evidence relates. In short, the Sole Arbitrator shares the view expressed by the panel in CAS 2023/A/9451, 9455 & 9456, para. 363:

> *"In this respect, the Appellants (principally WADA) contended that protestations of innocence, however credible they appear, 'carry no material weight in the analysis of intent' and that the same applies to a lack of a demonstrable sporting incentive to dope, diligent attempts to discover the source of the Prohibited Substance and/or the Athlete's clean record. The Panel is of the view that these contentions go too far. <u>These matters will carry whatever weight they will carry in the particular circumstances of the particular case. There is no a priori reason or basis to dismiss such evidence out of hand.</u>"* (emphasis added)

112. However, it goes without saying that for any evidence (from whichever category) to carry any material weight, it will need to be concrete and persuasive, as emphasized repeatedly in CAS jurisprudence (see, e.g., CAS 2016/A/4919, para. 71; CAS 2017/A/5369, para. 148; CAS 2020/A/2978, para. 134).

113. Finally, the Sole Arbitrator notes that multiple pieces of evidence can have a cumulative effect (CAS 2013/A/3124, para. 12.3; CAS 2017/A/4937, para. 51). This is sometimes described by a 'strands in a cable' metaphor: While each strand of evidence by itself may not be strong enough to meet the burden of proof, the cable created by all strands together may be sufficient to prove the relevant fact (CAS 2015/A/4059, paras. 120, 139, 141; CAS 2017/A/5434, para. 212).

vi. No requirement to prove source

114. The Sole Arbitrator agrees with the Athlete that proof of source is not a requirement under Article 10.2.1.1 of the JADC. There is no indication in the wording of that Article, or in the definition of the term "*intentional*" in Article 10.2.3 of the JADC, of any such requirement. This stands in stark contrast to the definitions of No Fault or Negligence

and No Significant Fault or Negligence, which expressly require athletes to establish how the Prohibited Substance entered their system. Had the draftspersons of the JADC (or rather of the WADC) sought to introduce such requirement also for proof of lack of intent, they would presumably have used the same language there. Instead, they did the opposite by expressly acknowledging in the comment to Article 10.2.1.1 of the JADC (which, according to Article 27.2 of the JADC, shall be used as an interpretative tool) that it is possible for an athlete to establish lack of intent without establishing source.

115. Under those circumstances, the Sole Arbitrator sees no basis for reading into Article 10.2.1.1 of the JADC a requirement to prove how the Prohibited Substance entered the athlete's system. The Sole Arbitrator is comforted by the fact that many CAS tribunals have reached the same conclusion (see, e.g., CAS 2016/A/4534, para. 37; CAS 2016/A/4676, para. 72; CAS 2016/A/4828, para. 136; CAS 2016/A/4919, para. 66; CAS 2017/A/5016 & 5036, para. 122; CAS 2017/A/5178, para. 88; CAS 2017/A/5112, para. 111; CAS 2018/A/5768, para. 142; CAS 2019/A/6313, para. 77; CAS 2020/A/7579 & 7580, para. 171; CAS 2021/O/8111, para. 73; CAS 2023/A/9451, 9455 & 9456, para. 357). The Sole Arbitrator notes that most, if not all, of the CAS tribunals that took a different view were faced with the 2015 WADC, which did not yet include the above-mentioned comment to Article 10.2.1.1 of the JADC (see, e.g., CAS 2016/A/4377, para. 51; CAS 2016/A/4662, para. 39; CAS 2017A/5175, para. 67; CAS 2017/A/5335, para. 137; CAS 2017/A/5392, para. 63; CAS 2017/A/5295, para. 105; CAS 2018/A/5570, para. 46).

116. It follows from the foregoing that any evidence related to the source of the AAF is simply one strand of the evidentiary cable relied upon by the Athlete to prove the only fact he must prove, namely lack of intent. The Sole Arbitrator fully agrees with CAS jurisprudence that any such evidence regarding source is a particularly important strand of this cable (see, e.g., CAS 2017/A/5016 & 5036, para. 123; CAS 2021/A/7579 & 7580, para. 171). Indeed, compelling evidence of a source that suggests non-intentional ingestion may sometimes even be sufficient, in and of itself, for athletes to meet their burden of proving lack of intent. However, the Sole Arbitrator agrees with the Athlete that just because evidence as to source is less compelling, such evidence does not become irrelevant (see also CAS 2017/A/5248, para. 55; CAS 2019/A/6313, paras. 65, 80 and 90; CAS 2020/A/7579 & 7580, para. 155). Instead, given the cumulative effect of evidence, it is for the Sole Arbitrator to decide on the totality of evidence, and not for certain pieces or types of evidence separately, whether the Athlete discharged his burden of proving lack of intent.

117. For the avoidance of doubt, the Sole Arbitrator does not disagree with the well-established CAS jurisprudence that without evidence as to how the prohibited substance entered the athlete's system, it is usually very difficult to prove lack of intent (see, e.g., CAS 2021/O/8111, para. 73). This is why such scenario is "*extremely rare*" (see, e.g. CAS 2016/A/4534, para. 37; CAS 2016/A/4676, para. 72; CAS 2016/A/4828, para. 136; CAS 2017/A/5016 & 5036, para. 123; almost identical terminology is used in CAS 2016/A/4919, para. 66; CAS 2018/A/5768, para. 142). However, for the reasons set out above, the Sole Arbitrator subscribes to the view of the panel in CAS 2023/A/9451, 9455 & 9456, para. 362:

> *"*[…] *It is very difficult for the Panel to form a view as to the intention of the Athlete without evidence as to how she happened to ingest the* [prohibited substance] *in this case. It is important, however, not to elevate these observations to statements of dogma lest doing so obscures the true nature of the task to be undertaken by the Panel. The task of the Panel is to weigh the evidence adduced by the Athlete and to form a view as to whether that evidence as a whole is sufficient to meet the Athlete's burden of proving that she did not intend (directly or recklessly) to commit the ADRV."*

vii. Analysis of the evidence on record

118. The Sole Arbitrator will now turn to the evidence before him. As the fact to be proven by the Athlete, *viz.* lack of intent, is both a subjective fact and a negative fact, the Sole Arbitrator finds it appropriate to first address the only direct evidence that the Athlete can possibly proffer for lack of intent, namely his own testimony (see section (a) below). Subsequently, the Sole Arbitrator will analyse all other evidence, which is necessarily circumstantial and aims at proving objective circumstances that allow for an inference that the AAF was not intentional (see sections (b) to (l) below). Finally, the Sole Arbitrator will weigh the totality of the evidence to determine whether the Athlete discharged his burden of proving that the AAF was, more likely than not, unintentional (see section (m) below).

(a) The Athlete's denial

119. The Athlete appeared at the hearing in person and expressly denied having taken trenbolone intentionally. The Sole Arbitrator does not share WADA's view that such denial carries no material weight *per se*. In this regard, the Sole Arbitrator refers to his general considerations in respect of the admissibility of any means of evidence, and the free assessment of such evidence (see paras. 107 and 111 above). Moreover, Article 3.2.5 of the JADC allows hearing panels to draw adverse inferences from an athlete's refusal to appear at the hearing and answer questions. It would hardly be reconcilable with procedural fairness and equal treatment if, in the opposite scenario of the athlete appearing and testifying, this could likewise only work against the athlete, but not to the athlete's benefit. Similarly, the fact that an ADRV may be proven by admission, as clarified by Article 3.2 of the JADC, necessarily implies that an athlete's testimony may (if credible) carry substantial evidential weight against the athlete. This again begs the question why the same should not be true for (credible) testimony to his benefit. In summary, the Sole Arbitrator fails to see why the tribunal's personal impression of the accused and his testimony should be irrelevant. He is comforted by the fact that several CAS tribunals have likewise considered an athlete's testimony relevant in anti-doping cases (see, e.g., CAS 2002/A/385, para. 57; CAS 2016/A/4534, para. 37; CAS 2016/A/4676, para. 72 and 76; CAS 2017/A/5016 & 5036, para. 123; CAS 2017/A/5112, para. 111; CAS 2019/A/6313, para. 87; CAS 2019/A/6443 & 6593, para. 182; see also LEWIS/TAYLOR, Sport: Law and Practice, 4th edition, 2021, para. C5.10).

120. Of course, denials may be untruthful (as may admissions, even though presumably much more rarely). This is why it is for the tribunal to assess the credibility of the testimony of the accused.

