

**INTERNATIONAL OLYMPIC COMMITTEE**

**IOC DISCIPLINARY COMMISSION**

**DECISION**

**REGARDING VIKTORIYA TERESHCHUK  
BORN ON 18 FEBRUARY 1982, UKRAINE, ATHLETE, MODERN PENTATHLON**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8 and 9 thereof:

**I. FACTS**

1. Viktoriya TERESHCHUK (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. On 22 August 2008, the Athlete competed in the Women’s individual modern pentathlon event (running, riding, swimming, fencing, shooting) in which she ranked 3<sup>rd</sup> and for which she was awarded a bronze medal.
3. On the same day, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1847186.
4. The A-Sample 1847186 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected upon the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne, Switzerland (“the **Laboratory**”) for long-term storage.
6. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods using more sensitive equipment and/or searching for new metabolites in order to possibly detect Prohibited Substances which were not identified by the analysis performed at the time of the 2008 Olympic Games.
7. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
  - An initial analysis was to be conducted on the remains of the A-samples
  - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of an A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory, the A-Samples were not individually resealed nor transported in sealed containers.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. A similarly precautionous approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample into a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for this first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
15. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
16. On 12 July 2016, the Athlete through her NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample.
17. On 14 July 2016, the Athlete through her IF sent to the IOC her completed PAAF Notification Appendix in which she indicated that she would not attend the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample, neither personally nor through a representative.
18. On the same day, the IOC informed directly the Athlete that the opening and splitting of the B-Sample and sealing of the B2-Sample would occur on 18 July 2016 at the Laboratory followed by the analysis of the B1-Sample.
19. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 18 July 2016 at the Laboratory.
20. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
21. As provided in the ISL, the opening and splitting was attended by an independent witness.
22. The results of the B1-Sample analysis were reported on 21 July 2016. These results establish the presence of the metabolites of a Prohibited Substance, namely dehydrochlormethyltestosterone (turinabol).
23. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with article 7.2.1 of the Rules.

24. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
25. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
  - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Legal Affairs Commission
  - Mrs Gunilla Lindberg (Sweden)
  - Mr Ugur Erdener (Turkey)
26. On 26 July 2016, the IOC notified the Athlete, directly and through her NOC, of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of her right to request and attend the opening of the B2-Sample and its analysis, either in person and/or through a representative, which was initially scheduled to take place on 8 or 9 August 2016. The Athlete was finally informed of her right to request a copy of the laboratory documentation package.
27. On 2 August 2016, the Athlete through her IF provided the IOC with her completed AAF Notification Appendix in which she indicated that she did not accept the Adverse Analytical Finding. She indicated that she did not request the opening and analysis of the B2-Sample and that, if conducted, she would not attend the process, neither personally nor through a representative. She finally requested a copy of the laboratory documentation package.
28. In her AAF Notification Appendix, the Athlete wrote the following comment:

*“I request the procedure of Determining the authenticity of the urine in the sample, which produces presence of turinabol, by DNA analysis to be conducted in independent laboratory at my expense.  
I request the copy of the laboratory documentation package for the sample’s initial analysis in Beijing Laboratory back in 2008 to be provided to me.”*
29. On the same day, the IOC informed the Athlete that the opening of the B2-Sample would take place on 8 August 2016 at the Laboratory followed by the analytical analysis of the sample.
30. On 5 August 2016, the Athlete was advised by the IOC that the current proceedings resulted of the analysis carried out by the Lausanne laboratory and that the analysis performed by the Beijing laboratory was not relevant for the purpose of his case. Regarding the request for a DNA analysis, the IOC indicated that her arguments and requests should be submitted to the Disciplinary Commission.
31. As planned, the opening of the B2-Sample occurred on 8 August 2016 in the presence of an independent witness followed by its analysis.
32. The results of the B2-Sample analysis were reported to the IOC on 11 August 2016. They confirmed the presence in the B2-Sample of the metabolites of a Prohibited Substance, namely dehydrochlormethyltestosterone (turinabol).
33. On 12 August 2016, the IOC received through her IF the Athlete’s written submissions, which will be addressed and discussed below.

