COURT OF ARBITRATION FOR SPORT (CAS)
Ad Hoc Division – Games of the XXXII Olympiad in Tokyo

sitting in the following composition

President: The Hon. Dr Annabelle Bennett AC SC, Barrister, Sydney, Australia
Arbitrators: Dr Ismail Selim, Attorney-at-Law, Cairo, Egypt
Ms Yasna Stavreva, Attorney-at-Law, Sofia, Bulgaria

CAS OG 20/06 World Athletics v. Alex Wilson, Swiss Anti-Doping & Swiss Olympic
CAS OG 20/08 WADA v. Alex Wilson, Swiss Anti-Doping & Swiss Olympic

AWARD

in the arbitration between

World Athletics

&

WADA
.....**("Applicants")**

and

Alex Wilson
..... ("**First Respondent**")

Antidoping Switzerland (Swiss Anti-Doping)
..... ("**Second Respondent**")

Swiss Olympic
..... **("Third Respondent")**

1 PARTIES

1.1 The Applicants are World Athletics ("WA"), formerly known as the International Association of Athletics Federations (the "IAAF"), which is the international governing body of the sport of athletics, with seat and headquarters in Monaco; and the World Anti-Doping Agency ("WADA"), which is a private law foundation constituted under Swiss law in 1999 to promote and coordinate at the international level the fight against doping in sport. WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada.

1.2 The First Respondent is Mr Alex Wilson (the "Athlete"), a Swiss Track and Field athlete, who is registered to compete in the men's 100m and 200m at the Tokyo Olympic Games (the "Tokyo OG").

1.3 The Second Respondent is Antidoping Switzerland (or Swiss Anti-Doping), with registered offices in Bern, Switzerland, which is in charge of the implementation and the application of the WADA Code ("WADAC") and the fight against doping at the Swiss level.

1.4 The Third Respondent is Swiss Olympic, with registered offices in Ittigen, Switzerland, which is the National Olympic Committee of Switzerland.

2 FACTS

2.1 The matters set out below are a summary of the main relevant facts as established by the Panel, by way of an uncontested chronology on the basis of the submissions of the Parties. Additional facts may be set out, where relevant, in the legal and factual considerations of the present award.

2.2 Mr Alex Wilson is qualified to compete in the men's 100m and 200m; the heats for the men's 100m event is scheduled for 31 July 2021.

2.3 On 15 March 2021, the Athlete underwent an Out-Of-Competition ("OOC") doping test and the sample provided to and analysed by the WADA-accredited laboratory in Lausanne (the "Laboratory") revealed the presence of an anabolic steroid known as trenbolone, or more particularly, its primary metabolite known as epitrenbolone.

2.4 Trenbolone is a prohibited substance under section S1.1 of the WADA Prohibited List of Substances and Methods (Anabolic Androgenic Steroids).

2.5 The B sample confirmed the presence of epitrenbolone in the Athlete's sample provided on 15 March 2021.

2.6 On 28 April 2021, Swiss Anti-Doping notified the Adverse Analytical Finding (the "AAF") to the Athlete. A provisional suspension was immediately imposed on the Athlete, *i.e.* on 28 April 2021.

2.7 On 7 May 2021, the Athlete challenged the provisional suspension and requested that such provisional suspension be immediately lifted. In his

submissions, the Athlete alleged that the source of the AAF was the consumption of contaminated beef he ate in a Jamaican restaurant named "Vybz" in Las Vegas on 11 and 12 March 2021. In particular, the Athlete asserted that the AAF resulted from his consumption of approximately 500g of oxtail and six beef patties on 11 March 2021 as well as approximately 500g of oxtail on 12 March 2021.

2.8 On 18 May 2021, the Disciplinary Chamber of Swiss Olympic (the "Disciplinary Chamber") temporarily lifted the provisional suspension, pending the determination of the Athlete's objection to the provisional suspension because the chance that the Athlete could establish, in whole or in part, that a lack of fault remained intact. In making its decision to temporarily lift the Athlete's provisional suspension, the Disciplinary Chamber also took into account the imminent start of the outdoor season and that the Tokyo OG were upcoming later in the year.

2.9 On 26 May 2021, the Athlete filed further written submissions, maintaining that contaminated beef must be the cause of the AAF.

2.10 On 31 May 2021, Swiss Anti-Doping filed a submission accepting that the decision of the Disciplinary Chamber remains lifted.

2.11 On 15 June 2021, the Disciplinary Chamber granted the Athlete a new deadline to file a response to Swiss Anti-Doping's position.

2.12 On 24 June 2021, the Athlete confirmed his position as set out in his previous submissions, *i.e.* that the source of epitrenbolone was contaminated meat.

2.13 On 2 July 2021, the Disciplinary Chamber rendered a final decision and lifted the provisional suspension imposed on the Athlete (the "Decision"). The Decision was notified to WA on 8 July 2021, and to WADA on 20 July 2021. The documents related to the case file, other than the A and B samples document packages, were sent to WA on 12 July 2021. The A and B sample document packages were sent to WA on 16 July 2021 after a request from the latter on the same date.

3 CAS PROCEEDINGS

3.1 On 22 July 2021 at 6.00 pm (time of Tokyo), the Applicant filed an Application with the CAS Ad Hoc Division against Alex Wilson, Swiss Anti-Doping and Swiss Olympic ("the Respondents") with respect to the Decision.

3.2 On the same day at 7.28 pm (time of Tokyo), the CAS Ad Hoc Division notified the Application to the Respondents.

3.3 On 23 July 2021 at 1.22 pm (time of Tokyo), the CAS Ad Hoc Division notified the Parties of the composition of the Arbitral Tribunal:

Ms. Annabelle Bennett, as President of the Panel;

Mr Ismail Selim and Ms Yasna Stavreva, as co-arbitrators.

3.4 On the same day, at 4.33 pm (time of Tokyo), the Panel issued procedural directions as follows:

- Respondents to file any objection to the jurisdiction of the CAS and admissibility of the Application by 24 July 2021 at 1.00 am (time of Tokyo);

- Any Party wishing to attend the hearing in person to be announced by 24 July 2021 at 1.00 pm (time of Tokyo);

- Respondents' Replies, if any, to be filed by 24 July 2021 at 6.00 pm (time of Tokyo)

3.5 On 23 July 2021 at 11.53 pm (time of Tokyo), the Third Respondent informed the Panel that it would not participate in these proceedings.

3.6 On 24 July 2021 at 4.47 am (time of Tokyo), the Second Respondent submitted its Reply to the Application.

3.7 On 24 July 2021 at 7.06 am (time of Tokyo), the First Respondent objected to the jurisdiction of the CAS.

3.8 On 24 July 2021 at 10.04 (time of Tokyo), WADA filed an Application against Mr Alex Wilson, Swiss Anti-Doping and Swiss Olympic with respect to the Decision. Such Application was acknowledged and notified to the Parties on the same day at 11.06 am (time of Tokyo) and was registered under the reference CAS OG 20/08.

