

**IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS BROUGHT BY THE
INTERNATIONAL BASEBALL FEDERATION AGAINST GEOVANY SOTO FOR
VIOLATION OF THE IBAF ANTI-DOPING RULES
(IBAF 09-002)**

FINAL AWARD OF THE IBAF ANTI-DOPING TRIBUNAL

The IBAF Anti-Doping Tribunal convened to hear and determine the disciplinary proceedings brought by the International Baseball Federation (the 'IBAF') against Geovany Soto (the 'Player') for violation of the IBAF Anti-Doping Rules, having considered the submissions of the parties, hereby issues the following final award:

1. **Introduction**

- 1.1 The World Baseball Classic is an international baseball tournament sanctioned by the IBAF and contested by the national representative teams of various of IBAF's member federations. The 2009 version of the World Baseball Classic (the '2009 Classic') took place in March 2009. The IBAF Anti-Doping Rules¹ applied at the 2009 Classic, binding each participating baseball player and team.
- 1.2 The Player participated in the 2009 Classic for his national team, Puerto Rico. He played throughout the tournament, including in his team's losing match to the United States on March 17, 2009.²
- 1.3 By letter dated May 4 2009, the IBAF charged the Player with the commission of an anti-doping rule violation under Article 2.1 of the IBAF Anti-Doping Rules, on the basis a prohibited substance, cannabis metabolites, was present in the urine sample provided by the Player immediately following the March 17th match.
- 1.4 In response to the charge, the Player did not challenge the anti-doping rule violation asserted by the IBAF. There is no reason to question the laboratory analysis disclosing the presence of a prohibited substance in the Player's sample.
- 1.5 Therefore, the only question for this Tribunal is what Consequences should flow (i.e., what sanctions, if any, should be imposed) as a result of the Player's anti-doping rule violation.
- 1.6 The IBAF is represented in this matter by its Anti-Doping Manager, Jean-Pierre Moser, while the Player is represented by Jay K. Reisinger of Farrell, Reisinger & Stallings, LLC, Attorneys-at-law.

2. **Facts**

- 2.1 The IBAF, headquartered in Lausanne, Switzerland, is recognised by the IOC as the international governing body for the sport of baseball. It does not have any jurisdiction over Major League Baseball ("MLB"), but it gives its sanction to the

¹ The IBAF Anti-Doping Rules in issue are the rules that were adopted by the IBAF Executive Committee on 7 November 2008 and came into force as of 1 January 2009 ('IBAF ADR'). Terms used in this Final Award that begin with capital letters but are not defined in this Award bear the meaning given to them in the IBAF Anti-Doping Rules.

² See box scores posted on www.worldbaseballclassic.com.

World Baseball Classic, an international event between the national representative teams of certain of its member federations that is organised by MLB and the MLB players' association through a joint venture known as World Baseball Classic Inc.

- 2.3 The Player is a 26 year-old professional baseball player and since 2005 a catcher with MLB's Chicago Cubs. He represented Puerto Rico in the 2009 Classic.
- 2.4 As part of its governance role, the IBAF has issued the IBAF Anti-Doping Rules, which are based on the World Anti-Doping Code and contain detailed provisions that are designed to implement and apply the provisions of that Code to baseball events sanctioned by the IBAF, including the World Baseball Classic.³
- 2.5 The current IBAF Anti-Doping Rules were approved by the IBAF Executive Committee on 7 November 2008 and came into force as of 1 January 2009.⁴ The cornerstone of those rules is the 2009 List of Prohibited Substances and Methods issued by the World Anti-Doping Agency (WADA), which is incorporated by reference into the IBAF Anti-Doping Rules (the 2009 Prohibited List).⁵
- 2.6 Cannabinoids are included on the 2009 Prohibited List in category S8, as substances In-Competition.
- 2.7 On 30 January 2009, World Baseball Classic Inc. issued a memorandum addressed to "All Players on World Baseball Classic Provisional Rosters, entitled "2009 World Baseball Classic Drug Testing." This memorandum (the WBC Anti-Doping Memorandum) stated in part:

This memorandum outlines the drug testing policies to which players participating in the 2009 World Baseball Classic (the "Classic") will be subject.

