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Item 7.3 of the Provisional Agenda

Implementation of Article 10 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 10 of the Convention, dealing with nutritional supplements, and presents information about the measures that governments can take to implement the obligation set forth.

This report is presented for information purposes only.

INTRODUCTION

1. One of the key differences between the International Convention against Doping in Sport (hereinafter referred to as "the Convention") and the 1989 Anti-Doping Convention developed by the Council of Europe is the attention given to nutritional supplements. This was in recognition of the growing number of anti-doping rule violations under the World Anti-Doping Code (hereinafter referred to as "the Code") resulting from athletes taking supplements which contain prohibited substances.

2. Several studies have shown that common supplements available in a number of countries contain banned substances, including stimulants, hormones, pro-hormones and anabolic androgenic steroids. It is estimated that 10-20 percent of these products may be contaminated (Schanzer 2002, Geyer et. al. 2004).[1] This situation is problematic once we take into account the high prevalence of supplement use by athletes. Putting aside questions about the safety and efficacy of these products, their use by athletes poses significant risks to their careers. Taking a tainted supplement could result in a two-year or lifetime ban. This is because anti-doping violations under the Code are based on strict liability. The mere presence of a prohibited substance in a blood or urine sample provided by an athlete constitutes an anti-doping rule violation. The manner in which the substance was ingested by the athlete, inadvertently or otherwise, might only impact on the length of the sanction imposed if no significant fault or negligence can be demonstrated.

3. Under Article 10 of the Convention, governments are obliged to encourage producers and distributors of dietary or nutritional supplements to establish marketing best practices, including information regarding the analytic composition of their products and quality assurance. This provision is intended to deal with problems such as contamination, inaccurate labeling and false marketing.

COMMENT

4. The results generated by the *Anti-Doping Logic* system show that governments have made limited progress when it comes to the issue of nutritional supplements. Almost a quarter of all States Parties have yet to implement any measures in accordance with Article 10 of the Convention. Moreover, this was the question with the lowest rates of overall compliance in the whole questionnaire. Of the 96 complete questionnaires submitted in 2011, only 11 percent had adopted extensive measures to encourage producers and distributors to establish best practices in the marketing and distribution of nutritional supplements, 32 percent had adopted substantial measures, and 31 percent partial measures. Nevertheless, 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.

[1] Schanzer, W. (2002). *Analysis of Non-Hormonal Nutritional Supplements for Anabolic-Androgenic Steroids - An International Study* and Geyer, H et. al. (2004) 'Analysis of non-hormonal nutritional supplements for anabolic-androgenic steroids – Results of an international study*, International Journal of Sport Medicine,* 2004, no. 25: pp. 124-129.

Table 1: Responses provided by States Parties on the measures taken by them under Article 10 of the Convention

Measures	Extensive		Substantial		Partial	
	2009	2011	2009	2011	2009	2011
Extent to which producers and distributors are encouraged to establish best practices in the marketing and distribution of nutritional supplements	3	**10**	20	**31**	25	**31**

Note: 71 responses were received from States Parties in 2009 and 96 in 2011.

5. A range of approaches have been adopted internationally to nutritional supplements, which are generally defined as substances that contain vitamins, minerals, proteins and amino acids of natural or synthetic origin and which are used to supplement a normal and balanced diet. The following section presents a series of regulatory frameworks, some of which can be implemented in a complimentary manner. States Parties are invited to consider these as possible modalities to implement their obligations under Article 10 of the Convention.

Education of athletes

A number of National Anti-Doping Organizations undertake advertising and education programmes to advice athletes and athletes support personnel about the risks of taking nutritional supplements. This is in accordance with Article 19.2 of the Convention, which calls for education and training programmes in this area. However, evidence show that athletes continue to take nutritional supplements despite these warnings, thus additional measures should also be taken.

Self-regulation

The Convention calls for the development of best practices regarding the marketing and distribution of nutritional supplements. While there is no internationally agreed Good Manufacturing Practice (GMP) in this area, certain governments have worked in partnership with industry to establish national safety and quality guidelines.

Testing and controls

Certain countries have introduced a testing programme for nutritional supplements in order to decrease the risks of athletes taking tainted products. Accordingly laboratory analyses are required on each batch of supplements produced. This is supported by random controls and random double analyses. Controls are also placed on the movement of products as well as storage to prevent the substitution of products or counterfeiting.

Food safety legislation

In some jurisdictions nutritional supplements are regulated under food law. All producers must register (often with local authorities which oversee the administration of the legislation), report all activities undertaken, and submit to periodic inspection of their manufacturing processes. Food legislation often

includes strict requirements concerning additives and labeling and products can not be marketed for a therapeutic purpose.

Therapeutic goods regulations

This regulatory approach places nutritional supplements on a par with complementary medicines. Substances must be registered and production must comply with Good Manufacturing Practice. Moreover, no positive health benefits can be claimed in the advertising of these products.

Specific regulation of nutritional supplements

Certain countries have established strict regulations governing the manufacture of nutritional supplements. All producers must be licensed. They are also required to provide detailed information about all products, including use and evidence about safety and efficacy. Labeling is also regulated and all constituents and ingredients must be clearly stated and in what quantities. These regulations are often supported by guidelines covering all production and manufacturing processes. Manufacturers are also required by law to report any adverse effects arising from taking these products.