3.9 On 24 July 2021 at 1.59 pm (time of Tokyo), the Parties were informed that both matters CAS OG 20/06 and CAS OG 20/08 would be consolidated in accordance with Article 11 (3) of the CAS Arbitration Rules for the Olympic Games.

3.10 On 24 July 2021 at 4.55 pm (time of Tokyo) the Panel requested that the Respondents, by 24 July 2021 at 12.00 midnight (time of Tokyo), submit free English translations of the provisions of the Swiss Anti-Doping Rules ("the "Swiss ADR") they wish to rely upon.

3.11 On 24 July 2021 at 6.00 pm, the First Respondent filed its Reply to the Application.

3.12 On 24 July 2021 at 11.56 pm (time of Tokyo), the First Respondent filed free English translations of the relevant legal provision of the Swiss ADR.

3.13 On 25 July 2021 at 6.00 pm (time of Tokyo), a hearing was held by videoconference. The Panel was joined by Mr. Fabien Cagneux, Counsel to the CAS, and the following persons also attended the hearing:

- Applicants: Ms Laura Gallo and Mr Virenda Rajput (World Athletics); Mr Ross Wenzel (Counsel for WA and WADA); Prof. Christiane Ayotte and Prof. Bradley Johnson (experts);

- First Respondent: Mr Alex Wilson; Mr Gabriel Nigon and Mr Alexander Pfeiffer (Counsel);

- Second Respondent: Mr Hanjo Schnydrig, Swiss Anti-Doping, Head of Legal.

The Second Respondent supported the submissions made by WA and WADA. The Third Respondent did not attend the hearing and did not file any Reply to the Application.

3.14 There were no objections to the constitution of the Panel. At the conclusion of the hearing, the Athlete expressed concern as to the limited time available to him to prepare his case, the inability to secure the attendance of his expert and the costs associated with having to present his case and respond to the case advanced by the Applicants. He did, however, appreciate the necessities of the Ad Hoc Division and the fast track procedures. After he had made these points, the Parties, including the Athlete, acknowledged that they had been given full rights to be heard by the Panel and treated equally in these proceedings.

4 PARTIES' SUBMISSIONS

4.1 All Parties' written submissions, arguments and evidence have been duly taken into consideration by the Panel and will be referred to in the sections of this Award, as necessary to explain the reasons and the decision of the Panel.

5 JURISDICTION AND ADMISSIBILITY

5.1 Article 61.2 of the Olympic Charter provides as follows:

"61 Dispute Resolution

[...]

2. Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport (CAS), in accordance with the Code of Sports-Related Arbitration".

5.2 Article 1 of the CAS Arbitration Rules for the Olympic Games (the "CAS Ad Hoc Rules") provides as follows:

"Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)

The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Rule 61 *of the Olympic Charter, insofar as they arise during the Olympic Games or during a period of ten days preceding the Opening Ceremony of the Olympic Games.*

In the case of a request for arbitration against a decision pronounced by the IOC, an NOC, an International Federation or an Organising Committee for the Olympic Games, the claimant must, before filing such request, have exhausted all the internal remedies available to him/her pursuant to the statutes or regulations of the sports body concerned, unless the time needed to exhaust the internal remedies would make the appeal to the CAS Ad Hoc Division ineffective".

5.3 The Athlete raised a number of challenges to jurisdiction. There was no dispute that the dispute was arising from or in connection with the Tokyo OG.

Does the Panel have jurisdiction under the Olympic Charter and CAS Ad Hoc Rules to hear WA Application (CAS OG 20/06)?

5.4 The Athlete challenges the jurisdiction of the Panel, as a Panel of the *Ad Hoc* Division of the CAS for the Tokyo OG, to hear the application brought by WA, on the basis that the Decision was notified to WA on 8 July 2021, well outside the 10 days before the Opening Ceremony of the Tokyo OG on 23 July 2021. He does not challenge the application brought by WADA on the basis of timing. The Decision was notified to WADA on 20 July 2021, unquestionably within 10 days of the Opening Ceremony.

5.5 The Athlete submits that the date on which the dispute arose with WA was the date on which the Decision was notified to WA (i.e. 8 July 2021) or, in the alternative, the date on which it received "*almost all, certainly all essential documents to assess the factual and legal situation"*, being 12 July 2021 (not, as WA contended, 13 July 2021). Both dates are outside the 10-day limit for the jurisdiction of the CAS. The Athlete points to the fact that the "*only*" outstanding documentation, received on 16 July 2021, was the A- and B-sample documentation. He contends that this document was not capable of decisively influencing the assessment of the facts and that these results were not disputed.

5.6 The deadline for appeal under the Swiss ADR provision is 21 days from the date the decision was notified. This is, at the earliest, 8 July 2021, the date on which WA was notified of the decision.

5.7 The appeal was filed within 21 days of 8 July 2021, namely on 22 July 2021.

5.8 Article 1 of the CAS *Ad Hoc* Rules provides that disputes covered by Rule 61 of the Olympic Charter during a period of ten days preceding the Opening Ceremony of the Olympic Games are within the jurisdiction of the CAS. That is, the jurisdiction of the Ad Hoc Division of the CAS is over disputes, relevantly in connection with the Olympic Games (Article 61.2 of the Olympic Charter) that arose within 10 days of the Opening Ceremony. 8 July 2021 is outside that time frame.

5.9 As discussed in CAS OG 06/001:

- Rule 61 of the Olympic Charter provides that any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the CAS.
- Internal available remedies should have been exhausted.
- It is a condition precedent to the jurisdiction of the CAS Ad Hoc Division that the dispute arose either during the Olympic Games or during the period of 10 Days preceding the Opening Ceremony
- In deciding whether the dispute arose within the 10-day period, the Panel observed that: "*It was open to WADA to decide not to appeal, if it so wished. However, in the Panel's opinion, it would not be possible to say that, on the facts of the present case, a dispute had arisen until WADA had decided to appeal and notified its decision to do so*".

5.10 The question is when a dispute arises (in contrast to when a decision was made or notified). This was discussed in CAS OG 14/003. The Panel in that case acknowledged previous CAS findings that the dispute did not arise until there had been a decision to appeal and a notice of appeal filed, but considered that this could lead to a situation where a party could extend such decision-making in order to bring itself within the 10-day period, thus "*making a mockery"* of the CAS Ad Hoc Rules. However, the Panel there also noted that while a dispute may generally arise on the date of the decision disagreed with, the date can arise later. The example was given (at para 5.28) of a circumstance where "*the decision is not self-explanatory and requires some explanation in order for the Parties to know with certainty that they are in disagreement"*. In the case before that Panel, the Panel found that the dispute arose as soon as the Athlete was notified of his non-selection and, relevantly, "*without any need to receive explanations on the reasons for the Decision"*.