Testing

Pre-competition – All players included on a National Team's Provisional Roster will be subject to Olympic style pre-competition drug-testing under the auspices of the International Baseball Federation ("IBAF"). For pre-competition testing, the IBAF will randomly select players on Provisional Rosters to be tested for all prohibited substances included on the 2009 WADA Prohibited List. A copy of this list is attached as Addendum A. This list is the applicable prohibited list for the Classic. Please be aware that the

³ The IBAF Anti-Doping Rules are stated to apply "to IBAF, each National Federation of IBAF, and each Participant in the activities of IBAF or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in IBAF, its National Federations, or their activities or Events. ... These Anti-Doping Rules shall apply to all Doping Controls over which IBAF and its National Federations have jurisdiction." (IBAF ADR. Introduction, p.4). And Article 5.1 of the IBAF Anti-Doping Rules provides: "[a]ll Athletes under the jurisdiction of a National Federation shall be subject to In-Competition Testing by IBAF, the Athlete's National Federation, and any other Anti-Doping Organization responsible for Testing at a Competition or Event in which they participate." For these purposes, the term "Event" encompasses "IBAF Sanctioned Events," i.e., an event played between national teams representing IBAF member federations (IBAF ADR 5.4). The 2009 World Baseball Classic falls into this category.

⁴ IBAF Anti-Doping Rules p.1.

⁵ See IBAF ADR 4.1.

list of banned substances for the Classic is more extensive than the one for Major League Baseball. If a player is removed from a Provisional Roster or not included on a National Team's Final Roster, he will no longer be subject to drug testing by the IBAF.

In-competition – If a player is included on a National Team's Final Roster, he will be subject to in-competition testing by the IBAF during the Classic. For in-competition testing, the IBAF will randomly select two players from each National Team to be tested from one game played at each Classic venue each day. All testing will take place after the conclusion of the game.

- 2.8 The WBC Anti-Doping Memorandum therefore put the players participating in the 2009 World Baseball Classic on notice that (a) drug-testing would be conducted before and during the 2009 Classic under the auspices of the IBAF and (b) the IBAF's anti-doping rules prohibit the substances listed on the 2009 Prohibited List.⁶ And as an appendix the memorandum reproduces in full the entire 2009 Prohibited List.
- 2.11 On March 17, 2009, as part of the in-competition drug-testing programme that the IBAF had put in place for the event, the Player was selected for testing after the match, and duly provided a urine sample for testing, numbered 2408223.
- 2.13 The Player's sample was transported to the WADA-accredited laboratory in Montreal, Canada, where both the A and B samples were analysed and found to contain cannabis metabolites. The A sample Adverse Analytical Finding was reported to the IBAF in a Certificate of Analysis dated April 6, 2009. The Tribunal has been provided by the IBAF with, and has reviewed, the laboratory document package for the analysis of the A and the B samples.

3. **Disciplinary Proceedings**

- 3.1 By letter dated May 4, 2009, in accordance with Article 7.2.1 of the IBAF Anti-Doping Rules the IBAF charged the Player with an anti-doping rule violation under Article 2.1 of the IBAF Anti-Doping Rules, based on the presence of cannabis metabolites in the sample he provided on March 17, 2009.
- 3.5 The Notice of Charge also stated: "In accordance with Article 7.8 of the [IBAF Anti-Doping] Rules, you are hereby provisionally suspended from participating in any competition under IBAF anti-doping rules." (Notice of Charge, p.1). Under the heading "Potential Consequences," the Player was also advised that he was liable to imposition of a two year period of Ineligibility, subject to possible elimination, reduction or increase depending on the circumstances. (Notice of Charge, p. 2)
- 3.6 Article 8.2.7 of the IBAF Anti-Doping Rules permits a Player charged with an anti-doping rule violation to "forego a hearing by acknowledging the anti-doping rule violation and accepting Consequences consistent with Articles 9 and 10 as proposed by IBAF. The right to a hearing may be waived ... expressly"
- 3.7 By e-mail dated May 15, 2009, to the IBAF, the Player's attorney, Jay K. Reisinger advised that his client would not challenge the anti-doping rule violation asserted in the IBAF Notice of Charge:

⁶ See IBAF ADR 4.4.