121. At the hearing, the impression that the Athlete's overall demeanour left on the Sole Arbitrator was that of a very serious and sincere young man. The Sole Arbitrator notes that this impression aligns with the descriptions of him in the written witness statements given by Mr Kishimoto (a teammate at Fujitsu's track and field team), Mr Karube and Mr Takahira. Of course, neither of them was called to testify at the hearing and all three of them belong to the Athlete's "camp". These are factors that limit the evidentiary weight that the Sole Arbitrator is prepared to give to their written statements. However, their written statements as to the personality of the Athlete benefitted from the fact that they went beyond abstract descriptions of his character. Instead, all of them included concrete examples of his behaviour in certain situations that lent credibility to their statement. Moreover, the Sole Arbitrator accepts Mr Kishimoto's explanation that while he is a teammate of the Athlete, they are at the same time rivals competing in the same discipline for a limited number of national team slots for the Olympic Games and World Championships. In addition, WADA itself relied on factual allegations contained in the written witness statement of Mr Takahira in its cross-examination of the Athlete (see para. 123 below). Based on those considerations, the Sole Arbitrator finds that those three written statements do lend some support to his impression of the Athlete at the hearing.

122. Moreover, the Athlete's credibility was helped by the fact that from the very beginning of this case, and as confirmed again in cross-examination without any hesitation, the Athlete acknowledged that he no longer remembered what precisely he ate the days before the Test. Similarly, even though he testified (understandably, in the Sole Arbitrator's view) that he could not clearly remember the precise timeline, he was promptly willing to accept WADA's proposition in cross-examination that he instructed his Japanese attorneys on 28 June 2022 (WADA relied in this regard on the written witness statement of Mr. Takahira). The Athlete also did not hesitate to confirm that it was only about half a month later that he took the photo of a package of Australian beef liver of the kind he says he regularly consumed. As all those acknowledgements by the Athlete have an obvious potential to hurt his case, they go to the Athlete's credit.

123. That said, there were two parts of the Athlete's testimony that WADA picked up at the hearing to challenge his credibility. The first one was the Athlete's testimony on the quantity of beef liver allegedly consumed by him, which WADA found "*hard to believe*". The Sole Arbitrator notes that the Athlete initially referred, in direct examination, to "*about 200-300g*" per meal. When shown, during cross-examination by WADA, the picture of the beef liver package that he says he consumed, he corrected the quantity, without being asked about it, to 220-330g because the label of the package said that it contained 110g (the Athlete testified that he would eat two to three such packages a meal). The Sole Arbitrator does not consider that this correction by 20-30g called into question the Athlete's credibility, nor does he understand WADA to have so suggested. Instead, WADA appeared to doubt only that the Athlete would eat such a large quantity of beef liver in a single meal. While the Sole Arbitrator agrees that 330g

of beef is quite a large portion, he does not find it entirely implausible for a professional athlete to eat such a quantity. In any case, the Athlete himself clarified that he usually ate only two such packages, i.e. 220g. Contrary to WADA's suggestion during its closing argument, this clarification was made spontaneously by the Athlete on his own motion, i.e. not only after being pressed by WADA that 330g would seem rather excessive. This voluntary acknowledgement that he usually consumed less than 330g again goes to the Athlete's credit. Under those circumstances, the Sole Arbitrator does not find that this part of the Athlete's testimony hurt his credibility.

124. The second point that, according to WADA, should cause the Sole Arbitrator to approach the Athlete's testimony with caution was related to the Diet Summary. As mentioned before, the Athlete accepted in cross-examination that the picture of the package of Australian beef liver shown in the Diet Summary was taken only after he had instructed his lawyers. He further testified that the text of the same document was written at an earlier point in time (even though it remained unclear whether this was before or after he instructed his attorneys). He acknowledged that such text did not contain any reference to beef liver specifically, or to Australia. The Athlete's explanation for the discrepancy between the text and the photo was that when he first drew up the Diet Summary, he went to the supermarket and took pictures of all meat products he consumed in the time before the Test; however, at the time, beef liver was not in stock, which is why he returned at a later point in time, took a picture of beef liver then and added it to the Diet Summary thereafter. According to the Athlete, he forgot to add also a textual reference to beef liver and Australia.

125. WADA's call for caution obviously alludes to the possibility that the Athlete learnt from his lawyers, who he confirmed are sports law experts, that (epi-)trenbolone is particularly prone to remain in beef liver, and that he decided thereafter to falsely claim that he had eaten beef liver before the Test. The Sole Arbitrator notes that WADA did not openly confront the Athlete with the proposition that he was lying about having eaten beef liver (from Australia or at all). Also, WADA did not in fact challenge the Athlete's submission that "[t]*he Athlete and his attorney first learned that trenbolone is particularly prone to remain in beef liver by Mr. Masato Okano, head of the Anti-Doping Laboratory, when observing the analysis of the B Sample on 21 July 2022*" and that this was after the Athlete had emailed the Diet Summary, which includes the beef liver photo, to his lawyers. The Athlete confirmed on re-direct that the first time he heard about beef liver being prone to retain trenbolone was during the opening of the "B" Sample, and that this was after he took the photo of the beef liver that is contained in Diet Summary. WADA did not challenge this testimony on re-cross.

126. In any case, while the course of events apparently insinuated by WADA is of course possible, the Sole Arbitrator considers it unlikely, for a combination of two reasons. First, to the extent that this implies any improper behaviour on the part of the Athlete's lawyers, it would be a most serious matter. The Sole Arbitrator is not prepared to make any assumptions to this effect in the absence of any concrete assertion by WADA, let alone any evidence for such misconduct. It should be mentioned that WADA, to its credit, seemed to carefully avoid making any such accusation at the hearing. Secondly, had the Athlete learned from his lawyers that beef liver could contain higher quantities

of trenbolone and had he thereafter decided to include beef liver in the Diet Summary before sending it to his lawyers, he would no doubt have asserted in that same document that he ate beef liver the night before the Test. Yet, this is not what he has done. Instead, he has very candidly admitted from the very beginning (already during the first instance proceeding) that he does not remember precisely what he ate the days before the Test. It seems rather implausible that he would bother to lie about having regularly eaten Australian beef liver, only to volunteer with the acknowledgement that he does not even remember what type of meat he ate before the Test. The Sole Arbitrator finds the Athlete's explanation significantly more plausible, i.e. that he forgot to update the text in the Diet Summary after he had managed to take a picture of the beef liver during his second trip to the relevant supermarket. In addition, the text of the Diet Summary does not specify any body parts of the chicken, pork or beef that he says he ate. Had beef liver been the only body part specifically mentioned in the test of the Diet Summary, this might have rather supported than undermined the very suspicion raised by WADA.

127. For the above reasons, the Sole Arbitrator does not consider that the timeline of the preparation of the Diet Summary, or the Athlete's failure to mention Australian beef liver in the text of that document, diminishes the credibility of the Athlete's testimony. WADA's reference in this context to the award in CAS 2019/A/6319 is of no avail because, in that case, the athlete acknowledged that she had given false testimony at the first instance as to her diet before the relevant doping test. WADA fairly acknowledged in its closing argument that it was not saying this is what happened in the present case. Indeed, the Sole Arbitrator is not persuaded that the Athlete's testimony that he regularly consumed beef liver in the time before the Test, which he maintained through all three instances, was false.

128. In conclusion, the Sole Arbitrator considers that the Athlete's testimony does carry evidentiary weight which, while not enough to meet his burden of proof in and of itself, it is not insignificant either.

(b) Evidence of meat contamination

129. The following facts are common ground in this arbitration: Trenbolone is approved as a veterinary drug in beef cattle in Australia and the USA. The same is true for a few other countries, but not for Japan. However, a large quantify of the beef meat sold in Japan is imported, including from Australia and the USA. Administration of trenbolone in beef cattle entails that meat sourced from such cattle may contain trenbolone (in muscles) or epitrenbolone (in livers). The MaxRL for trenbolone in beef liver is 10 ng/g. However, as the Japanese authorities do not test all beef meat imported into Japan, it is unknown to what extent trenbolone could have been present in any beef meat eaten by the Athlete. The human consumption of beef meat containing trenbolone or epitrenbolone will result in the presence of epitrenbolone in the urine of the person who ingested such meat. The Sole Arbitrator also notes that in at least two other cases (CAS 2019/A/6313 and New Era Arbitration Tribunal, Case 24052801), sports tribunals have

accepted that an AAF for trenbolone was caused by ingestion of contaminated beef meat.