5.11 In the present case, the Applicant, WA, was not a party to the proceeding which led to the decision. It is asserted in the Application, and not disputed, that WA had no knowledge of the proceedings until it received the Decision. It immediately (within four days, including a weekend) advanced its understanding by requesting the case file, which did not include the Laboratory Documentation Package, which was requested on 15 July 2021 and received on 16 July 2021.

5.12 WA contended that it was entitled to wait until the case file and necessary documentation was received in order to enable it to determine whether there was a dispute concerning the Decision. It relies on the evidence of Professor Ayotte, who was immediately consulted by WA as an expert in the pharmacokinetics of trenbolone, that she could not make a recommendation or report until she had seen the laboratory testing results and evidence of the chain of custody and she notified WA of that fact on 15 July 2021. WA then requested that additional documentation, which the Panel accepts constituted

material information necessary for a report to enable it to decide whether there was an issue giving rise to an appeal.

5.13 The Panel accepts that, if WA had been shown to have delayed filing the appeal or delayed in taking steps to determine if it wished to dispute the Decision, it would be appropriate to consider what date reasonably should have been the date on which the dispute could be said to have arisen. Put another way, the application of an objective test to determine when the dispute can reasonably be said to have arisen does not, as the Athlete submits, derogate from the principle of "*legal certainty*". It is not a case of the Applicant making a unilateral claim without verification, as contended by the Athlete. It is a case of the Panel considering the undisputed chronology and determining when the dispute can be said to have arisen.

5.14 This is not a case as envisaged in CAS OG 14/003, where there was some indeterminate time during which a party delayed in deciding whether there was a dispute.

5.15 The Panel concludes that the earliest date on which the dispute could reasonably have said to have arisen was the date on which the Applicants received the full case file, including the laboratory information. That date was 16 July 2021, within 10 days of the Opening Ceremony on 23 July 2021. The Athlete points to the delay in filing the Application, till 22 July 2021, but that is not relevant to the question of jurisdiction as the relevant date determined by the Panel is not the date of filing of the Application but the date of receipt of the complete case file.

5.16 On this basis, the Panel has jurisdiction to hear the dispute the subject of the filed Application. The Athlete submits that it is unfair that he be placed in a position to have to defend this matter so close to the Tokyo OG and as confined by the CAS Arbitration Rules for the Olympic Games and that the Panel should take into account, in its determination of jurisdiction, the personal impact on him. However, the Panel must determine its jurisdiction according to law and not on the basis of personal consequences for the Parties.

Is the Decision "challengeable"?

5.17 The Athlete further contends that the Panel has no jurisdiction because, under the Swiss ADR, the Decision is final and not subject to appeal.

5.18 He relies on Article 7.4.4 of those rules which, in the agreed translation provides:

"*An objection against the issuing of a provisional suspension may be lodged with the Disciplinary Chamber. The decision of the President or one of the Vice -Presidents of the Disciplinary Chamber is final. Details are regulated in the Disciplinary Chamber's procedural regulations*"

5.19 He also relies on statements in the Decision that the decision is final as to the objection against the issuing of a provisional suspension and that the Decision does not contain any indication of a possible appeal.

5.20 Further, he relies on the fact that Article 13 of the Swiss ADR is headed "appealable decisions" and submits that this must mean that there are non-appealable decisions, of which this is one.

5.21 There are a number of answers to the Athlete's submission:

- Article 13.1(b) of the Swiss ADR specifically provides that decisions of the Disciplinary Chamber taken on the basis of the Doping Regulations can be challenged by way of appeal to the CAS. The lifting of the Athlete's provisional suspension is undeniably a decision made by the Disciplinary Chamber on the basis of the Doping Regulations. It is an appealable decision.
- The Swiss ADR clearly differentiate between the "Objection" against a provisional suspension to be lodged with the Disciplinary Chamber which will decide thereupon by the latter "*en dernière instance*" under Article 7.4.4 and the "Appeal" to the CAS against decisions of the Disciplinary Chamber under Article 13.1(b).
- Article 13.2 provides that appeals may be brought by, *inter alia*, the competent international sports federation and WADA.
- While Article 13.2.1.3 provides that the athlete against whom a provisional suspension has been imposed shall have the exclusive right to make an objection against the imposition of a provisional suspension, as made clear in its plain wording this refers to an objection against the imposition of that suspension (as is also made clear in the heading of that sub-article), which is by Swiss Anti-Doping. This sub-article does not deal with an "appeal" against the lifting of a provisional suspension by virtue of a decision made by the Disciplinary Chamber.
- The Swiss ADR are rules that apply internally, in Switzerland, to anti-doping and, in that sense, they make it clear when internal rights of review (by way of "objection") can be sought, after which an appeal can be made to the CAS.
- Article 61.2 of the Olympic Charter specifically provides that any dispute arising in connection with the Olympic Games shall be submitted exclusively to the CAS.
- Swiss Anti-Doping contended that the Swiss ADR were drafted to be in conformity with the WADA Code and the WADA Code provides for appeals concerning a provisional suspension to the CAS.

5.22 As already pointed out, the deadline for an appeal is 21 days from the written notification of the decision (Article 13.6) of the Swiss Anti-Doping Rules. This was complied with by both WA and WADA.

5.23 The Panel concludes that the Decision is appealable to the CAS and that the appeal was filed within the time prescribed by the Swiss Anti-Doping Rules.

5.24 In view of the above, the Panel considers that it has jurisdiction to hear the Applications filed by WA and WADA and that the Applications filed by the Applicants are admissible.

6 APPLICABLE LAW

6.1 Under Article 17 of the CAS Arbitration Rules for the Olympic Games, the Panel must decide the dispute "pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate".

7 DISCUSSION

a. Legal framework

7.1 These proceedings are governed by the CAS Ad Hoc Rules enacted by the International Council of Arbitration for Sport (hereinafter: the "ICAS") on 14 October 2003. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 (hereinafter: the "PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS Ad Hoc Rules and as the result of the choice of Lausanne, Switzerland as the seat of the Ad Hoc Division and of its Panels of arbitrators, pursuant to Article 7 of the CAS Ad Hoc Rules.

7.2 According to Article 16 of the CAS Ad Hoc Rules, the Panel has "*full power to establish the facts on which the application is based*".

7.3 The first order sought in the Applications is that the Decision be set aside.

Should the Decision be set aside?

