ARBITARL AWARD

By the

ANTI-DOPING HEARING PANEL

of the

INTERNATIONAL BIATHLON UNION

consisting of

Edward G. Williams, Esq. (USA,) Chairperson

Juha Viertola (FIN); and

Walter O. Frey, MD (SWI)

In the Matter of

EVI SACHENBACHER-STEHLE (GDR)

Represented by: Dr. Marc Heinkelein, Attorney-at-Law

Dr. Joachim Rain, Attorney-at-Law

And the

INTERNATIONAL BIATHLON UNION (IBU)

Represented by: Dr. Stephan Netzle, Attorney-At-Law

1. The Parties

1.1 Ms. Eva Sachenbacher-Stehle (GER), hereinafter, "the Athlete", is a 33 year old athlete competing for Germany in the sport of biathlon.

1.2 The International Biathlon Union, hereinafter "the IBU", the international federation for the sport of biathlon.

2. The Facts Pertaining to the Finding of a Doping Offense at the Sochi Olympic Games and the IOC's Referral to IBU

2.1 On February 17, 2014, the Athlete provided a urine sample in connection with her participation in a biathlon competition at the 2014 Sochi Olympic Games.

2.2 The in-competition sample tested positive for methylhexaneamine, a prohibited substance classified under S6 b (Specified Stimulant) on the 2014 Prohibited List of the World Anti-Doping Agency.

2.3 As a "specified substance", methylhexamine is only prohibited in-competition, but not out-of- competition.

2.4 Following the testing of the Athlete's "B" sample, and after a Hearing attended by the Athlete before the IOC Disciplinary Commission in Sochi, the IOC Disciplinary Commission found that the athlete was guilty of having violated the IOC Anti-Doping Rules applicable to the Games of the XXII Olympic Winter Games at Sochi. Accordingly, the Athlete was disqualified from both the individual and relay competitions in which she competed. The Mixed Relay Team in which the athlete participated for Germany was also disqualified.

2.5 The IOC Disciplinary Commission, which has jurisdiction over the Olympic Games, but not thereafter, also Ordered the IBU "to consider any further action within its own competence" to determine what, if any, further sanctions from this doping offense would result.

3. The Convening of the IBU Anti-Doping Hearing in Salzburg, Austria on March 22, 2014

3.1 An in-person Hearing on this matter was held before this Panel of arbitrators at the Headquarters of the IBU in Salzburg, Austria on March 22, 2014.

3.2 In connection therewith, both the Athlete and the IBU were invited to submit per-Hearing statements/ memoranda, and both parties, by their counsel, did so on March 19, 2014.

3.3 An in-person Hearing was held, as scheduled, at the IBU Headquarters; and the Athlete personally appeared (assisted by an interpreter) together with her legal counsel, Dr. Marc Heinkelein and Dr. Joachim Rain. The IBU appeared, by its representative, Martin Kuchenmeister, and also by its legal counsel, Dr. Stephan Netzle.

3.4 Both parties presented their positons, with the IBU (as the party having the burden of proof, see IBU ARD 3.1) going first; followed by the Athlete and her witnesses.

3.5 The IBU established, to the comfortable satisfaction of the Panel, based on the findings of the IOC Disciplinary Commission (which were not disputed by the Athlete) and the evidence presented at the Hearing, that a specified substance, the stimulant methylhexaneamine, was found in the Athlete's system as a result of the in-competition test conducted at Sochi on February 17, 2014.

3.6 Accordingly, the focus of the Hearing was the appropriate sanction that should issue in accordance with the Anti-Doping Rules of the IBU, under the circumstances of the matter.

3.7 Neither party was constrained by time or limited in the number of witnesses called (some in person; some by teleconference); and both sides affirmed at the conclusion of the Hearing that each had had a full and fair opportunity to be heard, and present their respective positions.

3.8 Following closing statements by each side, at the conclusion of the Hearing, the Chairperson of the Hearing Panel, with the concurrence of the two other members of the Hearing Panel, invited each side to submit post-Hearing memoranda, with particular emphasis being given to the interpretation of Article 10.4 of the IBU's Anti – Doping Rules entitled "Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances."

3.9 Both the Athlete and the IBU, through their respective counsel, availed themselves of this opportunity, and submitted post-Hearing memoranda on the agreed to date of April 4, 2014. The Hearing Panel acknowledges not only the high quality and professionalism of the post-Hearing submissions, but also the presentations by both parties, including their witnesses, at the Hearing itself.

