



U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

February 24, 2017

TO: Members, Subcommittee on Oversight and Investigations

FROM: Committee Majority Staff

RE: Hearing entitled “Ways to Improve and Strengthen the International Anti-Doping System.”

The Subcommittee on Oversight and Investigations will hold a hearing on Tuesday, February 28, 2017, at 10:15 a.m. in 2123 Rayburn House Office Building, entitled “Ways to Improve and Strengthen the International Anti-Doping System.” This hearing aims to evaluate progress made thus far in reforming the global anti-doping system following the Rio Games and recent revelations of government-facilitated doping. The purpose of this hearing is to support efforts to strengthen clean competition and restore public confidence in international sports.

I. WITNESSES

- Richard Budgett, M.D., Medical and Scientific Director, International Olympic Committee;
- Rob Koehler, Deputy Director General, World Anti-Doping Agency;
- Travis Tygart, Chief Executive Officer, U.S. Anti-Doping Agency;
- Adam Nelson, American Shot Putter and Olympic Gold Medalist; and
- Michael Phelps, American Swimmer and Olympic Gold Medalist.

II. BACKGROUND

a. The Olympic Movement and the World Anti-Doping Agency

The World Conference on Doping held in Lausanne, Switzerland in 1999,¹ under the leadership of the Olympic Movement, including the International Olympic Committee (IOC), established the World Anti-Doping Agency (WADA) as an independent international agency to

¹ OLYMPIC INFORMATION CENTER: LAUSANNE DECLARATION 17-18 (1999), <http://library.la84.org/OlympicInformationCenter/OlympicReview/1999/OREXXVI25/OREXXVI25g.pdf>.

research, educate, and enforce standards on anti-doping in Olympic sport.² WADA developed the World Anti-Doping Code (the Code)—the international agreement that standardizes anti-doping policies, rules, and regulations among authorities around the world.³ Under the Code, the IOC, as a stakeholder organization, has jurisdiction to impose consequences on those whom WADA finds to be non-compliant.

WADA's mission is to "lead a collaborative worldwide movement for doping-free sport."⁴ Since its creation, WADA has implemented and overseen many positive developments in the fight against doping in international sport. The Agency, which consists of equal representatives from the Olympic Movement and public authorities, pursues scientific research, education, development of anti-doping capacities, athlete outreach, cooperation with law enforcement, and monitoring of the Code. The Athletes Biological Passport program, designed to detect variation in biomarkers in athletes' blood associated with the use of banned substances, has been widely endorsed by anti-doping experts as an effective tool to reduce cheating in sport.⁵ The Anti-Doping Administration and Management System keeps stakeholders apprised of athlete whereabouts, test planning and results management, and therapeutic use exemptions.⁶

Funded equally by the sport movement and governments of the world, in 2016, WADA's total budget was nearly \$30 million. After the IOC, the U.S. is the next largest contributor to WADA's budget at roughly \$2 million per year.⁷ The U.S. supports anti-doping activities, including WADA's budget, through use of funds from the Office of National Drug Control Policy (ONDCP).⁸ These funds were first authorized under title VII of the Office of National Drug Control Policy Reauthorization Act of 2006.⁹

b. The Role of the U.S. Anti-Doping Agency

National anti-doping organizations (NADO) are responsible for testing national athletes and athletes from other countries competing within that nation's borders, adjudicating anti-doping violations, and providing education on anti-doping issues.¹⁰ The U.S. Anti-Doping

² *World Anti-Doping Agency Mission Statement*, <https://www.wada-ama.org/en/who-we-are> (last visited Feb. 23, 2017).

³ *World Anti-Doping Agency Code*, <https://www.wada-ama.org/en/what-we-do/the-code> (last visited Feb. 23, 2017).

⁴ *Mission Statement* *supra* note 2.

⁵ Nick Harris, *Athlete Biological Passport: The key questions surrounding UEFA's new blood-testing process brought in to stamp out performance-enhancing drugs in football*, DAILY MAIL (Sept. 24, 2015), <http://www.dailymail.co.uk/sport/football/article-3247573/Athlete-Biological-Passport-key-questions-surrounding-UEFA-s-new-blood-testing-process.html>.