130. According to Professor Ohe's calculation, consumption of 200g of beef liver contaminated with the MaxRL of trenbolone (2 µg) would result in a urinary concentration of 1 ng/mL after 24 hours. This calculation relies on a study referred to by both Professor Ohe and Professor Ayotte, which found (among other things) that 50% of trenbolone is excreted through urination within the first 24 hours after ingestion.

131. While the concentration of 1 ng/mL resulting from Professor Ohe's calculation is 0.4 ng/mL lower than the (estimated) concentration of epitrenbolone in the Athlete's Sample, the Sole Arbitrator notes that according to both experts, excretion differs between individuals. In addition, the Athlete testified having regularly consumed 220g of beef liver instead of 200g as underlying Professor Ohe's calculation (who explained that he had not been provided with any information as to the Athlete's actual consumption of meat). Moreover, as the Sample was provided on or before 6:21 a.m. (when the Sample was sealed pursuant to the Doping Control Form), significantly less than 24 hours would have passed between ingestion of epitrenbolone and the Test if the Athlete had beef liver for lunch or dinner on the day before the Test. Accordingly, the Sole Arbitrator does not find it difficult to see that based on Professor Ohe's testimony, consumption of 220g (let alone 330g) of beef liver the day before the Test could have caused a urinary concentration of 1.4 ng/mL in the Athlete.

132. Professor Ayotte did not challenge the accuracy of Professor Ohe's calculation as such. Instead, she challenged some of his assumptions underlying the calculation. However, for the following reasons, the Sole Arbitrator is not satisfied that any of those challenges make it *impossible* for meat contamination to explain the estimated urinary concentration found in the Sample (and the Sole Arbitrator did not understand this to be Professor Ayotte's position).

133. First, Professor Ayotte testified that the excretion pattern differs depending on whether one ingests trenbolone or epitrenbolone. However, Professor Ohe disagreed with this statement, saying that both substances have a similar pharmakinetic profile. To support her diverging view, Professor Ayotte referred to a study performed by herself in 2021, according to which epitrenbolone was no longer detectable in two individuals' urine five to ten hours after they had each ingested 1 µg of epitrenbolone (in meat or liquid). However, the Sole Arbitrator is unable to conclude, from those numbers alone, that the excretion patterns of epitrenbolone and trenbolone are in fact different. When being asked about that very study in cross-examination, Professor Ayotte acknowledged that excretion differs between individuals and that the purpose of her study in 2021 was merely to "*give some idea and background of what we can expect in urine*". In addition, it is not clear how sensitive the measuring equipment used in that study was. Therefore, it is unknown how high a concentration of epitrenbolone may still have been present in the urine samples 5 to 10 hours after ingestion. It is also unclear what this may mean for a scenario in which the dosage of epitrenbolone was higher (as was the case with all studies on trenbolone referred to by the experts, and as may have been the case if the Athlete ingested 220g of Australian beef liver). In particular, it is unclear whether, had

Professor Ayotte's study been based on higher dosages of epitrenbolone, it would have likewise detected epitrenbolone after 24 hours and would have found that the half-life of epitrenbolone was 24 hours, as for trenbolone. In this regard, the Sole Arbitrator also notes that in his second written report, Professor Ohe stated that the study performed by Professor Ayotte on the excretion of 1 µg of epitrenbolone was consistent with the results of his calculation on the excretion of 2 µg of trenbolone, which statement was not specifically challenged by WADA at the hearing.

134. Secondly, Professor Ayotte highlighted that excretion of a substance is not flat, meaning that during the 24-hour half-life of trenbolone, excretion would first peak and then go down. However, Professor Ohe testified (and Professor Ayotte did not challenge) that epitrenbolone does not leave the body without urination, and that depending on the amount and timing of urination, the urinary concentration of epitrenbolone could be several dozen times higher than could normally be expected. If the Athlete had beef liver for dinner the day before the Test, the Sole Arbitrator does not consider it far-fetched that he did not urinate large amounts (if at all) after relevant quantities of epitrenbolone had reached his bladder and before the Test began, which was at 6:01 a.m. the next morning.

135. Thirdly, Professor Ayotte criticized the assumption underlying Professor Ohe's calculation that the beef liver consumed was contaminated with the MaxRL of trenbolone. She testified that between 2015 and 2021, the Canadian Food Inspection Agency tested 1725 beef livers and found epitrenbolone in 115 of them, with the highest concentration ever found being 6 ng/g. She further testified that this was consistent with other studies. The Sole Arbitrator finds that there is force to this argument, even though it is unclear if the practical use of trenbolone in cattle may differ between Canada and Australia. However, even if one assumed contamination with only 6 ng/g as suggested by Professor Ayotte in her first expert report, this would still result in 1.32 µg for 220g of beef liver (or 1.98 µg for 330g of beef liver). For the reasons mentioned in paras. 130 and 134 above, the Sole Arbitrator would still not find it excluded that such dosage of epitrenbolone could explain the Athlete's AAF.

136. For the above reasons, the Sole Arbitrator finds that based on the data and science presented to him in this arbitration, it is possible that the AAF was caused by the Athlete having ingested contaminated beef liver. The Sole Arbitrator is comforted in this finding by the fact that WADA itself did not go as far as excluding that possibility, arguing instead that such contamination was highly unlikely to have occurred.

137. That said, meat contamination being a scientifically plausible explanation of the Athlete's AAF does not, of course, mean that this is necessarily what happened or is even likely to have happened. Instead, as the actual meat consumed by the Athlete prior to the Test is not available for inspection, the focus must be on other circumstantial evidence that could indicate the likelihood of meat contamination being the source of the AAF. In this regard, the Sole Arbitrator notes that it is unclear whether the Athlete ate beef liver at all on the days immediately preceding the Test. There is no contemporary evidence in this regard, such as purchase receipts or witness statements. The Athlete's own testimony is equally of no help in this regard as he candidly admitted

not remembering the specific meals he ate prior to the Test. The Sole Arbitrator further notes that none of the eleven meat products tested by the Athlete after the notification of the AAF, including one package of beef liver, showed any presence of trenbolone. Of course, this does not exclude that, more than a month earlier, trenbolone may have been present in beef liver that the Athlete may have eaten shortly before the Test. However, had the meat tested positive, this would have certainly increased the likelihood that the same could have been the case a few weeks earlier.

138. Moreover, it is undisputed that the Tokyo Laboratory reported only six AAFs for trenbolone from 2015 to August 2024, which represents approximately 0.01% of all samples analysed by the Tokyo Laboratory during that time, including approximately 6,200 tests during the 2021 Olympic Games in Tokyo. Three of those AAFs involved Japanese athletes, amongst them the Athlete, and there was no suggestion by any Party that any other WADA-accredited lab ever reported a trenbolone AAF for any Japanese athlete. The Sole Arbitrator agrees with Professor Ayotte's assessment that if there was any widespread problem of meat available on the Japanese market being contaminated with relevant amounts of trenbolone, one would have expected more AAFs for trenbolone in Japan, or in respect of Japanese athletes, during a period of almost 10 years (cf. also CAS 2015/A/4049, para. 91). In the Sole Arbitrator's view, this holds true even if one takes into account that the detection window for trenbolone is relatively short because no long-term metabolite is known to date (per Professor Ayotte's testimony), that at least some Japanese athletes are encouraged to avoid foreign beef if possible (per Professor Tanigawa's testimony), and that not all athletes may eat beef liver. Meat contamination with trenbolone thus apparently not being an endemic problem reduces, in turn, the likelihood that any meat ingested by the Athlete was contaminated with sufficient amounts of trenbolone to explain the AAF.

139. Further, while it is scientifically possible for the AAF to have been caused by the consumption of beef liver, this possibility is not straight-forward as it depends on a number of assumptions in the Athlete's favour: Unless one assumes that the Athlete's individual excretion profile is more beneficial to his case than that of the individuals involved in the relevant studies, the level of trenbolone contamination of the meat ingested must have been quite significant, the time between the ingestion of the beef liver and the Test must not have been longer than 24 hours, and he must not have urinated too much (if at all) between the time relevant amounts of epitrenbolone reached his bladder and the time he underwent the Test.