7.4 WA's submission as to the effect of the Decision is straightforward. It submits that the basis of that Decision was incorrect, in that the finding was that the Athlete had credibly demonstrated that the AAF *could* have come from contaminated meat consumed in the United States.

7.5 WA's case is that pursuant to the World Anti-Doping Code ("WADC"), as reflected in the Swiss Anti-Doping Rules, a provisional suspension is mandatory where a non-specified substance (like trenbolone) is detected in an athlete's sample (Article 7.4.1 of the Swiss ADR). An athlete can object to the provisional suspension, which can only be lifted if the athlete demonstrates that it was

probable that the ADRV was caused by a Contaminated Product. WA submits that the Swiss ADR reflect Article 7.4.1 of the WADC which provides, relevantly:

- A mandatory Provisional Suspension may be eliminated if: (i) **the Athlete demonstrates** to the hearing Panel that the violation **is likely** to have involved a Contaminated Product

(emphasis added)

7.6 WA submits that the Decision did "*not even engage with the actual test set out"* in the Swiss ADR for the lifting of a provisional suspension. WA's submissions are to the effect that the Decision should be set aside as having failed to apply the correct test to a decision to lift a mandatory provisional suspension imposed where a non-specified substance is detected in the Athlete's sample.

7.7 This necessitates an analysis of the reasoning in the Decision. It is apparent that Swiss Anti-Doping, as the Respondent before the Disciplinary Chamber, called no expert evidence as to whether meat contamination could have been the source of the AAF. WA submits that the explanation proffered by the Athlete before the Tribunal was "*so unlikely as to be impossible*" and that "*the Athlete's explanation is so extremely unlikely that it is impossible to all practical intents and purposes"*.

7.8 The Decision was rendered in German. The Panel has been provided with a translation into English of the relevant portions of the Decision, which translation is not in dispute, as follows:

"*The metabolite of trenbolone relevant to this case is a so-called non-specified substance within the meaning of article 4.2.2 of the Doping Statute in connection with the 2021 Prohibited List. On the basis of art. 7.4.1 of the Doping Statute, Anti-Doping Switzerland was therefore obliged to impose a provisional suspension against the applicant.*

Based on the subsequent submissions of the applicant and the respondent to the application as well as a summary review of the situation by Dr. Rolf Walser in his capacity as a member of the Disciplinary Chamber with expert medical knowledge, the Disciplinary Chamber has come to the conclusion that the applicant has been able to demonstrate credibly, in accordance with the evidentiary requirements of art. 3.1.2 of the Doping Statute, that the positive finding could have been caused by the consumption of contaminated beef: according to generally recognized commentary and case law, the evidentiary standard in art. 3.1.2 of the Doping Statute requires concrete elements or indications that go beyond mere assertion, which can be sufficiently supported by proof for the adjudicating instance to reach the conviction on the basis of the available evidence that more speaks for, as opposed to against, the version brought forward by the party bearing the burden of proof (referred to as 'rendering credible'). The accused has brought forward such indications or concrete elements based on his submissions to date.

However, nothing has been determined at this stage with respect to either the motive of the consumption of meat nor to the question of any eventual fault. In other words, the Disciplinary Chamber has not reviewed nor accepted or rejected, within the context of this objection procedure, the question of a material anti-doping rule violation. In consideration of the imminently upcoming Olympic Games in Tokyo in which the applicant is scheduled to participate, it would appear disproportionate after careful weighing of the interests at stake and based on the current state of knowledge to maintain the provisional suspension."

7.9 It is, of course, necessary to read the whole of the relevant part of the reasoning and not to focus on a single word or phrase out of context.

7.10 As the Panel reads the Decision, the following comments can be made:

- The Disciplinary Chamber was aware of the burden of proof under the Swiss Anti-Doping Rules and that the onus was on the Athlete to establish his case on what in French and German words would equate to the balance of probabilities. This is apparent from the translation from the German using words such as "*reach the conviction on the basis of the available evidence that more than speaks for, as opposed to against, the version brought forward by the party bearing the burden of proof"*.
- However, the question remains: what was the test or the conclusion as to which the conviction had to be reached? The test applied by the Disciplinary Chamber was whether the positive finding **could** have been caused by the consumption of contaminated beef and not whether it was **likely** or probable that this was the case.
- It is immediately apparent that the two tests are not the same and that they impose very different burdens on the Athlete and necessitate very different analyses of the evidence.
- It follows that the Disciplinary Chamber made, in effect, an error of law.
- The Panel also notes that the Disciplinary Chamber referred to extraneous matters in its reasoning, such as proportionality after "*weighing of the interests at stake"* and the fact that the Olympic Games were imminent. These considerations, while worthy, were not relevant to the decision to be made. To the extent that they were taken into account in making the Decision, the Disciplinary Chamber was in error. To the extent that they were seen to be relevant to the Decision, it may also explain why the Athlete has referred in his submissions to the Panel to the personal consequences to him of these proceedings and a provisional suspension. However, the Panel does not base its decision on the legal test on this aspect.

7.11 It follows that the first order sought in the Applications, that the Decision be set aside, shall be granted. However, the Parties did not agree that this concluded

the role of the Panel and requested that the Panel reassess whether or not the conditions to impose a provisional suspension were met.

Should the Panel proceed to determine the question of the provisional suspension ?

7.12 Each of WA and WADA seek to have the Decision set aside and the imposition of a provisional suspension on the Athlete, with immediate effect.

7.13 The Athlete submits that if the Decision is set aside, the appropriate course is to remit the matter to the Disciplinary Chamber to decide the matter according to the correct test. He says that it is not for the Panel to determine the merits of whether the provisional suspension should be set aside.

7.14 Procedurally, the matter is also complicated by the fact that the provisional suspension originally imposed had been lifted pending the Decision. If the Decision is now set aside, a question remains whether that suspension remains lifted or if what amounts to a stay was terminated upon the rendering of the Decision, albeit that the Decision was flawed.

7.15 It was stated by Swiss Anti-Doping that the rules for dealing with such matters, including those set out in the Implementing Provisions on Results Management of Swiss Anti-Doping which were drafted to mirror the relevant provisions of the WADC. Article 6.2.1 (of which a translation was provided) refers to the mandatory imposition of a provisional suspension, which can be lifted if the Athlete demonstrates, relevantly, that the likely cause of the violation is a Contaminated Product. The mandatory nature of the provisional suspension is also referred to in Article 7.4.1 of the Swiss Anti-Doping Rules.

7.16 There are a number of reasons why it is appropriate for the Panel to proceed to consider the question of the provisional suspension.