⁶ *World Anti-Doping Agency ADAMS*, <https://www.wada-ama.org/en/adams> (last visited Feb. 23, 2017).

⁷ WORLD ANTI-DOPING AGENCY, CONTRIBUTIONS TO WADA'S BUDGET 2016 (JAN. 11, 2017), https://www.wada-ama.org/sites/default/files/resources/files/wada_contributions_2016_update_en.pdf.

⁸ EXECUTIVE OFFICE OF THE PRESIDENT OF THE UNITED STATES, FY 2016 BUDGET AND PERFORMANCE SUMMARY, COMPANION TO THE NATIONAL DRUG CONTROL STRATEGY, 11, 231 (Nov. 2015), https://obamawhitehouse.archives.gov/sites/default/files/ondcp/policy-and-research/fy_2016_budget_summary.pdf.

⁹ See 21 U.S.C §2001 et seq for authorizing language for the U.S. Anti-Doping Agency, and (P.L. 109-469), <https://www.gpo.gov/fdsys/pkg/PLAW-109publ469/pdf/PLAW-109publ469.pdf>.

¹⁰ *World Anti-Doping Agency, National Anti-Doping Organizations*, <https://www.wada-ama.org/en/national-anti-doping-organizations-nado> (last visited Feb. 23, 2017)

Agency (USADA) is the NADO in the U.S. for Olympic, Paralympic, Pan American, and Parapan American sport. USADA's mission is to preserve the integrity of competition, inspire true sport, and protect the rights of U.S. athletes. The organization is responsible for managing the anti-doping program, results management processes, drug reference resources, and athlete education for all United States Olympic Committee (USOC) recognized sport national governing bodies, their athletes, and events in a manner that is consistent with WADA's Code. Additionally, USADA helps to advance clean sport through scientific research and education and outreach initiatives that are focused on awareness and prevention.¹¹

c. Challenges Facing the Current Anti-Doping System

WADA's sweeping mission is not without its challenges. Experts point out that conflicts of interest stemming from the composition of WADA's senior leadership currently exist, as anti-doping decision makers often simultaneously hold a policy-making position within a sports organization. Such conflicts can have both real and perceived effects on the rigorous investigations of possible violations as well as the enforcement of anti-doping measures. Several anti-doping experts have publicly stated that WADA lacks sufficient independence.¹² In the summer of 2016, press reports and whistleblowers regularly suggested that this lack of independence had led to "foot-dragging" in response to long running allegations of state-sponsored doping.¹³

Actions taken by WADA to investigate recent claims of a state-sponsored doping scheme have prompted questions over the inherent conflicts of interest between those who police sport and those who promote sport.¹⁴ Indeed, recent events have raised the intensity and public profile of the debate over WADA's effectiveness. In light of the allegations, the Institute of National Anti-Doping Organizations (iNADO) called for further action to protect clean sport, noting that "iNADO recognises that WADA's role as an international regulator is seriously compromised if those who govern sport (such as International Federations (IFs) and the IOC) do not appropriately act on clear cases of non-compliance."¹⁵ Similarly, Travis Tygart, CEO of the U.S. Anti-Doping Association (USADA), has called into question WADA's ability "to do its job."¹⁶

Central to any discussion of WADA's value as an international regulatory body is its ability to investigate, and where necessary hold accountable, individual NADOs for world anti-doping code non-compliance. In a 2014 documentary, the Russian Anti-Doping Agency

¹¹ *U.S. Anti-Doping Agency, About*, www.usada.org/about/ (last visited Feb. 23, 2017).

¹² Will Hobson, *WADA heard of Russian doping in 2010, didn't investigate until media reports*, WASH. POST (Jun. 2, 2016), https://www.washingtonpost.com/sports/olympics/wada-heard-of-russian-doping-in-2010-didnt-investigate-until-media-reports/2016/06/02/9ec77acc-28e7-11e6-b989-4e5479715b54_story.html.