4. The Applicable Sanction under IBU Rules, Absent Circumstances Which Would Warrant the Elimination or Reduction of the Sanction

4.1 Neither the procedures followed by the IOC for testing the urine sample given by the Athlete at the in-competition test on February 17, 2014, nor the finding of the presence of methylhexaneamine, classified as a Specified Stimulant on the 2014 WADA Prohibited List, is contested by the Athlete.

4.2 Under the circumstances of this Adverse Analytical Finding ("AAF"), which is not disputed (and the burden of proof of the IBU having been satisfied), the sanction of a two-year period of ineligibility shall be imposed in accordance with IBU ADR 10.2, unless such sanction is eliminated or reduced by the application of IBU ADR 10.4 or ADR 10.5. *See* IBU Anti-Doping Rule 10.2 which states as follows:

> "The period of ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substances)...will be as follows, unless the conditions for eliminating or reducing the period of ineligibility, as provided in Articles 10.4 and 10.5 ....are met: **First violation two (2) years ineligibility** (emphasis supplied)."

4.3 Thus, we now turn to the consideration of IBU ADR 10.4, the first of the two possible IBU Anti-Doping Rules (the other being IBU ADR 10.5) which could mitigate against the imposition of the two-year sanction called for by IBU ADR 2.1. (Note: The possible application of IBU ADR 10.5 is considered in Section "6", infra).

4.4 The facts relating to, and legal interpretation of, IBU ADR 10.4, was the focus of almost the entire testimony at the March 22, 2014 Hearing, as well as the post-Hearing submissions by the Parties.

5. Discussion and Finding of the Applicability of IBU ADR 10.4

5.1 The athlete must establish two things, to the comfortable satisfaction of the Hearing Panel, for IBU ADR 10.4 (permitting the elimination or reduction of the otherwise mandated sanction of a two-year period of ineligibility) to apply:

5.1(a) First: the athlete must establish how a Specified Substance entered his or her body..... ***and***

5.1(b) Second: that the athlete did not intend the Specified Substance found in the athlete's system to enhance the athlete's sport performance.

5.2 The first section of IBU ADR 10.4, reads, in pertinent part, as follows:

> "Where an athlete... can establish how a specified substance entered his or her body ... and such specified substance was not intended to enhance the athlete's sport performance ... the period of ineligibility found in Article 10.2 will be replaced with [the words of the second section of IBU ADR 10.4, discussed below, which provide, in certain circumstances, the elimination or reduction of the standard two- year period of ineligibility]"

5.3 As for consideration of 5.1(a), *supra*, based on the testimony and other evidence adduced at the March 22, 2014 Hearing, the Hearing Panel finds, to its

comfortable satisfaction, that the Athlete has established that the source of the specified substance metylhexaneamine, found in the Athlete's system at the time of the in-competition test on February 17, 2014 at Sochi, was the Teepower product, "Shisandra" which was ingested by the Athlete prior to the competition.

5.4 This conclusion is reached based on the facts that the product "Shisandra" had been listed by the Athlete on her doping control form as one of the products which she had taken prior to the competition and doping control; and because the results of the analysis of the product "Shisandra," which had been purchased and analyzed by the German Sporthochschule subsequent to the AAF, revealed the presence of the substance metylhexanamine in the product.

5.5 Consideration of the second part of the first section IBU ADR 10.4 (that is, for IBU ADR 10.4 to apply, the athlete must show that he or she did NOT intend the Specified Substance "to enhance the athlete's sport performance") is not without some difficulty. This is because of the possible differing interpretations of the meaning of the words of this section (see 5.1(b), above) as they appear in IBU ADR 10.4, which follows precisely the wording of the corresponding section 10.4 of the WADA Code. (*NOTE*: Rule 10.4 of the WADA Code, as applied here in IBU ADR 104, has been eliminated by WADA in the revised WADA Code to take effect January 1, 2015; nevertheless, this Panel is constrained to apply the provisions of the WADA Code and IBU ADR 10.4 in effect at the time of the alleged offense.)

5.6 First, a literal reading of IBU ADR 10.4 (which is preferred) provides that the athlete, to show the applicability of IBU ADR 10.4 must show that the **specified substance** was not intended to enhance the athlete's sport performance." (Emphasis added). The Rule does not state that the athlete must show that the food, medicine, or nutritional supplement ingested by the athlete was not intended to enhance the athlete's sport performance. Rather, the language of IBU ADR 10.4 specifically states that the athlete need only show that the "specified substance" was not intended to enhance the athlete's sport performance.