- Both WA and WADA ask that the Decision be set aside. That is, they ask for the whole of the Decision, which included findings as to the asserted ingestion by the Athlete of Contaminated Product, to be set aside. As provided in Article 13.2 of the Swiss Anti-Doping Rules, the Decision, being one "*in connection with allegations of anti-doping rule violations"* is subject to appeal to the CAS. It is trite to point out that the whole of the Decision is the subject of this appeal.
- Both WA and WADA seek an order that a provisional suspension be imposed with immediate effect.
- Although the provisionary suspension had been stayed pending the decision of the Disciplinary Chamber, as the Athlete has pointed out before this Panel: "*the subject matter of the dispute in casu is the lifting of a provisional suspension by* [the Disciplinary Chamber]". That is, on one view, if the Decision is set aside, the provisional suspension stands and the Athlete needs to have it lifted if he is to compete in the Tokyo OG.

- This is an appeal to the CAS. Under Article 13.1.1 of the Swiss Anti-Doping Rules, the appellate court (the CAS) decides with "*unrestricted cognition"*. This was not in dispute. Accordingly, this is in effect a hearing *de novo*.
- The Athlete's expressed concern is that this is not about the assessment of the question whether an Anti-Doping Rule Violation (« ADRV ») has been committed. However, this proceeding does not answer that question. It concerns only the question of the lifting of the provisional suspension.

7.17 In this context, and in respect of the difficulties for the Athlete in preparing for and conducting this hearing, he pointed out the time available to him since the application was filed on 22 July 2021, the inability to secure expert evidence or his expert, or witnesses, from the hearing before the Disciplinary Chamber, the cost of full preparation, the inadequate time to respond to the evidence of Professor Ayotte and Professor Johnson and, generally, the lack of opportunity fully to present his case. The Panel fully appreciates these factors. However, the matter comes before the Panel pursuant to the procedures and the rules applicable to the Ad Hoc Division for the Tokyo OG. The urgency of the matter is governed accordingly, as the Athlete wishes to compete in the Tokyo OG. The resulting time pressures are not unique to this Athlete. Furthermore, this is not the final determination of the matter. The Panel stands in the shoes of the Disciplinary Chamber concerning the imposition of a provisional suspension. As stated by that tribunal, there is no determination "*with respect to either the motive of the consumption of meat nor to the question of any eventual fault"* and there is no finding of an ADRV.

7.18 The Panel will therefore consider whether or not a provisional suspension be imposed. This, in turn, requires consideration of whether the Athlete can establish that the (mandatory) provisional suspension provided for in the Swiss Anti-Doping Rules should not be imposed. It was not suggested before the Disciplinary Chamber, nor before the Panel, that the burden of proof was other than on the Athlete. After some discussion about the original German meaning in Article 3.1.2, which provides for the burden of proof with respect to a rebuttable presumption (where the German words take precedence under Swiss law) and the French and English translations, the Parties agreed that, practically, this was on the balance of probabilities.

Article 14 of the CAS Arbitration Rules for the Olympic Games

7.19 The Athlete submits that, in the consideration of whether the provisional suspension should be lifted, or imposed as sought in the Applications, the Panel should apply Article 14 of the CAS Arbitration Rules for the Olympic Games, such that no order should be made.

7.20 Article 14 is headed "Stay of Decision Challenged and Preliminary Relief of Extreme Urgency. It provides:

In cases of extreme urgency, the Panel, where already formed, or otherwise the President of the Ad Hoc Division, may rule on an application for a stay of the effects of the challenged decision of for any other preliminary relief without hearing the respondent first. The decision granting such relief ceases to be effective when the Panel gives a decision within the meaning of article 20 of the present Rules.

When deciding whether to award any preliminary relief, the President of the Ad Hoc Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the applicant outweigh those of the opponent or of other members of the Olympic Community.

7.21 This enables interlocutory orders to be made after a Panel is constituted pursuant to an Application and prior to the issue of the Award.

7.22 The Athlete makes submissions as to the elements of Article 14 insofar as he asserts that they apply to him. It is not necessary to recite those submissions, for example those addressing irreparable harm to the Athlete, the likelihood of success on the merits and the relative interests of the Athlete and WA. There is no application for interlocutory relief pending the decision of the Panel. The submissions seem to be made on the basis that article 14 applies because the matter before the Disciplinary Chamber, and the subject matter of these Applications, concerned a provisional suspension which is in the nature of an interlocutory order or preliminary relief. That is not a correct reading of Article 14.

7.23 What is sought in the present proceeding is not preliminary relief pending the decision of the Panel but, rather, whether the lifting of the provisional suspension shall be set aside and a provisional suspension be reinstated. In any event, any interlocutory orders made by the Panel would cease on the making of its decision.

b. *Evidence with respect to the provisional suspension*

7.24 The Panel will now turn to consider the evidence before it. This consists of the Athlete's evidence before the Disciplinary Chamber, a statement of the Athlete to the Panel, and expert evidence called by the Applicants in reports and oral evidence from Professor Ayotte and Professor Johnson. The evidence of Professors Ayotte and Johnson was not before the Disciplinary Chamber.

The evidence of the Applicants

7.25 Summary of Professor Ayotte's evidence

- Prof. Ayotte's report is based on her own experience, including consideration and assessment of industry, regulatory and academic data.

- In her report, she notes that trenbolone is an exogenous anabolic androgenic steroid, listed in category 51 of the World Anti-doping Code List. It is not a threshold substance and its identification, or that of its metabolite, is sufficient to report an AAF. As a doping agent, Trenbolone is believed to increase muscle mass while not causing water retention, i.e for bulking and cutting cycles (aesthetic) and, like other anabolic agents, to improve healing of wounds, speed up recovery, repair muscles, increase stamina and red blood cells, etc. As a growth promoter in animals such as cattle, slow-release formulations of trenbolone acetate are administered in the form of pellets, and no longer injected. In past years, as a doping agent in humans, it became relatively easy to acquire black market trenbolone acetate, including from internet websites, for oral administration as such or in the form of the so - called prohormones.

- Prof. Ayotte cited a paper by Spranger, who studied the excretion of a low dose of an oral dose of trenbolone in order to mimic potential "*contamination*" in a human subject and, according to him, the highest metabolite response (radioactivity) was found in the first 3 hours following the ingestion and that 63% was excreted in 72 hours.

- Prof. Ayotte considered the Athlete's explanation of the cause of the AAF, *i.e.*, that the ingestion of trenbolone residues in beef meat (muscles) in the USA could have caused the presence of epitrenbolone in his urine sample, to be extremely unlikely. She stated that, from her experience, she concluded that the proper use of trenbolone implants in cattle would not leave sufficient residues of trenbolone in the muscles of the treated animal that could impact an anti-doping test.