Dear Mr. Moser:

Please be advised that, after consultation with my client, Mr. Soto, he has decided to forgo his rights to challenge the results from the sample analysis of specimen 2408223 (collected March 17, 2009) and the resulting Adverse Analytical Finding contained therein (dated April 6, 2009) and the subsequent B sample analysis dated May 1, 2009.

Mr. Soto reserves the right to challenge any “aggravating circumstances” per Article 10.2 in the event that IBAF chooses to impose such aggravated penalty.

Further, on Mr. Soto’s behalf, we are requesting that the IBAF exercise its discretion under Article 10.9.2 to back date the commencement of any period of ineligibility, if so determined.

We also, on Mr. Soto’s behalf, reserve all of Mr. Soto’s rights under Articles 7.1.5 and 8.2.7 regarding the consequences of the Adverse Analytical Finding to be imposed.⁷

Should you have any questions or concerns, please do not hesitate to contact me.

...

- 3.8 This Tribunal’s jurisdiction to hear and determine the charge brought by the IBAF against the Player derives from Article 8 of the IBAF Anti-Doping Rules, which provides that cases arising out of IBAF Testing and Testing conducted at International Events will be determined by a tribunal convened by the Chairman of the IBAF Anti-Doping Panel from the members of that panel.
- 3.9 This Tribunal was convened in accordance with Article 8.2 of the IBAF Anti-Doping Rules. The IBAF sent a copy of the Notice of Charge to the Chairman of the IBAF Anti-Doping Panel, who appointed three members of that Panel to sit as the Tribunal convened under Article 8 of the IBAF Anti-Doping Rules to hear and determine the charge made against the Player, including (where the violation charged is admitted or found to have been committed) determining what consequences should be imposed under Articles 9 and/or 10 of the IBAF Anti-Doping Rules.⁸
- 3.10 The Player has not disputed the jurisdiction of this Tribunal to hear and determine this matter.
- 3.11 According to paragraph 5 of the IBAF Standing Directions for cases referred to the IBAF Anti-Doping Panel in connection with the World Baseball Classic 2009, when the Person does not respond to the Notice of Charge within ten days by challenging the anti-doping rule violation, he shall be deemed to have waived his right to a hearing, to have acknowledged the anti-doping rule violation(s) alleged, and to have accepted the consequences proposed in the Notice of Charge. In such circumstances,

⁷ The Tribunal notes that since the B sample was analyzed, Article 7.1.5 has been addressed. The waiver of the Player’s right to a hearing, and the fact and content of this decision, address Article 8.2.7.

⁸ Joseph de Pencier (Chair), Catherine Ordway and Gianfranco Beltrami.

the Chair of the Tribunal convened to hear the matter shall issue a decision to that effect, without the need for further process.

- 3.12 Under Article 3.1 of the IBAF Anti-Doping Rules, the burden is on the IBAF to establish the commission by the Player of the anti-doping rule violation charged.
- 3.13 Here, the charge is violation of Article 2.1, i.e., “presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.” This is a “strict liability” offence: baseball players subject to the IBAF Anti-Doping Rules are strictly responsible for any Prohibited Substances found in their samples, so that no proof is required of any intent, fault, negligence or even knowledge on the part of the player charged in order to establish a violation under Article 2.1.⁹
- 3.14 Therefore, to carry its burden, the IBAF must prove, to the comfortable satisfaction of the Tribunal¹⁰ that a Prohibited Substance was present in the urine sample collected from the Player on March 17, 2009.
- 3.15 The laboratory documents provided to the Tribunal demonstrate the presence of the prohibited substance in the Player’s sample. According to Article 3.2 of the IBAF Anti-Doping Rules, the Tribunal is entitled to presume the sample analysis was conducted properly. No departure from the relevant International Standards is suggested.
- 3.16 Accordingly, the Tribunal is comfortably satisfied that the Player has committed an anti-doping rule violation under Article 2.1 of the IBAF Anti-Doping Rules, in that the prohibited substance cannabis metabolites was found to be present in the urine sample collected from the Player on March 17, 2009.
- 3.17 It therefore falls on the Tribunal to determine what Consequences (if any) should be imposed on the Player for this anti-doping rule violation. The IBAF Anti-Doping Rules provide for two types of potential consequence: (1) Disqualification of individual results obtained by the Player; and (2) imposition of a period of future Ineligibility on the Player. Each of these potential consequences is considered in turn below.