5.7 But what if the athlete had no knowledge that the specified substance was in the nutritional product? In this situation, it follows that if the athlete had no knowledge of the existence of the specified substance in the food or product, then the athlete, necessarily, could have no intent that the "specified substance" would enhance his or her athletic performance. That is precisely what the Athlete argues here (and that a reduced – or no – sanction permitted by IBU ADR 10.4 should apply.

5.8 However, a literal reading of IBU ADR 10.4 (that is, that what controls is the athlete's intention with respect to the "specified substance" as opposed to the product in which the "specified substance" was found) would mean that IBU ADR 10.4 would always pertain (and permit the imposition of no, or a lessor, sanction) as long as the athlete had no awareness of the existence of the "specified substance" in the product (and, of course, that the athlete could also show how the specified substance entered his or her system, as also required by the first part of IBU ADR 10.4.)

5.9 This literal reading of IBU ADR 10.4, however, would not be consistent with the long-established accepted proposition found in Rule 2.1 *et seq.* of the WADA and IBU Codes that an athlete is strictly liable for what the athlete takes into his or her system, and must suffer the consequences for the failure to do so. It would mean that an athlete who willfully remained ignorant of the particular substances in products he or she ingested cold be eligible for reduced sanctions.

5.10 Accordingly, a number of CAS cases have held that ADR 10.4 must be read to mean that the athlete's intent (or lack of intent) to enhance sport performance must relate to the food or product in which the specified substance was found, and not the specified substance itself. By this interpretation of ADR 10.4, and for ADR 10.4 to apply, the athlete must not have had any intent when ingesting the food, medicine or food product / nutritional supplement, to enhance his or her athletic performance.

5.11 However, the problem with this interpretation (other than it is not supported by the language of the Rule itself, which refers to "specified substance" and not "product") is that almost everything a serious athlete does in his or her life is to enhance his or her sport performance, be it to get enough sleep; eat balanced and nutritious foods; maintain an appropriate weight level for the competition at hand; get enough rest to permit proper recovery from workouts; take permitted mediation when sick; take consideration of the appropriate altitude to train at for a particular competition; and so forth. Following healthy practices to "enhance" one's sport performance is not bad / cheating.

5.12 Thus, if an athlete ingests steak, for protein (and to enhance his or her performance), and that piece of steak, completely unknown to the athlete, is contaminated by a specified substance, then under this latter interpretation of ADR 10.4, the athlete would be precluded from invoking the "safe harbor" protections of IBU ADR 10.4 because he or she ingested the steak with the purpose of enhancing sport performance.

5.13 The same would hold with respect to a piece of fruit (the Athlete's counsel referenced an apple, which is "healthy" and therefore intended to enhance sport performance). Is an athlete who ingests an apple for nutrition and good digestion ("to enhance sport performance"), but which apple, unknown to the athlete, contains a specified substance from some mysterious and unknown source, to be precluded from invoking IBU ADR 10.4 as a possible "safe harbor" for the possible elimination or reduction of a period of ineligibility?

5.14 The Panel does not believe that either of the above examples was the intent of the drafters of WADA Code Rule 10.4.

5.15 In short, the Panel is of the opinion that an athlete should not be precluded from invoking the possible protections of IBU ADR 10.4 simply because the athlete ingested a

"good" product with the intention to "enhance sport performance," but which product, unknown to the athlete, contained a specified substance.

5.16 Thus, this Panel rejects the notion that the words "product containing the specified substance" should be substituted for the words "specified substance" in interpreting Rule 10.4, which states that the athlete can successfully invoke ADR 10.4 only upon a showing that the " specified substance was not intended to enhance the athlete's sport performance." Given (as previously noted) that almost everything an athlete does (eats, drinks) is done with the intention of enhancing one's sport performance, we do not believe that such a "judicial" re-wording of IBU ADR 10.4 is proper, even if permitted.

5.17 Accordingly, we find that IBU ADR 10.4 (similar to its counterpart in the WADA Code) should not, and cannot, be read to mean, for Rule 10.4 to apply, that the athlete must show that he or she had no intent to enhance his or her sport performance by ingesting the product (food, medicine, food or nutritional supplement).

5.18 Rather, the Panel believes that the athlete's intent (or, as with Rule 10.4, the required lack of intent) must pertain to the "specified substance" (the words in Rule 10.4), as opposed to the athlete being required to show the lack of intent to enhance sport performance by ingesting the food or product which contained the specified substance.

5.19 What then, what is the outcome when the athlete truly does not know of the presence of the specified substance which has contaminated the "good" product, and therefore can have no specific intent (one way or the other) to enhance his or her sport performance by ingesting that substance?