¹³ Rebecca Ruiz, Juliet Macur, and Ian Austen, *Even with Confession of Cheating World's Doping Watchdog Did Nothing*, N.Y. TIMES (June 15, 2016), http://www.nytimes.com/2016/06/16/sports/olympics/world-anti-doping-agency-russia-cheating.html?_r=0

¹⁴ Hobson, *supra* note 12.

¹⁵ Press Release, Institute of National Anti-Doping Organisations, iNADO Calls for Further Action to Protect Clean Sport (May 19, 2016), <http://www.inado.org/about/press-releases.html>.

¹⁶ Travis T. Tygart, *Come Clean, Russia, or No Rio*, N.Y. TIMES, May 25, 2016, <https://www.nytimes.com/2016/05/25/opinion/come-clean-russia-or-no-rio.html>.

(RUSADA) was alleged to be colluding with coaches and athletes to cover-up positive tests for the use of performance-enhancing drugs.¹⁷ In response to mounting evidence and media scrutiny, WADA, which initially held that it lacked the institutional authority to investigate, commissioned an independent report led by former WADA president Richard Pound.¹⁸ The Independent Commission report, published on November 9, 2015, corroborated claims of state-sponsored doping as well as a deep-rooted culture of cheating.¹⁹

d. Leading up to Rio: A System Under Severe Strain

In May 2016, the American newsmagazine *60 Minutes*²⁰ and then *The New York Times*²¹ published reports detailing Russian state-facilitated doping schemes during the Sochi 2014 Winter Olympic Games. The primary source of these allegations was the former Director of the Moscow and Sochi doping control laboratories, who ran the testing for thousands of Russian and international Olympians. On May 19, 2016, WADA announced that Richard McLaren would conduct an investigation into those allegations.²²

An Olympic summit held on June 21, 2016, produced a Five-Point Plan addressing the need “to make the entire anti-doping system independent from sports organizations” and called on WADA to convene an “Extraordinary World Conference on Doping” in 2017.²³ Similarly, on assuming the role of Director General of WADA on July 1, 2016, at the very height of the public controversy over how to respond to revelations shattering public confidence in the world anti-doping system, Olivier Niggli highlighted his aims of “bolstering our investigative work” and “implementing a new whistleblower program by the next Foundation Board meeting in November.”²⁴

On July 12, 2016, the Committee sent the President of the IOC, Thomas Bach, a letter expressing strong bipartisan interest in a renewed commitment to clean sport by the Olympic Movement in light of recent and ongoing investigations, including state-sponsored doping.²⁵ On

¹⁷ See 4-part installment of ARD/German TV documentaries. The first is, *The Secrets of Doping: How Russia Makes its Winners*, (2014), <https://www.youtube.com/watch?v=iu9B-ty9JCY>.

¹⁸ WORLD ANTI-DOPING AGENCY, THE INDEPENDENT COMMISSION REPORT #1, FINAL REPORT (NOV. 9, 2015), https://www.wada-ama.org/sites/default/files/resources/files/wada_independent_commission_report_1_en.pdf.

¹⁹ *Id.*

²⁰ *Russian Doping at Sochi Winter Olympics Exposed* (60 Minutes broadcast May 8, 2016), <http://www.cbsnews.com/news/60-minutes-russian-doping-at-sochi-winter-olympics-exposed/>.

²¹ Rebecca R. Ruiz and Michael Schwartz, *Russian Insider Says State-Run Doping Fueled Olympic Gold*, N.Y. TIMES (May 12, 2016), https://www.nytimes.com/2016/05/13/sports/russia-doping-sochi-olympics-2014.html?_r=0.

²² Press Release, World Anti-Doping Agency, WADA Names Richard McLaren to Sochi Investigation Team (May 19, 2016), <https://www.wada-ama.org/en/media/news/2016-05/wada-names-richard-mclaren-to-sochi-investigation-team>.

