



PUBLIC MEMORANDUM

June 21, 2024

TO: Members of the Subcommittee on Oversight and Investigations

FROM: Majority Committee Staff

RE: Hearing titled “Examining Anti-Doping Measures in Advance of the 2024 Olympics”

On Tuesday, June 25, 2024, at 7:00 p.m. (ET) in 2123 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold a hearing titled “Examining Anti-Doping Measures in Advance of the 2024 Olympics”

I. WITNESSES

- Michael Phelps, American swimmer and Olympic gold medalist
- Travis Tygart, Chief Executive Officer, United States Anti-Doping Agency (USADA)
- Allison Schmitt, American swimmer and Olympic gold medalist

II. OVERVIEW

Twenty-three swimmers permitted to compete after testing positive:

On April 20, 2024, *The New York Times* (NYT) published an article exposing how dozens of international swimmers tested positive for a banned substance yet were permitted to continue competing.¹ In the months leading up to the 2021 Tokyo Olympic games, twenty-three Chinese swimmers (“twenty-three swimmers”) tested positive for a banned substance, trimetazidine or TMZ, a medication that can increase stamina and hasten recovery times.² The tests were collected at a New Year’s event designed to be a competitive warm-up for the athletes ahead of the Summer Olympics.³ An investigation by the Chinese Anti-Doping Agency (CHINADA) found these athletes tested positive from consuming food tainted with TMZ from a hotel

¹ Michael S. Schmidt & Tariq Panja, *Top Chinese Swimmers Tested Positive for Banned Drug, Then Won Olympic Gold*, N.Y. TIMES (Apr. 20, 2024), <https://www.nytimes.com/2024/04/20/world/asia/chinese-swimmers-doping-olympics.html>.

² *Id.*

³ *Id.*

kitchen.⁴ CHINADA reported their findings three months later to the World Anti-Doping Agency (WADA) and dismissed the case in June of that year. WADA, using its own science department, determined CHINADA's claims to be plausible, and declined to appeal the dismissal or further investigate the matter.⁵ Three of the Chinese swimmers won gold medals in the Summer Olympics that year.⁶ According to reporting, Chinese investigators “offered no explanation...for how a prescription drug available only in pill form had contaminated an entire kitchen.”⁷

Since its publication, the international sporting community has raised alarm bells regarding WADA's handling of this case. The German Minister of the Interior called for an investigation stating: “If confirmed that Chinese swimmers were able to become Olympic champions in Tokyo despite previous evidence of doping, that would be a disaster for world sport ... - this case is a slap in the face of all innocent and honest athletes.”⁸ WADA President, Witold Banka, declined Germany Bundestag's invitation to participate in a June 12, 2024 hearing (or meeting) to discuss the matter, citing “previous commitments.”⁹

Reportedly, WADA “acknowledged that its own protocols had not been followed in this case” and that because of the pandemic, “hearings” could not be held to “inquire about how the drug might have entered [the swimmers'] systems.”¹⁰ WADA claimed that pandemic restrictions also prevented it from “sending scientists or investigators to conduct enquiries on the ground in China” and defended their handling of the case.¹¹ According to WADA president, Witold Banka, if presented with the opportunity again, they “would do exactly the same thing.”¹² On April 25, 2024, WADA responded to the negative public backlash by hiring an independent investigator, Swiss prosecutor Eric Cottier, to lead an independent inquiry into its handling of the twenty-three swimmers' positive tests.¹³ WADA has faced widespread skepticism from anti-doping officials, national

⁴ *Contamination Case of Swimmers from China: Fact Sheet/Frequently Asked Questions*, WADA (Apr. 29, 2024) [*Fact Sheet*], www.wada-ama.org/sites/default/files/2024-04/2024-04_fact_sheet_faq_chinese_swimming.pdf.

⁵ Iain Axon, *Olympics-WADA Must Repair Trust, Says U.S. Athletes' Commission Head*, USA Today (May 9, 2024), <https://www.usnews.com/news/top-news/articles/2024-05-09/olympics-wada-must-repair-trust-says-u-s-athletes-commission-head>.

⁶ Michael S. Schmidt & Tariq Panja, *Top Chinese Swimmers Tested Positive for Banned Drug, Then Won Olympic Gold*, N.Y. TIMES (Apr. 20, 2024), <https://www.nytimes.com/2024/04/20/world/asia/chinese-swimmers-doping-olympics.html>.