- She explained that the use of trenbolone as a growth promoter is widespread in the USA and Canada (up to 90% of the animals raised for domestic production of meat have received at least one treatment with growth promoters). Trenbolone acetate is administered to farm animals as a single subcutaneous implant that is required to be inserted beneath the skin in the middle one third of the ear (and not in any other site of the animal). The ear, along with any possible residual trenbolone, is discarded at slaughter.

- Based on the collected data from different sources, Prof. Ayotte explained that the residue levels in the meat (muscles) of cattle treated with trenbolone are in a small fraction of the Maximum Residue Level (MRL) of 2 ng/g). In Canada for example, the regulatory data show that, out of thousands of samples of beef treated with trenbolone, none had a trenbolone concentration greater than 0.2 ng/g. In South Africa the regulatory data provided by Merck, Sharp and Dohme showed a level of trenbolone measured by the method for simultaneous determination LC-MS/MS to 0.056 ng/g. An academic study (viz Lange et al.), conducted to ascertain the trenbolone residue levels in meat after the illicit injection of ten simultaneous implants, resulted, even in that extreme (and wholly theoretical) situation, in a small fraction of the MRL (circa 0.35 ng/mL).

- The number of trenbolone cases reported by laboratories worldwide and in North America do not show that there is a problem due to the contamination of beef meat. Although trenbolone appeared largely to be abused for performance-enhancement in body building and strength disciplines, often in combination with other anabolic agents, the laboratory analyses made in WADA-accredited laboratories for the period from 2013 to 2020 have confirmed just a few cases where athletes' samples have been positive for findings of trenbolone.

- Prof. Ayotte explained in her report her view that contaminated meat could not have been the cause of the AAF for epitrenbolone in the Athlete's results. The level of trenbolone metabolite, epitrenbolone, estimated in his samples and reported by the laboratory was 1.5 ng/g in the A sample and 3.5 ng/g in the B sample. Both samples, which were provided 3-4 days after the relevant ingestion of meat in the US, contained more trenbolone than could have been contained in the meat consumed by the Athlete in the restaurant in Las Vegas. For comparison, under proper use, beef meat would contain 0.1 ng/g trenbolone or less. According to the report "*If the Athlete had consumed 850 g. of meat in total (500 g. oxtail = 250 g. of meat plus 600 g. of beef patties), the dose would have been < or equal to 0.1 ng.* 850 g. = 85 ng.*" Such a minuscule amount would have been totally metabolised and excreted in 24 hours. The same would have been the case for the oxtail meal the next day (containing 25 ng. of trenbolone).

- After considering all of the data and laboratory analysis, Prof. Ayotte's final conclusion is that "*it is therefore extremely unlikely that the consumption of beef meat could have caused the AAF. As there was no doping control shortly before the control leading to AAF, there is nothing that rules out (or reduces the probability) of an intentional oral ingestion of trenbolone or a precursor"*.

- During the hearing Prof. Ayotte confirmed her report in its entirety and contested the statements of Prof. Pascal Kintz regarding the hair tests. According to her, the report of Prof. Kintz was not complete, because he excluded the residues, which is not the proper way to make the analysis. Due to the fact that trenbolone is quickly metabolised in the human body and the detection time of trenbolone is between 3 days and 10 days, she stated that it cannot be detected in a hair.

7.26 Summary of Professor Johnson's evidence

- Bradley Johnson – a Professor in Meat Science and Muscle Biology at the University of Texas Tech, who gave evidence of his extensive operational experience in the United States in the cattle industry - has stated in his expert report that anabolic steroids are safely and efficiently used as growth promoters in the beef cattle industry, especially in the United States where more than 90% of all feedlot cattle receive some type of steroidal implant. He has further insisted in several parts of his report that such steroidal implants are administered primarily through small pellets being placed under the skin on the back of the animal's ear, in order to

ensure that no pellets will enter the food chain, since ears are removed from animal early in the harvest process.

- Hence, Professor Johnson disagrees with the Athlete's position that he tested positive for epitrenbolone due to a misplaced implant likely to have been placed directly in a portion of beef oxtail or ground beef consumed by the Athlete at a restaurant in Las Vegas. Professor Johnson stated that "*this does not (and would not)*" take place in the US beef production system. He further gave three reasons why no implants are made directly into the tail or the muscle as follows: (i) Unlike the ear, the oxtail is a low vascular area and the hormone would not circulate in the bloodstream, which would therefore prevent any systemic benefit to the animal, (ii) the tail of the animal would be particularly difficult to handle; (iii) The meat surrounding such an implant would be damaged with lesions that would be discovered by inspections as well as during the preparation of all the meal at the restaurant. This could result in rejection of the meat from the whole animal.

- Moreover, Professor Johnson has commented on the photographs of the source of the beef oxtail said by the Athlete to have been provided by the restaurant by stating that Brawley Beef (the brand appearing on the photograph of the meat in the athlete's evidence) is a brand affiliated to One World Beef. He further explained that One World Beef procures and harvests organic cattle that are not treated with any steroidal hormones or other growth promoters. One World Beef also has particularly high-quality control procedures.

- Professor Johnson has further commented on supporting documents suggesting that that the beef consumed by the First Respondent originated from Tyson (IBP trade name) and on a statement from the Meat Shop owner to the effect that he was asked to inject trenbolone and boldenone into the hindquarter of calves when he was a farm worker for IBP in the past. In this regard, Professor Johnson disagreed with such supporting evidence, given that the boxed beef carried Brawley Beef's insignia. Professor Johnson further states that, to his knowledge, IBP does not own or operate its own farms but procures its cattle them from independent feedlots. Finally, Professor Johnson pointed out that there is no evidence whatsoever that the illegal practice of placing boldenone implants in cattle has occurred in the USA.

The evidence of the Athlete

7.27 The Athlete's statement

Summary of the Athlete's Objection regarding the provisional suspension of 7 May 2021

- The Athlete has submitted to the Panel the material ("Memorial") that he previously submitted to the Disciplinary Chamber and tilted "Objection

regarding the provisional suspension of 7 May 2021", to be considered as an integral part of his Reply to the Applicants' Applications.

- In his "Objection" Memorial, he stated that he has never intentionally taken or used the prohibited substance trenbolone and would never willingly violate the anti-doping rules. Further, he explained that he ordered and consumed approximately one-half kilogram (1 pound) of beef ("oxtail") for lunch and then 6 beef patties for dinner at a Jamaican bar and grill restaurant in Las Vegas on Thursday afternoon, 11 March 2021 and that he did the same on Friday noon 12 March 2021. In this regard, the Athlete submitted to the Disciplinary Chamber the relevant documentary evidence as well as an affidavit from the owner of the Jamaican bar and grill restaurant. Further, he contended that the use of trenbolone in the US cattle industry has been recognised, and he cited several comparable cases in which WADA and USADA have publicly acknowledged that epitrenbolone was detected in the doping sample and was due to the consumption of contaminated beef thereby resulting in athletes (Jarrion Lawson, Carl Grove and Marcela Zacarias Valle) testing positive for low levels of the trenbolone metabolite.