34. On 16 August 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was invited to indicate whether she accepted the Adverse Analytical Finding, whether she would attend the hearing of the Disciplinary Commission and/or she would submit a defence in writing. The Athlete was also informed of her right to request a copy of the laboratory documentation package.
35. On 19 August 2016, the Athlete through her IF sent to the IOC her completed Disciplinary Commission Form in which she indicated that she accepted the Adverse Analytical Finding. She further requested a copy of the B2-Sample laboratory documentation package. She also indicated that she would attend the hearing of the Disciplinary Commission personally and that he would be assisted by Ms Ganna Bordiugova, legal counsel and interpreter. She finally indicated that she would submit a defence in writing.
36. In her Disciplinary Commission Form, the Athlete wrote the following comment:

*“I request oral hearing to be conducted via video-conference through Skype. Please do not schedule the hearing on the dates 1-3, 19-21, 28-30 September 2016 due to the unavailability of my representative to attend it because of business trips abroad, already planned and settled five month ago. Please kindly forward to the IOC Disciplinary Commission my previous request to conduct DNA analysis of the urine sample # 1847186, producing positive result for the presence of prohibited substance turinabol, for its authenticity in an independent laboratory on my expense. Please kindly inform me when I will get the Laboratory documentation package for the sample’s A and B1 analysis for passing them to the experts for their review before providing my statement of defense in writing. Please provide me with the record file of the handling of the sample in Beijing and its transfer to the WADA accredited laboratory in Lausanne.”*
37. On 23 August 2016, the IOC acknowledged receipt of the completed Disciplinary Commission Form and advised the Athlete that the documentation would be provided in due course.
38. On 25 August 2016, the Athlete was provided with a copy of the B1-Sample laboratory documentation package.
39. On 16 September 2016, the Athlete was provided with a copy of the B2-Sample laboratory documentation package as well as additional documentation related to her sample, in particular the handling of the sample in Beijing and its transfer to Lausanne.
40. On 11 October 2016, the IOC informed the Athlete that the hearing of the Disciplinary Commission was scheduled to be held on 3 November 2016. The Athlete was invited to confirm by 19 October 2016 whether she would participate in the hearing personally and/or through a representative. She was also granted a deadline until 28 October 2016 to file a written defence.
41. On the same day, the NOC and the IF were invited to participate in the hearing and to file written observations.
42. On 20 October 2016, the Athlete confirmed that she would participate in the hearing via videoconference and that she would be assisted by Ms Bordiugova. The Athlete requested once again a DNA analysis to be conducted on her sample.
43. Neither the NOC nor the IF filed written observations.

44. On 27 October 2016, the Athlete sent to the IOC her final written submissions, in which she raised various analytical issues. The content of the submissions will be discussed below.
45. On 28 October 2016, the IOC forwarded the written submissions dated 27 October 2016 to the Laboratory for observations. The Laboratory answer dated 3 November 2016 was provided to the Athlete on 4 November 2016.
46. The hearing of the Disciplinary Commission was held on 4 November 2016 at the IOC Headquarters in Lausanne, Switzerland.
47. The Athlete participated in the hearing via videoconference. She was assisted by Ms Anna Bordiugova, legal counsel and interpreter.
48. The IOC was represented by Ms Tamara Soupiron, IOC legal counsel as well as Mr Jean-Pierre Morand and Mr Nicolas Français, IOC external legal counsels.
49. At the hearing, the Disciplinary Commission granted the Athlete a deadline to file written submissions in regard of the content of the observations of the Laboratory dated 3 November 2016.
50. The Athlete filed the corresponding submissions on 15 November 2016.