5.20 Can it be that, under such circumstances, IBU ADR 10.4 *always* applies, and the athlete is permitted to invoke what we have characterized the "safe harbor" protections of Rule 10.4? We think not. If that were the case, then the "exception" of IBU ADR 10.4 permitting the elimination or reduction of a sanction, would, in large measure, negate the general over-arching principle that athletes, particularly experienced athletes training at the international level, are to be held to the strict standard of being responsible for everything that enters their system. (See IBU ADR 2.1 *et seq*.)

5.21 We have found the CAS opinion in ***Oerimaj v. International Weightlifting Federation,*** CAS 2012/A/2822, quite helpful in our analysis. The rules being considered there are identical to the IBU rules we are applying. Having concluded that the issue was whether the athlete had established "to the comfortable satisfaction of the Panel the absence of an intent to enhance sport performance through consuming" the specified substance, the opinion in *Oerimaj* then goes on to consider whether an athlete who did not know the specified substance was present in the product he consumed, nevertheless may have had the necessary intent to enhance sport performance that would make him ineligible to rely on Article 10.4.

5.22 The Hearing Panel concludes in *Oerimaj* that Rule 10.4 is not available to an athlete who had "indirect intent" to enhance sport performance, which the Hearing Panel found is present when an athlete acts "in a reckless manner," but not if the athlete is "'only' oblivious".

5.23 We have concluded that this reading of Article 10.4 is consistent with the words used in that Rule 10.4; and we therefore follow the reasoning in *Oegimaji* in this matter.

5.24 The Athlete herein has submitted sufficient evidence to make this Panel comfortable with the conclusion that she was not aware that the product "Shisandra" contained the specified substance metylhexaneamine. She testified the label on the product did not indicate that it contained any specified substance and, in particular, methylhexaneamin; and it is not controverted that she disclosed in her doping control forms that she had taken the product "Shisandra." Thus the Panel is comfortably satisfied that the Athlete did not take the product with the direct intent to enhance sport performance by ingesting the specified substance, metylhexaneamin.

5.25 However, the Athlete has not given the Panel sufficient information to be comfortably satisfied that she did not take the product with *indirect intent* to enhance her sport performance. First, we note that the commentary to Article 10.4 states that "[g]enerally, the greater the potential performance-enhancing benefit, the higher the burden on the athlete to prove lack of an intent to enhance sport performance."

5.26 The substance involved here is a Specified Stimulant listed in S6b of the WADA 2014 Prohibited List. The comments to Article 10.4 single out Specified Stimulants as possibly being "very effective to an athlete in competition". Thus the burden of proving lack of intent may be higher in this case than in cases involving other drugs.

5.27 Regardless of the level of the burden of proof, however, the Panel is not comfortably satisfied that the Athlete did not intend to enhance her sport performance in biathlon by ingesting the Teepower product "Shisandra," which contained methylhexaneamine.

5.28 The manufacturer's website states that the product, "Schisandra" reduces fatigue and that the user "can stand physical efforts longer (e.g. in sports) especially when physical endurance is required (Antoshechkin)." This disclosure, without more, alerts potential users that the product is designed to enhance performance in sports, particularly sports where physical endurance is extremely important, such as biathlon.

5.29 Any elite biathlete who took the product after reading the aforesaid on the website would be taking the product fully aware that the product was purported to enhance performance.

5.30 There is no evidence that the Athlete herein read the website for this product. However, that does not mean that she did not have the requisite indirect intent to enhance her sport performance prohibited by Article 10.4. As stated in *Qerimaj*,

> "The Panel holds that an athlete competing at national and international level who also knows that he is subject to doping controls as a consequence of his participation in national and/or international competitions cannot simply assume as a general rule that the products he ingests are free of prohibited/specified substances.... [T]he question if and to what extent the athlete is obliged to do research on a product and its contents, is also determined by the purpose of the product. The more the product is likely to be used in a sport/training related context, in other words: to enhance sport performance, and the more it is processed the likelier it is that it contains prohibited/specified substances. ... In the case of a food supplement... that is taken in a sport/training related context, the athlete has to take a certain level of precautionary measures in order not to qualify his behavior as reckless, i.e. with indirect intent."

5.31 The Athlete herein, who had previously competed in three Olympics, and many other international competitions, clearly knew that she was subject to doping controls, and was aware of the dangers involved in taking food or nutritional supplements. She could not simply close her eyes to that danger and assume that the product did not contain specified substances. This product was likely to be used in a sport/training context, and the Athlete used it in such a context, taking it while training and indeed on the very day she competed in the 2014 Sochi Olympics.