140. In summary, based on the above-mentioned evidence, the Sole Arbitrator finds it possible, but not very likely, that the Athlete's AAF was caused by his having eaten contaminated beef liver. That said, the passage of time between the Test and the notification of the AAF, which was more than a month, made it objectively more difficult, through no fault of the Athlete, for him to furnish compelling evidence regarding the source of the AAF (see also CAS 2019/A/6313, para. 84). In particular, it is not surprising that he would not know, more than a month after the fact, what precisely he ate on the day(s) before the Test. Similarly, if one assumes that meat contamination with trenbolone is not a wide-spread problem in Japan, the passage of time also reduced the likelihood that if any beef liver ingested by the Athlete before the Test was in fact

contaminated, the same would be true for a similar product bought more than a month thereafter. When weighing the significance of the relative weakness of the evidence proffered by the Athlete on meat contamination, the Sole Arbitrator finds it appropriate to take this difficulty of obtaining such evidence into account.

(c) Evidence regarding supplements and skin products used prior to the Test

141. The Athlete submitted that being very aware of his anti-doping responsibilities, he exercised particular care in selecting his supplements, specifically by trying to avoid any foreign-made supplements. He further submitted that after being notified of the Test, he sent all supplements and skin creams that he had used in the weeks prior to the Test to a WADA-accredited laboratory in the USA, which found no trenbolone in any of those products. In the case of a creatine product, a protein product and two skin creams, the Athlete provided to the laboratory the unsealed packages that he says he used prior to the Test, whereas for an amino acid product and a chlorella product, he provided sealed packages with the same lot number or from the same box as the package that the Athlete says he consumed prior to the Test.

142. Those submissions were not contested by WADA. They were also supported by the Athlete's own written statement, the written witness statement by Mr Takahira, purchase receipts, photos of the relevant packages, waybills and analysis results. On this basis, the Sole Arbitrator accepts those submissions to be true.

143. However, the Sole Arbitrator considers that the only conclusion that can be drawn from the test results regarding the above-mentioned products used by the Athlete before the Test is that contamination of the creatine and protein products as well as the skin creams can be ruled out as the source of the AAF, and that it is very unlikely that the amino acid or chlorella products were that source. This conclusion does not, in the Sole Arbitrator's view, make it less likely (or more likely) that the AAF was non-intentional. Instead, it merely increases in equal degrees the likelihood of all other potential sources, including intentional doping, meat contamination or any unknown sources. Therefore, the Sole Arbitrator finds that the result of the testing of the supplements and skin creams does not assist the Athlete in showing that the AAF was non-intentional.

144. Similarly, regarding the undisputed fact that the Athlete exercised specific care when it came to his selection of supplements, the Sole Arbitrator is not persuaded by the Athlete's argument that this would make it less likely for him to deliberately take any prohibited substances. Not exercising sufficient diligence in the use of supplements creates a risk of its own in terms of committing an ADRV. This risk comes on top of any other risk created or tolerated by an athlete. Therefore, an athlete who deliberately takes a prohibited substance has at least the same incentive to avoid taking contaminated supplements as a clean athlete, lest the risk of testing positive is increased even further.

145. By contrast, the Sole Arbitrator considers that the Athlete's undisputed care as regards supplements, and the negative test of all products used by him prior to the test, reduces the likelihood of any reckless behaviour as a cause of the ADRV.

(d) Statistical evidence

146. According to the ADAMS data referred to in Professor Ayotte's expert reports, there have been 616 AAFs for trenbolone internationally across all sports from 2015 to August 2024. 65.9% of those AAFs related to bodybuilding and powerlifting. Another 6.2% (representing 38 cases) related to athletics. Moreover, as mentioned already in the context of the evidence related to meat contamination, out of the approximately 60,000 urine samples analysed by it between 2015 and August 2024, the Tokyo Laboratory reported only six AAFs for trenbolone. Three of those six trenbolone AAFs involved Japanese athletes, one of them being the Athlete, the other two being bodybuilding and wrestling athletes. The three non-Japanese nationals testing positive for trenbolone were bodybuilding and powerlifting athletes. There is no suggestion by any Party that any other WADA-accredited lab ever reported any trenbolone AAF for any Japanese athlete. There is also no suggestion that the Tokyo Laboratory reported any further trenbolone AAFs before 2015 or after August 2024. Accordingly, based on the record, the Athlete is the only Japanese athlete outside bodybuilding and wrestling who ever tested positive for trenbolone.

147. Looking at trenbolone AAFs in hurdlers, it is undisputed that there has never been any trenbolone AAF worldwide for any 400mH athlete except for the Athlete's AAF. Moreover, from 2015 to August 2024, there was only one other trenbolone AAF for any hurdler worldwide. This concerned a 60/100m hurdler, who was tested in 2015 by the Russian National Anti-Doping Agency (RUSADA), and whose sample showed the presence of both trenbolone and metenolone. The Sole Arbitrator finds it likely that this case formed part of the Russian doping scheme in place at the time, given the timing of the test, the involvement of RUSADA and the substances found, both of which were ingredients of the cocktail of steroids designed by Dr Rodchenkov, as confirmed by the testimony of Professor Ayotte. According to an interview with Dr Rodchenkov referenced by Professor Ayotte, it took him years to design the cocktail, and athletes received detailed instructions on how to use the cocktail to avoid testing positive. As there is no suggestion that any doping scheme of remotely similar sophistication existed in Japan around the time of the Test (or at all), the Sole Arbitrator finds it difficult to draw from this only other trenbolone AAF in hurdling any reliable inferences as to the likelihood that the Athlete may have used trenbolone intentionally.

148. Even when one looks beyond hurdlers and considers also 400m sprint and 4x400 relay athletes (who would seem largely comparable to 400mH athletes in terms of the speed/endurance profile, but not in terms of technical requirements), there were only three trenbolone AAFs between 2015 and August 2024 (and the Sole Arbitrator was not made aware of any further AAFs before or after). One of those three AAFs concerned an athlete who tested positive for trenbolone and oxandrolone in 2015, with RUSADA being the Testing Authority and Results Management Agency. Again, it seems likely that this was part of the Russian doping scheme. As to the other two trenbolone AAFs among 400m sprinters, while there is no indication that they were part of the Russian doping scheme, it is noteworthy that in each of them there was an AAF also for another substance in addition to trenbolone (in one case another AAS, in the other a stimulant).

Also, one of those two athletes competed also in 100/200m sprint, which has a different speed/endurance profile than 400mH.

149. Based on those statistics, the Sole Arbitrator disagrees with WADA's (and Professor Ayotte's) view that the Athlete's case is not so atypical statistically as to cast doubt on him having doped intentionally. While the Sole Arbitrator agrees that athletics accounting for a mere 6.2% of all trenbolone AAFs between 2015 and August 2024 does not make trenbolone AAFs sufficiently atypical as such, he does not consider that the entirety of track and field athletes (which includes, e.g., shot-putters and hammer and discus thrower) is the appropriate comparison group for assessing the likelihood of the Athlete having used trenbolone intentionally. Amongst Japanese track and field athletes, the Athlete's AAF is the only trenbolone case. The same is true for hurdlers (of any distance) worldwide, except for one case likely linked to the Russian doping scheme, where a sophisticated cocktail of steroids used by many Russian athletes included, *inter alia*, trenbolone.

150. The Sole Arbitrator is not persuaded that WADA's references to statistics for AAFs involving AAS more generally (or other anabolic agents) in 400mH, or in all sprint and hurdling disciplines up to and including 400m, would make the Athlete's case appear significantly less atypical.

151. First, while WADA has provided a list showing 313 AAFs between 2015 and August 2024 for AAS (including trenbolone) or other anabolic agents in all sprint and hurdling disciplines up to and including a distance of 400m, JADA did not act as Testing Authority or Results Management Authority in any of those cases (apart from the Athlete's case). There is also no suggestion by any Party that any athlete on that list, other than the Athlete, was Japanese, or that any Japanese athlete in those disciplines tested positive for an AAS before the period covered by WADA's list. Hence, at least as far as Japanese athletes in short-distance racing and hurdling are concerned, this list provides further confirmation that the Athlete's AAF is very atypical.

152. Secondly, as will become clear in section 168 below, the Sole Arbitrator accepts that the sporting characteristics of 400mH differ significantly (in a way relevant to the characteristics of trenbolone) from both shorter distance hurdling disciplines and from sprint disciplines. While this does not mean that comparing the Athlete with athletes competing in those other disciplines has no value at all, it does limit the meaningfulness of such comparison.