## II. **APPLICABLE RULES**

51. These proceedings are conducted in application of the Rules.
52. Art. 2.1 of the Rules provides as follows:

*“The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen.*

- 2.1.1 *It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, 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.*
- 2.1.2 *Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation.*
- 2.1.3 *As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.”*

53. Art. 2.2 of the Rules provides as follows:

*“Use or Attempted Use of a Prohibited Substance or a Prohibited Method*

*2.2.1 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be used for an anti-doping rule violation to be committed.”*

54. Art. 5.1 of the Rules provides as follows:

*“The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.*

*The Period of the Olympic Games, or In-Competition Period, is defined as “the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.*

*All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.*

*The IOC shall have the right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases.”*

55. Art. 7.3.3 of the Rules provides as follows:

*“Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or the General Secretary of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC.”*

56. Art. 8.1 of the Rules provides as follows:

*“A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes.”*

57. Art. 9.1 of the Rules provides as follows:

*“An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete’s results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1.”*

58. Art. 9.1.1 of the Rules provides as follows:

*“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation.”*

59. Art. 9.3 of the Rules provides as follows:

*“The management of anti-doping rule violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the Olympic Games, shall be managed by the relevant International Federation.”*

### **III. DISCUSSION**

#### **A. Establishment of Anti-Doping Rule Violation**

60. The presence of the metabolite of a Prohibited Substance has been established in 2016 in the sample 1847186 that the Athlete provided on 22 August 2008, upon the occasion of the 2008 Olympic Games.
61. The substance detected in the Athlete's sample, i.e. dehydrochlormethyltestosterone (turinabol) is an exogenous anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
62. In spite of the arguments submitted by the Athlete in this respect, which are expressly discussed below, the Disciplinary Commission is satisfied that the samples which have been re-analysed by the Laboratory are unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
63. Moreover, the Disciplinary Commission is further satisfied that the analytical results are valid and do properly establish the presence of the Prohibited Substance at stake in the Athlete's samples.
64. The Disciplinary Commission notes that the Athlete does not dispute the analytical finding as such. She thus did not require the analysis of the B2-Sample. In her signed Disciplinary Commission Form dated 18 August 2016, the Athlete further expressly accepted the AAF.
65. Based on the above, the Disciplinary Commission finds that an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in the Athlete's body is established.
66. In addition, the Disciplinary Commission finds that an anti-doping rule violation could also be held as established if the circumstances were considered in the perspective of art. 2.2 of the Rules.
67. In this respect, the Disciplinary Commission observes that the nature of the substance which was found in the Athlete's sample (i.e. a traditional doping substance) makes this result consistent with the use of a Prohibited Substance specifically ingested to deliberately improve performance.
68. The Disciplinary Commission, which has now handled multiple cases arising out of the re-analysis of samples collection on the occasion of the 2008 and 2012 Olympic Games, observes that the presence of metabolites of this particular substance has been established in a remarkably high number of cases.
69. This constitutes an indication that said substance has been in widespread use by athletes, who were doping at that time.
70. Prior to the application of a new detection strategy searching for metabolites remaining detectable over a much longer period of time and which began to apply only from late 2012 /2013, the detection window of said substance was limited to much shorter period of time (5 to 10 days).
71. The search for the newly established so called "long-term" metabolites significantly extended the detection window (up to 50 and more days). Such a significant extension of

the detection window is the obvious explanation for the unfortunately spectacular and unprecedented high number of positive cases which were revealed by the re-analysis process.

72. Doping is a planned process in which the detection window is a key parameter. The athletes using the substance at the time, and/or the persons who were supporting them in this respect, planned with the detection window applicable at the time. They did not expect that the detection window would subsequently be significantly extended, by virtue of a new method capable of detecting long-term metabolites during a much longer period of time.
73. This explains why athletes, who had in the past effectively managed to avoid anti-doping controls are caught. It is an illustration of the effectiveness of the re-analysis process and of its purpose, which is essentially to give those, who think they can outsmart the anti-doping controls, the message that they will never be safe.
74. In any event for the purpose of these proceedings, it is not necessary to examine exhaustively whether the Athlete could establish how the substance entered her body, as the mere establishment of presence suffices to justify the application of the consequences provided for under the Rules.
75. In conclusion, the Disciplinary Commission finds that an anti-doping violation is established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.

**B. Arguments of the Athlete**

76. The Athlete has challenged the commission of an anti-doping violation on the basis of various arguments set out in her written submissions, which are addressed below. None of them put the above finding into question.