5.32 The product's website says that one of the purposes of the product is to enhance sports performance. However, she says she took it to strengthen her immune system and for her general well-being, and that, the Athlete argues, means she cannot be found to have taken it to enhance her sport performance. However, the fact that an athlete can characterize her use of a product as being for her "general well- being" is no indication that she did not also intend it to enhance her actual sports performance.

5.33 In addition, a product with instructions to take it in doses of less than a teaspoon, does not appear, on its face, to be a natural (or fully organic) food supplement, as opposed to a powerful product/ supplement intended to boost one's energy (or "reduce fatigue" as stated on the manufacturer's website).

5.34 The Athlete testified she took precautionary measures before ingesting the product, which should mitigate against any penalty. She testified she consulted with her nutritional expert, Mr. Saxinger, several times. According to the Athlete, he repeatedly assured her the product contained no prohibited substances. She also testified she knew that other athletes advised by Mr. Saxinger took the same product and had not tested positive, and that she also "checked the internet via Google and found no "hits" for combinations of the product name and words like "doping". But she also admitted she did not check the actual website maintained by the manufacturer which would have alerted her to the danger that the product might well contain a specified substance.

5.35 The Athlete testified that she did not take the product to enhance her sport performance. Yet, at best, in view of all the facts and circumstances, she appears to have

deliberately disregarded a high probability that she was consuming a specified substance that would enhance her performance in biathlon. No evidence was submitted that the individual the Athlete consulted had any particular expertise in anti-doping matters. The Athlete failed to check the product's website which claimed the product would enhance sports performance. She testified that she took the product in doses of less than a teaspoon. Anything taken is such small doses is obviously extremely potent, which in itself would indicate to an elite athlete that it may well contain a specified substance that would enhance performance, and that further investigation (for example, looking at the website, or having the product tested) was needed. This dosage also indicates that the product was a supplement regardless of the Athlete's assertion that she did not think it was a supplement, but rather a natural organic tea.

5.36 The Athlete did not consult a medical doctor about this product nor did she consult the "Cologne list". She took nine supplements but had only 3 of them tested, allegedly because those products were made in countries that were suspected of producing contaminated products. She determined that this product did not come from a suspect country and so she did not have it tested. Such conduct causes this Panel to conclude that the Athlete took the product with at least the indirect intent to enhance her sport performance, regardless of her lack of knowledge of the specified substance it contained.

5.37 Wherefore, on account of all the foregoing, the Panel finds that the Athlete has not established, to the comfortable satisfaction of the Panel that, under the facts and circumstances of this case, she has met the standard set forth in the first section of IBU ADR 10.4 which, if applicable, would permit the elimination or reduction of the period of ineligibility imposed by reason of IBU ADR 10.2.

6. Discussion / Analysis of the "Corroborating Evidence" Requirement of ADR 10.4

6.1 Were the Athlete to have established to the comfortable satisfaction of the Hearing Panel that she met the requirements of the first section of IBU ADR 10.4 (see 5.1 and 5.2, supra), she would still also need to satisfy the requirements of the second full section of ADR 10.4, pertaining to the need for "corroborating evidence" for the Rule to apply.

6.2 That is, even if the athlete satisfies the requirements of the first section of IBU ADR 10.4, then for the possible elimination or reduction of the called for sanction to apply, the athlete must also "produce corroborating evidence, in addition to her own word, which establishes to the comfortable satisfaction of the Hearing Panel *the absence of **any intent** to enhance sport performance"* (Emphasis supplied).

6.3 Notably lacking from this clause, unlike the clause above in the first section of IBU ADR 10.4, is any reference to either "specified substance" or the product in which the specified substance was found.

6.4 The only evidence that was offered at the March 22, 2014 Hearing, to corroborate Athlete's own testimony that she did not ingest the Teepower product "Schisandra" with the intent to enhance her sport performance, was the testimony of her husband.

6.4 Her husband testified that he was a former elite athlete, but that he no longer competes. However, although not an actively competing athlete, he testified that he ingested "Schisandra," which he described as a "concentrated tea," on a regular basis. He did so, he testified, as did his wife, not to enhance sport performance, but rather to "stay healthy." The fact that he was not an actively competing athlete, but nonetheless ingested "Schisandra", was offered as corroborating evidence that the purpose his wife took "Schisandra" was not to enhance athletic performance.