Disqualification of the Player’s results in the match in question

- 3.18 Article 9 of the IBAF Anti-Doping Rules (Automatic Disqualification of Individual Results) provides that: “A violation of these Anti-Doping Rules in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points or prizes.”
- 3.19 A “Competition,” for purposes of Article 9, is a single match.¹¹ Accordingly, the automatic consequence of the Tribunal’s finding that the Player has committed an

⁹ See IBAF ADR 2.1.1 (“it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1.”) and comment thereto (“The violation occurs whether or not the Athlete intentionally or unintentionally used a Prohibited Substance or was negligent or otherwise at fault.”). Instead, issues of fault or negligence become relevant at the sanctioning stage: see para [8.6] et seq.

¹⁰ See IBAF ADR 3.1.

¹¹ See IBAF ADR, p.59, definition of “Competition.”

Article 2.1 violation in connection with his In-Competition test after the 2009 Classic match between Puerto Rico and the United States on March 17, 2009 is the disqualification of the results he obtained in that match, and forfeiture of any individual medals, points or prizes that the Player was awarded as a result of his participation in that match. That was Puerto Rico's last match in the 2009 Classic.

- 3.20 The Player had played in previous matches of the 2009 Classic. Article 10.1 of the IBAF Anti-Doping Rules provides:

An anti-doping rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes

- 3.21 There is no evidence (such as an admission or other problematic laboratory analytical results) upon which to disqualify the Player's other individual results for the 2009 Classic.

Imposition of a Period of Ineligibility

- 3.22 The Tribunal moves to the question of whether a period of Ineligibility should be imposed, and if so what period.
- 3.23 Since this Article 2.1 anti-doping rule violation is the Player's first doping offence (as far as the Tribunal is aware), Article 10.2 of the IBAF Anti-Doping Rules provides for a period of Ineligibility of two years, "unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met."
- 3.24 Article 10.4 of the IBAF Anti-Doping Rules applies where the Prohibited Substance found in the athlete's sample is categorised in the Prohibited List is a "Specified Substance." By virtue of Article 4.2.2, cannabinoids are so categorised for the purposes of Article 10. However, Article 10.4 also requires demonstration of how the Specified Substance entered the body and that it was not intended to enhance sport performance or mask the use of a performance-enhancing substance. Moreover, corroborating evidence is required in addition to the athlete's own assertions. Here the Player does not rely on Article 10.4 to seek to reduce the period of Ineligibility and has not offered any evidence responsive to the Article's requirements.
- 3.25 Nor do the conditions exist for increasing the two-year period of Ineligibility, as provided in Article 10.6 of the IBAF Anti-Doping Rules. Article 10.6 permits a Tribunal to increase the basic sanction where "aggravating circumstances" are established, but the IBAF has not alleged that any aggravating circumstances exist, nor is there any suggestion of aggravating circumstances in the record before this Tribunal. Therefore, Article 10.6 does not apply in this case.
- 3.26 That leaves Article 10.5, which provides four separate potential grounds for departing from the two-year period of Ineligibility otherwise prescribed by Article 10.2. None has been advanced by the Athlete. None appear to the Tribunal on the record before it.
- 3.27 The Player is sanctioned to a period of Ineligibility of two years.
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Commencement date of period of Ineligibility

- 3.28 Article 10.9 of the IBAF Anti-Doping Rules establishes that as a general rule any period of Ineligibility imposed by the Tribunal shall start to run from the date that the Ineligibility is imposed. However, Article 10.9.2 provides as follows:

Where the Athlete promptly (which, in all events, means before the Athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by IBAF, the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed.