***i. Validity of the analytical results***

77. The Athletes submits that the Beijing laboratory did not comply with the then applicable International Standards for Laboratories and with its own Sequence Operational Procedures (SOP) at the time of the analysis conducted in 2008.
78. The Athlete alleges that the departure from the ISL and SOP led to improper identification of her sample. The Athlete refers to CAS 2009/A/1752 (Vadim Devyatovsky v/ IOC) and CAS 2009/A/1753 (Ivan Tsikhan v/ IOC) to support her argument.
79. In this context, the Athlete requested a copy of the laboratory documentation package issued by the Beijing laboratory in 2008 and the performance of a DNA analysis.

**a. The documentation provided by the IOC is sufficient**

80. The Disciplinary Commission first finds that the documentation, which has been provided, is sufficient.
81. Since no positive results were reported in 2008, there is no reason for analytical documentation to have been issued in connection with the analysis conducted at the time.
82. Such documentation has absolutely no relevance in the context of these proceedings concerning solely and specifically the analytical results obtained by the WADA-accredited laboratory of Lausanne in July 2016.

83. Regarding the documentation issued in relation to the handling and transfer of the Athlete's samples, the Disciplinary Commission is satisfied that the information provided by the Beijing laboratory with respect to the receipt of the sample by the Beijing laboratory, the identification and the storage of the sample is the whole documentation, which could be obtained.
84. The Disciplinary Commission finds that the provided documentation is sufficient to establish the identity of the samples, which served as basis to the analysis performed in Lausanne.
85. In respect specifically of the transfer modalities, the Disciplinary Commission observes that the A-samples have not been resealed during their bulk transfer from the Beijing to Lausanne.
86. This was never disputed and was specifically explained by the IOC.
87. Although there was no requirement in the ISL in force at the time of the transfer (ISL 2008)<sup>1</sup> to reseat the A-Samples at the time of transfer, the fact that the transferred A-Samples were transferred without being individually resealed or placed in sealed boxes was precisely the reason why the IOC chose to rely on the analysis of the split B-samples, this as a cautionary measure.
88. The identity of the samples is indeed in any event ascertained and secured by the B-Sample, which remained sealed from the collection date until the opening of the samples for the purpose of the analysis. This is why the IOC decided to rely on the split B-Sample procedure.
89. The Disciplinary Commission observes that the IOC followed in this respect the procedure expressly provided for by the ISL applicable at the time of re-analysis (ISL 2016).
90. Since in this case the Athlete did not use the opportunity (not required by the ISL) to attend the opening and splitting of the B-Sample (in a B1- and B2-Sample), such was performed in accordance with art. 5.2.2.12.10 ISL in front of an independent witness, who attested that the seal of the B-Sample was intact and further attested the resealing of the B2-Sample.
91. The opening of the B2-Sample occurred again in front of an independent witness. Thus a complete chain of custody has been preserved from the collection of the sample and the signature of the DCF attesting that the Athlete's samples (A & B) were poured in the bottles (A&B) bearing the unique number 1847186 until the opening of the B-Sample bearing the same unique number and which had remained sealed until it went into the process of analysis leading to the results at stake.
92. The process chosen by the IOC focusing on the sealed B-Sample provides an additional assurance in regard of the identity and integrity of the sample. It must be however noted that in this case, there is no element showing that there could have been any issue in relation with the identity and/or integrity of the A-Sample.
93. On the contrary, the Disciplinary Commission notes that the results reported by the Laboratory further to the analysis of the A-Sample<sup>2</sup> are completely consistent with the

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<sup>1</sup> The ISL presently in force (ISL 2016 – art. 5.2.2.12.4) still do not require individual resealing but individual or "box" resealing.

<sup>2</sup> The Disciplinary Commission notes the the analysis performed on the A-Sample went beyond screening analysis and effectively constitutes a third confirmation of the analytical results and of their validity.

results of the double analysis of the (sealed) B-Sample. This is logically a confirmation of the identity and integrity of the A-sample.

94. The Athlete nevertheless questions the fact that the analysed samples would be her samples and requires the conduct of a DNA analysis.