- The Athlete's "Objection" Memorial cited the Expert Report for Jarrion Lawson from Prof. Dr. Helmut Zarbl which was submitted to the Disciplinary Chamber but not to the Panel. Prof. Dr. Zarbl has conducted extensive research into the legal use of hormones such as trenbolone in the USA on cattle and has testified on behalf of other athletes who have tested positive due to contaminated beef.

- The Athlete "Objection" Memorial has also referred to the Hair analysis by Prof. Dr. Pascal Kintz (then yet to be submitted) which has been reproduced verbatim in individual passages in the Athlete's Reply to the Applicants Applications. The Athlete has further argued that micro-dosing of trenbolone has no benefit for a sprinter but is rather for a body builder and pointed out the disproportionate nature of the provisional ban.

Summary of the Statements regarding Provisional Suspension and potential anti-doping rule violation

- The Athlete has submitted to the Panel the Memorial that he had previously submitted to the Disciplinary Chamber and titled "Statements regarding Provisional Suspension and potential anti-doping rule violation", to be considered as an integral part of his Reply to the Applicants' Applications. The date of this Statement is not mentioned therein but the Athlete has mentioned that they are dated 24 June 2021.

- In the said Statements, the Athlete contended that the opposing party (Swiss Anti-Doping), also requested a suspension (a lifting) of the provisional suspension. Hence, he submits, there are no apparent reasons why the motions of the Parties to the proceedings before the Disciplinary Chamber should be deviated from. Accordingly, he says, the provisional bar against the Athlete should be suspended to enable him to

participate to the formal selection for the Tokyo OG, which was expected to take place in the week of 28 June 2021.

- Moreover, the Statements refer to and rely on a supplementary expert opinion submitted by Dr. Pascal Kintz to the Disciplinary Chamber (which was not submitted to this Panel).

English Translation of the Disciplinary Chamber Decision lifting the Provisional Suspension

- The Athlete has also submitted to the Panel an English translation of the Disciplinary Chamber Decision dated 2 July that lifted the provisional suspension of 7 May 2021, to be considered as an integral part of his Reply to the Applicants' Applications. The Panel has reproduced and dealt with the relevant parts of the Decision in this Award.

Summary of the Statement regarding Notification of potential anti-doping rule violation

- The Athlete has submitted to the Panel the Memorial that he submitted to the Disciplinary Chamber for the purpose of deciding upon the merits of the alleged anti-doping rules violations. The said Memorial is titled "Statement regarding Notification of potential anti-doping rule violation" and the Athlete has also requested that such Statement be considered as an integral part of his Reply to the Applicants' Applications. The date of the said Statements is not mentioned therein but the Athlete has mentioned that it is dated 22 July 2021.

- In this Statement, the Athlete was defending himself against an Instagram video showing him training with Raymond Stewart, who was banned for life. Although such an allegation made by Swiss Anti-Doping was briefly mentioned in paragraph 18 of WA Application, the Panel will consider it irrelevant as to these proceedings and thus will not take it into account when deciding upon the subject matter of the Appeal.

7.28 Summary of Prof. Pascal Kintz witness statement dated 4th, June 2021

- Prof. Pascal Kintz is a certified expert in toxicology. He made a hair test of Alex Wilson based on a request by the Athlete. On 13th, May 2021 a beard hair was collected from Alex Wilson and examined for trenbolone. The report was provided on 21st, May 2021. Several issues were reviewed by Prof. Kintz in his report:

- What is trenbolone in general as substance?

  As can be read from Prof. Kintz's report, trenbolone is a synthetic anabolic androgenic steroid, used first as a growth promoter in animals and administered as pelletized implants for subcutaneous administration. Due to its anabolic properties, humans can misuse trenbolone, especially athletes for doping purposes in order to improve muscle mass, enhance endurance or reduce the recovery time. Trenbolone is available on the

internet as a tablet (25 mg) for oral administration and as an oily solution for intramuscular injection (75 mg/mL), mostly as ester forms, including acetate and enanthate. Because of misuse in sports, trenbolone is prohibited by WADA.

- Window of detection of Trenbolone in urine.

  Regarding the window of detection in urine, Prof. Kintz refers to different academic studies (Spranger, J Hromatogr) and papers (Putz et al) and pointed out that two data sets have been published spanning a window of detection from ingestion from approximately 3 days to 32 days. As trenbolone is not a specified substance, any amount in a sample, even a very small amount, will trigger an AAF. His opinion is that the measured concentration of epitrenbolone in Alex Wilson's urine (1.5. ng/mL) should be considered as a small concentration because there were cases where epitrenbolone was identified in concentrations ranging from 20 to 40 ng/mL in 3 subjects (De Boer et al, i.e more than the concentration in Athlete's urine).

- Trenbolone and veterinary issues

  According to Prof. Kintz's report, in Canada, USA, Australia and Mexico it is permitted to use hormonal growth promoters to speed up animal development. Over the years many different formulations of growth promoters have been approved for use in raising cattle but the most common are anabolic steroid implants administered primarily through small pellets being placed under the skin on the back of the animal's ear. The most common steroidal implant approved for use in beef cattle contains both androgen and an estrogen compound. Trenbolone acetate has also been approved for use in food – producing beef cattle. Commercially available steroidal implants contain trenbolone acetate formulations from 40 to 200 mg. These implants are made of compressed pellets and are administered subcutaneously in the middle third of the back of the ear. The administration of pellets in the back of the ear ensures that no pellets will enter the food chain since ears are removed from the animal early in the harvest process and are not used for human consumption. These implants are allowed for over 100 days in feedlot cattle. Feedlot steers that receive a single implant containing 200 mg trenbolone acetate and 40 mg 17b estradiol gain approximately 25% more weight compared to a non - implanted control steer over a 100-day period.

  As there are possibilities that injection sites can be different from the ear, laboratories have developed procedures to detect anabolic residues in misplaced implantation sites.

- Contamination of meat and AAF

  According to Prof. Kintz's report, testing athletes' samples with very high sensitivity methods revealed that inadvertent consumption of prohibited substances was possible when these are improperly used as growth promoters. The use of trenbolone implants is widespread in North America as up to 90% of the animals raised for the domestic production of meat

would have received at least one treatment with growth promoters. There is no withdrawal period recommended before slaughtering the animal after the implantation of the trenbolone pellet. The influence of the consumption of contaminated meat with anabolic steroids on doping tests has been discussed for many years. Therefore, it was not surprising for Prof. Kintz that the athletes have presented with an AAF due to meat contamination by trenbolone, including the race walker Maria Guadalupe Gonzalez – Mexico, the cyclist Carl Grove – USA, the tennis player Marcela Zacarias Valle – Mexico, the long jumper and sprinter Jarrion Lawson – USA.