²³ Press Release, Olympic Movement, Declaration of the Olympic Summit (Jun. 21, 2016), <https://www.olympic.org/news/declaration-of-the-olympic-summit>.

²⁴ Press Release, World Anti-Doping Agency, Olivier Niggli Begins New Role as WADA Director General (Jul. 1, 2016), <https://www.wada-ama.org/en/media/news/2016-07/olivier-niggli-begins-new-role-as-wada-director-general>.

²⁵ Letter from H. Comm. on Energy & Commerce, to Thomas Bach, President, Int'l Olympic Comm. (July 12, 2016).

July 16, 2016, Part 1 of the McLaren Report was released.²⁶ Most notably, the McLaren Report found that “The [Russian] Ministry of Sport directed, controlled and oversaw the manipulation of athlete’s analytical results or sample swapping” with the active participation of Russian security services and both the Moscow and Sochi Laboratories.²⁷

Later that same day, WADA publicized the recommendations of its Executive Committee based on the McLaren Report, which included the following: (1) The IOC should consider declining entry to Rio 2016 for all athletes submitted by the Russian Olympic Committee (ROC); (2) Russian government officials should be denied access to international competitions, including Rio 2016; and (3) the Russian National Anti-Doping Agency should be considered non-compliant under the World Anti-Doping Code.²⁸

On July 19, 2016, IOC President Bach stated, “[t]he findings of the report show a shocking and unprecedented attack on the integrity of sports and on the Olympic Games. Therefore, the IOC will not hesitate to take the toughest sanctions available against any individual or organisation implicated.”²⁹ The IOC’s Executive Board announced that it would begin exploring legal options balancing the applicability of a collective ban of all Russian athletes from the Olympic Games 2016 against the right to individual justice.³⁰ The IOC also provided for “the eligibility of each Russian athlete...to be decided by his or her International Federation (IF) based on an individual analysis of his or her international anti-doping record.”³¹

On July 24, 2016, the IOC Executive Board released its decision concerning the participation of Russian athletes in the Rio Games.³² The IOC opted to delegate its authority on the matter to the 28 IFs to determine individually the eligibility of Russian athletes if they were able to provide evidence, a record of non-doping, and “rebut the applicability of collective responsibility in his or her individual case.”³³ The IOC determined that an arbitrator of the Court of Arbitration for Sport (CAS) would rule on each and every athlete ban.³⁴ Several days later, IOC announced that a panel consisting of three Executive Board Members would confirm or

²⁶ RICHARD H. MCLAREN, THE INDEPENDENT PERSON REPORT (JUL. 16, 2016), https://www.wada-ama.org/sites/default/files/resources/files/20160718_ip_report_newfinal.pdf.

²⁷ *Id.*

²⁸ Press Release, World Anti-Doping Agency, WADA Statement: Independent Investigation confirms Russian State manipulation of the doping control process (Jul. 18, 2016), <https://www.wada-ama.org/en/media/news/2016-07/wada-statement-independent-investigation-confirms-russian-state-manipulation-of>.

²⁹ Press Release, Int’l Olympic Comm., Statement of the Int’l Olympic Comm. on WADA Report (Jul. 18, 2016), <https://www.olympic.org/news/statement-of-the-international-olympic-committee-on-wada-report>.

³⁰ Press Release, Int’l Olympic Comm., Statement of the Executive Board of the Int’l Olympic Comm. on the WADA Independent Person Report (Jul. 19, 2016), <https://www.olympic.org/news/statement-of-the-executive-board-of-the-international-olympic-committee-on-the-wada-independent-person-report>.

³¹ *Id.*

³² Press Release, Int’l Olympic Comm., Decision of the IOC Executive Board Concerning the Participation of Russian Athletes in the Olympic Games Rio 2016 (Jul. 24, 2016), <https://www.olympic.org/news/decision-of-the-ioc-executive-board-concerning-the-participation-of-russian-athletes-in-the-olympic-games-rio-2016>.