**b. The requested DNA analysis is not necessary**

95. DNA analysis is not part of the regular analysis process.
96. The Disciplinary Commission nevertheless observes that such analysis may, in principle, be used, as part of the analysis performed in accordance with the ISL (see Art. 6.2 ISL 2016).
97. The application of this additional and special analysis would however require a specific justification. Such may notably be given when there are reasons to consider that manipulations may have occurred and the Athlete's urine might have been substituted<sup>3</sup>.
98. On the other hand, in the absence of any such reasonable suspicion, the DNA analysis, which is an additional and burdensome measure, is not a relevant evidentiary measure and should not be conducted.
99. This in particular the case when there is not the slightest indication that a manipulation could have occurred.
100. The application is of course submitted in the context of what occurred at the time of the 2014 Olympic Winter Games in Sochi. In this respect, the Disciplinary Commission underlines that there is however not the slightest element supporting at any level of plausibility that anything similar to what happened in Sochi in 2014 could have also occurred in connection with the samples collected in Beijing in general and in connection with the Athlete's samples in particular.
101. The circumstances in Sochi are completely out of the ordinary. They imply the organisation of a highly complex conspiracy involving the laboratory and possibly even secret service agents.
102. There is absolutely no reason to have any suspicion that something similar could have happened outside of this very specific and extraordinary context.
103. Further, the fact that, in this special circumstances, samples may have been illegitimately opened, does not imply that this did or could have occurred in any previous testing conducted outside of this context and that this would put the integrity and/or identity of samples collected for doping controls generally in question.
104. The Disciplinary Commission observes that this is in any event not the case for the samples collected in Beijing in 2008.
105. At no time and place were these samples stored or handled in any context in which a manipulation of the kind, which occurred in Sochi, would be, even remotely, plausible.

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<sup>3</sup> This would be tampering within the meaning of Art. 2.5 of the Rules and a DNA analysis may help establishing it. It is to be noted that tampering could also and in any event lead to cancellation of the concerned results, without prejudice to other sanctions depending on what would be established in this respect.

106. The Disciplinary Commission further notes that the manipulations in Sochi had, logically, the purpose of removing Prohibited Substances, not adding such.
107. To add a Prohibited Substance would indeed just make no sense at all. Indeed, the only “rational” purpose of adding Prohibited Substance would have to impact the Olympic Games results in 2008. This would however have meant adding a Prohibited Substance in the samples for the purpose of the initial analysis conducted in 2008.
108. The concept that the samples would have been deliberately spiked by Prohibited Substance for the purpose of tampering the results of the re-analysis is completely outside of any plausible scenario. This is so much less the case that in 2008 it would not have been expected that re-analysis would be conducted<sup>4</sup>,
109. Finally, the Disciplinary Commission observes that the Prohibited Substance, which was found in the Athlete’s sample was not detected through the presence of the substance itself but the presence of metabolites thereof and, specifically, long-term metabolites.
110. The scenario of manipulation, which the Athlete is suggesting to support her request of DNA analysis would therefore imply a complex process in which actual urine of another individual having used the substance would have been used to substitute the Athlete’s urine. Such urine would further have been collected in such a way, as containing only long-term metabolites. This sophisticated scheme would have been implemented in 2008, when such long term metabolites were only identified in 2012.
111. A scenario of sample manipulation is in conclusion completely implausible. The Disciplinary Commission therefore holds that there is accordingly no reason to order the required DNA analysis.
112. It further holds that the analytical findings of the Laboratory establish the presence of the Prohibited Substance in samples, which are the samples number 1847186 collected from the Athlete on 22 August 2008.
113. The Disciplinary Commission finally notes the other arguments submitted by the Athlete with respect to the identification of her sample and/or the different argument that the analysis of her samples were not validly conducted are also without merits. These arguments include:
  - (i) the differences in pH allegedly existing between the samples analysed in Beijing and Lausanne;
  - (ii) the issue raised in connection with the quantity of substance used;
  - (iii) this issue raised in connection with the process of multiple samples analysed in one analytical batch and the traceability in this process; and
  - (iv) the fact that a screening analysis was performed on the A-Sample and not on the B-Sample.
114. These arguments were all addressed in the observations, which the Laboratory submitted in this respect on 3 November 2016.
115. The Laboratory Director, Dr Tiia Kuuranne first explained in regard of pH measurements that such can be based on various technologies and instruments.