⁷ *Id.*

⁸ DPA International, *German minister demands probe into reported Chinese swimmers doping*, YAHOO SPORTS (Apr. 21, 2024), <https://sports.yahoo.com/german-minister-demands-probe-reported-141013945.html>.

⁹ Letter from Witold Banka, President, WADA, to Frank Ullrich, Chairman, Sports Committee, German Bundestag (May 23, 2024).

¹⁰ Michael S. Schmidt & Tariq Panja, *Biden Official Calls for Investigation in Chinese Swimming Doping Case*, N.Y. TIMES (Apr. 22, 2024), <https://www.nytimes.com/2024/04/22/world/asia/doping-china-swimmers-olympics.html>.

¹¹ Press Release, WADA, *WADA statement on case of 23 swimmers from China* (Apr. 20, 2024).

¹² Nat'l Pub. Radio, *World Anti-Doping Agency officials stayed silent about Olympic doping scandal*, NPR (Apr. 22, 2024), <https://www.npr.org/transcripts/1246429896>.

¹³ Press Release, WADA, *WADA invites independent prosecutor to review its handling of Chinese contamination case in swimming* (Apr. 25, 2024), <https://www.wada-ama.org/en/news/wada-invites-independent-prosecutor-review-its-handling-chinese-contamination-case-swimming> (“In light of the damaging and baseless allegations that are being leveled at the World Anti-Doping Agency (WADA) regarding the China Anti-Doping Agency's

swim teams and athlete groups about their decision to pick Cottier, claiming Cottier’s friendship with a former colleague who also worked with WADA presents a potential conflict-of-interest.¹⁴ Cottier is due to reveal his findings by June 25, ahead of the start of the Paris Olympics in July 2024.¹⁵

III. Timeline of Events¹⁶

January 1-3, 2021: CHINADA collected 60 urine samples at a swimming event, 23 of those samples resulted in positive for trimetazidine;

March 15, 2021: Positive samples reported to WADA by CHINADA; although tests are to be immediately entered into WADA’s system, two and half months passed due to, according to WADA, COVID-19 delays.

April 2021: CHINADA informs WADA that it had initiated investigation;

June 15, 2021: WADA notified of CHINADA’s dismissal of the case;

June 21, 2021: WADA requests case file;

- 21 day deadline to accept or appeal decision begins
- During 21-day period, WADA sends case file to external counsel for review and advice.

Early July 2021: WADA receives legal advice from a barrister in the UK that an appeal was not warranted for this case

- WADA chooses not to appeal

2022: The International Testing Agency (ITA) contacts WADA regarding a tip-off suggesting that the Chinese swimmers’ sample results had been manipulated and/or not properly reported. WADA consulted with ITA and explained its conclusions to not appeal the dismissal.

April 2023 – USADA contacts WADA regarding a tip-off alleging that these twenty-three positive cases had been hidden and that the informant/source claimed to possess evidence. WADA disputes that these cases were hidden given it was forthright with ITA and that World Aquatics had independently investigated the same matter in June/July 2021.

(CHINADA’s) no-fault contamination case involving 23 swimmers from China in 2021, WADA has responded to calls and invited an independent prosecutor, Mr. Eric Cottier...”).

¹⁴ Graham Dunbar, *WADA defends pick of Swiss prosecutor under scrutiny in review of Chinese swimmers case*, AP (April 30, 2024), <https://apnews.com/article/wada-chinese-swimmers-special-prosecutor-d8352b340f3ba1b3659e6e35d4f76720> .

¹⁵ *Id.*

¹⁶ *Contamination Case of Swimmers from China: Fact Sheet/Frequently Asked Questions*, WADA (Apr. 29, 2024) [*Fact Sheet*], www.wada-ama.org/sites/default/files/2024-04/2024-04_fact_sheet_faq_chinese_swimming.pdf.