³³ *Id.*

³⁴ *Id.*

overturn each decision.³⁵ By the start of the Rio Games on August 5, 2016, 271 of the 389 athletes put forward by the ROC were cleared to participate.³⁶

On August 2, 2016, the IOC responded to the Committee's letter, in writing, stressing that while it is only one component of the Olympic Movement—with WADA serving as the “independent leader in the fight against doping”—the IOC was proud of its record supporting clean sport.³⁷ The IOC discussed its decision on Russian participation at Rio and listed the steps it had taken to combat doping since the Olympic Summit in June. While thanking the Committee for its support of IOC's efforts to protect clean athletes, the IOC noted that the 2017 “Extraordinary World Conference on Doping” will be “an ideal venue to discuss how financing for WADA's important anti-doping activities and initiatives can be enhanced.”

e. Events Following Rio

The Rio Games began on August 5, 2016 and ended on August 21, 2016. Nine days later, on August 30, 2016, the leaders of 17 NADOs, who had come together for a special summit in Copenhagen, Denmark, released a series of reform proposals to strengthen global anti-doping efforts.³⁸ These included a bid to remove the conflict of interest present where anti-doping decisions are controlled by sports organizations, a bolstering of WADA's capacity to investigate and impose sanctions for World Anti-Doping Code non-compliance, and a commitment to protect whistleblowers from retaliation.³⁹

On September 21, 2016, WADA's executive committee, reflecting an eight-point consensus reached during its recently held multi-stakeholder think tanks, affirmed its support for a reinforced and independent WADA.⁴⁰ An IOC summit held October 8, 2016, proposed changes to anti-doping protocols that would separate WADA's role as regulator from overseeing testing in international sports and empower CAS initially to handle all doping sanctions matters.⁴¹ On October 26, 2016, NADO leaders at a summit in Bonn, Germany renewed their calls, from August, for immediate change in the anti-doping system in order to restore the confidence of clean athletes.⁴²

³⁵ *Rio 2016: IOC panel to decide fate of Russian athletes*, CNN, Jul. 31, 2016, <http://edition.cnn.com/2016/07/31/sport/olympics-three-person-ioc-board-decision-russia-rio-2016/>.

³⁶ Eoghan Macguire and Steve Almasy, *271 Russian athletes cleared for Rio Games*, Aug. 5, 2016, <http://edition.cnn.com/2016/08/04/sport/russia-ioc-bach-olympics-rio-2016/>.

³⁷ Response on file with the Committee.

³⁸ SPECIAL NADO SUMMIT REFORM PROPOSALS (AUG. 30, 2016), http://www.usada.org/wp-content/uploads/Special_NADO_Summit_Reform_Proposals.pdf.

³⁹ *Id.*

⁴⁰ Press Release, World Anti-Doping Agency, WADA Holds First in Series of Multi-Stakeholder Think Tanks (Sept. 20, 2016), <https://www.wada-ama.org/en/media/news/2016-09/wada-holds-first-in-series-of-multi-stakeholder-think-tanks>.

⁴¹ INT'L OLYMPIC COMM., DECLARATION OF THE 5TH OLYMPIC SUMMIT (OCT. 8, 2016), <https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/News/2016/10/2016-10-08-Declaration-Olympic-Summit.pdf>.

⁴² Press Release, USADA, Renewed Call for Urgent Anti-Doping Reforms (Oct. 26, 2016), <http://www.usada.org/renewed-calls-urgent-anti-doping-reforms/>.

On November 20, 2016, the WADA Foundation Board, composed equally of the Olympic movement and governments of the world, met to develop a roadmap for reforming the world anti-doping system, to include a graded sanctioning framework for non-compliance and a formalized process for protecting whistleblowers.⁴³

On December 8, 2016, Thomas Bach, President of the IOC, led Executive Board meetings focused on the success of the Summer Games in Rio, cleaning up the Olympic Games, and upcoming challenges.⁴⁴ While Bach was quoted saying that the retesting program designed with WADA, the NADOs, and the IFs had proven to be successful, preventing 41 athletes from participating in Rio, he indicated that other results may continue to come and the program may need to be analyzed further.