153. Thirdly, while WADA has provided a list allegedly showing 24 cases from 2015 to August 2024 in which 400mH hurdlers tested positive for AAS other than trenbolone, seven of those cases in fact relate to other anabolic agents. Moreover, the list includes numerous athletes who competed also in other disciplines than 400mH (including shorter distance sprinting), raising again the issue of comparability. In addition, many of the samples were taken at a time that, depending on the individual race calendar, may well have been during the 400mH winter season for the athlete in question (which is relevant because the normal use of trenbolone, i.e. to bulk up, would be counterproductive in 400mH during the competition season, see section 168 below). If

one focuses on those cases in which athletes competing only in 400mH tested positive for an AAS at a time that was most likely during their competition season, this leaves one to three cases, depending on how early the competition season and the winter season began for the individual athlete.

154. Fourthly, WADA has not made any submissions on how comparable those other AAS (and, even more so, other anabolic agents) are to trenbolone. While it is safe to assume that all those substances are believed to have an anabolic effect, the magnitude of that effect is relevant here because the Sole Arbitrator finds it plausible that the Athlete needs to avoid muscle hypertrophy during the competition season (see section 168 below). Also, the extent of any androgenic or side-effects could make those substances more or less relevant for a comparison with the present case.

155. Fifthly, the Sole Arbitrator was not provided with any information as to whether any of those other 312 other athletes testing positive for anabolic agents were found to have doped intentionally. While, realistically, such finding will have been made at least for some of them, the actual number is relevant to be able to calculate a statistical probability of intentional doping among those athletes. In particular, it is unclear whether any (and, if so, how many) of the other 400mH athletes who tested positive for AAS other than trenbolone were found to have doped intentionally. It is not for the Sole Arbitrator to speculate about any findings on (lack of) intent that may have been made in those other cases. Accordingly, based on the record, it is very difficult for the Sole Arbitrator to follow WADA's suggestion that those other cases would stand in the way of the Athlete disproving lack of intent.

156. Similarly, the Sole Arbitrator is not persuaded by WADA's suggestion that the Athlete's case is not atypical because there are four CAS cases in which track and field athletes were sanctioned with four-year periods of ineligibility for ADRVs involving trenbolone. To begin with, while WADA claimed that those four athletes were short distance athletes like the Athlete, the athletes in CAS 2019/A/6319 and CAS 2021/O/8111were actually race walkers competing in 10-20 km and 3-20 km, respectively. The athletes in CAS 2017/A/5105 and CAS OG 20/06, in turn, were 60/100 m and 100/200 m sprint athletes. Even leaving aside the fact that the evidence in those cases was very different from the case at hand, the Sole Arbitrator is not satisfied that those four cases in disciplines with decisively different sporting requirements (see section 168 below) carry significant weight in the statistical analysis, at least when compared to the fact that the Athlete is the only Japanese track and field athlete, the only 400mH athlete worldwide and the only hurdler worldwide (except for a case likely connected to the Russian doping scandal) to ever have tested positive for trenbolone, and is also the only Japanese athlete competing on distances up to and including 400mH to ever have tested positive for an anabolic agent.

157. Hence, the Sole Arbitrator concludes that the Athlete's case is very atypical statistically. It goes without saying that this does not exclude intentional doping by the Athlete. Rather, it remains perfectly possible that he is the first 400mH hurdler worldwide, the first hurdling athlete worldwide (except for one case connected to the Russian doping scheme), and the first Japanese athlete outside bodybuilding and wrestling to have used

(or at least to be caught using) trenbolone. Likewise, it is perfectly possible that he is the only Japanese runner in distances up to and including 400m to have used (or at least to be caught using) any anabolic agent. However, possibility is not the same as likelihood, and the Sole Arbitrator finds that the statistically atypical nature of the Athlete's AAF reduces the likelihood of intentional doping. This relates not only to deliberate doping but also to reckless doping, given that the statistics suggest that there is no significant risk of ingesting trenbolone unwillingly in Japan that the Athlete should have been aware of but chose to manifestly disregard.

(e) Evidence of acquisition of trenbolone

158. In support of his argument that he could not have acquired trenbolone while abroad, the Athlete submitted copies of his passports issued on 28 May 2015 and 22 November 2019. Based on this evidence, the Sole Arbitrator accepts (and WADA did not contest) that his last overseas travel before the test was to Qatar in October 2019. He further accepts that it is unlikely that Athlete purchased trenbolone in or before 2019 abroad, to use it only in mid-2022.

159. To prove his point that he could not have purchased trenbolone online, the Athlete submitted purchasing histories from the only two online shopping website he claims to be using. He further submitted credit card statements for three credit cards, which he alleged were the only credits cards used by him. WADA did not contest that those were the only online shops and credits cards used by the Athlete and the Sole Arbitrator found nothing in the record that could call the veracity of those assertions into question. It is undisputed that neither the purchase history from the two online shops nor the credit card statements contain any indication that the Athlete may have purchased any product that may have contained trenbolone.

160. Moreover, the Sole Arbitrator accepts the Athlete's submission that in view of him being the first Japanese track and field athlete ever to have tested positive for trenbolone, it is rather unlikely that he was able to obtain trenbolone from fellow athletes or athletic staff.

161. Of course, it remains possible that the Athlete purchased (or otherwise obtained) a trenbolone product elsewhere and paid for it in a different fashion (if at all). However, just as it is not enough for an Athlete to speculate about the origin of the AAF, the Sole Arbitrator does not find it appropriate to speculate himself about ways in which the Athlete could have purchased trenbolone, given that WADA neither suggested any nor challenged the Athlete's testimony on this topic in cross-examination. Under those circumstances, the Sole Arbitrator finds that this evidence reduces the likelihood of the Athlete having doped intentionally.

(f) Athlete's bodyweight

162. The Athlete argues that any intentional use of trenbolone is disproven by the fact that he did not gain any weight during the relevant period of time. In support of this argument, he has submitted the following measurements of his bodyweight, which were

taken at company health checkups during the season and at the Japan Institute of Sports Sciences during winter training:

	Winter	In-season
2020	71.6 kg (27 January 2020)	68.7 kg (11 June 2020)
2021	71.9 kg (12 February 2021)	68.3 kg (24 November 2021)
2022	71.3 kg (25 February 2022)	67.9 kg (5 July 2022)

163. The accuracy of those measurements was not contested by WADA and is supported by contemporaneous documentation submitted in this arbitration. The Sole Arbitrator therefore accepts that the Athlete's bodyweight was as mentioned in the above table.

164. The Sole Arbitrator also accepts the Athlete's submission, which WADA did not dispute, that trenbolone is regarded as "*the ultimate anabolic steroid*" because it is known for particularly pronounced muscle hypertrophy compared to other AAS, while facilitating the burning of fat at the same time. This submission was supported by two internet articles already submitted by JADA in the previous instance proceedings. Among other things, those articles suggest that trenbolone is five times more effective than testosterone. Similarly, relying on multiple scientific publications, Professor Ayotte described trenbolone as a "*highly potent anabolic steroid*" that derives its anabolic efficacy "*from its ability to bind to androgen receptors with an affinity 3 times superior to testosteron*e".

165. Of course, as rightly noted by WADA, the times at which the Athlete's bodyweight was measured (especially during the competition season) appear quite random. In particular, his in-season weight 2022 was measured roughly one and a half months after the Test, and almost two weeks after the notification of the AAF. It cannot be excluded that he had in fact gained weight in the weeks before the Test, but lost it again by the time he was weighed. However, without any specific questions about this mere possibility being put to the Athlete, and taking into account that he was regularly competing prior to the Test, the Sole Arbitrator does not find it very likely that the Athlete's in-season bodyweight in 2022 was significantly higher before the Test. Therefore, he accepts that the Athlete did not gain significant weight as compared to previous years, and agrees that this tends to suggest that he was not using trenbolone for the purpose that this substance seems to be mainly used for, namely to facilitate rapid muscle hypertrophy.

(g) Clean testing history

166. The Athlete argues that his clean testing history prior to the Test speaks against him having used trenbolone, given that he would have had to use it long-term to achieve any relevant effect.