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<sup>4</sup> The first ever effective re-analysis by on Olympic samples occurred in 2009 on a limited number of samples. The first decision to conduct an extensive re-analysis programs on olympic samples was made in 2012.

116. Typically, the indicator paper (NB: typically used by Doping Control officers to obtain an indicative measurement upon collection) has a completely different accuracy than the much more precise techniques used by the laboratories (calibrated ion-selective glass electrode).
117. As indicated in the documentation related to the handling of the sample, the Beijing laboratory recorded 6.5 as pH in the A-Sample in 2008. The Laboratory measured a pH of 5.96 and 6.06 in the B1- and B2-Sample.
118. According to Dr Kuuranne's explanations, which the Disciplinary Commission understands and follows, the pH-results recorded by the two laboratories are consistent.
119. The same applies to the answer of Dr Kuuranne in respect of the adjustment of the quantity used for analysis. There is indeed nothing in the Athlete's allegations which would support that a quantitative adjustment could be a departure of the ISL, albeit one, which would have caused the AAF consisting in the identification of the substance, not of its quantity.
120. Dr Kuuranne further clearly explains that the processing of multiple samples in one analytical batch is a routine and well-controlled procedure in doping control and any other analytical laboratory. As demonstrated by the answers of Dr Kuuranne, the traceability is secured (number of negative controls and/or indications of the positive controls used).
121. Regarding the process followed consisting in relying on the B-Sample split in two samples (B1- and B2- Sample) for the confirmation analysis, the Disciplinary Commission can only concur with what Dr Kuuranne states and which the Disciplinary Commission has already mentioned above. The decision to apply this process is a decision of the Testing Authority, i.e. the IOC. Further the process applied is not in contradiction with the ISL but is expressly described in Art. 5.2.2.12.10 ISL.
122. Based on the above, the Disciplinary Commission finds that none of the Athlete's arguments is putting in question the validity of the analysis results of the Athlete's sample and of the corresponding finding consisting in the establishment of an anti-doping rule violation.

**ii. Contaminated Products**

123. The Athlete alleges that the presence of a Prohibited Substance in her bodily sample may be a result of a contaminated product unintentionally ingested. At the hearing, the Athlete repeated that she had never knowingly used any Prohibited Substances during her career.
124. The Disciplinary Commission was provided with a list of food supplements that the Athlete admits that she used at the time of the 2008 Olympic Games: Carnitine – L Body Shaper chewing pills, Carnitine – L 500 mg Extreme capsules #60 produced by Dymatize, Creatine (Amino 2000, Creatine monohydrate, ZMA, BCAA produced by Optimum Nutrition), Liquid L-Carnitine with 100.000mg of L-Carnitine per bottle, with added probiotics and vitamins produced by BioTech USA, ZMA (Maximum BCAA Syntho, Uniwersale, Amino, ZMA Pro, Muscule Tech, Cell Tech produced by Weider) and X-Treme BCCA produced by Inkospor.
125. Based on a publication (Diana Brito da Justa Neves, Eloisa Dutra Caldas, *Dietary supplements: International legal framework and adulteration profiles, and characteristics of products on the Brazilian clandestine market*, in *Regulatory Toxicology and Pharmacology*, 2015) and various articles found on the Internet, the Athlete contends that some of her food

supplements purchased in the USA at the time could have been contaminated with oral turinabol.