- The use of alternative specimens in doping control

  The WADC indicates that blood and urine are the key specimens by which to identify an ADRV. Although hair is not a routine specimen for the Olympic Committee or WADA, its use as a specimen for investigation has been accepted in most courts of justice in the world. Hair testing is a useful measure of drug intake of an individual in any situation in which a history of past, rather than recent, drug use is expected, as it reflects consumption over a long period of time. It is commonly accepted that each centimetre of head hair represents the growth and therefore drug accumulation for one month. Using segmental hair analysis, statements about the course of drug intake and chronological correlations are possible. While a constant regular profile along the hair shaft is in favour of permanent drug use, any variation of concentration indicates a change in drug intake. In case of a supplement from meat contamination, hair testing for the prohibited substance identified in urine during the control can be very useful. It is therefore accepted that hair testing for anabolic drugs cannot detect a single exposure or repetitive limited low dosages. But misuse of trenbolone (increase of body mass, recovery enhancing, etc.) can be observed when the drug is repetitively administered to an athlete.

- In conclusion, Prof. Kintz's states:

  The concentration of epitrenbolone in the urine of Alex Wilson is small and can be indicative of 2 different situations:

  1. Incidental ingestion from a contaminated meat or
  2. Tail and elimination following and an administration regime

  As epitrenbolone glucuronide is detectable 32 days after exposure to 25 mg of trenbolone acetate and because Alex Wilson was tested negative on 25March 2021 (i.e. after 15 days after the AAF) this is indicative of an accidental consumption of a limited amount of trenbolone, irrespective of its chemical formulation. As meat contamination with trenbolone has been described on several occasions and given that a source of possible contamination has been identified (ingestion of about 1 kg of beef some days before), it is possible to consider that the athlete's AAF can be a consequence of the consumption of contaminated beef.

8 CONCLUSION

8.1 The Disciplinary Chamber had before it only evidence from the Athlete, which included evidence, including expert evidence, explaining why the Athlete believed that the trenbolone detected had likely come from contaminated meat. The Panel has before it additional evidence from experts who dealt with each aspect of the Athlete's evidence (apart from his personal statement) and provide evidence to rebut the basis for the Athlete's claim.

8.2 The Panel does not have further evidence from the Athlete dealing with the Applicants' evidence, nor did the Athlete's expert, Professor Kintz, have the opportunity to appear before the Panel or to rebut the expert evidence of Professor Ayotte and Professor Johnson. This course was not possible in the present proceedings as the Athlete was, reasonably, unable to prepare and present such evidence in this proceeding.

8.3 Those matters will properly be before the Disciplinary Chamber when it considers the question of an ADRV.

8.4 The Panel now deals with the evidence before it.

8.5 The trenbolone was detected in the Athlete's urine. He strongly denied knowingly ingesting it and he seems to have no history of doping. His hypothesis was that he ate contaminated meat in the United States and he provided evidence in support of that hypothesis. The Applicants have adduced evidence that negates the Athlete's evidence and the basis for his claim.

8.6 In the circumstances, the Panel concludes that the Athlete has not satisfied it that, on the balance of probabilities, it is likely or probable that the trenbolone came from contaminated meat in the circumstances presently described by the Athlete. The evidence available so far clearly shows that the provisional suspension imposed on the Athlete should not have been lifted by the Disciplinary Chamber. It follows that the decision of the Disciplinary Chamber dated 2 July 2021 should not be reinstated and, thus, the mandatory provisional suspension shall be reinstated with immediate effect.

9 Confidentiality

9.1 The Athlete requests that, in accordance with the procedure adopted by Swiss Anti-Doping under the Swiss Anti-Doping Rules, the decision of the Panel and the Award be kept confidential and not published, pending the decision of the Disciplinary Chamber on the question of whether or not an ADRV has been committed.

9.2 The Panel was informed by Swiss Anti-Doping that such a practice of non-publication was not a formal requirement but rather a practice simply adopted.

9.3 Both WA / WADA and Swiss Anti-Doping said that they left the matter to the Panel and made no submissions.

9.4 The Panel notes that Article 19 of the CAS Ad Hoc Rules provides that if the National Olympic Committees concerned are not parties to the proceedings and do not receive a copy of the award in that capacity, this award **shall** (emphasis added) be communicated to them for information purposes.

9.5 There is no specific provision for confidentiality. Article 19 of the CAS Ad Hoc Rules argues against some form of automatic confidentiality. It is the practice of the CAS to publish its Awards.

9.6 In any event, no sufficient basis for such an order has been made. It is clear that the decision of the Panel is made on the basis of the evidence adduced before it and the Athlete has indicated that he will adduce further evidence when the matter of an ADRV is before the Disciplinary Chamber. The Athlete should not be prejudiced in this that hearing by the Chamber being aware of reasons and conclusions of the Panel as to the lifting of a mandatory provisional suspension.

9.7 The Panel finds that the Award shall not be kept confidential and shall be published. As a consequence, the CAS can publish the present Award and issue statements to the media.

10 COSTS

10.1 Article 22 of the CAS Ad Hoc Rules provides that the facilities and services of the CAS Ad Hoc Division, including the provision of arbitrators to the Parties to a dispute are free of charge. It further provides that the Parties shall pay their own costs of legal representation, experts, witnesses and interpreters.

10.2 Swiss Anti-Doping cites Article 22 of the CAS Ad Hoc Rules for the Olympic Games and does not seek costs. WA and WADA seek an award for costs.

10.3 The Panel declines to make any order for the CAS costs. The Parties will bear their own legal costs.

DECISION

The Ad Hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The Ad Hoc Division of the Court of Arbitration for Sport has jurisdiction to entertain the Application filed by World Athletics on 22 July 2021 and by WADA on 24 July 2021.

2. The applications filed by World Athletics and by WADA on 22 and, respectively, 24 July 2021 are upheld.

3. The Decision rendered on 2 July 2021 by the Disciplinary Chamber of Swiss Olympic is set aside.

4. The provisional suspension imposed on Mr Alex Wilson by Antidoping Switzerland on 28 April 2021 shall be reinstated with immediate effect.

5. Each Party shall bear its own legal costs and other expenses incurred by this procedure.

Tokyo, 27 July 2021

THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Annabelle Bennett
President of the Panel

Ismail Selim
Arbitrator

Yasna Stavreva
Arbitrator