The Player has requested the Tribunal exercise this discretion.

- 3.29 The pre-condition to the exercise of discretion in favour of the Player is a prompt admission of the anti-doping rule violation upon being confronted with it, and in any event before the Player competes again. Leaving aside the issues of “promptness” and whether the Player did compete again in the meantime under the authority of the IBAF, in Major League Baseball, or otherwise, the Player advised only that he would “forego his rights to challenge the results of the sample analysis...and the resultant Adverse Analytical Finding...” This is not an admission of an anti-doping rule violation. On the record before it, the Tribunal does not exercise its discretion under Article 10.9.2.
- 3.30 The two-year period of Ineligibility shall commence as of the date of this decision, and therefore shall end at midnight on June 10, 2011.

4. Confirmation of Operative Part of Final Award

- 4.1 For the reasons set out above, the Tribunal rules as follows:
- 4.1.1 The Player has committed an anti-doping rule violation under Article 2.1 of the IBAF Anti-Doping Rules in that cannabis metabolites, a Prohibited Substance, was present in the sample collected from him after the 2009 Classic match between Puerto Rico and the United States on March 17, 2009.
- 4.1.2 As a consequence:
- a. The Player’s individual results from the matches he played in the 2009 Classic are Disqualified in accordance with Articles 9.1 and 10.1 of the IBAF Anti-Doping Rules, with any medals, points or prizes that he earned from his participation in those matches to be forfeited.
 - b. In accordance with Article 10.2 of the IBAF Anti-Doping Rules, the Player is ruled Ineligible for a period of two years. In accordance with Article 10.10 of the IBAF Anti-Doping Rules, during that period of Ineligibility the Player may not “participate in any capacity in any Event or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by IBAF or any

National Federation or a club or other member organization of IBAF or any National Federation, or in Competitions authorized or organized by any professional league or any international or national level Event organization.” This includes Major League Baseball. If the Player does continue to participate in Major League Baseball, then Article 10.10.2 of the IBAF Anti-Doping Rules will apply to push back the commencement date of the period of Ineligibility imposed in this Award to the date of his last Major League Baseball match.

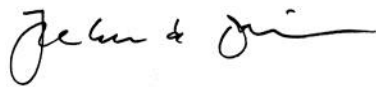
- c. In accordance with Article 10.9.2 of the IBAF Anti-Doping Rules, the two-year period of Ineligibility shall be deemed to have commenced on June 10, 2009 and therefore shall end at midnight on June 10, 2011.

- 4.3 There is no provision in the IBAF Anti-Doping Rules conferring on this Tribunal the power to award a party its costs of proceedings taken under these rules. Therefore, as set out at paragraph 15 of the Standing Directions for cases referred to the IBAF Anti-Doping Panel in connection with the World Baseball Classic 2009, each of the parties shall bear its own costs of these proceedings.

- 4.4 In accordance with Article 8.2.8 and Article 13.2 of the IBAF Anti-Doping Rules, each of the following persons may appeal against this final award to the Court of Arbitration for Sport in Lausanne, Switzerland: the Player, the IBAF, WADA and any other Anti-Doping Organization under whose rules a sanction could have been imposed. The IBAF is directed to disseminate a copy of this Final Award to each such person without delay. Article 13.6 provides that any such appeal must be filed with the CAS within 21 days from the date of receipt of the decision.

- 4.5 In accordance with Article 14.4 of the IBAF Anti-Doping Rules, the IBAF is to report this decision publicly within 20 days of the date of this decision. To ensure that baseball players are properly informed about the nature and extent of their responsibilities under the IBAF Anti-Doping Rules, the entirety of this decision should be published on the IBAF’s official website.

Dated: June 12, 2009



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Joseph de Pencier, Chair