IV. BACKGROUND

WADA is Supported by Taxpayer Dollars

WADA, established in 1999, serves the international community of sports by promoting, coordinating, and monitoring the fight against sports doping.¹⁷ An independent agency, their “governance and funding are based on equal partnership between the Sport Movement and Governments of the world”.¹⁸ Through annual contributions, each nation financially supports WADA’s mission to protect the integrity of sports.¹⁹ These contributions primarily assist “scientific and social science research; education; intelligence & investigations; development of anti-doping capacity; and monitoring of compliance with the World Anti-Doping Program.”²⁰

The United States (U.S.) contributes more than any other nation, giving nearly \$3.7 million in Fiscal Year 2024.²¹ The funding is allocated through the United States Office of National Drug Control Policy (ONDCP), which received the authorization to support WADA financially through Executive Order 13965.²² As a U.S. taxpayer supported entity, WADA owes it to the American people, and their athletes, to ensure that its “anti-doping rules and policies” are being fairly and consistently applied across all participating nations.²³

The United States has a Track Record of Upholding Integrity in Sports

Over the years, the U.S. has sought to uphold the clean international competition standards, free of doping. An independent report published in 2016, the McClaren Report, found that the Russian state government, conspiring with sports officials, led an institutionalized doping program unfairly benefitting over 1,000 Russian athletes.²⁴ A re-analysis of the London 2012 games, led to over 30 Russian medals being stripped.²⁵ Following the Russian doping scandal, the U.S. passed the Rodchenkov Anti-Doping Act in 2020, which allowed the Department of Justice to prosecute individuals who seek to influence international athletic

¹⁷ *Who We Are*, WADA, <https://www.wada-ama.org/en/who-we-are>. (last visited June 13, 2024).

¹⁸ *Who We Are*, WADA, <https://www.wada-ama.org/en/who-we-are>. (last visited June 13, 2024); *What We Do*, WADA, <https://www.wada-ama.org/en/what-we-do>. (last visited June 13, 2024).

¹⁹ *Funding*, WADA, <https://www.wada-ama.org/en/who-we-are/funding> (last visited June 13, 2024).

²⁰ *Who We Are*, WADA, <https://www.wada-ama.org/en/who-we-are>. (last visited June 13, 2024).

²¹ *Contributions to WADA’s Budget 2023*, WADA (Apr. 9, 2024), https://www.wada-ama.org/sites/default/files/2024-04/wada_contributions_2023_update_en.pdf.

²² Proclamation No. 157, 65 Fed. Reg. 49469 (Aug. 14, 2000).

²³ *Who We Are*, WADA, <https://www.wada-ama.org/en/who-we-are>; *What We Do*, WADA, <https://www.wada-ama.org/en/what-we-do>.

²⁴ Richard H. McClaren, Report to the President of WADA by the Independent Person, WADA, Page 2 (July 16, 2016), https://www.wada-ama.org/sites/default/files/resources/files/20160718_ip_report_newfinal.pdf.

²⁵ Ali Iveson, *ITA’s London 2012 re-analysis found 73 drug cheats and led to stripping of 31 medals*, INSIDE THE GAMES (Dec. 5, 2022), <https://www.insidethegames.biz/articles/1131284/2012-london-ita-reanalysis>.

competitions by procuring banned substances for athletes.²⁶ The law seeks to even the playing field for all athletes.²⁷

In June 2020, ONDCP released a report to Congress outlining WADA’s failure to identify and take action against the cheating Russian athletes, despite whistleblowers bringing it to its attention as early as 2010: “[t]he Russia doping scandal, which has been lingering for more than a decade since Russian whistleblowers brought evidence of state sponsored doping to WADA in 2010, still remains unresolved.”²⁸ ONDCP concluded to Congress: “The Russian doping scandal thus continues to demonstrate inadequacies in WADA’s independence and capacity to firmly, effectively, and in a timely manner enforce compliance with the [World Anti-Doping] Code, hold major countries accountable under the rules and uphold the expectations of clean athletes.”²⁹

ONDCP recommended Congress withholding funding from WADA if it fails to implement reforms to prevent Russian-like scandals from occurring:

ONDCP should have the explicit authority to withhold and/or decrease funding if WADA fails to meet basic standards for effectiveness, independence, transparency, and responsiveness to the athlete voice, and fails to promote U.S. representation commensurate with the United States’ financial contributions to WADA. The authority to reduce or withhold funding is a powerful tool that could incentivize WADA to adopt reforms to achieve the purposes for which it was created and prevent similar Russian-type scandals from re-occurring. The governance reforms urged in this Report could help to restore confidence that WADA is dedicated to its original mission and open to the viewpoints of key stakeholders, including athletes and governments.³⁰

The report revealed frustrations with WADA’s management and the lack of representation on the various boards and committees.³¹ According to ONDCP in 2023, WADA made several reforms, including the establishment of an independent ethics board, intended to bring “greater

²⁶ 21 U.S.C. § 2402; Olympic Talk, *Rodchenkov Act to criminalize doping signed into law*, NBC SPORTS (Dec. 5, 2020), <https://www.nbcsports.com/olympics/news/rodchenkov-act-doping-law>.