126. The Athlete further provided the Disciplinary Commission with a statement issued by the National Anti-Doping Center of Ukraine attesting that the analysis conducted on some of the left-over of the supplements used by the Athlete in 2008 detected turinabol.
127. The Disciplinary Commission observes that the issue whether the source of the presence of the Prohibited Substance could be the ingestion of contaminated supplements is in any event not relevant in the context of the present proceedings.
128. Indeed, in the perspective of the application of the Rules, the mere presence of the Prohibited Substance – which is not contested by the Athlete – is sufficient to establish an anti-doping violation and to automatically trigger the main consequence pursuant to the Rules consisting in the disqualification of the results.
129. The Disciplinary Commission further observes that athletes have long been warned against the use of supplements. As such, the fact that turinabol may have been ingested as part of a supplement is not likely to constitute an element exonerating the Athlete from having been at fault for using a Prohibited Substance.
130. In this respect, the Disciplinary Commission observes that supplements do not, as a rule, contain turinabol and that accidental contamination of a legitimate controlled supplement by this substance appears to be very unlikely.
131. In any event and based on the elements provided in this proceedings, the Athlete has not met his burden to establish that she did not intentionally use a Prohibited Substance.
132. The Disciplinary Commission observes that the nature of the substance which was found in the Athlete's sample is consistent with intentional use of Prohibited Substances specifically ingested to deliberately improve performance. The fact that the metabolites of a doping substance, which is a "classical" doping substance, was found, supports this consideration.
133. Furthermore, the Disciplinary Commission observes that the fact that the substance in question may have been contained in food supplements would not exonerate the Athlete from having used it.
134. First, the use of food supplements in which a Prohibited Substance is an ingredient may just be a way of using deliberately such Prohibited Substance. The fact that the Prohibited Substance might be included in a food supplement does not make it *per se* less reprehensible to use than the substance in isolation.
135. Furthermore, athletes have been repeatedly warned to apply extreme caution when using food supplements, which may contain undeclared Prohibited Substances or which may have been contaminated during production.
136. Finally, the Athlete brings forth an impressive list of supplements, which she now admits to have been using at the time of the Olympic Games. At the time of the doping control, the Athlete however did not declare any of these Supplements.
137. The mere hypothesis that the source of finding could be food supplements, which the Athlete alleges to have used, the Athlete does not in any event establish that she applied the required level of caution.

138. Assuming for the sole purpose of discussion, that the source of the analytical finding would indeed be supplements in which the Prohibited Substances would have been included without the Athlete's knowledge, there is in any event no indication (not to speak of any evidence) that the Athlete satisfied the high duty of care and caution, which is expected from high-level athletes in relation to the products they ingest.
139. In conclusion, the Disciplinary Commission finds that an anti-doping violation is thus established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.

**C. Consequences of the anti-doping rule violation**

140. Under the Rules, the consequences of anti-doping rule violations are limited to consequences in connection with the 2008 Olympic Games.
141. In application of Art. 8.1 and 9.1 of the Rules, the results achieved by the Athlete during the 2008 Olympic Games shall be annulled, with all resulting consequences (notably withdrawal of medals, diplomas, pins etc.).
142. In application of Art. 9.3 of the Rules, the further management of the consequences of the anti-doping rule violations, and in particular the imposition of sanctions over and above those related to the 2008 Olympic Games, shall be conducted by the Union Internationale de Pentathlon Moderne ("**UIPM**").

\* \* \* \* \*

CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, 2, 5.1, 7.3.3, 8, 9 and 16 thereof.

THE DISCIPLINARY COMMISSION OF THE  
INTERNATIONAL OLYMPIC COMMITTEE  
DECIDES

- I. The Athlete, Viktoriya TERESHCHUK:
  - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
  - (ii) is disqualified from the events in which she participated upon the occasion of the Olympic Games Beijing 2008, namely, the Women's individual modern pentathlon event in which she ranked 3<sup>rd</sup> and for which she was awarded a bronze medal, and
  - (iii) has the bronze medal, the diploma and the medallist pin obtained in the Women's individual modern pentathlon event withdrawn and is ordered to return same.
- II. The UIPM is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of Ukraine shall ensure full implementation of this decision.
- IV. The National Olympic Committee of Ukraine shall notably secure the return to the IOC, as soon as possible, of the bronze medal, the diploma and the medallist pin awarded in connection with the Women's individual modern pentathlon even to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 27 February 2017

In the name of the IOC Disciplinary Commission



Denis Oswald, Chairman



Gunilla Lindberg



Ugur Erdener