167. The Sole Arbitrator accepts that for trenbolone to have any muscle-strengthening effect, it must be taken consistently for cycles of several weeks (while performing strength training and taking in very large amounts of calories). Professor Ohe stated as much in his written expert report, referring also to a scientific article that mentioned 2-3 cycles of 6-18 weeks per year, albeit for AAS generally. This is also in line with one of the internet articles provided in this arbitration, which suggested the use of trenbolone in cycles of eight weeks. While Professor Ayotte testified that there were indications that lesser dosages of trenbolone taken at lesser frequencies might help prevent the loss of muscle mass, this does not contradict Professor Ohe's testimony on the usage of trenbolone to achieve muscle hypertrophy.

168. It is undisputed that the Athlete tested negative on 13 December 2021 and on 25 February 2022. This makes it very unlikely that he was using trenbolone before those dates for purposes of gaining muscle. Of course, the Sole Arbitrator cannot exclude that there was just enough time between those two tests, and between the 25 February 2022 test and the Test, to undergo a cycle of trenbolone use and still test negative (even though Professor Ohe testified that use of the requisite dosages of trenbolone would be excreted over at least 10 days). However, those negative tests do reduce the likelihood that this is what happened, given that the Athlete would have had to be quite lucky to time his cycles neatly between those testing dates not known to him in advance. Moreover, if one combines the clean testing history with the lack of any weight gain, the Sole Arbitrator considers it unlikely that the Athlete was using trenbolone to achieve a muscle-strengthening effect as described by Professor Ohe.

(h) Evidence of lack of incentive for the Athlete to use trenbolone around the time of the Test

169. The Athlete argued that considering the general characteristics of 400mH and his own sporting characteristics among 400m hurdlers, it would not make any sense for him to use trenbolone in-season. While WADA submitted that this argument was insufficient to prove lack of intent, it did not dispute the sporting characteristics invoked by the Athlete as such. Similarly, while WADA argued that the Athlete's coach, Mr Karube, whose written witness statement supported the Athlete's position, was not an independent witness, WADA did not make the same argument regarding Professor Tanigawa, whose testimony was aligned with that of Mr Karube.

170. Indeed, the Sole Arbitrator finds no reason to doubt the independence of Professor Tanigawa, whose testimony on the sporting characteristics of 400mH in general, and of the Athlete in particular, the Sole Arbitrator found convincing. Therefore, the Sole Arbitrator accepts that 400mH differs significantly from other short-distance disciplines in terms of what is required from athletes to be successful. In particular, both endurance

and technical factors play a much bigger role in 400mH. This holds true even more for the Athlete, whose stride pattern means that his success is more contingent than that of other 400mH athletes on his endurance (because he is slower than most competitors in the first half of the race) and his technique (because he must change his leading leg more often than most of his competitors).

171. Further, the Sole Arbitrator finds it established, based on Professor Tanigawa's persuasive testimony, that while rapid muscle hypertrophy might help a 400mH athlete during winter (when they usually undergo more intensive weight training), it would have a significant negative impact in-season because it would disrupt the athlete's stride pattern. The Sole Arbitrator notes for completeness that the same point was confirmed by the written testimonies of Mr Karube and Mr Kishimoto, even though they were not called to testify at the hearing. Contrary to WADA, the Sole Arbitrator does not consider that Professor Tanigawa's credibility in this regard was adversely affected by his statement that he found it "*unthinkable*" for any 400mH to use trenbolone during competition season, given the rapid hypertrophic effect that it is said to have (Professor Tanigawa volunteered to acknowledge that he is not an expert on the effects of trenbolone himself). The Sole Arbitrator does not agree with WADA's view that the four CAS cases in which runners were banned for four years due to the use of trenbolone, or the statistics on AAFs in 400mH involving other AAS and anabolic agents, establish that 400mH athletes are in fact using trenbolone (or substance with a similarly pronounced hypertrophic effect) during the competition season. As mentioned above, the CAS cases did not concern 400mH athletes and there are multiple issues with the list of AAFs for other anabolic agents (see section (d) above).

172. Finally, the Sole Arbitrator accepts, based on the undisputed submission by the Athlete, the testimony of Professor Tanigawa and the race data submitted, that the Athlete did not change his stride pattern at the 2022 Japan Championships, compared to previous races.

173. The decisive question is, however, to what extent those facts help the Athlete to establish that the AAF was not intentional. As correctly noted by WADA, multiple CAS tribunals have found that the athletes before them were unable to discharge their burden of proving lack of intent despite allegations of lack of sporting incentive having been made. However, as mentioned before, each case must be decided on its own facts and evidence and it is the Sole Arbitrator's task to assess the particular evidence before him rather than to exclude certain types of evidence from the outset (see para. 107 above). In this regard, the Sole Arbitrator notes that contrary to many of the CAS cases referenced by WADA, the Athlete did not merely make assertions. Instead, he relied on what the Sole Arbitrator found to be convincing expert testimony by Professor Tanigawa on the sporting characteristics of 400mH and the Athlete himself (in addition to the statements of Mr Karube and Mr Kishimoto). Also, the Athlete's argument was not that he had no incentive to dope *per se*, but rather that using this very specific substance at the very specific time of the season when the Test occurred was non-sensical. Therefore, the Sole Arbitrator is not prepared to consider this evidence immaterial from the outset.

174. That said, the Sole Arbitrator agrees with WADA that one must not too readily conclude that simply because, objectively, a certain substance is of little or no use as a doping agent in a particular sport or discipline, the athlete in question cannot have taken the substance intentionally. Indeed, as argued by WADA, such conclusion would imply that every ADRV is well thought out and calculated on the part of athletes, which may not always be the case. At the same time, however, the Sole Arbitrator finds it equally unconvincing to assume, by default, that athletes willing to dope would randomly take prohibited substances without informing themselves about, among other things, the potential of those substances to enhance their sporting performance. Rather, it is for the Sole Arbitrator to assess, with respect to the particular athlete before him, how likely it is for him to have intentionally taken a doping agent that is not fit for purpose. In the words of the panel in CAS 2020/A/7579 & 7580, at para. 169:

> *"Foolishness is of course not a defence; intent is not excluded if the marathon runner ingests a product designed for bulk. The question is rather the implausibility of either in the case of a particular athlete."*

175. As mentioned above, the Athlete appears to be a serious and sincere young man, and it has remained undisputed that he exercised significant diligence in selecting his supplements. The Sole Arbitrator does not find it likely that the Athlete is the kind of person who, assuming he is willing to dope, would take the next best substance without thoroughly informing himself of the (side-)effects and the potential to enhance his performance.

176. Against this background, the Sole Arbitrator considers that given the evidence presented on the sporting characteristics of 400mH, and of the Athlete specifically, and in combination with the evidence on his bodyweight and testing history, it is unlikely that the Athlete was using trenbolone to bulk up. The Sole Arbitrator is not persuaded by WADA's argument that this is gainsaid by the Athlete's statement that he used protein and creatin to improve his "*explosive power*". Even disregarding the Athlete's explanation in cross-examination that this was to be understood rather as a reference to sharpness in movement, any effect that protein and creatine may have in terms of increasing muscle is obviously not comparable to the rapid hypertrophic effect of trenbolone. Hence, even if the Athlete's use of protein and creatine aimed at increasing muscle power, this does not contradict the conclusion that he is unlikely to have used "*the ultimate anabolic steroid*" to bulk up during his competitive season.

177. To the extent that WADA suggested for the first time at the hearing that the Athlete may have used trenbolone to maintain (as opposed to gaining) weight, there is no indication in the record that the Athlete had any problems maintaining his weight. In fact, based on the bodyweight measurements mentioned above, the Athlete lost less weight in 2022 from winter season to competition season (3.4kg) than in the previous year (3.6kg). Also, when asked by the Sole Arbitrator – before there was any suggestion that trenbolone could have been used to maintain weight – whether there was any reason why his in-season weight seems to have decreased slightly from 2020 to 2022, the Athlete did not seem to be aware of any significant weight loss and explained that he had prioritized aerobic training in the winter season 2021/2022. This was not only a

plausible explanation (that remained unchallenged by WADA) for the slight weight loss but also one that does not suggest any ongoing weight loss during the competition season that could have caused the Athlete to use trenbolone to avoid losing further weight.