6.5 Taken as a whole, the Athlete's husband's testimony, including his personal belief that his wife was not taking the product with the intent to enhance her sports performance, did not give the Hearing Panel the requisite comfortable satisfaction to conclude that this was the level of evidence necessary needed to corroborate the Athlete's testimony that she did not have "**any intent** to enhance [her] sport performance." (Emphasis supplied)

7. Even if the first section of IBU ADR 10.4 Were Deemed to be Applicable, the Panel Finds that a Two (2) Year Period of Ineligibility is Still Appropriate.

7.1 The Hearing Panel acknowledges that CAS decisions are not unanimous with respect to the interpretation of the wording of the first section of Rule 10.4 as set forth in the IBU Anti-Doping Rules (and the identical wording of Rule 10.4 in the WADA Code); accordingly, we make findings of fact and a determination of sanction even if the Athlete's argument herein were accepted by the Panel that IBU ADR 10.4 does in fact apply.

7.2 If the wording of the first section of IBU ADR 10.4 is deemed applicable, as urged by the Athlete, then the period of ineligibility found in Article 10.2 (two years of ineligibility) "will be replaced" with the following language of the section of IBU ADR 10.4, to wit:

> "First violation: At a minimum, a reprimand and no period of ineligibility from future events, and at a maximum, two (2) years of ineligibility. To justify any elimination or reduction [of a sanction], the athlete ...must produce corroborating evidence in addition to his or her own word, which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. **The athlete's ... degree of fault will be the criterion considered in assessing any reduction of the period of ineligibility."** (Emphasis supplied)

7.3 The Panel finds, as a matter of fact, that even if IBU ADR 10.4 were to apply, as urged by the Athlete (with which the Panel disagrees, see above), any reduction of the two (2) year sanction otherwise applicable under ADR 2.1 would still not be justified.

7.4 The reason a reduction of the sanction would not be justified is because of the "degree of fault" of the athlete in this matter, which ADR 10.4 states must be taken into account in considering to apply any reduction of the two-year sanction called for by IBU ADR 2.1.

7.5 The Athlete's degree of fault in ingesting a stimulant into her system, in connection with her participation in competition (the Olympic Games, no less) includes reference to (but not necessarily limited to) the following:

7.5.a The Athlete ingested numerous nutritional supplements (including the offending product "Schisandra") notwithstanding clear (and multiple) warnings by the Athlete's National Anti-doping Agency that such products have been and continue to be the source of undeclared (on the product's label) stimulants and other prohibited substances. Indeed, the evidence adduced at the Hearing is that the Athlete ingested as many as nine (9) such nutritional supplements, some twice a day, including just prior to or on race day.

7.5.b The Athlete did not have the product Schisandra tested to determine if it might be contaminated.

7.5.c The Athlete claims to have "googled" certain of the nutritional products she ingested; but the record before the Panel is unclear as to the depth of the research she did (if any) with respect to the product "Schisandra". However, written declarations on the Teepower website for Schisandra disclose that its intents and purposes include increasing athletic performances. English translation: "Whoever ingests Schisandra *reduces fatigue* and can stay awake longer, *can stand physical efforts longer* (e.g., in sports) *especially when physical endurance is required*." (Emphasis added)

7.5. d The Athlete's claimed reliance on the advice of an "expert", as a way to reduce the time period of the two year sanction, is not credited by the Panel. Indeed, to the contrary, the Panel finds, as a matter of fact based on the testimony offered at the Hearing, that the Athlete's reliance on the identified individual was unfounded and reckless: No evidence was offered to establish that individual was medically trained, or was an expert in anti-doping matters. The Athlete was unaware of any expertise of the individual she relied upon in anti-doping matters (and none were offered at the Hearing) other than the Athlete's passing reference at the Hearing to seeing diplomas of unspecified nature on the wall of the individual's office. Accordingly, the Hearing Panel finds that the Athlete's reliance upon this individual to be reckless. Furthermore, and more fundamental, it is not a recognized excuse to a doping offense to say that it was the responsibility of someone else to make sure what the athlete ingests is "clean." As stated in IBU ADR 2.1.1: "It is each athlete's personal duty to ensure that no prohibited

substance enters his or her body…' Athletes may not be excused from that responsibility by claiming reliance on others, even an expert in the field, which (apparently) is not the case here.

7.5.e Significantly, the Athlete choose not to consult with the Team Doctor for the national team or any anti-doping officials of her sport federation or National Olympic Committee, where undoubtedly she would have been advised not to take nutritional supplements as she did.