On December 9, 2016, Part 2 of Richard McLaren's report was released by WADA.⁴⁵ Part 2 of the report further supported the findings in Part 1, and detailed "the institutional conspiracy [that] existed across summer and winter sports athletes" as well as how the "systematic and centralised cover up and manipulation of the doping control process evolved and was refined over the course of its use. . . ."⁴⁶ The report concluded that up to one thousand Russian athletes benefited from the state-sponsored doping scheme. The findings of the McLaren reports raise concerns about whether the current anti-doping system is structured and equipped to adequately address systemic, especially nation-state driven, doping violations.

f. Remaining Challenges

While many summits, conferences, and meetings have occurred since the Rio Games, challenges remain and progress towards meaningful reform remains unclear. The current system is rife with conflicts of interest where officials are wearing too many different hats and are in a position where they both have to promote and police sport. This inhibits their ability to make independent decisions and makes it challenging to conduct thorough and fair investigations.

Another area for reform includes clearly delegating who makes the decision to both investigate and sanction in the event of a suspected anti-doping code or rules violation. As witnessed prior to the Rio Games, despite evidence that athletes were doping, organizations wavered and were unsure of their authority to make decisions and sanction athletes. Ultimately, the decision was passed down to the 28 IFs, but then the question remains whether the IFs are equipped to evaluate and make individual determinations for all of the athletes within their sport – particularly when the decision timeframe is short. In the case of Rio, this resulted in inconsistent decisions by the IFs. For example, some IFs, such as International Association of

⁴³ Press Release, World Anti-Doping Agency, Foundation Board Press Release: Foundation Board Equips Agency to be Fit for the Future (Nov. 20, 2016), <https://www.wada-ama.org/en/media/news/2016-11/foundation-board-press-release-foundation-board-equips-agency-to-be-fit-for-the>.

⁴⁴ Press Release, Olympic Movement, IOC President Looks Back at 2016 and Sets Tone for Promising 2017 (Dec. 8, 2016), <https://www.olympic.org/news/ioc-executive-board-meeting-comes-to-a-close>.

⁴⁵ RICHARD H. MCLAREN, O.C., THE INDEPENDENT PERSON 2ND REPORT (DEC. 9, 2016), https://www.wada-ama.org/sites/default/files/resources/files/mclaren_report_part_ii_2.pdf.

⁴⁶ *Id.*

Athletics Federations – the governing body for track and field, banned all Russian athletes.⁴⁷ Other federations, however, made decisions for individual athletes. This variation reflects different perspectives on the issue of “collective” versus “individual” responsibility, and raises questions about the adequacy of the current system to issue consistent and fair punishment for violations, especially in response to a systemic doping program.

Further, recent events highlight the need to examine potential improvements with respect to whistleblower protections. There will always be athletes or institutions that attempt to gain a competitive advantage. Whistleblowers—whether they are athletes, coaches, or people within the NADOs—are critical to anti-doping organizations’ ability to identify and investigate violations. Therefore, it bares questioning whether the current system does enough to encourage, embrace, and protect honest whistleblowers.

This hearing provides an opportunity to learn from the past and examine opportunities to reform the system to make it fair, nimble, and effective for the sake of athletes, clean sport, and the integrity of the International competition, including the Olympic Games.

III. ISSUES

The following issues will be examined at the hearing:

- The current state of the anti-doping system;
- The challenges currently facing the anti-doping system;
- How to better facilitate efforts to guarantee clean competition and restore public confidence in international sports;

IV. STAFF CONTACTS

If you have any questions regarding the hearing, please contact Brittany Havens or John Ohly at (202) 225-2927.

⁴⁷ Rebecca Ruiz, *Sports Court Upholds Ban on Russian Track and Field Athletes*, N. Y. TIMES (Jul. 21, 2016), https://www.nytimes.com/2016/07/22/sports/olympics/russia-olympics-ban-doping-track-and-field.html?_r=0.