178. At the hearing, WADA also suggested for the first time that the Athlete may have used trenbolone to speed up recovery. Indeed, Professor Ayotte's written expert reports mentioned that trenbolone (like other AAS) could speed recovery, and Professor Ohe agreed with that statement during cross-examination. However, the Sole Arbitrator notes that, as confirmed by Professor Ayotte, due to the absence of any studies, very little is known about this type of use, in particular which dosage would need to be applied. Also, Professor Ohe explained in his first expert report that trenbolone was "*generally*" used in cycles to gain muscle. This is also precisely how trenbolone is characterised by the online sources on record. It does not seem very likely that an athlete who is trying to avoid hypertrophy and is merely looking for ways to recover more quickly would choose trenbolone of all substances – a substance that is described as "*ultimate anabolic steroid*" and that is associated throughout with bodybuilding. There is also no indication in the record that, contrary to long-term use for gaining muscle, there is any public information on how to use trenbolone if the goal is to speed up recovery while not bulking up. In the absence of such evidence on record, it seems probable that use of trenbolone exclusively for recovery purposes would require rather sophisticated methods, as the one described by Dr Rodchenkov in the interview referenced by Professor Ayotte (according to that interview, the cocktail and the very specific manner of application were designed to help athletes "*recover quickly* […], *allowing them to compete in top form over successive days*"). Given that there has never been any trenbolone AAF of any Japanese track and field athlete before the Athlete's AAF, it is not very likely that the Athlete could have obtained the necessary guidance from someone in the Japanese track and field community.

179. Moreover, the Sole Arbitrator agrees that the Athlete's inclusion in the RTP approximately two months prior to the Test is likely to have reduced any incentive he may have felt to use a prohibited substance at that time.

180. Of course, despite the above, it is not excluded that the Athlete was unfazed by his inclusion in the RTP just two months ago, that he learnt of the potential of trenbolone to facilitate recovery (or to maintain muscle mass), and that he either attempted to figure out himself how this worked (even though this would seem a bit out of character, see para. 175 above) or somehow managed to find someone to help him do it. However, based on the evidence on record, the Sole Arbitrator does not find it very likely that this is what happened. In this regard, the Sole Arbitrator also notes the finding of the panel in CAS 2020/A/7579 & 7580, at para. 168:

> *"If anything is speculative, it is the recovery theory now put forward by the Appellants without any indication of the Athlete's need to take a risk to achieve it in a new and unsupervised way.* […] *Uncorroborated speculation is said not to avail an accused athlete; it should not in fairness avail the accuser either."*

(i) Sporting performance before and after the Test

181. It is not in dispute that the Athlete performed well before the Test: He finished second at the Shizuoka International on 3 May 2022 (first among Japanese athletes) and fourth at the Seiko Golden Grand Prix on 8 May (second amount Japanese athletes). It is likewise undisputed that if he continued to perform at the same pace, he was positioned to qualify for the World Athletics Championships at the Japan Championships in the first half of June 2022 (as he eventually did, finishing third at that event). The foregoing is also confirmed by the written witness statement of Mr Karube, to which attached were the results from the Seiko Golden Grand Prix and the Japan Championships.

182. That said, the Sole Arbitrator does not consider that those facts carry any significant weight in proving lack of intent. The use of a prohibited substance will not necessarily show in a spike in sporting performance, in particular if, as is the case here, the evidence anyway suggests that the Athlete did not consume trenbolone long-term with significant dosages. Moreover, even if one expected a spike in performance, the relative stability of the Athlete's results in May and June could also be explained by him having used trenbolone both before the May competitions and before the June competition. Viewing the Athlete's sporting performance in isolation, the Sole Arbitrator does not view any of the two scenarios significantly more likely than the other. However, one can say at least that the Athlete's sporting performance does not provide any evidence in favour of intentional doping, neither in terms of uncharacteristically poor performances (in May) that could have provided him with an incentive to dope, nor uncharacteristically strong performances (in June) that could raise the suspicion that he was doped at that time (cf. CAS 2015/A/4059, para. 124; CAS 2020/A/7579 & 7580, para. 147).

(j) The Athlete's behaviour during the Test

183. The Athlete argued that had he doped intentionally, he could have simply pretended not to be home when his bell rang for the doping control, given that he had never missed any doping test before and that it was clear that his bell ringing at 6 am, at the beginning of his one-hour time slot indicated for testing, could only mean a doping test. WADA did not dispute those circumstances or challenge the Athlete's testimony in this regard in cross-examination.

184. Of course, assuming that the Athlete had knowingly taken trenbolone, it is possible that his opening of the door could also have been due to the fact that he just woke up and did not think clearly, or that he thought the trenbolone would have already left his system. However, if the Athlete knew that he had ingested a Prohibited Substance, the Sole Arbitrator finds it more likely on balance that he would not have taken the risk and instead pretended not to be home, especially since his anti-doping education (see section (l) below) supports the suggestion that he was aware that an isolated missed test would not constitute an ADRV.

185. That said, based on published CAS decisions alone, guilty athletes have tested positive out-of-competition before in situations where they could have avoided the doping

control. Therefore, the Sole Arbitrator is not prepared to attach significant weight to this strand of evidence.

(k) The Athlete's behaviour after the Test and after the notification of the AAF

186. The Athlete argued that had he doped intentionally, he would have been out of balance psychologically and athletically after the Test, while he did not in fact appear different at all after the Test, instead training calmly for and competing successfully in the Japan Championships. In support of this argument, the Athlete submitted written witness statements from Mr Takahira, Mr Karube, and Mr Kishimoto, all of whom confirmed that the Athlete seemed his usual self after the Test. The Sole Arbitrator also notes that WADA did not dispute that the Athlete's behaviour or outward appearance did not change after the Test, even though WADA did question in general the evidentiary weight of witness testimony by teammates and coaches.

187. Similarly, the Athlete argued that after the verbal notification of the AAF, he was in a state of shock, immediately calling Mr Takahira and Mr Karube, rather than waiting first for the written confirmation and devising a strategy what to say to his coaches, as could be expected had he doped intentionally. The timeline of his calls with Mr Takahira and Mr Karube is evidenced by phone records from the Athlete's and Mr Takahira's phones. In addition, the written witness statement of Mr Takahira mentioned that during their call, the Athlete was in tears and sounded exhausted. Mr Karube's written witness statement described the Athlete as having been "*simply stunned*" during their call and that he sounded like "*his mind was completely blank*". The Sole Arbitrator notes that WADA did not dispute those descriptions of the Athlete's behaviour right after the verbal notification of the AAF but, as mentioned before, called for the Sole Arbitrator to approach the relevant evidence with caution.

188. Finally, the Athlete argued that had he doped intentionally, he would have known the source of the AAF and would not have bothered to put in the expense, time, and effort to conduct multiple analyses of supplements, skin creams and meat products (the latter requiring him to travel to Tokyo twice as had had moved back to his family home away from Tokyo in the meantime). In support of his investigative efforts, the Athlete submitted the relevant shipping documents, test results, and the written witness statements by Mr Takahira and Mr Taga. WADA did not dispute that those efforts were made, but questioned their evidentiary value.

189. Regarding the first two points, i.e. the Athlete's demeanour right after the Test and after the notification of the AAF, the Sole Arbitrator notes that it is inherently difficult to reliably deduct a person's state of mind from his outside appearance. For instance, if he had doped intentionally, the Athlete's focus on practice and competition could have been a way for him to repress any concerns he may have had regarding the outcome of the Test. Similarly, his state of shock after notification of the AAF could just as well have been due to such repression mechanism being suddenly blown away by the reality that he had been caught cheating. That said, in view of the Athlete's personality as displayed at the hearing and as described in the witness statements of Mr Karube, Mr Takahira and Mr Kishimoto, the Sole Arbitrator is minded to accept that the Athlete

having called his coaches in an emotionally devastated state right after the verbal notification of the AAF seems a bit out of character and therefore tends to indicate genuine surprise on his part about the AAF. However, if the Athlete had doped intentionally, this surprise and emotional devastation may also be explained by a thwarted expectation that he would not be caught (e.g. because he thought trenbolone would no longer be in his system when tested). For the foregoing reasons, the Sole Arbitrator is unable to conclude that the Athlete's demeanour right after the Test and the notification of the AAF is a clear enough indication against him having doped intentionally. Therefore, the Sole Arbitrator is not prepared to accord any material weight to the related evidence.

