

UNI World Athletes – Statement of Concern on the Effectiveness and Fairness of Anti-Doping Policy

I. Summary

Many player associations are concerned that the World Anti-doping Agency (“WADA”) Code (coupled with the governing structures and roles of WADA and the ICAS) have delivered a global anti-doping regime that is:

1. ineffective in protecting sport from doping and, therefore, safeguarding the interests of clean athletes; and
2. unfair and disproportionate, with substantial penalties being imposed on athletes who are not ‘cheats’.

II. Desired solution of the player associations

As a disciplinary matter, doping should, having regard to the labour law of many countries, be a mandatory subject for collective bargaining.

The player associations (who are primarily organised in professional team sports) wish to develop their own anti-doping policies (with the agreement of their clubs and sports) which are both effective at preventing doping and fair in their impact on athletes and the sport. This is to be achieved through collective bargaining.

III. Concerns of the player associations

Since the global adoption of the WADA Code, organised player associations have consistently sought a number of simple yet fundamental reforms to the WADA Code and the way it is governed and enforced:

1. Recognition of the athlete representatives chosen by the players themselves:
Each player is entitled to negotiate the terms upon which he or she is involved in sport, and to be represented by the person he or she chooses for the purposes of those negotiations. In particular, each player has the right to organise and collectively bargain.
2. Sound and independent governance of anti-doping policy and enforcement:
As the November 2015 report of the WADA independent commission into Russian athletics noted, the governance of WADA (50% international sporting federations and 50% national governments) is conflicted regarding the enforcement of the WADA Code. Given the extent of the governance crisis affecting almost all Olympic sports, it is essential that the public and all sporting stakeholders, especially the athletes, have confidence in the governance of the anti-doping effort.

3. Reliable and transparent science:
Athletes need to clearly know what is banned, and why. There is great confusion over many substances and the science behind some critical anti-doping detection methods (e.g. the test for HGH (NFL) and the biological blood passport (Pechstein)). More recently, there has been a lack of transparency over the scientific reasoning behind WADA's decision to add meldonium to the prohibited substances list.
4. A focus on catching cheats, and not 'inadvertent dopers' and other technical rule breaches:
The prosecution of cheating must be the focus of the anti-doping effort, with the application of the presumption of innocence and the imposition of the burden of proof on the prosecution to establish 'cheating' on the part of an athlete to a satisfactory standard of proof ('comfortable satisfaction'). There is no need to sanction athletes where it is clear to the parties, acting objectively, that the athlete is not a cheat. Yet, this is a common occurrence. The reputations of athletes who have been wrongly accused of doping, or athletes who have inadvertently committed a technical rule violation, must be protected.
5. Acknowledgement of the fundamental human rights of athletes:
The fundamental rights of athletes need to be recognised (e.g. privacy, data protection, the privilege against self-incrimination and the protection of whistleblowers). Blood and urine testing, athlete whereabouts requirements and coercive powers regarding investigations need to be evidence based and proportionately exercised. This is most effectively achieved through the application of international human rights standards and the processes established under the United Nations Guiding Principles on Business and Human Rights, including the 'protect, respect and remedy' framework.
6. Tough yet proportionate penalties:
Sanctions must be determined having regard to the overall circumstances of a case and the relevant sport ('individual case management'). The four year ban based on the Olympic cycle is irrelevant to all professional team sports. There should not be any mandatory penalties. However, cheats should be heavily sanctioned.
7. Adaptation for the needs of professional team sports:
Anti-doping regulation must recognise the particular circumstances of professional team sports, such as the fact that the player is an employee within a controlled workplace in which the employer owes him or her a duty of care including to a safe workplace. Anti-doping policy must also be consistent with other binding regulations in particular sports (e.g. the conflict between mandatory penalties under the WADA Code and article 17 of the FIFA Regulations for the Status and Transfer of Players). Team sanctions may also be more appropriate and effective in given circumstances.
8. Fair and independent arbitration system:
The laws of natural justice and procedural fairness must apply to any legal process, with the preference being for timely, affordable and effective arbitration. Athletes must be able to access qualified counsel and representation, and have an equal say in the appointment of any arbitration panel, which must be independent of any influence from international sporting federations, national governments, the Olympic movement and WADA. Fundamental human and labour rights standards must apply, and prevail over considerations based on the so-called autonomy or specificity of sport.

9. Substances of addiction and abuse:

Substances of addiction and abuse present a major problem to society, and sport is not immune to those problems. Any regulation of such substances should be a matter for collective bargaining and resolved having regard, firstly, to the health and rehabilitation of any affected player. Effective treatment including self-referral are essential measures.

10. Effectiveness of anti-doping policy:

The effectiveness of anti-doping policy needs to be objectively and transparently measured and assessed.

Adopted by the Executive Committee of UNI World Athletes

Toronto, Canada

Tuesday 26 April 2016

Brendan Schwab, Head of UNI World Athletes