²⁷ Eddie Pells, *US law passed to stop doping nets its 1st guilty plea*, ASSOCIATED PRESS, (May 8, 2023), <https://apnews.com/article/doping-rodchenkov-okagbare-guilty-plea-0fb36146dd202aa869325466a59db676>.

²⁸ OFF. OF NAT’L DRUG CONTROL POL’Y, EXEC. OFF. OF THE PRESIDENT, REPORT TO CONGRESS ON WORLD ANTI-DOPING AGENCY REFORM EFFORTS 12 (2020) (“In fact, Russian whistleblowers, including an employee of the Russian National Anti-Doping Agency (RUSADA), first came forward to WADA in 2010...”).

²⁹ *Id.*

³⁰ *Id.* at 17.

³¹ Rick Maese, *Federal government threatens to pull WADA funding if it refuses reforms*, WASH. POST (June 24, 2020), <https://www.washingtonpost.com/sports/2020/06/24/federal-government-threatens-pull-wada-funding-if-it-refuses-reforms/>.

transparency to all ethics matters” and expanded the athlete board—now called the Athlete Council—for athletes to have “direct and serious engagement with WADA governance.”³²

WADA’s Handling of Russian Figure Skater, Kamila Valieva

In an unusually similar sequence of events, Kamila Valieva, a Russian figure skater, tested positive for the same banned substance, TMZ, during the 2022 Beijing Olympics.³³ Since Valieva claimed she ingested TMZ by mistake from a strawberry, RUSADA dismissed her positive test for the banned substance.³⁴

Rather than simply accept the Russian Anti-Doping Agency’s (RUSADA) explanation, WADA appealed the decision.³⁵ The Anti-Doping Code allows WADA to appeal a dismissal of a positive test.³⁶ After the appeal, Valieva was suspended from competition for four years and was disqualified from receiving her 2022 gold medal.³⁷ WADA’s appeal and response to Valieva’s positive TMZ test seemingly contrasts with its handling of the twenty-three swimmers who tested positive for the same drug allegedly ingested through food.

The Influence of the Chinese Communist Party

Although meant to be an independent agency, CHINADA’s leadership is deeply intertwined with the Chinese Communist Party (“CCP”).³⁸ Current CHINADA director Li Zhiquan, supposedly, serves as a Committee Secretary for the CCP.³⁹ At a meeting in 2023,

³² OFF. OF NAT’L DRUG CONTROL POL’Y, EXEC. OFF. OF THE PRESIDENT, REPORT TO CONGRESS ON THE STATUS OF THE IMPLEMENTATION OF WADA GOVERNANCE REFORMS (2023).

³³ Juliet Macur & Andrew Keh, *Star Russian Figure Skater Tested Positive for Banned Drug*, N. Y. Times, (Feb. 19, 2022) <https://www.nytimes.com/2022/02/10/sports/olympics/kamila-valieva-trimetazidine.html>.

³⁴ Tariq Panja, *Kamila Valieva’s Sample Included Three Substances Sometimes Used to Help the Heart. Only One Is Banned*, N.Y. TIMES (Jan. 29, 2024) <https://www.nytimes.com/2022/02/14/sports/olympics/valieva-drug-test-heart-medications.html>; see *Kamila Valieva claimed contaminated strawberry dessert behind positive test*, BBC (Feb. 7, 2024), <https://www.bbc.com/sport/winter-sports/68234345>

³⁵ Jill Martin and George Ramsey, *WADA appeals case of Russian figure skater Kamila Valieva to Court of Arbitration for Sport*, CNN (Mar. 10, 2023), <https://www.cnn.com/2023/02/21/sport/kamila-valieva-wada-appeal-figure-skating-spt-intl/index.html>.

³⁶ World Anti-Doping Agency, WADA Code Article 10.13.2.1 (2021); Jill Martin and George Ramsey, *WADA appeals case of Russian figure skater Kamila Valieva to Court of Arbitration for Sport*, CNN (Mar. 10, 2023), <https://www.cnn.com/2023/02/21/sport/kamila-valieva-wada-appeal-figure-skating-spt-intl/index.html>.