190. As to the third point, i.e. the Athlete's investigative efforts after notification, the Sole Arbitrator disagrees with the Athlete's argument that he would have been unlikely to undertake such efforts had he known how trenbolone had entered his system. First, the Athlete himself has submitted, and it has remained undisputed, that it was Mr Takahira who told him to test the supplements, skin creams and meat. Even if the Athlete had doped intentionally, he hardly could have ignored this advice of his coach without raising great suspicion. Secondly, there was an obvious risk that any tribunal would likewise find it suspicious if the Athlete argued contamination but did not bother to make any investigations in this regard. Thirdly, regardless of whether the Athlete doped intentionally, there was at least a possibility that one of the products would test positive for trenbolone, which would have helped the Athlete's defence in any scenario. For those reasons, the Sole Arbitrator does not consider that the Athlete's investigative efforts provide any material support to his assertion that he did not dope intentionally. For completeness, the Sole Arbitrator also notes the concerns of the panel in CAS 2020/A/7579 & 7580, at para. 107, that it would be an "*unacceptable prospect that guilty athletes could spend their way out of trouble by engaging in extensive post-violation investigations*".

(l) Athlete's awareness of risks and seriousness of doping

191. In support of his argument that he was acutely aware of risks and the seriousness of doping, the Athlete referred, firstly, to six anti-doping courses that he attended between January 2020 and April 2022. This was corroborated by attendance certificates from those courses. Secondly, the Athlete submitted that he understood how doping was not only problematic for those who doped but could also change the lives of other athletes, given that his coach, Mr Takahira, had shared with him (and his teammates) his personal experience of being awarded an Olympic silver medal only 10 years after the race, when it turned out that there had been doping on the team that initially won the silver medal. This aspect was confirmed by Mr Takahira in his written witness statement. WADA did not dispute those submissions.

192. Of course, anti-doping education does not immunize athletes against the temptation to further their athletic success through doping. However, arguably the main purpose of such education is to reduce the risk of doping. Against this background, the Sole Arbitrator accepts that the Athlete's participation in multiple anti-doping courses and, more importantly, the very personal experience that Mr Takahira shared with him, will

have had an impact on the Athlete's stance on doping. Realistically, the combination of both will have made it more difficult for the Athlete to be able to justify doping before himself (making deliberate doping less likely) and will have increased his diligence in trying to avoid risks of ADRVs (reducing the likelihood of reckless doping).

193. That said, it is trite that awareness of the consequences of misbehaviour (for the culprit and others) often is not enough to discourage such misbehaviour. Therefore, while the Sole Arbitrator accepts that the Athlete's awareness of the risks and seriousness of doping make intentional doping less likely, he finds that this evidence forms a rather thin strand in the evidentiary cable.

(m) Assessment of the totality of evidence

194. Based on the above, the Sole Arbitrator is unable to accept WADA's contention that the Athlete has failed to provide any actual evidence, or has offered at best a mere protestation of innocence, in support of his assertion that his ADRV was not intentional. One may hold different views on whether the evidence adduced is sufficient to meet the Athlete's burden of proof on a balance of probability, but the Athlete clearly submitted multiple pieces of actual and concrete – albeit necessarily circumstantial – evidence to corroborate his own testimony.

195. The Sole Arbitrator does not consider that any single strand of the said evidence is strong enough for the Athlete to discharge his burden of proving that the ADRV was not intentional. However, albeit not without hesitation, the Sole Arbitrator has concluded that the cumulative weight of the evidence is sufficient to meet the burden of proof on a balance of probability.

196. Specifically, the Sole Arbitrator finds that the following evidence, when viewed cumulatively, discharges the Athlete's burden of proving that he did not use trenbolone deliberately ('direct intent'):

- The Athlete's credible denial.

- The scientific evidence showing that the AAF could have been caused by the consumption of contaminated beef liver, taking into account also the fact that the time that passed between the Test and the notification of the AAF made it more difficult for the Athlete to prove what precisely he ate on the days before the Test, and whether it may have been contaminated with trenbolone.

- The statistical evidence establishing that the Athlete's case is very atypical.

- The evidence on the Athlete's bodyweight, his clean testing history and the sporting characteristics of 400mH and the Athlete himself, making it unlikely that the Athlete used trenbolone to gain muscle mass, combined with the rather speculative nature of the suggestion that he may have used trenbolone for other purposes.

- The evidence on his not having acquired any trenbolone product abroad, through the online shops he uses or with the credit cards he uses.

- The evidence that he knew he was about to be tested, was aware that a missed test would not amount to an ADRV, but did not attempt to evade the Test.

- The evidence regarding the Athlete's anti-doping education and the personal experience with ADRVs (of other athletes) that Mr Takahira shared with him.

197. To be clear, none of the above-mentioned evidence excludes that the Athlete knowingly used trenbolone. However, this is not the applicable standard of proof. Instead, it is sufficient for the Athlete to show that it is more than 50% likely that he did not take trenbolone deliberately. Based on the above-mentioned evidence, the Sole Arbitrator finds that the Athlete succeeded in doing so.

198. Regarding the Athlete's burden to also prove that he did not use trenbolone recklessly ('indirect intent'), the Sole Arbitrator considers that this is a particularly difficult form of a proof of a negative, at least if the source of the AAF remains unclear. It is simply not possible for an athlete to prove that in unknown situations that could have caused the AAF, the athlete either did not know about the existence of a significant risk of an ADRV or did not manifestly disregard that risk. Therefore, the Sole Arbitrator finds that it must be sufficient for an athlete to establish the absence of recklessness (by a balance of probability) in relation to those situations for which, based on the record, there is at least a possibility that they could have caused the AAF. Therefore, while WADA does not bear the burden of proof, the fact that it did not suggest any situations in which the Athlete may have acted recklessly makes it easier for the Athlete to meet his burden of proof in this regard (see, in general, para. 103 above).

199. For the only two situations transpiring from the record that could have caused the AAF (apart from deliberate doping and unknown other sources), the Sole Arbitrator is satisfied that no recklessness exists:

- In respect of possible meat contamination, the statistical evidence shows that the Athlete had no reason to be particularly cautious with the consumption of meat in Japan.

- In respect of his use of supplements, it has remained undisputed that the Athlete exercised particular care. Hence, even if trenbolone should have been present in the amino acid or chlorella products (which is not excluded as the Athlete could only test sealed containers with same lot number or from the same box as the ones he used before the Test), there is no indication of any recklessness on the part of the Athlete.

200. Having found that the Athlete established that the ADRV was not intentional, the period of ineligibility shall be two years pursuant to Article 10.2.2 of the JADC.

2. Starting date

201. As to the starting date of the period of ineligibility, the Athlete argued that due to delays in notifying the AAF to him and completing results management at first instance, the period of ineligibility should start on 21 May 2022, according to Article 10.13.1 of the JADC. Given that the Athlete was provisionally suspended from 21 June 2022, a starting date of 21 May 2022 would effectively result in a one-month retroactive period of ineligibility.

202. The Sole Arbitrator notes that the Athlete's request as to the starting date was granted both the JADPP and the JSAA. He further notes that in this arbitration, neither WADA nor JADA made any specific arguments regarding the starting date (even though, in its request for relief, WADA did request that the period of ineligibility start on the date of the CAS Award in this matter). In particular, they did not dispute that the notification of the AAF could have been quicker, and that there were certain delays in the procedure before the JADPP that were not attributable to the Athlete. Moreover, the Sole Arbitrator notes that the first instance decision by the JADDP was issued more than one and a half years after the notification of the AAF, while the ISRM provides a period of six months as a guideline for the duration of this process.

203. Under those circumstances, the Sole Arbitrator finds it appropriate to apply Article 10.3.1 of the JADC and to confirm the starting date indicated in the Appealed Decision, i.e. 21 May 2022.

B. Disqualification of competitive results

204. Pursuant to Article 10.10 of the JADC, all (individual) competitive results of the Athlete obtained from 19 May 2022 (the date of the Test) through 21 June 2022 (the commencement of the provisional suspension) shall be disqualified, including forfeiture of any medals, points and prizes obtained during that period. For completeness, the Sole Arbitrator notes that for the period between 21 May 2022 and 21 June 2022, i.e. the period of retroactive ineligibility, this is also confirmed by Article 10.3.1 *in fine* of the JADC.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by WADA on 6 June 2024 is dismissed.

2. The decision rendered by the Japan Sports Arbitration Agency on 2 April 2024 in the matter of Masaki Toyoda is confirmed.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 May 2025

THE COURT OF ARBITRATION FOR SPORT

Heiner Kahlert
Sole Arbitrator