7.5.f Finally, and significantly, the Athlete is not an inexperienced new-comer to the sport, just learning the strict requirements of the WADA and IBU ADR, but rather is a highly experienced and seasoned competitor who had already competed in multiple Olympics and World Championship and other international competitions. As such, she is well aware of the rules, and the well-pronounced dangers of taking nutritional supplements particularly where, as here, the supplements (in particular, the product "Schisandra") had not been vetted and cleared as a "clean" product listed on the Cologne list of products. The Hearing Panel finds, after considering all the evidence that, as a matter of fact, the Athlete bears a significant degree of fault for her ingesting a prohibited substance in connection with her participation in the Sochi Olympics.

7.6 In short, the Panel finds that the degree of fault of the Athlete is considerable. The Athlete failed, in the judgment of the Panel, to exercise that degree of diligence needed to demonstrate to the Panel that she attempted to avoid ingesting any substance that could result in a positive test. Indeed, to the contrary, she almost blindly took a large number of supplements without undertaking an adequate investigation of their provenance and purity. In that regard, the facts of this case can easily be distinguished from the CAS cases of *Squizzato v. FINA*, CAS 2005/A/830 and *Puerta v. ITF*, CAS 2006/A/102, where a lesser sanction was imposed on the grounds of lack of fault.

7.7 Accordingly, even if IBU ADR 10.4 were to apply (which the Panel finds it does not, see point 5 supra), the Panel would not find, on account of the Athlete's degree of fault, any basis to eliminate or even reduce the two year period of ineligibility called for by IBU ADR 2.1.

8. The Panel Finds No "Exceptional Circumstances" exist which, Under IBU ADR 10.5, would warrant the Elimination or Reduction of Period of Ineligibility.

8.1 IBU ADR 105 states, in pertinent part, as follows:

> "If an athlete…establishes in an individual case that he or she bears no significant fault or negligence, then the period of ineligility may be reduced, but the reduced period of ineligibility may not be less than one-half of the period of ineligibility otherwise applicable."

8.2 For the same reasons set forth above at point "7" of this Award, *supra*, the Panel finds that IBU ADR 10.5 is not applicable in this case as a grounds for any reduction of the period of ineligibility called for by IBU ADR 2.1.

9. Consideration of the Other Reasons Advanced by the Athlete for the Elimination or Reduction of a Period of Ineligibility

9.1 The Athlete offered a number of other reasons why this Panel should eliminate, or at least reduce the period of ineligibility which otherwise would be imposed.

9.2 The Athlete advanced the argument, through her own testimony and through counsel, that Shisandra was advertised as a natural product, consisting of crushed berries, and that therefore, it could not be suspected that the product contained a specified substance, as it did. However, as has been repeatedly warned by WADA, as well as the National Olympic Committee of the Athlete, experience has shown that the fact that a product is claimed by the manufacturer and /or distributer to be "pure" "organic" or "natural" does not mean that it is so. Athletes (particularly an experienced athlete competing for a period of time at the international level, such as here), know, and are deemed to know, of the possibility of contamination of so-called "natural" products, and the risks of taking such products. Simply reading the label, is not enough.

9.3 The Athlete, and her counsel, also place great reliance (and now blame) on the Athlete's nutritional advisor, Stephan Saxinger. During the course of the March 22, 2014 Hearing, the Athlete (or though counsel) stated that:

9.3(a) Mr. Saxinger confirmed to the Athlete that the products were purely herbal, extracted from a purely biological product, and that the ingredients posed no risk in terms of possible doping violations;

9.3(b) That the Athlete specifically asked Mr. Saxinger if using the Teepower products he recommended, including "Schisandra", would lead to a positive drug test, and that he advised her that it would not;

9.3(c) That, nonetheless, the Athlete asked Mr. Saxinger to double check with the manufacturer Teepower, that the products were safe, and that Mr. Saxinger reported back to her that he had done so, and that the products were indeed safe to use; and

9.3(d) That the Athlete knew other athletes in the testing pool who were advised by Mr. Saxinger and also used the same Teepower products she did, and that they never tested positive for a specified substance.

9.4 Notwithstanding all the foregoing testimony, which the Hearing Panel credits as true, that still does not relieve the Athlete of the consequences of taking the product in this case. Not only is the athlete personally responsible for the decisions she makes with respect to what she eats and otherwise puts in her system (athletes are responsible for what they ingest, see IBU ADR 2.1,), the Athlete is also responsible for their choice of

"nutritionist" or " advisor" (if any); and faulty advice by such a self-proclaimed "nutritionist," especially one of unknown (or doubtful) credentials, cannot serve the basis for the elimination or reduction of a period of ineligibility (see comments to IBU ADR 10.5.1 and 10 5.2 especially paragraph 2 thereof).