³⁷ Christine Brennon, *Russian skater Kamila Valieva banned four years over doping, ending 2022 Olympic drama*, USA Today, <https://www.usatoday.com/story/sports/olympics/2024/01/29/kamila-valieva-russian-skater-banned-four-years-doping-beijing-olympics/72393824007/>.

³⁸ China Nat’l Anti-Doping Agency, Organizational Structure – Central Leadership, <https://chinada.cn/channels/leader.html> (last visited May 5, 2024); See Opinion Clive Hamilton, *Doped Chinese swimmers?-CHINADA, WADA and the CCP*, CHARLES STURT UNI. NEWS (May 1, 2024),

³⁹ See Opinion, Clive Hamilton, *Doped Chinese swimmer? CHINADA, WADA and the CCP*, Charles Sturt Univ. (May 1, 2024), <https://news.csu.edu.au/opinion/doped-chinese-swimmers-chinada,-wada-and-the-ccp>.

Zhiquan called on CHINADA employees to be "loyal to the party" and to "hold high the great banner of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era."⁴⁰

Athletes Have Lost Trust in WADA

In May 2024, Team USA Athletes' Commission executive director, Elizabeth Ramsy, stated athletes have lost trust in WADA:

I think right now, because of what's happened, they [WADA] need to earn that trust back . . . Do we know this has happened any other time? What else is going on? What else don't we know? . . . When there's not transparency, then that just raises a lot of questions because now people are questioning a bunch of things because it appears like the rules weren't applied consistently in this case like they had been previously. . . The main thing is these athletes that are going into Paris want to know, "hey, what's being done to ensure that these athletes are getting tested the same way, same way I am." And so those are some of the concerns we've heard from athletes.⁴¹

Days after the NYT article was released, athletes from two American athlete groups wrote a letter to Rahul Gupta, the director of the ONDCP, calling for an independent investigation into the matter.⁴² The athletes expressed their frustration with WADA and breaking athletes' trust by failing "to follow its own rules and procedures."⁴³ With the upcoming Summer Olympic Games in Paris, it is important for Congressional oversight, the American public, and specifically the athletes, to understand the circumstances that led to WADA not investigating the twenty three swimmers who tested positive for trimetazidine.

V. KEY QUESTIONS

- What is the impact of WADA's decision not to appeal CHINADA's dismissal on the integrity of international sports?
- What can WADA do to regain the trust of athletes across the world?

⁴⁰ China Nat'l Anti-Doping Agency, *The Anti-Doping Center held a party member meeting to celebrate the 102nd anniversary of the founding of the Communist Party of China* (Jul. 13, 2023), <https://chinada.cn/contents/6/5552.html>.

⁴¹ Iain Axon, *Olympics-WADA Must Repair Trust, Says U.S. Athletes' Commission Head*, USA Today (May 9, 2024), <https://www.usnews.com/news/top-news/articles/2024-05-09/olympics-wada-must-repair-trust-says-u-s-athletes-commission-head>.

⁴² Eddie Pells, *Chinese doping on their mind, US athletes send letter to America's drug czar asking for answers*, ASSOCIATED PRESS (April 29, 2024), <https://apnews.com/article/china-us-swimming-doping-70f8fbefb364dbcbbf4d12b862e1b38b>.

⁴³ Letter from USA Swimming Athletes' Advisory Council & Team USA Athletes' Commission to Rahul Gupta, Dir., Off. Nat'l Drug Cont. Policy (Apr. 29, 2024).

- What reforms are needed to ensure WADA follows its own policies and procedures?
- Why did WADA investigate and enforce the WADA Code for Russian figure skater, Kamila Valieva, but not the twenty-three swimmers?
- What factors contribute to WADA appealing or accepting any doping agency's findings?
- What factors led to WADA not appealing CHINADA's finding that no wrongdoing occurred in connection with the positive test results from the twenty-three swimmers?
- Does WADA know how or why TMZ ended up in the kitchen that resulted in the twenty-three positive tests? When did WADA learn about it?
- How is WADA improving transparency with athletes?
- What policies or procedures has WADA implemented following the Russian doping scandal?

VI. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Lauren Kennedy or Deep Buddharaju of the Committee staff at (202) 225-3641.