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Item 7.2 of the Provisional Agenda

Implementation of Article 8 of the International Convention against Doping in Sport

Summary

Background: At the second session of the Conference of Parties in 2009, the Secretariat was asked to undertake an analysis of the responses provided to the *Anti-Doping Logic* questionnaire to determine their normative value. This report looks at the implementation of Article 8 of the Convention, which calls for measures to restrict the availability and use in sport of prohibited substances and methods, and draws upon additional research undertaken by UNESCO and the World Anti-Doping Agency (WADA).

This report is presented for information purposes only.

INTRODUCTION

1. The principle objective behind the development of the International Convention against Doping in Sport (hereinafter referred to as “the Convention”) was to constructively engage governments in the fight against doping in sport. This was largely in recognition of the fact that there are specific areas where only governments can progress anti-doping efforts. The Convention provided the hitherto absent legal framework with which all governments can address the growing prevalence and increasingly insidious use of performance-enhancing substances and methods in sport. One of the most important obligations for governments to address is the availability of performance-enhancing drugs. Under Article 8 of the Convention, governments are obliged to limit the availability of prohibited substances and methods in order to restrict their use in sport. These include measures against production, movement, importation, distribution, sale and trafficking. At the same time there is the need to ensure that these measures do not impede the general availability of medicines or therapeutic products for legitimate purposes or to prevent their use by athletes who obtain therapeutic use exemptions. This report looks at the implementation of Article 8 of the Convention.
2. The World Anti-Doping Code (hereinafter referred to as “the Code”), Prohibited List International Standard and the Standards for Granting Therapeutic Use Exemptions (TUE) provide the framework to restrict the use of performance-enhancing substances and methods in a sporting context. It is an anti-doping rule violation to use, attempt to use, possess, administer or traffic substances or methods contained on the Prohibited List without a TUE.
3. The issues of production, movement, importation, distribution, and sale are more complicated and pressing. Anti-doping efforts will remain incomplete if the manufacture, sale and supply of performance-enhancing drugs are not prohibited by national legislation. Key investigations, such as those into the BALCO Laboratory and Operation Puerto, as well as research undertaken by the World Anti-Doping Agency (WADA) have shown that there are business networks operating on the margins of the law with the express purpose of furnishing athletes with performance-enhancing substances and methods. Moreover, these businesses are well frequented by athletes and derive substantial financial gains from this trade. Thus, there is a need for governments to introduce concrete measures under the Convention to curtail the supply of performance-enhancing substances and methods. Tangible actions include the imposition of border controls and criminal penalties and for this matter to be afforded priority by enforcement agencies. WADA has entered into a memorandum of understanding with the International Criminal Police Organization – INTERPOL, however, the provisions of this agreement can not be fully implemented unless national legislation had been enacted to prohibit the sale and supply of performance enhancing drugs.¹

COMMENT

4. In 2008, UNESCO and WADA funded the first phase of a research project, undertaken by Loughborough University, which sought to identify the countries that had introduced legislation to prohibit the sale and supply of performance-enhancing drugs. A desk survey was undertaken; gathering information from a range of online sources. Data was retrieved from 134 countries, 53 of these had some form of legislation that refers specifically to performance-enhancing drugs. The nature of this legislation varied considerably. Of the 53 countries,

¹ WADA also entered into a memorandum of understanding with the World Customs Organization in June 2011.

some had legislation which references the Prohibited List and replicates the penalties under the Code, while a smaller number had introduced legislation which criminalized the sale and supply of performance enhancing drugs.

5. In 2010, the German government undertook a survey which looked at the criminal liability of doping, in particular the legislation enacted by 11 countries² to combat this problem. All of the participating countries had adopted anti-doping provisions under criminal law to implement Article 8 of the Convention, however, the legislation varied markedly in terms of scope and the substances and methods covered.
6. Both research projects indicate that there are three prominent legislative frameworks in place, which can sometimes overlap, to deal with the availability and the trafficking of performance-enhancing drugs. These are: (1) comprehensive anti-doping legislation encompassing a range of issues, including the sale and supply of performance-enhancing drugs based on the Prohibited List; (2) legislation prohibiting illicit drugs (generally narcotics, stimulants and psychotropic substances); and (3) medicines control legislation. In a limited number of cases specific anti-doping legislation has been put in place. The majority of the legislation is focused on illicit drugs, drawing upon the three principal international legal instruments in this domain (1961 Single Convention on Narcotic Drugs (as amended by the 1972 Protocol), 1971 Convention on Psychotropic Substances, and the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances). For almost all countries it is possible to identify legislation related to medicine either in the form of a specific medicines act or as part of broader public health legislation. However, the scope of the legislation tends to be very broad covering, *inter alia*, the criteria for adding a drug to the list of those available for therapeutic use, which drugs can be sold without medical authorization (doctor's prescription), the quantities in which drugs can be sold and where and under what conditions drugs can be dispensed.
7. The reports submitted by States Parties under Article 31 of the Convention, using the *Anti-Doping Logic* system, also provide useful information. As of 31 October 2011, UNESCO had received 96 complete questionnaires. Of this number, 36 percent had adopted extensive measures to restrict the availability of prohibited substances and methods in order to restrict their use in sport by athletes; 36 percent had adopted substantial measures; and 21 percent had adopted partial measures. The results for specific measures adopted to prevent the trafficking of prohibited substances were as follows: Extensive measures (30 percent); substantial measures (32 percent); and partial measures (31 percent). The responses to the supplementary questions about the purpose of the measures and the penalties or sanctions imposed provide further insight. In this regard, 80 percent had taken steps to deal with production, movement, importation, distribution and sale, and a range of penalties and sanctions have been introduced. Only 18 percent of responses indicated that the penalties imposed were sport sanctions or disciplinary actions consistent with the Code. These measures are confined to sport and do not address trafficking by criminal networks. However, when this information is compared with the results from 2009, as illustrated in Table 1 below, progress has been made over the 2010-2011 biennium.

² Austria, China, France Germany, Norway, Republic of Korea, Russian Federation, Spain, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

Measures	Extensive		Substantial		Partial	
	2009	2011	2009	2011	2009	2011
Measures to restrict the availability of prohibited substances and methods in sport	15	34	26	35	19	21
Measures adopted to prevent the trafficking of prohibited substances	13	29	27	31	20	30

Table 1: Responses provided by States Parties on the measures taken by them under Article 8 of the Convention

Note: 71 responses were received from States Parties in 2009.

8. UNESCO and WADA will draw upon this data in the second phase of the research project with Loughborough University, which will examine the legislation in greater detail. Specifically, the key questions to resolve are:
- What offences are set forth by the legislation concerning sale and supply of performance enhancing drugs?
 - What are the penalties for the above offences?
 - Which agencies are responsible for enforcement of the legislation?
 - How many cases have been prosecuted under the legislation, and how many of these cases have resulted in a guilty verdict?
 - Are these statistics be provided to INTERPOL? and which agency would normally provide this information?

All of the States Parties which have provided favourable responses to questions 2, 3 and 4 of the *Anti-Doping Logic* questionnaire will be contacted and asked to complete an additional survey to gather the above data. At the conclusion of the research, UNESCO also proposes to upload all the legislation into the anti-doping database (*Addbase*) for reference purposes.

9. It should also be noted that WADA has produced guidelines, which are targeted at Anti-Doping Organizations, and provide advice about how they can enhance cooperation and intelligence sharing with law enforcement agencies. The *Coordinating Investigations and Sharing Anti-Doping Information and Evidence* guidelines are an important reference tool.