9.5 Accordingly, these additional arguments put forth by the Athlete and her counsel are unavailing to support the elimination or any reduction of the period of ineligibility.

10. Any reduction of the sanction is not warranted based on a claimed assistance pursuant to IBU ADR 10.5.3

10.1 The Athlete urges a reduction in any sanction proposed to be imposed, on account of the authority of IBU ADR 10.5.3, which states as follows:

> "The IBU Anti-Doping Hearing Panel may, prior to a final appellate decision under article 1.3 or the expiration of the time to appeal, suspend a part of the period of ineligibility imposed in an individual case where the athlete or other person has provided substantial assistance to a anti-doping organization, criminal authority or a professional disciplinary body which results in the anti-doping organization discovering or establishing an anti-doping violation by another person or which results in a criminal or disciplinary body discovering or establishing a criminal offense or the breach of a professional rule by another person."

10.2 Insufficient evidence has been provided to the Hearing Panel which would permit it to be comfortably satisfied that any of the alternative provisions of IBU ADR 10.5.3 apply.

10.3 The athlete does not contend that she has provided substantial assistance to the IBU or any other anti-doping organization which has resulted in discovering or establishing an anti-doping violation by another person.

10.4 The Athlete and her counsel did present evidence (albeit all hearsay) with respect to the involvement of the German authorities in this matter; but it does not appear, at least to the comfortable satisfaction of the Hearing Panel that the athlete's cooperation with a criminal body has resulted in that criminal body discovering or establishing a criminal offense by some other person.

10.5 Accordingly, the Hearing Panel does not find any basis for suspending any part of the period of inelibility imposed on the Athlete.

11. Disqualification of Results in Competition Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

11.1 IBU ADR Rule 10. 8, which controls here, provides that, in addition to the automatic disqualification of the results in the competition which produced the positive sample (already imposed by the IOC with respect to the Sochi Olympics), the results of any competition in which the athlete may have participated from the date of the sample collection which resulted in the positive test result to the date of the commencement of the period of ineligibility shall also be forfeited.

12. Commencement of the Period of Ineligibility.

12.1 Here, the Athlete promptly (in any event, before competing again following the Adverse Analytical Finding) acknowledged the commission of the anti-doping violation when confronted with the anti-doping rule violation by the IBU.

12.2 Accordingly, the Hearing Panel has determined that, in accordance with the provisions of IBU ADR 10.9 ("Timely Admission") the two-year period of ineligibility shall be deemed to have commenced retroactively to the date of the sample collection, that is, February 17, 2014.

13. Costs of the Hearing.

13.1 The IBU, through its counsel in its Pre-Hearing Memorandum, asks that "the costs of the hearing before the ADHP shall be borne by the Athlete."

13.2 The IBU does not make clear what "costs" it intended to include when it requested that the "costs" of the ADHP be borne by the Athlete.

13.3 In any event, the IBU cites no authority that the costs of the Hearing, whatever those costs are deemed to include, may - - by Order of the Panel - - be shifted to one side or the other; and the Hearing Panel is not aware of any such authority.

13.4 Furthermore, it is the obligation of an International Federation to provide, as a part of its duties as an IF, a dispute-resolution forum, such as the IBU has done here.

13.5 Accordingly, the request of the IBU to have the costs of the hearing before the ADHP be borne by the Athlete is denied; and it is Ordered that each side shall bear their own costs and expenses, including attorney fees.

BASED ON THE FOREGOING

The IBU Anti-Doping Panel rules as follows:

1. The athlete, Eva Sachenbacher-Stehle (GER) committed an in-competition doping offense at the 2014 Sochi Olympic Games, as determined (and not contested by the Athlete) by the IOC Disciplinary Commission.

2. Ms. Sachenbacher-Stehle is sanctioned with a period of ineligibility for a period two years, commencing retroactive as of the date of the sample collection, that is, February 17, 2014.

3. All competitive results of Ms. Sachenbacher-Stehle obtained from the date of the sample collection are nullified;

4. Each party shall bear their / its own costs and expenses, including attorneys' fees, incurred in connection with this matter; and

5. The administrative and other expenses of the IBU in conducting the Hearing, and expenses of the Panel of Arbitrators, shall be borne by the IBU.

By Order of the IBU Anti-Doping Panel, dated July 14, 2014:

Edward G. Williams, Esq. (USA)
Chair of the Panel

Juha Viertola (FIN)

Walter O. Frey, MD (SWI)